

neglect of such sheriff, surveyor or other officer to execute and obey such warrant of resurvey, order or other process, the county court to which any such action shall or may be removed, and to which such warrant of resurvey order or other process may be returnable, shall, on motion and upon proof of the delivery of any such warrant of resurvey, order or other process, amerce such sheriff surveyor or other officer, and enter up judgment in the manner provided and directed by the first section of this act.

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1815.

3. AND BE IT ENACTED, That if any suit or action brought or to be brought in any court of law in this state, which by law is not to abate by the death of either of the parties thereto, and a declaration hath been or may be filed before the death of the plaintiff therein, further proceedings may be had upon the declaration so filed, but the executor or administrator as the case may require, or other proper person interested on the part of the deceased, may at any time after appearance, have liberty to amend such declaration, in the same manner as it might have been done by the original plaintiff if living.

Declarations.

4. AND BE IT ENACTED, That if the defendant in any suit or action hath died or hereafter shall die whilst such suit or action shall be depending, and the heir, devisee, executor or administrator of such defendant as the case may require, or other proper person, necessary to be made party to such suit or action, resides out of this state, the court in which such suit or action is or may be depending, shall on motion order and direct a subpoena to be issued, directed to such heir, devisee, executor, administrator or other proper person as the case may require, commanding him, her or them 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 suit or action, in the plea therein, if to him, her or them it shall seem meet; which subpoena the plaintiff in the said suit or action may serve, or procure to be served upon such heir, devisee, executor, administrator 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, devisee, executor, administrator 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 suit or action, the said court on motion shall order and direct a judgment to be entered for the plaintiff in such suit or action, by default nisi the third day of the succeeding term of said court, and if the said heir, devisee, executor, administrator 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, devisee, executor, administrator or other proper person as the case may be, shall be permitted to appear and defend such suit or action.

Persons absent becoming parties— subpoena may be issued.

5. AND BE IT ENACTED, That where any person against whom any judgment or decree hath been or shall be rendered or passed, hath appealed or shall appeal from any judgment or decree, or hath brought, or shall bring

Appeals.