

proceedings in chancery. It certainly cannot be considered as embracing any cases of abatement after a decree; because its phraseology expressly refers to cases which have not been brought to a termination, and to suits where "such final decree as to right shall appertain," remains to be made; and also, because it could not have been the intention of the legislature to provide a new mode of proceeding more expensive and less energetic than one already well established; as is the case in suits abating by the death of a party after a decree.

According to the course of proceeding in chancery, where a party dies, or a female plaintiff marries, after the final decree has been enrolled, such decree and proceedings must be revived by a *subpœna scire facias*. Which mode of reviving a suit, however, can only be pursued by or against the heir, the legal representatives, or those who are privy in blood or contract to the deceased party; and who, as such, may be benefited or bound by the decree: but they are precluded from going into its merits; and upon the same principles the merits of the decree cannot be questioned even on a bill in nature of a bill of revivor by an assignee or a devisee.(a) If the party summoned fails to shew cause, or the cause shewn should be deemed insufficient, he may, if required, be examined on interrogatories as to any matter necessary to the proceedings. But where there have been any proceedings subsequent to the decree, this process will be ineffectual, as it revives the decree only and nothing more.(b) It is said, that in England it has become the practice to revive in all cases indiscriminately by bill, because of its having become unusual to enroll decrees; but in Maryland all decrees are considered as enrolled so soon as they are signed;(c) and consequently, a bill of revivor, or this mode of reviving a suit, which has abated after a decree, by a *subpœna scire facias*, must be considered as the most regular, if not in fact the only modes by which a suit can properly be revived in this court.(d)

A *subpœna scire facias* may be obtained by petition, and must be served like a *subpœna* to answer. On its appearing by the return, that the process has been made known, and the party regularly summoned, if no cause be shewn to the contrary, nor any plea in

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(a) *Dunn v. Allen*, 1 Vern. 283, & 426; *Owen v. Curzon*, 2 Vern. 237; *Clare v. Wordell*, 2 Vern. 543; *Minshull v. Lord Mohun*, 2 Vern. 672.—(b) *Mif. Plea*. 70. (c) *Hollingsworth v. McDonald*, 2 H. & J. 237.—(d) *Croster v. Wister*, 2 Rep. Chan. 67; *Wharam v. Broughton*, 1 Ves. 181; *White v. Hayward*, 2 Ves. 461; *Fallows v. Williamson*, 11 Ves. 307.