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USURY.

THE commodities and incommodities of usury have been fruitful themes of discussion among civilized nations time out of mind; and to-day, when unlimited wealth flows into the coffers of our merchants and bankers, the subject is necessarily exercising the minds of commercial men more than ever.

Originally, usury meant the taking of any money for its use; now, if money be paid for the use of money according to law, it is denominated *interest;* if more be taken it is *usury.*

Almost every nation has fixed by law a rate of interest for the use of money, upon the principle that it is easy for the lender to oppress the borrower.

The laws of Great Britain regulating interest have been quite various and significant. During the reign of Henry VIII., who became king in 1509, the rate of interest was legalized at *ten per cent.*, and so continued, with but slight change, till James I. came to the throne (1603), when it was reduced to *eight per cent.* While England was a commonwealth it was only six per cent., which rate was re-enacted under 12 Charles II. (1661). By statute 12 Anne (September 29th, 1714), interest was again reduced to five per cent. From this statute of Anne, which provides that no person shall take, directly or indirectly, upon any contract, or loan of moneys, wares, or merchandise, above the value of 5*l.* in the hundred for a year, and that any person taking more than

that rate shall forfeit and lose treble value of the moneys and other things so lent,—the states of our Federal Union have carved their varied usury laws.

By Act 3 and 4 William IV., were exempted from the operation of usury, all bills or notes having "more than three months to run." Several modifications have occurred during the reign of Victoria, and by statute 1 Vict. 80, and 2 Vict. 37 (same as the statute of 7 William IV.), bills and notes are not affected by usury laws, if payable at or within twelve months, at legal interest, and not secured by mortgage, nor any contract for the loan or forbearance of money, above the sum of 10*l.* shall be affected by the usury law: *Pennell* vs. *Attenborough*, 4 Q. B. 867. And by statute 17 & 18 Vict. c. 90, all laws then in force upon usury were repealed.

The Sexviri of Athens were commissioners, who did watch to discern what laws waxed improper for the times, and what new law did in any branch cross a former one, and so *ex officio* propounded their repeal, upon the maxim *Salus populi suprema lex*. In the absence of this system with us, it devolves upon members of the legal profession more particularly to discern the real wants of society and the needs of commerce. While there should be no blind adherence to former rules, it is still necessary to exercise thought, foresight, and discretion, lest in a reform we "root up also the wheat."

As opinion obtains in many states, that money, being only worth what it will bring, should be regulated by voluntary contract of parties, subject to mercantile usage governing contracts of merchandise,—in fine, that the "tooth of usury" ought to be blunted, and as this prevailing sentiment has exerted, and must continue to exert, no inconsiderable influence upon adjudications, we purpose to devote some space to the discussion and review of two principal propositions: *First*, The present status of usury in the United States; and *Second*, The practicability of a reformation in the usury law of New York.

I. Strictly speaking, there are three requisites to constitute usury: 1. A loan, either express or implied; 2. An understanding that the money lent shall or may be returned; 3. That a greater rate of interest than is allowed by the statute shall be paid. It is clearly settled, also, that there must be an unlawful or corrupt intent confessed or proved, before a transaction will be pronounced usurious,—this is an important ingredient to constitute the offence.

We present below, in a condensed form, a table showing the lawful rate of interest of the several states: what states allow a greater interest on special contract, with a glance at their statutes.[1]

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[1] In MAINE, lawful interest is six per cent.; if more be paid it may be recovered back within one year; and usury does not attach to the "letting of cattle," or to a *bonâ fide* holder of a note: 32 Me. R. 17.

NEW HAMPSHIRE, six per cent. is lawful, and usury forfeits three times the interest.

VERMONT, six per cent.; excess recoverable back. Seven per cent. may be taken on railroad bonds: 23 Vt. R. 739; 22 Id. 581.

MASSACHUSETTS, six per cent.; forfeits three times the unlawful interest. Stat. Ch. 53, §§. 4 and 5, which may be recovered by an action of contract or suit in equity if prosecuted "within two years" from time of payment: 11 Met. R. 526; 12 Cush. R. 156; 4 Gray's R. 593.

