SMALL LOAN SERIES

MONEYLENDING IN GREAT BRITAIN

BY

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AND

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FOREWORD

THIS survey of moneylending in Great Britain is part of a general survey of small loans prepared for the Russell Sage Foundation under the direction of Dr. Louis N. Robinson. It is issued as one of the Small Loan Series of the Department of Remedial Loans. Of this series The Regulation of Pawnbroking, by R. Cornelius Raby, Ten Thousand Small Loans, by Dr. Louis N. Robinson and Maude E. Stearns, and Small Loan Legislation, by David J. Gallert, Walter S. Hilborn, and Geoffrey May, have already been published. The final volume of the series, The Small Loan Business, by Dr. Robinson and Rolf Nugent, is in preparation.

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LIST OF ABBREVIATIONS

A. C.	Appeal Cases (Law Reports)
c.	chapter
Ch.	Law Reports, Chancery Division
col.	column
ed.	edition
Edw.	Edward
Eliz.	Elizabeth
fol.	folio
Geo.	George
K. B.	Law Reports, King's Bench Division
L. J. Ch.	Law Journal Reports, Chancery Division
L. J. K. B.	Law Journal Reports, King's Bench Division
L. T.	Law Times
Rep.	Reports
sec.	section
sess.	session
st.	statute
Sol. Jo.	Solicitors' Journal
S. R. and O.	Statutory Rules and Orders
T. L. R.	Times Law Reports
Ves. Jun.	Vesey, Junior (Law Reports)
Ves. Sen.	Vesey, Senior (Law Reports)
Vict.	Victoria
Wm.	William
W. R.	Weekly Reporter

INTRODUCTION

THIS study traces the development of British moneylending by chronological periods. It aims, however, to present more than historical narrative. It purposes to show the devices whereby the enterprise of moneylending has adapted itself to its changing legal, economic, and social environments. In this aim the study is akin to its companion volume, Small Loan Legislation,[1] which portrayed the legal development of moneylending in the United States.

The term "moneylending" is used in this volume in a restricted sense. It does not include all lending of money. It does not include the large lending by bankers for purposes of commerce and production; nor the small lending by pawnbrokers which is secured by tangible pledges. It does include, for the most part, that type of lending, largely to individuals, which is for purposes of consumption.

In the United States the sphere of moneylending in this narrow sense is defined by the size of the loan. The usury laws allow returns which are adequate only for larger, well-secured loans, loans that are made for productive purposes. Special legislation allowing higher rates is restricted to small loans, usually of $300 or less. This legislation was enacted to procure credit for borrowers whose small loans and relatively poor security do not appeal to lenders bound by the usury laws.

In Great Britain the moneylender is not invariably a lender of small loans. The absence of usury laws in that country makes unnecessary the distinct treatment of a special class of borrowers. Any prospective borrower who, because of poor security, cannot obtain a loan at the low

[1] Gallert, Hilborn, May, Small Loan Legislation. Russell Sage Foundation, New York, 1932.

commercial bank rate must resort to a moneylender or pawnbroker. The moneylender's rates are higher than the bank's rates because of the added risk and the greater expense involved in relatively small loans payable, as they generally are, in instalments.

A second feature which distinguishes British from American moneylending is the absence in Great Britain of any maximum rate of interest. In the United States very few of the states have no usury laws; in them interest is determined solely by agreement of the parties. In almost half the states the law limits interest on all sorts of loans, large or small, productive or consumptive, to a fixed maximum varying from 6 to 12 per cent a year. The remaining states, following the Uniform Small Loan Law,[1] make a distinction between large loans for which the rate is restricted by the usury laws, and small loans where, in exchange for certain restrictions, the lenders are permitted to charge 24, 30, 36, or 42 per cent a year.

Although England has tried and abandoned the systems of fixed maximum interest rates and of no legal restrictions on rates whatever, her present attitude is quite different from that which obtains in the various states of the United States that have special small loan legislation. During the medieval and early modern period, the proscription of the church caused English law to make all interest charges illegal as usury. The Reformation and the growth of foreign commerce modified this condemnation and forbade interest charges only over the statutory maxima—10, then 8, then 6, and finally 5 per cent a year. It was during the existence of the English usury laws that the American laws were enacted which remain in force in most of the states today.

The evasions in Great Britain to which the narrow usury laws led, the demand for greater credit facilities that resulted from the industrial revolution, and the gradual accep-

[1] This law has been reprinted in the Appendix to this volume. See p. 162.

tance of a laissez faire philosophy, all combined to cause the modification, and in 1854 the repeal of the English usury laws. Repeal left the English moneylender almost entirely free in his dealing with the borrower. The slight protection afforded by the chancery courts against harsh and unconscionable bargains was inadequate to combat the advantage which the lender took of the growing class of small and often ignorant borrowers. In this extremity Parliament in 1900 enacted the first legislation dealing with moneylenders as such: it required their registration and extended the power of the courts to modify agreements which were unfair to the borrower.

Numerous moneylending abuses, however, escaped legislative notice in 1900. Not only did many lenders evade the requirement to register, but those who did register misled borrowers, made harsh terms, and often evaded the control which the courts were supposed to exercise over rates. The English solution of these difficulties was, like the American, to require moneylenders to be licensed. This licensing was covered by the English Moneylenders Act of 1927. But this act, instead of setting a legal maximum on the rate of interest charged, as had been proposed, set only a legislative guide to the rate. If interest on a loan is more than 48 per cent a year, the court shall presume that it is excessive and liable to modification unless the lender shows it not to be excessive. Subject to the court's discretion about fairness, the British lender may still exact rates that are far beyond those legally chargeable in the United States.

The early history of usury and the rise of interest-taking has been so combed by economic historians that the authors of the present study have done little more than consult the original sources and interpret the material for the interested student. The later history is taken largely from the laws themselves and the debates and committee reports which led to their enactment. The practices that have prevailed since the recent legislation went into effect have been discovered through personal interviews with British officials and moneylenders. If the discussion of the practices since 1928 is not fully developed, it is because disturbed economic conditions have made difficult an adequate evaluation.

The bibliographical note at the end of the volume offers suggestions for further investigations into the field and enlarges upon the sources from which the textual material was obtained.

CHAPTER I

RELIGIOUS RESTRAINT

FOR ten centuries—practically from the seventh to the seventeenth—the history of moneylending in England recounts the impact of commercial development on religious dogma. Usury was a deadly sin, condemned by the church and at times by the kings. This concept of sin formed a dam which sought to confine the flow of capital, capital to finance crusades, civil wars, foreign trade, and, later, manufacture. But some capital did escape. First, a small dam-gate was opened by the Jews. Then exemptions and evasions by Christians enlarged the channels, aided by the ever-ready tool of casuistry. Finally the needs of trade broke down the moral preachments and began that movement which culminated in the doctrine of laissez faire.

The first prohibition of usury in English legal writings was in the Penitential of Theodore of Tarsus, who was Archbishop of Canterbury in the seventh century. Theodore prescribed three years' penance to atone for the sin, one year on bread and water. And later Egbert, Archbishop of York, likewise forbade usury. The doctrines of these English divines were by no means unique. The laws of both the Old and New Testaments[1] had prohibited lending at interest. The church Fathers, Basil, Tertullian, Cyprian, Ambrose, Augustine, and Jerome, had condemned the taking of usury; Chrysostom had declared that nothing in the world was baser.

The church's reason for this general condemnation of interest is not far to seek. When trade was in its infancy,

[1] Deuteronomy 23: 19, 20; Leviticus 25: 35, 36; Luke 6: 35.

money was borrowed in the vast majority of instances not for productive purposes but for consumptive. The borrower did not want to invest in industry and commerce or to increase agricultural output; he was either a poor man seeking relief from frequent famines and oppressive taxes, or he was an extravagant man looking for new means of gratification. In either instance the church was interested: it sought to protect the needy and to curb the spendthrift.

When the temporal law of Western Europe endorsed and sanctioned the canon-law doctrines, the condemnation of usury became the keystone of the political economy of the Middle Ages. A law of King Alfred, about 900 A. D., forbade usury; and the apocryphal laws of Edward the Confessor in the next century treated usury as a crime. Glanvil explains that usury was both a sin and a crime: a usurer was punished by the ecclesiastical courts as a sinner; if he died unrepentant, his goods were claimed by the king. This dual punishment, recognized by Bracton, was restated by statute in 1341. To prevent future disputes between ecclesiastical and temporal jurisdiction it provided "that the King and his Heirs shall have the conisance of the Usurers dead; and that the Ordinaries of Holy Church have the conisance of Usurers on life, as to them appertaineth, to make compulsion, by the censures of Holy Church for the Sin, to make restitution of the Usuries taken against the Laws of Holy Church."[1]

Fortunately for the needs of finance at that time, the Jews were not bound by the canon law; they were not forbidden to engage in the business of moneylending. Owing to the fact that the sphere of their trading operations was seriously restricted by the guilds merchant and their agricultural activity precluded by feudal law, they were practically forced to employ their capital in lending. In this they received encouragement from the Crown. A charter granted

[1] 15 Edw. III, st. 1, c. 5. See also Rolle's Abridgment, 801, and Rotuli Parliamentorum, II, 130b, 133a.

to a particular Jewish magnate by Henry I was expressly extended to the entire Jewish community by John in 1201.

In the granting of this patent, which gave to the Jews many legal rights, the king was not acting as an altruist. Jews, as hereditary aliens or "social estrays"—they were unable to take the oath of fealty—were by right under "the tutelage and protection of the king." As the Statute of Jewry provided, "Jews and all their effects are the king's property, and if any one withhold their money from them, let the king recover it as his own."[1] The king's purpose in legalizing the Jews' moneylending enterprises, therefore, was to provide for himself a reservoir of credit on which he could draw in an hour of need.

Valuable as was this practical monopoly of moneylending, the Jews found it burdened by many restrictions. The ordinary rate of interest in the twelfth century, and the legal maximum in the thirteenth, was twopence a pound a week, or $43\frac{1}{3}$ per cent a year; compound interest was strictly forbidden. Large as this interest may seem, it must be remembered that in the Middle Ages enterprises were comparatively hazardous and the collection of debts difficult. This difficulty was increased by certain legal provisions. It seems likely that a Jew could not recover more than three years' interest in addition to the principal. If he satisfied his debt out of the borrower's land, he was impeachable for waste. Magna Charta (Section 10), confirmed by the Provisions of Merton in 1236,[2] suspended interest charges between the death of the borrower and the coming of age of his heir. Besides, the Jewish lender's rights were always subject to the will of the king, who at any moment might assign the security or release the borrower from the bond. And finally the security that he held on land was of little use to him

[1] Though the date of this statute is uncertain, in the early thirteenth century Hoveden considered it conclusive as to the status of the Jews of his day: Selden Society, vol. 15, p. x.

[2] 20 Henry III, c. 5.

since he could never become its owner; because of the Jew's inability to take an oath he could do neither homage nor fealty, and it was not lawful for a Christian to do homage or fealty to him; until 1275 he was not even capable of holding an agricultural lease.

These legal burdens on the Jews were light as compared with the non-legal. The crusades led to an increased antagonism, not only because they stirred religious and racial passions, but because they necessitated large loans from the Jewish lenders. Jews were charged with coin-clipping and punished; they were charged with ritual murder and persecuted. The kings, when pressed for money, would draw off a measure from their Jewish reservoir. Henry II demanded 5,000 marks[1] in 1168, £60,000 in 1188. John, having twice exacted 4,000 marks, in 1210 demanded 66,000 marks. Henry III collected 4,000 marks in 1226, 6,000 in 1230, 8,000 and 10,000 more in 1234, then 20,000 in 1241. Henry's campaign in France proving expensive, he later obtained 32,000 marks from the Jews and then 60,000 more. To obtain further funds he had their houses ransacked. Henry's embarrassments continued, and his levies on the Jews continued. An ordinance of 1253, forbidding Jews to change their residence, was some guaranty that the levies would not be evaded.

When a Jew died, his estate passed to the king, who generally retained one-third of it. When a Jew was converted to Christianity, all his property was confiscated.

The Civil War in the 1260's, however, impoverishing many nobles, enriched many Jews. They made bold to claim title to the lands which they held as security on defaulted loans. These claims enraged the nobles, who saw that the king, through his guardianship of the Jews, was thereby gaining political power. Anti-Semitism thus combined with constitutionalism to secure measures which would prevent the

[1] A mark was 13*s*. 4*d*., or two-thirds of a pound.

aggrandizement of the Jews and the king. An ordinance of 1269 invalidated all rent-charges held by Jews upon feudal hereditaments. An enactment of 1271 disseised the Jews of all feudal hereditaments and incapacitated them from acquiring feudal seisin in the future. And finally the Statute of Jewry in 1274–1275[1] made interest on loans irrecoverable by legal process and limited execution for the principal debt to one-half the debtor's land and chattels.

Prohibition is easier than prevention. Some of the lenders veiled their interest charges under expenses of recovery or under a contract for the periodic delivery of a specified amount of merchandise with a pecuniary penalty for every default. Others, barred from moneylending, took up other illegal occupations: at least the prohibition of usury was followed by an increasing mutilation of the coin of the realm. Since the whole Jewry was held suspect, all Jews were thrown into prison in 1278, and 293 of their number were subsequently convicted. All but one of the London synagogues were closed in 1282. In 1287 all Jews were again arrested on the suspicion of coin-clipping and the secret practice of usury. They were amerced in £12,000, a huge ransom for a community of only about 18,000 souls. The king needed money for an expedition in France.

In the summer of 1290 Edward I issued a decree consigning English Jewry to perpetual banishment.

We, moved by solicitude for the honour of God and the wellbeing of the people of our realm, did ordain and decree that no Jew should henceforth lend to any Christian at usury upon security of lands, rents, or aught else, but that they should live by their own commerce and labour; and whereas the said Jews did thereafter wickedly conspire and contrive a new species of usury more pernicious than the old . . . and have made use of the spurious device to the abasement of our said people on every side, thereby making

[1] 3 Edw. I: Statutes of the Realm, vol. 1, pp. 221f.; Selden Society, vol. 15, p. xxxviii.

their last offence twice as heinous as the first; for which cause We, in requital of their crimes and for the honour of the Crucified, have banished them from our realm as traitors: Now We, being minded in nowise to swerve from our former intent, but rather to follow it, do hereby make totally null and void all penalties and usuries, and whatsoever else in those kinds may be claimed on account of the Jewry. . . .

The debts owing to the Jews were to be paid to the king.[1]

When Edward banished the Jews he did not banish usury. About 1235 certain "papal merchants," called Caursines, had come to England to assist in the collection of papal revenues. Apparently the tithes claimed by the Pope were paid in kind and sold in the markets. The price obtained for these goods was transmitted to Italy by bills of exchange, the specie being retained by the Caursines. Having amassed these hoards of silver, the Pope's merchants were tempted to compete with the Jews as moneylenders. They lent money to the landowners, to the monasteries, to the king himself. So powerful were they that when Roger, bishop of London, excommunicated them and sought to drive them from his diocese, he was summoned to Rome and forced to give up his attempt to expel them. Banished in 1240 by order of the king, these papal usurers were again numerous by 1251. In the fourteenth century their practices were perpetuated by the Lombards and then by a moneyed class of Englishmen.

According to the dictates of the canon law these Christian moneylenders were prohibited from exacting interest on their loans. Nor did they, in form, violate those dictates; instead, they evaded them. As Matthew Paris recounts, the Caursines cozened the needy, "pretending not to know that whatever is added to the capital is usury, however it may be called." The pretensions commonly took one of four forms.

The first form was the creation of a rent-charge, which was never considered usury: it looked like a dealing with a

[1] Selden Society, vol. 15, pp. xl–xlii.

thing rather than with a sum of money. A landowner or a shopkeeper could in effect borrow money at interest by creating a charge on his property or granting a lease to the lender at a nominal rent. The only requirements imposed by the church were that the debtor should retain the right to redeem, that the creditor should set off some of the profits of the land against the debt, and that the rent-charge should bear a reasonable relation to the capital sum paid for it.

The second form of distinction between lawful and usurious lending was drawn as early as the first half of the thirteenth century and was widely applied by the Caursines. Though it was illegal for a lender to charge for the use of money, it was quite proper for him to require compensation for some loss actually occasioned to him by non-payment of a loan or for his failure to realize some expected gain resulting from the borrower's possession of the money. Technically the payment was made not for the loan but for non-payment of a gratuitous loan at the date promised. An example is a transaction between some Caursines and a certain prior in 1235. The prior borrowed 104 marks on April 24, to be repaid in full without interest on August 1. If the money was not repaid at that date, however, interest was to begin at the rate of 10 per cent every two months—60 per cent a year—besides other charges. Nominally the interest was compensation for the expense of sending for the money again and again. Gradually, however, the loss came to be presumed and the period of gratuitous loan to be shortened. By such means the forms became a mere subterfuge.

The third method of circumventing the usury laws was by use of several types of partnership. Partnership suggests a sharing of risk. The London ordinance of 1391 recognized that lending for gain was not usury if accompanied by risk. A loan was only usurious if the lender contracted to receive payment for his money in any event.

One type of such partnership grew out of a common commercial contract, the *commenda.* A merchant staying at home might entrust his goods or money to another, who could use them to trade with in foreign lands, and would receive in return a share of the profits accruing from the joint ventures; or a traveling merchant might borrow capital from a person at home and in payment might share with him the profits. The risk run by the lender would entitle him to payment for the use of his capital.

Another loan-like form of partnership rivaling the *commenda* in popularity was the loan on bottomry. Bottomry was a mortgage of a ship, or literally of the keel or bottom; and a loan on bottomry was a loan contracted by the owner, or sometimes the master, of the ship, on the security of the ship itself, or of the cargo, to be repaid with a certain stipulated interest on the termination of an intended voyage. The element of risk was important, because if the ship was lost the obligation ceased both as to principal and interest. This practice, which had appeared in Italy in the thirteenth century and had spread to England by the fourteenth, was commonly resorted to by owners of vessels as a means of raising the capital necessary for an enterprise.

Akin to this contract of bottomry was the contract of insurance. In a maritime loan the borrower promised to restore the sum advanced on safe arrival of the ship; in the early form of insurance contract, on the other hand, the insurer, who played the part of the borrower and stated that he had received the amount for which the ship or cargo was insured, promised to repay it in the event of the ship's not arriving safely. Insurance contracts, which had developed by the sixteenth century in England, were thus not usurious because of the sharing of risk.[1]

The fourth common method of obviating usury grew by inference from the risk-sharing contracts. The *contractus*

[1] For discussion of the later type of insurance contract see Commentaries on the Laws of England, by William Blackstone, Book II, pp. 458ff.

trinus, or threefold bargain, which developed in the fifteenth century, was declared by distinguished canonists of the sixteenth to be legal. It was already justifiable to enter into contracts of partnership and insurance. A could enter into partnership with B; could insure himself with C against loss of capital; and could insure himself with D against fluctuations in the rate of profit, by the device of selling his larger uncertain profit for a smaller but certain profit. If these three individual contracts were justifiable, it was but a step to declare justifiable a triple contract between A and B. A could place a certain sum in the hands of B, agreeing to receive only a low rate of interest, in consideration of two promises from B: first, to restore the capital, and second, to pay a particular rate of interest in any case, whether his gains were high, low, or non-existent. This triple contract, based on the forms of partnership, really lacked the essential element of partnership, participation in risk. It was nothing more or less than a loan on interest.

These legal sophistries, developing over a period of centuries, did save intact the canonical doctrines of usury. Moreover they did not open the door to loans of a purely consumptive nature. To be sure, they allowed a slack in earlier doctrines which permitted the rapid development of trade. But if there had been no such slack, the whole doctrine of usury might have snapped under the strain of economic expansion. From the church's point of view it was much better to maintain the prohibitions, and thereby to try to protect the needy and the stupid, who were chiefly peasant folk dwelling in the country, rather than to seek to restrain the merchants in the towns, who were economically able to take care of themselves. After all, the greater part of the population were still workers on the soil.

In its attempt to protect the needy the church was not uniformly successful, for borrowing was as common among the mass of peasants and small masters as it was necessary.

If moneylending among the lowly was not a business, it was, according to R. H. Tawney, a by-employment, "intertwined with, and often concealed by, other economic transactions."[1] This may account for the single reference to it in the proceedings of the English church councils. The lender was a more prosperous farmer, an innkeeper or tradesman who extended long-time credit, or even the parson himself. The loans were more commonly goods than money, and the security was a similar form of personal property. Often a broker would procure a loan on commission. Transactions of this sort tended to obscure the fact of usury. Among the craftsmen in the towns the need for loans increased as the struggle developed between them and the growing class of commercial capitalists. Case after case in the courts illustrates the cost of loans to these small craftsmen; 100 per cent to 400 per cent a year was not an uncommon charge. Thomas Wilson, a master of the Court of Requests, after discussing the "develishe usury" of twopence in the pound once exacted by the Jews, declared, "Would God the Christyans remayninge and our country men at this time dyd not use theire fashyons."[2]

Even if the minor ecclesiastical officials had been above moral reproach, which they were not, the church courts could not have dealt adequately with as widespread a problem. Seeing that they could not combat lending by law, the English bishops tried to combat it by competition. They established institutions where the poor could raise capital cheaply. Parishes, guilds, hospitals, perhaps monasteries, lent corn, cattle, and money. From the thirteenth century down to the Reformation the ecclesiastics sought to alleviate the burdens of the borrower by supplying his need, sometimes with high intent, sometimes to their own profit.

[1] Wilson, Thomas, A Discourse upon Usury, with an Introduction by R. H. Tawney. Harcourt, Brace & Co., New York, 1925, p. 21.

[2] *Ibid.*, p. 378.

The inadequacy of these ecclesiastical efforts is indicated by the fact that the great commercial towns, which suffered the most from the usurers, took action to suppress them. In 1363 and again in 1391 the city of London issued an ordinance against usury. In 1376 the Commons petitioned that the London ordinances against usury should be enforced in all other towns. That this ineffectiveness of ecclesiastical punishment persisted is evidenced by two statutes of Henry VII, enacted in 1487. The first made all "dampnable bargayns groundyt in usurye" void and subjected the makers not only to ecclesiastical penalty but to a forfeiture of £100.[1] The second statute inflicted penalties on brokers who participated in these usurious contracts.[2]

So rapid had been the changes of the preceding century, however, that these statutes of Henry VII were already out of step with their times; they had been enacted only to assist the king's supporters among the country gentry. The first of these statutes was replaced, therefore, in 1495,[3] by a statute which drew a distinction between cases where a charge might be imposed for a loan and cases where it might not. It allowed "laufull penaltees for nounpament of the same money lent"; it condemned the sale of goods and repurchase for a less sum only if the transaction was made with a person "in necessity"; and it forbade a loan of money in return for the rents and profits of land only if the lender incurred no "adventure" or if he was to enjoy a return for a specified period.

This statute was merely an official acknowledgment of a tendency that had already been going on for two and a half centuries. The growing dependency of the country on foreign trade, the demands for capital that it engendered, and the gradual breakdown of ecclesiastical control over the laity, had convinced the legislature that religious tenets were

[1] 3 Henry VII, c. 5; repealed by 11 Henry VII, c. 8.
[2] 3 Henry VII, c. 6.
[3] 11 Henry VII, c. 8.

not the sole criterion in the regulation of moneylending. In 1535 Thomas Cromwell considered the possibility of a statutory distinction between lending on interest for bona fide commercial transactions and lending on interest as a mere disguise for usury. "The immense enlargement in the sphere of credit operation which took place in the sixteenth century produced a controversy hardly less acute than that which accompanied the rise of machine industry in England two centuries later."[1] As Francis Bacon put the problem, "Two things are to be reconciled: the one that the tooth of usurie 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."[2]

The statutory solution of this problem, enacted in 1545, was more practicable than logical. Henry VIII sought to abolish the "many doubts, ambiguyties and questions" which had made the previous statutes useless and deleterious. In very specific terms he forbade any type of lending at a rate "above the some of tenne poundes in the hundred" and prescribed a penalty of treble the value of the property sold or profits contracted for, besides imprisonment at the king's pleasure.[3] The statute repealed all existing enactments on the subject and, except for moral condemnation of usury, omitted all mention of the church and its previous jurisdiction.

But the religious feeling against usury was by no means dead. Enthusiastic preachers rose in defense of the poor, to whose misery the changes in religion had redounded. Robert Crowley, addressing Parliament in 1551, decried the legalized interest of 10 per cent which the act of Henry VIII allowed. "Alas, that euer any Christian assemble shoulde

[1] Wilson, Thomas, A Discourse upon Usury, with an Introduction by R. H. Tawney, p. 105.

[2] Bacon, Francis, Essay on Usury. In Bacon's Essays. C. S. Francis & Co., New York, 1857.

[3] 37 Henry VIII, c. 9.

bee so voyde of Gods Holy Spirit that thei should alowe for leafull any thynge that God's Worde forbedeth. Be not abashed (most worthy counsaylours) to call this act into question agayne."[1]

For the time being Parliament was not abashed. Within a year, by an act of Edward VI, it had repealed the act of Henry VIII.[2] According to this new statute, though the previous act had not been meant "for mayntenance and allowaunce of usurie," yet "dyvers parsons blynded with inordinat love of themselves have and yet doo mistake the same." The penalty it prescribed for usury was forfeiture of the principal sum, with fines and imprisonment at the king's will. The reason for the enactment was the further prohibition of usury to ward off "Godd's wrathe and vengeaunce."

During the next two decades Protestant opinion changed. Reformers began to realize, according to Sir William Ashley, that the moral distinction was not so much between gratuitous and non-gratuitous loans as between excessive and moderate demands.[3] This change of religious opinion was fortified by the change of political opinion. The government, which had formerly borrowed abroad unhampered by the usury laws, finding an important source of credit dried up by revolt in the Netherlands, was forced to look to its domestic supply. Sir Thomas Gresham, the royal financial agent, faced with the difficulty of raising the first large governmental loan at home, urged the repeal of the act of Edward VI in 1560 and again in 1568; and the House of Commons passed a bill to that effect as early as 1563. In 1571 two bills concerning usury were introduced. The first, which proposed to establish banks in several cities to lend money

[1] The Select Works of Robert Crowley. Early English Text Society, Extra Series, no. 15, London, 1872, p. 173.

[2] 5–6 Edw. VI, c. 20.

[3] Ashley, W. J., An Introduction to English Economic History and Theory. Longmans, Green & Co., London, 1901, Part II, p. 451.

against pledges at the rate of 6 per cent, came to naught. The second became law.

The statute of 1571[1] repealed the statute of Edward VI, "which said latter Acte hathe not done so muche good as was hoped it shoulde," and revived the statute of Henry VIII, "by which Act the Vice of Usurie was well repressed." Though the statute of Elizabeth in 1571 repeated the worn phrase that "all Usurie, being forbydden by the lawe of God, is a synne and detestable," and provided punishment according to the ecclesiastical law and the temporal law as well, the punishment was not to apply to loans the interest on which did not exceed 10 per cent. Though a person lending at a rate of less than 10 per cent was not punishable, the act did make him liable to forfeit the interest if proper proceedings were taken. This provision, intended as a limitation, was interpreted as a license. The borrowers did not take proceedings to recover interest; the provision for forfeiture of interest below 10 per cent became almost a dead letter. The rate which the act intended to be a maximum became the normal.

When in 1623 a statute of James I lowered the interest rate to 8 per cent,[2] it neglected to repeat the penalty for interest at lesser rates. The abandonment of this penalty is significant because it illustrates the culmination of the process of secularization. Unlike the act of Elizabeth, the act of James was passed, according to the preamble, because "at this tyme there is a very great abatement in the value of Land and other Marchandises Wares and Commodities of this Kingdome, both at Home and also in forraigne parts whither they are transported." The fall in values made impossible the payment of outstanding loans at 10 per cent, increased the debts, and forced owners "to sell their Lands and Stocks at very lowe rates, to forsake the Use of Mer-

[1] 13 Eliz., c. 8, made perpetual by 39 Eliz., c. 18.

[2] 21 James I, c. 17; made perpetual by 3 Charles I, c. 5.

chandize and Trade, and to give over their Leases and Farmes, and soe become unprofitable Members of the Commonwealth." Those opposed to the bill had feared, not that they were contravening the Scriptures, but that lowering the interest rate would lead to withdrawal of foreign capital from England. The argument which led to the enactment was that the low rate of interest in Holland was "the reason why we are beaten out of Trade by the Low Country-men."[1] The final clause of the act, which provided that the practice of usury was not to be allowed "in point of Religion or Conscience," was, according to Rolle, a mere sop given the bishops in exchange for their votes.

By the seventeenth century, therefore, moneylending had finally emerged from the shadow of religious prohibition into the light of economic necessity.

[1] Journals of the House of Commons, vol. 1, p. 775.

CHAPTER II

COMMERCIAL RESTRAINT

IN THE expansion of credit operations two historical developments played a primary role. The first was the secularization of the attitude toward usury. The second was the differentiation of the functions of moneylending. Both those developments, having incubated over a considerable period, emerged in the early seventeenth century. Until then moneylending had no specific connotation; banking, pawnbroking, and financing were not distinct enterprises. At that time, however, deposit banking began to occupy a special area in the field of money transactions; and simultaneously the legal regulation of pawnbroking marked off its sphere. By definition of the areas about it, therefore, the bounds of modern moneylending became fixed. It is interesting to survey the field of moneylending as it became measured off, and to study how the lenders worked the field during the regime of the usury laws.

For a considerable period before deposit banking was known in England there had been great public banks on the Continent. English writers, impressed with their function, had advocated a similar system for their own country as early as the sixteenth century. But English banking was not based on any principle; it developed out of two practices. So subtle was this development that it is difficult to specify the exact dates.

One of the early types of bankers in England was the scriveners. They were primarily skilled clerks, expert amanuenses or notaries, employed to draft documents, business contracts, conveyances, and the like. With the growing dependence of landowners and traders on credit transactions, the scriveners were largely employed in drawing bonds and mortgages. Through constant contact with borrowers and lenders some scriveners became expert financial advisers. They began to act as financial middlemen, brokers who would put prospective borrowers in contact with potential lenders. Some of these scriveners became lenders themselves. Their personal fortunes not sufficing, however, it was but natural that they should procure in advance the money of others who wanted to find a suitable investment for surplus funds. Naturally these middlemen would pay interest on such deposited funds, because they could relend them at higher rates.

