

bank—*Liability of trustee for legal interest—Acquiescence of statutory guardian of infants—Costs.*]—Where moneys are left by will to be invested at the discretion of the executor or trustee, the discretion so given cannot be exercised otherwise than according to law, and does not warrant an investment in personal securities or securities not sanctioned by the Court. And

*Held*, that an executor and trustee who deposited funds so left in trust for infants, at three and a half or four per cent. interest, in a savings bank, did not conform to his duty; and his failure to do so exposed him to pay the legal rate of interest for the money, although he acted innocently and honestly; and the acquiescence of the statutory guardian of the infants, not being for their benefit, did not relieve him.

*Held*, also, that defendant was not entitled to costs out of the fund, but that he should be relieved from paying costs. *Spratt et al. v. Wilson*, 28.

2. *Provisions of will—Implied powers of trustees—Reasonable building lease—Specific performance of agreement for.*]—The plaintiffs were trustees under a will, holding the legal estate in the property devised and bequeathed, in trust to maintain themselves and their children, with remainder over to the children upon the death of themselves; with power to absolutely convey the property and to exclude any child from participating in the remainder:—

*Held*, that that the plaintiffs had implied power to make all reasonable leases. The plaintiffs made an agreement for a building lease to the defendant of part of the trust estate for twenty-one years, with a provision for compensation to the defendant at

the end of the term for his improvements, and the draft lease settled provided that the plaintiffs should at the end of the term pay for such improvements or renew the lease for a further term of twenty-one years:—

*Held*, that the provisions of the agreement and lease were reasonable, and bound the trust estate, and that the plaintiffs were entitled to specific performance. *Brooke et al. v. Brown*, 124.

3. *Breaches of trust—Taking securities in name of one of two joint trustees—Pledging securities for advance—Misapplication of moneys advanced—Following securities in hands of pledgee.*]—One of two joint trustees assumed to lend trust moneys on the security of mortgages on land, taking the mortgages to himself alone "as trustee of the estate and effects of J. C., deceased." These mortgages were hypothecated by him to, and moneys were advanced to him by, the defendants, ostensibly to meet an unexpected call by one of the beneficiaries; but the moneys were not so applied, nor otherwise for the benefit of the estate, and they were not required for any such purposes under the terms of the will creating the trust.

In an action by the other trustee and two new trustees, who were also beneficiaries, appointed in his stead:

*Held*, that he had been guilty of two breaches of trust, and that the plaintiffs were entitled to follow the trust securities and to make the defendants account for all moneys received by them thereunder. *Cumming et al. v. Landed Banking and Loan Co.*, 426.

*Breach of by director.*]—See COMPANY, 2.

See also WILL, 2.