

made in 1878, and that the payment of interest on the mortgage down to 1890 did not prevent the running of the statute in favour of the trustees, and that consequently the right of action of the tenant for life was barred. But, on appeal by the tenant for life, the Court of Appeal (Lindley, Smith, and Davey, L.JJ.), although affirming Kekewich's judgment as to the last point, were of opinion on the evidence that the tenant for life had not intended to consent, and had not, in fact, consented, to the trustees committing any breach of trust; but though he was desirous that the loan should be made, he did not intend to, nor did he, in fact, relieve the trustees from the duty of taking due and reasonable care to see that it would be properly made, and it is only where the *cestui que trust* instigates or requests the commission of an act which is of itself a breach of trust that s. 6 (Ont. Act, s. 11) applies. The Court of Appeal, therefore, varied the judgment of Kekewich, J., by declaring the tenant for life still entitled to receive the income of that part of the trust fund which had not been lost.

LIGHT—INJUNCTION—DAMAGES IN LIEU OF INJUNCTION—JURISDICTION—21 & 22 VICT., c. 27, s. 2 (ONT. JUD. ACT, s. 3, s.s. 9).

*Martin v. Price*, (1894) 1 Ch. 276, was an action to restrain an actual and threatened interference by the defendant with the plaintiff's ancient rights. Kekewich, J., on the hearing of the action, although finding the acts complained of were an injury to the plaintiff's rights, yet as he failed to prove that the commercial value of his premises, or the facility of letting them, would be materially affected, he declined to grant a mandatory injunction to pull down the buildings already erected by the defendant, or an injunction to restrain his further building, but in lieu thereof awarded damages both for the actual and possible interference. On appeal, Lindley, L.J., who delivered the judgment of the court (Lindley, Smith, and Davey, L.JJ.), said that it was by no means clear that the court had any jurisdiction to award damages by way of compensation for an injury not yet sustained, but only threatened and intended—Bowen, Fry, and Cotton, L.JJ., having all expressed an opinion to the contrary in *Dreyfus v. Peruvian Guano Co.*, 43 Ch.D. 316; but, in any case, the plaintiff having established a legal right, and its material infringement already, and a still further infringement threatened,