

such an agreement, and for setting it aside if found unfair or unreasonable. The action also attacked an agreement made in May, 1893, which had been entered into between the solicitor and his clients by which the former was to retain for himself the sum of \$13,350 and interest at eight per cent. per annum out of the judgment when collected in lieu of his taxable costs and charges. This was attacked on the alleged grounds that it had been made at the request of and under pressure from the defendant while he was the plaintiff's solicitor and without his clients having independent advice and without consideration as to the charge of interest and upon false representations as to the right to interest and without intention on the part of the client to enlarge the defendant's rights, but the judge found that misrepresentation was not proved.

Held, that the circumstances were such that it could not be said that this agreement was not fair and reasonable, and that the forbearance to sue was a sufficient consideration for the promise to pay interest, although there was no legal right to it.

Judgment avoiding the contract of 1897, affirming that of 1893, and directing an account. Defendant to pay the costs of the action up to the trial. Further directions and subsequent costs reserved.

Elliott and Minty, for plaintiff. *Howell*, K.C., and *Ewart*, K.C., for defendant.

Killam, C.J.] TURRIFF v. McDONALD. [Oct. 3.
Solicitor—Right of solicitor trustee to costs as against trust estate—R.S.M.
c. 146, s. 40—Lien of solicitor under Imp. Act, 23 and 24 Vict., c. 127.

Appeal from the decision of the taxing master that the defendant, Nugent, a solicitor, was entitled to have taxed and allowed to him profit costs out of a certain fund of which he was trustee for himself, his co-defendants, McDonald & Schiller, and their creditors, in respect of his services as solicitor in the defence of a certain suit in Ontario affecting the trust fund, which services had been rendered by the trustee as a solicitor of the Ontario Court.

Held, that, notwithstanding the provision in s. 40 of The Manitoba Trustee Act, R.S.M. c. 146, the rule of English law that a sole trustee who is a solicitor cannot charge against the trust estate profit costs for acting as solicitor for the estate still prevails to the extent that he is not entitled as of right to have such costs taxed to him as a solicitor.

The Trustee Act gives him a legal right to "such remuneration for his care, pains and trouble, and his time expended in and about the trust estate" as the court, judge or master may think fair and proper, but a separate application for such allowance would have to be made. *Meighen v. Bull*, 24 Gr. 503, followed; *Cradock v. Piper*, 1 Mac. & G. 664 distinguished.