

# The Canada Law Journal.

VOL. XXVI.

MAY 1, 1890.

No. 8.

It is sometimes said that the standard of duty to which trustees are expected and required to conform is that which would be reasonably expected to regulate the conduct of a careful and prudent man dealing with his own affairs. But there is an important limitation to this rule of conduct which is sometimes lost sight of, and that is that regard must always be had to the express terms of the trust deed. So that a trustee is not at liberty to act as a prudent and careful man would act in regard to his own affairs, untrammelled by the terms of his trust, but the abstract "careful and prudent man," which he must have in his mind's eye, must be one whose powers of action are expressly constrained and limited as his own are. It was from neglect of this consideration that the trustees came to grief in the late case of *Worman v. Worman*, 43 Chy.D., 296, noted ante p. 209. In that case part of the trust funds had been invested by the settlor upon the security of a second mortgage. The mortgagor got into difficulties, and it became apparent to the trustees that, unless they purchased the equity of redemption, there was a strong probability that the whole amount invested on the second mortgage would be lost. No doubt a careful and prudent man, dealing with his own affairs would, under such circumstances, do as the trustees did in this case, and that is purchase the equity of redemption. By this means they did, in fact, save the trust estate from the entire loss of the fund secured by the second mortgage; but unhappily for them, although they had admittedly done what was best for the estate under the circumstances, the trust deed did not warrant the investment of the trust funds in the purchase of an equity of redemption. Consequently the abstract "careful and prudent man" in this case ought to have suffered the loss without committing "a breach of trust" in order to prevent it. Because the trustees did not pursue this policy of "masterly inactivity" they had to assume a personal liability for the £2,000 of the trust funds which they had thus invested.

## THE TORRENS SYSTEM OF LAND TRANSFER.

The annual report of the Master of Titles is an interesting document to all who are interested in the success of the new system of land transfer, of which his office is the practical embodiment.

His report shows a steady increase of transactions. Thirty-eight additional properties, of the aggregate value of \$887,761, have been brought under the