

## II.

## PRACTICE.\*

## Abatement and Revivor.

1904, art. 75, sec. 25. 1888, art. 75, sec. 24. 1860, art. 2, sec. 1. 1785, ch. 80. 1801, ch. 74. 1815, ch. 149. 1849, ch. 517.

25. No action of ejectment, waste, partition, dower, replevin, or any personal action, including appeals from judgments rendered by justices of the peace, in any court of law in this State shall abate by the death of either or any of the parties to such action; but upon the death of any defendant, the action shall be continued and the heir or executor of the defendant, or other person interested on the part of the defendant, may appear to such action; and in case the proper person to defend doth not appear at the court at which the death is suggested, the plaintiff may issue a summons, returnable to the next court, directed to the proper person to defend such action; and upon such summons being served, the person summoned shall appear. This not to apply to actions for injuries to the person where the defendant dies, nor to actions for slander.

**Particular cases.**

The effect of the act of 1888, ch. 262 (see section 26), is to prevent an action for personal injuries caused by neglect or default from abating by the death of the plaintiff before final judgment. History of this section. This and the following section construed in connection with article 67, section 1, and article 93, section 104. *Stewart v. United, etc., Co.*, 104 Md. 334. And see *B. & O. R. R. Co. v. Ritchie*, 31 Md. 199.

Prior to the act of 1888, ch. 262 (see section 26), an action could not be maintained by the husband to recover damages for the killing of his wife. The act of 1888, ch. 262, had no application where the plaintiff died before its adoption. *Harvey v. B. & O. R. R. Co.*, 70 Md. 324.

Where partners bring suit and one of them dies pending the action, it survives to the living plaintiff and subsequent proceedings should be in the name of the survivor alone. The continued use of the name of the deceased plaintiff, is a mere irregularity and not fatal. *Billingslea v. Smith*, 77 Md. 521.

Upon the death of a plaintiff in a suit to recover damages for the interference with enjoyment of property, and for injuries to the property, the suit survives to his personal representatives. *Baltimore Belt R. R. Co. v. Sattler*, 105 Md. 269. And see *Keirle v. Shriver*, 11 G. & J. 405. *Cf.* article 50, section 4, *et seq.*

Under the act of 1801, ch. 74, an executor may maintain an action of trespass, *q. c. f.*, for a trespass to his testator's real estate in his lifetime. The term "personal action" defined. *Kennerly v. Wilson*, 1 Md. 107.

As to the effect of the act of 1801, ch. 74, upon an action of ejectment, see *Carroll v. Norwood*, 5 H. & J. 173.

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\*As to practice in equity, see art 16, sec. 139, *et seq.*

As to the practice before the public service commission, see art. 23, sections 422 and 461.

As to the practice in suits against railroad companies for injury to live stock and from fire, see art. 23, sec. 307, *et seq.*

As to the practice in suits by the state to recover the gross receipts tax. see art. 81, sec. 173, *et seq.*

As to the practice in suits against a corporation for the recovery of the bonus tax, see art. 81, sec. 101, *et seq.*

As to the practice in suits upon a tax collector's bond, see art. 81, sec. 76. *et seq.*; as to suits against tax collectors, see art. 81, sec. 84, *et seq.*