

A motion for a *non pros.* under this section held properly overruled, the note in question not being joint and several. See notes to art. 13, sec. 87. *Leonard v. Union Trust Co.*, 140 Md. 202.

The object of act of 1825, ch. 167, is to prevent costs. Where one of defendants is dead, separate actions may be brought against survivor and representative of deceased. Nor does this section prevent only one of obligors being sued, although all obligors are alive and reside in same county. In such case, however, plaintiff will be non-suited if he brings a second suit. (See sec. 3.) *Blizzard v. Jacobs*, 3 G. & J. 70.

Where declaration shows that there is a co-obligor, the non-joinder must be accounted for, or declaration is bad. *Kent v. Holliday*, 17 Md. 393; *State v. Wheeler*, 14 Md. 109; *Merrick v. Bank of Metropolis*, 8 Gill, 60. See also *Annapolis, etc., Institution v. Bannon*, 68 Md. 461.

This section has no application to actions *ex delicto*. *Mitchell v. Smith*, 4 Md. 406.

This section has no application to an action on a covenant. *Cruzer v. McKaig*, 57 Md. 461.

See sec. 6.

An. Code, 1924, sec. 3. 1912, sec. 3. 1904, sec. 3. 1888, sec. 3. 1825, ch. 167, sec. 2.

3. If a joint obligor be dead when the suit is brought his representative may be sued.

An. Code, 1924, sec. 4. 1912, sec. 4. 1904, sec. 4. 1888, sec. 4. 1825, ch. 167, sec. 3.

4. If either of the obligors against whom a joint action shall be brought shall die pending the same, the plaintiff may suggest such death and the court shall cause the suggestion to be entered of record and shall direct the clerk to docket an action as of the same term in which the suggestion is entered in the name of the plaintiff against the obligor so dying; and in such action the same proceedings shall be had to make the executor or administrator of the deceased obligor a party thereto as if the original action had been brought separately against all the obligors.

In an action against two defendants on a joint obligation, if one of them dies, it is error to make administrator of deceased obligor a co-defendant in the same action; and a judgment rendered against surviving obligor and such administrator will be stricken out. *Wolfe v. Murray*, 96 Md. 738.

Object of this section. The creditor may sue both survivor and the representative, but if there are more than one survivor living in same county, both must be joined in one suit. *Blizzard v. Jacobs*, 3 G. & J. 67.

See sec. 11.

An. Code, 1924, sec. 5. 1912, sec. 5. 1904, sec. 5. 1888, sec. 5. 1825, ch. 167, sec. 4.

5. If any of the obligors against whom a joint action is brought and judgment obtained thereon shall die after judgment, the plaintiff may issue a *scire facias* on said judgment against the executors or administrators of the deceased defendant and such judgment shall be had on the said *scire facias* as if the judgment had been rendered in a separate action.

See sec. 11.

An. Code, 1924, sec. 6. 1912, sec. 6. 1904, sec. 6. 1888, sec. 6. 1825, ch. 167, sec. 7.

6. If the obligors in any bond, penal or single bill reside in different counties they may be sued in the counties in which they respectively reside, but all residing in the same county shall be sued in one action.

Where obligors live in different counties, creditor may sue in both or either. He is restricted, however, to one suit in each county. *Blizzard v. Jacobs*, 3 G. & J. 72.

In a case under this section declaration must explain non-joinder of obligor living in another county. *Annapolis, etc., Institution v. Bannon*, 68 Md. 461. See also *Kent v. Holliday*, 17 Md. 393.

See sec. 2.

An. Code, 1924, sec. 7. 1912, sec. 7. 1904, sec. 7. 1888, sec. 7. 1825, ch. 167, sec. 8.

7. When any writ against joint and several obligors shall be returned summoned as to one or more and *non est* as to the others the clerk may