and in that case a judgment of *fiat* upon a *scire facias*, issued in the *name of the legal plaintiff* for the use of the equitable plaintiff, was held valid though the former were dead at the time the *fiat* was entered; see Clarke v. Digges, 5 Gill, 118. The death of a party is matter of fact, and the judgment will be reversed accordingly as for error in fact, see Richardson's lessee v. Parsons, 1 H. & J. 253; Hawkins v. Bowie, 9 G. & J. 428; though the death of a plaintiff before the impetration of the writ is matter in abatement, *ibid.*, and so of the death of one of several defendants, McLaughlin v. De Young, 3 G. & J. 4.

In Anon. 1 Salk. 8, it was ruled that if the plaintiff die after the *assizes* begin, though the trial be after his death, it is within the remedy of the Statute, the assizes being considered as one day in law, and the same point was ruled in Jacobs v. Miniconi, 7 T. R. 30, as to sittings at *nisi prius;* the Court observing, that the construction given in the case in Salkeld had always prevailed. In Taylor v. Harris, 3 B. & P. 549, it is explained that Jacobs v. Miniconi might have been tried at any time after it had been entered on the judge's cause-paper, and nothing but the multiplicity of business prevented it from being tried on the first day of the sittings. But sittings *in term* are appointed at the discretion of the Chief Justice, and do not commence with the term and are no part of it, and hence it was in that case held, that a verdict should be set aside where the defendant died on the night before the trial at the sittings *in term.* It seems, however, that all causes tried by adjournment from the first day of a sittings *in term* are treated as having been tried on that day, Cheetham v. Sturtevant, 1 Dowl. & L. 631; but see Johnson v. Budge, 1 Cr. M. & R. 647. The death of either party before the assizes is not helped, but the Court will not stay judgment after verdict for the plaintiff, in case only of a strong probability of his death before trial, as that the ship which he had embarked in was lost, it not positively appearing that he had perished, but facts must be shown that would be evidence before a jury, Johnson v. Hamilton, 9 M. & W. 149. All our trials are at bar, and it is highly probable that the term would be considered as one day, and a judgment helped where either party had died during the term before trial; though not if the other party had notice of the death, for it might have been suggested, and an appearance entered of the new party at the same Court, under sec. 1 of Art. 2 of the Code;[4] and in Richardson's lessee v. Parsons *supra,* a judgment in ejectment was reversed for error in fact, where the defendant was dead at the time and had died two days before the trial, and, no doubt, at the same term. But a judgment signed on the day of, and subsequently to the death of the defendant was held well signed, on the principle, that judicial proceedings are to be taken to date from the earliest minute of the day on which they are done (Edwards v. Reginam, 9 Exch. 628), or on the principle, that judicial acts shall have precedence over the acts of a private party, when both date from the same day, Wright v. Mills, 4 Hurl. & N. 488.

The Act does not apply to cases of nonsuit;[5] as in Dowbiggin v. Har-

[4] Code 1911, Art. 75, sec. 25.

[5] Cf. Hemming v. Batchelor, L. R. 10 Ex. 54.