

RECENT DECISIONS.

partners, although they had taken no steps as to the mine up to July, 1879, when they made a claim. Kay, J., held that even assuming the shares not to have been regularly forfeited, the plaintiffs under the circumstances, could not, after lying by for more than six years, successfully assert their claim to be partners. He says, p. 667,—"I think the lying by here was entirely analogous to the lying by in the case of *Prendergast v. Turton*, 1 Y. & C. Ch. 98. It was a lying by to wait and see whether the concern turned out sufficiently profitable to make it worth while to assert their claim to be partners; and when they think the time is come when it is worth their while to assert their title, then they bring their action. The time during which they lie by being more than six years, I consider the analogy of the Statute of Limitations to be one which is applicable, as it is impossible to lay down a hard and fast rule what amount of time shall be sufficient in every case. * * * Whether it is called abandonment or estoppel seems to me to be indifferent. If it were necessary to call it abandonment, I should be quite prepared to hold that what has taken place in this case amounts to abandonment as between the plaintiffs and their co-adventurers of any interest in this concern."

SETTING ASIDE VOLUNTARY DEED.

In *Henry v. Armstrong*, p. 668, the plaintiff had, shortly before going into business on the Stock Exchange, executed a voluntary deed, without power of revocation, by which he conveyed most of his property, real and personal, to trustees upon trust for the separate use of his wife for life, with remainder to his children. He now sought to have it set aside on the ground (i.) that he did not fully understand the purport of the deed, as to which Kay, J., held the evidence did not support it; (ii.) that the deed was irrevocable, which the learned judge held must be disregarded, since any power of revocation would have been entirely inconsistent with the objects of the settlement, and as to the question on whom the

onus of supporting a voluntary deed when impeached, must be held to rest, he said that despite certain *dicta* to the effect that it rests with those who set up the deed—"As I understand it, the law is, that anybody of full age and sound mind who has executed a voluntary deed by which he has denuded himself of his own property, is bound by his own act, and if he himself comes to have the deed set aside—especially if he comes a long time afterwards—he must prove some substantial reason why the deed should be set aside."

SPECIFIC PERFORMANCE OF SEPARATION DEED.

Of the next case, *Hart v. Hart*, p. 670, we have already noticed some of the points that arise in it among our Recent English Practice Cases, 17 C. L. J. 412, where our note is taken from 45 L. T. 13, the case being there also reported. The two further points decided which seem to require mention now are:—(i.) that the Court would not refuse specific performance of an agreement for a separation deed on the ground that it provided for the wife having the custody of the children. As to which Kay, J., held that since Imp. Act, 36 Vict., c. 12, sec. 2—enacting that no such agreement shall be invalid by reason only of its providing that the father shall give up the custody or control of the infant children to the mother, but that no Court shall enforce such agreement if it be not for the benefit of the children—the objection no longer holds good. We do not appear to have any such enactment, therefore presumably with us the objection would hold good on the authority of *Hope v. Hope*, L. R. 3 P. & M. 226; and *Vansittart v. Vansittart*, 4 K. & J. 62, the ground being that it is against the policy of the law for the husband to divest himself of his natural guardianship and custody of the children; (ii.) that it is no answer to a suit for specific performance for defendant to say that, though he understood what the words of the agreement were, he was under a mistake as to their legal effect, As to this Kay, J., says, p. 693—"Of course