

heir, executor or proper person resides, returnable to the court from which the same issued; and the same proceedings shall be had as if such heir, executor or other proper person lived in the county where the action was pending.

An. Code, sec. 33. 1904, sec. 33. 1888, sec. 32. 1815, ch. 149.

37. If any defendant in any action shall die pending such action and the heir or executor of such defendant, or other proper person necessary to be made party to such suit or action, resides out of this State, the court in which such action is pending shall, on motion, order and direct a subpoena to be issued, directed to such heir, executor or other proper person, commanding him to be and appear before such court on or before the first day of its next session thereafter to answer unto the plaintiff in such action in the plea therein, if to him it shall seem meet, which subpoena the plaintiff in the said action may serve, or procure to be served upon such heir, executor or other proper person; and upon proving to the satisfaction of the court to which such subpoena shall be made returnable that the same has been duly served, if the heir, executor or other proper person so served with the said subpoena shall not appear on or before the third day of the second term of the said court after such service, in person or by attorney, and defend such action, the said court, on motion, shall order and direct a judgment to be entered for the plaintiff in such action, by default "*nisi*," to become absolute on the third day of the succeeding term of said court, if the said heir, executor or other proper person shall fail by that day to appear; and if the said heir, executor or other proper person shall appear on or before the third day of said succeeding term, in person or by attorney, upon application to the said court the said judgment shall be stricken out, and the said heir, executor or other proper person, as the case may be, shall be permitted to appear and defend such action.

An. Code, sec. 34. 1904, sec. 34. 1888, sec. 33. 1843, ch. 40.

38. No action in any of the courts of this State, either original or upon appeal, shall abate by reason of the marriage of any of the parties, but on application of any of the parties the court, upon such terms and notice as to it shall seem proper, may allow and order any amendment of the pleadings and the making of any new and additional parties that such marriage may render proper.

Application of this section pointed out. *Rowland v. Prather*, 53 Md. 241.

Amendment.

An. Code, sec. 35. 1904, sec. 35. 1888, sec. 34. 1785, ch. 80, sec. 4. 1809, ch. 153.
1852, ch. 177, sec. 1. 1888, ch. 235.

39. In all suits and actions at law, any of the proceedings, including the writ of summons, may be amended so that such case may be tried on its real merits and the purposes of justice subserved; writs may be amended from one form of action to another when the ends of justice require it; and any amendment may be made at any time before the jury retire to