RHODE ISLAND, six per cent.; excess recoverable.

CONNECTICUT, six per cent.; usury forfeits all interest.

NEW YORK, seven per cent.; forfeiture of contract.

NEW JERSEY, six per cent.; usury forfeits the contract. *Seven per cent.* may be charged in the counties of Hudson, Essex, Bergen, and Union, and also in the city of Patterson (in Passaic county), and township of Woodbridge, within the bounds of Rahway: Laws 1858, Pam. 475.

PENNSYLVANIA, six per cent. If more be reserved or contracted for, the debtor is not required to pay the excess over the legal rate, and may deduct such excess from the amount of any such debt; and where any borrower or debtor shall have voluntarily paid the whole debt with the unlawful interest, he may sustain an action to recover back such excess, if commenced within "six months after such payment." Holders of negotiable paper taken *bonâ fide* in the usual course of business, are not affected by this Act: See Act 28th May, 1858. By Act 21st May, 1857, § 1, P. L. 639, *seven per cent.* may be contracted for by commission merchants, and agents of non-residents.

DELAWARE, six per cent. is lawful; excess forfeits the contract, and one-half goes to the state.

MARYLAND, six per cent.; excess recoverable. The penalty in this state is a matter of some doubt, owing to an opinion by the late C. J. TANEY.

VIRGINIA, six per cent.; unlawful contract for more interest renders the contract void. Excess of interest may be recovered back within "one year:" 5 Leigh R. 478.

NORTH CAROLINA, six per cent.; penalty same as Virginia.

SOUTH CAROLINA, seven per cent.; usury forfeits all interest.

GEORGIA, seven per cent.; penalty same as South Carolina.

ALABAMA, eight per cent.; penalty same as South Carolina.

ARKANSAS, six per cent. All bonds, notes, assurances are void if more be reserved. *Ten per cent.* is allowed on special contract. Judgments bear same interest as contract: Henry *vs.* Ward, 4 Ark. R. 150.

FLORIDA, *eight per cent.* is lawful, if expressed; if not expressed, only *six per cent.* can be recovered. Contract void for usury.

ILLINOIS, six per cent. By Act of January, 1857, usury forfeits the whole

1. It has been held in New York, see 5 Denio 236, that an usurious contract is incapable of ratification; but, said BALCOM, J., in *Smith* vs. *Marvin*, 25 How. Pr. R. 326, the assertion is not strictly true, for when a usurious loan is "voluntarily paid," the contract is certainly ratified, except as to the unlawful interest, which may be recovered back. Also, in the case of *Dix* vs. *Van Wyck*, 2 Hill R. 522, BRONSON, J., delivering the opinion of the court, observed, "Contracts affected by usury are not so utterly void, but that they may be ratified." Thus it follows, if a borrower repay a loan which he might have avoided for usury, he cannot recover the money back again; though by the New York statute he may recover the excess which has been paid over lawful interest, within one year, as in Maine and Virginia; or at common law at any time within six years.

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interest and costs: 14 Gilm. 154; 15 id. 406. The banks of this state may charge seven per cent., and ten per cent. is allowed on special contract between individuals. A contract made in Illinois, but payable in a sister state or foreign country, must bear interest at the rate recognised by their laws: 4 Gilm. R. 521; 17 Ill. R. 821.

INDIANA, six per cent. The penalty for usury is the forfeiture of five times the amount of the whole interest.

IOWA, six per cent.; usury forfeits whole interest. Ten per cent. may be taken on special contract. By Act of January, 1863, the banks can take only eight per cent., formerly ten.

KENTUCKY, six per cent.; usury forfeits all interest.

LOUISIANA, five per cent.; forfeiture of all the interest,—and eight per cent. is allowed when specified in writing.

