

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1722,  
and ended May 11th, 1723.

1723.

WILLIAM KEITH, LIEUTENANT GOVERNOR,

### CHAPTER CCLXII. \*

*An ACT for reducing the interest of money from eight to six per cent. per annum.*

Six per cent.  
to be lawful  
interest of  
money, &c.

*BE it enacted*, That no person shall, directly nor indirectly, for any bonds or contracts to be made after the publication of this act, take for the loan or use of money, or any other commodities, above the value of six pounds for the forbearance of one hundred pounds, or the value thereof, for one year, and so proportionably for a greater or lesser sum, any law, custom or usage, to the contrary notwithstanding.

Persons tak-  
ing more  
than six per  
cent. forfeit  
the money  
or things  
lent.

*II. And be it further enacted*, That if any person or persons whatsoever do or shall, after the publication of this act, receive or take more than six pounds *per cent. per annum*, on any such bond or contract as aforesaid, upon conviction thereof, the person or persons so offending, shall forfeit the money and other things lent, one half thereof to the Governor, for the support of government, and the other half to the person who shall sue for the same, by action of debt, bill, plaint, or information, in any court of record within this province, wherein no essoin, protection, or wager of law, or any more than one imparlance, shall be allowed.

Passed 2d March, 1723.—Recorded A. vol. II. page 236. (s)

(\*) Interest was refused pending a writ of error; but in the case of promissory notes, where a day certain is fixed for payment, interest is allowed from the day of payment; and where no day is fixed, it is payable from the

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time of demand. 1 Dallas, 52. Where money was received, as well as paid, in a mistake, and neither fraud or surprise can be imputed to either party, no interest will be allowed. *Ibid.*

The usurious contract was stated in several counts of the declaration to be with two persons jointly, as partners, but the proof was of a note given by one of them alone, and the variance was held to be fatal. 1 Dallas, 216.

New notes, including the usurious interest, were given for others, which had become due, without the actual payment of any money; but it was ruled by the court, that the second notes were a satisfaction of the first, and that the usury was complete, on the defendant's accepting them, as thereby the original contract between the parties was extinguished. 1 Dallas, 216.

A fair purchase may be made of a bond or note, even at twenty or thirty per cent. discount, without incurring the danger of usury. 1 Dallas, 217. For the difference between the purchase of a note, and an usurious loan, see *ibid.* page 216. 2 Dallas, 92.

Interest is not payable upon an open account between two citizens, without notice that it would be charged, or an agreement to pay it. 1 Dallas, 265. There are only three cases in which interest can be allowed on an open account; 1st, where it is payable by the express agreement of the parties; 2dly, where it is payable by a general usage, as in the trade between England and America; and 3dly, where there has been a vexatious and unreasonable delay of payment. 1 Dallas, 315.

Where one man has received money belonging to another, and has retained it without the consent of the owner, it is to be considered as money lent, and ought to carry interest. 1 Dallas, 349.

For the mode of computing the interest on a bond, where partial payments have been made, see 1 Dallas, 124, 378. (*Note to former edition.*)

In an action on a promissory note, the defendant pleaded the act in the text; and thereupon the following points were ruled by the court, in their charge to the jury.

1st. That where more than legal interest was included in any note, bond, or specialty; the whole amount could not be sued for and recovered: but the plaintiff was entitled, in such case, to a verdict for the just principal, and lawful interest.

2d. That if a man directly, or indirectly, actually receives more than six per cent. he incurs a forfeiture equal to the money, &c. lent; but if an action is brought to recover the amount of the

loan, a verdict ought not to be given for the defendant, as that would, in effect, be putting the money into his pocket, instead of working a forfeiture to the commonwealth. *Wycoff v. Longhead.* 2 Dallas, 92.

Bond, conditioned for the payment of £. 740, in seven years, and the interest thereon yearly, and every year; and an agreement indorsed thereon, by the obligor, that if any part of the interest should remain unpaid for the space of three months, to allow the obligee lawful interest for the same, from the end of the said three months until paid; the agreement may be enforced, and is not usurious.

*Pawling's executors v. Pawling's administrators.* Franklin, (*Yeates & Smith, J.*) Circuit Court, on great deliberation. MSS. Reports.

*Miscellaneous notes respecting interest.* (See ante. pa. 7, chap. 48, sect. 2, and the concluding part of the note thereto, pa. 9, 10.)

