

Where, in an action for malicious prosecution, after appeal prayed the defendant dies, the suit will abate. *Clark v. Carroll*, 59 Md. 181; *Turner v. Walker*, 3 G. & J. 377.

This section applies in a negligence suit for injury to the person, where the plaintiff dies after appeal prayed. *Siatic v. Northern Central Ry. Co.*, 92 Md. 214.

This section is to be construed in connection with secs. 82 and 83. Where the heir, etc., is a defendant, he cannot elect to suffer the case to abate. Object and effect of this section. *Carroll v. Bowie*, 7 Gill, 38.

At common law, a judgment cannot be obtained if either party is dead, but if such judgment is entered notwithstanding the death of one of the parties, it is conclusive. *Trail v. Snouffer*, 6 Md. 314.

This section held to have no application. *Booze v. Humbird*, 27 Md. 5; *Owings v. Owings*, 3 G. & J. 1.

Cited but not construed in *Hopper v. Jones*, 64 Md. 581; *Young v. Citizens' Bank*, 31 Md. 70.

See secs. 63 and 93.

As to abatement and revivor at law, see art. 75, sec. 29, *et seq.* As to abatement and revivor in equity, see art. 16, sec. 1, *et seq.*

See art. 93, sec. 106.

An. Code, sec. 76. 1904, sec. 76. 1888, sec. 74. 1815, ch. 149.

**82.** When the plaintiff in an appeal or writ of error dies before the term to which such an appeal or writ of error is returnable, the heir, executor or other proper person to be made a party, may appear in the court of appeals and suggest the death of the plaintiff, and appear to such appeal or writ of error for the purpose of prosecuting the same.

This section applies to cases where the plaintiff, who has already taken an appeal, dies before the term to which the appeal was returnable, and not to a case where the plaintiff dies before the appeal was prayed. *Goldschmid v. Meline*, 86 Md. 372; *Harryman v. Harryman*, 49 Md. 69.

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

See notes to secs. 81 and 83.

An. Code, sec. 77. 1904, sec. 77. 1888, sec. 75. 1806, ch. 90, sec. 11.

**83.** 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 secs. 81 and 82, 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).

An. Code, sec. 78. 1904, sec. 78. 1888, sec. 76. 1862, ch. 167.

**84.** 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,