

An. Code, 1924, sec. 35. 1912, sec. 31. 1904, sec. 31. 1888, sec. 30. 1785, ch. 80.

35. In all cases where a new party is made to an action, the costs which accrued before such new party was made shall be taxed as part of the costs in such action, and the judgment rendered shall be the same as if the action had been originally commenced between the persons who are the parties to such action; provided, that no defendant who is made a new party to such action shall be burdened with debts, damages or costs further than property or assets have descended or come to his hands from the deceased.

An. Code, 1924, sec. 36. 1912, sec. 32. 1904, sec. 32. 1888, sec. 31. 1812, ch. 145.

36. If any heir, executor, or other proper person to be made a party shall reside in a different county than that in which such action is pending and it may be necessary to make such heir, executor, or other person a party to such action, a summons may be issued for such heir, executor or other proper person, directed to the sheriff of the county where such 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, 1924, sec. 37. 1912, 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, 1924, sec. 38. 1912, 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