

**Abatement and Revivor.**

An. Code, sec. 1. 1904, sec. 1. 1888, sec. 1. 1820, ch. 161. 1842, ch. 229.

1. No suit in chancery shall abate by the death of any of the parties in cases where the rights involved in the suit survive.

The provisions of art. 16 in reference to cases which would, but for the statute, have abated on the death of a party are very liberal. There being no ground for the contention that proceedings would have abated upon the death of the party, the most that can be claimed is that his death should have been brought to the attention of the court. *Spedden v. Baltimore Refrigerating, etc., Co.*, 117 Md. 452.

This section applied. *Whelan v. Cook*, 29 Md. 8; *Glenn v. Smith*, 17 Md. 281.

Cited but not construed in *Diffenderfer v. Griffith*, 57 Md. 84.

See sec. 224 and notes to sec. 2.

As to abatement and revivor at law, see art. 75, sec. 29, *et seq.*; in the court of appeals, see art. 5, sec. 81, *et seq.*

As to where a party to a suit, involving title to lands, dies leaving an infant a proper party to be substituted—see art. 75, sec. 68.

An. Code, sec. 2. 1904, sec. 2. 1888, sec. 2. 1820, ch. 161, sec. 4. 1844, ch. 44, sec. 2.

2. If any of the parties to a suit in chancery, whether plaintiff or defendant, shall die after the filing of the bill or petition, it shall not be necessary to file a bill of revivor; but any of the surviving parties may file a suggestion of such death, setting forth when the death occurred, and who is the legal representative of such deceased party, and how he is representative, whether by devise, descent or otherwise.

A suit to set aside a fraudulent conveyance does not abate upon the death of the grantor, leaving the grantee his only heir. This section, while not abrogating the practice of filing a bill of revivor under sec. 12, gives a new method of attaining the same object. Purpose of this section. A purchaser *pendente lite* is not a necessary party. The heirs at law of a deceased defendant may be brought in by petition when the matter in controversy is real estate in which the heirs have an interest. The term "legal representative," defined. *Sinclair v. Auxiliary Realty Co.*, 99 Md. 231. And see *Griffith v. Bronaugh*, 1 Bl. 547; *Allen v. Burke*, 1 Bl. 544.

Where a suit involves both real and personal property, in case of the death of either party, in order to affect both kinds of property, the suit must be revived by or against the heir, as well as personal representative of deceased, but it may be partly revived against either. *Owings' Case*, 1 Bl. 370.

Defendants, or their representatives, may revive a suit in every case where they may derive a benefit from further proceedings. Parties. *Ridgely v. Bond*, 18 Md. 449.

The act of 1820, ch. 161, has done nothing more than to authorize a party to pursue the course prescribed, instead of a bill of revivor. *Hawkins v. Chapman*, 36 Md. 97.

*Re* procedure in cases of suggestion of death under act of 1820, ch. 161, see *Laves v. Monker*, 1 Bl. 130, note C. And see *Hall v. Hall*, 1 Bl. 130.

See notes to sec. 1.

An. Code, sec. 3. 1904, sec. 3. 1888, sec. 3. 1820, ch. 161, sec. 5. 1841, ch. 22, sec. 3. 1842, ch. 229, sec. 3.

3. Upon such suggestion, a subpoena shall issue for the legal representative of the deceased party, commanding him to appear and be made a party to such suit, if such representative resides in this State; and if such representative is a non-resident, then such notice shall be given, instead of the subpoena, as is provided for non-resident defendants.

Cited but not construed in *Townshend v. Duncan*, 2 Bl. 47; *Chase v. Manhardt*, 1 Bl. 336.