

Parties to scire facias.¹²—In *Arnott v. Nicholls*, 1 H. & J. 471, A. obtained a judgment against B. with a stay of one year. Before the expiration of the stay, the defendant conveyed certain of his lands to a *bona fide* purchaser

¹² **Parties defendant.**—All original defendants, if living, must be made parties to a *scire facias*, or their omission accounted for by suggestion in the writ; otherwise a demurrer will lie, not a plea in abatement. *Bowie v. Neal*, 41 Md. 124.

Where a sole defendant in a judgment is dead, a *scire facias* to revive the same may be issued against his personal representative alone and judgment thereon will only bind assets; but if it is desired to bind decedent's land, it must issue not against the *terre-tenants* alone but the personal representative must also be joined, not for the same reason that all *terre-tenants* must be joined but because the personal representative is the one best able to defend the suit. *Tiers v. Codd*, 87 Md. 447. But see *Polk v. Pendleton*, 31 Md. 118, where it is said that in such case a *scire facias* may issue against the heirs and *terre-tenants* without joining the personal representative. All *terre-tenants* should be made parties, otherwise any *terre-tenant* who is made a party may plead in abatement the failure to do so. But while the judgment must be revived against all, the debtor cannot compel the levy and execution of the writ upon all the lands. If the land of only one *terre-tenant* is sold, he may enforce contribution in equity from all with whom he stood "*in equali jure.*" *Walsh v. Boyle*, 30 Md. 262. See on this subject generally *Poe's Practice*, sec. 593.

Who are terre-tenants.—All who are in possession under the judgment debtor, such as heirs, devisees, mortgagees, or alienees after the judgment, are *terre-tenants*. They are in as of the estate of the judgment debtor and before the judgment can be revived and enforced by execution against the land so as to divest their title, it is necessary to warn them by *scire facias* so they may have an opportunity of making their defense and claiming contribution from others holding lands of the judgment debtor bound by the judgment. But where a party is in possession holding by title adverse to the judgment debtor or paramount to his, (as a purchaser at a tax sale), he is not a *terre-tenant* because his rights are in no manner affected by the judgment. If he has a good title the judgment does not bind the land nor can a sale under the execution affect his interest. If he has not a good title, then he has no right to claim contribution by reason of the land being taken to satisfy the judgment. *Polk v. Pendleton*, 31 Md. 118; *Lee v. Early*, 44 Md. 80, 94. Cf. *Adams v. Stake*, 67 Md. 447.

The assignment by one entitled as distributee of an estate to an undivided interest in a chattel real by a deed not recorded among the land records, but lodged in the office of the register of wills where the estate is being administered, followed by a distribution of such interest to the assignee in the administration account and a subsequent deed to her of it by the administrator pursuant to an order of the Orphans Court, makes the assignee a *terre-tenant*. *Wright v. Ryland*, 92 Md. 645.

A *scire facias* against *terre-tenants* is either general or special, general when it issues against all *terre-tenants* without naming them in the writ but leaving them to be named in the sheriff's return, special when the names of the *terre-tenants* are set out in the writ. In the latter case plaintiff must name all *terre-tenants* holding lands subject to the lien of the judgment,