2. Property was given by will on trust to A. for life; remainder to all or such one or more of the children or issue of the testator's deceased brother B., in such shares and in such manner as A. should appoint; and, in default of appointment to B.'s children equally. C., one of B.'s children, assigned "all his estate and effects" by deed under the Bankruptcy Act. 1861, but never obtained a discharge. After this, A. appointed the fund by will to B.'s children equally; and, as all B's children survived A., C. took the same share he would have taken in default of appointment. *Held*, that the deed did not pass after-acquired property; and that C.'s interest in default of appointment was defeated by the appointment, which gave him a new interest, liable to be defeated by lapse, and that therefore C.'s share did not pass under the deed.—*Vizard's Trusts*, Law Rep. 1 Ch. 588.

See Election, 3; Marshalling of Assets, 1.

Practice.

1. If an action is begun in the name of a dead man, his representatives cannot be substituted as plaintiffs.—*Clay* v. *Oxford*, Law Rep. 2 Ex. 54.

2. To an action on a bill of exchange, the defendant pleaded that he did not accept, and proved that the bill was accepted by his partner in the firm's name, and included a private debt of the partner, for which he had given his partner no authority to accept. The court amended the declaration by adding a count for the consideration, and ordered a verdict to be entered for the sum really due from the firm on terms. Whether the plea was proved, *quære*. *Ellston* v. *Deacon*, Law Rep. 2 C. P. 20.

3. An affidavit made in order to hold a defendant to bail, which states that the defendant "is indebted" to the plaintiff "for money lent and goods sold and delivered," without averring that the money was lent or the goods sold and delivered by the plaintiff to the defendant, is insufficient.—*Handley* v. *Franchi*, Law Rep. 2 Ex. 34.

4. A creditor may have a *scire facias* against a shareholder in a railway company, under 8 & 9 Vic. c. 16, sec. 36, though the sheriff's returns to abortive writs issued against the company have not been actually filed at the time of the motion; and, though notice to the party sought to be charged must be served personally, the rule *nisi* for the *scire facias* may be served on an attorney authorized to accept service for him. — *Ilfracombe Railway Co.* v. *Devon and Somerset Railway Co.*, Law Rep. 2 C. P. 15.

5. A plaintiff who recovers a debt not exceeding £20, though deprived of costs, is yet entitled to poundage fees and expenses of execution under 15 & 16 Vic. c. 76, sec. 123.—*Armitage* v. *Jessop*, Law Rep. 2 C. P. 12.

See Different Titles.

Principal and Agent.

The defendant employed an architect to prepare plans and a specification for a house, and to procure a builder to erect it. The architect took out the quantities, and represented to the plaintiff, a builder, that they were correct; the plaintiff thereon made a tender, which was accepted. The quantities proved incorrect, and the plaintiff expended much more material than he contemplated. *Held*, that there was no evidence that the architect acted as the defendant's agent in taking out the quantities, or that the defendant guaranteed their accuracy, and that, therefore, the plaintiff could recover only his contract price. — *Scrivener* v. *Pask*, Law Rep. 1 C. P. 715.

See Bill of Lading, 2; Contract, 1; Master and Servant; Ship, 2.

Probate Practice.

1. A will was opposed on a written statement, by an attesting witness, that it was not duly executed. The party opposing the will did not deliver notice of intention not to call witnesses till after he had delivered his plea. *Held*, that he had thereby lost the protection against costs given by contentious rule 41; and the court, thinking the statement unfairly obtained, condemned him in costs. — *Bone* v *Whittle*, Law Rep. 1 P. & D. 249.

2. The rule which protects one opposing a will against costs, if he gives notice that he merely insists on the will being proved in solemn form, and only intends to cross-examine the witness produced in support, does not apply to a case in which undue influence is pleaded.—*Ireland* v. *Rendall*, Law Rep. 1 P. & D. 194.

3. A next of kin, who had unsuccessfully pleaded undue influence, was yet not condemned in costs, the plea under the circumstances not being unreasonable. — *Smith* v. *Smith*, Law Rep. 1 P. & D. 239.

See Administration.

Production of Documents.

1. A case and opinion of counsel stated about a separate litigation on the same subject-matter as the present dispute, and, after it had arisen, is privileged from production, as is also a letter written between co-defendants about a matter in suit, with direction to forward it to their joint solicitor.—*Jenkins* v. *Bushby*, Law Rep. 2 Eq. 547.

2. If a defendant, after answer, has obtained an affidavit as to documents in the common