THE MONEY-LENDERS ACT, 1900 (63 AND 64 VICTORIA, CHAPTER 51)

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JOSEPH BRIDGES MATTHEWS & GEORGE FREDERICK SPEAR

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THE MONEY-LENDERS ACT, 1900

(63 AND 64 VICTORIA, CHAPTER 51)

BY

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BEING A NEW EDITION OF THE SECOND PART OF THE LAW OF MONEY-LENDING, PAST AND PRESENT: BY J. B. MATTHEWS.

"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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1908.

OF USURY.

Usury is conceded on account of the hardness of a 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 discommodities of usury 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 appears by the ballance of commodities and discommodities 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.

MANY things have happened since "The Law of Money-lending, Past and Present" was published by one of the present writers. *Bonnard* v. *Dott*, 21 T. L. R. 491, has been affirmed by the Court of Appeal, [1906] 1 Ch. 740, and has established the rule that violation of the provisions of the Act requiring the money-lender to register himself will vitiate the transaction.

Saunders v. *Newbold*, [1905] 1 Ch. 260, has been taken to the House of Lords, [1906] A. C. 461, *sub nom. Samuel* v. *Newbold*, where pronouncements of the first importance were made by the noble and learned Lords who addressed the House, the most important of such pronouncements being to the effect that excessive interest alone *may* (not *must*) render a transaction harsh and unconscionable; to this extent overruling the judgment of Mr. Justice CHANNELL in *Carringtons, Ld.* v. *Smith*, [1906] 1 K. B. 79.

Staffordshire Financial Co. v. *Hunt, The Times*, 10th December, 1907, [1907] W. N. 258, and *In re a Debtor, Ex parte Carden*, 52 Sol. Journal, 209, have demonstrated the danger incurred by a registered money-lender who transacts the business of a loan at a place other than his registered

address, the transactions in both these cases having been held void for non-compliance with the provisions of sect. 2, sub-sect. 1.

Mr. Justice PARKER, in *Lodge* v. *National Union Investment Co., Ld.*, [1907] 1 Ch. 300, has held that although a transaction may be void for non-compliance with the provisions of the Act, yet the maxim, "He who seeks equity must do equity," may oblige a borrower, seeking equitable relief, to repay the money borrowed with interest at 5 per cent.

And last but not least in importance, the judgment of the Lords in *Samuel* v. *Newbold* has been considered by the Court of Appeal in *Fieldings* v. *Pawson* and *Blair* v. *Buckworth*, with the result endeavoured to be stated by the writers in the notes to sect. 1, sub-sect. 1 of the Act. These decisions are concerned with the effect of "excessive interest," as shifting upon the money-lender the burden of proving that the transaction was not harsh and unconscionable; in defining "excessive interest" for this purpose; and in establishing the principle that a transaction may be relievable against as harsh and unconscionable notwithstanding that the borrower was a competent borrower (*a*) who thoroughly understood and appreciated the terms of the bargain.

The above decisions, together with many others upon points of less importance, have rendered the second part of "The Law of Money-lending, Past

(*a*) For a definition of this term, see page 12.

and Present" entirely out of date, and have imperatively called for another work in the nature of a new edition of Part II. of that work. We have endeavoured to collect all the authorities to date, and we have also ventured to discuss questions which have arisen in practice, or which have occurred to us as likely to arise hereafter, upon which no authority as yet is to be found; and to submit our views thereon to the judgment of the profession.

The observations made by the author of "The Law of Money-lending, Past and Present," at pages 64 and 65 of that work, as to the unreasonableness of charging, in respect of renewals, interest at as high a rate as might fairly be charged upon original transactions, do not appear to have been accepted by the Bench, and they have met with some unfavourable criticism from members of the Bar and others, for whose opinions we entertain respect; and, whilst the author's views upon the subject remain unchanged, it has been thought better in the present work to relegate them to a footnote.

We have noticed with regret that the reporters seem to have made up their minds that cases under this Act turn so much upon their special circumstances that, generally speaking, it is not worth while to report them, with the result that the case of *The Staffordshire Financial Co.* v. *Hunt* is only to be found in the Weekly Notes, and *Fieldings* v. *Pawson*, a case of the first importance

decided by the Court of Appeal, has not been reported at all!

An important question, upon which at present no authority exists, will probably arise for settlement in the not far distant future. It is: Does the Act require the lender to be the real owner of the money which he lends? This subject is discussed in the notes to sect. 2.

In conclusion, we venture to express the hope that this work may meet with as favourable a reception at the hands of the profession as "The Law of Money-lending, Past and Present," to the second part of which this work is designed to serve as a new edition.

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2, Paper Buildings, Temple.
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