



Common Law Procedure Act 1852

1852 CHAPTER 76

Death, Marriage, and Bankruptcy

CXXXVIII. Proceeding upon Death of sole or sole surviving Defendant.

In case of the Death of a sole Defendant or sole surviving Defendant, where the Action survives, the Plaintiff may make a Suggestion, either in any of the Pleadings, if the Cause has not arrived at Issue, or in a Copy of the Issue, if it has so arrived, of the Death, and that a Person named therein is the Executor or Administrator of the Deceased ; and may thereupon serve such Executor or Administrator with a Copy of the Writ and Suggestion, and with a Notice, signed by the Plaintiff or his Attorney, requiring such Executor or Administrator to appear within Eight Days after Service of the Notice, inclusive of the Day of such Service, and that in default of his so doing the Plaintiff may sign Judgment against him as such Executor or Administrator ; and the same Proceedings may be had and taken in case of Nonappearance after such Notice, as upon a Writ against such Executor or Administrator in respect of the Cause for which the Action was brought; and in case no Pleadings have taken place before the Death, the Suggestion shall form Part of the Declaration, and the Declaration and Suggestion may be served together, and the new Defendant shall plead thereto at the same Time ; and in case the Plaintiff shall have declared, but the Defendant shall not have pleaded before the Death, the new Defendant shall plead at the same Time to the Declaration and Suggestion ; and in case the Defendant shall have pleaded before the Death, the new Defendant shall be at liberty to plead to the Suggestion, only by way of Denial, or such Plea as may be appropriate to and rendered necessary by his Character of Executor or Administrator,, unless, by Leave of the Court or a Judge, he should be permitted to plead fresh Matter in answer to the Declaration ; and in case the Defendant shall have pleaded before the Death, but the Pleadings shall not have arrived at Issue, the new Defendant, besides pleading to the Suggestion, shall continue the Pleadings to Issue in the same Manner as the Deceased might have done, and the Pleadings upon the Declaration and the Pleadings upon the Suggestion shall be tried together ; and in case the Plaintiff shall recover, he shall be entitled to the like Judgment in respect of the Debt or Sum sought to be recovered and in respect of the Costs prior to the Suggestion, and in respect of the Costs of the Suggestion and subsequent thereto, he shall be entitled to the like Judgment as in an Action originally commenced against the Executor or Administrator.