

ALLOWANCE OF INTEREST.

may notwithstanding occasionally indulge in an attack of *delirium tremens*. No doubt one swallow does not make a summer, but it takes a good many swallows to give a man *delirium tremens*.

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[COMMUNICATED]

Interest in general terms is the consideration paid by the borrower to the lender for the use of money, and may arise by express or implied contract, or by operation of law. Usury can only legally exist when the law fixes a rate, and the contract for the rate of interest is greater than that allowed by law. At common law interest may be recovered upon an express promise or where there is an implied promise from the usage of trade or upon mercantile securities. There has long existed a usage to pay interest on the settled balance of merchants' accounts, *Orme v. Galloway*, 9 Ex. 544, but this usage is confined to the dealings of merchants with merchants, and no such usage is implied in the dealings of ordinary tradesmen with their customers, nor does any such usage prevail in cases of sales by retail. There is no usage to pay interest upon money lent and payable either on demand or at a stated time, nor upon money received by one for the use of another, nor for work and labor done, nor upon money received by one on deposit; but such a usage is implied when deeds are deposited with bankers to secure a loan, such a transaction being in effect a mortgage upon a loan from bankers upon the security of title-deeds.

Upon mercantile instruments, such as bills of exchange and promissory notes, in the absence of any agreement they bear interest only from their maturity, and upon all instruments bearing interest, in the absence of any agreement to pay interest after they mature, the better opinion now seems to be that a jury may; and the Court ought, to give interest at the same rate as the debt bore before ma-

turity, if it were reasonably within the contemplation of the debtor and creditor that the rate contracted for while the debt was maturing would be the rate after maturity as well. If the rate be a reasonable rate and one ordinarily paid for the use of money, that would appear to be the proper rate; but if on the other hand the rate be excessive and one that no man would voluntarily pay except for a short while and under some pressure, then the Court may infer that the debtor and creditor made no bargain as to the rate after maturity, and the legal rate, six per cent (see C. S. C. cap 58, sec. 8) would then be the proper rate to be allowed; *Keene v. Keene*, 3 C. B. N. S. 144; *Simonton v. Graham*, 17 Can. L. J. N. S. 169; *Cook v. Fowler*, L. R. 7 H. L. 37; *Dalby v. Humphreys*, 37 U. C. R. 514.

It has been held that when goods have been sold by an offer in writing, one-third cash and balance by bill at six and twelve months, interest may be collected upon the portion of the purchase money payable in cash from the date of the delivery of the goods if the cash be not paid, *Duncombe v. The Brighton Club*, L. R. 10 Q. B. 371; and it was held that it was not necessary that the written offer should state when the cash payment would be payable. It is enough if the demand be of a sum, and at a time, that can be reasonably rendered certain, *Geak v. Ross*, 44 L. J. C. P. 317. In the same case it was held not necessary that interest should be demanded in express words if it can be reasonably inferred from the contents of the written demand that the creditor is seeking interest upon the indebtedness due him, and it would seem that if the demand be for interest for the past as well as the future, or for too great a rate, the demand will at all events enable the creditor to claim legal interest from the date of the demand if the debt be then payable. In a recent case Chief Justice Wilson allowed solicitors interest (they having, when rendering their bill, demanded interest), following *Berrington v. Phillips*, 1 M. & W. 48. This case seems to be at a variance with *In re*