

BOYNTON v. BOYNTON.

Where a female plaintiff in equity marries pending the suit, the cause cannot proceed on the mere application of counsel.

A bill in equity abates by the marriage of a female plaintiff, and cannot proceed without a bill of revivor.

The Rev. Stat., ch. 186, § 77, provide, that no action shall be abated by the marriage of a female plaintiff, if the husband, after due notice to be directed by the court, shall become a party to the suit. Perhaps the notice, if any, to the husband, should be that a bill of revivor may be filed: *sed quære?*

IN EQUITY. The cause had been prosecuted by an administratrix *de bonis non*, who married pending the suit.

Lyford, for the plaintiff, moved, that the representative of the deceased be permitted to come in and prosecute the bill.

Perley, for the defendant. There is no bill before the Court. By the marriage of the administratrix the bill abated, and there must be a bill of revivor to enable the cause to proceed.

GILCHRIST, C. J. This cause cannot proceed without a bill of revivor. Wherever a suit abates by the death of a party, and the interest of the person whose death has caused the abatement is transmitted to that representative which the law gives, or ascertains, (as an heir at law, executor, or administrator,) so that the title cannot be disputed at least in the Court of Chancery, but the person in whom the title is vested is alone to be ascertained, the suit may be continued by a bill of revivor, merely. Mitf. Pl. 69. So also in the case of the marriage of a female plaintiff, as the sole fact to be ascertained is the person of the husband, a simple bill of revivor is all that is necessary to continue the suit. *Douglas v. Sherman*, 2 Paige, 358. But the suit abates by the marriage of a female plaintiff. 1 Smith, Ch. Pr. 513. And a bill of revivor is in such cases necessary, whether she be a sole or joint plaintiff. *Durbaine v. Knight*, 1 Vernon, 318; 1 Ch. Ca. 77. The object of the bill of revivor is to bring the husband before the court. 1 Smith, Ch. Pr.

 Curry v. Rogers.

516 ; *Campbell v. Bowne*, 5 Paige, 34 ; Story's Eq. Pl. § 364 ; Daniell's Ch. Pr. 1697.

By the Rev. Stat., ch. 376, § 17, it is enacted that no action shall be abated by the marriage of any female plaintiff, if the husband, after due notice to be directed by the court, shall become a party to the suit. This provision does not interfere with the usual proceedings in chancery. The husband may institute a bill of revivor, and proceed with the cause : and if any notice to him be required for any reason, such notice will, upon application, be directed by the court. But the cause cannot proceed merely on the application of the counsel. If the husband decline to go on with the suit, the bill will be abated, and such course must then be taken with it, as the case may require. Perhaps the notice, if any to the husband, should be, that a bill of revivor may be filed ; but this point it is unnecessary now to determine.

Motion denied.

 CURRY & a., Appellees, v. ROGERS, Appellant.

To make a party liable for services rendered, or moneys advanced, they must be either expressly or impliedly authorized, or subsequently sanctioned by him.

Where R., the defendant, signed a subscription-paper, promising to pay \$12 in lumber, towards the erection of a building to be used for literary purposes, and a portion of his co-signers subsequently held a meeting and chose the plaintiffs, neither of whom had signed said subscription-paper, a building committee, and they proceeded and expended money, and erected the building, but the defendant was not notified of the meeting, nor did he attend it, nor did he afterwards in any way recognize the appointment of the committee or their doings : *Held*, that there was no privity of contract between him and the committee, and that they could not maintain an action against R., either upon the subscription-paper, or upon a general count for money paid.

APPEAL, from the decision of a justice of the peace. The writ was dated April 24th, 1848, and contained four counts. The first was special, and alleged that the defendant, on the