

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.

CHAP.
LXXX.

By November, 1787, ch. 9, the courts may continue actions, where, by the death of plaintiff or defendant, new parties are made or to be made, as long as they shall think necessary, not exceeding the end of the third court after the appearance court of such new party, unless evidence or plots are wanting as in other cases.

II. PROVIDED ALWAYS, AND BE IT ENACTED, That in case any action be brought to recover any lands, tenements, or hereditaments, or involve the title thereof, and upon the death of either plaintiff or defendant as aforesaid the heir or devisee of the deceased, or other person interested in such lands, tenements or hereditaments, be an infant under the age of twenty-one years, and it shall so appear to the court, such action shall not be tried during such minority, unless the guardian, or next friend of such infant, satisfy the court that it will be for the benefit of the infant to have such action tried during such minority, but such action may be continued at the instance and request of the surviving party until such infant arrives to the age of twenty-one years, and then such proceedings may be had to bring such action to trial and judgment, according to the nature of the case, as are herein before mentioned, or such surviving party may order the said action to be entered abated, if the court are not satisfied as aforesaid that it ought to be tried during the minority aforesaid.

Proviso.

III. AND BE IT ENACTED, That the plea of *non est factum* shall not be received in any action brought, or hereafter to be brought, unless the party for whom such plea shall be tendered verify the same by affidavit, or affirmation, as the case may be, to the truth thereof, or unless the defendant, being heir, executor or administrator, of the person alleged to have made the deed, obtain leave from the court, upon shewing just cause, to put in such plea.

Plea of *non est factum* shall not be allowed, &c.

IV. AND BE IT ENACTED, That the courts of law shall have full power and authority to order and allow amendments to be made in all proceedings whatsoever before verdict, so as to bring the merits of the question between the parties fairly to trial; and if amendment is made after the jury is sworn, a juror shall be withdrawn; and in all cases where amendments are made, the adverse party shall have time allowed him, in the discretion of the court, to prepare to support his case upon the state of the proceeding so amended, and such costs shall be allowed the party against whom such amendment may be made as the court shall think just.

Court may order and allow amendments, &c.

V. AND BE IT ENACTED, That in all cases of appeals prosecuted, or writs of error brought, before the court of appeals by the plaintiff upon a bill or bills of exception taken by the plaintiff, and the judgment excepted to shall be reversed, and it shall appear to the court proper and necessary that the fact should be tried under such judgment and direction as to them appears legal, that it shall and may be lawful for such court to issue a *venire* to the sheriffs of Anne-Arundel, Prince-George's and Baltimore counties, respectively, returnable at the next court, to summon and cause to come before them six good and lawful men of their respective counties to try the facts in such cause, and the twelve of such jurors to try the facts shall be elected by ballot under the direction of the said court, and there shall be such remedy against the sheriffs aforesaid to compel obedience to the process, and such process to compel the jurors so summoned to attend, and such fine for non-attendance, as in case of process issued from, and jurors summoned to attend, the general court, and the said court of appeals shall have the same power to issue *tales* in case a sufficient number of the jurors so summoned do not appear to try the facts in the cause as the general court hath; and the facts shall be tried before the court of appeals; and such judgment given by the court as shall appear legal, and execution shall and may issue from the court of appeals upon such judgment, and shall be served and returned, in all cases, in the same manner, and to the same purposes and effects, as executions upon judgments of the general court in similar cases.

In case of appeals, &c. court may issue a *venire*, &c.

This section is virtually repealed by 1790, ch. 42, which directs the proceedings to be sent, with a writ of *procedendo*, to the judges of the general court, for a new trial.

VI. AND BE IT ENACTED, That in all cases of appeals, or writs of error, hereafter brought or prosecuted by any defendant or person grieved by any judgment, and the judgment of the inferior court, upon the merits of the question between the parties, and not upon the form of proceeding, be reversed, the court reversing such judgment shall award costs incurred by the defendant, or person grieved by such judgment, both in the superior and inferior courts, to be paid by the plaintiff or person against whom such writ of error or appeal be prosecuted, and judgment shall be entered in the court determining such appeal or writ of error for the costs aforesaid, and execution may issue for the same from such court.

On appeals, &c. court may award costs, &c.

See 1790, ch. 42.

VII. AND