

Barker, J.]

SIMPSON v. JOHNSTON.

[Dec. 17, 1901.

*Trustee—Breach of trust—Relief—61 Vict., c. 26—Costs.*

A testator devised and bequeathed his real and personal estate to his wife "to be hers in such a way that she shall during her natural life have the full use, benefit and enjoyment thereof" He directed his executors to sell his real estate and to invest any money belonging to his estate in certain specified securities "so that my said wife may have the interest and income arising therefrom during her life," and appointed his wife and the plaintiff executors. Proceeds from the sale of the real estate came to the hands of the plaintiffs, and were by them remitted to the widow, living in England. The widow invested part of the proceeds in securities in the name of herself and one of the plaintiffs, and disposed of, though in what manner did not appear, the balance of the principal monies. A suit was brought by the plaintiffs after the widow's death to be relieved from liability for the loss of such part of the estate. By Act 61 Vict., c. 20, a trustee who has acted honestly and reasonably, and ought fairly to be excused for the breach of a trust, and for omitting to obtain the directions of the Court of Equity in the matter in which he committed such breach, may be relieved by the Court from personal liability for such breach. Relief granted, but without costs.

*A. J. Trucman*, K.C., for plaintiffs. *S. L. Fairweather*, for next of kin.

In Equity, Barker, J.]

FOREMAN v. SEELY.

[Jan. 7.

*Solicitor and client—Authority to collect principal and interest under mortgage—Possession of mortgage securities.*

In the absence of legal proceedings to enforce a mortgage security there is nothing in the mere relation of solicitor and client from which an authority may be implied to the solicitor to receive interest or principal due the client on the mortgage, even though the solicitor arranged the mortgage loan. The solicitor must have either express authority for the purpose or the course of dealing between the parties must have been such as to necessarily imply such an authority; and the onus of establishing that is upon the mortgagor. An authority to receive interest confers no authority to receive principal, and the possession of the mortgage securities is no evidence of authority to receive money due on them.