tles another point which might occur upon the language of the Statute of Limitations, viz: whether after the plaintiff and defendant are both dead, a *scire facias* could issue on the judgment, for it was declared that the judgment on a *scire facias* is a *new* judgment. And it is also authority that, under the equity of sec. 4 of 21 Jac. 1, c. 16, an executor may take out process within a year after the death of his testator, if the period of limitations has not expired before such death, though it elapses during that year, see, however, Ruff v. Bull, 7 H. & J. 14; Young v. Mackall, 4 Md. 362.

In Boyd v. Talbott *supra* judgment was recovered 1st March 1848, and executions by *fi. fa.* and *ca. sa.* were immediately and successively issued and returned. An interval of two terms then occurred, and at the third term, on the 2d Oct. 1849, an attachment on the judgment was issued and laid in the hands of Talbott, which was regularly continued till the 2d March 1852, when the plaintiff suffered judgment of nonsuit, and on the same day issued another attachment and laid it in Talbott's hands, who moved to quash it, as having been issued after three years from the date of the judgment without reviving the latter, and the writ was quashed.

On appeal it was insisted, that as the previous attachment had been regularly continued until the day the last writ was issued, the judgment was then alive although three years had elapsed, and there being no fractions of a day in law, the latter attachment was in time, and Mullikin v. Duvall was cited as an authority that a judgment is unaffected by any lapse of time, during which process of execution is kept up by the renewal of the writ whenever it proves ineffective. But the Court as elsewhere noticed held the execution irregular. And it may therefore be considered as settled upon these two cases, that where a writ of *fi. fa.*, though issued within the three years, is not returned, (Mitchell v. Chesnut, 31 Md. 521,) or is *returned* by the Sheriff and not continued, or becomes *functus officio* in any other way, a revival of the judgment by *scire facias* after three years from its date is necessary. On the other hand, the general rule is that judicial writs do not abate, and therefore if the execution is actually issued in time, a change of parties does not necessitate a *scire facias;* as in Hanson v. Barnes' lessee, 3 G. & J. 354, where A. recovered judgment against B. in March 1824; on the 28th August 1824, and during the session of that term of the Court, a *fi. fa.* issued and was placed in the hands of the Sheriff; and on the 1st Sept. 1824, B. died, and both his real and personal estate were levied on. The Court observed that a *scire facias* could not be necessary, where a new party becomes interested after the process is in the hands of the officer. As to the personalty the case was clear, and there could be no difference as to the realty. It is at the election of the plaintiff to take lands or goods, except the defendant die when his lands become only secondarily liable, unless they had prior to his death become liable to be affected by execution. Statute 5 Geo. 2, c. 7, makes lands liable as personalty, and hence, if it had *not* been proved that the writ had been delivered to the Sheriff be-

148 fore the death of the defendant, but *merely that an execution had issued, lands in the seisin of the *heir* might have been taken, for the *fieri facias* does not bind from the delivery of the writ, but the lien is from the rendition of the judgment, and the right to execution of lands in the tenure of the heir grows out of Stat. 5 Geo. 2, in connection with that lien.