

**THE LAWYER'S COMPANION
SERIES; THE INTEREST ACTS: (ACT
XXXII OF 1839 AND ACT XXVIII
OF 1855); (WITH THE CASE-LAW
ON "INTEREST'.)**

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The Lawyer's Companion Series; The Interest Acts: (Act XXXII of 1839 and Act XXVIII of 1855); (With the Case-Law On "Interest.") by T. V. Sanjiva Row

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The Lawyer's Companion series.

THE INTEREST ACTS

(ACT XXXII OF 1839

AND

ACT XXVIII OF 1855)

(with the case-law on 'Interest'.)

BY

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COMPILER'S NOTE.

Though the Acts relating to Interest are very few and the sections thereof handful, the cases relating thereto are very numerous and diversified and cover a very wide area. Such cases are dispersed over various headings and sub-headings in the Digests and Reports, thereby rendering the finding out of a case on a given subject by no means an easy task. I have thought it fit to collect, in the name of the Interest Acts, the whole case-law on the subject of Interest, classify, arrange and group them under appropriate heads and present them in a condensed form to the reader, so that he may pick up the cases he requires without much difficulty.

The accompanying Table of Headings, which precedes the Acts, will, I hope, serve as a guide to the study of the book.

3-1-24
"MADHWA VILAS,"
Teppakulam Post,
Trichinopoly, 27-1-1908.

T. V. SANJIVA ROW.

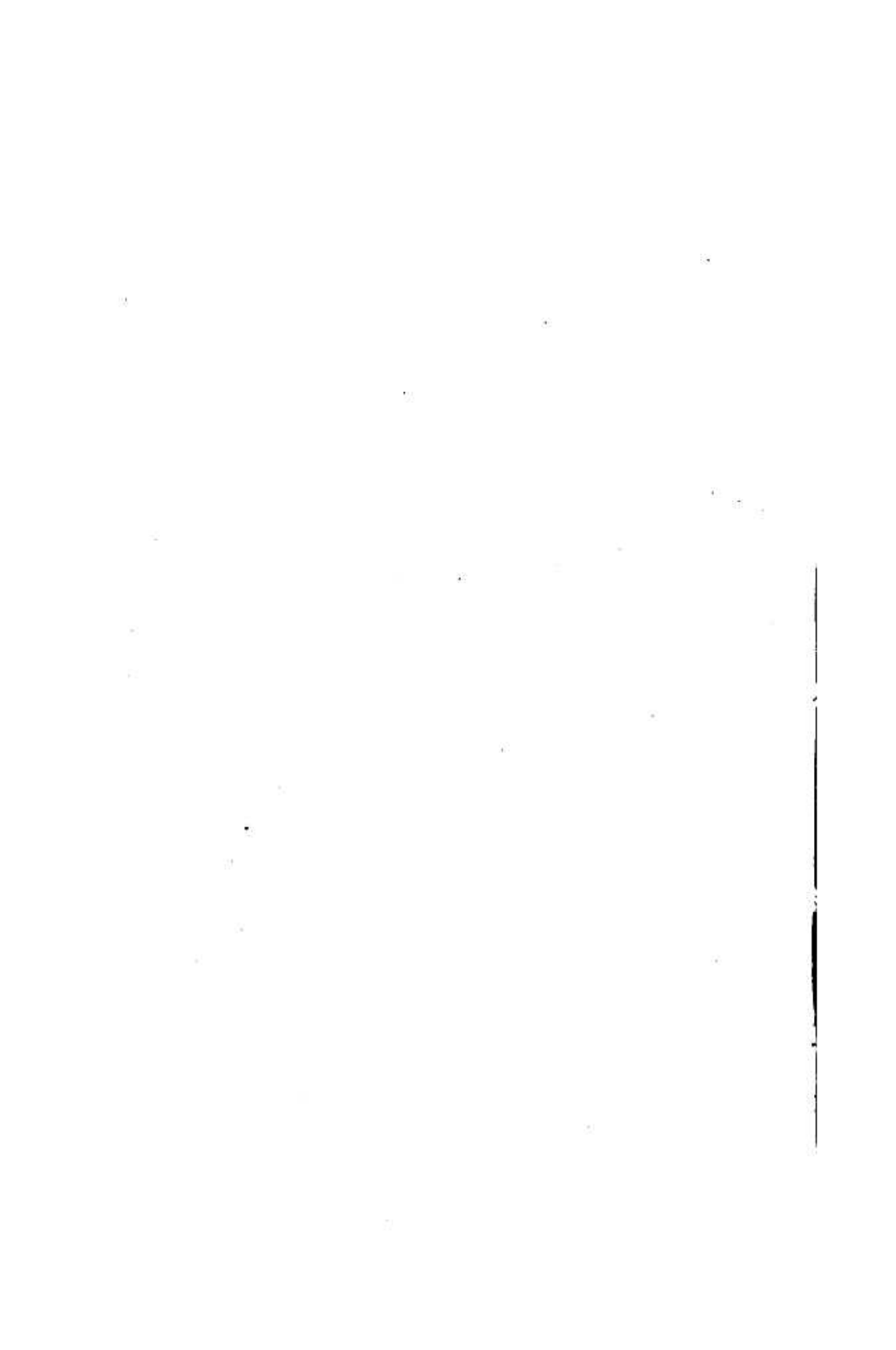
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THE INTEREST ACTS

