

had been dissipated by the new trustees. Miss Head also claimed indemnity against Gould on the ground that he was a solicitor, and she had acted by his advice. With regard to this latter claim Kekewich, J., was of opinion that no case for relief was made on the evidence, which showed that Miss Head had been an active participator in the breaches of trust committed by herself and her co-trustee, and did not show that she had concurred therein, merely by the advice or under the control of the solicitor. As regards the claim of Clapp and Houlditch in regard to the securities on which the £1,500 had been improperly invested, he was of opinion that notwithstanding the fact that those securities had been dissipated by the new trustees, Clapp and Houlditch were liable to make good the loss to the plaintiff, who had never assented to the improper investment, or done anything to put it out of the power of Clapp and Houlditch to obtain the benefit of the investment on making good the loss. On the question of their liability for the acts and defaults of the new trustees the case is important, as very little authority on the point is to be found in the books; but on the evidence the learned judge came to the conclusion that it did not warrant him in finding that Clapp and Houlditch had contemplated the commission of a breach of trust by the new trustees, when they were appointed, or that they were unreasonably negligent in assenting to the appointment of Miss Head and Gould as the new trustees. In order to make them liable, he holds that it is necessary to show "that they were guilty as accessories before the fact of the impropriety actually perpetrated." On this branch of the case therefore the plaintiff failed. Clapp and Houlditch's claim for indemnity against Mrs. and Miss Head was allowed. Possibly the learned judge's view in regard to the liability of Clapp and Houlditch may to some extent have been influenced by the fact that what they had done had been at the urgent solicitation of Mrs. and Miss Head, and that for yielding to their importunities they were now attacked in the name of the infant plaintiff, "but really no doubt at the instigation of those whom they honestly, though unwisely, endeavored to assist," but that is not an uncommon experience of trustees.