STATUTE II.
Aug. 23, 1842.
[Obsolete.]

CHAP. CLXXXIX.—*An Act making an appropriation to supply a deficiency in the navy pension fund.* (*a*)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of eighty-four

Where the plaintiff has stated an account on a principle unfavorable to himself, as to the charge of interest, he ought to be bound by it. *Ibid.*

There is no difference as to the application of the general rule relative to calculating interest on debts legally carrying interest, and on those debts where interest is given in the name of damages. *Ibid.*

The rate of interest fixed by the law of Georgia, the contract having been made there, will be allowed in the courts on such contracts, although it may exceed the interest allowed by the law of the State in which the court sits. Jaffray *v.* Dennis, 2 Wash. C. C. R. 253.

The defendant settled his account at the treasury department in 1808, on which a balance was stated against him. In 1812 he claimed further credits, which were allowed to him, and which reduced the balance claimed in 1808. The court instructed the jury to allow interest on the actual balance from 1808. United States *v.* Ormsby, 3 Wash. C. C. R. 195.

Where there have been running accounts between parties, and one party has been in the habit of transmitting his accounts regularly to the other, striking a balance, and charging or giving credit for interest, as the balance might be, and no objections have been made to it, and where this mode of stating accounts is shown to be the custom of trade, such manner of charging interest is legal. Barclay *v.* Kennedy et al. 3 Wash. C. C. R. 350.

A usage to add interest to the annual account at the end of the year, and interest on the balance, does not apply in a case in which the commercial intercourse between the countries in which the parties respectively reside, had ceased when the account was transmitted; nor will it authorize the creditor to make other rests in the account. Denniston et al. *v.* Imbrie, 3 Wash. C. C. R. 396.

Where an alien enemy has an agent in the United States, and this is known to the debtor, interest ought not to abate during a war. *Ibid.*

A promise was made by the defendant, the drawer of a protested bill of exchange, that if the plaintiff would give time, he would pay the bill when he should be able. In an action on the new promise, the plaintiff is entitled only to the sum stated in the bill, and to interest from the time when defendant was able; and not to any damages. If the jury give more, the court will set aside the verdict, unless the plaintiff enter a remittitur for the overplus. Lonsdale *v.* Brown, 4 Wash. C. C. R. 148.

If there has not been a previous demand of the penalty of a bond, or an acknowledgment that the whole is due, interest is recoverable only from the commencement of the suit, on a bond with sureties given to the Bank of the United States for the faithful discharge of the duties of cashier of the branch bank at Middletown, Connecticut. United States Bank *v.* Magill et al., Paine's C. C. R. 661.

Interest is not allowed on unliquidated damages. Gilpins *v.* Consequa, Peters' C. C. R. 86.

It is generally in the discretion of the jury to give interest in the name of damages. Willings et al. *v.* Consequa, Peters' C. C. R. 172.

Damages for breach of contract do not bear interest. Youqua *v.* Nixon, Peters' C. C. R. 224.

When an attachment is laid on money in the hands of a third person, interest ceases from the time of the attachment until it is dissolved; but where a debtor who is also a creditor lays an attachment in his own hands, interest is chargeable during the continuance of the attachment. *Ibid.* 303.

It is the usage at Canton to add interest to the other charges on the amount of the articles sold, and for which compensation is demanded. This will be allowed in the United States, on a Canton contract. *Ibid.*

Interest on debts due by the citizens of the United States to the subjects of the king of Great Britain, ceased during the revolutionary war, and during the war of 1812; but the mere circumstance of war existing between two countries is not a sufficient reason for abating interest on the debts due by the subjects of one belligerent to the subjects of another. Conn et al. *v.* Penn et al. Peters' C. C. R. 497.

A prohibition of all intercourse with an enemy during a war, furnishes a just reason for the abatement of interest on debts due to the subjects of the belligerent, until the return of peace. *Ibid.*

The rule as to the abatement of interest during the war, does not apply where the creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent residing there, and who is authorized to receive the debt. *Ibid.*

An account current, received and not objected to in a reasonable time, becomes a settled account bearing interest from the time it is stated, and the balance is payable on demand. Bainbridge & Co. *v.* Wilcocks, Baldwin's C. C. R. 538.

An account made up of principal and interest becomes one principal debt; the aggregate balance, where the account is thus settled, bearing interest. *Ibid.* 540.

Compound interest is not illegal, and may be recovered on an express promise, or one implied by law, as a part of the contract. *Ibid.* 541.

If an account contains a charge of interest during a war, it is recoverable if there is a promise to pay the amount after peace, or the account is in fact or law a settled account, from which a promise results by operation of law. *Ibid.* 542.

Whether the jury, in a case in which a man covenants to convey lands without fraud, and it afterwards appeared that, in truth, he had no title to the land, when he covenanted to convey, should allow interest on the value of the lands at the date of the contract, must depend on the circumstances of the case, of which they are the proper judges; and it is competent to the defendant to give in evidence any circumstances tending to show interest should not be allowed. Letcher & Arnold *v.* Woodson, 1 Brockenb. C. C. R. 212.

