judgment may be entered notwithstanding the death. Under this it has been holden, that where an action was brought by an executor on a guaranty to indemnify his testator against a pending suit which was referred, the guarantor could not impeach the validity of the judgment by showing the death of the defendant therein before the award, Turner v. Maddox, 3 Gill, 190. And though the Act requires the cause to be continued, the Court of Appeals may correct the omission, and give judgment without sending the case back. And in Price v. Tyson, 2 G. & J. 475, it was held, that the Act applied to the death of *both* parties, that the proper course where the cause is to be reinstated is to reinstate it in the name of the original parties, and the suggestion of the death of the defendant may then be made by the plaintiff's administrator.

If either party die after a special verdict or special case, and during the time taken for argument or advisement thereon, or on a motion for a new trial, or in arrest of judgment, or demurrer, Miles v. Williams, 9 Q. B. 47, judgment may be entered *nunc pro tunc,* as of the term of which judgment would otherwise have been given. This is a common law power of the Court, that the delay of the Court may not be to the prejudice of the party, and exists of course independently of, however the effect of the judgment, when entered, may depend upon, this Statute, Evans v. Rees, 12 A. & E. 167, and see Griffith v. Williams, 1 Cr. & J. 47; see also Fishmongers' *Co. v. Robertson, 3 C. B. 970; Freeman v. **498** Tranah, 12 C. B. 406; Moor v. Roberts, 3 C. B. N. S. 844.

As to abatement in the Court of Appeals, see Code, Art. 2, secs. 9, 10, 11;[9] Roche v. Johnson, 2 H. & J. 37, n. *a.;* Owings v. Owings, 3 G. & J. 1; Carroll v. Bowie, 7 Gill, 34; Hanney v. Murray, 9 G. & J. 157; Coombs v. Jordan, 3 Bl. 284. In Turner v. Walker, 3 G. & J. 377, a judgment for the plaintiff in an action for a malicious arrest was reversed, and his death having been suggested, a *procedendo* was refused.

II. **Administrator *d. b. n.* may sue out *sci. fa.* and take execution.**— This case does not appear to be provided for under the testamentary law. With us, it is positively provided by the Code, Art. 93, sec. 71,[10] that the executor of an executor shall not be entitled to administration as such, and consequently he does not represent the testator. At common law, an administrator *de bonis non* could not revive a judgment obtained by the original executor, for his title as administrator was paramount to the judgment, to which he was not privy, Snape v. Norgate, Cro. Car. 167; though a *scire facias* lies against an administrator *de bonis non* on a judgment recovered against the original executor, for such administrator claims by title under the judgment and not above it. It is holden that if an executor proceed on a judgment and has judgment *quod habeat executionem,* and then die intestate, the administrator *de bonis non* must revive the original

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[9] See now Code 1911, Art. 5, secs. 75-79. Grove v. Swartz, 45 Md. 227; Harryman v. Harryman, 49 Md. 70; Thomas v. Thomas, 57 Md. 508; Clark v. Carroll, 59 Md. 180; Hopper v. Jones, 64 Md. 578; Goldschmid v. Meline, 86 Md. 370; Siacik v. Ry. Co., 92 Md. 213; Martin v. R. R. Co., 151 U. S. 673.

[10] Code 1911, Art. 93, sec. 71.