The competitors of the scriveners in the banking business were the goldsmiths. Because the goldsmiths made and sold valuable objects which they had to protect, they became the natural depositories of gold and silver plate for safe-keeping. This led to the safe-keeping, as well, of gold and silver coin and gave rise to considerable profit. The variable weight of coins at that period allowed the goldsmiths to melt the heavier coins and, upon reminting, to keep the excess metal for themselves. It was said that they would pay servants to bring their masters' coin to them. This movement to deposit money with the goldsmiths received a great impetus when Charles I in 1640 seized the bullion in the Mint, which had been considered until then the safest depository. The distrust born of this confiscation, combined with the insecurity of property during the Civil War and the need of the gentry to melt down some of their plate, led merchants and gentlemen to bring it to the goldsmiths for storage and to be turned into coin.

The goldsmiths gave three services in one: they afforded a place of safe deposit; they paid interest on money which, unlike that lent on real or personal security, was subject to immediate demand; and they provided new mediums of exchange, known as goldsmiths' notes. Goldsmiths' notes were of two sorts: promissory notes of the goldsmith to pay stated sums; and running cash notes, orders of the customer to the goldsmith to pay a specific sum to a third person. The first type came to circulate like a modern bank-note; the second, like the modern check. The convenience of these accommodations naturally led to an increase in the deposits in the hands of the goldsmiths.

Although deposits were subject to withdrawal on demand, or on short notice, the goldsmiths did not keep the money in their strong-boxes. Relying upon the regular flow of deposits and withdrawals, the goldsmiths made loans to merchants, landowners, and the Crown. If a banker owed £10,000, this "running cash," or cash on hand, to meet current withdrawals, might be less than £1,000.[1] Cromwell was the first to make use of the goldsmiths' lending facilities on a large scale. Charles II, who often relied on such advances in anticipation of revenues, carried the practice further. Goldsmiths paid their customers the legal rate of 6 per cent interest on deposits. The king would pay the goldsmiths 10 or even 12 per cent. It was said that in 1676 bankers received "above twenty, and sometimes thirty in the hundred."[2]

The growth of deposit banking sounded the death-knell of the old type of moneylending. A lender who depended upon his own capital could no longer compete with a banker who made loans out of his customers' deposits. He could not command adequate capital to finance large undertakings. Nor could he lend so cheaply. Whereas the moneylender needed a tradesman's profit to reimburse him for the use of his own money, a banker required only a broker's profit to compensate him for transferring to the borrower the use of

[1] North, Sir Dudley, Discourses upon Trade. London, 1691, p. 21.

[2] The Mystery of the New Fashioned Goldsmiths or Bankers. London, 1676. A reprint of this curious and interesting paper may be found in the Quarterly Journal of Economics, vol. 2, 1887–1888, p. 251.

his depositors' money. Loans left to the moneylender were therefore only the scraps from the banker's plate, small loans and the loans for which there was not adequate security to protect the banker.

Even small loans on tangible security were not, however, to be left to the moneylender. Pawnbroking began to emerge as a distinct type of enterprise. Before the development of goldsmiths as bankers, much of the moneylender's business had been loans secured by valuable pawns of personal property pledged by nobles and gentry. When the scriveners and goldsmiths began to absorb the larger loans, the other lenders were forced to depend on relatively petty dealings. The poor seem to have borrowed in great numbers. Since the philanthropic lending societies (*Montes Pietatis*)[1] were rare in England, the borrowers had to seek pawnbrokers. These "extreme usurers and extortioners" drove many poor citizens into dealing in pawntickets. In the little town of Berwick-on-Tweed, therefore, pawnbroking was prohibited

[1] These institutions founded on a pledge system were permanently established in Italy after fugitive efforts in other countries. In origin the system was purely benevolent. The early *Monti di Pietà* were constituted by the authority of the popes to lend money to the poor only, without interest, on the sole condition of the advances being covered by the value of the pledges. Later the Vatican allowed the *Sacri Monti di Pietà* to charge sufficient interest to their customers to enable them to defray expenses. The date of the establishment of the *Monti di Pietà* in Italy was not later than 1464 when the earliest, at Orvieto, was confirmed by Pius II. Three years later another was opened at Perugia by the efforts of two Franciscans, Brothers Barnabus and Fortunatus de Copolis. A strong impulse was later given to the creation of these establishments by the preaching of another Franciscan, Father Bernandino di Feltre. By his efforts *Monti di Pietà* were opened at Assisi, Mantua, Parma, Padua, Pavia, and elsewhere.

In France the institution was slow in obtaining a footing. *Monts de Piété* were organized at Avignon in 1577 and at Arras in 1624. When in 1626 a similar institution was opened in Paris, the doctors of the Sorbonne could not reconcile themselves to the lawfulness of interest and it had to be closed within a year. Marseilles obtained one in 1695 but it was not until 1777 that the first *Mont de Piété* was founded in Paris by royal patent. The National Assembly, in an evil moment, destroyed its monopoly but it struggled on until 1795 when the competition of private moneylenders compelled it to close its doors. So great, however, were the extortions of the usurers that the people began to clamor for its reopening, and in July, 1797 the *Mont de Piété* recommenced business. In 1806 Napoleon I re-established its monopoly, while Napoleon III regulated it (1851–1852) by new laws which are still in force. (See article on Pawnbroking by James Penderel-Brodhurst in the Encyclopaedia Britannica, 14th ed.)

in 1598 to all but two "credible and honest" brokers who were to keep a register of their transactions.[1]

Although the remedy of municipal regulation was by no means general, the need for some remedy was general. Artisans and other manual laborers were said to have given up their occupations and to have "set up a Trade of buyinge and selling and taking to pawne of all kinde of worne Apparell . . . Household Stuffe and Goods . . . findinge therebie that the same is a more idle and easier kinde of Trade of livinge, and that there riseth and groweth to them a more readie more greate more profitable and speedier Advantage and Gaine then by theire former manuall Labours and Trades did or could bring them." Moreover, "the said kinde of counterfeit Brokers and Pawnetakers upon Usurie, or otherwise for readie Money, are growen of late to many Hundreds within the Citie of London, and other places next adjoyninge to the Citie . . . and are like to increase to farre greater multitudes, being Friperers, and no Brokers, nor exercisinge of any honest or lawfull Trade and within the memorie of many yet livinge such kinde of persons Tradesmen were verie fewe and of small number."

By 1604 Parliament was convinced that these "brokers and friperers" were encouraging the theft of articles which were sold or pawned to them. "For the repressinge of such kinde of Nourishers and Ayders of Theeves" it therefore abolished the right of "market overt" in certain sorts of goods, which had formerly existed in London, and provided that title to them was not to pass if they had been stolen.[2]

Such dishonest transactions could not have been of the essence of pawnbroking, for during the next century it attained always greater importance. A witness before a parliamentary committee whose work extended from 1745 to

[1] Historical Manuscripts Commission, Report on Manuscripts in Various Collections. London, 1901, vol. 1, pp. 3f., 25.

[2] 1 James I, c. 21.

1746 described the business as an "indispensable necessity" to several classes of persons: to "the very poor Sort of People, such as Persons who cry Fish, Fruit, or other Wares, about the Streets," who had to borrow the pawnbrokers' money to buy their stocks in trade; "the middling Sort of Tradesmen," who borrowed from pawnbrokers to pay wages, support their credit, and maintain their families because of "the great Credit they are obliged to give their Customers"; artificers and handicraftsmen who had to borrow to obtain materials for business; and journeymen who, sick or out of work, would perish "if there were no such Profession."[1]

Recognizing the need which pawnbrokers served among small borrowers and the inadequacy of the legal rate in relation to small loans, Parliament in 1757 exempted pawnbrokers from the operation of the usury laws on all loans up to £10, to the extent of allowing them to charge, in addition to interest, a sum for warehouse room on terms agreed when the loan was made.[2] In 1784 Parliament placed pawnbrokers definitely outside the usury laws by permitting them to charge interest at from 10 to 20 per cent on all loans under £10.[3] The later laws which required the licensing of the pawnbrokers and increased the rates all maintained the limit of £10 on loans in order to entitle lenders to the special privileges. These laws, and the custom which doubtless preceded them, have in effect set a minimum limit on the secured loans of moneylenders.

Specialization of the field of credit transactions worked a hardship on moneylenders in relation to rate of interest. When the goldsmiths usurped lending for productive undertakings, they began to profit by those acts which benefited industry and foreign trade. The rate of interest was juggled about in order to encourage trade. But the welfare of the

[1] Journals of the House of Commons, vol. 25, p. 46.

[2] 30 Geo. II, c. 24.

[3] 24 Geo. III, c. 42.

moneylender, now driven to make only consumptive loans, was not considered.

The act of 1623 had reduced the interest rate from 10 to 8 per cent to encourage trade.[1] An act of the Commonwealth in 1652 further reduced the rate to 6 per cent.[2] At the Restoration, though an effort was made to bring the rate back to 8 per cent, the advantages which were supposed to have accrued from the previous reduction convinced Parliament that it should confirm the maximum rate of 6 per cent.[3] A final reduction came in 1713. The recent Queen Anne's War had not only thrown many landed proprietors into debt but had caused a drop in foreign trade. To relieve the landowners, whose property values had greatly depreciated during the war, and to aid the sale of English goods in foreign markets, Parliament reduced the interest rate on loans to 5 per cent.[4] When conditions had so improved that the Bank of England could not, even on its security, borrow money at 5 per cent, Parliament in 1716 permitted the Bank to borrow at higher than ordinary rates.[5] All other borrowers,[6] regardless of their inferior credit, were limited to the rate of 5 per cent.

In respect to the usury laws the English moneylenders were in no worse position than the Scottish and Irish lenders. The only difference was that Scotland and Ireland reduced the interest rates later than England. The Scottish law of 1587 limited the maximum rate of interest to 10 per cent a year.[7] This limitation of rate led to evasions, the most common of which was to deduct in advance the interest on the whole loan—in modern terminology, to discount the loan—whereby the borrower would have only £90 on a loan of £100

[1] See p. 26.

[2] Acts and Ordinances of the Interregnum, vol. 2, p. 548.

[3] 12 Charles II, c. 13; ratified and confirmed by 13 Charles II, st. 1, c. 14.

[4] 12 Anne, st. 2, c. 16.

[5] 3 Geo. I, c. 8, sec. 39.

[6] Except the South Sea Company, granted an exemption by 3 Geo. I, c. 9.

[7] Scotland, Acts 1587, c. 35.

and the lender could himself make use of the remaining £10 during the entire period of the loan. To clarify the act of 1587 and prevent evasions the Scottish Parliament passed four more acts in the next few years.[1] Thereafter the Scottish law followed the English law closely. In 1633 interest was reduced to 8 per cent; in 1661, to 6 per cent; and in 1713, to 5 per cent.[2] In Ireland the rate was similar. An act of 1634[3] limited interest to 10 per cent. It was not followed until 1702 by an act which made the rate 8 per cent.[4] An act of 1721 reduced it to 7 per cent;[5] an act of 1731, to 6 per cent,[6] where it remained until the repeal of the usury laws in 1854.[7]

Legal limitation of the rate of interest failed to stem the demand for credit. To be sure, the bankers were able to supply the needs of the large industrial and landed borrowers. And the pawnbrokers, favored in their rates, were able to supply the smaller needs of those who brought tangible security. But there was a large intermediate group whose demand for loans was persistent and whose security was not liquid or adequate enough to satisfy bankers and pawnbrokers. A rate of interest which would support the better loans would not support the loans which involved considerable risk. The economic demand, therefore, encountered legal limitation. The result was, inevitably, evasion.

From the time of Elizabeth onward annuities were a successful means of circumventing the usury laws. They became increasingly popular as their legal limits were judicially defined. An annuity was not ordinarily usurious because of the risk involved. But the risk had to be bona fide, rea-

[1] Scotland, Acts 1594, c. 32; 1597, c. 18; 1600, c. 15; 1621, c. 28.

[2] Green's Encyclopædia of the Law of Scotland, vol. 13, pp. 54f.

[3] Ireland, Statutes 10 Charles I, sess. 2, c. 22.

[4] Ireland, Statutes 2 Anne, c. 16.

[5] Ireland, Statutes 8 Geo. I, c. 13.

[6] Ireland, Statutes 5 Geo. II, c. 7. See also Great Britain, Statutes 14 Geo. III, c. 79.

[7] See p. 42.

sonable, and not fixed by agreement. Say a borrower agreed to pay a lender £10 for a loan of £20 for a year, if the borrower's son were still alive. Here there was uncertainty, but the court held the uncertainty not to be bona fide.[1] Or suppose an agreement to pay, in return for a loan of £100, £80 at the end of ten years to each of the lender's five daughters then alive. Here there was real uncertainty because within ten years one or all of the daughters might be dead. The court added, however, that had the bargain provided for payment in one or two years instead of ten, the bargain would have been usurious:[2] the uncertainty had to be not only bona fide but also reasonable in degree. And finally the time for repayment had to be at the option of the borrower. If it were fixed by contract, the lender could calculate the return in advance.[3]

As employed in moneylending the annuity transaction, in form a sale, was in reality a loan, for which the annuity grant was the instrument of credit. A borrower in immediate need of money would agree to sell an annuity for the duration of his life to a lender and in return would receive a sum of money. It would be understood, however, at the time the bargain was made that the borrower could at any time buy back the annuity grant. The price of repurchase would ordinarily include the sum originally lent, together with the arrears of the annuity up to the time of repayment, plus an additional half year's annuity. The amount paid by the borrower above the amount advanced by the lender was in lieu of interest.

The price of a true annuity naturally varied according to the estimated duration of the borrower's life, as determined by actuarial tables. When an annuity grant was made a cloak for a loan, however, the probable length of life was not

[1] Button *v.* Downham, Croke Eliz. 643 (1598).

[2] Bedingfield *v.* Ashley, Croke Eliz. 741 (1600). See similarly Reighnolds *v.* Clayton, 5 Coke Rep. 70 (1595).

[3] Brooke, Sir Robert, La Graunde Abridgement. London, 1586, fol. 317.

important, since the borrower was expected to repurchase the annuity in a comparatively short time. Under these conditions, therefore, the same price was quoted for all transactions, irrespective of the borrower's age. The current price among moneylenders for annuities on good security was as low as six years, that is, the equivalent of six yearly payments of the annuity. In a six years' purchase of a life annuity of £100 a year, the moneylender would pay the borrower £600. If the borrower should then redeem the loan in three months, the lender would receive the £600, plus three months' annuity, or £25, and an additional half year's annuity, or £50—a total of £675. In other words, for a loan of £600 for three months the borrower would pay as interest £75; that is, 12½ per cent for the three months or 50 per cent on a yearly rate. Had the loan been permitted to run a year, the interest would have amounted to only £150, however, or 25 per cent a year.

The average duration of lives on which annuities were bought was moderately estimated at fifteen years.[1] So far as the life of the grantor was concerned, therefore, the grantee or lender took slight risk under this scheme. The chief risk hinged on the value of the borrower's estate from which the annuity was to be paid. Where the borrower had an absolute title or a life interest in a considerable estate, the risk was much less than where the value of his property was uncertain or his interest conditional. Lenders would adjust their terms accordingly. Sometimes, in order to decrease the risk, they would require the annuity to be granted on more than one life, in some cases even on three or four lives. The additional persons involved were virtually endorsers, for if the borrower should die or fail in his obligation, they would become responsible for payment of the annuity. More than four lives were seldom required on one loan, as there was danger of the courts of equity setting

[1] Journals of the House of Commons, 1777, vol. 36, pp. 491f.

aside such a transaction because of the inadequacy of the consideration received.[1]

When a lender could not obtain satisfactory security, he increased the rate of interest to compensate him for the risk. Thus on an annuity of £100, if a borrower's estate did not offer satisfactory security for a loan of £600, the lender would reduce the sum lent to £400 or £300. Upon such a loan the borrower would still be required to grant the annuity for the duration of his life and make the same periodic payments that a borrower with better security would make on a larger loan.

Even though purchase of annuities was legal, certain evils adhered to the practice. When transactions were kept secret at the borrower's request, lenders sometimes threatened disclosure in order to extract a greater profit. Hardship was caused, too, when lenders refused to let borrowers redeem their annuities and insisted that they should run for the full length of the borrowers' lives. Under the terms on which these bargains were usually made such a situation would have been ruinous to borrowers. As a rule, however, it was to the advantage of both parties to cancel the transaction.

By 1777 the purchase of annuities made for the purpose of concealing loans at a high rate of interest had grown to such proportions and involved so much property that the House of Commons undertook an investigation. Although the investigators found it difficult to get exact information because most of the transactions were made secretly in order to avoid prosecution, it was generally claimed that a charge of 70 per cent a year was not uncommon in bargains of this sort.[2] Parliament therefore felt constrained to take a hand in the control of this practice and in 1777 passed a law[3] making it

[1] See p. 70.

[2] Journals of the House of Commons, vol. 36, May 12, 1777, pp. 489f.

[3] 17 Geo. III, c. 26, repealed by 53 Geo. III, c. 141 (1813), which resulted in minor changes but left the same principles intact. This statute was later clarified by 3 Geo. IV, c. 92 (1822), and 7 Geo. IV, c. 75 (1826).

compulsory to register all deeds for granting life annuities. Failure to register such deeds within twenty days made the contract void. It was expected that this statute would force transactions into the open and so put an end to evasive practices.

But legislation again failed, and evasions continued until the usury laws were relaxed. The usury laws had not been successful in larger ways either. The developing industrialism created so great a demand for credit that the government itself was, in 1818, borrowing at more than the legal rate.[1] Spurred by industrial needs and Benthamite philosophy, the commercial and landed interests in 1818 roused Parliament to action, asking for release from the restrictions on the rate of interest which impeded the country's trade. The House of Commons appointed a select committee to consider the question of the effect of the laws regulating or restraining the rate of interest. The committee came to the conclusion that the usury laws had failed entirely to impose a maximum rate of interest but had actually raised the rates, and declared that the time was ripe for their repeal.[2] But Parliament was not yet ready for that step.

The first relaxation of the usury laws came fifteen years later, in 1833, when an act[3] was passed exempting bills of exchange and promissory notes, with not more than three months to run, from the restrictions on the interest rate imposed by the usury laws.[4] In 1837 Parliament extended this exemption to bills of exchange and promissory notes with not more than twelve months to run.[5] These two acts

[1] Parliamentary Papers 1845, vol. 12, p. 112: Report from the Select Committee on the Usury Laws, 1818.

[2] Parliamentary Papers 1845, vol. 12, p. 67: Report from the Select Committee on the Usury Laws, 1818.

[3] 3–4 Wm. IV, c. 98, sec. 7.

[4] By various acts passed in the reigns of Charles II, William III, Anne, George II, George III, and George IV, all securities given upon usurious considerations were declared void; by 5–6 Wm. IV, c. 41, such securities were declared not to be void but given for an "illegal consideration."

[5] 7 Wm. IV and 1 Vict., c. 80, enacted to remain in force until 1840.

freeing commercial institutions of credit from the restrictions imposed by the usury laws had the incidental effect of changing the moneylending business. Under these enactments money could be lent openly on promissory notes, with some use of bills of exchange and other instruments. There was no longer the need to purchase an annuity or to use some other cloak to hide the rate of interest charged. As we shall see,[1] the promissory note came to be the most popular instrument of the moneylender.

In 1839[2] the exemptions previously granted to bills of exchange and promissory notes were extended to all contracts for amounts above £10 not made upon the security of lands, tenements, or hereditaments. At the same time 5 per cent was established as the legal rate, or the rate recoverable in any court of law or equity if no other rate had been agreed upon between the contracting parties. This final modification of the law relieved the moneylender of practically all restrictions on the size of loan. If the borrower could not be induced to contract for more than £10, the £10 minimum limit for notes could easily be evaded by immediate return of part of the sum advanced. The exclusion of contracts made on security of lands, tenements, or hereditaments from the exemption did not greatly affect the moneylender; though undoubtedly the borrower's real estate holdings often established a basis of credit, the lender seldom required them as specific security.

These relaxations of the usury laws seem merely to have whetted the appetites of the advocates of laissez faire. Popular opinion was beginning to demand their complete repeal. As a result of this growing desire for freedom in money bargains, the House of Lords ordered an investigation in 1841 to inquire into the effect of the alterations al-

[1] See discussion, p. 57.

[2] 2–3 Vict., c. 37, enacted to remain in force until 1842; extended by 3–4 Vict., c. 83, to 1843; by 6–7 Vict., c. 45, to 1846; by 8–9 Vict., c. 102, to 1851; by 13–14 Vict., c. 56, to 1856.

ready made in these laws, with a view to repealing them entirely.

Most of the evidence before the investigating committee was to the effect that, although interest rates were high under the altered conditions, they worked less hardship than under the usury laws. Sir Charles Frederick Williams, one of the commissioners of the Court of Bankruptcy, though he lamented the ruinous rates of interest that people were paying, considered it quite clear that the reason for the high rate was the borrower's distressed condition and that lenders who had charged exorbitant interest often had not shown good judgment, as was apparent from their not being paid.[1] The parliamentary investigation showed that in ordinary commercial transactions the rate of interest in 1845 ranged from 6 to 20 per cent a year. On poor security 30 and even 40 per cent was not uncommon, and in some instances the rate ranged as high as 60 per cent.[2]

In the class of credit not yet freed from the restrictions of the usury laws, especially that based on the possession of real property, moneylenders still indulged in some evasion of the law. In spite of the legislative attempts to discourage such evasions, they made some use of the purchase of annuities to hide a loan granted on the security of land. Or if they made the loan openly, they might increase the interest rate by means of a commission charge which was a percentage of the sum lent. If a man borrowed £100 for two months, the lender might charge a commission of 1 per cent, which would amount to 6 per cent a year in addition to the regular interest charge. The usual commission was one-half of 1 per cent. This practice, however, was not widely used because the usury laws, which still applied in this respect, prohibited any commission charge, except one-half of 1 per cent permitted to bona fide bill brokers or scriveners, as a contrivance for increasing the rate of interest.

[1] Parliamentary Papers 1845, vol. 12, p. 58.

[2] *Ibid.*, pp. 58f.

The controversy over the usury laws continued in Parliament until 1854. In that year an act[1] was passed to repeal all laws relating to usury and to the enrolment of annuities. The effect of this act was not startling. Its main accomplishments were two: it placed real property on an equal footing with personal property in credit transactions, and it unified the law for the entire kingdom. In England and Wales, in Scotland and Ireland, there remained no restrictions on the rate of interest.[2]

[1] 17–18 Vict., c. 90, an act to repeal the laws relating to usury and to the enrolment of annuities.

[2] Except for pawnbrokers, who were exempted from provisions of 17–18 Vict., c. 90, sec. 4.

CHAPTER III

LACK OF RESTRAINT

THE repeal of the usury laws in 1854 gave to the moneylenders a new freedom. Not only could they not be penalized for charging high rates; the law would actually help them to enforce their charges. As might have been expected, this new freedom was abused. The credit instruments which lay conveniently at hand, the bill of sale and the promissory note, proved to be two effective agents in working hardships on borrowers. These hardships eventually aroused a public indignation that led to a new type of moneylending regulation. The history of this change may be conveniently discussed in terms of the two instruments on use and abuse of which the moneylending business thrived.

One of these credit instruments which served the moneylender was the bill of sale. In its original sense this was a contract of absolute sale, used to transfer the ownership of property. In this sense it was called an absolute bill of sale. With the increased demand for diverse kinds of security it gradually came to be used as a form for mortgages on chattels where the actual possession of the chattels was not given to the purchaser. When so used it was called a "conditional bill of sale," corresponding to the chattel mortgage in America. It was so much more frequently used in relation to conditional than to absolute sales that the term "bill of sale" generally came to mean a conditional bill of sale.

The essential element in a conditional bill of sale is the transfer of property in chattels without the transfer of possession but with the right to the grantee (lender) to take possession upon failure of the grantor (borrower) to meet the terms of the contract. It was especially a moneylender's credit instrument; banks required security that was more readily negotiable. The advantage of the bill of sale was that it allowed a person to obtain credit on the security of goods that he still retained and with which he could not readily part: household furniture, wearing apparel, trade equipment, and the like. To sell such necessaries or to pawn them would deprive the borrower of a close personal need. The disadvantage of the bill of sale was the danger of the borrower's default, upon which he would lose possession. This disadvantage could not, of course, deter persons who had only such personal security to offer.

The bill of sale is a very old instrument. As early as 1376 Parliament passed an act to render void fraudulent assurances of lands or goods to deceive creditors.[1] In 1571 another act was aimed against "feigned, covinous, and fraudulent feoffments, gifts, grants, alienations,"[2] and so forth, as well of lands and tenements as of goods and chattels, which were devised to defraud creditors and others of their just and lawful debts, actions, and suits. Many of the early usury laws forbade pretended sales of wares. Altogether Parliament has enacted about two score acts touching bills of sale in their various uses. It was not until 1854, however, that Parliament attempted to regulate bills of sale directly.

It is interesting to note that none of the mass of legislation concerning bills of sale affected Scotland. Scotland has never known the bill of sale or chattel mortgage. Under the Scottish law the only way in which a borrower could use his personal property as security was by delivering it into the possession of the lender. Scottish mercantile law has been more closely related to Roman law than has English mercantile law. It has recognized the Roman-law doctrine of pledge, which involves delivery of the subject. While

[1] 50 Edw. III, c. 6.

[2] 13 Eliz., c. 5.

chattels, therefore, could not be used as security unless they were put in the possession of the lender, they nevertheless strengthened the credit of their owner. No creditor without taking possession could have a special claim to the debtor's chattels superior to that of other creditors. A lender might be willing to give credit, therefore, on the prospect of obtaining his share in the general distribution of the borrower's personal property in bankruptcy. The particularly effective processes by which debts could be collected in Scotland, to be discussed shortly, have adequately protected the money-lender, even without specific security.

The Bills of Sale Act, 1854,[1] was intended to protect creditors upon whose complaint it had been enacted. It was not drafted to benefit borrowers. Its object was to prevent frauds on creditors through secret bills of sale of personal chattels which enabled debtors to appear to own property by retaining possession, while in fact the holders of such secret bills of sale had the power to take their property to the exclusion of the rest of the creditors. In the act of 1854, as in those statutes concerning secret grants of annuities, Parliament's remedy was compulsory registration of the contract. All bills of sale were to be registered in the Court of Queen's Bench within twenty-one days of execution, or were to become void as against all trustees of the estates of bankrupt or insolvent persons, or under assignments for their creditors and as against seizure under process of courts of law or equity. Registration was intended to prevent the concealment of bills of sale. It was believed that the publicity attached to filing the contract with the court would eliminate the frauds growing out of the secrecy of the agreement. The same principles were extended in the act of 1866.[2]

[1] 17–18 Vict., c. 36, repealed by 41–42 Vict., c. 31, sec. 23. This act did not extend to Scotland or Ireland, but 17–18 Vict., c. 55, was practically the same act for Ireland.

[2] 29–30 Vict., c. 96, repealed by 41–42 Vict., c. 31, sec. 23. The act did not extend to Scotland or Ireland.

Compulsory registration, however, did not prove to be an adequate remedy. Creditors in bankruptcy suffered through the precedence granted to holders of registered bills of sale; that is, the holder of a registered bill had prior claim to the chattels of the debtor or grantor. Moreover the courts as a rule interpreted a bill of sale to include all chattels acquired later by the debtor even though they had not been included in the bill.[1] A debtor, therefore, who made a bill of sale in borrowing money to stave off bankruptcy mortgaged not only his present goods, but those which he might acquire later through trade, even if he had not paid for them. A dishonest debtor could, besides, grant a "friendly" bill of sale covering all his existing property, and all that he might acquire later, to a friend or relative and thus legally, though fraudulently, elude his creditors. The goods to which the "friendly" creditor held title would be those obtained from another creditor and not paid for. The Bankruptcy Act of 1869[2] provided against this inequality by declaring that all goods at the "order and disposition" of a debtor at the time of his bankruptcy should be subject to the claims of all his creditors.

There was, in addition, a way of circumventing the registration requirement. Twenty-one days were allowed before registration, during which period the bill would be in force. There was nothing to prevent its being re-granted again and again before the expiration of successive periods of twenty-one days each. Consequently many bills of sale, especially those for less than £20, were never registered and maintained their validity through this system of renewals.[3] The disadvantages of the attendant publicity, the extra expense and trouble of registering, the fact that registration did not certify the bill or give it additional force, and the possibility of maintaining the validity of unregistered bills through re-grants, more than offset the risk of voidance of an unregistered bill.

[1] Parliamentary Debates, Third Series, vol. 270, col. 1546.

[2] 32–33 Vict., c. 71, repealed by 46–47 Vict., c. 52, sec. 169.

[3] Parliamentary Debates, Third Series, vol. 270, col. 1549.

This practice of evasion continued until 1878, when the Bills of Sale Acts of 1854 and 1866 were repealed and replaced by an act[1] intended to correct the evils which had come to light through the administration of the former laws.

The act of 1878 cut the period in which registration must take place to seven days and declared null and void any regrant of a bill of sale within that period. It thus prevented evasion by means of renewals. It required attestation of a bill of sale by a solicitor and explanation of the terms of the contract to the borrower before the bill could be registered; otherwise the bill would be void. In the attestation the solicitor had to state that the contract had been fully explained to the grantor and had to certify that the document was genuine. This attestation had the effect of validating and of setting a stamp of approval on the contract. Although intended as a protection to the borrower, the provision for attestation benefited the lender more. A bill of sale duly registered and attested became almost as binding as a judgment of court; there was practically no possibility of setting it aside. The bill of sale became, therefore, an even more desirable instrument of credit for the moneylender after 1878 than it had been formerly.

The act of 1878 gave the moneylender another advantage. It took bills of sale out of the "order and disposition" clause of the Bankruptcy Act of 1869, which had provided that any property in the actual possession of the debtor at the time of bankruptcy should be divided among all his creditors. The new act gave a registered bill of sale priority over the claims of other creditors. The chattels included in the bill were not deemed to be in the possession of the grantor but of the holder of the bill, who thereby had the prior claim. A bill of sale could thus be relied upon even in extremities to satisfy the claims of the holder.

[1] 41–42 Vict., c. 31. The act for Ireland was passed the next year, 42–43 Vict., c. 50.