MICHIGAN, seven per cent. A contract in writing is legal for ten per cent.; if more be stipulated for, the plaintiff can only recover the principal and simple interest: Wal. Ch. R. 529.

MISSISSIPPI, six per cent.; forfeiture of the whole interest. Eight per cent. allowed if by contract in writing.

MISSOURI, six per cent. The law is the same as that of Mississippi.

OHIO, six per cent.; same law as Mississippi.

TENNESSEE, six per cent. Usury forfeits the whole interest, and the party is liable to indictment for misdemeanor.

TEXAS, eight per cent.; usury forfeits all interest. Twelve per cent. may be collected on special contract: 2 Tex. R. 238. Judgments bear eight per cent.

WISCONSIN, seven per cent.; forfeiture of the excess. Twelve per cent. allowed by contract in writing; if a greater rate is reserved in a bond, note, or assurance, no interest can be recovered.

CALIFORNIA, ten per cent.; no penalty

OREGON, ten per cent.; no penalty.

KANSAS, no penalty.

MINNESOTA, seven per cent.; no penalty. Any rate of interest specified in writing is legal.

In Massachusetts, it is held, where there has been no payment, demand, or adjustment, that in ascertaining the amount due on a note, made payable with interest annually, simple interest only can be computed: *Hastings* vs. *Wiswall*, 8 Mass. 455; *Ferry* vs. *Ferry*, 2 Cush. 98; *Von Hemert* vs. *Porter*, 11 Met. 210. The same rule has been followed in Maine: *Doe* vs. *Warren*, 7 Greenl. 48.

What constitutes a voluntary payment of a loan? In the case of *Mumford* vs. *Am. Life Ins. and Trust Co.*, 4 Comst. R. 463, it was held, that the payment of a usurious loan was not voluntary, if obtained by the lender out of collateral securities in his hands without the concurrence of the borrower.

2. *Of contingent interest.* In ordinary transactions, if the gain to the lender, beyond legal interest, is made dependent upon the will of the borrower, as where he may discharge himself by a punctual payment of the principal,—as if I covenant to pay one thousand dollars one year hence, and if I do not then pay it, to pay five hundred dollars, or fifty per cent., being in the nature of a penalty for non-performance, it would not be usurious; as where there is no loan or forbearance there can be no usury,—and both parties must intend to provide for the payment of more than legal interest.

Thus, the Supreme Court of the United States held, in the recent case of *Spain* vs. *Hamilton's Admin.*, 1 Wall. 604, that, where the promise to pay a sum above legal interest "depends upon a contingency, and not upon any happening of a certain event, the loan is not usurious." Nor will usurious interest be inferred from a paper which, while referring to payment of a sum above the lawful interest, is "uncertain and so curious," that intentional bad device cannot be affirmed.

It is clearly understood, that the essence of the contract of *bottomry* and *respondentia*, is, that the lender runs the risk, and is thus entitled to the marine interest. This mercantile rule is sanctioned either by usage or law in almost every country: Ord on Usury 24 to 48; *Thorndike* vs. *Stone*, 11 Pick. 183.

There is a distinction made between such cases and those of personal risk of the debtors being able to pay; if anything is paid for such risk it is usurious.

3. *What interest vitiates a contract.* If interest be paid upon miscalculation, it does not render the contract usurious; but if taken through ignorance of law it would be, upon the familiar maxim, *Ignorantia juris non excusat.*

It is not material in what form the contract is made, as the courts necessarily inquire into the real nature of the transaction, and no shift or device can protect it. A novel and interesting case was recently tried in Massachusetts, as to the liability of an executor who received unlawful interest innocently, which was reserved in a note due to his testator; and it was held that an action would not lie against the executor personally to recover back "threefold" the amount of usury so paid, although he be described in the writ as executor: *Heath* vs. *Cook*, 7 Allen R. 59.

