

excused. The position of the defendants in the case at bar is not dissimilar to that of the appellants in that case. And it may be said of the defendants here, as was said in that case, that, without saying that the remedial provisions of the section should never be applied to a trustee in the position of the defendants, it is a circumstance to be taken into account, and there is not shewn any fair excuse for the breach of trust or any reason why the plaintiff, who has committed no fault, should lose his money to relieve the defendants: see also *Davis v. Hutchings*, [1907] 1 Ch. 356.

Whether the plaintiff's action be based on failure to observe the trust, or rests on quasi-contract, there is no reason why he should not recover such loss or damage as he may fairly have sustained, nor why the same measure should not apply. The damage has been ascertained by the learned trial Judge, upon evidence adduced by both parties, and his finding thereon, as a question of fact, should not be disturbed, but should stand as the amount of the plaintiff's loss which he should recover from the defendants.

The appeal should, therefore, be allowed and judgment entered for the plaintiff for \$700, with costs here and below.

MACLAREN and MAGEE, JJ.A., concurred, each stating reasons in writing.

GARROW and MEREDITH, JJ.A., dissented, each stating reasons in writing.

DECEMBER 19TH, 1910.

RE TAYLOR AND VILLAGE OF BELLE RIVER.

Municipal Corporations—Closing of Part of Street—Injury to Property not Abutting on—Municipal Act, sec. 447—Property "Injuriouslly Affected"—Compensation—Special Injury—Depreciation.

Appeal by the village corporation from the order of MULLOCK, C.J. Ex. D., 1 O.W.N. 609, dismissing their appeal from an award by compensation to a land-owner for injury to her property by the closing of a road.