The number of registered bills of sale increased by leaps and bounds as a result of the advantages of registration. In 1877, the year before the passage of the act, the total number of bills of sale registered in England and Wales was 15,736. In 1879, the year after the passage of the act, the number had grown to 49,623, more than three times as great. This enormous increase was not due to a larger use of bills of sale but to a larger use of registration; the bulk of the increase lay in the small bills which had not previously been registered. The number of registered bills of sale for less than £20 increased more than fifteen fold from 1877 to 1879, while the number for less than £10 increased more than eighty-seven fold. The number of larger bills registered increased less rapidly because, owing to the greater risk involved, larger lenders had not previously evaded registration to the same extent as small lenders. Table 1 shows the number of bills of sale registered in England and Wales from the years 1875 to 1881, classified by amounts.

The extraordinary increase in the number of bills of sale which were registered attracted parliamentary attention once more to the moneylending business and led to an investigation.[1] In addition to unearthing other abuses, this investigation showed that interest rates were high. Although the usual charge was said to be about 60 or 70 per cent a year, rates over 100 per cent were not infrequent. Table 2 is an analysis of nine bills of sale held by an English moneylender from 1878 to 1880. They may be taken as fairly representative of bills of sale held by other moneylenders at this time. The amounts lent ranged from £10 to £40; the chattels mortgaged included both household furniture and agricultural implements and animals; the loans made were payable by monthly instalments; the grantors or borrowers were skilled workers, small farmers, or trades-

[1] Parliamentary Papers 1881, vol. 8: Report from the Select Committee on Bills of Sale Act (1878) Amendment Bill.

TABLE I.—NUMBER OF BILLS OF SALE REGISTERED IN ENGLAND AND WALES EACH YEAR, 1875 TO 1881, CLASSIFIED BY AMOUNTS

Year	Under £10	£10 and under £20	£20 and under £50	£50 and under £100	£100 and under £200	£200 and under £500	£500 and under £1000	£1000 and above	Amount not specified	Total
1875	36	761	2,696	2,599	2,570	1,791	482	281	628	11,844
1876	60	877	3,376	3,115	2,910	2,114	595	358	823	14,228
1877	65	945	3,792	3,572	3,259	2,302	622	319	860	15,736
1878	393	2,308	5,257	3,953	3,234	2,371	655	320	1,105	19,596
1879	5,754	10,751	13,418	7,521	5,320	3,576	1,018	591	1,674	49,623
1880	8,872	13,978	15,327	7,183	4,652	3,038	766	416	1,281	55,513
1881	7,227	13,541	14,519	6,954	4,503	2,734	679	347	1,183	51,687

Reproduced from a table which was prepared from weekly lists of the number and amounts of bills of sale registered, and compiled by Messrs. Stubbs and Messrs. W. R. Perry and Co. for the Board of Trade: Parliamentary Papers 1882, vol. 64, p. 4: Return Relating to Bills of Sale.

men; the rates of interest, as computed for the parliamentary committee, ranged from 69 per cent to 157 per cent a year.[1]

The high rate of interest worked an increased hardship on the borrower because of the provisions under which a bill of sale could be executed. Immediately and without warning the lender could deprive the borrower of possession, upon

TABLE 2.—NINE BILLS OF SALE HELD BY AN ENGLISH MONEYLENDER FROM 1878 TO 1880

Occupation of grantor	Nature of articles pledged	Amount lent	Amount to be paid	Terms of repayment monthly	Rate of interest: per cent per annum	
					Estimated in report	Computed according to 1927 act
Hay dealer and carman	Hay, livestock, implements, carts, and household furniture	£20	£28	£5 12*s.*	96	160
Cowkeeper, etc.	Livestock, carts, farm implements, and household furniture	40	56	8	69	120
Married woman described as widow	Household furniture	10	14	2	69	120
Coach-builder	Household furniture and contents of workshop	21	32	8	157	251
...	...	15	22	3 13*s.* 4*d.*	93	160
Engineer	Household furniture	10	14 14*s.*	2 2*s.*	80	141
Carpenter	"	10	15	2 10*s.*	100	171
Cabinet maker	"	20	30	5	100	171
Basket maker	"	12	18	3	100	171

Except for the final column, this table is reproduced from an analysis of nine bills of sale furnished to the Parliamentary Committee on Bills of Sale by a moneylender. Published in Parliamentary Papers 1881, vol. 8, p. 87: Report from the Select Committee on Bills of Sale Act (1878) Amendment Bill.

[1] These rates, computed for the parliamentary committee which investigated the effect of the Bills of Sale Act of 1878 were obtained by treating as interest the amount paid by a debtor in excess of the amount lent. For better comparison with present rates the final column of Table 2 gives the rates computed according to the method prescribed by the Moneylenders Act, 1927.

numerous types of default. A printed form of a well-known moneylender embodying such provisions and submitted to the investigating committee permitted the lender to execute the bill of sale:

(1) if the mortgagor shall make default in payment of the sum or sums hereby secured or any part thereof at the time or in the manner hereinbefore provided for payment thereof as aforesaid, or (2) whether such default in payment shall have been made or not, in case the mortgagor shall permit or suffer the said goods, chattels, and effects, or any of them, to be distrained for rent, rates, taxes, or other impositions, or (3) to be seized or taken under any writ of execution or other legal process whatsoever, or (4) shall not deliver to the mortgagee, the receipt of rents, rates, premium of insurance and impositions aforesaid when demanded by writing or otherwise, or (5) shall remove or permit or suffer the goods, chattels and effects, or any of them to be removed from the said dwelling house or premises for any purpose under any pretense whatsoever without the previous written consent of the mortgagee, or (6) shall charge, encumber, sell, or otherwise dispose of or make away with the same or any of them, or attempt or endeavor to do so, or (7) shall not keep the same whole, safe, or uninjured, or (8) shall use the same by underletting, or (9) shall make any assignment for the benefit of creditors, or file a petition for liquidation, or do or suffer any act, matter, or thing whereby he shall render himself liable to be made or become bankrupt, or (10) shall be sued or prosecuted in any court of law [or] equity, or (11) shall be arrested upon or imprisoned under any process, civil or criminal, whatsoever, or (12) shall quit England, or (13) shall otherwise do or permit or suffer to be done any act, matter, or thing contrary to the true interest and meaning of these presents, or by means whereof the security hereby intended to be given shall or may be in any way whatsoever prejudiced or invalidated, or (14) should the mortgagee discover that any statement made by the mortgagor in respect of this security is false, or (15) in the event of the death of the mortgagor.[1]

[1] Parliamentary Papers 1881, vol. 8, pp. 2f.: Report from the Select Committee on Bills of Sale Act (1878) Amendment Bill.

The disclosure of the hardships caused by the stringent terms of these bills of sale led to an enactment in 1882 amending the act of 1878. The act of 1878 had treated bills of sale as absolute assignments or transfers of chattels and had defined them to include "assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred."[1] The act of 1882,[2] on the other hand, recognized the concept of a contract creating a security on chattels; it regulated conditional bills of sale. This act was not intended, like the act of 1878, to protect the creditor against fraudulent conveyance; it was intended rather to safeguard the borrower who might be defrauded by a contract he did not understand. The investigation that had preceded it had brought about an understanding of the possible abuses, as well as the uses, to which bills of sale might be put; it was these abuses that the new enactment sought to prevent.

The act of 1882 required that to every bill of sale there must be attached a schedule of the property included under it, and that the agreement should be effective only against the property so named. Moreover, instead of the 15 causes for foreclosure given in the typical moneylender's form on page 51, the new law allowed only five: (1) default in payment or in the performance of an agreement necessary for maintenance of the security; (2) bankruptcy of the grantor or distraint for his rent, rates, or taxes; (3) fraudulent removal of the property from the premises; (4) refusal by the

[1] 41–42 Vict., c. 31, sec. 4.

[2] 45–46 Vict., c. 43.

grantor without a reasonable excuse to produce his latest receipts for rent, rates, and taxes, when demanded in writing; (5) levy of an execution under judgment of any court against the goods of the grantor. It recognized no other cause as sufficient to bring about seizure under a bill of sale. Even after execution the act protected the borrower. It provided that he should have five days of grace after seizure within which he could, upon paying the amount due, apply to a court to restrain the lender from removing or selling his goods.

To make sure of the effect of these limitations on the lender's power the new act prescribed a standard form[1] for all bills of sale. This form required that the interest charge be expressed on the face of the bill in terms of a percentage rate per year. The practice of the moneylenders had been to charge a lump sum in pounds, shillings, and pence for interest. The lump-sum charge had not only concealed the actual rate but had lent itself to manipulation by the lender.

On default of the borrower the entire debt, including the interest, became due and payable immediately, regardless of the date agreed upon for maturity. It is evident that when the lender received, months or even weeks before maturity, the interest which had been agreed upon for the whole period, he secured a greater profit than when interest was acknowledged at a stated rate. Under the new provision he was to receive only the interest at the stated rate for the time actually elapsed.

Since the greatest hardship under the previous law had resulted from loans of small sums to the very poor, Parliament decided that it would be better to prevent the poor from making bills of sale than to allow them to enter into agreements which might ultimately result in loss of all their property. The act of 1882 therefore declared void all bills of sale for less than £30.

[1] See Form 1, p. 54.

FORM 1.—FORM OF BILL OF SALE

As Provided in the Bills of Sale Act of 1882

This indenture made the day of , between *A. B.* of of the one part, and *C. D.* of of the other part, witnesseth that in consideration of the sum of £ now paid to *A. B.* by *C. D.*, the receipt of which the said *A. B.* hereby acknowledges [*or whatever else the consideration may be*], he the said *A. B.* doth hereby assign unto *C. D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ , and interest thereon at the rate of per cent. per annum [*or whatever else may be the rate*]. And the said *A. B.* doth further agree and declare that he will duly pay to the said *C. D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ on the day of [*or whatever else may be the stipulated times or time of payment*]. And the said *A. B.* doth also agree with the said *C. D.* that he will [*here insert terms as to insurance, payment of rent, or otherwise which the parties may agree to for the maintenance or defeasance of the security*].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C. D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said *A. B.* in the presence of me *E. F.* [*add witness' name, address, and description*].

Besides equipping the borrower with these safeguards the act of 1882 deprived the lender of two of his weapons. As attestation by a solicitor under the act of 1878 had been found to give too much force to the contract, the new act provided for attestation by a disinterested witness or witnesses. And it repealed the clause of the act of 1878 which had made registration useful and beneficial to the money-lender by giving the holder of a bill of sale preference over other creditors in bankruptcy.

In consequence of these restrictions the number of bills of sale registered in England and Wales dropped precipitately in 1883. In 1881 the number of registered bills, according to Table 3, had exceeded 52,700. In 1883 the number had dropped to 13,355, a decline to one-quarter. The great decline can be accounted for in part by Parliament's fixing the minimum value of each bill at £30, which had eliminated the mass of bills for small amounts. In 1881, 41 per cent of the total number of bills registered had been for amounts under £20, 68 per cent for amounts under £50.[1] This fact, together with the loss of incentive of large profits and the other restrictions placed upon the use of bills of sale, would account for the suddenness and extent of the drop in 1883. The gradual decline in the number of registered bills continued for several years after 1883. Their use never increased to former proportions but remained at a low level, varying little and averaging about 8,000 a year after 1893. From 1879 to 1881 their number had averaged more than 51,000 a year. Table 3 gives the number of bills of sale registered in England and Wales from 1875 to 1923.

Another significant result of the legal restrictions was the fall in the amount of money secured by bills of sale after the act of 1882. Table 4 presents all the figures available for

[1] See Table 1. There are no figures to show the number of bills for amounts under £30.

this comparison. Although the data are incomplete, covering only the years 1875 to 1881, and 1895 to 1900, they give illuminating evidence concerning the extent of the use of bills of sales by moneylenders.

Under the act of 1878, which was most favorable, the total

TABLE 3.—BILLS OF SALE REGISTERED IN ENGLAND AND WALES EACH YEAR, 1875 TO 1923

Year	Number	Year	Number	Year	Number	Year	Number
1875	11,844	1888	12,122	1901	6,496	1914	6,807
1876	13,922	1889	10,019	1902	6,629	1915	4,685
1877	15,393	1890	9,180	1903	7,091	1916	3,932
1878	18,873	1891	8,915	1904	7,948	1917	3,173
1879	45,625	1892	10,245	1905	8,891	1918	3,114
1880	55,368	1893	9,933	1906	7,713	1919	5,657
1881	52,711	1894	9,900	1907	7,881	1920	8,465
1882	49,074	1895	8,988	1908	8,942	1921	11,951
1883	13,355	1896	8,365	1909	8,556	1922	13,843
1884	12,512	1897	7,809	1910	8,256	1923	15,177
1885	12,965	1898	7,505	1911	7,807		
1886	12,092	1899	6,827	1912	8,137		
1887	12,361	1900	6,550	1913	7,627		

Compiled from Great Britain Home Office—Judicial Statistics, England and Wales: Part II, Civil Judicial Statistics, for the years in question.

The figures for 1879 to 1881, as shown in Tables 3 and 4, are a better index of the volume of money in bills of sale before the act of 1882 than are the figures for the earlier years because of the prevailing lack of registration before the act of 1878.

The total numbers of bills of sale for the years 1876 to 1881 inclusive are taken from official annual records and do not agree with the totals for the same years as given in Table 1, which was privately compiled from weekly lists.

TABLE 4.—AMOUNTS INVOLVED IN BILLS OF SALE IN ENGLAND AND WALES EACH YEAR, 1875 TO 1881[a] AND 1895 TO 1900[b]

Year	Absolute and conditional bills	Year	Conditional bills only	Absolute and conditional bills
1875	£2,123,826	1895	£637,596	£721,717
1876	2,719,413	1896	685,927	765,172
1877	2,807,871	1897	641,671	717,974
1878	2,760,094	1898	565,402	627,661
1879	5,253,291	1899	615,859	693,764
1880	4,333,914	1900	485,279	551,063
1881	3,749,360			

[a] Parliamentary Papers 1882, vol. 64, pp. 4–5. The amount of money involved was not specified on 3 to 4 per cent of the bills of sale registered.

[b] Great Britain Home Office, Judicial Statistics, England and Wales, Part II, Civil Judicial Statistics, for the years in question.

Data are not available for intervening years.

amount of money covered by bills of sale in 1879 was about £5,300,000; in 1881 it was about £3,750,000. In 1897, under the act of 1882, the yearly total was £718,000; in 1900 it was only a little over £551,000. The demand for bills of sale in the 1920's probably did not greatly exceed £900,000 a year. To be sure, these figures include both absolute and conditional bills of sale, but it is probable that the volume of the absolute bills of sale is neither large nor varied enough to affect the general comparison greatly. During the years 1897 to 1900, when returns were given separately for absolute and conditional bills of sale, the value of absolute bills of sale was only from 10 to 12 per cent of the total.

The decrease in the use of bills of sale did not indicate any diminution of moneylending. The promissory note, for some time the most popular credit instrument among lenders, grew in popularity. Though the use of promissory notes in England, often called notes of hand, dated back to the Middle Ages, they had become effective instruments of credit only when, by an act of 1704,[1] they were made assignable. Under the unmodified usury laws, however, they had been of small value to the moneylender, who had to disguise the rate of interest charged. Their real popularity in loan transactions dated from 1833, when the usury laws were first relaxed.

The reason for this popularity was, of course, the adaptability of the promissory note to the moneylender's needs. It lent itself to strictly private and confidential transactions; it could be drawn up without loss of time and without the bother and publicity of registration; it did not require the participation of a third person. Moreover, it permitted the use of a wide range of personal property as a basis for credit, property that could not be used as formal collateral. This reliance on the general credit of the borrower rather than on the

[1] 3–4 Anne, c. 9.

specific security of definite pieces of property was one of the distinctive features of British moneylending. From the lender's point of view, therefore, it was an accommodating instrument.

Although the promissory note proved to be an excellent credit instrument for the lender, it had a number of disadvantages for the borrower. The ability to borrow without specific collateral, while superficially to the borrower's advantage, may have had the effect of impairing his general credit. The fear of legal process and consequent exposure of his impaired credit could thus cause the borrower appreciable concern. But legal action held an even greater threat: the absence of any specific means of enforcing his claim under a promissory note left to the lender the choice of several legal processes which worked hardship on the borrower. Of these processes three were most frequently used: warrants of attorney, garnishment orders, and the Scottish summary diligence.

A warrant of attorney is an instrument authorizing an attorney to appear in court on behalf of the maker and confess judgment, in an action of debt, in favor of some particular person named in the warrant; it usually contains a stipulation by the maker not to bring any process to delay such appearance and confession of judgment. The borrower, besides giving the lender a promissory note, might be required to give him a warrant of attorney, whereby someone in the lender's employ could confess judgment on the note in favor of the lender. This practice had been developed by moneylenders in the eighteenth century as an aid to securing payment of annuities from borrowers. It had been useful to the lenders, but hard on the borrowers, for upon any default in the borrower's contract the lender could, with no notice to the borrower, sign judgment against him. When the lender had thus obtained judgment, he could have the borrower arrested and imprisoned for debt. When in 1869 imprisonment for debt was with certain exceptions abolished, the use of warrants of attorney became dormant.[1] The Bills of Sale Act of 1882 revived their use somewhat as a means of forcing payment of loans under £30.[2]

Garnishment is a process of attaching money or goods in the hands of a third person which are due the defendant. In relation to moneylenders it would usually mean that the borrower's employer, the garnishee, would be garnished, or warned not to pay the borrower his accrued wages or salary but to hold the money pending the lender's action. Unlike American moneylenders, English lenders have used garnishment orders very little. The Wages Attachment Abolition Act of 1870[3] protected the wages of servants, laborers, and workmen from garnishment. Although there has been no similar law for the protection of the salaries of clerks and others of such standing, there has been a rule in banks and government offices that threatens immediate dismissal to any clerk found borrowing from a moneylender. If a moneylending bargain was harsh or unconscionable, as we shall see, a court of equity could afford some relief. If a lender should take action which would lead to the discharge of the borrower from his employment, the court would be more likely to consider the bargain harsh and more likely to set it aside. This possibility seems to have deterred English lenders from subjecting borrowers to garnishment orders to any considerable extent. Lenders have made use of them more largely as a threat to borrowers than as a means of legal coercion.

In Scotland, however, there was a process of arrestment, corresponding closely to garnishment, which moneylenders have found useful. When a borrower failed to meet payments according to his obligation, the lender, having secured judgment for the debt, could arrest his wages each payday. A restriction, enacted in 1870, provided that the wages of

[1] Parliamentary Papers 1898, vol. 10, p. 4: Report from the Select Committee on Moneylending.

[2] Parliamentary Papers 1898, vol. 11, p. 29: *Ibid.*

[3] 33–34 Vict., c. 30.

laborers, farm servants, manufacturers, artificers, and work-people should be liable to arrestment only in excess of 20 shillings a week.[1]

A Scottish process of even greater use to the moneylender was summary diligence. The term "diligence" in Scotland is simply the equivalent of the term "execution" in England. Under this procedure if a debtor had defaulted in payment, a lender could obtain from a court a warrant in which the debtor was charged to make payment within six days if a resident of Scotland or within fourteen days if a non-resident. This charge was published only in an official roll, which did not reach the general public and was often not seen by the debtor. The debtor would thus know nothing of the warrant until his goods were seized for sale. If the debtor failed to comply with the terms of the charge, the lender could obtain an order of the court to sell the debtor's chattels, subject to preferential claims such as those of a landlord or tax collector. Or the lender could have the debtor declared a bankrupt and liable to sequestration proceedings. The lender could then obtain an execution against the debtor's effects and sell them.

A debtor charged in a warrant could, to be sure, take action in Scotland to have the diligence suspended. Before his petition would be received and his claim heard, however, he had to deposit in court the amount claimed under the charge, which would be paid over to the lender if the reasons for suspending the diligence were held not to be valid. The expense involved deterred many debtors from seeking suspension of warrants against them. Or a debtor might plead that the goods were not his, but the property of his wife, of his mother, or of some other relative. If such a plea proved to be genuine, the lender could not make a valid sale of the goods. Diligence was therefore not a sure remedy. Its use,

[1] 33–34 Vict., c. 63. For discussion see Parliamentary Papers 1881, vol. 8, pp. 84ff.: Report from the Select Committee on Bills of Sale Act (1878) Amendment Bill.

if not widespread, worked particular hardship, we shall see, on English borrowers.

The power which these court processes gave to the moneylender, and the freedom of bargaining to which the repeal of the usury laws led, were the causes of many abuses. After centuries of legal restraint and social ostracism it was but natural that the lenders should fail to use their new powers in a straightforward manner but should pervert them to their own aggrandizement. These perversions were largely of five sorts: secrecy, misrepresentations, harsh terms, inconvenient legal actions, and excessive interest rates.

The secrecy which characterized moneylending was a survival of the attitude engendered by the usury laws, under which it had been necessary to disguise lending transactions. One means of this secrecy had been concealment of identity under an assumed name. The lenders continued thus to shun publicity. They chose their disguises cunningly, taking their trade names from those names best known in the legitimate banking world. In many cases the word "bank" or "association" was added to lend respectability to the establishment. In advertising, the moneylender took this means not only to conceal his identity but the fact that he was a moneylender. A philanthropic gentleman or widow or a private citizen wishing to place idle capital, mentioned in an advertisement, invariably turned out to be a professional lender. Often some term like "Accountant" or "Investments" on the office door would be the only clue to the character of the service conducted within. "John Smith, Financier," would probably prove to be a moneylender.

One of the reasons for this secrecy and concealment was its appeal to the borrower as a guaranty of privacy. Because of the nature of small consumptive loans and the impairment of the borrower's prestige and credit which might accompany notoriety, borrowers were willing to take certain risks to avoid this possibility. They were attracted to a lender's advertisement which promised secrecy; their confidence was inspired by his blank stationery, his small and inconspicuous office, the absence of a name on the doors and windows, the obvious euphemisms in his name.

This desire of borrowers for privacy gave lenders a greater power in two different respects. Lenders could and did trade under several different names in the same and different places in order to remain obscure and yet profit by large-scale business. They were thus able to expand their trade through a chain of unidentified offices without creating uneasiness in the borrower or advertising the extent of their operations.

At the same time this disguise gave them an added power over the borrower. A man borrowing from one lender to pay another would unwittingly become involved with the same lender under a different name. Take an example. A dressmaker at Llangollen who was in difficulties, seeing an advertisement, applied to one Benjamin Edwards of Chester for a loan. He lent her £50 in return for her obligation to repay £70 in monthly instalments. Unable to meet these, she applied to W. Spencer of Liverpool. From him she received £70 in return for her note of £100. This paid off Edwards but left her unable to meet her payments to Spencer. She therefore borrowed £50 from Isaac Gordon of Birmingham. Edwards, Spencer, and Gordon were the same person.[1]

The use of several names, or a chain of apparently unrelated offices, thus gave the lender an unfair advantage over the borrower, for while he would know the borrower's situation in detail, the borrower would not appreciate that he was involved with the same lender in each of his several transactions. After believing that his dealings had been with three or four unrelated concerns, each of whom would know

[1] Parliamentary Papers 1897, vol. 11, pp. 18f., 138f.: Report from the Select Committee on Moneylending.

only a part of his affairs, the discovery that the whole fabric of his dealings had been in the hands of one lender only would leave him at a distinct disadvantage. In cases where secrecy was of utmost importance to the borrower this advantage gave the lender dangerous power. So long as the borrower met his instalments regularly, the lender would maintain his promise of secrecy. In event of default he would consider himself released from his promise and would threaten exposure. Unscrupulous lenders would use the threat of exposure as a psychological weapon of great cruelty and sometimes to extort an increase in interest charges.

A second taint that the usury laws had imposed on the moneylending business was the need to misrepresent rates. Repeal of the laws did not change the public attitude, which continued, without understanding, to condemn interest charges higher than the commercial bank rate. Some of the means by which lenders sought to overcome this feeling were relatively innocent; others were decidedly fraudulent. Among the more ingenuous methods of disguising rates were failure to state the rate of interest at all and making additional charges to increase the rate.

One practice to avoid mentioning interest was to make the loan for a stated lump sum. For instance, a borrower signing a promissory note for £50 would receive only £30 10*s*. in cash. It would then be difficult for him to compute the rate he was paying. Another practice was to confuse in the borrower's mind the rate of interest charged by the lender per month with the rate charged by banks per year. It would be published that money was offered at 5 per cent. The reader's natural conclusion was 5 per cent a year, but the actual charge was 5 per cent a month. Finally, in advertisements, lists of easy instalments by the month or week would be tabulated for loans of different sizes without any statement of the rate of interest or total cost. Offers of £10 repayable at 4*s*. a month, or £5 at 2*s*. a month, were misleading to the undiscriminating borrower. At 5 per cent a month, which was the usual rate, 4*s.* would not even meet the interest charges on £10; and the debt would increase with each monthly payment. It was not unusual for the borrower to be entirely ignorant of the rate he was paying and sometimes even of the actual amount of his debt.

The second method of increasing the interest charges without positive fraud was by use of fees and bonuses. Lenders would sometimes charge preliminary fees, supposedly to compensate for the expense of investigating the borrower's security before granting the loan. Such a charge would have been fair only in those rare cases where the interest was not already so high as to compensate the lender for the risk of a poor loan; in most cases this was in fact a double charge. It had the additional objection of entangling the borrower in payments before the terms of the loan were agreed. Besides preliminary fees, lenders would exact fines and bonuses for extension of time in making payments. In a typical case of this kind a borrower, unable to meet a loan, paid a bonus of £10 on a debt of £101 9*s.* for an extension of one month.[1] The extra bonus charge for delay in payment therefore amounted to additional interest and an increased rate on the original loan.

Disguise of the rate of interest led unscrupulous lenders to less savory practices. It was not unknown for a lender to alter a borrower's note, calling for 6 per cent interest, to call for 60 per cent. There was, besides, a group of pseudo lenders known as "fee snatchers," who collected fees to cover the expense of preliminary investigations when they contemplated making no investigations and granting no loans.

The third great abuse in moneylending practice grew out of default clauses in loan contracts and the renewals which

[1] Parliamentary Papers 1897, vol. 11, p. 66: Report from the Select Committee on Moneylending.

resulted from them. In their mildest form renewals worked this way. A borrower late in the payment of an instalment would be charged with interest on the instalment at the rate of a halfpenny in the shilling each week, something like 216 per cent a year.[1] But this payment of interest on interest would seldom cure his difficulties. Having been unable to meet one payment, it was unlikely that he could then meet a double payment plus interest. The only thing the borrower could then do would be to accept the lender's offer of renewal, contracting to repay the unpaid balance of the original loan, with interest to maturity, and interest on the new loan. Often borrowers would be forced to take several successive renewals.

In bankruptcy proceedings this system worked great hardship on other creditors. Under the Bankruptcy Act of 1890 when a proved debt included interest, such interest had to be calculated at a rate not greater than 5 per cent a year.[2] Not until after all debts proved in the estate had been paid in full, could the creditor claim his right to any higher rate. If, however, a moneylender had granted to a borrower a renewal of his loan previous to bankruptcy proceedings, the whole amount of unpaid interest and principal could be claimed as principal, with interest at 5 per cent, without prejudicing the lender's right to a higher rate after all other debts had been paid in full. In many bankruptcy cases the claims of other creditors were thus swamped by those of moneylenders. During 1895 and 1896 in the 8,500 orders in bankruptcy made in England and Wales there were 3,160 claims by moneylenders.[3]

When the moneylending contract was supported by a bill of sale rather than a promissory note, the default clause

[1] Parliamentary Papers 1897, vol. 11, p. 10: Report from the Select Committee on Moneylending.

[2] 53–54 Vict., c. 71, sec. 23.

[3] Parliamentary Papers 1897, vol. 11, Appendix 11: Report from the Select Committee on Moneylending.

worked even greater hardship on the borrower. The usual clause provided that on default of a single instalment the whole debt became due and payable, plus interest. The lender could thereupon foreclose and take possession of the property and, according to the act of 1882, could sell it after five days.[1] These days of grace were scant protection. A borrower who could not pay one instalment would find difficulty in paying the entire debt within a few days. Possibly he would be able to contract a new loan from another moneylender, thus paying interest upon interest. Otherwise he might find himself deprived of the personal property which comprised his home.

That similar abuses resulted from default on promissory notes is evidenced by an actual case. To obtain a loan of £300 a borrower gave his note for £456, to be paid by monthly instalments of £19. Having repaid £114, he sent his seventh instalment six or seven days late. Acting within his legal rights the lender refused it, returning the check, and took action to recover the whole amount. Default interest accrued at the rate of a halfpenny per shilling a week until the claim amounted to over £800. The borrower settled for £600. For £300 cash the borrower had, through a slight default, to repay £714.[2]

Akin to the harshness of default clauses were the inconveniences to which lenders put borrowers in collecting loans by judicial process. Part of these hardships grew out of the borrowers' own ignorance and fear. They would not realize that, upon their default in meeting the terms of the agreement, action to collect might be brought in the place specified for payment.[3] Hence a man in Cornwall borrowing from a Manchester moneylender would, in case of suit, have either to incur heavy traveling expenses and extra loss of

[1] See p. 53.

[2] Parliamentary Papers 1897, vol. 11, pp. 172–176: Report from the Select Committee on Moneylending.

[3] See p. 92.

time from work or else would have to let the suit go by default through his failure to appear. This situation often occurred because a person unaware of the possible consequences would actually prefer to borrow at a distance from his home and his acquaintances, either to keep his poor credit from becoming known to the lender or to prevent his good credit from being impaired by knowledge of his needs. Since the laws controlling the instruments used by moneylenders differed in Scotland from those in England and Wales, some English moneylenders made a practice of maintaining an office, or at least an address, in Glasgow and dating some of their contracts there in order to make use of the Scottish summary diligence which had no counterpart in England. Having obtained a decree in the Scottish Court of Session, the lender could register it under the Judgments Extension Act in the High Court in England. Thereupon the local sheriff would levy upon the debtor's property in England.

