

ALLEN v. BURKE.

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

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

This bill was filed on the 2d 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 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 *subpœnas* 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 *subpœnas*, 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.

12th February, 1829.—BLAND, *Chancellor*.—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.

The act of 1820, ch. 161, it is evident, was intended to provide a course of proceeding by which any party who had a right to revive a suit that had abated, in the manner specified, before a final decree, might have it revived in a mode less expensive and dilatory than in the common way by a bill of revivor. It is manifest, that the general object of that law was to shorten and enervate the