The question whether interest calculated by tables, upon the principle of 360 days being a year, is usurious, has been somewhat mooted. The New York courts have held that usury would attach: *N. Y. Firemen's Ins. Co.* vs. *Ely*, 2 Cow. 678; *Utica Ins. Co.* vs. *Tillman*, 1 Wend. 555; 8 Cowen 398. In Massachusetts, however, they have decided otherwise: *Agricultural Bank* vs. *Bissell*, 12 Pick. 586; and also in Vermont: *St. Albans' Bank* vs. *Scott*, 1 Vt. R. 426; *State Bank* vs. *Cowan*, 8 Leigh. 253. Professor Parsons, in his excellent work on Contracts, thinks this latter the better opinion. In Ohio, Iowa, and some of the other states, Rowlett's tables are authorized by statute.

New York and Massachusetts courts hold, that the taking of interest in advance by a bank, upon discounting notes, is not usurious; and the same opinion obtains in most states: *Mowen* vs. *Hymers*, 12 N. Y. 230.

The rule for casting interest where partial payments have been made, is given in the case of *The State of Connecticut* vs. *Johnson*, 1 Johns. Ch. R. 17, by Chancellor KENT, as follows:— "Apply the payment in the first place to the discharge of the interest then due. If the payment exceeds the interest, the surplus goes toward discharging the principal, and the subsequent interest is to be computed on the balance of principal remaining due. If the payments be less than the interest, the surplus of interest must not be taken to augment the principal; but interest continues on the former principal until the period when the payments, taken together, exceed the interest due, and then the surplus is to be applied toward discharging the principal; and interest is to be computed on the balance of principal as aforesaid." The renowned Judge SHAW, of Massachusetts, also declared this to be the proper rule in computing interest on partial payments.

In New York and the New England states it has been generally held, that new securities for old ones which are tainted

with usury, are void with the old ones, and subject to the same defence.

But in Arkansas, where the plaintiff held several notes against the defendant, by agreement with him calculated interest due on each note and added it to the principal, took a new note for the whole sum bearing ten per cent. interest, it was held not usurious: 1 Eng. R. 463.

Whether a note valid in its inception, but usuriously transferred by the payee or indorsee, is valid against the maker, has been variously decided. Lord KENYON once held that such holder would be entitled to recover: *Parr* vs. *Eliason*, 1 East 92; and in the case of *Campbell* vs. *Read*, Martin & Yerg. R. 392, it was decided, that a note thus usuriously indorsed is valid as against the maker, in the hands of a holder *in good faith*. By Statute of Michigan, a holder of a bill or note in good faith, for valuable consideration, without notice and before maturity, shall be entitled to recover as if such usury had not been alleged and proved. This is a wise and equitable provision, working great benefit. New York repealed a similar provision by the amendment of 1837. There are but few cases in which a bill or note is void in the hands of an innocent indorsee for valuable consideration; such cases are, when the consideration in the instrument is money won at play, or it be given for a usurious debt. Notes given by a corporation, in violation of a statute, are void, even in the hands of an innocent holder: *Root* vs. *Godard*, 3 McLean 102. In Mississippi a note was held to be void, where the signature was procured by fraudulent representations: *Dunn* vs. *Smith*, 12 S. & M. 602. The payee of a note may transfer it at a discount exceeding the legal rate of interest; but where an indorser buys a note (valid in its inception), he can recover against the indorser only the sum paid with interest, though the full amount may be recovered against the maker: 15 Johns. R. 49; 4 Hill 472. If a usurious note be given up and cancelled, on the promise of the debtor to pay the original debt, with lawful interest, such promise would be binding; or if, when the interest is due and payable, or constitutes a then subsisting debt, the debtor ask to retain it, and agrees to pay interest upon the amount at the legal rate, the agreement is not usurious. Though a note be valid between the original parties, yet the indorser cannot sue the maker, if the indorsement was on an usurious consideration: Story on Bills 189; 1 Peters R. 37.

4. *Of usury in parties procuring loans.* Whether a bonus

or premium is in the nature of a gift or promise at the time of the transaction, is a question of fact; if the undertaking assumes distinctness enough to become a contract for additional interest, the penalties of the usury law would attach.

