

This sub-section applied in a suit on promissory note and guaranty. *Booth v. Irving Nat. Exch. Bank*, 116 Md. 672; *Herrman v. Combs*, 119 Md. 48.

Where a policy of insurance which is the basis of action is set out in declaration and its execution is not denied in plea, its execution is admitted for purposes of the action. *Prudential Ins. Co. v. Devoe*, 98 Md. 588; *Citizens' Ins. Co. v. Conowingo Co.*, 113 Md. 438.

This sub-section applied so as to obviate proof of incorporation of defendant. *Norfolk, etc., R. R. Co. v. Hoover*, 79 Md. 267.

Cited but not construed in *Zihlman v. Cumberland Glass Co.*, 74 Md. 307.

For section applicable to cases before justices of the peace, see art. 52, sec. 35.

(109) Whenever the ownership of any motor vehicle is alleged in the pleadings in any action or matter at law, the same shall be admitted for the purpose of said action or matter, unless the ownership shall be denied by the next succeeding pleading of the opposite party or parties.¹

This sub-section applied in *Gutheridge v. Gorsuch*, *Daily Record*, Nov. 2, 1939.

Although defendant does deny allegation of ownership, he is not precluded from showing that at the time of the accident the vehicle was being operated by some one who was not the agent or servant of the defendant, or was not engaged in the defendant's business. *Penna. R. R. Co. v. Lord*, 159 Md. 519.

II.

PRACTICE.²

Abatement and Revivor.

An. Code, 1924, sec. 29. 1912, sec. 25. 1904, sec. 25. 1888, sec. 24. 1785, ch. 80. 1801, ch. 74. 1815, ch. 149. 1849, ch. 517. 1929, ch. 570, sec. 29.

29. No action of ejectment, waste, partition, dower, replevin, or any personal action, including appeals from judgments rendered by justices of the peace, in any court of law in this State shall abate by the death of either or any of the parties to such action; but upon the death of any defendant, the action shall be continued and the heir, administrator or executor of the defendant, or other person interested on the part of the defendant, may appear to such action; and in case the proper person to defend doth not appear at the court at which the death is suggested, the plaintiff may issue a summons, returnable to the next court, directed to the proper person to defend such action; and upon such summons being served, the person summoned shall appear. This not to apply to actions for slander.

Particular Cases.

The effect of act of 1888, ch. 262 (see sec. 30), is to prevent an action for personal injuries caused by neglect or default from abating by death of plaintiff before final judgment. History of this section. This and the following section construed in connection with art. 67, sec. 1, and art. 93, sec. 109. *Stewart v. United, etc., Co.*, 104 Md. 334. And see *B. & O. R. R. Co. v. Ritchie*, 31 Md. 199; *White v. Safe Dep. & Tr. Co.*, 140 Md. 598.

Prior to act of 1888, ch. 262 (see sec. 30), an action could not be maintained by husband to recover damages for killing of his wife. The act of 1888, ch. 262, had no application where plaintiff died before its adoption. *Harvey v. B. & O. R. R. Co.*, 70 Md. 324.

Where partners bring suit and one of them dies pending the action, it survives to living plaintiff and subsequent proceedings should be in name of the survivor alone. The continued use of name of deceased plaintiff, is a mere irregularity and not fatal. *Billingslea v. Smith*, 77 Md. 521.

Upon death of a plaintiff in a suit to recover damages for interference with enjoyment of property, and for injuries to property, the suit survives to his personal

¹ Added by act of 1924, ch. 216.

² As to practice in equity, see art. 16, sec. 161, *et seq.*

As to the practice before public service commission, see art. 23, secs. 358 and 420.

As to practice in suits against railroad companies for injury to live stock and from fire, see art. 23, sec. 246, *et seq.*

As to practice in suits upon a tax collector's bond, see art. 81, sec. 66, *et seq.*