Greater than any of these abuses in detail, however, was the general abuse of excessive interest. The moneylender's lending was, of course, based on security not ordinarily acceptable to other credit institutions; if the security were good enough, the borrower could obtain credit elsewhere at the commercial rate of interest. To insure the moneylender against the risk involved in poor security, he naturally charged high rates. On fairly dependable security a common rate was 40 or 50 per cent. The usual rate on promissory notes, not too well secured, was 60 or 70 per cent a year. On bills of sale the moneylenders' usual range of rates was said to be from 30 to 60 per cent a year. Charges as high as 3,600 per cent were not unknown.[1]

Although no complete data are available concerning rates of interest on registered bills of sale, a sample is available from one county court circuit for 1897, representing 11 per

[1] Parliamentary Papers 1897, vol. 11, pp. 128–131: Report from the Select Committee on Moneylending.

cent of the total number of bills registered in England and Wales for that year. Even if such a limited sample cannot be taken as typical, the picture presented in Table 5 is nevertheless interesting as illustrating certain moneylending practices. While the range of rates is considerable, they show a pronounced tendency toward extremes: 55 per cent of the bills cited interest at 5 per cent or less a year, 19 per cent at from 50 to 60 per cent. Although the bills with very low interest doubtless included absolute bills of sale and conditional bills for commercial purposes, their sizable number indicates that they included also some conditional bills held by moneylenders. If so, this classification is misleading and represents the cunning practice commonly followed by moneylenders at that time of quoting a rate of interest without reference to the time period in order to give the impression that it was an annual rate. Some of the interest listed in this table at 5 per cent really meant 5 per cent a month.[1] Such a hypothesis would make the large numbers at the two extremes compatible.

TABLE 5.—SOME BILLS OF SALE REGISTERED IN 1897, CLASSIFIED BY STATED RATES OF INTEREST

Rate of interest: per centum per annum	Number
0–5	487
5–7½	44
7½–10	38
10–15	8
15–20	10
20–30	23
30–40	17
40–50	12
50–60	169
Exceeding 60	17
Rate not stated	56
Total	881

Reproduced from Parliamentary Papers 1898, vol. 10, p. 175: Report from the Select Committee on Moneylending. The table was prepared from returns received from the 15 courts of County Court Circuit no. 36, and handed in by Judge Snagge. The number in the above table represents 11 per cent of the total number of bills of sale registered in England and Wales in 1897.

[1] Channell, J., in Carringtons, Limited *v.* Smith, [1906] 1 K. B. 79, at p. 90.

The ordinary rates do not convey so shocking a picture of the abuses as does the current practice in individual cases. A picturesque example is revealed in the questioning of a moneylender in 1897.

Do you remember a case at Chester of a man of the name of Robert Burden?

Yes, I do perfectly.

You made him certain advances?

Yes . . . .

You lent him 5,178*l.*

I believe that was somewhere about the figure.

You proved in the Bankruptcy Court for 3,809*l.* 11*s.* 10*d.*?

Yes, that is the figure.

In addition to that sum that you proved for in court, he had paid you . . . the sum of 10,274*l.* 11*s.* 9*d.*?

I suppose that would be so.

Making a total of 14,084*l.* 3*s.* 7*d.*?

Yes, I suppose that would be so.

For a loan of 5,178*l.*?

Yes, but you know he has done a lot of moneylenders.[1]

In addition to the ordinary abuses of moneylenders, which were largely the same in all parts of the kingdom, Ireland was burdened with the notorious "gombeen-man," the shopkeeper turned usurer. Because of the agricultural nature of the country and the poor condition of her credit institutions, the gombeen-man played far too important a part in the history of Irish moneylending. The small farmer in need of credit borrowed from the moneylending shopkeeper and paid for his credit with the yield of his land. There was seldom any transfer of cash between the shopkeeper and farmer. The shopkeeper in this way set the price he paid the borrower for the latter's goods and the price he received from the borrower for his own goods. In some cases credit would not

[1] Parliamentary Papers 1897, vol. 11, p. 152: Report from the Select Committee on Moneylending.

be advanced unless the debtor bought goods from the shopkeeper at the same time.

The gombeen-man's power over the small farmer was one of the greatest evils against which Ireland had to contend. Many of the small holdings of farm-land became his property when every other resource of the borrower had been drained to meet his debts. It was not until the co-operative movement with its farming and dairy societies had come into Ireland through the efforts of Sir Horace Plunkett and Father Finlay that the grip of the gombeen-man was broken and the Irish farmer was made independent of the storekeeper. While the activity of the Irish Agricultural Organization Society, founded in 1894, has not entirely eradicated the gombeen system, it had done so much that the parliamentary committee investigating moneylending in 1897 thought that the remedies proposed for other moneylending evils would be sufficient to cope with this evil without the need for independent treatment.[1]

Against these abuses of the moneylender the borrower had but a feeble weapon. He could only ask a court of equity for release from a bargain that was, by legal definition, fraudulent. This doctrine of fraud first accrued to the benefit of the borrower in 1750. In the case of Chesterfield *v.* Janssen[2] Lord Hardwicke declared, "There is always fraud presumed or inferred from the circumstances or conditions of the parties contracting: weakness on one side, usury on the other, or extortion or advantage taken of that weakness. There has been always an appearance of fraud from the nature of the bargain."[3] And this principle of upsetting a bargain if the Court of Chancery thought it so unfair as to imply fraud had been constantly acted upon.

[1] For a good treatment of the gombeen system see Rural Reconstruction in Ireland, by Lionel Smith-Gordon and Laurence C. Staples. London, P. S. King & Son, Ltd., 1917, chaps. 8 and 9.

[2] 2 Ves. Sen. 125.

[3] *Ibid.*, p. 157.

The difficulties with this type of proceeding were two. From the very beginning borrowers were deterred by the initial expense of bringing the petition and their hesitancy for reasons of privacy to take any initiative that would lead to publicity. In consequence courts of law would give judgment against a borrower on a contract from which courts of equity might have granted relief. The right hand of the law did not know what the left hand would have done.

The second difficulty arose upon the repeal of the usury laws. After 1854 the courts of equity would no longer grant relief in moneylending cases merely because the interest or charges were excessive. Unless the borrower was not of full capacity or was one of the class known as "expectant heirs," which was treated distinctly, the rule was that the court would not grant him relief unless he showed that he had been overreached, tricked or deceived, and that the lender had taken an undue advantage of his weakness and necessities. Exorbitance of charge did not allow the borrower relief in the absence of unfair dealing.[1]

In Scotland the borrower did not have even this meager hope of relief. The Scottish sheriffs, in whose courts moneylending cases were often heard, had no power to interfere with the rate of interest; and judges of the county courts, considering that they lacked the power exercised by English courts of equity to lower the interest in unfair bargains, felt obliged to give judgment according to the rate agreed between the parties in the loan contract.

These evidences are sufficient to indicate that the moneylenders' abuses of their new powers were numerous and serious. About 1893 Thomas Farrow, a philanthropic gentleman, became interested in moneylending. Through an attempt to establish agricultural credit societies in England,

[1] Wilton and Co. *v.* Osborn, [1901] 2 K. B. 110, 70 L. J. K. B. 507, 84 L. T. 694, 17 T. L. R. 431; *Re* A Debtor, *Ex parte* The Debtor, [1903] 1 K. B. 705, 72 L. J. K. B. 382, 88 L. T. 401, 19 T. L. R. 288, 51 W. R. 370, 47 Sol. Jo. 334.

he made a study of the lenders' methods. His indignation at their usurious practices caused him to advertise in newspapers for victims to come to him with their troubles. In this way he collected a mass of material for public lectures and newspaper articles and finally for a book, The Moneylender Unmasked, in which he asked for a parliamentary investigation. This demand was re-enforced by a strong public opinion, built up by Farrow's exposures.

"The widespread prevalence of usury, as evidenced by recent disclosures," led R. A. Yerburgh, a member of Parliament, to ask the First Lord of the Treasury whether he would allow a parliamentary inquiry. Though the First Lord would not assent to questioning the usury laws, which implied the propriety of limiting interest rates, he thought that "a more limited inquiry might with advantage be instituted."[1] This discussion led to the appointment in 1897 of a Select Committee "to inquire into the alleged evils attending moneylending transactions at high rates of interest, or under oppressive conditions as to repayment, between the poorer classes and professional moneylenders."[2]

The purpose for which the committee was created, therefore, was to plug the legal holes through which the abuses of moneylending were flooding. In the words of T. W. Russell, then secretary to the Local Government Board and chairman of the committee,

> At the very outset of their deliberations the committee had to weigh and decide between two proposals, which admittedly went to the root of the whole question. They had to decide between fixing a rate of interest which should be applicable to all moneylending transactions, and bringing into play the discretion of the courts. The mere fact that the first of these proposals had the weight and the experience of Mr. Justice Mathew behind it, as well as the support of many experienced men, who conveyed their

[1] Parliamentary Debates, Fourth Series, vol. 46, cols. 412f.

[2] Parliamentary Papers 1897, vol. 11, p. iii: Report from the Select Committee on Moneylending.

views unofficially to the committee, was quite sufficient to insure its careful consideration. But, notwithstanding these considerations, and with absolute unanimity, the committee rejected the proposal. It was felt that Parliament would never consent to re-enact the usury laws. And, what was even stronger ground, the committee were convinced that just as laws of this character have been and are at the present day evaded, so the ingenuity of the English moneylender would suffice to get behind any such enactment. With equal unanimity the committee arrived at the conclusion that the real remedy for the evils proved to exist was to confer upon the judges of the superior and of the county courts "absolute and unfettered discretion" in dealing with such cases.[1]

In consequence of this decision the committee made its most striking announcement:

They therefore recommend that all transactions, by whatever name they may be called, or whatever their form may be, which are, in substance, transactions with persons carrying on the business of a moneylender, in the course of such business should be open to complete judicial review.

That in all legal proceedings to enforce, or for any relief in respect of, a claim arising out of such transactions the court should have power to inquire into all the circumstances of such transactions, from the first transaction up to the time of the judicial inquiry.

That in such proceedings the court should have power to reopen any account stated in the course of such transactions, to direct that an account be taken upon the basis of allowance of such a rate of interest as shall appear to be reasonable, having regard to all the circumstances, and to make such order as the court may think fit.[2]

Far-reaching as were these recommended powers, they were not new in concept. Courts of equity had already had the right to review the circumstances of the transaction in a suit brought by the borrower. The parliamentary commit-

[1] Russell, T. W., The Moneylending Inquiry. In The Nineteenth Century, vol. 44, August, 1898, p. 240.

[2] Parliamentary Papers 1898, vol. 10, p. vi: Report from the Select Committee on Moneylending.

tee wished to give to courts of law the same power, or a greater power, to protect the borrower, allowing them to exercise it in actions brought by the lender. Not only would this simplify the procedure; it would encourage the borrower to defend himself against the consequences of an unfair bargain. Besides, this power of investigation and revision by the courts was to extend not only to the immediate loan contract but to all the lending transactions between the parties, including old loans and renewals, upon which the claim was founded. Even though the committee did not propose to limit the rate of interest or deprive the lender of legal recourse in enforcing his contract, it did wish to hold over him a test of fairness. If in the special circumstances of the case the bargain was unconscionable, the court was to be allowed to revise it and even to order the return to the borrower of payments already made in excess of a fair amount.

This protection against excessive charges necessitated further precautions. In cases where the security was negotiable and the lender had made a bona fide assignment before a decision was made on the fairness of the bargain, the claim of the second holder was valid under the law, and the borrower was liable to be required to pay the full amount of the note in spite of the fact that the terms of the bargain might be held to be unfair. In such cases the committee proposed that the courts be given the power to require the lender to indemnify the borrower for any sum he had paid the holder in excess of the amount considered by the court to be reasonable. To prevent lenders from charging interest on interest in case of defaults, the committee proposed to make invalid any bargain of renewal between a borrower and lender so long as a judgment for payment of the loan remained unsatisfied.

These were the most important of the committee's recommendations intended to eradicate the most important abuse. To remedy the oppression on borrowers resulting from use of certain legal processes, the committee proposed to abolish warrants of attorney and cognovits as a means of enforcing moneylending bargains. It recommended confining the use of summary diligence in moneylending transactions to borrowers who had a domicile in Scotland. To extend to clerks and others of small income the protection which the Wages Attachment Abolition Act of 1870 had given to servants and laborers, the committee wished to prohibit the garnishment of wages or salaries not exceeding £200 a year. And finally, to protect the poor and ignorant borrower from the provisions of bills of sale, it proposed to make all such bills void if given in consideration of a sum under £50 (instead of £30) and to allow twenty-one instead of merely five days of grace.

To prevent the lender from making the borrower defend the action in a distant court, the committee recommended that, when proceedings were taken in the county court, the lender should be allowed to sue only in the county court of the district where the borrower resided.

As a method of protecting the other creditors, in bankruptcy proceedings against borrowers, from being swamped by moneylenders who had greatly increased their claims by constant renewals after the borrowers' defaults, the committee suggested that the official receiver in bankruptcy should have the power to go behind any series of transactions with moneylenders, whether they purported to be final settlements or not, and to ascertain the actual amount lent and the amounts paid. If the total repayments of interest which had been made by the debtor amounted to more than 5 per cent a year on the actual sum lent, the excess was to be deducted from the amount of the lender's claim under bankruptcy proceedings, without prejudicing his right to prove for the remainder of his debt after all other debts proved on the estate had been paid in full.[1]

[1] Although this suggestion, unlike some of the others, was not immediately incorporated into the law, the statute 4–5 Geo. V, c. 59, sec. 66, did embody this principle, in a modified form, in the Bankruptcy Act of 1914.

The committee's final important recommendation was aimed at the abuses growing out of secrecy. Not only did it advocate that all moneylenders be registered as such; it advocated that they be registered under their own names and not be permitted to carry on business under the name of "bank" or other misleading title. An unregistered moneylender would be incapable of recovering his debts in courts. The reason for the committee's failure to go further and require not only registration but a license, as some moneylenders themselves desired in order to eliminate undesirable competition, was the fear that prospective borrowers would consider the lender's respectability guaranteed by his advertising himself as "licensed under Act of Parliament."

Even though the investigation by the parliamentary committee had been long and thorough and its recommendations had been based on an incomparable mass of evidence, the members of Parliament did not all receive its proposals warmly. The bill which incorporated them, even though espoused by the government, underwent many delays and prolonged debate.[1] It resulted, at length, in the Money-lenders Act of 1900,[2] which, for purposes of further discussion, must be reproduced. In comparing the final enactment with the committee's proposals it is important to note that several of the committee's most helpful prescriptions for the ills of moneylending never found their way into the legislative compound.

MONEY-LENDERS ACT, 1900[3]

An Act to amend the Law with respect to Persons carrying on business as Money-lenders.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and

[1] For debate see Parliamentary Debates, Fourth Series, vol. 84, cols. 681–734 (21 June 1900) and 1187–1204 (26 June 1900).

[2] 63–64 Vict., c. 51.

[3] Ibid.

Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Re-opening of transactions of money-lender.*—(1.) Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the money-lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the money-lender, and if the money-lender has parted with the security may order him to indemnify the borrower or other person sued.

(2.) Any court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived.

(3.) On any application relating to the admission or amount of proof by a money-lender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4.) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a money-lender.

(5.) Nothing in the foregoing provisions of this section shall affect the rights of any bona fide assignee or holder for value without notice.

(6.) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court.

(7.) In the application of this Act to Scotland this section shall be read as if the words "or is otherwise such that a court of equity would give relief" were omitted therefrom.

2. *Registration of money-lenders, &c.*—(1.) A money-lender as defined by this Act—

(*a*) shall register himself as a money-lender in accordance with regulations under this Act, at an office provided for the purpose by the Commissioners of Inland Revenue, under his own or usual trade name, and in no other name, and with the address, or all the addresses if more than one, at which he carries on his business of money-lender; and

(*b*) shall carry on the money-lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address; and

(*c*) shall not enter into any agreement in the course of his business as a money-lender with respect to the advance and repayment of money, or take any security for money in the course of his business as a money-lender, otherwise than in his registered name; and

(*d*) shall on reasonable request, and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan or any security therefor.

(2.) If a money-lender fails to register himself as required by this Act, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding one hundred pounds, and in the case of a second or subsequent conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding one hundred pounds, or to both: Provided that if the offender be a body corporate that body corporate shall be liable on a second or subsequent conviction to a fine not exceeding five hundred pounds.

(3.) A prosecution under subsection (1) (*a*) of this section shall not be instituted except with the consent in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

3. *Regulations as to registration.*—(1.) The Commissioners of Inland Revenue, subject to the approval of the Treasury, may make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or companies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, not exceeding one pound for each registration or renewal, and respecting the inspection of the register and the fees payable therefor.

(2.) The registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and if renewed shall have effect for three years from the date of the renewal.

4. *Penalties for false statements and representations.* If any money-lender, or any manager, agent, or clerk of a money-lender, or if any person being a director, manager, or other officer of any corporation carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanour, and shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceed-

ing two years, or to a fine not exceeding five hundred pounds, or to both.

5. *Amendment of 55 and 56 Vict. c. 4. s. 2, as to presumption of knowledge of infancy.* Where in any proceedings under section two of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

6. *Definition of money-lender.* The expression "money-lender" in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but shall not include—

(*a*) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or

(*b*) any registered society within the meaning of the Friendly Societies Act, 1896, or any society registered or having rules certified under sections two or four of that Act, or under the Benefit Building Societies Act, 1836, or the Loan Societies Act, 1840, or under the Building Societies Acts, 1874 to 1894; or

(*c*) any body corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or

(*d*) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or

(*e*) any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.

7. *Short title and commencement.* (1.) This Act may be cited as the Money-lenders Act, 1900.

(2.) This Act shall come into operation on the first day of November one thousand nine hundred.

CHAPTER IV

JUDICIAL RESTRAINT

DURING the parliamentary investigation in 1897 and 1898 two prominent moneylenders declared that the contemplated restrictions would put an end to their business. These fears—or threats—have not been realized. To be sure, the Moneylenders Act of 1900 was intended to express a new spirit, to change the whole emphasis in the moneylending business. Instead of protecting the lender in his freedom of trade, a motive which had dominated the period of laissez faire, the act was meant to protect the borrower in his search for economic assistance. It was meant to curb the practices of lenders so as to secure reasonably the needs of borrowers. But business practice is like a gyroscope; to change its direction a considerable force must be applied. The act of 1900 did not apply sufficient force to redirect the course of moneylending; its results were modifications of details and extremes only.

The act of 1900 had actually inaugurated only two changes: it required registration of lenders; and it allowed the courts to go behind the bargains to protect borrowers against undue hardships. The first of these innovations failed to attain its purpose; the second attained it only in part. And the abuses which the other recommendations of the parliamentary committee had hoped to terminate continued after 1900 as they had continued before.

The first inadequacy of the act of 1900 was its failure to bring the business of moneylending into the open. It was expected that the requirements of registration would abolish the secrecy which surrounded lending transactions and the abuses which resulted from secrecy. This expectation depended, of course, on two assumptions: that all lenders would register, and that they would register in the prescribed manner.

It is difficult to assert dogmatically that many lenders did not register. In the first place, the act required registration only of those persons "whose business is that of moneylending." The courts held that this was in each instance a question of fact. It was not sufficient to show that a person had on several occasions lent money at remunerative rates of interest; to bring him within the requirement a certain degree of system and continuity about his transactions, a degree of repetition, had to be shown.[1] Moreover the act had provided exemption for any person "bona fide carrying on any business not having for its primary object the lending of money." Unless, therefore, the lending was a part of his regular occupation,[2] a person making loans did not need to register.[3]

Unfortunately the Commissioner of Inland Revenue, who registered moneylenders, issued no official figures of the number of registrations. In 1913, however, the Moneylenders' Federation of Great Britain and Ireland issued a manual and directory which included what purported to be "a complete list of registered moneylenders for the three years[4] ending June 29, 1912." Individual names in this list numbered about 6,000; the total number of moneylending offices, something like 8,000. In 1925 an officer of a money-

[1] Newton *v.* Pike (1908), 25 T. L. R. 127; Kirkwood *v.* Gadd, [1910] A. C. 422, 79 L. J. K. B. 815, 102 L. T. 753, 26 T. L. R. 530, reversing [1909] 2 K. B. 353; Newman *v.* Oughton, [1911] 1 K. B. 792, 80 L. J. K. B. 673, 104 L. T. 211, 27 T. L. R. 254, 55 Sol. Jo. 272; Bonnard *v.* Dott (1905), 92 L. T. 822, 53 W. R. 678, 21 T. L. R. 491; on appeal, [1906] 1 Ch. 740.

[2] For instance, Fagot *v.* Fine (1911), 105 L. T. 583, 56 Sol. Jo. 35; Edgelow *v.* MacElwee, [1918] 1 K. B. 205, 87 L. J. K. B. 738, 118 L. T. 177; Newman *v.* Oughton, [1911] 1 K. B. 792, 80 L. J. K. B. 673, 104 L. T. 211, 27 T. L. R. 254, 55 Sol. Jo. 272.

[3] Litchfield *v.* Dreyfus (1906), 1 K. B. 584, 75 L. J. K. B. 447, 22 T. L. R. 385, 50 Sol. Jo. 391; Furber *v.* Fieldings, Ltd. (1907), 23 T. L. R. 362.

[4] The act of 1900 required registration every three years.

lenders' association stated before a parliamentary committee that there were upwards of 30,000 lenders in the United Kingdom.[1] This estimate probably included pawnbrokers and unregistered moneylenders. The Pawnbrokers Act of 1872 had applied to loans of £10 and under, and by the Moneylenders Act of 1900 a pawnbroker became a moneylender when he advanced sums exceeding £10. As a great number of pawnbrokers at one time or another made loans in sums exceeding £10, a large proportion of the registered lenders were undoubtedly pawnbrokers registered as moneylenders.

The wide divergence between the published list for 1912 and the estimate in 1925 was due not only to the inclusion of pawnbrokers but of unregistered lenders as well; that is, the small lenders who operated from their own homes. There is no evidence to show any abnormal increase in the number of registered lenders from 1912 to 1925. Since the fee charged for each office registered was £1, an examination into the total amount of these fees as reported by the Commissioner of Inland Revenue would indicate any extraordinary increase in the number of registrations. For the three years ending March 31, 1912, the total fees amounted to £7,728; for the three years ending March 31, 1923, to £7,773. Since both these figures include pawnbrokers registered under the Moneylenders Act of 1900,[2] they suggest that the difference between the estimate of from 6,000 or 8,000 lenders and the estimate of 30,000 lenders probably represents unregistered lenders. This probability is confirmed by the evidence of several lenders before the parliamentary committee in 1925 who emphasized—even if they may have exaggerated—the prevalence of small unregistered lenders.

Because of the wording of the act of 1900 and the court

[1] Joint Select Committee, Report, 1925, p. 4.

[2] They include likewise the fees charged for examination of moneylenders' registration, a small item.

interpretations of what constituted professional lending, and because of the secrecy with which such lending was attended for social and psychological reasons, some of the evils of the earlier period persisted among the lower classes. Neighbors and fellow-workers—sometimes in co-operation with the plant foreman—would make loans of amounts generally no larger than a pound, often as small as a shilling. The interest which they charged was, as we shall see, exorbitant. The hardship caused by their terms of repayment from needy borrowers was often extreme.

Even when the lenders did register as required, their registration did not entirely effect the end that the act of 1900 had intended. It required, under penalty, that each lender register "under his own or usual trade name, and in no other name." Lenders thereupon assumed that "usual trade name" included not only a name under which they had been carrying on business previously but a name which they adopted for purposes of registration and intended to use in the future. Many lenders therefore assumed new names. In this practice the King's Bench upheld the lenders. "I think," said Mr. Justice Bucknill, "a moneylender can lawfully register a name by which he elects at the time of its registration to be known, whether he adopted it before or after the Act of 1900 came into operation."[1]

Such an interpretation would have defeated one of the purposes of the act of 1900, which was intended not only to prevent a moneylender from doing business in diverse places under different names, but also to inform the borrower of the name of the lender with whom he was dealing. Possibly the courts did not sympathize with this device of Parliament; possibly they felt that it would be prejudicial to many lenders to have to do business under foreign-sounding names. At least, several distinguished judges pointed out that a

[1] Stirling *v.* Silburn and Pyman, [1910] 1 K. B. 67, 79 L. J. K. B. 336, 101 L. T. 945, 26 T. L. R. 13.

moneylender not in business in 1900 would have no choice of a trade name, a privilege enjoyed by all other types of traders. Regardless of this opposition, the legislative purpose was finally effected in 1910 by a decision of the higher courts. Obviously, the Court of Appeal said, "usual trade name" can refer only to a name in which the lender has previously been doing business, for "usual" can have reference only to the past.[1] And this holding was affirmed by the House of Lords.[2]

This restriction on the use of trade names thereupon led to other petty evasions. Some lenders with unwieldy surnames would register under their given names: thus Aaron Rabinovitch would reverse his name to R. Aaron.[3] Or a prospective lender would change his personal name before registering it: thus Mr. Wolfson became Mr. Wilson.[4] According to Sir Mackenzie Chalmers, testifying before a parliamentary committee, "a notorious moneylender called Isaac Gordon was really a Polish Jew; I do not know what his name was. They take Scotch and English names."[5] As Lord Darling aptly phrased it, "Most of the names that they use are taken from Roll of Battle Abbey."[6] Legislation thus proved an inadequate means of dealing with the problem of moneylenders' names.

To prohibit another form of misconception into which the borrower might have been led by the lender's trade name, a further act of Parliament was necessary. Some lenders seem, by the use of the name or by misleading advertising, to have tried to give prospective borrowers the impression that they were engaged in the banking business. The Moneylenders Act of 1911 prohibited lenders from registering under any name including the word "bank" or implying that

[1] Sadler *v.* Whiteman, [1910] 1 K. B. 868.

[2] Whiteman *v.* Sadler, [1910] A. C. 514, 79 L. J. K. B. 1050, 103 L. T. 296, 26 T. L. R. 655, 54 Sol. Jo. 718.

[3] Joint Select Committee, Report, 1925, pp. 154f.

[4] *Ibid.*, p. 145.

[5] *Ibid.*, p. 110.

[6] *Ibid.*, p. 50.

they were bankers, and made criminal any advertising or statements carrying such implication.[1]

The second shortcoming of the act of 1900 was its neglect to take cognizance of the lender's abuses in obtaining business. Although the fourth section of the act had provided a penalty for deceptive advertisements, this prohibition did not play an important part in moneylending litigation. The reasons were two: the difficulty of establishing a lender's intent to deceive; and the fact that the borrower, as a rule, was more interested in obtaining relief for himself than in helping to impose a fine or imprisonment on the lender. Since the direct road to relief lay, as we shall see, in proving the transaction to be harsh and unconscionable—such that would be accorded relief in a court of equity—the borrower would bring action on that score.

Even if borrowers might have prosecuted lenders for deception, the act would have left considerable opportunity for abuse. Lenders procured their business in three ways: through circulars, through newspaper advertising, and through agents. The larger London lenders used circulars, and in great quantities. A member of a parliamentary committee mentioned receiving moneylenders' circulars at least once a week; a large lender might send on an average a thousand circulars a week. The provincial lenders, on the other hand, did not use circulars at all, relying entirely on newspaper advertising. The small unregistered lender relied

[1] 1–2 Geo. V, c. 38, sec. 2; repealed by 17–18 Geo. V, c. 21, sec. 19. The act of 1911 was intended also to protect a third person assignee of security taken by an unregistered moneylender. The courts had held that a bona fide holder for value without notice of a security given to a moneylender, which was invalid because of the lender's failure to register, was in no better position than the original holder of the security: *Re* Robinson, Clarkson *v.* Robinson, [1911] 1 Ch. 230, 80 L. J. Ch. 309, 103 L. T. 857, 27 T. L. R. 182. To prevent such unfairness the act of 1911 declared valid any agreement or security taken by a lender and assigned or transferred by him to a bona fide assignee or holder for value without notice of the defect. It also declared valid any payment of money or transfer of property made bona fide by a person on the faith of the validity of such an agreement. In either case the lender was made liable to indemnify the borrower if the agreement proved to have been made in violation of the act of 1900.

only on personal contacts. All classes of lenders made some use of agents or "touts" (agents usually working independently, who obtained business for moneylenders), even though individual lenders denied doing so.

Besides the nuisance to a man of receiving circulars, all printed advertising led to certain abuses. The advertisements would generally set out, besides the name and address of the lender and a varying amount of "sales talk," first, the type of loan that the lender sought to make, that is, the size and security, and second, the amount of interest or payments.

There was relatively little objection to statements on the type of loan. Certain lenders purposely catered to certain classes: those who lent from £20 or £25 up to thousands of pounds did not wish to be bothered by small loans to the working classes; those who made loans of from £5 to £20 or thereabouts did not have adequate capital to engage in the large loan business. Nor was there much misrepresentation of the security demanded. An examination of the advertisements of 100 lenders drawn from the "money" columns of British metropolitan newspapers[1] in 1922 showed that 90 of them offered loans without security and on note of hand alone. The catch phrases most often used were "on note of hand alone," "on simple promissory note," "on borrower's own signature," "without sureties," and "without security." Of the 90, 17 specified the group to whom they were willing to make these unsecured loans on simple promissory notes. The group included property holders, such as tradesmen, farmers, householders, professional men, clergymen, ladies, gentlemen, shopkeepers, and manufacturers. Three of the 17 lenders would advance money on the security of promissory notes only if the property holders were also in permanent employment. Practically all of the 90 lenders, according

[1] London, Manchester, Birmingham, Leeds, Bristol, Southampton, Plymouth, Cardiff, Glasgow, Newcastle, and Stoke-on-Trent.

to their advertisements, were also willing to lend on better security if offered. The remaining 10 of the 100 advertisers would not take the risk of an unsecured promissory note but required the signatures of guarantors or other security in the form of shares, deeds, policies, annuities, expectancies, reversions, legacies, war loans or certificates, post-dated checks, or bills of sale. Only eight of the 100 stated their willingness to lend on "furniture without removal," that is, on bill of sale, and three definitely excluded bills of sale. That this sample was fairly representative is shown by the testimony of the president of a moneylenders' association before a parliamentary committee in 1925; he testified that 95 per cent of the moneylending transactions were upon promissory notes with no security whatever but the signature.[1]

This absence of security in the typical cases, and the high rate of interest which was necessary to compensate for the consequent risk, afford the important reasons why the advertisements had to conceal the charges for the loan. To be sure, most advertisements quoted some condition of repayment, but many of them were ambiguous and capable of several interpretations. The ambiguity was usually intentional. Emphasis was thrown on points which would specially appeal to the borrower, such as the actual cost of the loan or the size of instalment necessary for repayment, but not on the rate of interest. In many instances the rate could not be computed from the statements in advertisements. "Holiday Loans—£5 at 2*s*. monthly" was a purposely ambiguous advertisement. Whether the 2*s*. monthly was interest or the amount to be repaid monthly was not clear, but the undiscriminating borrower would read in the advertisement the meaning he wanted. Many lenders would quote only the lowest terms charged on first-class security, or a rate of interest without the accompanying fees, fines, and bonuses;

[1] Joint Select Committee, Report, 1925, pp. 5, 11.

their willingness to make a few loans at such rates would prevent their announcements from being "deceptive."