A creditor in loaning money is not allowed to receive a compensation as for services in procuring the loan, nor make a condition of a loan that the borrower shall purchase a certain article; and whether the contracting parties sought to evade the statute is a question for the jury: Cowen's Treat. 63; 1 Johns Ch. 6.

In New York city, a very large business is done by brokers in procuring money loans, and the question often arises what transactions are usurious. It is clear, that if a borrower pays a broker commission for his services in effecting a loan, in addition to paying lawful interest to the lender, it does not render the loan usurious, provided, the broker acts as agent merely and is not the person making the loan, and the lender receives no part of the commission: *Condit* vs. *Baldwin*, 21 N. Y. 219; 21 Barb. 181; On the other hand, if the loan was in fact made by the person pretending to act as broker, his receiving a commission beyond simple interest, would constitute usury.

If a party guarantee or indorse paper for two months at two and a half per cent., it is not usurious (where there is no loan); for a man may sell his credit as well as goods and lands, dealing fairly, at any price he can get: *Reed* vs. *Smith*, 9 Cow. 647; *Moore* vs. *Howland*, 4 Denio 264; 1 N. Y. Legal Obs. 107.

If A. loans money to B. on simple interest, and on paying the same, B. expresses gratitude by a gift to A., either of money or goods, it would not be usurious; but if it be given in accordance with a previous promise, usury would attach.

The weight of authority recognises the principle, that none but parties or privies to an usurious contract can take advantage of it; and to avoid a security it must be shown that the agreement was usurious from its origin: *Nichols* vs. *Fearson*, 7 Peters R. 103; *Rice* vs. *Welling*, 5 Wend. 597; *Gardner* vs. *Flagg*, 8 Mass. 101.

Usury, though commonly an unconsionable defence, is a legal one, and if proved, the courts must sustain it; if impolitic, the legislature alone can annul or repeal it. It is a defence which is not encouraged by the New York courts; and since the enactment of Laws of 1850, neither a corporation nor a receiver of one can maintain an action to recover back usurious premiums paid by it.

II. Having endeavored above to unfold and illustrate the practical bearing of usury in most of the states, we proceed now to review the incommodities of usury and the desirability or practicability of a reform in the law of New York.

1. We are told that the Mosaic law prohibited the Jews from taking interest: which, however, is proved to have been more a political than a moral precept, for it only prohibited them from taking usury of their own race, expressly allowing them to exact it of "strangers:" See Deut. xxiii. 20; Exod. xxii. 25; Prov. xxviii. 8; Lev. xxx. 36; Ezek. xxii. 12. Which is conclusive, from this standpoint, that the taking of usury, or a reward for the use—for so the word signifies—is not *malum in se.*

Over-scrupulous writers have often drawn arguments from this source, and from the fanciful theories of Aristotle, Domat, and Pothier, that, as money is naturally barren, to make it breed money is "preposterous."

Against the taking of usury, some theorists have held that it were a "pity the devil should have God's part, which is the tithe;" that the usurer is the greatest Sabbath-breaker, because his plough goeth every Sabbath; and that he is the drone Virgil speaketh of, *Ignavum fucos pecus a præsepibus arcent:* Virg. G. 4, 168; that usurers should have "orange-tawny bonnets," because they do Judaize.

The believers in this school have held (and certainly upon untenable ground), that, in case of cross notes, *i. e.*, where A. gives his note to B., and B. gives his note to A., but A.'s credit is much better than B.'s, and it is a part of the bargain that the notes from B. to A. shall be greater than the notes from A. to B., that such a transaction is usurious, when in fact it is merely a sale of a man's credit.

The canon law likewise prohibited the taking of any interest for money loaned, pronouncing it a "mortal sin." It is not surprising, under such strenuousness, that the taking of interest should have been looked upon with profound jealousy, and as writers have said, with "horror and contempt,"—and that this delusion should have augmented. In that age, when nothing was considered honorable but the plough and the sword; when money, as such, was comparatively a secondary consideration,—not a merchantable commodity as now,—it may be readily imagined how thoroughly the popular mind became imbued with this sentiment.

