shall be suggested, then the action shall be struck off the docket and discontinued.

By November, 1787, ch. 9. the courts may continue actions, where, by the death of plaintiff or defendant, new parties are made or to be made, as long as they shall think necessary, not exceeding the end of the third court after the appearance court of such new party, unless evidence or plots are wanting as in other cases.

By 1801, ch. 74, sec. 38, no action of ejectment, waste, partition, dower, trespass, quare clausum freget, trover or replevin, to abate by the death of either of the parties.

By 1806, ch. 98, sec. 11, on the death of a party to a cause in the court of appeals, set down under a rule argument, and having an attorney in court, the cause shall not abate, nor shall the death be suggested.

By 1812, ch. 145, sec. 4, directions are given for issuing process on the death of defendant, where his representative resides in another county.

By 1815, ch. 149, sec. 3, directions are given, where the representative resides out of the state.

By 1815, ch. 149, sec. 3, where a declaration is filed before the death of the plaintiff, the representative may have liberty to amend.

By 1815, ch. 149, sec. 5, on an appeal or writ of error, the heir or other proper party may appear, and prosecute.

By 1820, ch. 161, sec. 4, on the death of a party to a suit in chancery, his representatives may be admitted a party, without filing a bill of revivor.

By 1828, ch. 199, no writ to abate because of the misnomer of any of the defendants.

By 1831, ch. 311, no suit in equity to abate by the marriage of any of the parties.

Proviso.

SEC. 2. *Provided always, and be it enacted*, That in case any action be brought to recover any lands, tenements or hereditaments, or involve the title thereof, and upon the death of either plaintiff or defendant as aforesaid the heir or devisee of the deceased, or other person interested in such lands, tenements or hereditaments, be an infant under the age of twenty-one years, and it shall so appear to the court, such action shall not be tried during such minority, unless the guardian, or next friend of such infant, satisfy the court that it will be for the benefit of the infant to have such action tried during such minority, but such action may be continued at the instance and request of the surviving party until such infant arrives to the age of twenty-one years, and then such proceedings may be had to bring such action to trial and judgment, according to the nature of the case, as are herein before mentioned, or such surviving party may order the said action to be entered abated, if the court are not satisfied as aforesaid that it ought to be tried during the minority aforesaid.

Plea of non est factum shall not be allowed, &c.

SEC. 3. *And be it enacted*, That the plea of *non est factum* shall not be received in any action brought, or hereafter to be brought, unless the party for whom such plea shall be tendered verify the same by affidavit, or affirmation, as the case may be,