ACT XXXII OF 1839.

PASSED ON THE 30TH DECEMBER 1839.

An Act concerning the allowance of Interest in certain cases.

1. WHEREAS it is expedient to extend to the territories under the government of the East India Company, as well within the jurisdiction of Her Majesty's Courts as elsewhere, the provisions of the Statute 3rd and 4th William IV., chapter 42, section 28, concerning the allowance of interest in certain cases :

It is therefore hereby enacted that upon all debts or sums certain¹, payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit², allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument³ at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing⁴, so as such demand shall give notice to the debtor that interest will be claimed⁵ from the date of such demand until the term of payment ; provided that interest shall be payable in all cases in which it is now payable by law.⁶

Power of Court to allow interest.

(Notes)-

Nature, scope and construction of the Act.

(1) Nature of the Act—It is an enabling enactment.

The Act is only an enabling Act by which the Court is vested with a discretion to grant interest in certain cases, but does not create a right to interest in favour of creditors, which of itself, could be made the subject-matter of a suit. 1 C.W.N. 219. **A**

(2) It does not restrict power of Court to allow interest in other cases.

The Act has not the effect of restraining the power of the Court to allow interest in cases other than those mentioned in it. *Marah* 239=1 *Hay* 500. **B**

(3) Act merely an extension of English enactment.

This Act extends the provisions of the Statute, 3 and 4 Wm. IV., c. 42, S. 28 to India. 6 M.I.A. 292. **C**

Nature, scope and construction of the Act.—(Continued).

(4) Act is retrospective in its effect.

An instrument in the nature of, though not strictly, a bond, was executed in 1838, which provided for the liquidation of the amount therein specified by instalments, but no provision was made for the allowance of interest. The condition for payment not having been performed, it was held, in an action brought in 1849, to recover principal and interest upon the bond, that the Act was retrospective in its operation, and authorised the allowance of interest, although it was not provided for by the bond. 6 M.I.A. 232. D

(5) Interest under the Act is given by way of damages.

(a) Interest is given under this Act by way of damages, on the ground that the debtor has wrongfully refused to pay the debt. 10 C.L.R. 561=7 C. 594. E

(b) There can be no wrongful refusal, where there is no hand to receive payment and give a complete discharge. Thus where an Insurance Company refused payment to the executors of the assignee of an insurance policy, on the ground, that they were ignorant as to the terms of the assignment, and as to whether any consideration passed or not, and that the executors should obtain the authority or concurrence of the representatives of the deceased, (who was the person assured), it was held, the Company were not liable to pay interest. (*Ibid.*) F

(6) Scope of the Act—Grant of interest before suit.