There appears to be no foundation in natural or revealed religion, inhibiting a man from realizing a profit on his money as well as articles of merchandise, goods, or lands; or if Doe were to let his horse to Roe to go a journey, it is no more than just that Doe should receive an equivalent for such benefit; and within the purview of the statute, a compensation in such cases, greater than the rate of seven per cent., is a *hiring*: Ord on Usury 28; 4 Wend. R. 679.

2. The plea of usury, like that of infancy, has been generally looked upon with disfavor by New York jurists, and a defendant setting it up will be held to strict rules, both in the mode of pleading and in the substance of the defence itself.

SAVAGE, C. J., in the case of *Martin* vs. *Feeter*, Ord on Usury; 8 Wend. R. 533; 2 Kernan R. 223,[1] observes: "Usury is a defence which must be strictly proved, and the courts will not presume a state of facts to sustain that defence, when the instrument is consistent with correct dealing." The law will presume nothing in favor of this defence, but rather against it: *Bailey* vs. *Lane*, 21 How. Pr., 13 Abb. 354.

To establish a just medium, so that moneyed men will be induced to lend their wealth, and thereby quicken trade, has been considered by practical, far-sighted men as the safer and more politic rule, especially in governments whose organic law partakes either of the republican or democratic form.

In the Athenian Republic, Solon is said to have permitted parties to regulate the rate of interest by contract; but De Pauw observes, that usage finally fixed the rate at twelve per cent. in certain cases, and eighteen per cent. in others. Grotius believed that a "reasonable interest" ought to be allowed; as to what constitutes a reasonable rate of interest, must of necessity be determined and regulated by circumstances,—the peculiar state of society, commerce, and country, and the manner and kind of business transacted; for what would suit the demands of the people of China, would not meet with favor in England, neither will the rate of interest adapted to an inland state or city satisfy the people of a seaport city.

The late Henry Thomas Buckle (who was one of England's brightest intellects), in descanting upon Aristotle,—whom he

[1] Usury must be specially pleaded in clear and precise terms, in all cases: Scott *vs.* Johnson, 5 Bosw. 213.

considered little inferior to Plato in depth, and much his superior in comprehensiveness,—and of his purely speculative idea, that no one should give or receive interest for the use of money, remarks: "An idea, which, if it had been put into execution, would have produced the most mischievous results, *would have stopped the accumulation of wealth, and thereby have postponed for an indefinite period the civilization of the world.*"

Thus, upon Mr. Buckle's philosophy, the receiving a *reward for the use of money*, during the past few centuries, has not only not made the world more corrupt, but has produced a healthy zest in trade, yielding wealth and all the desirable elements of a true civilization.

Keeping in view the wants of commerce, the New York courts have invariably leaned toward the side of equity—frowning upon the plea of usury. And who can deny but that it is better for a people to have laws which will be administered with respect, and meet a ready acquiescence, than to have them evaded by the business community, and continually deprecated by the courts.

The New York statute (Vol. 3, tit. 3, §§ 1 and 2, 5 Cow. 144), rigorously provides that, no person or corporation shall, directly or indirectly, take or receive in money, goods, or things in action, or in any other way, any greater sum or greater value, for the loan or forbearance of any money, goods, or things in action, than seven dollars in the hundred for one year; and that the amount paid above that rate, may be recovered back if an action for the purpose be brought within *one year* after such payment or delivery. And that (as amended in 1837), "all bonds, bills, notes, assurances, conveyances; all other contracts of securities whatsoever (except bottomry and respondentia bonds and contracts), and all deposits of goods, or other things whatsoever, whereupon or whereby there shall be reserved or taken, or secured, or agreed to be reserved or taken, any greater sum or greater value for the loan or forbearance of any money, goods, or other things in action than is above prescribed (*i. e.*, at the rate of seven per cent. *per annum*), shall be void."[1]

[1] The Usury Act of 1787 was as follows: "That all bonds, bills, notes, contracts, and assurances whatsoever, and all deposits of goods, or other things whatsoever, for payment of any principal or money to be lent, or covenanted, or agreed to be paid, upon or for any usury, whereupon or whereby there shall be reserved, or taken, or secured, or agreed to be reserved or taken, above the sum of seven pounds in the hundred, shall be utterly void."

