

or guardian, may from time to time allow to him a fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the estate. (4) Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate, regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be deemed fair and reasonable in respect of such services. (5) Nothing in this section shall apply where the allowance is fixed by the instrument creating the trust."

This last Act, as will be found, revokes the extended jurisdiction which had been conferred by 63 Vict. c. 17, s. 18, and 3 Edw. VII. c. 7, s. 26, upon Surrogate Court judges and restricts their jurisdiction again, as before these latter enactments, to the cases of "a trustee under a will, or of a personal representative or guardian" when passing his accounts under sec. 71 of "the Surrogate Courts Act."

The allowance to be made in all cases is, what is fair and reasonable for the trustee's care, pains and trouble, and his time expended in or about, the estate.

Quoting the words of Chancellor Boyd in *Re Fleming* (1886) 11 P.R. 426: "The statute has fixed no standard by which the rate of compensation is to be measured, and this imports that each case is to be dealt with on its merits, according to the sound discretion of the judge, who is to regard the care, pains, trouble, and time bestowed and expended by the claimant. Nor have the courts laid down any inflexible rule in this regard. While a percentage has been usually awarded as a convenient means of compensating a class of services which do not admit of accurate valuation, yet the adoption of any hard and fast commission (such as five per cent.) would defeat the intention of the statute . . . Five per cent. may be a reasonable allowance in many cases, but where the estate is large and the services rendered are of short duration and involving no very serious responsibility such a rate may be excessive."

The last case upon the subject is *Re Griffin* (1912), 3 O.W.N. 1049, where a Divisional Court, composed of Mulock, C.J.Ex.D.