

which might be found in his hands, seems to have been wholly abandoned.

It now appears that the defendant, Ashur Foulke, the administrator, who had been appointed to make the sale, is dead; and that the suit had thus abated as to him. A suit which has abated as well in regard to the real as to the personal estate may be so revived as to proceed against either, leaving the abatement to stand as to the other. *Colegate D. Owings' Case*, 1 Bland, 409. So here, **661** as this abatement does not * affect the plaintiff's claim, or their proceedings against the realty, founded upon their equitable lien, it may be suffered to stand, and the case be allowed to proceed in all other respects, and for that purpose it will only be necessary to appoint some person to take the place of the deceased trustee.

Whereupon it is ordered, that James Boyle be, and he is hereby appointed trustee, to carry the decree into effect; and in all respects he will be governed by, and pursue the directions of the decree in the same manner as if originally appointed trustee.

The surveyor John W. Duvall, by his petition filed on the 3d of October, 1827, stated, that there was then due to him from each of the parties the sum of \$15 for the survey made by him under the order of the 8th of January, 1823. Whereupon he prayed, that the trustee Boyle, and Samuel Anderson might be each of them ordered to pay him that amount.

BLAND, C., 3d October, 1827.—Ordered, that James Boyle, the trustee, pay to John W. Duvall the sum of \$15 for his services, as stated in his petition. And it is further ordered, that Samuel Anderson pay to John W. Duvall the sum of \$15 for his services as above stated; or that they, Boyle and Anderson, shew cause to the contrary on the first of November next. Provided, that a copy of this order be served on each of them before the fifteenth day of the present month.

The trustee Boyle, on the 2d of November, 1827, filed his answer shewing cause against this order; in which he states, that although he admits, that the services were performed by the surveyor, and that his charge is reasonable; yet he did not render his account to the register until the 3d of October, 1827; that in consequence of this neglect the register in taxing the costs, set out in the record, transmitted to the Court of Appeals, had not included the fees now claimed by the surveyor; that a *fieri facias* was issued against Anderson from the Court of Appeals for the costs, and charges of the two Courts as taxed by the register and clerk; that it would be unjust, that the estate of Stephen Scotton should have to pay these fees, now claimed by the surveyor with-