

how much he received for interest, and could have brought the fund into court. The charge for interest does not commence until July, 1844, being more than two years from the commencement of the trust, and, as I think, it is impossible to doubt that sums were received for interest, and as the trustee and his representatives have not discovered what those sums are, it seems unreasonable to except them altogether from the charge. The Auditor's report in this respect is approved of.

I am also of opinion, that the estate of David Trundle is justly chargeable with the note of John W. Winemiller. That note, which was taken without surety, bears date in July, 1843, and was payable in September of the same year; and no attempt was made to recover it, until after January, 1847, when it was assigned to the new trustee. It is said that the new trustee retained the note until the 6th day of March, 1848, before he instituted proceedings upon it, and, that the insolvency of the maker (which is admitted) in the fall of 1848, may have occurred between the assignment to the new trustee in 1847, and the fall of 1848.

This may possibly be so; but it is thought to be much more probable, that it occurred between the date of the note, in 1843, and the assignment to the new trustee, in 1847, the interval between the latter period being much longer. And, when in addition to this, it is considered, that the note was originally taken without a surety, it seems to me more equitable to throw the loss upon the former trustee, who took it. If the fact is, as the solicitor of Trundle's administrators supposes, that the note was good, when it passed into the hands of the new trustee, and that the maker became insolvent afterwards, it was the duty of the administrators of the former trustee to show it by proof. This they have not done, and I am of opinion, the loss should be borne by the estate of the intestate.

With regard to the application to allow the present trustee a solicitor's fee, and to deduct such fee from the commissions of the former trustee, I am of opinion, that as the commission given to the latter is but the equivalent for his services, it would be unreasonable to reduce it by such a deduction.