

Death of Plaintiff in Error no abatement.

Death of one of several Plaintiffs in Error.

Death of sole Plaintiff or of all the Plaintiffs in Error.

Death of Defendant in Error no abatement.
Proceedings upon death of one of several Defendants in Error.

Proceedings upon death of sole Defendant or of all the Defendants in Error.

Marriage not to abate Proceedings in Error.

Review of subject of Error.

(c) "The death of a Plaintiff in Error after service of the note of the receipt of the memorandum alleging Error, with a statement of the grounds of Error, shall not cause the proceedings to abate, but they may continue as hereinafter mentioned."

(d) "In case of the death of one of several Plaintiffs in Error, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the Proceedings may be thereupon continued at the Suit of, and against the surviving Plaintiff in Error, as if he were the sole Plaintiff."

(e) "In case of the death of a sole Plaintiff or of several Plaintiffs in Error, the legal representative of such Plaintiff, or of the surviving Plaintiff, may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the proceedings may thereupon be continued at the Suit of, and against such legal representative, as the Plaintiff in Error; and, if no such suggestion shall be made, the Defendant in Error may proceed to an affirmance of the judgment according to the practice of the Court, or take such other proceedings thereupon as he may be entitled to."

(f) "The death of a Defendant in Error shall not cause the Proceedings to abate, but they may continue as hereinafter mentioned."

(g) "In case of the death of one of several Defendants in Error, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue; and the proceedings may be continued against the surviving Defendant."

(h) "In case of the death of a sole Defendant or of all the Defendants in Error, the Plaintiff in Error may proceed, upon giving ten days notice of the Proceedings in Error, and of his intention to continue the same, to the representatives of the deceased Defendants, or if no such notice can be given, then by leave of the Court or a Judge, upon giving such notice to the parties interested, as it or he may direct."

(i) "The marriage of a woman, Plaintiff or Defendant in Error, shall not abate the proceedings in Error, but the same may be continued in like manner as herein before provided with reference to the continuance of an Action after marriage."

58. On a review of this part of our subject it will be found that a complete system of proceedings in Error both in fact and in law may be established by means of the suggested enactments, as free from complication, as little dilatory in operation, and as little expensive to suitors as the nature of the matter will permit. It seems to us that no more simple or summary process could be introduced without depriving the community of the Colony of the power of taking advantage of some grounds of Error on which their English fellow subjects might have relied at the time up to which it seems to have been the intention of the Imperial Government and the Colonial Legislature that the rights of Colonists and of Englishmen should as far as practicable be deemed identical.

VI.—APPEALS FROM DISTRICT COURTS.

59. There is but one topic remaining relative to the civil jurisdiction of the Appeal Court, and that refers to appeals either direct, or intermediately through the Supreme Court, from the District Courts established by the Act of 1858.

Appeal from Judgment of Supreme Court on an appeal from District Court.

We have stated in our preliminary observations, that we think, on principle, the suitors of the District Courts ought to be empowered to go to the Court of Appeal if dissatisfied with the judgment of the Supreme Court, provided there seemed to be some fair ground for carrying the case further; and in order to give effect to this suggestion, it will be necessary, in the first place, to repeal so much of the 102nd section of "The District Courts Act, 1858," as makes the orders of the Supreme Court (as a Court of Appeal) final.

It might then be provided, as a simple, practical course, that, on notice of Appeal being given to the Registrar of the Supreme Court, the case transmitted to him by the parties, under the District Courts Act, should be sent on by him to the Registrar of the Court of Appeal, along with a memorandum of the Judgment of the Supreme Court thereupon. The following clause might carry out these suggestions:—

Proposed clause.
Part of s. 102 of the District Courts Act, 1858, repealed.

Proceedings for removing Appeal from Supreme Court to the Court of Appeal.

1. "So much of the 102nd section of "The District Courts Act, 1858," as directs "that the Orders made by the Supreme Court on appeals from any District Court shall be final, is hereby repealed."

2. "It shall be lawful for any party against whom any order of the Supreme Court shall have been made under the 102nd section of the last mentioned Act, on an appeal from any District Court, to give notice within [] days after such order shall have been made, to the other party or his Solicitor, and to the Registrar of the Supreme Court, of his wish to appeal to the Court of Appeal on some ground or grounds to be specifically alleged by him in such notice, and if the Judge who made such order shall certify in writing that in his opinion the grounds or ground alleged in such notice are, or that some one ground is fit to be argued in the Court of Appeal, and if such party so wishing to appeal shall within [] days after the granting of such certificate, give security for the costs of such appeal, and for the amount of the judgment, if he be the defendant, to the satisfaction of the Registrar of the Supreme Court; then, on proof of notice that such certificate and security have been given, having been served upon the party appealed against, the said Registrar shall transmit to the Registrar of the Court of Appeal, the case agreed upon or settled under the 103rd