

has been satisfied. *Cruzen v. McKaig*, 57 Md. 461; *Gott v. State*, 44 Md. 337; *Thomas v. Mohler*, 25 Md. 45.

This section does not alter the rule that all joint defendants (partners) must be joined, and the omission so to do may be taken advantage of by plea in abatement, or in a proper case by demurrer. Object and effect of this section, discussed. *Loney v. Bailey*, 43 Md. 17. See also, *Merrick v. Bank of Metropolis*, 8 Gill, 60.

This section is identical with art. 26, sec. 21—see notes thereto.

1904, art. 50, sec. 11. 1888, art. 50, sec. 11. 1860, art. 49, sec. 11. 1825, ch. 167.

**11.** If any joint defendant in an action *ex contractu* dies either before or after judgment, his executor and heirs shall be bound in the same manner as if a separate action had been pending or a separate judgment been rendered against such defendant.

See sections 4 and 5.

*Ibid.* sec. 12. 1888, art. 50, sec. 12. 1888, ch. 482.

**12.** In suits brought against alleged joint debtors in actions *ex contractu* it shall not be necessary for the plaintiff to prove their joint liability as alleged in order to maintain his action; but he shall be entitled to recover as in actions *ex delicto* against such one or more of the defendants as shall be shown by the evidence to be indebted to him; and judgment shall be entered in his favor against such one or more of said defendants as fully as if the defendant or defendants against whom he shall fail to establish his claim had not been joined in the suit.

When the plaintiff's claim is established against only one of the two or more joint defendants, the verdict and judgment should be for the plaintiff as against the one defendant and for the other defendants. *Horner v. Plumley*, 97 Md. 281. See also, *Boyd v. Wolff*, 88 Md. 342.

Prior to the adoption of this section in a suit against the husband and wife under the act of 1872, ch. 270, although the wife maintained her defense, judgment might be entered against the husband. *Wilmer v. Galther*, 68 Md. 349.

This section applied. *Meyer v. Frenkl*, 113 Md. 46; *Westheimer v. Craig*, 76 Md. 407.

### Joint Tenancy.

*Ibid.* sec. 13. 1888, art. 50, sec. 13. 1860, art. 49, sec. 12. 1822, ch. 162.

**13.** No deed, devise or other instrument of writing shall be construed to create an estate in joint tenancy, unless in such deed, devise or other instrument of writing it is expressly provided that the property thereby conveyed is to be held in joint tenancy.

#### Application of this section.

This section inverts the rule of the common law. It has no application to a tenancy by the entireties. *Brewer v. Bowersox*, 92 Md. 572; *Marburg v. Cole*, 49 Md. 412.

This section applied. *Walsh v. McBride*, 72 Md. 60 (dissenting opinion); *McPherson v. Snowden*, 19 Md. 230; *Purdy v. Purdy*, 3 Md. Ch. 552.

This section held to have no application to devises or grants made to trustees for the benefit of third parties. *Gray v. Lynch*, 8 Gill, 424.