This ambiguous type of advertising, even on the part of respectable lenders, opened the door to further abuses on the part of those who were not so respectable. If a lender advertised too attractive terms, he was probably not reputable. For example, a lender who offered £5 at 5*s*. would not intend to make a bona fide loan; he was a "fee snatcher." The innocent prospective borrower applying for such a loan would be asked to fill in a form containing particulars of his standing and to pay what was called a fee or an inquiry charge, for which the "lender" never intended to give any consideration.[1]

Some of the advertising was so worded as to look like the announcement of a moneylender when in fact it was the announcement of a tout. Having thus procured an inquiry from a would-be borrower, the tout would then obtain a loan for him from a moneylender.

There is no question that the reputable lenders wished to eliminate the obvious abuses of advertising—so long as such elimination would not interfere with their own business. During the parliamentary investigation in 1925 provincial lenders, who themselves used newspaper advertising, advocated the abolition of circularizing. The larger London lenders, who relied on circulars, preferred to limit newspaper advertising. To avoid the competition of fee-snatchers and touts, genuine lenders were willing to prohibit any announcement of rates and assurances; they would confine their advertising to the name, address, and business of the firm. The old-established lenders preferred to include, too, the date of their establishment. To effect this end in part, they would call the attention of newspapers to improper advertising, and the papers themselves would help to prevent deception. Some newspapers refused all moneylenders' advertising.

[1] Joint Select Committee, Report, 1925, p. 58.

None of the types of lending was free from "touting." It was but natural that the moneylender should welcome the tout's services. Other means of obtaining business were expensive. A large London lender estimated that his cost of circularizing, when charged against the loans actually made, amounted to £10 or £12 per completed loan.[1] To avoid such cost a lender would naturally pay the tout a commission of 5 per cent.[2] The tout would then charge the borrower, in addition, 10, 15, or 20 per cent.[3] Even if some lenders refused to pay commissions to touts, it was difficult to eliminate them. A neighbor, a fellow-worker, a member of the same club—a certain class of touts was socially impeccable—would not be known to the borrower as a tout; he would act as a friend. Such mediation invariably increased the cost of the loan to the borrower.

The third deficiency of the Moneylenders Act of 1900 was its failure to guard a borrower against certain hardships in the legal enforcement of their obligations. The great bulk of actions to enforce moneylending contracts was brought either in the High Court (King's Bench Division) or in the county courts. All actions on claims exceeding £100 went to the High Court; all under £20 to the county courts; and those between £20 and £100 to either court at the discretion of the plaintiff. Although custom had allotted to the High Court the larger claims within the overlapping jurisdiction, say those over £40, the amount was not the only determining factor. The lender would bring his action in the court most likely to meet his needs.

Because the High Court dealt in large sums and not usually with needy debtors, it tended to be more favorable to the moneylender than the county courts. It would be likely to consider 30 to 60 per cent a fair rate on ordinary unsecured notes, and if the risk was great, 100 per cent might pass

[1] Joint Select Committee, Report, 1925, p. 166.

[2] *Ibid.*, pp. 21, 166.

[3] *Ibid.*, p. 21.

judgment. In the High Court judgment was usually given for the whole amount due at the time of judgment, principal and interest, payable in a lump sum. And in it, even if the borrower filed a defense, the judgment was likely to be more favorable to the lender than if he had brought action in a county court. If the judgment was in his favor, he was also awarded higher costs in the High Court because the solicitors' fees were on the scale of the larger debts. If, therefore, a lender was sure of his case and of the borrower's means, he would probably bring action in the High Court.

County courts, on the other hand, were small debtors' courts. Their judgments were often in the nature of adjustments. Since few of the smaller moneylending actions were defended, and since the borrower and lender would usually agree on terms of repayment relative to the borrower's capacity, the court, through its registrar, would simply incorporate the agreed terms into its order. Even though the judgment of the county courts was for the full amount of the debt plus costs, it might thus order payment by instalments, sometimes very small instalments, which the court itself would collect for the lender. But the court, in its equitable capacity, would act to prevent hardship on a borrower, and if his need was great it might greatly reduce the interest rate, usually by permitting repayment in small instalments over long periods. Because the county court costs were computed on a lower scale than costs in the High Court, and because county court expenses were relatively much higher owing to the expense of the bookkeeping necessary in the collection of instalments, amounts available to the moneylender for solicitors' fees were not only actually but relatively smaller. In consequence, when the jurisdiction of the two courts was concurrent, the lender would tend to sue in the county court only when the condition of the borrower was such as to make impossible his payment of a lump-sum judgment.

This choice on the part of the lender to increase the borrower's costs and expenses by suing for small sums in the High Court was not so abusive as other choices of courts that the lender was given. The County Courts Act of 1888 had deprived the plaintiff of most of his opportunity to gain an unfair advantage by making the defendant appear in distant courts; the act had made the venue for most actions the court within the district where the defendant dwelt or carried on business when the action was commenced.[1] Action could be brought, however, with leave of the judge or registrar, in the district where the cause of action arose; that is, in moneylending cases, where payment of the obligation was supposed to be made. The rules of the county court restricted the granting of such leave when the proposed defendant was in humble circumstances, such as a manual worker. But there was no reason why a person in the position of a clerk, who had borrowed money on a note payable in a place distant from his home, should not have to defend the action by the lender at such an inconvenient place.

This inconvenience of venue in the county courts seems not to have caused so much abuse as jurisdiction of some of the local courts. There was, among several ancient local courts which stood apart from the regular judicial hierarchy, the Derby Borough Court of Record. Its charter went back to the reign of King John; its procedure was unique and unknown to most solicitors; and yet its jurisdiction extended over actions for money payable in Derby, regardless of the defendant's residence. It often occurred that a defendant would not discover what steps to take until after judgment had been signed against him. In small claims borrowers would be unable to defend the cases at all.

The inconvenience, or impossibility, of the borrowers defending against actions in Derby, which is by no means conveniently located, was such an advantage to lenders that

[1] 51–52 Vict., c. 43, sec. 74.

many of them maintained offices there for the very purpose of using the local court's jurisdiction.[1] During the parliamentary investigation of moneylending in 1925 Lord Templemore asked the Registrar of the Derby Court the following questions:

> As regards the business done in the Derby Court of Record, what proportion of business should you say is done in connection with moneylending?—The greater proportion.
>
> I mean in percentage; what would you say—80 per cent. or 90 per cent.?—It is a little difficult to say, but I dare say 80 per cent. would not be exaggerating it.[2]

Since the total number of actions filed in the court was about 1,300 a year,[3] the number of borrowers who suffered from this abuse was considerable. So notorious did the abuse become that in 1925 the Derby Law Society recommended that the court be abolished.

The hardships resulting to the borrower from the moneylender's failure to register, from his unethical methods of obtaining business, and from his misuse of judicial powers were but minor when compared with the oppression of high interest rates. In order to understand this oppression it is first necessary to know how interest was then assessed in England, and in addition to know how the courts treated the interest rates under the Moneylenders Act of 1900.

It was the universal practice of British moneylenders to express their interest charges on a loan in a round sum and to leave the calculation of the percentage rate to the borrower. They considered themselves as selling a service, just as they might sell a dozen eggs or a piece of land. In exchange for a promise by the borrower to pay, say £12 at the end of six months, or in six monthly instalments, they would sell him the immediate use of £10.

[1] Joint Select Committee, Report, 1925, pp. 100, 177.

[2] *Ibid.*, p. 179.

[3] *Ibid.*, p. 181.

This theory that interest was a service charge to be stated as a lump sum made difficult the computation of the percentage rate. An illustration will make this difficulty clear. In May, 1925, a journal known as The Accountant carried the following letter from a reader: "A moneylender lent £15; took a promissory note for £22 10*s*. 0*d*. payable by 15 weekly instalments of 30*s*. 0*d*. each. . . . Will any of your readers tell me what is the rate of interest charged by the lender to the borrower?" Ten answers were received, probably all from chartered accountants, with the following results: Number 1 calculated the rate of 289 per cent per annum; on second attempt, at 262.69 per cent per annum. Number 2 thought the rate 234 per cent per annum; on second attempt, 326 per cent per annum. Number 3 considered the rate to be 264 per cent per annum; Number 4—162.5 per cent per annum; Number 5—1,563.86 per cent per annum; Number 6—1,182.6 per cent per annum effective rate, 261.5 per cent per annum nominal rate; Number 7—326 per cent per annum; Number 8—1,164 per cent per annum effective rate, 260 per cent per annum nominal rate; Number 9—299 per cent per annum at simple interest, 328 per cent per annum by another method; and Number 10—500 per cent per annum. No two of the accountants agreed, and on a second attempt some did not get the same results as in their first calculation.[1]

The reason for this wide variation in the computation of experts was explained by a representative of the Board of Trade to the parliamentary committee investigating moneylending in 1925.

> To take quite a simple and imaginary case, suppose a loan of £100 repayable in three half-yearly instalments of £50; a question arises what is the rate of interest in that case? The most elementary answer, namely, that the interest is £50 on £100 for

[1] Joint Select Committee, Report, 1925, pp. 25f. The authors of this study consider Number 1 to have been correct at about 289 per cent.

18 months, and that the rate is, therefore, 33⅓ per cent. per annum is evidently wrong, because the borrower has not had the use of £100 for 18 months. In all these cases it is necessary to make clear how much of the principal the borrower has in hand from time to time. If, for example, the interest is supposed to be paid before any instalments are paid off the principal, that is to say, in the case supposed the first £50 was interest and the two remaining instalments of £50 were principal, the rate of interest is 40 per cent. If, on the other hand, the principal is supposed to be paid off first, that is to say, that the first two instalments of £50 are principal and the third and last instalment is interest, the rate is 66⅔ per cent. In the Bankruptcy Act . . . there is a provision that for the purposes of proving a debt to a money-lender any instalments already paid are to be deemed to have been paid partly as a reduction of principal and partly as interest, in the proportion which the principal bears to the sum payable as interest. In the present case the principal being £100, and the interest £50, the instalments would be divided between principal and interest in the proportion of 2 to 1, that is to say, that the first £50 would be £33 6*s*. 8*d*. off principal, and the rest interest, and correspondingly for the remaining instalments. Then when you calculate how much principal the borrower has in hand and for how long, the rate of interest becomes 50 per cent.[1]

The logically correct rate of interest was determined by the method of unpaid balances described in a pamphlet by J. C. Graham, a judge of the County Court, entitled, On the Method of Calculating the Rate of Interest Charged by Moneylenders. This logically correct rate, which was almost always higher than the rate resulting from other calculations, usually involved heavy arithmetical calculations in which mistakes could very easily be made.

Besides these mathematical difficulties in computing the percentage rate per annum on loans to be paid by instalments, three practices generally used by British money-lenders complicated the computations. One of these was the

[1] Joint Select Committee, Report, 1925, p. 119.

default clause; another was the system of renewals; the third was addition of fees. All three of these practices, previously discussed for an earlier period,[1] survived the act of 1900.

The promissory note, we have seen, was the most common evidence of the borrower's debt to the lender. A second common evidence was the bill of exchange. Upon the form and content of the promissory note or bill of exchange depended, therefore, the rate of interest which the moneylender charged on his loans. Although there was no standard form of promissory note, there was a general similarity in the contents of notes used by moneylenders. Forms 2, 3, and 4 are here presented as types of notes used in British moneylending transactions. All of them contain an express or implied default clause.

FORM 2.—NOTE USED BY A MONEYLENDER OF NEWCASTLE

I..........................(name of borrower)..........................agree to pay ....(name of lender)........................at................(address) ....the sum of £.......................in monthly instalments of ....beginning this day........................

In case of default in the payment of any one of the instalments the entire sum becomes due and payable forthwith.

This first type, Form 2, made no statement of the amount of money advanced or of the rate of interest on the loan. It showed only the conditions of repayment, the total amount to be repaid, and the frequency and size of the instalments. From the face of this note alone it would have been impossible to calculate the rate of interest charged. The default clause which the lender inserted made it possible for him to bring suit immediately upon default without waiting for the entire period of the loan to elapse. If default occurred and

[1] See pp. 64 ff.

this clause was brought into operation, obviously the actual rate of interest to the borrower was greatly increased.

FORM 3.—NOTE USED BY A MONEYLENDER OF LEEDS

Cash Received	£70	(Date)......................
Interest	30	
	£100	

I......................(name of borrower)......................promise to pay to........................(name of lender)........................, or his order, the sum of £100 for the loan to me this day of £70.
(Instalments listed)

The second type, Form 3, was more generally used by moneylenders in England. It showed the sum advanced, the amount charged for interest, the total amount to be repaid, and the size and frequency of instalments. Here again the lender assumed that the borrower was more concerned with the total amount charged for the loan than with the percentage rate of interest. Under the terms of this note, as expressed on its face, the percentage rate per annum could be calculated, however, if the borrower wished. Although no default clause was inserted, the note was in effect payable on demand. If the lender demanded payment before the date originally set for payment, as he could legally do, the effect was to increase the rate of interest.

Form 4 was the type generally used in Scotland. Though it was in form a bill of exchange instead of a promissory note, it was similar in effect to the demand note of Form 3. The explanation, which accompanied the bill and altered its terms, contained a plainly worded default clause. Here again operation of the default clause would increase the rate of interest.

Under the act of 1900, as under the law of the preceding period, the default clause was closely associated with the

FORM 4

A. BILL OF EXCHANGE USED BY A MONEYLENDER OF GLASGOW

No.................... Glasgow...............................

On demand pay to me or my order within my offices at................. Street, Glasgow, the sum of.........................for value received.

To.. ....

....

....

....

B. EXPLANATION OF TERMS ACCOMPANYING THE ABOVE BILL

No........................ 192

(Lender's name)
(Address)
(City)

Sir, I beg to acknowledge having this day received from you in cash, the sum of £.......................in consideration of which sum I have accepted your Bill, payable on demand, for £.......................

Notwithstanding, however, the terms of the said Bill, I have, with your concurrence, undertaken and agreed to repay the said Bill by instalments as follows; namely:—

....

....

....

the whole amount of said Bill to be fully repaid by the....................... day of.......................19 .

In case, however, I fail to pay any instalment when due, or if, during the subsistence of my account with you, I shall borrow or apply for the loan of money from any person or persons carrying on the business of money-lending, then it has been agreed between us that the whole amount outstanding shall become due and payable forthwith.

Yours faithfully,

....
....
....

system of renewals. As a chartered accountant explained to the parliamentary committee in 1925:

> It is really out of default, in my experience, in these transactions that the moneylender makes his money. For instance, an advance of £100 in cash is made for a promissory note of £180 payable in six monthly instalments of £30 each. The borrower defaults on the second instalment—this is history—not imagination—and in the express terms of the promissory note the whole of the balance of that £180, namely, £150, becomes immediately due and payable, although a considerable proportion of it is obviously in respect of interest for a future period and at a very high rate at that. The result is mere arithmetic, that the cash advanced and outstanding for one month was £100; at the end of that month £30 is repaid; therefore, £70 outstands for a second month. The man defaults at the end of the second month, but the borrower has only had the benefit in mathematical equivalent of £14 3*s.* 4*d.* for one year. For that, because of default, he claims his £70 principal and £80 for interest, which is equal to 565 per cent. per annum. But he does not get it; he makes another arrangement. He takes a bill for £300 and pays himself the money due with interest on the first promissory note, then starts the man on a fresh career of instalments and he has to pay, not only heavy interest on both notes, but on the second note he is paying heavy interest on the default penalty of the first note. If he carries the second one through miraculously, the heavy rate of interest is there. It is beyond your comprehension what would happen if he defaulted on the second note.[1]

It was a common trick for lenders to induce the continuous renewal of loans by arranging that the last instalment should be larger than the rest. Under such an arrangement the borrower often found the burden of the last instalment too great to be met at the stated time and was forced to take a renewal. This made him continue in the vicious circle of loans and renewals. Actual cases before the courts showed such terms as these: monthly payments of £50, £50, £100,

[1] Joint Select Committee, Report, 1925, p. 171.

and a final payment of £175; three monthly payments of £10 and £120 on the fourth month; and five instalments of £50 and the sixth of £250.

This evidence presents the picture only from one side, and that the dark side. From the moneylender's point of view the use of renewals was quite fair. It would have been an unnecessary hardship on the borrower and an unnecessary nuisance to the lender for the lender to bring action if the borrower had not the means to pay. It was better business for the lender to wait till the borrower was able to pay. But waiting was expensive; by lengthening the time for payment it cut down the rate of interest. The system of renewals compensated the lender for this waiting period by promising him a higher return in exchange for the delay in payment. Besides, it increased the lender's business by keeping the borrower constantly on his books.

Whether the system of renewals worked undue hardship on the borrower can best be judged by a study of actual cases. The increase in the rate of interest by means of renewals is some measure of the hardship they caused. Table 6 presents five cases, occurring during the period of operation of the act of 1900, in which renewals were granted and which afterward came before the courts.

The third case in Table 6 is a fair instance of the use of renewals. There the borrower received a loan of £200, gave his note for £250, paid £50 on account, and sought a renewal of the old loan and £100 additional at the cost of £375, to be paid in five equal monthly instalments. On the loan of £375 he paid £215, but the burden being again too great, he obtained another renewal and another advance of £100, this loan secured by his note for £315, which he agreed to pay in three monthly instalments of £105 each. He again paid £50 but, finding that the instalments were too heavy for him to carry, he secured an extension of time and smaller instalments through a new note for £345, to be paid monthly in

TABLE 6.—FIVE LOANS FOR WHICH THE LENDER GRANTED A RENEWAL: THE RATE CHARGED IN THE ORIGINAL CONTRACT, AND THE RATE ALLOWED BY THE COURT

Loan	Amount of advance	Amount of promissory note	Terms of repayment	Contract rate of interest: per cent per annum on unpaid balances[a]	Rate of interest: per cent per annum set by the courts
1	£300	£450	Monthly payments of £70, £120, £120, £140. Paid £310. Renewed on fourth month	219.5	..
	Renewal	207	3 monthly payments of £69	287.1	180
2	450	750	6 monthly payments of £125. Paid £475. Renewal on fourth month	228.6	..
	Renewal	375	Monthly payments of £50, £50, £100, £175	142.3	60
3	200	250	4 monthly payments of £62 5*s*. Paid £50	120.0	.. ..
	100	Renewal for 375	5 monthly payments of £75. Paid £215	100.0	..
	100	Renewal for 315	3 monthly payments of £105. Paid £50	126.9	..
	New note	345	Monthly payments, amount not stated	..	120
4	40	50	5 monthly payments of £10. Paid £40	100.0	..
	30	Renewal for 50	5 monthly payments of £10. Paid £40	100.0	..
	30	Renewal for 50	5 monthly payments of £10. Paid £20	100.0	..
	23 5*s*.	Post-dated cheque for 25	Due in 2 months	36.0	..
	45	Renewal for 144	12 monthly payments of £12. Paid £60	169.8	..
	20	Post-dated cheque for 25	Due in 2 months	150.0	80
5	125	150	3 monthly payments of £10; balance on 4th month. Paid £10	66.7	..
	200	Renewal for 500	5 monthly payments of £50; balance on 6th month. Paid £50	125.5	20

[a] Computed according to the Moneylenders Act, 1927.

Source of information:

1. Michaelson *v.* Nichols (1910), 26 T. L. R. 327.
2. Michaelson *v.* Nichols (1910), 26 T. L. R. 327.
3. Levene *v.* Greenwood (1904), 20 T. L. R. 389.
4. Samuel *v.* Burton, Court of Appeal, unreported, May 4, 1903.
5. Carringtons, Ltd. *v.* Valerie (1905), 49 Sol. Jo. 500.

amounts not stated by the court. In the last transaction he received no further advance but was charged an additional £30 for extension of the time of repayment. In the first transaction the interest rate on unpaid balances was 120 per cent a year; in the second, 100 per cent; in the third, 126.9 per cent.

There was a third method by which the British moneylender increased his charges without increasing the acknowledged rate of interest. These charges took diverse guises and were variously called commissions, fees, fines, penalties, bonuses, expenses, inquiry fees, and premium renewals. Although the so-called "fee snatcher," previously mentioned, who made a business of exacting preliminary inquiry fees from borrowers without intending to grant a loan, had brought the inquiry fee into such disrepute that most lenders abolished its use altogether, various lenders still made extra charges to compensate them for added expense in making small or special loans. For example, one moneylender would charge threepence for an application blank; another would charge an inquiry fee according to the amount of the loan, as in the following excerpt from a moneylender's prospectus:

Amount of loan	£5 to £10	£12 5*s.* to £15	£20	£30	£50	£75	£100
Enquiry fee	1*s.* 6*d.*	2*s.*	2*s.* 6*d.*	3*s.* 6*d.*	5*s.*	7*s.* 6*d.*	10*s.*

Others would charge fees on special or rushed loans.

Some lenders made use of a "bonus" charge in granting extensions or expressed interest as a bonus if the case could be better handled in that way. These bonus charges took the form not only of money but of security of undetermined value. Thus in Bonnard *v.* Dott[1] on a series of loans totaling £940 the borrower had given a bonus of £100 in cash, 1,100 shares in a copper company, and 3,700 shares in a gold mine. The total value of the shares at the time the case was brought

[1] Bonnard *v.* Dott (1906), 21 T. L. R. 491; 22 T. L. R. 399.

into court amounted to £1,800, nearly twice the amount advanced by the lender.

These charges were made by the lenders of large and medium sums. The small lenders' rate averaged, probably, even higher. A lender whose business was with working people, making loans of £5 and less, told a parliamentary committee that his rate was 20 per cent. But he did not mean 20 per cent per annum; he meant that the lump-sum interest was 4*s*. in the pound. A loan of £1 was repayable 2*s*. a week for twelve weeks. The committee computed this rate to be 160 per cent a year.[1]

If small registered lenders charged such rates, small unregistered lenders, operating outside the law, charged more. Popularly called "twopenny-on-the-shilling-a-week" lenders, their charges were, according to testimony, 1*s*. 8*d*., 2*s*. 0*d*., 2*s*. 6*d*., or even 3*s*. 0*d*. per pound per week.[2] A study of moneylending in Liverpool revealed that 1,100 women lenders—and these were registered—though generally charging a penny in the shilling a week, sometimes charged 1½*d*., 2*d*., or even 3*d*. in the shilling a week. A penny in the shilling a week is 433 ⅓ per cent a year.[3]

This long discussion of the abuses which survived the Moneylenders Act of 1900 does not mean that the legislation was a total failure. Without unreasonable delay the mechanism provided by the act began its work of relieving the plight of the borrower. As Lord James of Hereford expressed it,

> The objects of the Act can easily be traced from its contents. The ends sought to be remedied by it were generally recognized. A class of men well known under the term "moneylenders" were, under different names and disguises, carrying on the business of lending. No usury law remained to restrain them, and so in many instances they lent money at as high a rate of interest as could be wrung from the necessities of the borrower. Terms were

[1] Joint Select Committee, Report, 1925, p. 131.

[2] *Ibid*., p. 133.

[3] *Ibid*., p. 78.

imposed which caused default, however technical, to add to the burthen to be borne by the debtor. No sufficient legal remedy existed. The old Chancery jurisdiction was too narrow to meet the case. It was not with remaindermen and reversioners that the modern moneylender dealt. The needy, helpless, perhaps unwary, borrower was of a different class to those who had in former days applied to the Court of Chancery for relief. It was principally in the county courts the moneylender sought to enforce his contract, and those courts had no power to grant direct relief against oppressive contracts.[1]

To effect this end, it will be remembered, the act gave to the courts, in actions by moneylenders, the power to reopen the transaction and remake the agreement if there was satisfactory evidence that the interest charged was excessive or that the amounts charged for fees, bonuses, renewals, and the like were excessive "and that, in either case the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief." In its first interpretation of this provision the Court of King's Bench was hesitant. It held that the words "or is otherwise such that a court of equity would give relief" were not exclusive of the words "harsh and unconscionable," and that for the court to relieve against excessive interest or charges the transaction had to be such as a court of equity would consider harsh and unconscionable.[2] In 1903 the Court of Appeal overruled this decision, holding that the court could reopen the transaction when satisfied that the transaction was harsh and unconscionable even if it was not such that a court of equity would have given relief before the act, that the interest itself might be so excessive as to render the transaction harsh and unconscionable.[3]

[1] Samuel *v.* Newbold, [1906] A. C. 461.

[2] Wilton and Co. *v.* Osborn, [1901] 2 K. B. 110, 70 L. J. K. B. 507, 84 L. T. 694, 17 T. L. R. 431. This decision was followed in Barnett *v.* Coronna, The Times, 16 June 1902.

[3] *Re* A Debtor, *Ex parte* The Debtor, [1903] 1 K. B. 705, 72 L. J. K. B. 382, 88 L. T. 401, 19 T. L. R. 288, 51 W. R. 370, 47 Sol. Jo. 334.

The House of Lords finally established the principles upon which the courts would relieve a borrower. The act, it said, conferred upon the courts a new jurisdiction and gave to borrowers a form of relief different in character, nature, and extent from that previously exercised by courts of equity. A bargain would warrant relief either if it was harsh and unconscionable, so that a court of equity would have relieved against it, or if the interest and charges were excessive. And finally, a rate of interest which, according to the risk and other circumstances, was excessive was itself prima facie evidence that the transaction was harsh and unconscionable.[1]

Although the House of Lords thus laid down the general principles allowing relief, it did not specify the circumstances warranting relief. These circumstances, varying in each case, included not only the excessiveness of interest but also the needs and pecuniary position of the borrower, the presence or absence of security, the relation of borrower and lender, and the total remuneration derived by the lender from the whole transaction.[2] An explanation of the law depended, therefore, on an interpretation of the facts of individual cases.

One of the greatest handicaps to the evolution of a rule of general application was the impossibility of defining excessive interest. Mr. Justice Channell expressed the problem succinctly.

> One of the difficulties of dealing with the question of interest on the footing of what is ordinary or extraordinary is that the efforts of the Legislature to assist borrowers undoubtedly have the effect of raising the normal rate of interest . . . . Practically, I think any test as to interest being ordinary or extraordinary is, for the purpose of the Moneylenders Act, out of the question, except perhaps in cases of loans on security. There can be no standard

[1] Samuel *v.* Newbold, [1906] A. C. 461, 75 L. J. Ch. 705, 95 L. T. 209, 22 T. L. R. 703, 50 Sol. Jo. 650, affirming Saunders *v.* Newbold, [1905] 1 Ch. 260.

[2] Poncoine *v.* Higgins (1904), 21 T. L. R. 11; Carringtons, Ltd. *v.* Valerie (1905), 49 Sol. Jo. 500; Glaskie *v.* Griffin (1914), 111 L. T. 712.

rate on personal loans, and where the parties are reasonably on terms of equality a judge cannot, I think, do better than adopt what they themselves have agreed on, although, of course, when that is not the case he has to adjudge what is reasonable as best he can under all the circumstances . . . . Amongst the very things that the Act does mean to hit, and I think does effectually hit, are the moneylender's traps for the unwary. I should not hold 60 per cent. per annum to be of itself necessarily excessive or harsh and unconscionable, though, of course, the circumstances might easily make it so, nor should I hold 1*s*. in the pound per month (which, of course, is 60 per cent. per annum) to be necessarily so either; but if I found, as would most likely be the case, that the interest was put into the shape of 1*s*. in the pound per month in order to disguise it, and that in fact the borrower had not appreciated it, I should then hold the interest was both excessive and harsh and unconscionable . . . . I would also point out that the Moneylenders Act does not, as the Bills of Sale Act, 1882, did, require that the interest should be rateable interest. When a loan is to be for an indefinite time, of course the rate of interest is all-important, but where the loan is for a definite period, repayable by instalments or otherwise, I do not think the borrower generally cares very much what the rate of interest on the amount from time to time outstanding as his instalments are paid works out at . . . . Assuming, however, that he is willing to pay the sum asked of him for the loan for a year, he probably will not be willing to pay that sum for the loan for a month only, and consequently a default clause not understood in my opinion is a trap.[1]

General as was this phraseology, it indicated two considerations on which the courts might base their decisions concerning excessiveness of interest. One of these was the risk which the moneylender ran in advancing the money. The other was the straightforwardness of the bargaining.

The risk as it appeared to the moneylender at the time of the bargain depended upon the security given, the general

[1] Carringtons, Limited *v*. Smith, [1906] 1 K. B. 79, 75 L. J. K. B. 49, 93 L. T. 779, 22 T. L. R. 109, 50 Sol. Jo. 171, 54 W. R. 424.

finances of the borrower—the amount of his property, income, liabilities—his habits and previous moneylending transactions.[1] The straightforwardness of the bargaining turned on an even greater number of elements: the equality of lender and borrower—the borrower's experience, intelligence, understanding of the bargain and, above all, his need; and the freedom of bargaining—whether pressure was exerted by the lender.[2] These considerations had the salutary effect of making invalid many default clauses not understood by borrowers.[3]

There were, of course, further incidental questions that related to excessiveness of interest. It was not a question of percentage alone. The size of the loan and the time for which it was granted were important. A charge of 12 per cent for three months was not exactly comparable to 48 per cent for twelve months. The court could not disregard the inconvenience to the lender of the short-time loan and compensation for his services whether the loan was large or small. Some lenders felt that they could not make any bargain, large or small, for a profit of less than a certain amount which would compensate them for their services as well as for the use of their money. To complicate matters, there were times when the interest charges could not be expressed in a percentage rate as explained earlier; money might be lent without any specified interest charge, the lender demanding for his services a bonus in the form of fully paid shares of stock or other valuables. If at the time of the original transaction the stock or valuables had no definite market value,

[1] For examples see Part *v.* Bond (1906), 94 L. T. 390, 22 T. L. R. 253; Salaman *v.* Blair (1914), 111 L. T. 426; Kruse *v.* Seeley, [1924] 1 Ch. 136, 93 L. J. Ch. 67.

