

make, and cause to be executed, such rules and orders in the case, and direct such proceedings therein, as may be judged necessary and proper to bring the merits of the question fairly to trial; and in all such cases such judgment shall be given as if the action had been originally brought by the plaintiff or plaintiff's so appearing, or summoned to appear, as aforesaid, and the costs accruing before the death shall be taxed as part of the costs in the action; and if the person appearing as aforesaid shall die before trial and judgment had in the case, the heir, &c. of the person so appearing, or the executor or administrator of the deceased, or other proper person to prosecute such suit, may appear or be compelled to appear as aforesaid, and there shall be such proceeding, judgment & costs taxed as aforesaid, and so toties quoties, until there be a trial and judgment had in the case.—*Ibid.*

5. In all cases of death of the plaintiff, after the appearance of the defendant's heir, &c. or other proper person to defend, and all cases of the death of the defendant after appearance of the plaintiff's heir, &c. or other proper person to prosecute such suit, shall be considered as within the meaning and provision of this act; and in case there be no appearance or proceeding by either party in any case aforesaid, before the tenth day of the second court after the death shall be suggested, then the action shall be struck off the docket and discontinued.—*Ibid.*

6. In case any cause hath been or shall be set down regularly for hearing, or submitted to the chancellor by both parties, as ready for his decision, and one of the parties hath died, or shall die, after such setting down, or submission, and before a decree passed, having a solicitor in court, the said cause shall not abate, and the chancellor may decree as if such deceased party were alive, and the decree shall have the same effect as if it had been passed against the deceased, except that it shall not entitle the complainant to a preference in the distribution of assets, either real or personal.—1797, c. 114, §. 4.

See *Bonds*, 2—*Reference*, 4.

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## A C C O U N T S.

1. **A**CCOUNTS which concern the trade or merchandize between merchant and merchant, their factors and servants, which are not residents within this province, are excepted out of the act of limitation.—1715, c. 23, §. 2.

2. In all actions brought, or to be brought, grounded upon an account, or in which it may be necessary to examine and determine on accounts between the parties, the court where such action may be or remain for trial, may order the accounts and dealings between the parties to be audited and stated by an auditor or auditors to be appointed by such court,  
and