

INTEREST UNDER THE STATUTE.

payable otherwise than by such a written instrument, then the jury may allow interest from the time when a demand of payment is made in writing, informing the debtor that interest will be claimed from the date of such demand: R. S. O. c. 50, sec. 267. It has been decided that a statute similar in terms is applicable when money is directed to be paid by a decree in equity: *MacIntosh v. Great Western R. R.* 4 Giff. 683; *Ridley v. Sexton*, 19 Gr. 146.

It has been held that no particular formality was required in the demand: it is sufficient if intimation is given in writing to the debtor by the creditor that he claims interest. *Mowatt v. Londesborough*, 3 E. & B. 307; 4 ib. 1; and *Geake v. Ross*, 32 L. T. N. S. 666. So in *Ridley v. Sexton* 19 Gr. 146, and 18 Gr. 580, the majority of the court held that the usual count for interest in a declaration was a sufficient compliance with the demand required by the statute to warrant the allowance of interest from the date of its filing and serving, though in that case the amount of the claim could not be ascertained without taking accounts. The arguments of the dissenting judge in *Ridley v. Sexton*, however, appear to be met by the line of reasoning in a recent decision, in which it is broadly laid down that courts of equity are not bound by the statute, so as to be limited to cases therein provided for. In *Spartali v. Constantinidi*, 20 W. R. 823, interest was allowed upon profits which the defendant retained beyond the expiration of the period when they should have been paid over, although they were not set apart at that time. But Bacon, V. C., held that as they were capable of easy ascertainment the maxim applied, *id certum est &c.* He then proceeded to act upon "the well-established law of the Court," that money being payable at times susceptible of being easily ascertained, from each of these

times the person entitled to receive the money at that time is entitled to interest upon that money from that day. This case was appealed, but pending the appeal was compromised: See 21 W. R. 116.

In *Duncomb v. Brighton Co.*, L. R. 10 Q. B. 441, the Court differed in the meaning of the statute regarding the words "payable by virtue of a written instrument at a time certain." Blackburn J. thought that the written contract should expressly state the time of payment, and that it was not enough that the time might be ascertainable therefrom. But the other members of the Court decided that it was enough if a basis of calculation by which it might be ascertained should be established by the written document. This is in accord with the principle adopted by Bacon, V. C., in *Spartali v. Constantinidi*.

As opposed to the views of Bacon, V. C., the decision of Hall, V. C., in *Hill v. Stafford*, L. R. 18 Eq. 154 is noticeable. He there lays it down that if there is no express stipulation to pay interest in the contract, there should be a demand in writing for payment of a sum certain payable at a time certain. This, however, even the Common Law Judges thought was a too rigid construction of the statute, and they declined to follow it in *Geake v. Ross*, already cited.

Interest was disallowed in *Inglis v. Worthington Hotel Co.*, 29 C. P. 387, on the ground that there was no written contract, and no demand of interest was proved.

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**FREDERICK HARRISON ON THE
ENGLISH SCHOOL OF
JURISPRUDENCE.**

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Whenever Mr. Frederick Harrison takes up his pen to write on any subject he is sure to deal with it as a deep