A Treatise On the Writ of Scire Facias, with an Appendix of References to Forms

Foster Thomas Campbell
A TREATISE

ON THE

WRIT OF SCIRE FACIAS,

WITH AN

Appendix of References to Forms.

BY

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MDCCCLI.
TO

THE HON. SIR THOMAS NOON TALFOURD, KNT.,

ONE OF HER MAJESTY'S JUSTICES OF

THE COURT OF COMMON PLEAS,

ETC. ETC. ETC.

THIS VOLUME IS DEDICATED,

WITH

THE GREATEST RESPECT

FOR THOSE AMIABLE QUALIFICATIONS, THOSE VARIED LEGAL AND
LITERARY ATTAINMENTS, AND FOR THAT GRACEFUL ELO-
QUENCE WHICH SO EMINENTLY DISTINGUISHED
HIM AS AN ADVOCATE, AND ULTIMATELY
RAISED HIM TO THE BENCH,

BY THE AUTHOR.
PREFACE.

In presenting this treatise to the notice of the profession, the author ventures to hope that he has, in some measure, supplied a book of practice which was required.

It is indeed somewhat extraordinary, that, whilst there are many authors on almost every known branch of the law, until very recently, there was no treatise on the writ of *scire facias*. A very cursory glance at the present volume will show this writ to be required in a great variety of instances, the practice in each being distinct, and in many of them depending on different rules; the decisions which govern the practice being scattered through the books in an immense number of reports. Had the author believed that a treatise on this subject, recently published,* was adequate to the wants of the profession, although he had then progressed far through the labour of the present volume, and its preparation for the press had been announced, he would at once have ceased its compilation. But conceiving that an attempt to render that work (written originally with reference to the practice on the writ of *scire facias* in Ireland, founded in many instances on Irish statutes,) applicable to the practice in England, by bracketting within Irish statutes the different enactments made by English statutes, rather deteriorated from its utility as applicable to Ireland, than met the requirements of the profession in England, the author saw no reason to induce him to refrain from completing his task.

* Kelly on *Scire Facias*. 
Hitherto, in this country, the English practitioner has been aided only by brief collections of the side notes of reported cases in the books of practice, with very slight attempts at methodical arrangement, and by the foot notes of cases in Williams’ Saunders, which in the course of time have become so voluminous, and so devoid of arrangement, as to be almost useless without an expenditure of time which the practitioner can ill afford.

The author has endeavoured in the present volume to arrange the practice, as to the writ, under distinct and separate chapters, each treating only of one subject, so that a reference to any one chapter shall afford to the reader all the information on the subject treated of in it which he may require. In doing this, it seemed a natural arrangement to divide the instances in which the writ is necessary according to those principles which characterise it, and which regulate its issuing. Thus, in some cases, the writ is a continuation merely of a former suit; in others, it is an original action, or in the nature of one: and in those cases in which it is a continuation merely of a former suit, it is in some of them required to revive and have execution of a pre-existing judgment; in others, it is required to render liable to, or to enable a new party to the suit to have execution of, a pre-existing judgment.

The first book will be found to treat of those cases in which the writ is required to revive a pre-existing judgment; and of those exceptions in which it has been held that the writ is not necessary.

The second book treats of all those cases in which the writ is required because a new party becomes chargeable to, or benefited by, the judgment.

The third book relates to those cases in which the writ is an original action, or in the nature of one, and in which it is the first step taken to enforce a right, or pay-
ment of a debt due, as to repeal a patent, to have execution of a recognizance, &c.

The fourth book treats of pleading and practice points.

It was originally the author’s intention to have furnished precedents of the writ in all cases, in an appendix. These, however, when prepared, appeared in the manuscript of so great a bulk, and would have so materially increased the size and price of the volume, that the author, yielding to the opinion of the publishers, determined to give references only to the precedents. These will be found in the appendix; and most of the precedents are to be found in the ordinary books of precedents.

To facilitate references, a table of the statutes and cases cited is prefixed, in addition to the usual index to the volume.

In many branches of the subject, the author has had no guide other than the decisions scattered at large over the books; in some, he has had little to do but to use materials already compiled, which he could not improve; but, in all instances, he has faithfully cited his authorities, not wishing in any case to claim a credit which did not belong to him.

In some of the cases treated of in which the writ is required, as where it is necessary to revive a judgment presumed to be satisfied by lapse of time, it is rumoured that the Common Law Commissioners intend altering the practice, by extending the time during which a judgment may be put in execution, from one to six years, and by providing a different form of reviving the judgment, which is to be termed a “writ of revivor,” in the place of the present writ of scire facias. It is, however, impossible to predicate what changes may be contemplated; and, with the change proposed, most of the existing rules regarding the reviving of a judgment, expired by lapse of time, will probably be held to apply.
In placing this volume before the profession, the author feels conscious that it has many short-comings and many faults, which more leisure might have enabled him to avoid; and he can only crave for it that indulgence and consideration which the first editions of most books of practice require. Should its reception warrant a future edition, it will be the author's earnest wish to make it deserving of the good opinion of the profession; that he may, so far as he can, contribute something to the common store, in return for those treasures of legal lore which the sages of the law have freely, and without stint, offered to his use.

2, Plowden Buildings, Temple,
January 16, 1851.