[2] For examples see Carringtons, Ltd. *v.* Valerie (1905), 49 Sol. Jo. 500; Oakes *v.* Green (1907), 23 T. L. R. 560; Blair *v.* Buckworth (1908), 24 T. L. R. 474; Lewis *v.* Mills (1914), 30 T. L. R. 438; Levy *v.* Dott (1919), 35 T. L. R. 518; Jacobs Brothers *v.* Joicey (1919), 35 T. L. R. 362; Garde *v.* Kerman (1925), 41 T. L. R. 597, 69 Sol. Jo. 694.

[3] For examples see Levene *v.* Titchener (1907), 23 T. L. R. 508; Harris *v.* Clarson (1910), 27 T. L. R. 30; Stirling *v.* Rose (1915), 30 T. L. R. 67; Halsey *v.* Wolfe, [1915] 2 Ch. 330, 84 L. J. Ch. 809, 113 L. T. 720.

it became practically impossible to determine the rate of interest on such a loan.

It would be illuminating to tabulate the practical results of these legal principles, to learn the rates which the courts prescribed when looking into moneylending bargains. Unfortunately this is not possible. Decisions in the county courts are not currently printed. Opinions of the High Court are printed only when they contain matters of legal interest. The printed opinions of the High Court concerned with the Moneylenders Act of 1900 were therefore most numerous when the act was new and the principles as yet in a formative state. Of the decisions of the High Court which were printed from 1900 to 1923 in the various law reports, 40 contain information about rates of interest fixed by the court. Even though these decisions do not represent a proper sample of the litigation of the period, in the absence of other sources they merit some comment. Information about a few of these decisions is set out in Table 7.

In just half of these 40 cases the rate of interest fixed by the court was 40 per cent a year or more. Of the 20 cases where the interest fixed was under 40 per cent, all but one were cases where the court lowered the rate fixed in the loan agreement. Of the 20 cases where the court allowed 40 per cent or more, in 6 it allowed the same interest as the parties had originally agreed upon. Moreover the reduction in rate which the court imposed in these high-interest cases was far less marked than in the low-interest cases. The court approved rates as high as 120, 153, and 180 per cent a year. According to the president of a moneylenders' association, many judgments of the High Court allowed 100 per cent.[1] And it is certainly true that the court has rarely disapproved interest of 60 per cent a year on unsecured loans.

Although there is no evidence of the general rates allowed in the county courts, there is some evidence that the rates

[1] Joint Select Committee, Report, 1925, p. 6.

TABLE 7.—TWELVE LOANS MADE ON THE SECURITY OF PROMISSORY NOTES BETWEEN 1900 AND 1923 FOR WHICH THE COURTS SET THE RATE OF INTEREST

Loan	Amount of advance	Amount of promissory note	Terms of repayment	Rate of interest: per cent per annum: Allowed by the court	Rate of interest: per cent per annum: Computed according to the 1927 Act[a]
1	£150	£250	£100 after 3 months, £150 after 6 months	30	166.7
2	300	500	£30 after 3 months, £30 after 6 months, £30 after 9 months, and £410 after 13 months	5	68.1
3	700	1200	12 monthly payments of £100	50	131.9
4	150	250	Quarterly payments of £62 10*s.*	40	106.7
5	70	105	12 monthly payments of £8 7*s.* 5*d.*	25	92.3
6	1000	1550	5 monthly payments of £100 and £1050 on the 6th month	60	131.2
7	150	210	6 monthly payments of £35	60	137.1
8	100	145	4 monthly payments of £10 and £105 on the 5th month	100	125.3
9	320	500	5 monthly payments of £100	25	225.0
10	200	300	12 monthly payments of £25	20	92.3
11	100	160	3 monthly payments: £50, £50, and £60	110	86.5
12	50	75	3 monthly payments of £25	80	300.0

Details of these loans and the rate of interest allowed by the court are recorded in The Law Times, 1912–1923; Bellot, H. H. L., Legal Principles and Practices of Bargains with Money-Lenders; Collard, J. L., The Money-Lenders Acts, 1900–1911; Matthews, J. B., and Spear, G. F., The Money Lenders Act of 1900.

[a] On the basis of the lender's original charge.

were not so high as those allowed in the High Court. When legislation was proposed to give the county courts exclusive jurisdiction over a larger part of the moneylenders' actions, the lenders raised a strong protest. They avowed that some county court judges were not fair to them; they complained that county court judges were not so bound by precedents as were High Court judges.

The dissatisfaction of the lenders arose in the practice of the county courts of giving judgment for the full amount but at the same time ordering payment by instalments which took into consideration the circumstances of the borrower. The resulting extension of time for payment naturally decreased the lender's rate of interest, tying up his capital and preventing its being lent at a higher rate. In the county courts, as we shall see, the borrower generally admitted his debt, offering to make certain payments which, if the lender accepted, the court would order. In cases where the lender refused to compromise, the court, though giving judgment for the full amount, could order payment by instalments according to the borrower's means. One former county court judge boasted to the parliamentary committee in 1925 of his treatment of a moneylender: "I told him, as I had told others before, that if he would not make a fair settlement I should make the judgment debt payable by instalments of a penny a month, and that the money might come in useful to his great grandchildren."[1] The president of a moneylenders' association reported that judges of county courts frequently gave orders of a shilling a month for loans of £10 or £15, and very frequently gave orders of 3*s.* or 4*s.* a month for loans of, say, £20. "In those cases the moneylender has no other resource than to wipe that off as a bad debt."[2]

When the jurisdiction of the High Court and the county courts overlapped, the lenders would, we have noted, often seek the High Court, where they were assured of more uniform and more liberal treatment. But notwithstanding the harsh treatment of which they complained in some county courts, they did not want to be forced to conform to rules which would have obviated this lack of uniformity. They did not want to put on the face of their notes the percentage rate of the interest charged. And they did not want the rate fixed which would serve as a guide to the courts between the Scylla of legitimate moneylender's profits and the Charybdis of extortionate rates for the borrower.

The abuses of the moneylending enterprise did not go unnoticed. Not only the borrowers who suffered, but the pub-

[1] Joint Select Committee, Report, 1925, p. 108.
[2] *Ibid.*, p. 2.

lic at large was aware that the Moneylenders Act of 1900 did not meet the need for which it was enacted. As time went on, this feeling became apparent in Parliament. Numerous questions were asked in the House of Commons and several bills were introduced, even during Edward VII's reign, to require moneylenders to state the definite rate of interest on the face of the obligation. Though these bills failed of passage, partly because of the organized opposition of the lenders themselves, the movement to change the law continued. This movement culminated in 1925 when two bills were introduced, one into each house of Parliament, to change the law of moneylending. Part of their purpose was to cure the old abuses by requiring the interest rate to be stated and to be limited. But their purpose was much broader; they aimed to bring about a new and strengthened control over the moneylending business.

In order to combine the two bills and consider the feasibility of amendatory legislation in general a joint select committee of the two houses of Parliament was appointed. The committee listened to 36 witnesses during June and early July, 1925, most of them professional moneylenders. Recognizing that the public temper demanded reforms in moneylending, the lenders did not object to legislation in general. But they did strongly object to some of the provisions in the bills which were being considered.

They objected to stating the interest charge as a percentage rate per annum. The borrower, they said, wanted to know not the rate but the total cost of the loan. The difficulty of calculating a percentage charge was so great, they claimed, that a moneylender in good faith using one method of calculation might be liable for violation of the act because the court used another. Moreover the extensions of time of payment which lenders allowed for the borrowers' own welfare, reducing the overall interest, made the pre-calculation of the rate impossible.

Even more violently did the lenders object to the limit of 15 per cent interest a year, proposed in the pending legislation. Not only was it unfair, they asserted, to set a single rate for all loans, large and small, long-term and short, but moneylending was impossible at 15 per cent gross interest. A lender has to set off against his gross interest calculation not only a reasonable return on his invested capital but the expenses of the business, including the lender's own salary, and an allowance for bad debts. They presented data to show that expenses and bad debts ate up three-fourths of their gross profits. Table 8 was compiled from evidence given to the Joint Select Committee, based on reports, covering the past five years, of 16 typical moneylending businesses. A return of 15 per cent on the moneylenders' invested capital was no more than was earned by British banks on their capital.

TABLE 8.—BAD DEBTS, EXPENSES, AND INTEREST ON INVESTMENT OF SIXTEEN MONEYLENDERS DURING THE FIVE YEARS 1920 TO 1924, AS PERCENTAGES OF GROSS PROFITS

Lender	Bad debts	Expenses	Interest
1	47.5	30.0	25.1
2	34.8	45.0	15.5
3	38.1	36.8	14.4
4	6.3	81.2	7.9
5	55.0	25.3	19.1
6	14.6	66.3	9.3
7	45.2	35.1	23.5
8	58.3	31.6	11.4
9	30.4	59.3	7.5
10	35.0	23.0	19.8
11	17.5	39.3	16.7
12	24.5	33.3	17.1
13	18.2	47.4	18.6
14	17.7	54.4	14.8
15	25.4	54.8	8.9
16	21.1	47.7	13.6
Average	30.6	44.4	15.2

Compiled from Joint Select Committee, Report, 1925, pp. 28f.

The lenders agreed that on unsecured loans it was impossible to do business at a gross rate of less than 60 per cent.

On security of bills of sale 40 per cent might be reasonable. A few lenders meant this 60 per cent as a lump-sum charge, repayable in instalments, which would bring the rate per annum to about twice that amount if equal instalments were spread over a year. Even the secretary of a non-commercial moneylending society declared that it was impossible to carry on business at less than an annual rate of about 20 per cent,[1] and a former county court judge thought that 200 per cent a year might be reasonable on short-term loans because of the risk.[2] Seemingly only one witness suggested that a moneylender, like any other tradesman, should make inquiries before extending credit and that it was unfair to allow a lender to charge every borrower a rate high enough to compensate him for those risks which were purely gambling.[3]

The diverse sentiments of the moneylenders on the advantages of circularizing, advertising, and personal solicitation and the advisability of limiting these mediums by legislation we have already noted.

The fourth important innovation of the bills was the requirement for licensing moneylenders. The Moneylenders Act of 1900, it will be remembered, required only registration, because the Select Committee then feared that lenders would derive unwarranted repute from the fact of their being licensed by the government. The reputable lenders, it seems, had long wanted the government to assume some sort of supervision over moneylending so as to force out of competition the unethical lenders and to remove from the business the stigma that resulted. They favored a high license fee of, say, £10 or £20 a year to make it difficult for small lenders to enter the business. One moneylenders' association wished to require each applicant for a lender's license to prove that he had a minimum capital of £1,000 as a guaranty

[1] Joint Select Committee, Report, 1925, p. 146.

[2] *Ibid.*, p. 113.

[3] *Ibid.*, p. 92.

that he was a man of substance.[1] And several lenders assented to the suggestion that a general moneylenders' association be chartered and that the association itself should decide on the professional requirements for engaging in the business. The lenders who testified before the parliamentary committee were decidedly in favor of renovating the business.

After listening to evidence which filled 191 pages the committee made several important decisions:

(1) It is desirable that persons carrying on business as moneylenders should be licensed in a similar manner to which pawnbrokers are licensed under the Pawnbrokers Act, 1872.

(2) The Courts to which proceedings on moneylending transactions are to be taken, shall be prescribed by Order in Council.

(3) Moneylending circulars shall be prohibited. Advertisements in newspapers shall only be allowed to contain the moneylender's registered name and address, a statement that he lends money with or without security and the date of the establishment of his business.

(4) Agents or canvassers for moneylenders shall not be allowed, and shall be liable, on conviction on indictment, to imprisonment.

(5) Charges for preliminary expenses shall be prohibited.

(6) Where a rate of interest exceeding 4 per cent. per mensem has been charged, the onus of proof that the terms of the loan were not harsh and unconscionable shall be on the lender.

(7) Where the borrower defaults in the payment of an instalment the lender shall not be entitled to recover any greater sum than the amount actually lent, with interest thereon up to the date of payment at the rate properly chargeable.[2]

After the Joint Select Committee had reported the Lords bill with its own numerous amendments in 1925, legislation was still delayed two years; although the House of Lords passed the amended bill in 1925 and again in 1926, the House of Commons did no more than refer it to another

[1] Joint Select Committee, Report, 1925, p. 82.

[2] Joint Select Committee, Report, 1925, pp. viii, xii.

committee. With the amendments of the Joint Committee it came to a second reading in the Commons in 1927. Political considerations partly obscured the merits of the bill during the first long debate[1] ("I submit that this Bill is a purely Tory Bill"), but at a later debate amendments were considered and the bill was passed.[2] Further amendments suggested by the Lords had to be adopted[3] before the bill finally became law on July 29, 1927. The Moneylenders Act, 1927, did not become operative, however, until January 1, 1928.

For the purpose of comparison with the Moneylenders Act of 1900, appended to Chapter III, and as a basis of intelligible discussion we reprint here the act of 1927 in full.

MONEYLENDERS ACT, 1927[4]

An Act to amend the Law with respect to persons carrying on business as Moneylenders.

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Licenses to be taken out by moneylenders.*—(1) Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, an excise licence (in this Act referred to as "a moneylender's excise licence"), which shall expire on the thirty-first day of July in every year, and, subject as hereinafter provided, there shall be charged on every moneylender's excise licence an excise duty of fifteen pounds, or if the licence be taken out not more than six months before the expiration thereof, of ten pounds.

[1] Parliamentary Debates, Fifth Series, vol. 203, cols. 727–792.

[2] *Ibid.*, vol. 208, cols. 765–845.

[3] *Ibid.*, vol. 209, cols. 1607–1622.

[4] 17–18 Geo. V, c. 21.

Provided that—

(*a*) the duty charged on any moneylender's excise licence which will expire on the thirty-first day of July, nineteen hundred and twenty-eight, shall, notwithstanding that the licence may be taken out more than six months before the expiration thereof, be a duty of ten pounds; and

(*b*) where moneylender's excise licences are taken out by two or more moneylenders in respect of any address or addresses at which they carry on their business as partners in a firm, the Commissioners of Customs and Excise shall remit, or if the duty has been paid repay, to the firm a sum equal to the aggregate of the duties charged on such number of the licences taken out as exceeds the number of the addresses in respect of which they are taken out; and

(*c*) where it is proved to the satisfaction of the Commissioners of Customs and Excise that there is in force a licence for carrying on the business of a pawnbroker at any premises in respect of which a moneylender's excise licence is taken out by the person carrying on the business, the Commissioners shall remit, or if the duty has been paid repay, to that person such part of the duty charged on the moneylender's excise licence as is equal to the amount of the duty paid in respect of the licence for carrying on the business of a pawnbroker, or where in any such case moneylender's excise licences are taken out by partners in a firm in respect of the premises, the remission or repayment shall be made to the firm.

(2) Subject to the provisions of this Act, moneylenders' excise licences shall be in such form as the Commissioners of Customs and Excise may direct, and shall be granted on payment of the appropriate duty by any officer of Customs and Excise authorised by the Commissioners to grant them, and regulations made by the said Commissioners may make provision as to the procedure to be followed in making application for moneylenders' excise licences:

Provided that a moneylender's excise licence shall be taken out by a moneylender in his true name, and shall be void if it be taken out in any other name, but every moneylender's excise licence shall also show the moneylender's authorised name and authorised address.

(3) If any person—

(*a*) takes out a moneylender's excise licence in any name other than his true name; or

(*b*) carries on business as a moneylender without having in force a proper moneylender's excise licence authorising him so to do, or, being licensed as a moneylender, carries on business as such in any name other than his authorised name, or at any other place than his authorised address or addresses; or

(*c*) enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or takes any security for money, in the course of his business as a moneylender, otherwise than in his authorised name;

he shall be guilty of a contravention of the provisions of this Act and shall for each offence be liable to an excise penalty of one hundred pounds:

Provided that, on a second or subsequent conviction of any person (other than a company) for an offence under this subsection, the court may, in lieu of or in addition to ordering the offender to pay the penalty aforesaid, order him to be imprisoned for a term not exceeding three months, and an offender being a company shall on a second or subsequent conviction be liable to an excise penalty of five hundred pounds.

2. *Certificate required for grant of moneylender's excise licence.*—(1) A moneylender's excise licence shall not be granted except to a person who holds a certificate granted in accordance with the provisions of this section authorising the grant of the licence to that person, and a separate certificate shall be required in respect of every separate licence. Any moneylender's excise licence granted in contravention of this section shall be void.

(2) Certificates under this section (in this Act referred to as "certificates") shall be granted by the petty sessional court having jurisdiction in the petty sessional division in which the moneylender's business is to be carried on, so, however, that within any part of the metropolitan police district for which a police court is

established, a certificate shall not be granted except by a police magistrate.

(3) Every certificate granted to a moneylender shall show his true name and the name under which, and the address at which, he is authorised by the certificate to carry on business as such, and a certificate shall not authorise a moneylender to carry on business at more than one address, or under more than one name, or under any name which includes the word "bank," or otherwise implies that he carries on banking business, and no certificate shall authorise a moneylender to carry on business under any name except—

(*a*) his true name; or

(*b*) the name of a firm in which he is a partner, not being a firm required by the Registration of Business Names Act, 1916, to be registered; or

(*c*) a business name, whether of an individual or of a firm in which he is a partner, under which he or the firm has, at the passing of this Act, been registered for not less than three years both as a moneylender under the Moneylenders Act, 1900, and under the Registration of Business Names Act, 1916.

(4) A certificate shall come into force on the date specified therein, and shall expire on the next following thirty-first day of July.

(5) A Secretary of State shall make rules with respect to the procedure to be followed in making applications for certificates (including the notices to be given of intention to make such an application), and certificates shall be in such form as may be prescribed by rules so made.

(6) A certificate shall not be refused except on some one or more of the following grounds—

(*a*) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company of the persons responsible for the management thereof;

(*b*) that satisfactory evidence has been produced that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is not a fit and proper person to hold a certificate;

(*c*) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is by order of a court disqualified for holding a certificate;

(*d*) that the applicant has not complied with the provisions of any rules made under this section with respect to applications for certificates.

(7) Any person aggrieved by the refusal of a petty sessional court to grant a certificate may appeal to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts as if the refusal were an order of a court of summary jurisdiction.

3. *Suspension and forfeiture of moneylenders' certificates.*—(1) Where any person, being the holder of a certificate, is convicted of any offence under this Act or under section two or four of the Betting and Loans (Infants) Act, 1892, or the Moneylenders Act, 1900, the court—

(*a*) may order that any certificates held by that person, and in the case of a partner in a firm by any other partner in the firm, shall either be suspended for such time as the court thinks fit, or shall be forfeited, and may also, if the court thinks fit, declare any such person, or any person responsible for the management of the moneylending business carried on by the person convicted, to be disqualified for obtaining a certificate for such time as the court thinks fit; and

(*b*) shall cause particulars of the conviction and of any order made by the court under this subsection to be endorsed on every certificate held by the person convicted or by any other person affected by the order, and shall cause copies of those particulars to be sent to the authority by whom any certificate so endorsed was granted, and to the Commissioners of Customs and Excise:

Provided that, where by order of a court a certificate held by any person is suspended or forfeited, or any person is disqualified for obtaining a certificate, he may, whether or not he is the person convicted, appeal against the order in the same manner as any person convicted may appeal against his conviction, and the court may, if it thinks fit, pending the appeal, defer the operation of the order.

(2) Any certificate required by a court for endorsement in accordance with the foregoing provisions of this section shall be produced, in such manner and within such time as may be directed by the court, by the person by whom it is held, and any person who, without reasonable cause, makes default in producing any certificate so required shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding five pounds for each day during which the default continues.

(3) Where a certificate held by any person is ordered to be suspended or to be forfeited under the foregoing provisions of this section, any moneylender's excise licences granted to that person, whether in pursuance of that or any other certificate, shall be suspended during the period for which the certificate is ordered to be suspended or become void, as the case may be.

4. *Names to be stated on documents issued by moneylenders.*—(1) Subsection (2) of section two of the Companies (Particulars as to Directors) Act, 1917 (which requires certain particulars to be published in trade catalogues, trade circulars, show cards and business letters) shall apply with the necessary modifications to every company licensed under this Act notwithstanding that the company was registered or had established a place of business within the United Kingdom on or before the twenty-second day of November, nineteen hundred and sixteen.

(2) Without prejudice to the provisions of the last foregoing section and of section eighteen of the Registration of Business Names Act, 1916, a moneylender shall not, for the purposes of his business as such, issue or publish, or cause to be issued or published, any advertisement, circular, business letter, or other similar document which does not show—

(*a*) in such manner as to be not less conspicuous than any other name, the authorised name of the moneylender; and

(*b*) except in the case of an advertisement published in a newspaper, any name, other than his authorised name, under which the moneylender, and in the case of a firm any partner therein, was before the commencement of this Act registered as a moneylender under the Moneylenders Act, 1900;

and any moneylender who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding twenty pounds in respect of each offence.

(3) If a moneylender, for the purposes of his business as such, issues or publishes, or causes to be issued or published, any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking business, he shall on summary conviction be liable to a fine not exceeding one hundred pounds, and on a second or subsequent conviction, in lieu of or in addition to such a fine as aforesaid, to imprisonment for a term not exceeding three months, or, in the case of a second or subsequent conviction of an offender being a company, to a fine not exceeding five hundred pounds.

5. *Restrictions on moneylending advertisements.*—(1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a moneylender, or containing an invitation—

(*a*) to borrow money from a moneylender;

(*b*) to enter into any transaction involving the borrowing of money from a moneylender;

(*c*) to apply to any place with a view to obtaining information or advice as to borrowing any money from a moneylender.

(2) Subject as hereinafter provided, no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation, or by means of any poster or placard, an advertisement advertising any such particulars, or containing any such invitation, as aforesaid:

Provided that an advertisement in conformity with the requirements of this Act relating to the use of names on moneylenders' documents may be published by or on behalf of a moneylender in any newspaper or in any such paper as aforesaid or by means of a poster or placard exhibited at any authorised address of the moneylender, if it contains no addition to the particulars necessary to comply with the said requirements, except any of the following particulars, that is to say any authorised address at which he carries on business as a moneylender and the telegraphic address and telephone number thereof, any address at which he formerly carried on business, a statement that he lends money with or without security, and of the highest and lowest sums that he is prepared to lend, and a statement of the date on which the business carried on by him was first established.

(3) No moneylender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a moneylender, and no person shall act as such agent or canvasser, or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a moneylender any person desiring to borrow money.

(4) Where any document issued or published by or on behalf of a moneylender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed to be charged in terms of a rate per cent. per annum or show the rate per cent. per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the First Schedule to this Act.

(5) Any person acting in contravention of any of the provisions of this section shall be guilty of a misdemeanour and shall in respect of each offence be liable, on conviction on indictment, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and, on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(6) Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall, notwithstanding that the moneylender was duly licensed under this Act, be illegal, unless the moneylender proves that the contravention occurred without his consent or connivance.

6. *Form of moneylenders' contracts.*—(1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a money-lender after the commencement of this Act or for the payment by him of interest on money so lent and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract be made and signed personally by the borrower, and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract; and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given as the case may be.

(2) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and, either the interest charged on the loan expressed in terms of a rate per cent. per annum, or the rate per cent. per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act.

7. *Prohibition of compound interest and provision as to defaults.* Subject as hereinafter provided, any contract made after the commencement of this Act for the loan of money by a moneylender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract:

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the moneylender under the contract, whether in respect of principal or interest, the moneylender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

8. *Obligation of moneylender to supply information as to state of loan and copies of documents relating thereto.*—(1) In respect of

every contract for the repayment of money lent by a moneylender whether made before or after the commencement of this Act, the moneylender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of one shilling for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the moneylender or his agent showing—

(*a*) the date on which the loan was made, the amount of the principal of the loan and the rate per cent. per annum of interest charged; and

(*b*) the amount of any payment already received by the moneylender in respect of the loan and the date on which it was made; and

(*c*) the amount of every sum due to the moneylender, but unpaid, and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and

(*d*) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

(2) A moneylender shall, on any reasonable demand in writing by the borrower, and on tender of a reasonable sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a moneylender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the moneylender shall be liable on summary conviction to a fine not exceeding five pounds for every day on which the default continues.

9. *Provisions as to bankruptcy proceedings for moneylenders' loans.*—(1) Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of

the Bankruptcy Act, 1914, relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and dividend, be calculated at a rate not exceeding five per cent. per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled.

The provisions of this subsection shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of subsection (1) of section sixty-six of the Bankruptcy Act, 1914.

(2) No proof of a debt due to a moneylender in respect of a loan made by him shall be admitted for any of the purposes of the Bankruptcy Act, 1914, unless the affidavit verifying the debt is accompanied by a statement showing in detail—

(*a*) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the moneylender in respect of the loan and the date on which every such payment was made; and

(*b*) the amount of the balance which remains unpaid distinguishing the amount of the principal from the amount of interest included therein, the appropriation between principal and interest being made in accordance with the provisions of this Act where the interest is not expressed by the contract for the loan in terms of a rate; and

(*c*) where the amount of interest included in the unpaid balance represents a rate per cent. per annum exceeding five per cent., the amount of interest which would be so included if it were calculated at the rate of five per cent. per annum.

(3) General rules may be made under section one hundred and thirty-two of the Bankruptcy Act, 1914, for the purpose of carrying into effect the objects of this section.

10. *Amendments of 63 and 64 Vict. c. 51. s. 1.*—(1) Where, in any proceedings in respect of any money lent by a moneylender after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of

this Act, it is found that the interest charged exceeds the rate of forty-eight per cent. per annum, or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section one of the Moneylenders Act, 1900, that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding forty-eight per cent. per annum, is excessive.

(2) Where a court reopens a transaction of a moneylender under the said section one of the Moneylenders Act, 1900, the court may require the moneylender to produce any certificate granted to him in accordance with the provisions of this Act, and may cause such particulars as the court thinks desirable to be endorsed on any such certificate, and a copy of the particulars to be sent to the authority by whom the certificate was granted.

(3) The powers of a court under the said section one of the Moneylenders Act, 1900, with respect to the reopening of the transactions of moneylenders, shall extend to any transaction effected under a special contract made in accordance with the provisions of section twenty-four of the Pawnbrokers Act, 1872, and accordingly, for the purposes of the first mentioned section the provisions of paragraph (a) of section six of the Moneylenders Act, 1900, shall not apply with respect to any such transaction.

(4) The powers of a court under subsection (2) of the said section one of the Moneylenders Act, 1900 (which enables a court at the instance of the borrower, surety, or other person liable, to exercise its powers under that section with respect to the reopening of the transactions of moneylenders, although no proceedings are taken for the recovery of the money lent, and notwithstanding that the time for repayment may not have arrived), may in the event of the bankruptcy of the borrower be exercised at the instance of the trustee in bankruptcy, notwithstanding that he may not be a person liable in respect of the transaction.

(5) The powers of a court under the said subsection (2) of section one of the Moneylenders Act, 1900, may be exercised notwithstanding that the moneylender's right of action for the recovery of the money lent is barred.

11. *Courts to which proceedings on moneylending transactions are to be taken.*—(1) Subject as hereinafter provided, no action by a moneylender for the recovery of money lent by him or for enforcing any agreement or security relating to any such money shall be brought in any inferior court other than a county court:

Provided that His Majesty may by Order in Council direct that any inferior court specified in the Order shall have the same jurisdiction as respects such actions as aforesaid as it would have had but for the provisions of this subsection, and any such Order may contain such provisions as appear to His Majesty expedient with respect to the making of rules of court for regulating the procedure to be followed in the case of any such action, and may be revoked or varied by any subsequent Order made in like manner.

(2) Before any Order in Council is made under this section, a draft thereof shall be laid before each House of Parliament for a period of not less than twenty-one days during the session of Parliament, and if either House before the expiration of the said period presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new draft order.

12. *Prohibition of charge for expenses on loans by moneylenders.* Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the moneylender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a moneylender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

13. *Limitation of time for proceedings in respect of money lent by moneylenders.*—(1) No proceedings shall lie for the recovery by a moneylender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him, unless the

proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued:

Provided that—

(*a*) if during the period of twelve months aforesaid or at any time within any subsequent period during which proceedings may by virtue of this proviso be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the moneylender to pay that amount, proceedings for the recovery of the amount due may be brought at any time within a period of twelve months from the date of the acknowledgment and undertaking;

(*b*) the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run in respect of any payments from time to time becoming due to a moneylender under a contract for the loan of money until a cause of action accrues in respect of the last payment becoming due under the contract;

(*c*) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor, the person entitled to take the proceedings is *non compos mentis*, the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until that person ceases to be *non compos mentis* or dies, whichever first occurs; and

(*d*) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor, the debtor is beyond the seas, the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until he returns from beyond the seas, so, however, that section eleven of the Mercantile Law Amendment Act, 1856 (which relates to the limitation of actions against joint debtors where some are beyond seas) shall have effect as if this section were included among the enactments therein referred to as fixing a period of limitation.

(2) Without prejudice to the powers of a court under section one of the Moneylenders Act, 1900, if at the time when proceedings are taken by a moneylender in respect of a default in the payment of any sum due to him under a contract for the loan of money, any further amount is outstanding under the contract but not yet due, the court may determine the contract and order the principal outstanding to be paid to the moneylender with such interest thereon, if any, as the court may allow up to the date of payment.