The interest allowed on the personal estate, for the sums advanced by it to discharge the specialty debts, should, in accordance both with the general course of the court, and with justice in particular cases, be limited to twenty years. Byrd *v.* Executors of Byrd, 2 Brockenb. C. C. R. 171.

Where a mortgagee is in possession, and the annual rents and profits of the mortgaged estate, exceed

(*a*) Act relating to the navy pension fund, July 10, 1832, chap. 194.

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Appropriation to supply the deficiency in the navy pension fund.

thousand nine hundred and fifty-one dollars be, and the same is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to supply any deficiency which may exist in the navy pension fund, for the payment of the semi-annual navy pensions, which will be due on the first day of July, eighteen hundred and forty-two.

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the interest of the debt due, it seems that he should pay interest on the surplus rents and profits. Gordon *v.* Lewis, 2 Sumner's C. C. R. 143.

In the ordinary cases, where the relation of mortgagor and mortgagee is uncontroverted, if a mortgagee receive the rents of a mortgaged estate after his debt has been satisfied, and retain them to his own use, without paying them over to the mortgagor, he is chargeable with interest. *Ibid.*

If, however, there are sufficient equitable circumstances in favor of the mortgagee; as if he retained the rents under a mistake, supposing the rights of the mortgagor extinguished; he would not be liable for interest until after notice of the adverse claim. *Ibid.*

Interest on the amount of the debt as ascertained by the decree of the circuit court, was allowed from the time of the judgment; but the damages allowed by the court were not permitted to bear interest. Jennings et al., Plaintiffs in Error, *v.* The Brig Perseverance, 3 Dall. 336; 1 Cond. Rep. 154.

Interest is to be calculated to the present time, upon the aggregate sum of principal and interest in the judgment below; but not to the next term of the circuit court, when the mandate will operate, as the party has a right to pay the money immediately. Brown *v.* Van Braam, 3 Dall. 344; 1 Cond. Rep. 157.

Interest is, in general, allowed from the time a demand is made for the wages of a mariner; and if no special demand is made, then from the commencement of the suit. Gammell *v.* Skinner, 2 Gallis. C. C. R. 45.

If captured property is ordered to be sold, then no interest is allowed. Rose *v.* Himely, 4 Cranch, 291; 2 Cond. Rep. 98.

Interest commences on a pecuniary legacy at the expiration of one year from the decease of the testator, whatever may be the posture of the estate, unless some other period is specified in the will. The cases of infant children, not otherwise provided for, and of adopted children under age, are exceptions to the general rule. Sullivan *v.* Winthrop, 1 Sumner's C. C. R. 1.

Where the executors invested certain sums, less than the whole amount of the legacy, in the name of the legatee; *held*, that this was, pro tanto, a payment of the legacy; and that the interest accruing on those sums, within the year from the time of such investment, belonged to the legatee. *Ibid.*

Where the vendor is indebted to the vendee, and the sale is made in order to pay the debt, the vendor must pay interest from the time the debt is liquidated until he makes a good title; and the vendee is accountable for the rents and profits from the time the contract is perfected, until it is specifically performed. Hepburn et al. *v.* Dunlop & Co., 1 Wheat. 179; 3 Cond. Rep. 529.

A party is as well entitled to interest on an appeal bond, as if he were to proceed on the judgment, if the judgment be on a contract for the payment of money. He is entitled to interest from the rendition of the original judgment. Sneed et al. v. Wister et al. 8 Wheat. 690; 5 Cond. Rep. 556.

The taking of interest in advance upon the discount of a note in the usual course of business by a banker, is not usury. This has long been settled, and is not now open for controversy. Thornton *v.* The Bank of Washington, 3 Peters, 40.

The taking of interest for sixty-four days on a note is not usury, if the note given for sixty days, according to the custom and usage in the banks at Washington, was not due and payable until the sixty-fourth day. In the case of Renner *v.* The Bank of Columbia, 9 Wheat. 581, it was expressly held, that under that custom the note was not due and payable before the sixty-fourth day; for until that time the maker could not be in default. *Ibid.* 40.

Where it was the practice of the party, who had a sixty day note discounted at the bank of Washington, to renew the note by the discount of another note on the sixty-third day, the maker not being in fact bound to pay the note according to the custom prevailing in the District of Columbia; such a transaction on the part of the banker is not usurious, although on each note the discount for sixty-four days was deducted. Each note is considered as a distinct and substantive transaction. If no more than legal interest is taken upon the time the new note has to run, the actual application of the proceeds of the new note to the payment of the former note before it comes due, does not of itself make the transaction usurious. Something more must occur. There must be a contract between the bank and the party at the time of such discount, that the party shall not have the use and benefit of the proceeds until the former note becomes due, or that the bank shall have the use and benefit of them in the mean time. *Ibid.*

The contract to accept the bills of exchange on which the action was brought, was made in Charleston, South Carolina. The bills were drawn in Georgia on B. and H. in Charleston, with a view to their payment in Charleston, where the contract was to be executed. The interest on the bill which was so drawn and was unpaid, is to be charged at the rate of interest in South Carolina. Boyce & Henry *v.* Edwards, 4 Peters, 111.