Where one pays money properly chargeable against the State, he is entitled to interest from the time of payment; but in common cases, a demand must be made on the Legislature, before they can be charged with interest. MSS. Reports, Sup. Court. And see *Respublica v. Mitchell*, 2 Dallas, 101. Which was an appeal from the settlement of *Mitchell's* account by the Comptroller General; and the cause had been referred by consent. The referees reported a sum due to *Mitchell*; but had omitted to allow him interest; which being stated to the Court, it was resolved, that the State was liable to pay interest as well as individuals; and that the Court would add it, under the circumstances of the case, although the referees had not expressly given it in their report.

A British subject not entitled to interest during the war. 2 Dallas, 102-3-4, 133. And see Mr. *Jefferson's* celebrated reply to Mr. *Hammond*. *Ibid.* (in note) 104.

When trustees shall be chargeable with interest; see 2 Dallas, 182-3. 1 Binney, 194.

A trustee is entitled to interest for advances made to supply the deficiency of the trust fund, although the interest and advances nearly absorb the equitable interest. 1 Binney, 488.

In case for goods sold; it was proved, that at the time of the sale, the defendant was informed, that it was the course of the trade, to give six months credit, or, if cash was paid, to discount five per cent. but that punctuality, and not interest, was the object of the plaintiffs.

*By the Court.* The established course

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of the plaintiff's trade is proved; and also the knowledge of the defendant. It appears, therefore, to be a part of their contract, that interest should commence, at the expiration of six months credit. *Knox v. Jones*. 2 Dallas, 193.

And in the case of *Pawling v. Pawling*, before cited, one of the Judges, in delivering his opinion, says, "it is now the law, founded on reason and justice, and conducive to fair dealing, and punctual payment, that where money is made payable by an agreement between the parties, and a time given for the payment of it, this is a contract to pay interest from the day, in case of failure of payment at the day. 2 Burr. 1088. 3 Wils. 127. Or in case of a long delay, under vexatious or oppressive circumstances.

And it is now a settled rule, that interest is recoverable for money lent and advanced; and this rule applies to loans made when the rule of law was held to be otherwise. 1 Binney, 488.

Where the condition of a bond is for the payment of interest annually, and the principal at a distant day, the interest may be recovered before the principal is due, in an action of debt, on the bond. But no interest can be recovered on such interest. 1 Binney, 165.

Interest must be paid according to the *lex loci* where the debt was contracted. MSS. Reports, Supreme Court.

It is by no means a matter of course that rent in arrear should pay interest; and unless unreasonable and vexatious delay has occurred in withholding rents, interest is not properly chargeable thereon. *Smith's executor v. Montgomery*. Cumberland, April, *Nisi Prius*, 1796, before *Shippen* and *Tates*, Justices. MSS Reports.

So, in *Albright v. Pickle*, Northumberland, Circuit Court, October, 1805. It was held by the Court, "That it is not the usage in this State to allow interest on rent; but from the time the landlord distrains, or sues for it, it is customary for the jury to make such allowance. The practice is right and proper in itself. Where one unreasonably and vexatiously delays another from the recovery of his just debt, the least compensation he can make is to pay interest for the delay he has thus given.

The jury may give interest beyond the penalty of a bond for the performance of a contract. *Perit v. Wallis*. 2 Dallas, 252.

Interest on judgments—see the note to chap. 48, ante. pa. 7.

Judgment given merely as a security. Interest ought not to be calculated on the amount of the judgment, (which included principal and interest,) but only on the sum originally due. 3 Dallas, 506.

## CHAPTER \* CCLXIII.

*An ACT to rectify proceedings upon attachments. (t)*

WHEREAS, in the execution of a law of this province, entitled *An act about attachments*, divers irregularities and fraudulent practices have happened, to the injury of such creditors as were willing to accept of an equal share of their debtors effects, in proportion to their demands, and not have them wasted in needless prosecutions, contrary to the true design of the said act: Therefore, to prevent such practice for the future, *Be it enacted*, That from henceforth no writ or writs of attachment shall issue forth or be granted, before the person or persons requesting the same, or some other credible person or persons for him or them, shall, upon oath or affirmation, declare, that the defendant in such attachment is indebted to the plaintiff therein named in the sum of forty shillings,

Writs of attachment, when to be issued.

(t) For a general reference to the laws and adjudications respecting foreign and domestic attachments, see ante. chap. 142, and the note there subjoined. See, particularly, Dallas's Reports, pages 152, 450.

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