

DIARY FOR OCTOBER.

1. Sat. Wm. D. Powell, 5th C.J. of Q.B., 1816. Meredith, Judge Chancery Division, 1890.
2. Sun. 16th Sunday after Trinity.
3. Mon. London Assizes, Rose, J. County Court sittings for motions, except in York. Surrogate Court sittings.
4. Tues. Criminal Assizes at Toronto, MacMahon, J. County Court non-jury sittings, except in York.
7. Fri. Henry Alcock, 3rd C.J. of Q.B., 1802.
8. Sat. Sir W. B. Richards, C.J., Supreme Court, 1875. R. A. Harrison, 11th C.J. of Q.B., 1875.
9. Sun. 17th Sunday after Trinity. De la Barre, Governor, 1682.
10. Mon. County Court sittings for motions in York. Surrogate Court sittings.
11. Tues. Guy Carleton, Governor, 1774.
12. Wed. America discovered, 1492. Battle of Queens-ton Heights, 1812.
15. Sat. English law introduced into Upper Canada, 1791.
16. Sun. 18th Sunday after Trinity.
17. Mon. County Court non-jury sittings in York. Burgoyne's surrender, 1777.
18. Tues. Civil Assizes at Toronto, MacMahon, J.
23. Sun. 19th Sunday after Trinity. Lord Lansdowne, Governor-General, 1883.
24. Mon. Kingston Assizes, Armour, C.J. Last day for filing notices for call. Sir J. H. Craig, Governor-General, 1807.
25. Tues. Supreme Court of Canada sits. Battle of Balaclava, 1854.
27. Thur. C. S. Patterson, Judge of Supreme Court, 1888. Jas. MacLennan, Judge Court of Appeal, 1888.
29. Sat. Battle of Fort Erie.
30. Sun. 20th Sunday after Trinity.
31. Mon. All Hallow's Eve

Reports.

SURROGATE COURT.

(Reported for THE CANADA LAW JOURNAL.)

RE MCM.— TRUST.

Trustee—Liability of, for moneys embezzled by confidential clerk.

Where a trustee, a solicitor, allowed a confidential clerk and cashier of the firm of which he was a member to receive occasionally in his (the trustee's) absence moneys payable to the estate, and issue his (the trustee's) receipt for the same and the cashier, after receiving a payment, embezzled the same,

Held, the trustee not liable to make the loss good to the estate.

[TORONTO, Sept. 6, 1892.]

This was a case stated by consent for the opinion of the County Judge of the County of York. The facts sufficiently appear in the judgment.

Z. A. Lash, Q.C., for the estate.

Wm. Macdonald for trustees.

MCDUGALL, Co. J.: I am asked to express my opinion as to the liability of a trustee to make good to the estate a loss of \$143 occurring under the following circumstances: The trustee in question is the active trustee in the management of the estate; all dividends, in-

terest, and income are collected by him for the estate; he himself is a solicitor and a member of a firm of solicitors, but the business of the estate is transacted by the trustee alone, and not by his firm. All notices forwarded to the debtors of the estate were sent in the name of the trustees, and the address of the active trustee was given as at the office of his firm. A bookkeeper was employed by the firm of solicitors, who kept their office ledger and also the books of the estate. This bookkeeper had the confidence of the firm and of the trustee as a reliable and trustworthy person; he had been in their service several years; he frequently received moneys on account of the firm, entered the amounts in their books, and deposited the same to the credit of the bank account of the firm. The trustee, an active practising solicitor, had the utmost confidence in the bookkeeper, and persons indebted to the estate had been in the habit of making payments to this bookkeeper in the ordinary course of business; when unable to see the trustee personally; these amounts were, for a long period of time, duly entered in the estate books, and duly deposited by the bookkeeper to the credit of the bank account of the trusts estate, which was kept as a separate account and entirely distinct from that of the firm. In the end several payments of interest due the estate, amounting to \$143, were paid in this way to the bookkeeper, who appropriated them to his own use and absconded. The question is raised by the other trustees and the *cestui que trust*, Is the active trustee liable to make this amount good to the estate?

The general doctrine, as laid down in the cases, is that a trustee is only bound to conduct the business of the estate in the ordinary and usual way in which similar business is conducted by mankind in transactions of their own. As said in *Re Speight v. Gaunt*, 22 Chy.D. 740 (affirmed 9 App. 1), "It never could be reasonable to make a trustee adopt further and better precautions than an ordinary prudent man of business would adopt, or to conduct the business in any other way." If it were otherwise, no one would be a trustee at all.

In *Ex parte Belchier*, 1 Amb. 218, Lord Hardwicke says: "Where trustees act by other hands, either from necessity or conformably to the common usage of mankind, they are not answerable for losses."