

upon and immediately after the death of the said plaintiff Colegate D. Owings. And it shall be further expressly stipulated and declared in the said deed of conveyance, that if the said defendant Charlotte C. D. Owings shall die without leaving any lawful issue, in the life-time, and before the death of the said plaintiff Colegate D. Owings, then and in that case the said deed of conveyance and every part thereof shall be utterly null and void to all intents and purposes whatever.

And it is further decreed, that the said defendant Charlotte C. D. Owings pay unto the said plaintiff Colegate D. Owings her full costs expended in this suit, to be taxed by the register.

Soon after the passing of this decree the plaintiff died, and yet an appeal was prayed in her behalf, and the case taken to the Court of Appeals. After which, by a petition signed by one of her solicitors, the Court was asked to pass an order directing the defendant to pay the costs as taxed by the register.

BLAND, C., 8th November, 1828.—It may not be amiss here to observe, by the way, that in England an appeal from a decree in Chancery may be had at any time within five years, with **409** \* a saving in favor of persons *non compos mentis*. *Shelf. Lun.* 424. Here it is declared, that all appeals shall be made and entered within nine months from the time of making the decision, and not afterwards; unless it be alleged on oath, that such decree was obtained by fraud or through mistake, 1826, ch. 200, s. 14, but there is no saving in favor of persons *non compos mentis*.

Where a decree has been passed, as in this instance, affecting as well the real as the personal estate of the parties, and the suit abates by the death of either of them, as the realty passes to the heirs, and the personalty to the administrator or executor of the deceased, in order to embrace the whole subject of the decree, it should be revived by or against both the heirs and personal representatives of the deceased party. But such a comprehensive revival of the suit is not in all cases indispensably necessary, as each class of the representatives of the decease may revive and prosecute the suit to the extent of their respective interests, and no further. *Ferrers v. Cherry*, 1 *Eq. Ca. Abr.* 4. It is said, that in England a suit cannot be revived merely to recover costs not taxed: this however has been regarded there as a very odd rule. 2 *Mont. Dig.* 524. And having met with no instance of its having been acted upon by this Court, I feel no hesitation in rejecting a rule which has been so often condemned, and which appears to be now reluctantly tolerated by the tribunal in which it originated. Be that however as it may, in this case the costs, it is alleged, have been taxed, and therefore the amount of them, as a liquidated decreed debt, on the death of the plaintiff passed to her personal representative.