

Court, might come in under such creditors' suit. *Drewry v. Thacker*, 3 Swan. 529; *Clarke v. Ormonde*, 4 Cond. Cha. Rep. 54.

According to the English law there is no positive limitation against a bill of revivor, or a *subpoena scire facias* to revive a decree; yet where there had been a lapse of fifteen years, the proceedings were stayed. *Comber's Case*, 1 P. Will. 767. But in Maryland it would seem to have been long since understood, that there was a similar limitation to the issuing of an execution upon a decree as to that of issuing an execution upon a judgment at law; and that no execution can \*be now issued upon the one or the other after the lapse of three years from their date without a revival. *Barrington v. O'Brien*, 1 Ball & Be. 173; *Matthews' Presum.* 470; *Thomas v. Harvie*, 10 Wheat. 146; *Berrett v. Oliver*, 7 G. & J. 207. (o) **327**

After the time has elapsed by which the plaintiff is precluded from at once issuing an execution upon his judgment, he may still, if it be not satisfied, instead of a *scire facias*, have an action of debt upon it; but the institution of such an action, as it is incompatible with, and cannot be prosecuted at the same time and together with an execution upon the judgment, amounts to a waiver of the lien arising from the right to issue execution; or an admission, that no such lien then exists. *Selwin*, N. P. 627; 3 *Blac. Com.* 160, note; *Bates v. Lockwood*, 1 T. R. 638; *Holmes v. Wainwright*, 1 Swan. 23; *Sasscer v. Walker*, 5 G. & J. 103. There was formerly no positive limitation to an action of debt upon a judgment; but after the lapse of twenty years it would be presumed to have been satisfied, unless the delay could be sufficiently accounted for. *Kemys v. Ruscomb*, 2 Atk. 45; *Hales v. Hales*, 1 Rep. Cha. 105; *Winchcomb v. Winchcomb*, 2 Rep. Cha. 101. But by our Act of Assembly the bringing of such an action of debt has been expressly limited to twelve years. 1715, ch. 23, s. 6; *Hammond v. Denton*, 1 H. & McH. 200.

It appears from the proceedings and the testimony taken in support of the claim of Stone & McWilliams, that at the August Term, 1822, of St. Mary's County Court, they obtained a judgment against James Walker and Jeremiah Booth, for the before mentioned amount, from which judgment Walker and Booth appealed; and, after the case had been taken to the Court of Appeals, and placed there for argument, Jeremiah Booth, on the 10th Novem-

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(o) *STUMP v. HOPKINS*.—On the petition in this case a *ca. sa.* was ordered on the return of which it was moved to quash the execution, because more than a year had elapsed from the date of the decree before the application for the *ca. sa.*

*KILTY, C.*, 1806.—This objection is such as to cause some doubt, and to require consideration; therefore, the execution must be quashed as having been erroneously issued.—MS.; *Forum Rom.* 192; 1823, ch. 194.