

DIGEST OF ENGLISH LAW REPORTS.

DIVORCE.—See CONFLICT OF LAWS, 1.

DOMICILE.—See CONFLICT OF LAWS.

DOUBLE PORTION.—See SATISFACTION.

DUTY.—See NEGLIGENCE, 1.

EASEMENT.—See COMPANY, 4; WAY.

ECCLIESIASTICAL LAW.

1. A faculty for the appropriation of a family vault under the chancel of a district church was granted by the ordinary, on the application of the proprietor of the great tithes and of the land adjoining the church, against the objections of the incumbent. The entrance to the vault was from the outside of the church, where there was no consecrated ground. *Held*, that the incumbent had, as such, a *persona standi* to oppose the grant; that, though the grant was within the discretion of the ordinary, it was his duty to prevent the possibility of misuse by the grantee, and the grant was made conditional upon the grantee's allowing a piece of ground in the vicinity of his vault to be consecrated for the sole purpose of burials in the vault, thereby preserving the jurisdiction of the ordinary, *ratione loci*, in case of any impropriety in the burial service.—*Rugg v. Kingsmill*, Law Rep. 2 P. C. 59; s.c. Law Rep.; 1 Adm. & Ecc. 343 (*ante*, 2 Am. Law Rev. 275).

2. The right of advowson is a temporal right of property. Although the bishop must reject an unfit presentee, his finding on the question of fitness is not conclusive, but the fact is examinable in a temporal court.

It is not, therefore, a good plea to a *quare impedit*, that the bishop had good reason to believe that the presentee had attempted to commit simony, but it must be alleged that he *had* attempted to do so, with such particularity of allegation as will enable the patron to take issue thereon.

In this case it was further pleaded, that the clerk came from a foreign diocese, and did not bring with him a sufficient testimony, from the bishop of that diocese, of his honest conversation, ability, and conformity to the ecclesiastical laws of England. It was not alleged that the clerk proved unfit, on examination, but that the production of said testimony was a condition precedent to his being examined at all. *Held*, that there was no such condition precedent. The 48th Canon of 1603 did not apply to this case, but only the 39th. Moreover, these canons do not bind the laity, *proprio vigore*, but only when declaratory of the ancient law of the Church. Neither is it enough to show that such a condition was imposed by

the canon law of Europe.—*Bishop of Exeter v. Marshall*, Law Rep. 3 H. L. 17.

EQUITABLE ASSIGNMENT.—See ATTACHMENT.

EQUITY PLEADING AND PRACTICE.

1. To a bill by a *cestui que trust* against the trustees of a testator's estate, praying for the administration of the estate, and the usual accounts and directions, and seeking to set aside a release which he alleged had been improperly obtained from him, and to be untrue in its recitals, the defendants pleaded the release by them set forth, one of the recitals of which was, that true and just accounts had been rendered, and averred the said recitals were true, and answered the rest of the bill. They did not set out the said accounts. *Held*, that the plea must stand for an answer, with liberty to except. *Quare* (per Lord Romilly, M.R.), whether a release can ever be pleaded without setting forth the accounts therein referred to.—*Brooks v. Sutton*, Law Rep. 5 Eq. 361.

2. A first mortgagee, having notice that A., a second mortgagee, had agreed to transfer his mortgage to B. for £250 and certain costs, and had received £250, but had not executed the transfer, made A. a defendant to a foreclosure suit. Before and just after appearing, A. told the plaintiff that he had no interest in the property, and offered to disclaim; and, being served with interrogatories, he put in an answer and disclaimer. Afterwards he executed said transfer. *Held*, that A., until he executed the transfer, was a necessary party, and that he was not entitled to his costs.—*Roberts v. Hughes*, Law Rep. 6 Eq. 20.

See MORTGAGE, 1; PATENT, 1; PRODUCTION OF DOCUMENTS; TRIAL BY JURY; VENDOR AND PURCHASER OF REAL ESTATE.

ESTOPPEL.

A deed of release and indemnity to the executor of a testator contained a recital, that the executor had retained £19 8s., being the amount of the legacy duty on the bequests in the will, but in fact that sum was only part of such duty. *Held*, that the executor, who was afterwards called on to pay the balance of the duty, was not estopped by the above recital, made under a mistake of fact, without fraud on his part, from recovering that sum from the estate of the residuary legatees, under the covenant for indemnity in the deed.

An executor of a testator cannot renounce the executorship of other persons of whom his testator may have been executor.—*Brooke v. Haymes*, Law Rep. 6 Eq. 25.

See COLLISION; COMPANY, 2; SPECIFIC PERFORMANCE, 2.