

An. Code, sec. 11. 1904, sec. 11. 1888, sec. 11. 1825, ch. 167.

11. If any joint defendant in an action *ex contractu* dies either before or after judgment, his executor and heirs shall be bound in the same manner as if a separate action had been pending or a separate judgment been rendered against such defendant.

See secs. 4 and 5.

An. Code, sec. 12. 1904, sec. 12. 1888, sec. 12. 1888, ch. 482.

12. In suits brought against alleged joint debtors in actions *ex contractu* it shall not be necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action; but he shall be entitled to recover as in actions *ex delicto* against such one or more of the defendants as shall be shown by the evidence to be indebted to him; and judgment shall be entered in his favor against such one or more of said defendants as fully as if the defendant or defendants against whom he shall fail to establish his claim had not been joined in the suit.

When plaintiff's claim is established against only one of the two or more joint defendants, the verdict and judgment should be for plaintiff as against the one defendant and for the other defendants. *Horne v. Plumley*, 97 Md. 281. See also *Boyd v. Wolff*, 88 Md. 342.

Prior to adoption of this section in a suit against husband and wife under act of 1872, ch. 270, although wife maintained her defense, judgment might be entered against husband. *Wilmer v. Garther*, 68 Md. 349.

This section applied. *Meyer v. Frenkil*, 113 Md. 46; *Westheimer v. Craig*, 76 Md. 407.

### Joint Tenancy.

An. Code, sec. 13. 1904, sec. 13. 1888, sec. 13. 1822, ch. 162.

13. No deed, devise or other instrument of writing shall be construed to create an estate in joint tenancy, unless in such deed, devise or other instrument of writing it is expressly provided that the property thereby conveyed is to be held in joint tenancy.

#### Application of this section.

This section inverts rule of common law. It has no application to tenancy by entireties. *Brewer v. Bowersox*, 92 Md. 572; *Marburg v. Cole*, 49 Md. 412; *Masterman v. Masterman*, 129 Md. 170.

This section applied. *Walsh v. McBride*, 72 Md. 60 (dissenting opinion); *McPherson v. Snowden*, 19 Md. 230; *Purdy v. Purdy*, 3 Md. Ch. 552.

This section held to have no application to devises or grants made to trustees for the benefit of third parties. *Gray v. Lynch*, 8 Gill, 424.

This section held to have no application, because a joint tenancy was not created. *Craft v. Wilcox*, 4 Gill, 506. See also *Fladung v. Rose*, 58 Md. 20; *Moody v. Ellhott*, 1 Md. Ch. 290 (involving a will); *Purdy v. Purdy*, 3 Md. Ch. 552.

#### Generally.

Tenancies in common, joint tenancies and estates in coparcenary, distinguished. *Gilpin v. Hollingsworth*, 3 Md. 194.

Requisites of joint tenancies. They are viewed with disfavor. *Chew v. Chew*, 1 Md. 171.

Husband and wife may become joint tenants where the deed expressly so provides. *Fladung v. Rose*, 58 Md. 20.

This section referred to by way of example. *Preston v. Clabaugh*, 90 Md. 709.

Prior to the adoption of this section the law was to the contrary. *Hannon v. Towers*, 3 H. & J. 149. And see *Mayburry v. Brien*, 15 Pet. 37.

Cited but not construed in *Lannay v. Wilson*, 30 Md. 552.

As to partition of property among co-owners, see art. 16, sec. 152.