

Eng. Rep.]

TAYLOR V. TAYLOR—REVIEWS.

the estate of the deceased partner, and then if a proper case has been made out, a receiver would be appointed to get in the assets. But to allow it to be supposed that where the legal personal representative of the deceased partner has been advised that there is no case for her to go on with, another person—a mere stranger—can file a bill in her stead, is a doctrine so monstrous, and would lead to consequences so incalculable, that it is not too much to say it might even end in doing away with the Court of Chancery itself. Then, as to the application of the Statute of Limitations, the transactions here in question occurred so long ago as 1842. A person who was a partner in the business died in that year. The partnership consisted of three brothers, who commenced their business in a small or humble way. After the death of the one brother the others represented to his legal personal representative that there was not a farthing coming to her from the business; nay, more, that she might be liable to contribute in consequence of a very large deficiency, the result of losses in the working of the concern. The bill in this suit does not contain a single allegation that there was any untruth in those representations, or any fraud on the part of the surviving partners. The case of *Knox v. Gye* (*sup.*) decides that there is no fiduciary relation between a surviving partner and the representatives of his deceased partner; there are legal obligations between them equally binding on both. There is, in fact, a mere liability to render an account. In the present case the deceased partner died on the 23rd July 1842, and letters of administration were granted to his widow on the 24th Jan. 1843. That being so, the right to sue for an account, as from the death of the partner, then accrued to his widow. If any mistake has been made in the accounts the right to have them opened then accrued therefore to the administratrix more than thirty years ago. But she never questioned them, and the Statute of Limitations applies just as much between surviving partners and the representatives of their deceased partners as between any other persons. The Solicitor-General, in opening the present case, expressed some dissatisfaction with the report of the case of *Knox v. Gye*, but I have perused the report carefully since this case commenced, and I have never read a judgment with which I more entirely concur than that of Lord Westbury, not forgetting either his lordship's lecture on the use of metaphorical terms, or the peculiar views on the subject once taken by the Court of Exchequer. The law is that the right of a surviving partner

to the partnership assets is absolute. The right of the legal personal representatives of the deceased partner is to an account merely of the partnership assets, and to the taking of that, as to the taking of any other account, the Statute of Limitations applies. I see nothing in this case to take it out of the ordinary rules. The bill in the suit contains no statement of any fraud or deceit on the part of the defendants. It is filed by a plaintiff who ought not to have filed it, who is in fact the wrong party; and it is so filed after an interval of time far in excess of the prescribed period. Under these circumstances the bill must be dismissed with costs. In conclusion, I cannot refrain from adding that I sincerely hope the authority of *Knox v. Gye*, and the principles of law thereby established will prevent the recurrence of any other suit at all resembling the present.

REVIEWS.

THE INVESTIGATION OF TITLES TO ESTATES IN FEE SIMPLE. By THOS. WARDLAW Taylor, M.A., Master in Chancery, &c. Second Edition. Toronto: Willing & Williamson. 1873.

The first edition of this little work, known to the profession as "Taylor on Titles," was received most favourably, and very soon ran out of print. A second edition was immediately called for, and comes to us much improved and enlarged, and with evidence of careful revision and increased learning and experience on the part of its most capable and painstaking author.

The thought of writing this book would seem to have been first suggested by the passing of the Act for Quieting Titles to Real Estate in 1865, at least it appeared shortly after the working of that Act had become somewhat familiar, and its provisions occupied a prominent position in the discussion of the subjects treated of. It must not, however, be supposed that the author was limited in his research and labours by the scope of that Act, as a perusal of the table of contents clearly shews.

The preface to the second edition states that a careful revision has been made in connection with the recent changes in the law affecting titles to real estate, such as the legislation relating to crown debts, wills, conveyances by married women, &c., &c. We