THE LAW OF MONEY-LENDING, PAST AND PRESENT: BEING A SHORT HISTORY OF THE USURY LAWS IN ENGLAND, FOLLOWED BY A TREATISE UPON THE MONEY-LENDERS ACT, 1900

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The Money-Lenders Act, 1900.

BY

JOSEPH BRIDGES MATTHEWS,

OF THE MIDDLE TEMPLE AND OF THE OXFORD CIRCUIT, BARRISTER-AT-LAW.

"The true spirit of usury lies in taking an unjust and unreasonable advantage of one's fellow creatures."—BURNETT, J., *Earl of Chesterfield* v. *Janssen*, 2 Ves. Sen. 141.

"The greediness of gain is the only principle on which a stranger can be induced to furnish a stranger."—*Ib.*

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1906.

OF USURY.

Usury is conceded on account of the hardness of man's heart: For since there must be borrowing and lending, and men are so hard of heart, as they will not lend freely, usury must be permitted. It is good to set before us the incommodities and commodities of usury; that the good may be either weighed out, or culled out; and warily to provide, that while we make forth to that which is better, we meet not with that which is worse. The discommodity of usuries are . . . that it makes poor merchants. For as a farmer cannot husband his ground so well, if he sit at a great rent: so the merchant cannot drive his trade so well if he sit at great usury. . . . It is the canker and ruin of many men's estates.

The commodities of usury are . . . First, that howsoever usury in some respect hindereth merchandising, yet in some other it advanceth it. . . . The second is that, were it not for this easie borrowing upon interest, men's necessities would draw upon them a most sudden undoing: in that they would be forced to sell their meanes (be it land or goods) far under foot: and so, whereas usury doth but gnaw upon them, bad markets would swallow them up. . . . The third and last is that it is a vanitie to conceive that there would be ordinary borrowing without profit: and it is impossible to conceive the number of inconveniences that will ensue if borrowing be cramped. . . . It appeares by the ballance, of commodities and incommodities of usury, two things are to be reconciled:—The one, THAT THE TOOTH OF USURY BE GRINDED, THAT IT BITE NOT TOO MUCH: *The other, that there be left open a meanes to invite moneyed men to lend to the merchants, for the continuing and quickening of trade.*

BACON'S ESSAY, "OF USURY."

PREFACE.

THE signs of the times, as I interpret them, appear to indicate that it is not improbable that at no very distant time the usury laws may to some extent be re-enacted, possibly with reference to loans of money on personal security of less than a certain amount, or to members of the working classes, who, despite the general spread of education amongst the people, appear to be regarded by Parliament as not capable of managing their own affairs unless hedged round with all sorts of protective legislation.

Partly in view of this, and partly because it has occurred to me that the usury laws, although long since repealed, may, as a branch of legal history, be not altogether devoid of interest to the profession, if presented in a readable form, I have devoted the first part of this book to a short sketch of the History of Usury in England, which, however, does not profess to be exhaustive of the subject. My material has been merely such as my own scantily furnished bookshelves have afforded, and I can only hope that an indulgent profession will excuse the shortcomings which must necessarily characterise an essay written under such conditions.

Part II. deals with the Money-lenders Act, 1900, and comprises all decided cases reported in the Law Reports, the Law Journal Reports, the Law Times Reports, and the Times Law Reports, down to the time of the manuscript going to press (January, 1906). References will also be found to a few cases reported only in *The Times* newspaper, and also to one or two unreported cases which have come under the writer's observation. In the references to cases given in the notes only one report is mentioned. References to other reports are given in the Table of Cases.

In the Appendices will be found a reprint of *The Times* report of the considered judgment of Mr. Justice CHANNELL in *Carringtons, Ld.* v. *Smith*, for permission to print which I am greatly indebted to the proprietor of that newspaper, and also the judgments of the Court of Appeal in *Samuel* v. *Burton*, and of Mr. Justice DARLING in *Samuel* v. *Mills*, printed from transcripts of shorthand notes very kindly placed at my disposal by gentlemen who were professionally engaged as solicitors in those cases.

As for the Act itself I do not hold myself competent to subject it to criticism from the point of view of public policy; but from the point of view of a mere lawyer I am moved to offer two criticisms upon it. These are: Firstly, that the terms "excessive" and "harsh and unconscionable" are terms of vague import which render

the equal administration of the Act in the highest degree difficult, if not impossible; and, secondly, that if a loan transaction is of such a character that it ought, in justice to the borrower, to be set aside, there cannot be any justification for differentiating between lenders who are "money-lenders" as defined by the Act and lenders who are not within such definition. It is unfortunate that Judges should be called upon to review the transactions of mankind without being furnished by the Act which confers the jurisdiction with a more clear and certain standard of decision than the Money-lenders Act affords. The use of such a word as "excessive" is incapable of anything approaching precise definition. This word can only be given effect to by drawing a line which must of necessity be purely arbitrary, and it is hopeless to expect anything like uniformity of view or of practice among the Judges upon such a question. It involves no disrespect to any of the learned Judges to apply to them in this connection Selden's famous gibe at the Chancellors: "Equity is a roguish thing: for law we have a measure: we know what to trust to. Equity is according to the conscience of him that is Chancellor: and as that is larger or narrower so is equity. 'Tis all one, as if they should make his foot the standard for the measure we call a foot, 'the Chancellor's foot'; what an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an