

After which the auditor reported a distribution of the proceeds as directed, which was confirmed by an order of the 4th of May, 1829; from which Kent appealed; and, at June Term, 1831, the order was affirmed by the Court of Appeals.

* ALLEN v. BURKE.

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ABATEMENT AND REVIVOR IN CHANCERY.

The Act of 1820, ch. 161, applies only to cases in which it remains to pass a final decree. (a)

Where the suit abates after a final decree it may be revived by a subpoena *scire facias*. The form of the writ, and the mode of proceeding. (b)

This bill was filed on the 2nd of March, 1824, by Richard Allen against Micajah Burke and Ann his wife, and William Comegys, to foreclose certain mortgages which had been given by the defendant Ann, while sole, to the plaintiff on a certain parcel of ground and its rents and profits, of which she held the remainder in fee fee simple, after the expiration of a lease for years held by the defendant Comegys. The defendants answered: after which the defendant Ann died; and the suit was revived against Elizabeth Burke, her daughter and heir. Commissions were then issued and testimony taken and returned; upon which the case was heard; and on the 29th of April, 1828, it was decreed, that the mortgaged property be sold; and that the defendant Comegys pay to the plaintiff the sum of \$846.97, &c.

After which Sarah Allen, by her petition, stated, that the plaintiff Richard Allen had died since the passing of the decree; and that she had obtained letters of administration with the will annexed on his personal estate. Whereupon she prayed, that the decree might be revived against the defendants; that subpoenas might be issued against them; and that she might have such other and further relief in the premises as the nature of her case might require. Upon which subpoenas, in common form, were issued without any special direction or order from the Court; which having been returned summoned, the petitioner moved, that the decree might be ordered to stand revived.

BLAND, C., 12th February, 1829.—The motion of the petitioner Sarah Allen, that the decree should be revived having been submitted on her part, and no cause having been shewn to the contrary, the proceedings were read and considered.

(a) See Rev. Code, Art. 65, secs. 12, *et seq.*; *Hall v. Hall*, *ante*, 130.

(b) Cited in *Matthews v. Merrick*, 4 Md. Ch. 364. See *Harryman v. Roberts*, 49 Md. 67.