

ALLOWANCES TO TRUSTEES AND EXECUTORS IN ONTARIO.

At one time the rule was that trustees, executor, and others standing in similar position could not charge anything for their services. This was upon the principle of equity, that a trustee could not profit by his trust. Otherwise, it was said, the trust estate might be loaded and rendered of little value and the trustee put in a position where his interest and his duty would conflict.

This rule was first relaxed in favour of persons acting under a will or letters of administration by 22 Vict. c. 93, s. 47 (C.S.U.C. c. 16, s. 66), as follows: "The judge of any Surrogate Court may allow to the executor or trustee or administrator acting under will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under any will or letters of administration, and in administering, disposing of and settling the same, and generally in arranging and settling the affairs of the estate, and therefore, may make an order or orders from time to time, and the same shall be allowed to an executor, trustee or administrator in passing his accounts."

Then followed 37 Vict. c. 9, which was in effect: "Any trustee under a deed, settlement or will, and executors and administrators, and any guardian appointed by any court, and a testamentary guardian, or any other trustee, howsoever the trust is created . . . shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the trust estate, as may be allowed by the Court of Chancery, or any judge or master thereof, to whom the matter may be referred." Thus, was virtually abrogating in Ontario the above equity rule.

The two enactments were consolidated in R.S.O. (1877), c. 107, as ss. 36 to 41 and continued, in *pari materia*, in R.S.O.