(a) Interest, before suit, cannot be decreed if the case is not covered either by the Interest Act (XXXII of 1839) or by S. 73 of the Contract Act. 4 C.W.N. 818=27 C. 814. G

(b) Unless a case satisfies the provisions of this Act, interest prior to the suit may not be awarded. D.C.R. Part II, 7. H

(c) Interest cannot be awarded as damages in an action for debt in which the requirements of the Act are absent. 19 P.L.R. 1902=104 P.R. 1901. I

(d) Where a suit for money lent is not covered by the provisions of this Act, nor by S. 73 of the Contract Act, no interest from the date of the institution of the suit may be allowed. 27 C. 814=4 C.W.N. 818. J

(e) In the absence of an agreement or usage giving a right to interest, and of a written demand giving notice that interest would be claimed, such as is contemplated in the Act, a creditor will not be entitled to interest. 19 P.L.R. 1902=104 P.R. 1901. K

(f) Suit on oral contract—Absence of demand—whether interest before suit recoverable.

See 20 M. 481=7 M.L.J. 263 noted below.

(g) Price of goods sold—No written instrument or demand in writing—whether interest prior to suit recoverable.

See 6 W.R. 288 noted below.

(7) This Act has no application where there is a contract between the parties as to rate of interest.

(a) The Act does not apply where there is an agreement between the parties regulating the amount of interest. 4 W.R. 1 (P.C.)=10 M.I.A. 229. L

Nature, scope and construction of the Act—(Continued).

- (b) Where there is no contract to pay interest, the Court may grant interest if the case satisfies the requirements of Act XXXII of 1839. 37 P.R. 1867. **M**
- (c) The Act does not apply to a contract to pay interest, implied from the dealings of the parties. 36 P.R. 1894. **N**
- (8) **Where there is a contract, Act XXVIII of 1855 applies.**
- (a) Where there is an agreement between the parties as to interest, Act XXVIII of 1855 applies. (*Ibid.*) See under **D**, at p. 10, *infra*. **O**
- (b) Even if such contract is to be *implied* from the dealing of the parties, Act XXVIII of 1855 applies. (*Ibid.*) **P**
- (9) **Contingent contracts not within the scope of the Act—Wager.**
- (a) A wager contract (before the passing of Act No. XXI of 1848) upon the average prices, which opium would fetch at the next Government opium sale, is not within the scope of this Act, as the Act supposes a party to have been sued for breach of contract for the payment, by virtue of a written instrument, of a *sum certain*, at a certain time, and does not affect debts contingent in amount and time of coming due. 4 W.R. 8 (P.C.)=7 M.I.A. 263. **Q**
- (10) **What kind of contingency does the Act contemplate.**
- The language of the Act does not show that a contingency in the liability, not affecting the amount of debt, or the time of payment, can in any way prevent the operation of the provisions of the first part of S. 1 of the Act. 96 C. 956. **R**
- (11) **Power of the Court to allow compound interest under the Act.**
- It is doubtful whether a Court possesses the jurisdiction under the Act to allow what in effect would be compound interest. But, even if the Court has jurisdiction, there can be no doubt that it would be exercising a sound discretion in not allowing compound interest, except in cases where compound interest is expressly provided for by the agreement. 1 C.W.N. 219. **S**
- (12) **Power of Court to allow *post diem* interest under the Act.**
- (a) Where, in a registered mortgage, there was no provision for the payment of interest *post diem*, *held*, that the Court had power, under this Act, to give interest *post diem*, at a reasonable rate, as it was money payable at a certain time, and under a written instrument. 18 M. 248=4 M.L.J. 265. **T**
- (b) Where a mortgage instrument is silent as to *post diem* interest, although more than six years have elapsed after the due date of the bond, such interest may be recovered under this Act, and may be made a charge on the mortgaged property. 5 M.L.J. 154. **U**
- (c) The joint effect of the Interest Act and S. 88 of Transfer of Property Act is in favour of the award of interest *post diem*, as interest, till date of payment, at a reasonable rate, and as a charge upon the mortgaged property. 18 M. 248. But see 17 A. 581, *contra*. See also 18 M. 338 (note), 24 C. 699, 20 M. 371, 21 C. 274, noted under POST DIEM INTEREST. **Y**