INTEREST AFTER DEFAULT.

THE Court of Appeal in affirming the decision of Proudfoot, J., in *Powell* v. *Peck*, 12 O. R., 492, 22 C. L. J. 386, do not appear to have laid down any hard and fast rule, that in no case can interest be recovered at a higher rate than six per cent. under a mortgage, for the detention of the principal beyond the day appointed for payment On the contrary, they appear merely to have proceeded on the well-settled rule, that such interest is, in the absence of any express contract between the parties providing for payment of interest after default, merely recoverable as damages for breach of the covenant to pay at the day named, and that the amount of these damages is discretionary with the jury, or the judge who may be discharging the function of a jury. As to which rule we would remark, *en passant*, that it is a venerable relic which should as soon as possible be relegated to some lumber room that contains many like fusty remains of antiquity.

The case before the Court of Appeal was therefore in substance an appeal from the discretion of the court below, and, acting upon the well understood rule governing appellate courts, that where the appeal is from a matter within the discretion of the judge appealed from, it is incumbent on the appellant to show either that there has been a gross miscarriage of justice, or that the order appealed from is clearly wrong, the court refused to disturb the order appealed from, because the appellant could fulfil neither condition. We believe it will be found, however, that this decision is no obstacle to a judge or jury awarding damages at a higher rate than six per cent. for the detention of money wherever evidence is given to warrant it. It would seem, however, that in the opinion of the Court of Appeal, the rule laid down by Blake, V.C., in *Simonton* v. *Graham*, 8 P. R. 495, is not correct. In that case it was held that *prima facie* damages after default should be allowed at the mortgage rate, but that the person seeking to reduce it might show that such rate was excessive and more than the value of money. This certainly was the reasonable and common-sense rule, and we regret it has not been followed. The judgment of the Court of Appeal appears to throw on the party seeking to recover more than six per cent. the onus of showing that such increased rate is the proper value of money. The evidence pertinent to such an inquiry would appear not to be properly limited to establishing the general value of money in the market, but rather the value of money lent upon security of the kind upon which the money in default is invested. The character of the security is always an important ingredient in determining the rate of interest upon loans, and by detaining the money beyond the time fixed for repayment, the covenantor, in effect, is compelling the covenantee against his will to lend the money for the period during which it is detained, and the security for the money during such detention is often no better, and may be much worse than it was when the original loan was made. The parties certainly ought to be the best judges of their own business as to the rate of interest that should be paid, and it is not desirable that the court should in effect step in and make a new bargain for them. In so far as the view taken by the Court of Appeal tends in this direction, we think the tendency is wrong. The sooner the Legislature puts the law in the way it is supposed to be by laymen, and as it reasonably should be, the better.