14. *Special provisions as to pawnbroker's loans.*—(1) The provisions of sections six, twelve and thirteen of this Act shall not apply in relation to any loan by a pawnbroker on a pledge, or in relation to any debt in respect of such a loan, or any interest thereon, notwithstanding that the loan is not made in the course of the business carried on by the pawnbroker in accordance with the Acts for the time being in force in relation to pawnbrokers, so long as the following conditions are complied with in respect of the loan:—

(*a*) The pawnbroker shall deliver or send to the pawner within seven days a note or memorandum containing all the terms of the contract, and in particular showing the date on which the loan is made, the amount of the principal of the loan, the interest charged on the loan expressed in terms of a rate per cent. per annum, and any other charges payable by the pawner under the contract, and the rate of interest charged shall not exceed the rate of twenty per cent. per annum;

(*b*) Subject as hereinafter provided, the pawner shall not be charged any sum on account of costs, charges, or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan, except a charge for the preparation of documents relating to the loan not exceeding the sum of one shilling, and a charge equal to the actual amount of any stamp duty paid by the pawnbroker upon any such document:

Provided that a pawnbroker shall not be deemed to have failed to comply with the foregoing conditions by reason of his having made in good faith and in accordance with the terms of the contract for the loan—

(i) a reasonable charge in respect of the storage or care of any pledge which is not physically delivered to him or which, although so delivered, is of such weight or size that it would not under the Post Office regulations for the time being in force be received for transmission by parcel post; or

(ii) a charge for interest at a rate not exceeding twenty per cent. per annum upon any sum reasonably expended by the pawnbroker in respect of the storage or care of the pledge; or

(iii) a charge not exceeding one shilling for rendering any account of the sale of any pledge; or

(iv) a charge not exceeding one shilling in respect of any inspection of the pawnbroker's books;

(2) Any charge authorised by this section for the preparation of documents relating to a loan, or in respect of stamp duty upon any such document, may be deducted by the pawnbroker from the amount of the loan, and, if so deducted, shall be deemed for the purposes of this Act to be included in the principal.

15. *Interpretation, &c.*—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"Authorised name" and "authorised address" mean respectively the name under which and the address at which a moneylender is authorised by a certificate granted under this Act to carry on business as a moneylender;

"Business name" means the name or style under which any business is carried on, whether in partnership or otherwise;

"Company" means any body corporate being a moneylender;

"Firm" means an unincorporate body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;

"Interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a moneylender for or on account of costs, charges, or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a moneylender in consideration of or otherwise in respect of a loan;

"Principal" means in relation to a loan the amount actually lent to the borrower.

(2) Where by a contract for the loan of money by a moneylender the interest charged on the loan is not expressed in terms of a rate, any amount paid or payable to the moneylender under the contract (other than simple interest charged in accordance with the proviso to section seven of this Act) shall be appropriated to principal and interest in the proportion that the principal bears to the total amount of the interest, and the rate per cent. per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act shall be deemed to be the rate of interest charged on the loan.

16. *Notice and information to be given on assignment of moneylenders' debts.*—(1) Where any debt in respect of money lent by a moneylender whether before or after the commencement of this Act or in respect of interest on any such debt or the benefit of any agreement made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor (whether he is the moneylender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

(*a*) give to the assignee notice in writing that the debt, agreement or security is affected by the operation of this Act; and

(*b*) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto,

and any person acting in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be guilty of a misdemeanour, and shall in respect of each offence be liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine, and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds.

(2) In this section the expression "assigned" means assigned by

any assignment inter vivos other than an assignment by operation of law, and the expressions "assignor" and "assignee" have corresponding meanings.

17. *Application of Act as respects assignees.*—(1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt to a moneylender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and, except where the context otherwise requires, references in this Act to a moneylender shall accordingly be construed as including any such assignee as aforesaid:

Provided that—

(*a*) notwithstanding anything in this Act—

(i) any agreement with, or security taken by, a moneylender in respect of money lent by him after the commencement of this Act shall be valid in favour of any bona fide assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(ii) any payment or transfer of money or property made bona fide by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid; and

(iii) the provisions of this Act limiting the time for proceedings in respect of money lent shall not apply to any proceedings in respect of any such agreement or security commenced by a bona fide assignee or holder for value without notice that the agreement or security was affected by the operation of this Act, or by any person deriving title under him,

but in every such case the moneylender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings commenced by, an assignee or holder for value who is himself a moneylender; and

(*b*) for the purposes of this Act and of the Moneylenders Act, 1900, the provisions of section one hundred and ninety-nine of the Law of Property Act, 1925, shall apply as if the expression "purchaser" included a person making any such payment or transfer as aforesaid.

(2) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

18. *Application to Scotland.*—This Act shall apply to Scotland subject to the following modifications—

(*a*) Certificates under section two of this Act shall be granted by the licensing court under the Licensing (Scotland) Acts, 1903 to 1921, within whose jurisdiction the premises in which the moneylender's business is to be carried on are situated, and may be granted either at the general half-yearly meeting of such court, or at any adjournment thereof, which adjournment they may make from time to time for the purposes of this Act, or at some other meeting specially convened for that purpose, and an appeal against the refusal to grant such a certificate shall lie to the court of appeal under the said Acts:

(*b*) The power to make rules under subsection (5) of section two of this Act shall include power to make rules with respect to the procedure to be followed in appeals under the foregoing paragraph of this section:

(*c*) The provisions of subsection (3) of section twenty-seven of the Licensing (Scotland) Act, 1903 (which relates to the prescribing of fees), shall extend to the prescribing of fees payable to clerks of licensing courts and of courts of appeal for anything done under this Act:

(*d*) References to the presentation of a bankruptcy petition shall be construed as references to the presentation of a petition for sequestration; "scheme of arrangement" shall mean deed of arrangement; references to the admission of proof of debts shall be construed as references to the ranking of claims or debts; and "affidavit" shall mean oath:

(*e*) The Bankruptcy (Scotland) Act, 1913, shall be substituted for the Bankruptcy Act, 1914, except where subsection (1) of section sixty-six thereof is referred to; and Act of Sederunt under section one hundred and ninety of the said Act of 1913 shall be substituted for general rules under section one hundred and thirty-two of the said Act of 1914:

(*f*) Where decree is granted by any court in favour of a moneylender for any sum of money in respect of a loan by him, the court may, either at the time of granting such decree or at any time thereafter prior to the payment of such sum and on the application of either party, make an order that such sum shall be payable by instalments of such amount and subject to such conditions as the court shall think fit:

(*g*) Section eleven of this Act shall not apply:

(*h*) Notwithstanding anything to the contrary in any Act contained, summary execution or diligence shall not be competent upon any bill of exchange or promissory note or upon any bond or obligation registered in the books of any court, where such bill, promissory note, bond or obligation has been granted to or in favour of or is held by a moneylender.

19. *Short title, citation, construction, repeal, extent and commencement.*—(1) This Act may be cited as the Moneylenders Act, 1927, and the Moneylenders Act, 1900, and this Act may be cited together as the Moneylenders Acts, 1900 to 1927.

(2) Except where the context otherwise requires, references in this Act to the Moneylenders Act, 1900, shall be construed as references to that Act as amended by this Act, and this Act shall be construed as one with that Act, and the provisions of this Act as to moneylender's excise licences and offences in relation thereto shall also be construed as one with the Acts relating to duties of excise and the management of those duties.

(3) The enactments set out in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that section one of the Moneylenders Act, 1911, shall continue in force as respects any agreement with or security taken by a moneylender before the commencement of this Act, or any payment or transfer of money or property made, whether before or after the commencement of this Act, on the faith of the validity of any such agreement or security.

(4) This Act shall not extend to Northern Ireland.

(5) Except as hereinafter provided this Act shall come into force on the first day of January, nineteen hundred and twenty-eight:

Provided that—

(*a*) subject to the provisions of any regulations or rules made under this Act, licences and certificates may be granted to moneylenders at any time after the first day of October, nineteen hundred and twenty-seven; and

(*b*) Orders in Council may be made under the provisions of this Act relating to courts to which proceedings on moneylenders' transactions are to be taken at any time after the passing of this Act,

so, however, that no such licence or Order in Council shall come into force until the commencement of this Act.

Nothing in the foregoing proviso shall be construed to limit or otherwise affect the provisions of section thirty-seven of the Interpretation Act, 1889.

SCHEDULES

FIRST SCHEDULE

CALCULATION OF INTEREST WHERE THE INTEREST CHARGED ON A LOAN IS NOT EXPRESSED IN TERMS OF A RATE

1. The amount of principal outstanding at any time shall be taken to be the balance remaining after deducting from the principal the total of the portions of any payments appropriated to principal in accordance with the provisions of this Act.

2. The several amounts taken to be outstanding by way of principal during the several periods ending on the dates on which payments are made shall be multiplied in each case by the number of calendar months during which those amounts are taken to be respectively outstanding, and there shall be ascertained the aggregate amount of the sum so produced.

3. The total amount of the interest shall be divided by one-twelfth part of the aggregate amount mentioned in paragraph 2 of this Schedule, and the quotient, multiplied by one hundred, shall be taken to be rate of interest per cent. per annum.

4. If having regard to the intervals between successive payments it is desired so to do, the calculation of interest may be made by reference to weeks instead of months, and in such a case the foregoing paragraphs shall have effect as though in paragraph 2 the word "weeks" were substituted for the words "calendar months," and in paragraph 3 the words "one-fifty-second," were substituted for the words "one-twelfth."

5. Where any interval between successive payments is not a number of complete weeks or complete months, the foregoing paragraphs shall have effect as though one day were one-seventh part of a week or one-thirtieth part of a month, as the case may be.

SECOND SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
63 and 64 Vict. c. 51.	The Moneylenders Act, 1900.	Section two; section three; in paragraph (e) of section six the words "registration under"
1 and 2 Geo. 5. c. 38.	The Moneylenders Act, 1911.	The whole Act.

CHAPTER V

THE BEGINNINGS OF ADMINISTRATIVE RESTRAINT

THE abuses in moneylending practices existing in 1927 were the same abuses that had existed in 1897. The Moneylenders Act of 1900 had failed to prevent them because the select committee of 1897 and 1898 had been timid about prescribing remedies and Parliament itself had been even more timid. The act of 1927 sought in four main ways to put an end to misuses which had persisted for seventy years. These four ways were (1) a tighter state control of moneylenders as such, (2) specific provisions for the protection of borrowers, (3) limitation of interest rates, and (4) incidental defense of third persons from the consequences of moneylending transactions.

The method of tightening state control of moneylenders is through licensing. Any person desiring to carry on the business of moneylending could, under the act of 1900, be registered upon payment of a small fee. There was no guaranty of his character or qualifications. The act of 1927 does much more than raise the fee to an appreciable amount. It requires that an applicant for license must first obtain a certificate either from the local magistrate, if there is one, or from the petty sessional court of his own locality. Since the petty sessional court is also the licensing authority for the sale of intoxicating liquors, it has considerable experience in investigating applicants.

The application for a certificate must show the applicant's true name and address or the registered business name or the name of the firm of which he is a partner. The form for application can be very specific in its inquiries, in the discretion of the Home Secretary. A certificate will be refused to an applicant not complying with the rules with respect to applications. The application is then published in a local newspaper, and objections to the application are invited.[1] The certificate is granted only when there is no satisfactory evidence that the applicant is unfit or disqualified to hold a certificate and only if there is satisfactory evidence that he is of good character. A person aggrieved by the refusal of a petty sessional court to issue a certificate may appeal to a court of quarter sessions.

Nor does the state's control end with the granting of the certificate. If the holder of a certificate, once granted, is convicted of any offense under the acts of 1900 or 1927 or certain sections of the Betting and Loans (Infants) Act, 1892, the court may cause particulars thereof to be endorsed on the certificate and notified to the authority issuing the certificate, and may even order the suspension or forfeiture of the certificate. Of course the holder of the certificate may appeal the conviction, but there are penalties for his otherwise delaying to carry out the court's order.

Only after procuring such a certificate can an applicant obtain a license from the Commissioners of Custom and Excise. The license costs £15 a year and can be taken out only in the moneylender's true name. A severe penalty is imposed on one carrying on the moneylending business without a proper license or taking out a license or carrying on business in other than his true name. In addition to the penalty, the lack of a license will probably render a moneylender's contracts void and unenforceable.

Besides the guaranty of fair dealing that is associated with state licensing, the act requires moneylenders to protect borrowers in specific ways. Not only must the lender state his true name in the license; he must publish his authorized

[1] S. R. and O. 1927, no. 861, pp. 829–832. The rules in relation to Scotland are even more specific: S. R. and O. 1927, no. 882, pp. 832–836.

name in advertisements, circulars, and business letters. To prevent disguise of the real name of the lenders through use of a company name, the act of 1927 makes applicable a provision of the Companies (Particulars as to Directors) Act of 1917.[1] It requires that all trade catalogues and circulars, show cards, and business letters set out the following particulars concerning the company's directors: (1) their present names; (2) any former Christian names and surnames; (3) their present nationality, if not British, and nationality of origin. In other words, the act of 1927 makes it very difficult for a borrower not to know everything about the lender that his true name will reveal.

Misleading advertising is entirely abolished by the act of 1927. The moneylender may advertise only by means of announcements in newspapers or placards at his authorized address. These advertisements may contain only seven statements: (1) the lender's authorized name; (2) his authorized address, with its telegraphic address and telephone number; (3) any previous address; (4) a statement that he lends money with or without security; (5) the highest and lowest amount that he will lend; (6) the date when his business was first established; (7) the rate of interest he proposes to charge. If he publishes the rate of interest, he must express it as a definite percentage rate per annum or must show the rate to be charged as calculated in accordance with the schedule attached to the act itself.[2]

The act abolishes all circularizing. Only in response to a written request may a moneylender send a circular. Circularizing is forbidden not only to lenders themselves but to agents or brokers who give information or advice about borrowing money. The act prohibits lenders from employing agents or canvassers and prohibits agents or canvassers from

[1] Repealed and re-enacted by the Companies Act, 1929, 19–20 Geo. V, c. 23, sec. 145.

[2] See p. 136.

receiving remuneration for introducing borrowers to lenders.[1] Contravention of these provisions not only subjects a person to criminal punishment but makes illegal and unenforceable a moneylending transaction so induced.

The main argument advanced against a license requirement for moneylenders in 1900 was that lenders might create a false impression by advertising that they were officially licensed. This simple expedient of prescribing restrictions on the contents of advertisements entirely eliminates such misleading inducement.

Evidence produced before the parliamentary committees of 1897–1898 and of 1925 showed that some ignorant borrowers did not know the terms of the agreements into which they had entered. Section 6 of the act of 1927 does everything possible to prevent the borrower's failure to know and understand the transaction. It requires that the borrower should personally make and sign a written note or memorandum of the contract before the money is lent or security is taken. Such note or memorandum must set out all terms of the contract and particularly the date of the loan, its actual amount, and the rate of interest charged, expressed either as a percentage rate per annum or calculated as the schedule to the act explains. Within seven days after the making of the contract the lender must send a copy of the memorandum to the borrower. Failure to observe these requirements makes the contract or security unenforceable.

The courts in their interpretation of these requirements about memoranda have been very strict. The Court of Appeal is said in a headnote to have held that a contract is unenforceable if the required memorandum merely states the date of loan incorrectly, even though the inaccuracy resulted not from deception but only from clerical error.[2] In a later

[1] The act does not prohibit canvassing when the tout acts without the authority or mandate of the lender to whom he introduces a customer: Verner-Jeffreys *v.* Pinto, [1929] 1 Ch. 401, 98 L. J. Ch. 337, 140 L. T. 360, 45 T. L. R. 163.

[2] Gaskell, Ltd. *v.* Askwith (1929), 45 T. L. R. 566, 73 Sol. Jo. 465.

case Lord Justice Scrutton said that the court had not meant that a clerical error will necessarily invalidate the memorandum; in each case it must depend upon the nature of the error.[1] Failure of the memorandum to state the date of loan at all will, however, make the security for the loan unenforceable.[2]

When the memorandum correctly states the date of the loan, the transaction may yet be vitiated by an incorrect statement of the date in the copy of the memorandum: the copy must be exact.[3] If a new loan agreement is substituted for a previous one, the memorandum will suffice if it sets out truthfully the terms upon which the new loan replaced the old.[4] But if the memorandum is not a true representation of the new transaction[5] or if a copy of the memorandum of the new transaction is not sent to the borrower, the contract is unenforceable.[6] The memorandum need not necessarily state the terms of an ordinary promissory note on the security of which the loan is made, and a variation between the memorandum and the note itself would probably not invalidate the contract except, possibly, where the note contained an onerous term not in the memorandum.[7]

In addition to the lender's having to send the borrower a memorandum of the terms of the loan soon after the loan is made, he must, on demand and tender of a shilling, give the borrower an exact account of the state of the loan. Thus, a borrower can at any time ascertain not only the original

[1] Temperance Loan Fund, Ltd. *v.* Rose (1932), 101 L. J. K. B. 609. See also Sherwood *v.* Deeley (1931), 47 T. L. R. 419, 25 Sol. Jo. 345.

[2] Temperance Loan Fund, Ltd. *v.* Rose (1932), 101 L. J. K. B. 609.

[3] Bennett (T. W.) and Co., Ltd. *v.* Smith (1931), 47 T. L. R. 592, 75 Sol. Jo. 645.

[4] Lyle (B. S.), Limited *v.* Chappell, [1932] 1 K. B. 691, reversing 47 T. L. R. 562, 75 Sol. Jo. 511.

[5] Lyle (B. S.), Limited *v.* Chappell, 47 T. L. R. 562, 75 Sol. Jo. 511, reversed on other grounds, [1932] 1 K. B. 691.

[6] Eldridge and Morris *v.* Taylor, [1931] 2 K. B. 416, 100 L. J. K. B. 689, 145 L. T. 499, 47 T. L. R. 516.

[7] Reading Trust, Ltd. *v.* Spero, [1930] 1 K. B. 492, 99 L. J. K. B. 186, 142 L. T. 361, 46 T. L. R. 117, 74 Sol. Jo. 12.

terms of the agreement but also the amount and time of past and future payments and the interest due and unpaid. Upon tender of a reasonable sum for expenses the borrower can likewise obtain from the lender a copy of any document relating to the loan or any security for it. A lender failing to heed such a request is precluded, during such default, from suing to recover on the loan and from charging interest on it, and may also be liable to a heavy fine.

The other hardship into which the borrower's ignorance led him was the possibility of legal action at a distant place or time. The act of 1927 seeks to put an effective stop to that. Actions to enforce moneylending agreements can be brought in no inferior court other than a county court. Since there are, however, several popular local courts whose process had been used by moneylenders, the act allows the King by order in council to restore to them any jurisdiction of which the act deprived them, subject to rules of procedure made in the order to protect the borrower from previous abuses. This gives a certain elasticity on the question of jurisdiction. In accordance with this provision jurisdiction in moneylending cases has been restored to the Mayors' and City of London Court, the Liverpool Court of Passage, the Salford Hundred Court, and the Derby Borough Court of Record;[1] and the Lord Chancellor, granted the power by order in council, has made special rules regulating procedure in the Liverpool and Salford courts.[2]

To abolish the harsh consequences of suits in Scotland the act of 1927 prohibits the use of summary diligence on obligations running to moneylenders.[3]

The relatively short statute of limitations which the law applies to actions on moneylending contracts is intended to deprive the lender of the club which he could formerly hold over the borrower's head for extended periods. After 1928

[1] S. R. and O. 1927, no. 1170, pp. 837f.

[2] S. R. and O. 1928, nos. 1, 2, pp. 742ff., 745ff.

[3] Sec. 18 (h).

the lender has had to sue, in an ordinary case, within twelve months after the cause of action accrued.

The most conspicuous abuses uncovered by the parliamentary investigation of 1925 were connected with high charges. The provision of the act of 1900 allowing the court to reopen a moneylending transaction if the charges were excessive or the bargain harsh and unconscionable had not put an end to extortionate rates. The bill which the parliamentary committee considered in 1925 had proposed to limit the rate of interest to 15 per cent a year. Lenders had said that they could not do business unless they charged at least 60 per cent. Faced with this wide discrepancy the committee hesitated to establish a rigid rule. Any maximum rate would tend to become the normal rate; if the maximum were to be as high as the lenders considered essential, deserving borrowers would suffer. The committee's solution of the problem was to continue the court's discretion and yet supply the court with a legislative guide.

The act of 1927 therefore provides that the court should presume the interest excessive and the transaction harsh and unconscionable under the act of 1900 if the rate charged exceeds 48 per cent a year. The level of 48 per cent is not a maximum; it is rather a turning point for the burden of proof. If the rate is less than 48 per cent, the court may, under the circumstances of the case, still consider the charges excessive; if the rate is over 48 per cent, the lender may yet prove that, notwithstanding the presumption, it is not excessive. A moneylender whose transaction is reopened for excessive charges may jeopardize his future business because the court can endorse the particulars on the license certificate and notify the authority which granted the certificate.

Needless to suggest, this provision has been the subject of important litigation. The presumption of excessiveness has proved itself elastic. The Court of Appeal has held the rate of 48 per cent harsh and unconscionable where, in addition to the borrower's mere promise to repay, the lender took a bill of sale over his furniture of ample security for repayment.[1] And when the defendant borrower has consented to judgment in a case where interest exceeded 48 per cent, the court has nevertheless refused to enter judgment merely by reason of such consent.[2] But the elasticity of the presumption works against the borrower as well. The Court of Appeal has likewise held 80 per cent a year not to be excessive,[3] and the King's Bench Division has held 160 per cent a year not to be excessive under the circumstances of the case.[4]

The circumstances which may, in a particular case, convince the court that a rate is not excessive, even if above that presumed by the act, are set out by Lord Justice Slesser in Reading Trust, Ltd. *v.* Spero:

> It is not a case of a man who is in difficulties who cannot escape and advantage is taken of him, and that, therefore, is harsh and unconscionable. The terms were very stiff and his business was extraordinarily speculative, but he was making large profits—this was a true matter of business embarked upon by a gentleman who struck me as being . . . a man of great intelligence . . . carrying on a high class business, simply finding that his business is so speculative that he cannot get finance from the banks, but so profitable in his skilful hands that he can make profits which can pay 60 or 80 per cent. interest . . . . The policy of the Act was to enable the Court to prevent oppression, leaving it in the discretion of the Court to weigh each case upon its own merits.[5]

Although it would be a misconception to suppose that the act of 1927 imposes 48 per cent a year as a maximum rate, the

[1] Verner-Jeffreys *v.* Pinto, [1929] 1 Ch. 401, 98 L. J. Ch. 337, 140 L. T. 360, 45 T. L. R. 163.

[2] Mills' Conduit Investments, Ltd. *v.* Denholm (1931), 100 L. J. K. B. 685, 145 L. T. 585, 47 T. L. R. 514.

[3] Reading Trust, Ltd. *v.* Spero, [1930] 1 K. B. 492, 99 L. J. K. B. 186, 142 L. T. 361, 74 Sol. Jo. 12, 46 T. L. R. 117.

[4] Parkfield Trust, Ltd. *v.* Dent, [1931] 2 K. B. 579.

[5] [1930] 1 K. B. 492, at pp. 515f., quoting in part Mr. Justice Rowlatt, the trial-court judge.

act does provide against certain definite methods of increasing and concealing the rate.

The act abolishes some of the misuses of default clauses. It makes illegal any moneylending contract for compound interest or for increase in rate upon default of payment. In case of default the moneylender can charge only simple interest from the date of default to the date of payment, and the rate of such interest must not exceed the rate payable on the principal if there had been no default.

The rate may not be increased by any preliminary "costs, charges or expenses." Such illegal charges may be recovered back by the borrower or intending borrower, or may be set off against the amount actually lent. Not only does this provision prevent manipulation of interest rates; it makes more arduous the path of the "fee snatcher."[1]

And finally, the act provides effectively against the lender's concealing his actual percentage rates by charging interest as a lump sum. Section 15 gives a convenient rule of thumb for allocating the payments to principal and interest respectively: the sums paid or payable (except the simple interest which may be charged on default) must be appropriated to principal and interest in the proportion that the actual sum lent bears to the total interest. The First Schedule then shows how the percentage rate per annum is to be calculated. This can best be illustrated by an example.

Say that on January 1, M lends B £100, for which B agrees to repay the sum of £120 in four equal instalments of £30 at intervals of three months, the first to be paid on April 1. According to Section 15, £100 is principal, £20 interest. Of the £30, one-sixth is thus interest, five-sixths principal; payment will be credited one-sixth to interest, five-sixths to principal.

In terms of paragraph 2 of the First Schedule[2] the actual sum lent is outstanding—namely, £100. This is multiplied

[1] See pp. 64, 102.

[2] See p. 136.

by 3 (the number of months making up the interval to the first payment), giving the figure of £300. When the first instalment of £30 is paid on April 1, then five-sixths or £25 of that instalment must be appropriated to principal, which leaves the amount of principal outstanding for the next three months at £75. This is multiplied by 3 (the number of months making up the interval) and gives the figure £225. The result of the calculation is best shown by a table:

Intervals of Payment	Principal Outstanding
3 months ending April 1	£100 × 3 = £300
" " " July 1	(£100 − £25) or £75 × 3 = £225
" " " October 1	(£ 75 − £25) or £50 × 3 = £150
" " " January 1	(£ 50 − £25) or £25 × 3 = £ 75
	£750

£750 is the aggregate sum referred to in paragraph 2 of the First Schedule. See page 136.

Paragraph 3 of the Schedule directs how this aggregate sum is to be dealt with to find the percentage rate per annum of interest charged under the contract. The total interest payable (in the example given, £20) is to be divided by one-twelfth of the aggregate sum, and the resulting figure is to be multiplied by 100. Keeping to the figures in the example, the following proportion sum results:

$$\frac{20}{750 \div 12} \times \frac{100}{1} = \frac{20}{1} \times \frac{12}{750} \times \frac{100}{1} = 32 \text{ per cent per annum.}^{1}$$

Although this method is not an exact computation of the percentage rate per annum on unpaid balances, it is much simpler than an exact computation, and the results are very nearly the same. The statutory enactment of the method of figuring rates frees the lender from the fear of reaching a different result from the court and allows him to express his

[1] This example is taken from The Law of Moneylending by Linton Thorp, and A. Aiken Watson, London, Effingham Wilson, 1928, pp. 100f.

charges in lump sums, so long as the actual rate is within the prescribed terms.

The fourth way in which the act of 1927 sought to cure existing evils was through protecting third persons who are affected by moneylending transactions. Such persons are general creditors of a borrower in bankruptcy proceedings and assignees of a moneylender's debts.

Creditors of a bankrupt would often suffer because of his obligations to moneylenders. In earlier periods default clauses would operate to make the whole debt fall due to the moneylender immediately in case of bankruptcy of the borrower, both principal and all interest to date of maturity of the loan. Later, moneylenders would make new loans to borrowers in danger of bankruptcy, incorporating into the new loan the principal and all interest to maturity on the old loan. The Bankruptcy Act of 1914 had overcome the first of these difficulties in England by providing in effect that the moneylender's rights and dividends in the borrower's estate should be limited to the principal of his loan, plus 5 per cent interest until after other creditors had been paid in full, whereafter he might apply for the higher interest according to contract.[1] The Moneylenders Act of 1927 made this provision somewhat more specific and applicable to Scotland as well as to England.[2] It sought, too, to overcome the evil of renewals by giving to the borrower's trustee in bankruptcy the right to reopen transactions with moneylenders in the same way that the act of 1900 had given the right to the courts.[3]

The act of 1911, it will be remembered, protected bona fide assignees of moneylending debts.[4] Since the act of 1927 repealed the act of 1911, a new section (17) was necessary to continue this protection. Essentially an assignee is in the same position as his assignor, the moneylender, except where

[1] See note, p. 75. This restriction may be unfair to moneylenders: other tradesmen who are creditors of a bankrupt may claim the sale price of the goods purchased, which may include a profit far greater than 5 per cent.

[2] Sec. 9.

[3] Sec. 10 (4).

[4] See note, p. 86.

he has taken the assignment without notice of any defect in the instrument caused by the act of 1927 itself, and except that he is not bound by the short statute of limitations. A borrower obligated to the assignee under these exceptions can obtain indemnity from the moneylender. Moreover, a moneylender (or his assignee) assigning a debt to a third person must give the third person written notice of the fact that the debt is subject to the Moneylenders Act and supply him with the information necessary to enable him to comply with the act. A moneylender failing to give such notice and information is liable to indemnify a person prejudiced by his failure and may be criminally liable as well.

Although the act of 1927 has changed some of the shadings in the picture of moneylending, it has probably not greatly changed the contours. The recent amendments to the law have left the classification of moneylenders largely the same and have not radically altered their method of transacting business.

There were and there are in Great Britain four types, roughly, of commercial moneylenders. There are, first, the small illegal lenders. Since the act of 1927 has increased the legal license fee considerably, the number of unlicensed lenders probably exceeds the number of lenders previously unregistered. As already noted, the number of registered lenders in 1912 was about 6,000 or 8,000.[1] The number of licensed lenders since the new law became effective has varied from 3,651 to something over 4,000. For the year ending in March, 1930, the number was 3,759.[2] If the number of licensed lenders is appreciably less than the number formerly registered, it may of course mean that there are fewer moneylenders. Or it may mean that there are fewer legal lenders and an increased number of lenders operating

[1] See p. 82.

[2] See Parliamentary Debates, Fifth Series, vol. 214, col. 2122; vol. 223, col. 1732; vol. 240, cols. 816–817.

without license. These illegal lenders generally lend sums less than £1. There is no reason to believe that the act of 1927 has lowered their rates or changed their practices as we have studied them.

The second group of lenders, licensed, of course, handles the smaller loans of say £1 to £20, usually £5 or £10. Its clients are largely workingmen. To carry on this type of business a lender may have a capital anywhere from £100 to £10,000. It is reasonable to suppose that the smaller lenders of this class have been forced by the high license fee into the class of illegal lenders.

The third type of lenders makes larger loans and requires a larger capital. Their loans range from £20 to £100, a large majority falling between £25 and £60. This means that their clientele is composed of artisans, small tradesmen, professional men, and clerks. Their method of doing business is relatively conservative, and they often make use of bills of sale. A lender of this type generally has a capital of £20,000 or £30,000.

The fourth type of lenders, small in number, is confined almost exclusively to London. Its business is with large and comparatively wealthy borrowers. Some lenders of this type will make no loans smaller than £50, and some advertise to make loans of from £1,000 to £25,000. Single loans have been known as high as £38,000. To carry on such a business a capital of £250,000 may be necessary. Since economic conditions have affected potential wealthy borrowers adversely, the importance of this group of large lenders has been steadily declining.

