

CARTWRIGHT, MASTER.

MARCH 13TH, 1905.

CHAMBERS.

ADAMS v. COX.

*Interest—Moneys Realized upon Execution—Repayment when Judgment Reversed—Liability for Interest—Claim by Stranger—Rate of Interest—Costs.*

After the Court of Appeal (3 O. W. R. 32) had affirmed the decision of the trial Judge (2 O. W. R. 93) in favour of plaintiff, plaintiff issued execution against defendants, and received a sum of \$1,358.89, being proceeds of sale of goods of defendant Alice R. Cox.

The Supreme Court of Canada on 14th December, 1904, reversed the judgment of the Court of Appeal, and plaintiff thereupon became liable to repay the \$1,358.89.

Some delay arose about this, as the money was claimed by another execution creditor. The plaintiff thereupon notified the claimants that he would apply for an interpleader order, and prepared the necessary material, but did not proceed further.

Ultimately on 20th February, 1905, the money was paid by consent of all parties to the solicitors for the defendants, but without interest, though interest was asked for before payment of the principal.

Defendant Alice R. Cox moved for an order for payment by plaintiff of interest at 5 per cent. from date of payment to plaintiff to date of repayment, nearly 11 months.

J. Bicknell, K.C., for applicant.

J. J. Maclellan, for plaintiff.

THE MASTER.—The prima facie right to interest, in the circumstances of this case, is established by *Rodger v. Comptoir d'Escompte de Paris*, L. R. 3 P. C. 465, where the whole question is discussed by Lord Cairns.

This was followed by *Bacon, V.-C.*, in *Merchant Banking Co. v. Maud*, L. R. 18 Eq. 659, and by our own Court of Appeal in *Sherk v. Evans*, 22 A. R. 242 (see especially judgment of Osler, J.A., at p. 248).

Counsel for plaintiff, however, contended that, in view of the conflict as to who was entitled to the principal, interest should not be allowed. But it was open to him to have guarded himself either by an order to pay the money into Court, or by getting a waiver of any right to interest from the rival claimants. Unfortunately he did not adopt either of these necessary and yet simple precautions.