ROSE, J.] [May, 1893.

IN RE SOLICITORS.

Costs—Solicitor and client taxation—Interlocutory costs—Set-off.

In the course of a proceeding for the taxation, at the instance of the client, of the solicitors' bills of costs, there were several interlocutory applications and appeals by the solicitors, which were dismissed with costs, to be paid by the solicitors forthwith.

Held, that the solicitors were not entitled to have these costs set-off against the amount of costs alleged to be due to them upon the bills then being taxed.

S. R. Clarke for the solicitors.

G. G. Mills for the client.

MANITOBA.

TAYLOR, C.J.] [Jan. 16.

STOBART *v.* AXFORD.

Garnishee—Trust moneys—Onus of proof—Trust account in bank—Costs of bank.

The defendant resided at Glenboro, and had been carrying on business with his brother. The plaintiffs recovered a judgment against the firm. Defendant was also a County Court clerk and acted as agent for two insurance companies and two loan companies, in connection with which employments he had opened an account in the Imperial Bank at Winnipeg, which was styled "Frederick Axford, Trust." Plaintiffs garnisheed the bank, and applied to have the money paid over to them. The bank disclaimed any interest in the fund, but suggested that it was not the money of the defendant, but of persons for whom he held it in trust.

Held, (1) The account having been opened as a trust account, the fact that the defendant drew out moneys for his own purposes, or to repay other trust moneys received by him before the opening of the account which had been improperly used, could not deprive the other trust moneys lying to the credit of the account of their trust character.

(2) Unless the money was money with which the debtor could deal as his own, it could not be garnished: *Campbell* v. *Gemmell*, 6 W.R. 35; *Re General Hort. Co.*, 32 Ch.D. 512; *Badeley* v. *The Consol. Bank*, 38 Ch.D. 238.

(3) Where the account is a mixed one the onus is on the party seeking to attack it to show that the money is the debtor's, with which he can deal; and in the absence of proof that the account or so much of it is his, the money will be treated as all trust money: *Ex parte Kingston*, L.R. 6 Ch. 632.

(4) The fact that he did not deposit the identical money received but cashed local cheques at Glenboro with it, and deposited such cheques to the credit of the trust account in Winnipeg, did not alter the character of the account.

(5) In the absence of clear evidence that the balance to the credit of the account did not consist of trust moneys, it should be held to be so: *Ex parte Cooke*, 4 ChD. 123; *Re Hallett*, 13 Ch.D. 696; and *Hancock* v. *Smith*, 41 Ch.D. 456; *Re Monkman & Gordon*, 3 M.R. 145, 254 distinguished.