
CURRENT REVIEW OF ENGLISH CASES.

Registered in accordance with the Copyright Act.

INTEREST—FURTHER DIRECTIONS—DISCRETION OF COURT.

Burland v. Earle (1905) A.C. 590 is a case which in a previous stage has been before the Judicial Committee of the Privy Council. The action was brought to compel the defendant Burland to recoup the defendant company certain moneys which he had appropriated as compensation for his services as president and manager of the company in excess of \$12,000, to which he was admittedly entitled. The plaintiff did not, in his statement of claim, claim interest on such excess. The liability to refund the excess was declared by a judgment of the Court of Appeal of November 13, 1900, and its order was affirmed by the King in Council, but neither the judgment of the Court of Appeal nor the order of Council contained any direction for the payment of interest on the sums ordered to be refunded. Although conceding that it was competent on further directions for the Court to order interest to be paid, yet their Lordships held that the plaintiff was not entitled as of right to such an order, and that it was a matter of discretion, and in the exercise of such discretion having regard to the fact that the defendant had not been found guilty of any fraud, that there was a resolution of the directors on which he assumed to act, and that the plaintiff had himself been a director of the company when such moneys were being paid and made no objection, their Lordships thought that interest should only run from November 13, 1900, the date of the judgment of the Court of Appeal declaring the defendant liable to refund, and the order of the Court of Appeal which had allowed interest for a longer period was varied accordingly.

R.S.O. (1897) c. 48, s. 1—APPEAL TO KING IN COUNCIL—APPEALABLE CASE.

Gillett v. Lumsden (1905) A.C. 601 was an appeal from the judgment of the Court of Appeal for Ontario, 8 O.L.R. 168, the action was to restrain the infringement of certain trade marks. The Court of Appeal affirmed the judgment of a Divisional Court dismissing the action. The plaintiffs gave security in due form for an appeal to His Majesty in Council, but in the order of Osler, J.A., allowing the security, the following proviso was added: "that this order shall not prejudice the right of the respondent to object to the competence of the appeal." The re-