Prior to May 15th, 1837, the laws against usury had much relaxed; but by an Act of that date the rigor of this statutory prohibition was restored in its fullest force—usury is thereby made a penal offence. In 1850 (Laws of N. Y. Ch. 172), an Act was passed prohibiting corporations interposing the defence of usury in any case.

Fortunes are daily being made in Wall street, by money begetting money, despite this rigorous law; and no one rails on the man now-a-days who loans his money to best advantage, taking his chances of the breach of honor and law, nor is the matter even tauntingly cast up to such lender, as was the wont a few centuries ago, against which old Shylock is represented as having retorted.[1]

The disadvantages of this usury law of New York are apparent to every candid, thinking mind. Millions of dollars lie idle year after year in consequence. If the law were to be repealed or modified, who can doubt that there would be more merchants and greater thrift, as more capital would be employed in a thousand avenues, where now is nought but inactivity. For nothing can more promote thriftiness in every branch of trade than a perfect freedom to buy and sell.

The statute makes an exception in contracts of *bottomry* and *respondentia*, when in fact, in money loans the compensation received for the benefit, we submit, ought to be commensurate with the use and inconvenience or hazard incurred by the lender. There appears to be nothing in the nature of such contracts necessitating this sharp distinction. Some may hold, that prodigality would follow by greater facility in borrowing. It has never been so demonstrated by history; on the contrary, we submit (and against the position taken by Jeremy Bentham), that by restrictive laws in times of great emergency, or panic, money is largely enhanced, necessarily causing the pressure greater upon the distressed, compelling ruinous sacrifices of property, as in such times men will not lend at regular rates, and if more be stipulated for, would continually tremble under usury's fearful arm. Men have thus been ruined, rather than run the risk of violat-

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[1] ——"he rails
Even there where merchants most do congregate,
On me, my bargains, and my well-won thrift,
Which he calls interest."—MERCHANT OF VENICE, Act 1, sc. 3.

ing this law,—which perchance would lose for them both "itself and friend."

The prohibitory system thus aggravates the very evils which it is intended to mitigate, making often the poor poorer, as was realized in the panic of 1857, the rich more avaricious, the cautious more timid, the prodigal more prodigal, the rash more rash, and introducing many perturbations in society, which secretly impair or sap the foundations of truth and commerce.

Lord BACON, in one of his moral essays, has discussed the question, examined the advantages and disadvantages of interest, and concludes that 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 means to invite moneyed men to lend for the continuing and quickening of trade,—and recommends a general rate of interest, say seven per cent., as in New York, for ordinary cases, and a higher rate of interest in matters of trade.

The statutes of some of the states have wisely provided, that a greater rate than simple interest may be recovered if specified in writing, which has proved to be (as in Michigan and Illinois for example) far more advantageous than a law like that of New York. And even in California, where they have *no penalty* for usury, but parties are left free to contract for money or goods, commerce thrives almost beyond comparison. A usury law may be proved to be necessary in New York, but if so, we hold that the present one works indubitable evils. Let lawful interest still be seven per cent., to be taken by moneyed corporations; but would it not be most politic at the present time, to allow individuals to make their own contracts relative to goods and money, limiting them, say, to *ten per cent.* interest. Such a law would, without doubt, work a great benefit, as we should then have a quickening spirit in trade, and commercial men and the courts would respect and strenuously uphold the law; as with Lord BACON, we believe, "it is better to mitigate usury by declaration than to suffer it to rage by connivance."

J. F. B.