Interest is not chargeable on money collected by the marshal of the District of Columbia for fines due to the levy court, the money having been actually expended by the marshal in repairs and improvements on the jail, under the opinions of the comptroller and auditor of the treasury department, that these expenditures were properly chargeable upon this fund, although those opinions may not be well founded. Levy Court of Washington v. Ringgold, 5 Peters, 451.

In an action brought on a note given for payment for teas, the defence was, that teas of an inferior quality were delivered; the jury must not credit the defendant with the amount of damages, as of the day the teas were delivered, but as of the day when the verdict was rendered. The interest on the note is to be reckoned to the day of the verdict, and from that amount is to be deducted the amount of the damages ascertained by the jury. Youqua *v.* Nixon et al. Peters' C. C. R. 229.

Assumpsit was brought for the proceeds of a cargo which was taken under legal process by the defendants, the consignees, in a foreign port, for the debts of the prior owners of the ship. *Held*, that the plaintiffs, the consignors, by bringing assumpsit, had waived the tort so that the customary commissions should be allowed the defendants; but that the defendants were chargeable with interest from the receipt by them of the proceeds of the cargo. Ricketson *v.* Wright, 3 Sumner's C. C. R. 335.

SEC. 2. *And be it further enacted*, That the act entitled "An act to provide for the more equitable administration of the navy pension fund," approved March third, eighteen hundred and thirty-seven, be, and the same is hereby, repealed, from and after the first day of July, eighteen hundred and forty-two. And all pensions to officers and seamen in the naval service shall be regulated according to the pay of the navy as it existed on the first day of January, one thousand eight hundred and thirty-five.

Act of March 3, 1837, ch. 38, repealed.

Pensions to be regulated according to the pay of the navy on the 1st of January 1835.

SEC. 3. *And be it further enacted*, That so much of an act, entitled "An act directing the transfer of money remaining unclaimed by certain pensioners, and authorizing the payment of the same at the Treasury of the United States," approved April sixth, eighteen hundred and thirty-eight, as requires pensions that may have remained unclaimed in the hands of pension agents for eight months to be returned to the Treasury, be, and the same is hereby, repealed, and that the time within which such pensions shall be returned to the Treasury, be, and the same is hereby, extended to fourteen months, subject to all the other restrictions and provisions contained in the said act.

Act of April 6, 1838, ch. 56, partially repealed; and the time for unclaimed money to remain in the hands of the agents, extended to 14 months.

APPROVED, August 23, 1842.

STATUTE II.

Aug. 23, 1842.

CHAP. CXC.—*An Act for the relief of certain settlers in the Territory of Wisconsin.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler in the district of lands subject to sale at Mineral Point, in the Territory of Wisconsin, who shall show, by proof which shall be satisfactory to the register and receiver of the land office at Muscoday, that he, by cultivation and possession, as required by the pre-emption act of the nineteenth of June, eighteen hundred and thirty-four, was entitled to a right of pre-emption; and that he, the said settler, was refused the privileges granted by said act, in consequence of the mineral character of the tract of land applied for by him, shall be permitted to enter, at the rate of one dollar and twenty-five cents an acre, one complete quarter section of land, of any lands in said land district which have not yet been offered at public sale: *Provided*, That no tract shall be entered, by any settler claiming under this act, which contains mines or discoveries of lead ore, or on which there may be an improvement, or on which any person may have a residence, or which may have been reserved from sale: *And provided, further*, That the claimant, under this act, and his witnesses, shall make oath, before a person duly qualified to administer oaths, to all the facts stated by them.

Settlers at Mineral Point who have been refused entry under the pre-emption act of June 19, 1834, allowed to enter one quarter section elsewhere. 1834, ch. 54.

Proviso.

Proviso, that the claimant shall make oath to the facts stated.

SEC. 2. *And be it further enacted*, That the provisions of this act be carried into effect, in conformity with the instructions which may be given by the Secretary of the Treasury, to the register and receiver of the land office at Muscoday.

Instructions of Sec. Treasury to be complied with.

APPROVED, August 23, 1842.

STATUTE II.

Aug. 23, 1842.

CHAP. CXCI.—*An Act to amend the acts of July, eighteen hundred and thirty-six, and eighteen hundred and thirty-eight, allowing pensions to certain widows.*

Act of July 4, 1836, ch. 362. July 7, 1838, ch. 189.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the marriage of the widow, after the death of her husband, for whose services she claims a pension, under the act of the seventh of July, eighteen hundred and thirty-eight, shall be no bar to the claim of such widow to the benefit of that act, she being a widow at the time she makes application for a pension.

Marriage of the widow to be no bar to her pension, if a widow at the time of applying.

APPROVED, August 23, 1842.