

Nov. 6, 1899.

My Dear Sir:

I greatly regret that my absence from the University at the time when your letter of the 26th of June was received there has resulted in so great a delay in replying to it.

The general rule applied by our courts in respect of ancillary administration is that the distribution is made according to the law of the place, and that foreign creditors, even of the domicile, who seek to participate, are permitted to do so only under the law of the jurisdiction in which the ancillary adm. is carried on. The case of Hays v. Cecil, 16 Lea, 160, (Dicey, 680) is so reported that it is difficult to say whether the opinion was supposed by the court to rest on specific legislation or upon the general practice of the courts, but I think that in either case it accords with the doctrine generally received here.

Warner, in his recent work on The American Law of Administration, I. *377 (2nd ed.) states that Parker, C.J., in Dawes v. Head, 3 Pick. (Mass.) 128, "suggested the rule, now adopted by the courts in some States and in some enacted by statute, to retain the funds in the State of the ancillary administration for a pro rata distribution according to the laws thereof among its citizens, having regard to all the assets in the hands of the principal as well as of the auxiliary administrator, and also to all of the debts which by the

Laws of either country are payable out of the decedent's estate, without regard to any preference which may be given to one species of debt over another, considering the funds in each State as applicable, first, to the payment of the just proportion due to its citizens, and, if there be any residue, that should be remitted to the principal administrator, to be dealt with according to the laws of his country. (Dawes v. Head, 3 Pick. 128; Davis v. Estlin, 8 Pick. 475; Harvey v. Richards, 1 Mass. 381; Churchill v. Boyden, 17 Vermont, 319; Lawrence v. Elmendorf, 5 Barb. (N.Y.) 73; Hays v. Cecil, 160.)

I should say that your judgment was in harmony with the rules usually enforced in our courts.

When you visit this country again, I hope that I may have the pleasure of seeing you.

Very truly yr

J. B. Moore.

To Mr. Justice Clark,
Hobart, Tasmania.