

**I. Abatement of actions.**—At common law, the death of the plaintiff or defendant at any time before final judgment would have abated the suit. Under Art. 2<sup>1</sup> of the Code actions do not now abate, except in cases of injuries to the person or slander;<sup>2</sup> but its provisions are chiefly for cases in which such actions would have abated, and do not seem to interfere with this Statute. In *Trail v. Snouffer*, 6 Md. 308, it was observed that, at common law, no judgment could be obtained where either party had died, if the objection be taken in time, but if not then made, the judgment concludes all persons from denying the fact of the party's existence **496** at that time. There are exceptions by Statute, \*and by the Acts of Assembly in reference to the death of parties in the Court of Appeals,<sup>3</sup>

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<sup>1</sup> See now Code 1911, Art. 75, secs. 25-34; Art 93, sec. 104. See the case of *Stewart v. United Co.*, 104 Md. 332, for a comprehensive review of the legislation on this subject. See also *B. & O. R. R. Co. v. Ritchie*, 31 Md. 198; *Young v. Bank*, 31 Md. 66; *Barton Coal Co. v. Cox*, 39 Md. 19; *Lake Roland Co. v. Frick*, 86 Md. 259; *Baltimore Belt R. R. Co. v. Sattler*, 105 Md. 269. As to the death of a party in an action to recover land where the proper person to be made a party in his place is an infant, see Code 1911, Art. 75, sec. 64; *Tise v. Shaw*, 68 Md. 1; note 2 to 13 Ed. 1, St. 1, c. 15. As to the death of the legal plaintiff when the suit is entered to the use of another, see Code 1911, Art. 8, sec. 4; *McAleer v. Young*, 40 Md. 439; as to the death of the equitable plaintiff, see *Logan v. State*, 39 Md. 177; *Harvey v. R. R. Co.*, 70 Md. 325; *Baldwin v. State*, 89 Md. 596.

Where a defendant dies and the proper party to represent him does not appear and suggest his death at the next term, it is incumbent on the plaintiff to do so not later than the second term after he learns of his death. *Shipley v. Johns*, 72 Md. 542.

In an action by co-partners the use of the names of both plaintiffs after the suggestion of the death of one of them, although irregular, is not fatal to the judgment. *Billingslea v. Smith*, 77 Md. 504.

Where a corporation is actually dissolved, a suit against it abates, for a suit can no more be prosecuted and judgment recovered against a dead corporation than against a dead man. *Ordway v. Central Bank*, 47 Md. 238.

<sup>2</sup> Under the Act of 1888, ch. 262, these exceptions are reduced to actions for injuries to the person where the defendant dies and to actions for slander. Code 1911, Art. 75, sec. 26; Art. 93, sec. 104. In *Stewart v. United Co.*, 104 Md. 332, it is held that where an injury results in death the cause of action therefor survives to the personal representatives of the deceased; that Art. 67, secs. 1 and 2, of the Code of 1911, (*Lord Campbell's Act*), creates a new cause of action; that neither of these actions is a substitute for the other and both may be maintained concurrently.

An action for injury to the person means an action founded on a personal injury without regard to the nature of the damages claimed. So an action by a husband for loss of services caused by personal injury to his wife abates on the death of the defendant. *Ott v. Kaufman*, 68 Md. 56. Cf. *Harvey v. R. R. Co.*, 70 Md. 319.

<sup>3</sup> See note 9 *infra*.