

RECENT ENGLISH PRACTICE CASES.

withdraw his notice of withdrawal, the Court might have given leave. As it was, however, they knew nothing about the facts. He was of opinion that the proposal, when once accepted, became a contract by which the parties were bound.

The appeal was dismissed with costs, such costs not to include the respondents' costs of affidavits filed since the acceptance by him of the withdrawal.

Key asked for leave to give notice of motion to enlarge the time for appealing.

The Court gave leave, but no motion was subsequently made.

LYON V. TWEDDELL.

Partnership—Action of dissolution on equitable grounds—Date from which it should commence.

Where the partnership articles contain no provision for the dissolution of the partnership, and the intervention of the Court is sought to put an end to the partnership on purely equitable grounds, such as incompatibility of temper, and a dissolution is decreed, the dissolution will date from the date of the judgment.

[Ch. D., C. of A., May 19.—50 L. J. R. 571; 44 L. T. 785.]

This was an appeal from a decision of BACON, V. C., who, when the action came on for trial, decreed a dissolution of the partnership, and held that the dissolution should date *from the date of the writ*, and directed that the partnership accounts should be taken in a particular manner.

The defendant appealed, and the only point calling for a report on the appeal was from what date the dissolution should date.

Counsel for the appellant declared the practice to be unsettled, and submitted that the dissolution should date from the judgment of the V. C. They cited *Besch v. Frolich*, 1 Ph. 172; 12 L. J. R., Ch. 118.

Counsel for respondent cited contra *Kirby v. Carr*, 3 Y. & C., Ex. 184; *Shepherd v. Allen*, 33 Beav., 577.

No reply was heard.

JESSEL, M. R.: I think on the whole the more convenient and better plan is to make the dissolution date from the date of the judgment.

Consider the nature of the action. The action is instituted not to carry out or enforce any of the partnership articles, but asks the intervention of the Court on purely equitable grounds; that is to say, that under the circumstances the partnership is so detrimental to the parties that the Court is asked to intervene and to put an end to it. In such a case the dissolution should, in my opinion, as a matter of principle, date from the date of the judgment.

JAMES, L. J.: I am of the same opinion. I think that the date of the dissolution should be the date of the judgment, where the misconduct on which the dissolution is based is not in respect of any breach or misfeasance of the partnership articles or contract, but where it arises from incompatibility of temper or like matter. It appears to me that every word of Lord Cottenham's judgment in *Besch v. Frolich* applies to the present case, and that is really a matter of principle. But in holding this, I guard myself expressly, and say that it applies only where the dissolution is sought for misconduct not arising under the partnership articles.

LUSH, L. J.: The point is important, and one in which the practice should be settled. In the present case the partnership articles do not provide for a dissolution. In such a case, where both the partners are *sui juris*, and the court dissolves the partnership articles, it seems to me that the principle of the decision in *Besch v. Frolich* applies with even greater force than when one partner is a lunatic. I am also of opinion, therefore, that the dissolution should date from the date of the judgment.

IN RE SUTCLIFFE.—ALISON V. ALISON.

Discovery—Administration—Creditor.

A plaintiff in an administration action is entitled to discovery as to the property of the deceased debtor, at the earliest stage of the action.

[Ch. D., May 19.—50 L. J. R. 574; 19 W. R. 732.]

This was a motion by the plaintiff, a beneficiary in an administration action, to compel a further answer from the defendants, the representatives of the deceased debtor, to interrogatories, some of which they had objected to answer. One of the interrogatories was the old common interrogatory as to the details of the