

## DIGEST OF ENGLISH LAW REPORTS.

section permits a defence denying the debt to be pleaded along with a plea of payment. In my opinion by such a plea of payment is meant a payment of the entire amount before action brought. A defence of payment after action brought has never been allowed along with traverses going to the entire cause of action. The cases cited by counsel for the defendant, therefore, do not apply to the present case, where such traverses are pleaded. The defence must be set aside, with costs; the defendant to be at liberty to amend, as he may be advised, within two days.

Rule accordingly.

## DIGEST.

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FOR THE MONTHS OF NOVEMBER AND DECEMBER, 1866, AND JANUARY, 1867.

(Continued from page 165.)

ADEMPTION.—See WILL, 11.

## ADMINISTRATION.

1. A guardian of an infant sole next of kin is entitled to administration in preference to creditors; and the latter cannot require the guardian to give justifying security, unless a very strong case for so doing is made out.—*John v. Bradbury*, Law Rep. 1 P. & D. 245.

2. A testator, by will, gave his property to trustees in trust, to invest part in an annuity for his widow, and to divide the residue among his children; the amount of the annuity and the names of the trustees and executors were left in blank. Administration with the will annexed was granted to the widow.—*Goods of Pool*, Law Rep. 1 P. & D. 206.

3. At an intestate's death, A., his only next of kin, was in New Zealand. On its appearing that immediate representation was necessary to preserve the estate, administration was granted to the intestate's sister for the benefit of A., limited till the grant should be made to A., or his attorney, and the administratrix was ordered to give justifying security.—*Goods of Cholwell*, Law Rep. 1 P. & D. 192.

4. A creditor was allowed to cite the next of kin to take administration, or show cause why it should not be granted to the applicant, though his right of action was barred by the statute of limitations.—*Goods of Coombs*, Law Rep. 1 P. & D. 193.

5. In a suit by creditors to administer the realty, there being no personalty, and the realty proving deficient, the costs of the plaintiffs and of the beneficial devisee, defendants, were taxed as between party and party, and paid *pari passu* out of the fund; and the

balance of the fund was applied to pay plaintiffs' extra costs as between solicitor and client, and then to pay debts.—*Henderson v. Dodds*, Law Rep. 2 Eq. 532.

See MARSHALLING OF ASSETS; PROBATE PRACTICE; WILL, 4.

AFFIDAVIT TO HOLD TO BAIL.—See PRACTICE, 3.

AGENT.—See PRINCIPAL AND AGENT.

AGREEMENT.—See CONTRACT.

## ALIMONY.

1. The fact that a husband is obliged, in order to earn his income, to live in a more expensive place than the wife, will be considered in allotting permanent alimony.—*Louis v. Louis*, Law Rep. 1 P. & D. 230.

2. The husband's income did not exceed £66: the wife had £70 in her possession when suit was brought. Alimony *pendente lite* was refused.—*Coombs v. Coombs*, Law Rep. 1 P. & D. 218.

3. The respondent had been ordered to pay permanent alimony at a certain rate, so long as he should receive a rent charge of £400 a year (his only source of income), the trustees of which had a discretionary power to refuse payment. The respondent had, before the order, become bankrupt; but the trustees had continued to pay him the rent charge, and he had failed to comply with the order. *Held* (the respondent and trustees opposing), that a sequestration should issue in general terms against the property, &c., of the respondent.—*Clinton v. Clinton*, Law Rep. 1 P. & D. 215.

4. In a separation deed, the husband covenanted with trustees to allow his wife £50 a year, he being indemnified against all liabilities on her account; and it being agreed, on her behalf, that she would not endeavour to compel the husband again to live with her, or to allow her any further maintenance or alimony than the annuity of £50. *Held*, that in the absence of any act showing an unqualified acceptance of the provisions of the deed, or of any attempt to enforce it against her husband, the court of equity would not, on interlocutory motion, restrain her from proceeding to the divorce court to obtain an allowance for alimony, as incident to her petition for judicial separation on the ground of cruelty: but the court put her under an undertaking to deal with the alimony as it should direct.—*Williams v. Bailey*, Law Rep. 2 Eq. 731.

## APPEAL.

1. On appeals, the appellant will begin.—*Williams v. Williams*, Law Rep. 2 Ch. 15.

2. On appeal, any previous order in the cause may be read, but not evidence referred