

order of the taxing-master might be discharged, and that he might be directed to proceed with the taxation without regard to the claim for fees.

Kekewich, J., directed the taxing-master not to include in the taxation any sums received by the solicitors in respect of fees.

T. appealed.

M. Cababé for the appellant.

T. R. Warrington, Q.C., and George Cave for the solicitors.

Their Lordships considered that the direction given by Kekewich, J., to the taxing-master was right. They held (1) that the motion was contrary to the practice, the proper course being for the taxing-master to make his certificate, and the party objecting to it to carry in his objections, upon which he could come to the court; (2) that the moneys for which the solicitors were liable to give credit under the direction in the order to tax were not confined to moneys received in respect of the matter to which the bill of costs related, but included all moneys received by them in their character of solicitors of T., or which they were legally or equitably bound to pay over to him, and against which, if sued for by T., they would be entitled to set-off their costs when taxed; (3) that any money which the solicitors had received in respect of fees due to T. as counsel were not moneys for which they were liable to give credit.

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HOW v. THE EARL OF WINTERTON.

[JULY 22.]

Trustee—Annuitant—Breach of Trust—Payment away of moneys applicable to annuities—Lapse of six years—Account—

Statutes of Limitation—Trustee Act, 1888, 51 & 52 V. c. 59, s. 8.

Appeal from a decision of Kekewich, J., reported 65 Law J. Rep. Chanc. 415.

The testatrix directed that surplus rents and profits should be accumulated for fourteen years, and she bequeathed to the plaintiff an annuity which was held by Kekewich, J., and the Court of Appeal, upon the true construction of the will, to be charged on the surplus rents and profits. The testatrix died in 1875, and the term came to an end in May, 1889. The plaintiff's annuity fell into arrear in 1894, and she issued her writ in the action on August 9, 1895, against the trustee, alleging that he had not accumulated anything, and claiming an account of the rents and profits of the real estate of the testatrix received by him during the term, a declaration that he must make good the loss with compound interest, and an account on that footing. The defendant claimed under the Trustee Act, 1888, s. 8, to be protected by the Statutes of Limitation.

Kekewich, J., held that in taking the account the claim as to any items paid away by the defendant more than six years before the issue of the writ was barred by the statute.

The defendant appealed, and the plaintiff gave notice of his intention to apply, upon the hearing of the appeal, to vary the order by directing an account from the death of the testatrix.

Bramwell Davis, Q.C., and H. Godefroi, for the appellant, contended that no account ought under the circumstances to be directed, and that the action ought to be dismissed.