

proceeding in the name of a dead man is a nullity, not a mere irregularity. The application to renew a writ, though (by the practice of the Court) made to an officer of the Court on præcipe, must really be treated as if made to the Court itself. The officer is merely the instrument of the Court. If the Court itself cannot entertain applications on behalf of deceased suitors, how can its officer? If the application in this case, instead of being made to the officer of the Court, had been made to the Court itself, what would the Court say: or what ought it to say?

*"Counsel for deceased plaintiff.* I apply to renew a writ of execution.

*"Court.* For whom do you apply?

*"Counsel.* I apply on behalf of the plaintiff, who is now dead.

*"Court.* We are only authorised to administer justice to the living. The application is refused."

But what will the Court have to say hereafter in such a case? By s. 32 (1) of the Judicature Act it is provided that "the decision of a Divisional Court on a question of law or practice, unless overruled or otherwise impugned by a higher Court, shall be binding on all Divisional Courts, and on all other Courts, and Judges, and shall not be departed from in subsequent cases, without the concurrence of the Judges who gave the decision," therefore, henceforth all Provincial Courts will have to decide that writs of execution may be validly renewed in the name of a dead suitor and, so renewed, may be validly executed.

The moment you depart from well settled principles there is no knowing where you may get. If you may validly renew a writ in the name of the dead man, you may as validly issue it in his name. If you may issue a writ of execution in a dead man's name, why not also a writ of summons, or any other writ? If the solicitor may validly take proceedings in a dead man's name, then he is under no legal responsibility for so doing, and the suitor, being dead, is not responsible, and consequently any person injured by the taking of such proceedings is without remedy.

See, however, *Yonge v. Toynbee*, 1909, 1 K.B. 215; *Simmons v. Liberal Opinion*, 1911, 1 K.B. 966; 104 L.T. 264.