

tended to go no further than as above indicated, though questions may arise upon its language.

It was observed in *Warfield v. Brewer*, 4 Gill, 265, that "where the plaintiff has suffered his judgment to die, the law *presumes it until revived to be satisfied*, and a purchaser has some right to presume it also and may have purchased under that belief."⁷ With regard therefore to the defendant in a judgment, and those claiming under him, it is a positive rule of law, subject to exceptions that will be noticed presently, that an execution, except by attachment, shall not be had after the lapse of three years from the date of the judgment or from the expiration of a stay thereon, nor after a change of the defendant by death or marriage, without a *scire facias* being first issued,⁸ in which the parties to be charged must be included, for in the same case of *Warfield v. Brewer supra*, it was held, that a judgment revived against the executors of the defendant only was not a judgment to bind lands like the original judgment.

Keeping judgment alive—Limitations.—However, the plaintiff may keep his judgment alive for an indefinite time, either by bringing an action of debt upon it, (which, however, is seldom done here, though not taken away by the Statute of Westminster,) or by *scire facias*,⁹ or by issuing an execution within three years and renewing it from time to time if it be not effective. It was also formerly holden, that a plaintiff might keep his judgment alive by issuing a *feri facias* within three years, but without executing it, and when the effective execution was desired, having a return made of *nulla bona*, and the writ filed, and entering continuances regularly on the roll, by *vicecomes non misit breve*, down to the term of which the writ intended to be executed bore *teste*, (for such seems to be the effect of the case of *Mullikin v. Duvall*, 7 G. & J. 355, in conjunction with *Boyd v. Talbott supra*); or by the more simple process of issuing an execution "to lie" as explained in *Evans Pr.* 66. But this has been denied by the Court of Appeals in *Hazlehurst v. Morris*, 28 Md. 67.¹⁰ In *Mullikin v. Duvall* judgment had been recovered against the defendant at June term, 1819, of the Court of Appeals. A *fi. fa.* was issued in Feb.

to insert such a clause in a case where the attachment is issued within twelve years, is said in *First Bank v. Weckler*, 52 Md. 30, to be a matter of doubt. See *Poe's Practice*, sec. 588, note 1.

⁷ *Mitchell v. Chesnut*, 31 Md. 521; *Johnson v. Lemmon*, 37 Md. 336; *Starr v. Heckart*, 32 Md. 267.

⁸ The present law is practically the same except that the period of three years has been raised to twelve years in all kinds of execution and that the time covered by any stay of execution is counted as part of the twelve years. Code 1911, Art. 26, sec. 20.

⁹ The fact that under the present law the judgment creditor is entitled to execution at any time within twelve years from the date of the judgment does not prevent him from resorting to a *scire facias* to revive the judgment within the twelve years as the safer and more effective mode of keeping the judgment alive. *Lambson v. Moffett*, 61 Md. 426.

¹⁰ But *Mulliken v. Duvall, supra*, has been affirmed in later cases, which make no reference to *Hazlehurst v. Morris, supra*. The law therefore seems to be that plaintiff may keep his judgment alive for an indefinite period by issuing execution within the twelve years and having