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## RENEWAL OF WRITS BY DEAD SUITORS.

The case of *Mahaffy v. Bastedo* has now been published in the regular reports (38 O.L.R. 192), and having perused the report carefully, our view of the case is unchanged, and we think it somewhat strange that the very clear and convincing judgment of the Chief Justice failed to carry weight with the other members of the Court.

The judgment of the majority of the Court appears to be based on the following reasoning. Because a writ of execution issued in the lifetime of a suitor and delivered to the sheriff may be executed by the sheriff after the suitor's death, so long as the writ remains in force, therefore a writ so issued may be kept in force after the suitor's death by renewal in his name—such reasoning appears to be fallacious: because while the death of the execution creditor may not determine the authority of the sheriff to act under the execution, it does determine the power of the suitor to keep it alive, and if anything is necessary on his part to keep it in force, then his death puts an end to his power to take that proceeding, and it must be taken by some person in esse, who must first make himself a party to the record, and thereby acquire the right to take the proceeding.

To hold that such a proceeding can be validly taken in the name of a dead man, seems to violate a fundamental principle of litigation. A dead man cannot come into Court and ask to have a writ renewed, and if he can't act in person how can he act by attorney?

We see that Mr. Justice Middleton suggests that the renewal of the writ in the name of a dead man is a mere irregularity, which a stranger to the record cannot take advantage of: but a