goods of the person flying, any law, statute or usage to the contrary notwithstanding.[92]

Whether a plaintiff proceeded by *capias ad satisfaciendum* or *fieri facias,* he still had to sue out the writ of execution within a year and a day from the date judgment was entered. Otherwise the court would conclude *prima facie* that the judgment was satisfied and extinct. However, if more than a year and a day had passed, plaintiff could still sue out a writ of *scire facias* for defendant to show cause why the judgment should not be revived and execution had against him. This practice was probably based upon the extension of 13 Ed. I, St. I, c. 45 to the province.

From the entries in the *Liber* it appears that the writ of *scire facias* recited that plaintiff at a court held on a certain date had recovered a certain debt against defendant, as well as damages, and that execution had not yet issued forth; whereupon the sheriff was commanded to make known to the defendant that he be in court at the next term to show cause, if he had any, why execution should not issue against him for the said debt and damages, and that the sheriff make return of the writ at said date.

In the usual case the sheriff returned the writ endorsed "Not found" or "*Non est,*" if defendant could not be served, and "Made Known", if service were made. In a few cases writs were returned endorsed "*Cepi*" or "Sumoned" or "Agreed." Upon the return day defendant might appear and imparl to the next court. Then, or without any previous imparlance, defendant might appear in his own person and being prayed to answer to the writ might in effect plead "*nihil dicit.*" Whereupon the court would adjudge that plaintiff have execution against defendant for the debt and damages for which judgment had already been entered, plus costs and charges. Apparently if suit was by administrators, the cost of the *scire facias* would not be allowed.

In one case, *Davis* v. *Yopp* in the January 1697 court, two writs were issued and returned "Not Found" and Yopp, being called, did not appear. Thereupon the court adjudged that Davis recover the debt and damages as well as costs and charges. In *Jowles* v. *Bennett* defendant had been served but failed to appear so the court adjudged recovery for Jowles. In *Jowles* v. *Davis* Davis appeared on the return of the writ and apparently attempted to show cause why execution should not be had. However, the court, "the truth of the matter between the parties . . . being Seen heard and understood" considered that Jowles have execution, plus costs and charges. The same procedure was followed in *Jowles* v. *Winkling.* In *Batson* v. *Mills,* upon the return of the writ Mills appeared and apparently showed good cause why execution should not issue, for the truth of the matter in controversy having been "Seen heard understood and Maturely Deliberated" the court considered that Batson take nothing by his writ and that Mills recover his costs and charges.[93]

In several cases demurrer was made to the writ. In *Brooke v. Tracey's Administrator,* in the February, 1698/9 court James Brooke had obtained a judgment against Charles Tracey for 5200 pounds of tobacco but execution had not issued forth against Tracey in his lifetime nor against the administrator, David Small. Service was made and Small, after an imparlance, demurred to the *scire facias.* Upon examination of the matter "twas found that the Cause of Demurrer was that the clerke had not ishued out the writt of Scire facias aright." Therefore, it was considered by the court that the writ be quashed, that defendant go without

92. 13 *id.* 521; 22 *id.* 463.
93. *Infra* 296–97, 298, 319, 342.