



Common Law Procedure Act 1852

1852 CHAPTER 76

Death, Marriage, and Bankruptcy

And with respect to the Effect of Death, Marriage, and Bankruptcy upon the Proceedings in an Action, be it enacted as follows :

CXXXV ~~W~~Action not to abate by Death.

The Death of a Plaintiff or Defendant shall not cause the Action to abate, but it may be continued as herein-after mentioned.

CXXXVI ~~W~~Proceedings in case of Death of One or more of several Plaintiffs or Defendants.

If there be Two or more Plaintiffs or Defendants, and One or more of them should die, if the Cause of such Action shall survive to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the Action shall not be thereby abated; but such Death being suggested upon the Record, the Action shall proceed at the Suit of the surviving Plaintiff or Plaintiffs against the surviving Defendant or Defendants.

CXXXVII ~~W~~Proceeding in case of sole Plaintiff.

In case of the Death of a sole Plaintiff or sole surviving Plaintiff, the legal Representative of such Plaintiff may, by Leave of the Court or a Judge, enter a Suggestion of the Death, and that he is such legal Representative, and the Action shall thereupon proceed; and, if such Suggestion be made before the Trial, the Truth of the Suggestion shall be tried thereat, together with the Title of deceased Plaintiff, and such Judgment shall follow upon the Verdict in favour of or against the Person making such Suggestion, as if such Person were originally the Plaintiff.

CXXXVIII ~~W~~Proceeding upon Death of sole or sole surviving Defendant.

In case of the Death of a sole Defendant or sole surviving Defendant, where the Action survives, the Plaintiff may make a Suggestion, either in any of the Pleadings, if the Cause has not arrived at Issue, or in a Copy of the Issue, if it has so arrived, of

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the Death, and that a Person named therein is the Executor or Administrator of the Deceased ; and may thereupon serve such Executor or Administrator with a Copy of the Writ and Suggestion, and with a Notice, signed by the Plaintiff or his Attorney, requiring such Executor or Administrator to appear within Eight Days after Service of the Notice, inclusive of the Day of such Service, and that in default of his so doing the Plaintiff may sign Judgment against him as such Executor or Administrator ; and the same Proceedings may be had and taken in case of Nonappearance after such Notice, as upon a Writ against such Executor or Administrator in respect of the Cause for which the Action was brought; and in case no Pleadings have taken place before the Death, the Suggestion shall form Part of the Declaration, and the Declaration and Suggestion may be served together, and the new Defendant shall plead thereto at the same Time ; and in case the Plaintiff shall have declared, but the Defendant shall not have pleaded before the Death, the new Defendant shall plead at the same Time to the Declaration and Suggestion ; and in case the Defendant shall have pleaded before the Death, the new Defendant shall be at liberty to plead to the Suggestion, only by way of Denial, or such Plea as may be appropriate to and rendered necessary by his Character of Executor or Administrator,, unless, by Leave of the Court or a Judge, he should be permitted to plead fresh Matter in answer to the Declaration ; and in case the Defendant shall have pleaded before the Death, but the Pleadings shall not have arrived at Issue, the new Defendant, besides pleading to the Suggestion, shall continue the Pleadings to Issue in the same Manner as the Deceased might have done, and the Pleadings upon the Declaration and the Pleadings upon the Suggestion shall be tried together ; and in case the Plaintiff shall recover, he shall be entitled to the like Judgment in respect of the Debt or Sum sought to be recovered and in respect of the Costs prior to the Suggestion, and in respect of the Costs of the Suggestion and subsequent thereto, he shall be entitled to the like Judgment as in an Action originally commenced against the Executor or Administrator.

CXXXI Death between Verdict and Judgment.

The Death of either Party between the Verdict and the Judgment, shall not hereafter be alleged for Error, so as such Judgment be entered within Two Terms after such Verdict.

CXL Proceedings in case of Death after Interlocutory, and before final Judgment.

If the Plaintiff in any Action happen to die after an Interlocutory Judgment and before a final Judgment obtained therein, the said Action shall not abate by reason thereof, if such Action might be originally prosecuted or maintained by the Executor or Administrator of such Plaintiff; and if the Defendant die after such Interlocutory Judgment and before final Judgment therein obtained, the said Action shall not abate, if such Action might be originally prosecuted or maintained against the Executor or Administrator of such Defendant; and the Plaintiff, or if he be dead after such Interlocutory Judgment, his Executors or Administrators, shall and may have a Writ of Revivor, in the Form contained in the Schedule (A.) to this Act annexed, marked No. 9, or to the like Effect, against the Defendant, if living after such Interlocutory Judgment, or if he be dead, then against his Executors or Administrators, to show Cause why Damages in such Action should not be assessed and recovered by him or them ; and if such Defendant, his Executors or Administrators, shall appear at the Return of such Writ, and not show or allege any Matter sufficient to arrest the final Judgment, or shall make Default, a Writ of Inquiry of Damages shall be thereupon awarded, or the Amount, for which final Judgment is to be signed, shall be referred to One of the Masters, as herein-before provided ; and upon the Return of the Writ, or

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Delivery of the Order with the Amount indorsed thereon to the Plaintiff, his Executors or Administrators, Judgment final shall be given for the said Plaintiff, his Executors or Administrators, prosecuting such Writ of Revivor, against such Defendant, his Executors or Administrators respectively.

CXLI Marriage not to abate Action.

The Marriage of a Woman Plaintiff or Defendant shall not cause the Action to abate, but the Action may, notwithstanding, be proceeded with to Judgment; and such Judgment may be executed against the Wife alone, or, by Suggestion or Writ of Revivor pursuant to this Act, Judgment may be obtained against the Husband and Wife, and Execution issue thereon; and in case of a Judgment for the Wife, Execution may be issued thereupon by the Authority of the Husband without any Writ of Revivor or Suggestion; and if in any such Action the Wife shall sue or defend by Attorney appointed by her when sole, such Attorney shall have Authority to continue the Action or Defence, unless such Authority be countermanded by the Husband, and the Attorney changed according to the Practice of the Court.

CXLII Bankruptcy and Insolvency of Plaintiff, when not to abate Action.

The Bankruptcy or Insolvency of the Plaintiff in any Action, which the Assignees might maintain for the Benefit of the Creditors, shall not be pleaded in bar to such Action, unless the Assignees shall decline to continue, and give Security for the Costs thereof, upon a Judge's Order to be obtained for that Purpose, within such reasonable Time as the Judge may order, but the Proceedings may be stayed until such Election is made; and in case the Assignees neglect or refuse to continue the Action, and give such Security within the Time limited by the Order, the Defendant may, within Eight Days after such Neglect or Refusal, plead the Bankruptcy.