

1904, art. 5, sec. 77. 1888, art. 5, sec. 75. 1860, art. 2, sec. 11.
1806, ch. 90, sec. 11.

77. When a case is under rule argument in the court of appeals, and a party shall die, having an attorney in court, the court of appeals shall give judgment to have the same effect as if the party were alive; provided, the heir, executor or other proper person may, if he thinks proper, suggest the death and become a party in the place of the person dying.

This section applies to the death of a party whilst the case is under rule argument, and not to a case where the plaintiff dies before the appeal is prayed. *Goldschmid v. Meline*, 86 Md. 372; *Harryman v. Harryman*, 49 Md. 69. See also, *Thomas v. Thomas*, 57 Md. 506; *Carroll v. Bowie*, 7 Gill, 38.

As all cases now stand for argument in the court of appeals at the first term, there is no longer necessity for a rule argument, and this section is construed accordingly. This section also applies if the party dies after argument and before decision. *Moore v. Taylor*, 81 Md. 649.

This section applied. *Coombs v. Jordan*, 3 Bl. 328.

This section held to have no application. *Harryman v. Harryman*, 49 Md. 67; *Owings v. Owings*, 3 G. & J. 1.

This section, and sections 75 and 76, should be construed in connection with each other. *Carroll v. Bowie*, 7 Gill, 40.

The law was in accordance with this section prior to its adoption. *Lynch v. Colegate*, 2 H. & J. 34, and note (a).

Ibid. sec. 78. 1888, art. 5, sec. 76. 1862, ch. 167.

78. In any cause in which one or more appellants or appellees, plaintiffs or defendants in error shall have died, or shall die after appeal taken, or writ of error sued out, and before final judgment upon such appeal or writ of error in the court of appeals, and the executor of such party, or his administrator, shall have failed or shall fail to appear in the court of appeals, and to suggest such death, and judgment has been or shall be given, as if the said party so deceased was alive, then and in such event it shall and may be lawful for any surviving party to such appeal or writ of error so adjudged as aforesaid, to suggest in the court of appeals the death of the said party to the said appeal or writ of error, prior to the entering up of the judgment in the said court, and to show to the court of appeals who is the executor or administrator of the deceased party; and in that event it shall be competent for the said court of appeals to order execution to issue in the said cause to the same extent and in the same manner as if the said executor or administrator had suggested the death of the person so dying as aforesaid, and had appeared to prosecute or defend said writ of error or appeal.

This section refers to cases where parties die after an appeal has been taken, but before final judgment in the court of appeals, and not to a case where the plaintiff dies before the appeal is prayed. *Goldschmid v. Meline*, 86 Md. 372. *Harryman v. Harryman*, 49 Md. 69.

Ibid. sec. 79. 1898, ch. 29, sec. 76 A.

79. In any case in which the party plaintiff or party defendant shall have died, either before or after judgment or decree, the heir, executor, administrator or other proper person may, if he thinks proper, suggest the death and become a party in the place of such deceased party, and pray an appeal or writ of error, and appear to such appeal or writ of