

ACT 82

H. B. 788.

A Bill for an Act Permitting Dissolved Corporations to Continue as Parties in Civil Actions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 230-55, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

“§ 230-55. Death or dissolution of plaintiff or defendant. The death of a plaintiff or defendant or the dissolution of a corporate plaintiff or defendant shall not cause an action to abate, but it may be continued as hereinafter mentioned; and where an action would but for the provisions of this subtitle abate by reason of the death or dissolution of either party, and

in which the proceedings may be revived and continued under this subtitle, the defendant or person against whom the action may be so continued may apply by summons to compel the plaintiff, or person entitled to proceed with the action in the room of the plaintiff, to proceed according to the provisions of this subtitle, within such time as the judge shall order; and in default of such proceeding, the defendant, or other person against whom the action may be so continued as aforesaid, shall be entitled to enter a suggestion of such default and of the representative character of the person by or against whom the action may be proceeded with, as the case may be, and to have judgment for the costs of the action and suggestion against the plaintiff, or against the person entitled to proceed in his room, as the case may be, and in the latter case to be levied on the goods or assets of the testator, intestate or dissolved corporation.”

SECTION 2. Section 230-56, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

“§ 230-56. **Death or dissolution, in case of two or more plaintiffs or defendants.** If there be two or more plaintiffs or defendants, and one or more of them should die or be dissolved, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated; but such death or dissolution being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs, against the surviving defendant or defendants.”

SECTION 3. Section 230-57, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

“§ 230-57. **Death or dissolution of sole plaintiff.** In case of the death or corporate dissolution of a sole plaintiff or sole surviving plaintiff, the legal representative of such plaintiff may, by leave of the court or judge, enter a suggestion of the death and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion is made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased or dissolved plaintiff; and such judgment shall follow upon the verdict in favor of or against the person making such suggestion as if such person were originally the plaintiff.”

SECTION 4. Section 230-58, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

“§ 230-58. **Death or dissolution of sole defendant.** In case of the death or corporate dissolution 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 on the record, if it has so arrived, of the death or dissolution, and that a person named therein is the executor, administrator or trustee in dissolution of the deceased or dissolved defendant, and may thereupon serve such executor, administrator or trustee in dissolution with a copy of the suggestion and with a notice

signed by the plaintiff or his attorney requiring such executor, administrator or trustee in dissolution to appear within twenty days after service of the notice, and that in default of his so doing the plaintiff may apply for judgment against him as such executor, administrator or trustee in dissolution; and the same proceedings may be had and taken in case of nonappearance, after such notice, as upon a summons against such executor, administrator or trustee in dissolution in respect of the cause for which the action was brought; and in case the defendant shall not have pleaded or answered before the death or dissolution, the new defendant shall plead or answer at the same time to the petition and suggestion; and in case the defendant shall have pleaded before the death or dissolution, 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, administrator or trustee in dissolution, unless by leave of the court or a judge he shall be permitted to plead fresh matter in answer to the petition, and the pleadings upon the petition 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, administrator or trustee in dissolution."

SECTION 5. Section 230-59, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

“§ 230-59. Death or dissolution between verdict and judgment. The death or corporate dissolution of either party between the verdict and the judgment shall not be alleged as error, if judgment be entered during the term in which such verdict was rendered, and if the plaintiff in any action happens to die or to be dissolved after an interlocutory judgment and before a final judgment obtained therein, the action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor, administrator or trustee in dissolution of such plaintiff; and if the defendant dies or is dissolved after such interlocutory judgment and before final judgment therein obtained, the action shall not abate if such action might be originally prosecuted or maintained against the executor, administrator or trustee in dissolution of such defendant and the plaintiff, or if he be dead or it be dissolved after such interlocutory judgment, his executors or administrators, or its trustee in dissolution, shall and may have a writ of revivor in a form prescribed by rule of the Supreme Court, or to the like effect against the defendant if living or in existence after such interlocutory judgment, or if he be dead or it be dissolved, then against his executors or administrators or its trustee in dissolution, to show cause why damages in such action should not be assessed and recovered by such plaintiff, and if such defendant, his executors or administrators or its trustee in dissolution shall appear at the return of such writ and not show or allege any matter sufficient to arrest the final judgment, or shall make default, an inquiry of damages shall be there-

upon held, or the amount for which final judgment is to be signed shall be referred to the clerk of the court; and upon return of the writ or delivery of the order with the amount indorsed thereon to the plaintiff, his executors or administrators or its trustee in dissolution, judgment final shall be given for the plaintiff, his executors or administrators or its trustee in dissolution, prosecuting such writ of revivor against such defendant, his executors or administrators or its trustee in dissolution, respectively.”

SECTION 6. Section 230-60, Revised Laws of Hawaii 1955, is hereby repealed.

SECTION 7. Existing statutory language to be deleted is bracketed and new language is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed language or the underscoring.*

SECTION 8. This Act shall take effect on January 1, 1968.

(Approved May 15, 1967.)

* Edited accordingly.