

tion of the court to which such subpoena shall be made returnable, that the same has been duly served, if the heir, devisee, executor, administrator or other proper person, so served with the said subpoena, shall not appear on or before the third day of the second term of the said court after such service, in person or by attorney, and defend such suit or action, the said court on motion shall order and direct a judgment to be entered for the plaintiff in such suit or action, by default nisi the third day of the succeeding term of said court; and if the said heir, devisee, executor, administrator or other proper person, shall appear on or before the third day of said succeeding term, in person or by attorney, upon application to the said court, the said judgment shall be stricken out, and the said heir, devisee, executor, administrator or other proper person, as the case may be, shall be permitted to appear and defend such suit or action.

See 1785, ch. 80, ante page 229.

SEC. 5. *And be it enacted*, That where any person against whom any judgment or decree hath been or shall be rendered or passed, hath appealed or shall appeal from such judgment or decree, or hath brought, or shall bring a writ of error to the court of appeals, to which such appeal or writ of error may be made returnable, it shall and may be lawful for the heir, devisee, executor or administrator, of the deceased, or other proper person necessary to be made a party to such appeal or writ of error, to appear in the court of appeals, in person or by attorney, and suggest the death of such appellant or plaintiff in error, and appear to such appeal or writ of error, for the purpose of prosecuting the same, and the same proceedings shall be thereupon had as in other cases of appeals or writs of error.

On appeals, &c. where appellant dies, &c. the heir, &c. may appear.

See 1806, ch. 90, sec. 11, ante page 547.

SEC. 6. *And be it enacted*, That in all appeals or writs of error depending or hereafter to be depending in the court of appeals of either shore, the same shall not abate by the death of either of the parties to such appeal or writ of error, if the heir, devisee, executor or administrator, of the deceased party, or other proper person necessary to be made a party to such appeal or writ of error, shall in the said court of appeals, at the first or second term succeeding the death of such party, either in person or by attorney, make the necessary suggestion, and appear to such appeal or writ of error for the purpose of prosecuting or defending the same, and the same proceedings shall be thereupon had as in other cases of appeals or writs of error.

Appeals not to abate by death, if heirs, &c. appear.