

DIGEST OF ENGLISH LAW REPORTS.

but recovered a sum less than the principal. *Held*, that said sum must be treated as capital. But one having a life estate therein was entitled to the future interest of the same.—*In re Grabowski's Settlement*, Law Rep. 6 Eq. 12.

ARBITRATION—See AWARD.

ARREST—See ASSAULT.

ASSAULT.

The prisoner assaulted a constable in the execution of his duty. The constable went for aid, and after an hour returned with three others, but found the prisoner had locked himself up in his house. Fifteen minutes later the constables forced the door, entered, and arrested the prisoner, who wounded one of them in resisting the arrest. *Held*, that the arrest was illegal.—*The Queen v. Marsden*, Law Rep. 1 C. C. 131.

ASSETS—See EXECUTION; WINDING UP, 2.

ASSIGNMENT—See ATTACHMENT.

ASSUMPSIT—See VENDOR AND PURCHASE OF REAL ESTATE.

ATTACHMENT.

1. A prior equitable assignment of railway shares in the hands of the garnishee is a bar to a foreign attachment, although no notice of such assignment has been given to the garnishee.—*Robinson v. Nesbitt*, Law Rep. 3 C. P. 264.

2. A railway company assigned, by a deed containing a power of sale, a call which had been made, but was not yet payable, as security for a debt then due to the plaintiff. After the same had become payable, the defendants obtained a garnishee order nisi against a shareholder. The shareholder had no notice that the deed of assignment had been sealed at the time of the service of said order upon him, but had presided at the board at which the sealing was directed. *Held*, that the assignment was not *ultra vires*; that it was not made void by the power of sale, as, if said power was invalid, it would be expunged by the Court of Chancery; and that the shareholder had notice. *Quære*, whether notice was necessary as against a subsequent judgment creditor.—*Pickering v. Ilfracombe Railway Co.*, Law Rep. 3 C. P. 235; *Watts v. Porter*, 3 E. & B. 743, overruled. See *Robinson v. Nesbitt*, Law Rep. 3 C. P. 264.

AWARD.

The plaintiff sued A., B., and C., upon a joint contract, and after plea entered a *nolle prosequi* as to B. and C. Afterwards an order of reference was drawn up, by consent, on a printed form, which contained no power to the arbi-

trator to amend. Before the arbitrator it was set up that the *nol. pros.* as to B. and C. discharged the defendant, and the plaintiff sought to amend. *Held*, that he could not. Unless there has been an omission by an officer of the court, or an accident or mistake, owing to which it is not in accordance with the intention of either party, or fraud, a consent order will not be altered by the court. (Per BOVILL, C.J.) Nor could it be done indirectly by amending the record under § 37 of the Common Law Procedure Act, 1852, by striking out the names of B. and C., at least when they were joined as defendants intentionally, to fix all three with liability.—*Vanderbyl v. McKenna*, Law Rep. 3 C. P. 252.

BANKER.

Appellants, bankers, had policies on the life of one deceased as security for money due from him to them. To obtain payment of these, they received the probate of his will from his widow and executrix, promising to make over the balance to her. Said probate showed remainders to children after the widow's life estate. The latter drew a cheque for said balance, payable to a firm composed of herself and her husband's former partner, which banked with appellants, and the amount was placed to the credit of the firm accordingly. In a suit by the children, *held*, by the House of Lords, reversing the decree of the Lord Chancellor of Ireland, that the bankers were not liable to replace said balance. To justify a banker in refusing to pay a cheque drawn by a customer as executor, there must be a breach of trust intended by the latter, and the banker must be privy to that intent. Proof that any personal benefit to the bankers themselves is designed or stipulated for, is the strongest evidence of such privity.—*Gray v. Johnston*, Law Rep. 3 H. L. 1.

BANKRUPTCY.

1. R., having a contract to supply meat to a lunatic asylum for six months from April 1, assigned it on that day to H., who delivered his own meat in R.'s name, without the knowledge of the asylum. R. became bankrupt, and his assignee claimed the sum then due for meat as "goods and chattels" in the "possession, order, or disposition" of R. as reputed owner with the consent of H., the true owner, within the Bankrupt Act 12 & 13 Vict. c. 106, § 125. *Held*, that the debt passed to the assignee.

(Per WILLIS, J., *dissentiente*). The meat never having been in R.'s possession, the debt arising thence was not within his possession,