

REVIEW OF CURRENT ENGLISH CASES.

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TRUSTEE—BREACH OF TRUST—IMPROPER INVESTMENT—POWER TO INVEST “IN HIS OWN NAME OR UNDER HIS LEGAL CONTROL”—CONTRIBUTORY MORTGAGE—RELIANCE ON SOLICITOR—REPORT OF VALUER—RELIEF UNDER JUDICIAL TRUSTEES ACT (59-60 VICT. c. 35), s. 3—(62 VICT. (2), c. 15, s. 1. ONT.).

In re Dive, Dive v. Roebuck (1909) 1 Ch. 328. This was an action brought by cestuis que trust against their trustee for breach of trust. By the will of a testator the defendant was empowered as trustee to invest the trust fund “in his own name or under his legal control” in (amongst other investments) freehold, copyhold, leasehold or chattel real securities. The defendant invested £2,000 part of the trust fund in a contributory mortgage in the following circumstances. A surveyor brought the proposed loan to the attention of the trustees’ solicitor, who recommended it to the trustee and also suggested the same surveyor as a suitable person to value the property. The trustee accordingly in good faith appointed the surveyor and it was arranged that he was to be paid a fee only in the event of the loan going through. The surveyor made his report, from which it appeared that the property was a speculative character, but the surveyor nevertheless advised that it formed a good security for the proposed loan by the trustee and his co-mortgagee. The trustee relying on the advice of the surveyor and his solicitor in good faith advanced the £2,000. The mortgagor subsequently became insolvent, and the mortgaged property was sold and the greater part of the £2,000 was lost. The defendant claimed to be relieved as having “acted honestly and reasonably” within the meaning of the Judicial Trustees Act 1896 (59-60 Vict. c. 35), s. 3 (62 Vict. (2), c. 15, s. 1, Ont.), but Warrington, J., came to the conclusion that the defendant had not acted “reasonably” in the circumstances—that the making an advance on a contributory mortgage was of itself a breach of trust, and that in employing and acting on the report of the surveyor who had introduced the loan he acted unreasonably, and that even on the information contained in the report the loan was unreasonable, because it appeared that the mortgaged property was leasehold and subject to a rent equal to the interest on the money loaned, and therefore although he found the defendant had acted honestly and relying on the advice of his solicitor, he was not entitled to be relieved from liability.