

invested: he held that it had; but the Court of Appeal (Lindley, Lopes and Rigby, L.J.J.) disagreed with him and reversed his decision, and although there was no authority exactly covering the point, the Court had no difficulty in determining that on principle a trustee cannot be deemed to have a power to defeat the bequests of his testator by the exercise of a mere option to invest in a particular way the fund bequeathed. *Re Corcoran*, 62 L.J., Chy. 267, on which Kekewich, J., relied, was held to be clearly distinguishable, as there the gift at the death of a tenant for life, was of the securities in which the fund might then be invested, "or so much thereof as might by law be so applied," and the testator there clearly contemplated that part of the fund might not then be applicable to charity.

TRUSTEE—CESTUI QUE TRUST—BREACH OF TRUST—BREACH OF DUTY BY TRUSTEE  
—ANNUITY, OMISSION TO FORM FUND FOR—ANNUITANT ACTION BY, FOR ACCOUNT  
—TRUSTEE ACT, 1888 (51 & 52 VICT., C. 59), SEC. 8, s-s. 1 (a) (b)—(54 VICT., ch. 19 (O.)), sec. 13, s-s. 1 (a) (b)—STATUTE OF LIMITATIONS.

*How v. Winterton*, (1896) 2 Ch. 626, is an interesting exposition of the Trustee Act, 1888, from which the Ontario Act, 54 Vict., ch. 19, sec. 13, is derived. The action was brought by an annuitant against the trustee of a will which provided that during a term of fourteen years the trustee was to receive certain rents, and after the payment of certain annuities was to accumulate the surplus and invest the same, and upon such accumulations the plaintiff's annuity was charged as well as upon the devised estates. Instead of accumulating the surplus as directed by the will, the defendant applied the same, without any fraudulent intent, in keeping down the interest on incumbrances and in necessary repairs. The 14 years expired on 20th May, 1889, the plaintiff's annuity fell into arrear in November, 1894, and on 9th August, 1895, she commenced this action, claiming an account from the death of the testator. The defendant set up the Statute of Limitations as a defence, relying on the Trustee Act, 1888, sec. 8 (54 Vict., ch. 19 (O.)), sec. 13, s-s 1 (a) (b), but he admitted that within six years prior to the action he had rents in his hands which he ought to have accumulated and invested.