

TRUSTEE—BREACH OF TRUST—POWER TO EMPLOY AGENTS—
 CHEQUE PAYABLE TO SOLICITOR—MISAPPROPRIATION BY SOLICITOR OF TRUSTEE—LIABILITY OF TRUSTEE—"HONESTLY AND REASONABLY"—JUDICIAL TRUSTEES ACT, 1896 (59-60 VICT. c. 35) s. 3—(62 VICT. c. 15, s. 1 (ONT.)).

In re Mackay, Griessman v. Carr (1911) 1 Ch. 300. In this case trustees under a will had express power to employ agents to act for them under the will. One of the trustees was a solicitor, and managed the estate, and on his death the survivor instructed another firm of solicitors to act for the estate; and at the new solicitor's request he signed cheques payable to him for considerable sums which were said to be wanting for death duties, and the solicitor misappropriated the proceeds of these cheques. The action was brought to compel the trustee to make good the loss, but Parker, J., held that the defendant was justified in believing that having regard to the terms of the will he might safely pay the money to the solicitor; and that in so doing he acted "honestly and reasonably" and ought to be excused under the Judicial Trustees Act, 1896, s. 3 (see 62 Vict. c. 15, s. 1 (Ont.)).

HUSBAND AND WIFE—GIFT OF INCOME DURING WIDOWHOOD—MARRIAGE WITH DECEASED'S SISTER'S HUSBAND—UNLAWFUL MARRIAGE SUBSEQUENTLY VALIDATED BY STATUTE—DECEASED WIFE'S SISTER'S MARRIAGE ACT, 1907 (7 EDW. VII. c. 47) ss. 1, 2.

In re Whitefield, Hill v. Mathie (1911) 1 Ch. 310. This is an instance of a curious legal complication which has arisen from the passage of the Act authorizing and validating marriages with a deceased wife's sister, and which is productive of a somewhat paradoxical result. The facts were that a testator died in 1902 leaving property to trustees on trust to pay the income to his widow while she remained unmarried. The widow subsequently went through a form of marriage with her deceased sister's husband, but the trustees continued to pay her the income on the ground that such marriage being unlawful she was still "unmarried," but when the Act in question was passed validating the marriage, they ceased to pay her, because she had by virtue of the Act become married; but the Act provides, that no right, title, estate or interest whether in possession or expectancy, and whether vested or contingent at the time of the passing of this Act, existing in, to or in respect of any pro-