

and the liability of the respondent must be determined in that regard: *Re Willey*, W. N. 1890, p. 1; *Re Smith*, 42 Ch. D. 302; *Re Chipman*, [1896] 2 Ch. 773; *Philipps v. Munnings*, 2 M. & Cr. 309, 314; *Dix v. Burford*, 19 Beav. 409, 412. Then, regarded as a trustee, was the respondent guilty of such default as to make him liable? There is no question of the honesty of his conduct. He trusted Burnham, and had no reason to suspect him, a circumstance considered material in such cases. See *In re Gasquoine*, [1894] 1 Ch. 476. Of course it cannot be contended that confidence in a co-trustee, or the absence of reason for suspicion, will or ought to excuse the omission of a plain, obvious duty; but there was no such plain, obvious duty omitted or neglected by the respondent. The respondent is not responsible for the money received and misapplied by Burnham, nor for the mortgages that he improperly assigned. Even if it were held that the respondent was guilty of a breach of trust, it ought also to be held that he had acted both honestly and reasonably, and ought fairly to be excused: 62 Vict. ch. 15, sec. 1 (O.) Although what passed between him and the testator would be no excuse independently of the statute, it is very material on the question whether, under the circumstances, his conduct was reasonable. See *Re Smith*, 18 Times L. R. 432. Appeal dismissed with costs.

E. B. Edwards, Peterborough, solicitor for plaintiffs.

Hall & Hayes, Peterborough, solicitors for defendant.

APRIL 12TH, 1902.

C. A.

MURRAY v. WURTELE.

Promissory Note—Agreement not to Negotiate—Notice of.

Appeal by defendants from order of a Divisional Court reversing judgment of BOYD, C., dismissing action to recover upon a promissory note for \$1,975 made by defendants J. W. Wurtele & Co. in favour of defendant B. A. C. Wurtele, and indorsed by her and defendant J. Wurtele. The Divisional Court held that the note sued on had been given to the Sclater Asbestos Company partly to secure a debt due by defendants J. W. Wurtele & Co. and partly as indemnity against a note for the same amount made by the Asbestos Company and given by it to defendants J. W. Wurtele & Co.; that the plaintiff gave value for and received the note from the manager of the Asbestos Company, without notice of an