

a saving in favour of persons *non compos mentis*.(o) 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;(p) but there is no saving in favour 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 deceased may revive and prosecute the suit to the extent of their respective interests, and no further.(q) 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;(r) 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. Consequently, in order to recover that debt this decree may well be revived by her executor or administrator alone; but no attempt appears to have been as yet made so to revive it.

Whereupon it is ordered, that the said petition be and the same is hereby dismissed with costs.

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After which the case having been brought before the Court of Appeals, the appeal was dismissed. *Owings v. Owings*, 3 G. & J. 1.

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(o) Shelf. Lun. 424.—(p) 1826, ch. 200, s. 14.—(q) *Ferrers v. Cherry*, 1 Eq. Ca. Abr. 4.—(r) 2 Mont. Dig. 524.