

parties have themselves in adjusting their accounts, allowed interest upon balances outstanding—though a jury might, and probably would allow such interest as damages. In such a case, therefore, a claim for interest is not a proper subject of special endorsement.

But in view of Con. Rule 575, notwithstanding in such a case the addition of a claim for interest in the nature of unliquidated damages, final judgment may be rightly signed for the liquidated demand upon the accounts stated, while as to the rest of the claim the judgment should be interlocutory only. And if under these circumstances final judgment for the whole claim has been entered it is not a nullity, but merely irregular, and terms may be rightly imposed on setting it aside.

*C. Millar and C. McCrea*, for appellant George. *C. A. Moss*, for respondent Green.

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Mulock, C.J., Ex.D., Anglin, J., Clute, J.]

[Dec. 13, 1906.]

RE PRESTON.

*Trusts and trustees—Trustee de son tort—In, ant cestui que trust—Illegal disposition of fund—Payment into Court—Jurisdiction.*

Moneys payable to a widow as trustee for her infant child were collected for her by M., and by arrangement between them retained by him and employed in his business. By writing addressed to the widow he acknowledged holding the moneys to the credit of the infant, "bearing interest at the rate of six per cent. per annum."

*Held*, that M. was a trustee de son tort, and as such either an express or a constructive trustee, and liable to account to his infant cestui que trust, and so entitled to come to the Court, under the Trustee Relief Act, R.S.O. 1897, c. 336, s. 4 (and s. 2, defining "trustee"), and obtain an order allowing him to pay the moneys into Court, against the opposition of the widow, who pressed for payment to her, on the ground that he was simply her debtor.

*Semble*, also, per ANGLIN, J., that the Court had jurisdiction, as custodian of the interests and property of infants, to order, *motu proprio*, that which, upon application of the official guardian or of the infant by her next friend, it could and would direct.