

PART D.—AWARD OF INTEREST IN CIVIL SUITS.

1. By Act XXVIII of 1855 (an Act for the repeal of the Usury Laws) it is provided that, in any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties and, if no rate shall have been agreed upon, such rate as the Court shall deem reasonable. (Section 2). Provision in Act XXVIII of 1855.

2. The Act further provides that, whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged or at such other rate as the Court shall think fit (Section 3). Ditto,
future interest.

3. Section 34 of the Code of Civil Procedure enacts that, where and in so far as a suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit; with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on the principal sum so adjudged from the date of the decree to the date of payment. It will be observed that by this section, a discretion is given in respect of two periods of times; viz., from the date of the suit to the date of the decree, and from the date of the decree to the date of payment. Future interest.

4. Section 35(3) of the Code of Civil Procedure which empowered the Court to give interest on costs has been omitted by Act No. 66 of 1956. Interest of costs.

5. In awarding interest subsequent to the date of the decree, the Courts, in the exercise of the discretion which the law has conferred, should not ordinarily award a rate of interest approaching in amount that which may be obtainable in common dealings by persons who have not the security of a decree of Court to enforce payment. No inducement should be given to decree-holders to allow their decrees to remain unexecuted. It is not permissible now to award interest after decree at a higher rate than six per centum per annum. Future Interest.

6. The plea is often raised that the "interest" claimed is "penal". Courts should be careful to distinguish between high or excessive interest and "penal" interest. Penal Interest.

The mere fact that the rate of interest is high or that compound interest is charged is, by itself, no justification under the Indian Contract Act for its reduction, unless some other ground such as coercion, undue influence, etc. is established. (see 101 and 124 P.R. 1918, P.C.) there is no definition of "penalty" given in the Indian Contract Act but its nature is indicated in section 74 of that Act. It would appear from that section that if a sum is named in a contract as the amount to be paid in the event of a breach of the contract, or where there is any other stipulation in the contract making a person liable for an extra sum (e.g., in the shape of interest), for which he would not have been otherwise liable, the stipulation is to be considered penal. According to section 74 of the Indian Contract Act, in such cases, the person entitled to claim advantage of the penal clause can only recover such reasonable compensation not exceeding the penalty as the Court may think it fit to award, and cannot legally enforce the payment of the "penalty" as such.

Penal interest.

7. The question whether a particular stipulation is or is not "penal" is to be determined by the Court on the facts of each case. It has been held generally, that a stipulation which imposes a higher rate of interest, in the event of a breach of the contract with retrospective effect from the date of contract is "penal" (c.f. 99. P.R. 1894).

Effect of
Usurious Loans
Act.

8. The Usurious Loans Act 1918, gives wider powers to Courts to interfere on equitable grounds in order to do justice between the parties when it is found that interest is excessive or that the transaction was, as between the parties thereto, substantially unfair (vide section 3 of the Act). In such cases the Act empowers the Court to reopen past transactions and relieve the debtor from liability in respect of excessive interest, etc. Attention is invited in this connection to I.L.R. VIII Lah. 205. The provisions of the Act should be carefully studied and used in proper cases coming within its purview.

Changes made
by Punjab
Relief of
Indebtedness
Act.

9. The changes made in the provisions of this Act by section 5 of the Punjab Relief of Indebtedness Act, VII of 1934, as amended by Punjab Act XII of 1940, deserve attention.

(i) The existence of two conditions was formerly essential before the provisions of the Usurious Loans Act could apply. It was necessary that both

(a) the rate of interest be excessive, and

(b) the transaction be substantially unfair as between the parties.

The word "and" has now been changed to "or" and the Court can give relief even if one of these conditions only is fulfilled.

(ii) The Courts, according to the wording of the Usurious Loans Act "may" exercise all or any of the powers specified in that Act. This word "May" has now become "shall" and it is obligatory for the Court to exercise these powers for giving relief in fit cases.

(iii) The Punjab Act has also now prescribed a maximum rate of interest beyond which "the Court shall deem interest to be excessive."

The maximum limit is:—

(a) For secured loans, seven and a half per cent per annum simple interest or two per cent over the Bank rate, whichever is higher.

(b) For unsecured loans, twelve and half per cent per annum simple interest.

10. The rule of Damdupat has been made applicable to the Punjab by Section 30 of the Punjab Relief of Indebtedness Act, 1934 in respect of all 'debts' as defined in section 7 of the Act. If the loan was advanced after the commencement* of the Act, no Court shall pass or execute a decree or give effect to an award in respect of such debt for a larger sum than twice the amount of the sum found by the Court to have been actually advanced less any amount already received by the Creditor.

Rule of
Damdupat.

*Note.—The Act came into force on the 19th April, 1935, vide Home Secretary's letter No, 15639-Judl. dated the 18th April, 1935.

11. It is important to note in this connection the provisions of the Punjab Regulation of Accounts Act, 1930. The accounts prescribed by this Act have to be maintained in such a way as to show the items due by way of interest as separate and distinct from the principal sum.

Interest should be
shown separately in
accounts.

12. It is further provided that the creditor shall not in the absence of agreement include any items due by way of interest, in the principal sum. The principal and interest are to be shown separately in the opening balance of each new six-monthly account.

Interest not to be
included in
principal.

13. If the Court finds that the accounts have not been maintained as prescribed, it must disallow the whole,

Interest
disallowed if
accounts not
maintained.

or a portion of the interest found due as it thinks fit, and also disallow costs.

Interest disallowed if accounts not furnished.

14.If the accounts have been maintained but not furnished to the debtor as prescribed, the Court must disallow interest for the whole period for which the creditor failed to furnish the accounts unless the creditor actually furnished the accounts after the time prescribed and can satisfy the Court that he had some sufficient casue for not furnishing them earlier.

Interest permissible in case of certificate by Debt conciliation Board.

15.It should also be noted that where any creditor sues in a civil court for the recovery of debt in respect of which a Debt Conciliation Board has granted a certificate under section 20 (1) of the Punjab Relief of indebteiness Act, the Court cannot allow and costs or interest after the date of certification in excess of simple interest at six per centum per annum on the amount due on the date of such certificate.

Future interest not allowed on sums deposited in Courts.

16.Attention is drawn to section 31 of the Punjab Relief of Indebtedness Act which lays down that the debtor may deposit in court money in full or part payment of his debts and interest shall cease to run on the s um so deposited from the date of deposit.