

APRIL 12TH, 1902.

C. A.

## DOVER v. DENNE.

*Trustee—Liability for Acts of Co-trustee—Executor becoming Trustee after Passing Accounts—Acting Honestly and Reasonably and Ought Fairly to be Excused—62 Vict. ch. 15, sec. 1 (O.)—Effect of Request of Testator to Trustee to let Co-trustee Manage Estate.*

Appeal by plaintiffs from order of FERGUSON, J., dismissing appeal from report of Master at Peterborough finding that defendant Denne, one of the three trustees under the will of Stephen Wood, who died in 1892, was not liable to make good a loss of about \$5,800 incurred by reason of a breach of trust by his co-trustee, Burnham, who died in December, 1897. The Master found that Denne had no reason to suspect that Burnham, whose reputation for honesty and integrity was very high in the community, would be guilty of misappropriation of the trust funds; that when the testator was about to make his will he asked Denne to become one of his executors and trustees, but Denne refused, because, as he said, he was old and did not know about such things, whereupon the testator told him he did not want him to act in any way, because Burnham would manage everything, as he had always been theretofore doing (Burnham having been the testator's solicitor), and that he (testator) merely wanted Denne's name, in order that, if anything should happen to Burnham, Denne would communicate with testator's son-in-law in England, the defendant Carruthers; that thereupon Denne consented, honestly believing that he was not obliged to take any part in the management of the estate. The Master also found that the beneficiaries and third trustee (Carruthers) acquiesced in the sole management of the estate by Burnham.

A. B. Aylesworth, K.C., and E. B. Edwards, K.C., for plaintiffs.

G. H. Watson, K.C., and Louis M. Hayes, Peterborough, for defendant Denne.

THE COURT (ARMOUR, C.J.O., OSLER, MACLENNAN, J.J.A.) held that the report of the Master was right and the appeal should be dismissed.

MACLENNAN, J.A.—On the passing of the accounts, all debts and charges having been paid, and the residue ascertained, the executors became trustees of the testator's estate,