

interest, or any other of the creditors of Jeremiah Booth. *Davidson v. Clayland*, 1 H. & J. 546; *Jones v. Jones*, 1 Bland, 451; *Lewis v. Zouche*, 2 Cond. Chan. Rep. 470.

It is clear then, that the judgment of Stone & McWilliams did give them a lien upon the equitable interest held by Jeremiah Booth; but the circumstances of this case suggests another inquiry, in relation to this point, and that is, whether their lien continued to be in full force, at the time they filed their petition, so as to overreach any intermediate claims against Booth's estate; and to continue to them their right to a preference in satisfaction.

At common law, a man, by a judgment, authenticated his debt, and thereby obtained authority to sue out execution within a year and a day; but, if he failed to do so, it was presumed to be paid; and the defendant might plead payment and a release of such recorded debt; because all judgments were to be rendered effectual within a competent time, which was the same as in case of non-claim. This time of limitation of judgment was the same in real as in personal actions; for though the judgment on a real action settled the right to the land, as in the personal it did to the thing in demand; yet that judgment could not lie dormant forever, to be executed at any time; for then dormant judgments would overreach conveyances between parties, which would be produc-

324 tive * of the greatest evils, and the most mischievous consequences; and therefore, there was but a year's time allowed to execute such judgments, as between party and party; where however, the State was plaintiff it might sue out execution at any time after the year without a *scire facias*. But in debt, if the judgment was not executed, the debt was presumed to be paid, when the judgment lost its force; and therefore, the common law, in such case, gave no *scire facias* but a new action. *Gilb. Execu.* 12, 26, 92, 95; *Gilb. Court of Exchequer*, 166; *Anonymous*, 2 Salk. 603; *Stileman v. Ashdown*, 2 Atk. 609; *Eppes v. Randolph*, 2 Call. 125; *Nimmo v. The Commonwealth*, 4 Hen. & Mun. 57; *Coleman v. Cocks*, 6 Rand. 629; *Rankin v. Scott*, 12 Wheat. 179; *The United States v. Morrison*, 4 Peters, 124.

This limitation to the issuing of an execution on a judgment, between party and party, has been repeatedly recognized by our Legislature as being founded, like all other limitations, upon a presumption of satisfaction; and as being, on that ground, an effectual bar to that mode of recovery; and consequently, as furnishing conclusive evidence of the extinction of the lien; since, as has been shown, there can be no lien where there is no right to issue execution. May, 1766, ch. 7; February, 1777, ch. 15, s. 7; October, 1778, ch. 21, s. 7; *Bac. Abr. tit. Limitation of Actions*, E. 6.

The statute which gave the *scire facias* as a new mode of reviving a judgment in personal actions, 13 Ed. 1 c. 45, made no altera-