

not claiming by operation of law only, a mere bill of revivor will not lie; nor can it be resorted to by a defendant as a means of reviving the suit in any case, except after a decree when he can derive a benefit from the further proceedings, and the plaintiff neglects to revive: for no man can be compelled to revive and prosecute a suit, who can have no possible advantage from it. (d) And as it cannot be presumed, that the mode of proceeding prescribed by this law was intended to stand as an addition to any pre-existing and similar mode of proceeding, which was, in its nature, more cheap, simple, and expeditious; it therefore cannot be considered as having been intended to apply to any case of an abatement, after a decree, where the suit may and ought to be revived by a subpœna *scire facias*. (e)

It must also be recollected, that the form of proceeding, under this act of assembly, as laid down in the case of *Labes v. Monker*, refers only to a case where the representative of a deceased party applies to be admitted in his place; for, the act evidently contemplates a different mode of proceeding, where the surviving party proposes to revive the suit against the representatives of a deceased party. But as it is sufficiently obvious, that a suit cannot be revived in the mode prescribed by this act, which has been abated, as in this instance, by the marriage of a female plaintiff,

It is therefore ordered, that this petition be dismissed, with costs, to be taxed by the register.

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Whereupon *Bayliss* and wife filed a bill of revivor, stating the fact of their marriage, which being admitted, and an answer to the bill of revivor, for that purpose, having been dispensed with, by consent, and the case considered as having been thus revived, it was brought before the court accordingly upon its merits.

1st January, 1827.—BLAND, Chancellor.—This case standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

This suit has been instituted to recover a legacy given by the late *Thomas Hall* to his son *William W. Hall*, the late plaintiff. This *Thomas Hall*, in the lifetime of his wife, had, besides the late complainant, *William W. Hall*, seven other children; and was then in possession of personal property to a considerable amount in

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(d) 1 Mont. Dig. 303; 2 Mad. Chan. 526; Beams' Plea. 287.—(e) 1 Harr. Pra. Chan. 669; 2 Fow. Ex. Pra. 419; Mitf. Pl. 69.