

## RECENT ENGLISH DECISIONS

*Smith*, 9 Beaven 342, but in principle it would seem that the decision is correct, for it would be hard to point out in what respect a solicitor's bill differs from any other bill, though it might well be that interest should not be allowed till after the expiration of the month succeeding delivery. The client may at any time tax or pay the bill, and if he does not see fit to pay, it is only fair that he should pay interest during the time indulgence is shown.

It may also be here pointed out that if a debt be contracted upon an agreement that it should be arranged by a bill or note, if the debtor neglect or refuse to give the instrument agreed upon, the debt will bear interest from the time such bill or note if given would have enabled the creditor to claim interest, upon the ground that if the debtor had given the note or accepted the bill the debt would at all events from the maturity of the securities bear interest, and the creditor should be in no worse position if he fails to receive the security by the act of the debtor, *Farr v. Wald*, 3 M. & W. 25; *Davis v. Smith*, 8 M. & W. 399.

An express contract to pay interest may be raised by the conduct of the creditor and debtor when the debtor has been in the habit of paying interest upon obligations from time to time.

The principal statute in force in this Province respecting interest is C. S. U. C., cap 43, ss. 1, 2 and 3, now R. S. O. cap 50, ss. 266, 267, 268. By sec. 267 of the Revised Statute, when moneys are payable by virtue of a written instrument at a time certain, a jury may allow interest from the time when such debt became due and payable; and by sub-sec. 2 of the same section, when moneys are payable otherwise than by a written instrument a jury may allow interest from the time when a demand of payment was made in writing informing the debtor of the creditor's intention that interest should be charged from the date of such demand. As has already been intimated, when debts by agreement are payable at a time certain and bear a reasonable interest, that rate will continue to be the rate after

maturity of the debt, but in all other cases six per cent is deemed to be the rate of interest when the creditor and debtor have not fixed another rate by an express or implied agreement, or where interest is allowed by operation of law. By sec. 268 of cap. 50 R. S. O., in actions of trover or trespass *de bonis asportatis*, juries may give interest as damages in addition to the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance juries may in like manner allow interest over and above the money recoverable thereon. Also by sec. 269, verdicts in certain cases bear six per cent interest, and in such cases damages are only to be assessed up to the day of the verdict; and again in appeal to the Court of Appeal (sec. 43, R. S. O. cap 38), in any action personal, interest shall be allowed for such time as execution has been delayed by the appeal.

By a salutary doctrine of the Court of Equity, trustees using in trade, or not properly keeping apart the moneys of their *cestui que trust*, may be compelled to account for the same with rests during the time such moneys have remained in their hands, and where profits have arisen from such trading, may also, at the option of the *cestui que trust*, be called upon to account therefor.

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Proceeding now to the June numbers of the Law Reports, they consist of 8 Q. B. D. 585—712; 7 P. D. 61—102; 20 Ch. D. 1—229.

## GIFT—FIDUCIARY RELATION—PHYSICIAN AND PATIENT.

The first case requiring notice in the first of these, is *Mitchell v. Humfray*, p. 587, before the Court of Appeal. In this case the executors of a certain Mrs. Geldard, who died in 1876, strove to recover a sum of £800 from the defendant, who had acted as Mrs. Geldard's medical attendant. The defendant received the money in 1871. The case was