not a party. It appears, then, that if there be no change of parties to the judgment, or if the *plaintiff only* die or marry, within the three years, a *scire facias* is not required before execution may be levied on lands aliened by the debtor in the possession of his alienees. But that if the defendant die before execution within the three years, or the three years elapse, then as a *scire facias* is necessary to revive the judgment it must issue against all the alienees, as terre-tenants, whose lands it is designed to affect.[15] And if a plaintiff omit to revive a judgment against particular terre-tenants, he may on subsequently attempting to do so find his remedy as to them barred by limitations, see Warfield v. Brewer.

But though it is generally true, that lands in the possession of an alienee of the defendant cannot be affected by an execution without a previous *scire facias* in cases where the judgment requires to be revived, yet as against the defendant and his heirs the rule is different. The question arose in Miles v. Knott's lessee, 12 G. &. J. 442. The case, so far as we are now concerned, may be shortly stated thus: A. recovered judgment against B. More than three years elapsed, and A. issued a *fi. fa.*, under which B.'s lands were taken. The plaintiff, who purchased the lands under the *fi. fa.*, brought an ejectment for them, and the question was whether he took title under the execution and sale. And the Court held that the process was voidable only and not void, and the irregularity could not be inquired into in another suit. This decision was affirmed in Manahan v. Sammon, 3 Md. 463. Ten years afterwards, in Elliott's lessee v. Knott, 14 Md. 121, the question in Miles v. Knott arose *in another form, which may be **149** thus stated. A. recovers judgment against B.; B. dies, leaving an infant heir; three years elapse and the judgment is not revived by *scire facias*, execution issues and the lands are sold; the infant on attaining age brings an ejectment. It was held that the circumstance of infancy made no difference and the purchaser took a good title. These decisions were much criticised in Schley's lessee v. the City of Baltimore, 29 Md. 34, by the ablest counsel in Maryland, but the rule was affirmed, and extended to what was considered the analogous case of the execution of a decree in Chancery on a bill for the sale of an intestate's real estate. The objection in this respect must therefore be made in time in the principal case, and it is held that it may properly be made at the return of the writ of *fi. fa.*, Trail v. Snouffer *supra*.

The assignee or the *cestui que use* of a judgment may issue a *scire facias* under the Act of 1830, ch. 165, Code, Art. 9, sec. 2,[16] without taking out administration on the estate of the original plaintiff, Clark v. Digges, 5

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[15] This, with the change of three years to twelve years, may be taken as a correct statement of the law at the present time. But it must be added that where a judgment is revived within the twelve years, the alienee of the land of the judgment debtor must be made a party to the *scire facias*, else the land so conveyed to him will not be bound by the judgment of *fiat*. This was decided in Wright v. Ryland, 92 Md. 645, which overruled on this point Murphy v. Cord, 12 G. & J. 182. See the criticism of Wright v. Ryland in 53 L. R. A. 70.

[16] Code, 1911, Art. 8, sec. 2.