

[Prac. Ct.]

NOTES OF RECENT DECISIONS—TAYLOR V. TAYLOR.

[Eng. Rep.]

## REG. V. FIRMAN.

22-33 Vict. c. 31, sec. 71, C.—*Appeal from Quarter Sessions.*

[GALT, J., Feb. 10th, 1873.]

The above statute, preventing applications touching the decision of a Judge at Quarter Sessions in appeal, not only refers to where an adjudication has taken place therein, but even to where the appeal has gone off on a preliminary objection to the right of entering it.

## WORTHINGTON V. BOULTON.

*Amending writ of summons—Revealing.*

[MR. DALTON and MORRISON, J., Feb. 20th, 1873.]

A writ of summons may, after its issue, be amended by substituting a new plaintiff, without an order, and on such amendment there is no necessity for resealing, nor need it appear on the copy served that such amendment has been made.

## REG. EX REL. HANNAH V. PAUL.

*Quo Warranto—Disclaimer after issue of writ.* 35 Vict. c. 36, O.

[MR. DALTON, Feb. 27th, 1873.]

*Held*, That the effect of filing the disclaimer after the issue of the writ is much the same as doing so before its issue notwithstanding the above Act, and so operates as a resignation and puts an end to the suit, and defendant avoids the reference to the County Judge and the penalties under the Act.

## HUNTER V. GRAND TRUNK R. V. CO.

*Certiorari from Division Court—Variance between declaration and claim in Division Court.*

[MR. DALTON, Feb. 28th, 1873.]

Claim in a Division Court for \$40, for "detention of plaintiff by defendants, on a journey from Toronto to Detroit and back (journey occurring between 28th Nov., when he started from Toronto, and 3rd December, when he got back)." Removed by *certiorari* into the Queen's Bench, where declaration was on contract for \$500 for delaying the plaintiff in his journey, in not starting the train at the time named. An application to set aside the declaration was refused, the two claims being held sufficiently similar considering the want of technicality in Division Court pleadings.

## ENGLISH REPORTS.

## CHANCERY.

## TAYLOR V. TAYLOR.

*Partnership—Fiduciary relation—Deceased partner—Bill for an account—Parties—Statute of Limitations.*

The right of a surviving partner to the partnership assets is absolute. There is no fiduciary relation between him and the representatives of his deceased partner; but he is liable to account for the partnership assets, and, in taking such account, the Statute of Limitations is applicable.

In the absence of fraud or collusion, or some other circumstances creating a privity between the parties, the only person who can file a bill against a surviving partner for an account of the partnership assets is the legal personal representative of his deceased partner.

Knox v. Gye commented upon

[March 7, 1873, 28 L.T., N.S., 180.]

The bill in this suit was filed by a son against his father's surviving partners for an account of the partnership assets. The facts were shortly these:

William Taylor carried on the business of a mustard, cocoa, and chocolate manufacturer in London, in partnership with his brothers Henry and John, from 1832 till July 1842, when he died intestate, leaving his widow and his only son, the plaintiff, H. G. M. Taylor, surviving him. In Jan. 1843 letters of administration were granted to the widow, and in 1844 she married a Mr. Syers, but both before and after her marriage with Mr. Syers she acted (as the plaintiff alleged) in the affairs of the administration entirely under the advice of the surviving partners. At the time when the letters of administration were granted to her she swore that her deceased husband's estate was under 6000*l.* in value, but, being told by the partners that she was mistaken as to the amount, she was re-sworn, and reduced the value to 300*l.* On this last occasion she deposed specifically, "that she had since the 1st June then last past, for the first time ascertained that upon the accounts being inspected and balanced, which they were as she believed, on or about the said 1st June, the firm wherein her deceased husband was a partner, was not in solvent circumstances or able to pay 2*s.* in the pound, either at the time of his death or of taking out the letters of administration; and consequently that his estate would not benefit from such firm." She then verified an account of the personal estate at 285*l.* Another account was deposited at the office purporting to be a stock account of the partnership, taken as of the 5th Sept. 1842, but only balanced on the 1st June 1844, in con-