

NOTES OF CASES—DIGEST OF ENGLISH LAW REPORTS.

VICTORIA MUTUAL FIRE INS. CO. V. BETHUNE.

[September 25.]

Administration of Justice Act—Injunction.

The plaintiffs had effected an insurance in favour of one Clark, whose goods were destroyed by fire, and referees awarded him a sum of money which the plaintiffs were ready to pay over, but having been served with garnishee proceedings, at the instance of the defendant Bethune, they had refrained from paying over the amount, and orders were made by the Judge of the County of Wentworth, in favour of Bethune and seven other creditors to an amount of \$582.97, being the full amount of the money remaining in the hands of the plaintiffs, as payable to Clark, and Bethune had issued an execution against the plaintiffs, and the sheriff had seized under the writ. It also appeared that the Judge of the County of Essex had granted a similar order for \$208 debt, and costs \$38.11, so that the sums ordered to be paid by plaintiffs exceeded the amount in their hands by about \$240; thereupon plaintiffs applied to the Judge of Wentworth for an order to rescind his orders so far as plaintiffs were prejudiced thereby, which application the Judge refused to grant on the ground that he had not any authority to rescind his order. Under these circumstances, the plaintiffs filed a bill in this Court for an order to continue an interim injunction restraining proceedings on such orders, but

PROUDFOOT, V.C., refused the motion, observing: "The Administration of Justice Act applies to County Courts, and in the proceedings in Essex all the claimants might have been summoned under the act of 1873, (sec. 8) and a judgment or decree made adjusting all the rights of the parties. If dissatisfied with the decision it might have been appealed from."

*Walker for plaintiffs.**Crickmore and Moss, contra.*

HOWEL'S State Trials, 207. A curious illustration of the extreme barbarity of the spirit of British criminal law, in cases not capital, is shown in a law which was repealed scarcely fifty years ago, enacted, we believe, in the time of Edward VI., and which provides that every person "convicted of drawing or smiting with a weapon in a churchyard is to have one of his ears cut off; and if the person so offending have none ears whereby he should receive such punishment, then" the letter F was to be branded in the cheek with a hot iron, so that he might be known for a fray-maker and fighter. Nothing can more forcibly illustrate the practical savagery of the times than that the law-maker was obliged to contemplate the probability of finding culprits whose ears have already been cut off.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS

FOR FEBRUARY, MARCH, AND APRIL, 1876.

*From the American Law Review.*ACCOUNT.—*See* APPROPRIATION OF PAYMENTS.ACKNOWLEDGMENT.—*See* LIMITATIONS, STATUTE OF.

ADMINISTRATION SUIT.

P. died in 1740, and his assets were apportioned among the creditors who were then found. The funds then distributable were insufficient to pay the creditors in full. In 1867 a large sum was paid into court to the credit of P.'s estate, and certain creditors of P.'s estate presented their claims. *Held*, that said creditors were only entitled to such a proportion of said sum as their debts bore to the total indebtedness of P.'s estate, and that the remainder of said sum must be retained to meet any future claims of other creditors.—*Ashley v. Ashley*, 1 Ch. D. 243.

AGENCY.—*See* BROKER; CONTRACT, 3; PRINCIPAL AND AGENT.AGREEMENT.—*See* CONTRACT.

APPOINTMENT.

E., who had power of appointment by will over £7,000, appointed to various persons £1,995, £4,000, £4,000, and £5, being £10,000 in all. An appointee of £4,000 died in the testator's lifetime. *Held*, that the other appointees, and not the persons entitled in default of appointment, were entitled to the benefit of the lapse. Appointees of life and reversionary interests were ordered to bring their interests into hotchpot.—*Eales v. Drake*, 1 Ch. D. 217.

See SETTLEMENT, 1.

APPROPRIATION OF PAYMENTS.

A. & B., partners, gave their acceptance to the plaintiffs for £132 for goods sold. A. & B. dissolved partnership, and informed the plaintiffs of this, and that A. would carry on the business, and pay and receive the partnership debts. After this the plaintiffs sent A. an account headed, "A., debtor to plaintiffs," putting the acceptance of A. & B. for £132 first, and then an acceptance by A. only; and on the credit side various payments amounting to £97, and showing a balance against A. of £92. Afterwards A. made payments, which, with the other payments, amounted to more than £132. The plaintiffs sued on the acceptance for £132, and A. pleaded payment. *Held*, that the payments made must be applied to the debts in order of date, as the plaintiffs had blended the accounts of A. & B., partners, and of A.; and