The licensed lenders are organized into several loose associations. Four such associations sent representatives to the parliamentary hearings in 1925: one for London, one for Yorkshire, one for Lancashire and Cheshire, and one for Scotland. Very few lenders belong to these associations, and some join only when there is a threat, such as a new law, to their common interests. The National Federation of Moneylenders Associations, in 1911 composed of seven such local organizations, evidently had ceased to exist by 1925. Its place is taken in part by the Moneylenders Association, a national body which has grown out of the London group.

Besides their defensive activity these associations sometimes seek to police the business from within and to that end to bring to justice lenders who offend against the law. Before the act of 1927 they passed regulations against objectionable advertising methods and even solicited the co-operation of newspapers in their effort to stamp out this class of advertisement. In general they place their disapproval on sharp practices and try to raise the standard of the profession; but in the conduct of their business the members are entirely individualistic. They have no clearing house of credit information, no standard forms and methods, no aggressive legislative campaigns. A suggestion made during the parliamentary investigation in 1925 that the moneylenders form an organization that would receive a charter and have exclusive control over licensing and regulating the profession, though assented to by a few influential lenders, bore no fruit.

Outside the regular categories of commercial moneylenders there exist the so-called "Money Societies," organized under the Friendly Societies Act to provide credit facilities for workingmen and to compete with commercial lenders. Their loans are limited to £50. Co-operative in their principle, they correspond roughly to credit unions in America, making loans only to members. Although they sprang up in great numbers after the acts creating them were passed, and maintained a lively competition with moneylenders, they have not been highly successful. Like many other co-operative credit enterprises, in the beginning a number failed because of lack of experienced managers. Many of those that did not fail, finding the restrictions by the Registrar of Friendly Societies too binding, became registered as moneylenders, thus going over to the side of the enemy. Those that remain on their original basis now deal chiefly in loans running for three and a half to four years, repayable by weekly instalments and secured by two and three signatures. Such loans do not compete with the commercial lender.

Except for the changes in detail the act of 1927 has not altered the essential outlines of moneylending transactions. The credit instruments remain the same; the method of enforcing them in the courts persists.

There are three common types of credit instruments used by moneylenders, the same three that we have seen used in the earlier periods: promissory notes, bills of exchange, and bills of sale. Of these, promissory notes remain by far the most common.

If the borrower has adequate general property and a fairly stable economic position, the lender may accept his signature alone on a note. But since there is no definite assurance that the borrower will not assign his property, lose his position, or even go into bankruptcy, some lenders require, and most of them request, the signature of a surety. If the risk is great, the lender may require the endorsement of two or three sureties. Since each endorsement reduces the risk, it brings down the interest rate. If the borrower is married, the lender will almost always demand the signature of the spouse, not so largely as a matter of ethics as a matter of protection, to make sure that title to the property which the lender considers security is not, and will not be, in the spouse.

The bill of exchange, different in form from a promissory note,[1] serves about the same purpose in the field of moneylending. It carries with it no security other than the general credit of the maker. A lender may therefore require additional signatures as on a note.

The third credit instrument, the bill of sale, is evidence of a secured loan. We have already noted the disadvantages of

[1] For form see p. 98.

the bill of sale as a moneylenders' instrument.[1] Occasionally a lender will take a post-dated check as an evidence of the loan, discounting the interest in advance. Instead of the endorsement of sureties, a few lenders may take collateral security, such as stocks, bonds, or mortgages. More frequently lenders take tangible security, jewelry or plate. This type of security is most used among pawnbrokers who, in order to make loans over £10, the maximum under the Pawnbrokers Acts, become licensed as moneylenders.

Security for moneylenders' loans is, by and large, the exception rather than the rule. The absence of security results in part, no doubt, from the legal restrictions on bills of sale and assignments of wages.[2] It results, too, from judicial opposition to high interest rates on secured loans. But it results in part from the readiness with which judgment can be obtained in claims for liquidated amounts and from the effectiveness of the means of procuring satisfaction of judgments once obtained.

The readiness of obtaining judgment is marked even in actions by moneylenders, which have recently been subjected to special procedural restrictions. The rules of both the High Court and the County Court are very specific about the information which the endorsement on the writ or the summons shall state. This information includes the date and actual amount of loan; the yearly rate of interest; facts concerning the date of the contract, such as the borrower's signature, the making of the memorandum, and a delivery of a copy; the amount and date of all payments made and of all payments not made but due; and the amount of interest accrued but unpaid.[3]

These special requirements with regard to information are not so arduous as the special requirements with regard to

[1] See pp. 143f.

[2] See pp. 52ff.

[3] Rules of the Supreme Court, Order 3, Rule 10; County Court Rules, Order 6, Rule 5A.

default of appearance by defendants. In action for ordinary debts in the High Court, as for goods sold, when the writ is endorsed for a liquidated demand and the defendant fails to appear, the plaintiff may enter final judgment for a sum not exceeding the amount endorsed on the writ, plus interest and costs. The same effect is obtained in the county courts by use of a default summons. This simple method was formerly open to moneylenders in cases wherein the borrower entered no appearance.

Since the enactment of the present law, however, the courts have changed their rules. The County Court has made procedure by default summons and special default summons inapplicable to actions by moneylenders: the moneylender must prove his case even though the borrower does not appear. And in the High Court, in actions on moneylending contracts, judgment may not, since 1930, be entered in default of appearance except with leave of the court or judge. For this leave application must be made by notice served on the defendant, which must be given at a prescribed time and in a prescribed form. At the hearing of this application, whether the defendant appears or not, the judge may exercise his powers under the Moneylenders Act to reopen the transactions or may enter judgment for the whole or a part of the claim and, if for part, may make an order for a hearing on the part refused.[1]

These restrictions, even if they do protect debtors to moneylenders in a way that other debtors are not protected, do not make the collection of moneylending obligations unduly slow. If the defendant borrower does enter an appearance, the procedure may be very rapid. This rapidity is obtained in the High Court through hearings before the master and in the County Court through hearings before the registrar.

If the defendant borrower enters an appearance in the High Court and yet the plaintiff moneylender thinks that he

[1] Rules of the Supreme Court, Order 13, Rules 3 and 16.

has no real defense, he may make use of the process of summary judgment. For this purpose he makes out a specially endorsed writ setting out the general purport and the particulars of his claim, such as the items on which the claim rests, with date and amount of each, and credits for payments made. In support of his claim the plaintiff must present an affidavit verifying the cause of action and amount claimed and stating that there is no defense to the action. A summons is then issued, calling on the defendant to appear before the master in chambers and show cause why the plaintiff should not be at liberty to secure final judgment for the amount endorsed on the writ.

The defendant borrower, informed by the writ of the claim and the risk of judgment being signed against him, and wishing to oppose the order, must attend the hearing on the order. Ordinarily he must present an affidavit disclosing facts on which he relies and which he thinks will make a good defense; rarely, in lieu of affidavit, the defendant is examined on oath. His purpose is to show that there is a triable issue.

If the master decides in favor of the plaintiff, he makes an order allowing the plaintiff to sign judgment for the amount claimed, or for a part of the amount against which the defendant has presented no adequate defense. If he decides in favor of the defendant, he gives him leave to defend. In doing so he may order the action to be tried as a "short cause," which permits of a more speedy trial.

This summary procedure in the King's Bench Division, while protecting the defendant who has a valid defense, enables the plaintiff with a good claim to get judgment without having the delay and expense of trial. In the county courts, too, there is a similar means of speeding the judgment without the need to await trial.

Actions by moneylenders in the county courts proceed first to the registrar of the court. If the defendant borrower does not dispute the claim or raise a question on the merits, when the plaintiff moneylender has proved the necessary facts before the registrar the registrar may give judgment for the plaintiff. It often happens in moneylending cases, however, that failure to pay the instalments results not from a dispute of the claim but from financial inability. In such an event the defendant may offer to pay smaller instalments, or the registrar or plaintiff may elicit the facts about the defendant's means and position. The plaintiff then, rather than demand a judgment which the defendant has not the property to satisfy, may accept the defendant's offer for payment by smaller instalments or make a counter-offer. In all this the registrar acts rather as an arbiter than as a judge. It is only where the defendant denies the debt that the action goes before the judge himself. If the parties can agree, the registrar incorporates the terms of the agreement in his order.

Not only are the means of obtaining judgment effective; the means of getting satisfaction of judgment are effective. To collect a judgment debt in England the creditor can make use not only of execution and garnishment proceedings; he can utilize the "judgment summons." This is a summons issued after judgment, calling upon the debtor to attend at court, submit to an examination of his means, and show cause why he should not be committed to prison for his default in making payment in contempt of the court's order.

A lender who resorts to this means of enforcing his claim under the judgment must prove that the debtor has the means to make the required payments. If he does prove this, the judge may—but rarely does—commit the debtor to prison immediately, for a period not exceeding six weeks. But usually the judge in making the order for commitment adds a further order that the warrant shall not issue for a certain number of days, or shall not issue at all so long as the debtor pays specific instalments regularly. Upon default of any such payments the creditor may obtain a warrant for his arrest. Payment of the sum for which the warrant is issued releases the debtor from prison; but if further instalments are still due, default in them may occasion a later commitment.

To be sure, few of the debtors actually reach prison. In a typical year, 1920, out of the 258,548 judgments of the county courts of England and Wales, judgment summonses were issued for 70,822. Of these only 42,437 cases were heard, the claims in the others having been satisfied out of court. Of the cases heard, warrants of commitment were issued for 22,043. Of this large number, however, only 230 debtors were actually imprisoned. It is true, too, that the total numbers both of judgment summonses and of commitments have decreased fairly steadily since 1870.[1]

The effectiveness of this means of enforcing satisfaction of judgment cannot be judged from the mere figures of actual commitments to prison. The commitments do not represent the situation in which the creditor, in our case the moneylender, is successful—quite the opposite. The creditor is successful where the threat of imprisonment has sufficed to make the debtor pay his obligation. In this respect the proceeding by judgment summons may be effective beyond any means of collection generally allowed by American law.[2]

The foregoing discussion of the present British law of moneylending has avoided direct comparison with American laws. The American reader who is familiar with the Uniform Small Loan Law[3] will have noted that the British Moneylenders Act of 1927 differs from it in four important respects: First, it does not classify loans according to size; the regulation of loans for the needy consumer is the same as for the

[1] Great Britain, Home Office, Judicial Statistics, England and Wales, Part II, Civil Judicial Statistics, 1920.

[2] The constitutions of most of the American states prohibit imprisonment for simple judgment debts.

[3] The text of the latest draft of this law appears in the Appendix, p. 162.

speculative business man and the wealthy spendthrift. Second, the British law does not fix a real maximum rate of interest; the reasonableness of the charge depends upon the opinion of the judge in the individual case. Third, beyond mere licensing there is in Great Britain little administrative supervision; the enforcement of the law is left to the judiciary. And fourth, the American method of punishing excessive charges under the criminal law is entirely absent.

As a companion volume, Small Loan Legislation, described the forces which have molded the present American law, so this volume has shown the practical considerations which have throughout history led to the evolution of the British law. The merits of these divergent systems can be discussed only when careful statistical and case studies have disclosed the comparative facts. Meanwhile the laws of each country must be judged not by an elusive ideal, but by their success or failure in overcoming the evils at which they are aimed.

BIBLIOGRAPHICAL NOTE

This note is intended (1) to point out to the interested reader the means of studying the subject further and (2) to supplement the footnote references with an additional explanation of the authors' sources of material.

The subject of usury and usury laws has been treated at length by numerous authors. The best brief summary in general is Sir W. S. Holdsworth's A History of English Law (Messrs. Methuen & Co., Ltd., London, 1922), vol. 8, pp. 100–113. The purely religious aspects of usury have been discussed by Patrick Cleary in The Church and Usury (M. H. Gill & Sons, Dublin, 1914). The legal aspects have been frequently set out.

Volumes that include a thorough historical treatment of English usury laws include: A Treatise upon the Law of Usury and Annuities, by Francis Plowden (London, 1797); The History of Usury, by J. B. C. Murray (J. B. Lippincott Co., Philadelphia, 1866); 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,[1] by Joseph Bridges Matthews (Sweet & Maxwell, Ltd., London, 1906); The Legal Principles and Practice of Bargains with Moneylenders, by Hugh H. L. Bellot (2d ed., Stevens & Haynes, London, 1906), pp. 1–82; A History of the Criminal Law of England, by Sir J. F. Stephen (MacMillan & Co., Ltd., London, 1883), vol. 3, pp. 194–199; Commentaries on the Laws of England, by Sir William Blackstone, Book II, pp. 454–464.

Other volumes on the legal aspect are A Summary of the History and Law of Usury, by James Birch Kelly (R. J. Kennett, London, 1835; Philadelphia, 1853); A Treatise on the Law of Usury, by Jeremiah W. Blydenburgh (J. S. Voorhees, New York, 1844); A Treatise on the Law of Usury, by James Avery Webb (F. H. Thomas Law Book Co., St. Louis, 1899); Usury and Usury Laws,

[1]A new edition of the second part of this book was published in 1910, by Joseph Bridges Matthews and George Frederick Spear.

by Franklin W. Ryan (Houghton Mifflin Co., Boston, 1923), pp. 37–47.

The economic history of moneylending has been dealt with at length by distinguished scholars. The fullest treatment is by Sir W. J. Ashley in An Introduction to English Economic History and Theory (Longmans, Green & Co., London, 1901), Book I, chap. 3, Book II, chap. 6. This is closely seconded by W. Cunningham in The Growth of English Industry and Commerce (4th ed., Cambridge University Press, Cambridge, 1905), vol. 1, pp. 199–208, 285ff., 360–368, vol. 2, pp. 250ff., and by the extended researches of R. H. Tawney in his elaborate introduction to A Discourse upon Usury, by Thomas Wilson (Harcourt, Brace & Co., New York, 1925), and in his articles, Religious Thought on Social and Economic Questions in the Sixteenth and Seventeenth Centuries, in the Journal of Political Economy, vol. 31 (1923), pp. 461–493, 637–674, 804–825. Certain economic details are to be found documented in A. Abram's Life in Social England in the Fifteenth Century (Geo. Routledge & Sons, Ltd., London, 1909), pp. 59–62.

The history of early Jewish moneylending in England has been admirably presented by J. M. Rigg in his introduction to Select Pleas, Starrs, and Other Records from the Rolls of the Exchequer of the Jews (Selden Society, vol. 15, London, 1902). The rise of modern banking is discussed by R. D. Richards in The Early History of Banking in England (P. S. King & Son, Ltd., London, 1929); E. Lipson in The Economic History of England, vol. 3, (A. & C. Black, Ltd., London, 1931), pp. 222–232; and by J. Laurence Laughlin in A New Exposition of Money, Credit and Prices (University of Chicago Press, Chicago, 1931), vol. 2, pp. 56ff. The history of pawnbroking in England is narrated by Samuel W. Levine in A Treatise on the Law of Pawnbroking (Fremont Payne, New York, 1911), pp. 35–62. The reader might consult also Charles Leete Attenborough's The Law of Pawnbroking (2d ed., Stevens & Sons, Ltd., London, 1913).

Those who wish to investigate original sources in this earlier period might begin with the references in Henry Rolle's Un Abridgment des Plusieurs Cases et Resolutions del Common Ley (London, 1668), pp. 800–802. The Rolls of Parliament and Statutes of the

Realm contain numerous petitions and laws not mentioned in the text. The ecclesiastical laws will be found in Edmund Gibson's Codex Juris Ecclesiastici Anglicani (2d ed., Oxford, 1761) and in John Johnson's A Collection of the Laws and Canons of the Church of England (new ed., Oxford, 1850–1851). Among the many chroniclers who make note of moneylending practices are Matthew Paris, Holinshed, and Stow.

To understand the legal instruments used in moneylending transactions, the reader might consult the following: on annuities, A Treatise upon the Law of Usury and Annuities, by Francis Plowden (London, 1797), and Usury and Annuities of the Eighteenth Century, by Sybil Campbell, in the Law Quarterly Review, vol. 44 (1928), pp. 473–491; on bills of sale and promissory notes, The Law Relating to Money-Lenders and Borrowers, by Daniel Rankin Macalpin (Reeves & Turner, London, 1880). The social and economic practices related to these instruments can be discovered most readily from the parliamentary debates and investigations of parliamentary committees as cited in the text. There are, besides, in English periodicals numerous comments upon contemporary moneylending practices in the eighteenth and nineteenth centuries. One interested might begin by consulting the indices to the Annual Register and the Gentleman's Magazine, more accessible sources than newspaper files.

The abuses which led to the Moneylenders Act of 1900 are discussed at length in the reports of the parliamentary committee of 1897–1898, in the writings of Thomas Farrow and other publicists of the 1890's, and in some of the court decisions. The abuses leading to the act of 1927 are less discussed in periodicals, and they are less fully set forth in the Report of the Joint Select Committee of the House of Lords and the House of Commons on the Moneylenders Bill, published in 1925; part of the material in the text was therefore gained by personal investigation in Great Britain.

The law of moneylending under the acts of 1900 and 1927 has been interpreted in many court decisions not discussed in the text. They are indexed in Mew's Digest of English Case Law and in the English and Empire Digest. The law has, besides, been expounded in several treatises: The Legal Principles and Practice of Bargains with Moneylenders, by Hugh H. L. Bellot (2d ed., Stevens &

Haynes, London, 1906); 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, by Joseph Bridges Matthews (Sweet & Maxwell, Ltd., London, 1906); The Law Relating to the Transactions of Money-Lenders and Borrowers, by Chaloner Grenville Alabaster (Stevens & Sons, Ltd., London, 1908); The Money-Lenders Acts, 1900–1911, by James Lukey Collard (Butterworth, London, 1912); The Law Relating to Moneylenders, by Gilbert Stone and Dougall Meston (Solicitors' Law Stationery Society, London, 1927); The Law of Moneylending, by Linton Thorp and A. Aiken Watson (Effingham Wilson, London, 1928). The practice under these laws, discussed only summarily in these books, may be studied at greater length in The King's Bench Masters and English Interlocutory Practice, by Edward S. Greenbaum and L. I. Reade (Johns Hopkins Press, Baltimore, 1932); in Guide to County Court Procedure, by F. H. B. Chapman (Pitman, London, 1930); in the Annual Practice [of the Supreme Court], 1933; and in the Annual County Courts Practice, 1932.

APPENDIX

GENERAL FORM OF UNIFORM SMALL LOAN LAW (AS REVISED JANUARY 1, 1932)

Title

A Bill for an Act to define, license, and regulate the business of making loans or advancements in the amount or of the value of three hundred dollars ($300) or less, secured or unsecured, at a greater rate of interest than . . . . . per cent (. . . . .%) per annum [Note 1],[1] prescribing the rates of interest and charges therefor and penalties for the violation thereof, regulating the assignment of wages or salaries, earned or to be earned, when given as security for any such loan or as consideration for a payment of three hundred dollars ($300) or less, providing for the administration of this Act, authorizing the making of examinations and investigations and the publication of reports thereof, providing for a review of decisions and findings of the [Note 2] under this Act [Note 3] and to repeal [Note 4] and to repeal all acts and parts of acts inconsistent with the provisions of this Act [Note 5].

License

Section 1. No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of three hundred dollars ($300) or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than . . . per cent (. . .%) per annum [Note 1] except as authorized by this Act and without first obtaining a license from the [Note 2] hereinafter called the Commissioner [Note 6].

Application and fee

Section 2. Application for such license shall be in writing, under oath, and in the form prescribed by the Commissioner, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality

[1] See notes at end of text.

with street and number, if any, where the business is to be conducted and such further information as the Commissioner may require. Such applicant at the time of making such application shall pay to the Commissioner the sum of fifty dollars ($50) as a fee for investigating the application and the additional sum of one hundred dollars ($100) as an annual license fee [Note 7] for a period terminating on the last day of the current calendar year; provided, that if the application is filed after June thirtieth in any year such additional sum shall be only fifty dollars ($50) [Note 7d]. In addition to the said annual license fee every licensee hereunder shall pay to the Commissioner the actual costs of each examination as provided for in Section 10 of this Act.

Every applicant shall also prove, in form satisfactory to the Commissioner, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least twenty-five thousand dollars ($25,000).

Bond

Section 3. The applicant shall also at the same time file with the Commissioner a bond to be approved by him in which the applicant shall be the obligor, in the sum of one thousand dollars ($1,000) with one or more sureties whose liability as such sureties need not exceed the said sum in the aggregate. The said bond shall run to the State for the use of the State and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder, and will pay to the State and to any such person or persons any and all moneys that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act.

Requirements for license

Section 4. Upon the filing of such application and the payment of such fees and the approval of such bond, if the Commissioner shall find that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this Act, and if the Commissioner shall find that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and if the Commissioner shall find that the applicant has available for the operation of such business at the specified location liquid assets of at least twenty-five thousand dollars ($25,000), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this Act at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the Commissioner shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the fifty dollars ($50) investigation fee to cover the costs of investigating the application. The Commissioner shall approve or deny every application for license hereunder within sixty days from the filing thereof with the said fees and the said approved bond.

Denial of application and right of review

If the application is denied, the Commissioner shall within twenty days thereafter file with the Department of [Note 8] a written decision and findings with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof, which decision and findings may be reviewed by a writ of certiorari or writ of mandamus within thirty days after the filing thereof [Note 9].

Posting of license

Section 5. Such license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

Additional bond

Section 6. If the Commissioner shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond to be approved by him, with one or more sureties and of the character specified in Section 3 of this Act, in the sum of not more than one thousand dollars ($1,000), shall be filed by the licensee within ten days after written demand upon the licensee by the Commissioner.

Every licensee shall maintain at all times assets of at least twenty-five thousand dollars ($25,000) either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license. **Minimum assets**

Section 7. Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Act governing an original issuance of a license, for each such new license. **Place of business, etc.**

Whenever a licensee shall change his place of business to another location within the same [Note 10], he shall at once give written notice thereof to the Commissioner, who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location. No change in the place of business of a licensee to a location outside of the original [Note 10] shall be permitted under the same license. **Removal**

Section 8. Every licensee shall, on or before the twentieth day of each December, pay to the Commissioner the sum of one hundred dollars ($100) as an annual license fee for the next succeeding calendar year and shall at the same time file with the Commissioner a bond in the same amount and of the same character as required by Section 3 of this Act. **Payment of license fee**

Section 9. The Commissioner shall, upon ten days' notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that: **Revocation of license**

(a) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this Act or to comply with any demand, ruling, or requirement of the Commissioner lawfully made pursuant to and within the authority of this Act;

(b) The licensee has violated any provision of this Act or any rule or regulation lawfully made by the Commissioner under and within the authority of this Act;

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the Commissioner in refusing originally to issue such license.

Suspension of license

The Commissioner may, without notice or hearing, suspend any license for a period not exceeding thirty days, pending investigation.

The Commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Surrender of license

Any licensee may surrender any license by delivering to the Commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

Reinstatement of license

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this Act, but the Commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Commissioner in refusing originally to issue such license under this Act.

Filing reasons for revocation, etc.

Whenever the Commissioner shall revoke or suspend a license issued pursuant to this Act, he shall forthwith file with the Department of [Note 8] a written order to that effect and findings with respect thereto containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof, which order may be reviewed by a writ of certiorari or writ of mandamus within thirty days after the filing thereof [Note 9].

Examinations

Section 10. For the purpose of discovering violations of this Act or securing information lawfully required by him hereunder, the Commissioner may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, co-partnership, association, and corporation who or which shall be engaged in the business described in Section 1 of this Act, whether such person, co-partnership, association, or corporation shall act or claim to act as principal or agent, or under or without the authority of this Act. For that purpose the Commissioner and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons, co-partnerships, associations, and corporations. The Commissioner and all persons duly designated by him shall have authority to require the attendance of [Note 11] and to examine under oath all persons whomsoever whose testimony he may require relative to such loans or such business.

Annual examination

The Commissioner shall make such an examination of the affairs, business, office, and records of each licensee at least once each year [Note 7e]. The actual cost of every examination shall be paid to the Commissioner by every licensee so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Books and records

Section 11. The licensee shall keep and use in his business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of this Act and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein.

Annual reports

Each licensee shall annually on or before the fifteenth day of March file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

Advertising

Section 12. No licensee or other person, co-partnership, association, or corporation shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of three hundred dollars ($300) or less, which is false, misleading, or deceptive [Note 12].

The Commissioner may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

Liens on real estate

No licensee shall take a lien upon real estate as security for any loan under the provisions of this Act, except such lien as is created by law upon the recording of a judgment [Note 13].

Other business in same office

No licensee shall conduct the business of making loans under the provisions of this Act within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the Commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this Act or of the rules and regulations lawfully made hereunder.

No licensee shall transact such business or make any loan provided for by this Act under any other name or at any other place of business than that named in the license.

No confessions of judgment, etc.

No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest, nor any instrument in which blanks are left to be filled in after execution.

Rate of charge

Section 13. Every licensee hereunder may lend any sum of money not exceeding three hundred dollars ($300) in amount and may charge, contract for, and receive thereon interest at a rate not exceeding three and one-half per centum (3½%) per month [Note 14].

No amount whatsoever shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances.

No further charges

In addition to the interest herein provided for no further or other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received. If any interest, consideration, or charges in excess of those permitted by this Act are charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever.

Requirements for making and payment of loans

Section 14. Every licensee shall:

Deliver to the borrower at the time any loan is made a statement (upon which there shall be printed a copy of Section 13 of this Act) in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge;

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, specifying the amount applied to interest and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan;

Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest in full at the agreed rate up to the date of such payment;

Upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower;

Display prominently in each licensed place of business a full and accurate schedule, to be approved by the Commissioner, of the charges to be made and the method of computing the same;

Include in all advertising a statement of the rate of charges to be made.

Prohibition

Section 15. No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than . . . per cent (. . .%) per annum [Note 1] upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than three hundred dollars ($300). The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than three hundred dollars ($300) for principal.

Wage assignments

Section 16. The payment of three hundred dollars ($300) or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of this Act be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this Act.

Validity and payment of assignments

Section 17. No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this Act, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, nor if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of such assignment, order, mortgage, or lien.

Amount collectible under assignment

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made by any licensee under this Act, a sum not to exceed ten per cent (10%) of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan, is served upon the employer.

Prohibition

Section 18. No person, co-partnership, association, or corporation, except as authorized by this Act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than . . . per cent (. . .%) per annum [Note 1] upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of three hundred dollars ($300) or less.

The foregoing prohibition shall apply to any person, co-partnership, association, or corporation who or which, by any device, subterfuge, or pretense whatsoever shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this Act for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

No loan of the amount or value of three hundred dollars ($300) or less for which a greater rate of interest, consideration, or charges than is permitted by this Act has been charged, contracted for, or received, wherever made, shall be enforced in this State and every person in anywise participating therein in this State shall be subject to the provisions of this Act, provided that the foregoing shall not apply to loans legally made in any State which then has in effect a regulatory small loan law similar in principle to this Act.

Penalties

Section 19. Any person, co-partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of Sections 1, 11, 12, 13, 14, or 18 of this Act, shall be guilty of a misdemeanor [Note 15].

Any contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this Section, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

Excepted lenders

Section 20. This Act shall not apply to any person, co-partnership, association, or corporation doing business under and as permitted by any law of this State or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or licensed pawnbrokers.

Regulations

Section 21. [Note 16] is hereby authorized and empowered to make such general rules and regulations and such specific rulings, demands, and findings as may be necessary for the proper conduct of such business and the enforcement of this Act, in addition hereto and not inconsistent herewith.

Pre-existing contracts

Section 22. This Act or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

Status of pre-existing licenses

Section 23. Any person, co-partnership, association, or corporation having a license under [Note 17], in force when this Act becomes effective, shall notwithstanding the repeal of the said [Note 17], be deemed to have a license under this Act for a period expiring six months after the said effective date, if not sooner revoked, provided that such person, co-partnership, association, or corporation shall have paid or shall pay to the Commissioner as a license fee for such six months' period the sum of fifty dollars ($50) [Note 7b] and shall keep on file with the Commissioner during such six months' period the bond required either by this Act or by the said [Note 17]. Any such license so continued in effect under the provisions of this Act shall be subject to revocation during such six months' period as provided in Section 9 of this Act except that it may not be revoked during such six months' period either upon the ground that such licensee has not the minimum amount of assets required in Section 6 of this Act or upon the ground that the convenience and advantage of such community will be promoted by the operation therein of such business.

Section 24. . . . [Note 18]. . . .

Repeal

Section 25. . . . [Note 4]. . . . and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed.

Nothing herein contained shall be so construed as to impair or affect the obligation of any contract of loan between any licensee under the said [Note 17] and any borrower which was lawfully entered into prior to the effective date of this Act. **Status of pre-existing obligations**

Section 26. If any clause, sentence, section, provision, or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect, or invalidate the remainder of this Act, which shall remain in full force and effect thereafter. **Decisions affect adjudicated sections only**

Section 27. This Act shall take effect immediately. [Note 19]

NOTES

Note 1. Here insert the maximum legal contract rate if it is the only interest statute except those which apply to the special institutions named in the exemption section hereof (Sec. 20). If there is more than one interest maximum fixed by a statute of general application, then the following language may be here inserted:

"Than the lender would be permitted by law to charge if he were not a licensee hereunder."

The same situation exists in Sections 1, 15, and 18.

Note 2. Here insert title of licensing official.

Note 3. If a separate department or supervising official is created, there should be added to the title of the bill descriptive language covering the creation of such department or office, the duties thereof, the raising and disbursing of revenues, and other special provisions incident to such creation. It is recommended that a subdivision of the Banking Department be created in charge of a special deputy to supervise the small loan business and administer this Act, such subdivision to be designated as the Bureau of Personal Finance. See Note 16, Section 21.

Note 4. Here insert titles of Acts to be specifically repealed in whole or in part.

Note 5. Here insert enacting clause.

Note 6. The title "Commissioner" is used throughout this form of Act for convenience, but local usage should fix this title and it should then be substituted for "Commissioner" throughout the Act. "The licensing official" may be used in lieu of a specific title.

Note 7. It is thought that $100 per year per office will return enough revenue to cover the cost of necessary general supervision including the preparation, analysis, and tabulation of the annual report.

If the fiscal policy of the State or other considerations make it advisable to collect the full costs of individual examinations from each office in a stated annual fee, $200 or $250 should provide sufficient funds for this purpose. In such an event

(a) the greater amount should be substituted in Section 2,
(b) one-half thereof should be inserted in Section 23,
(c) at [Note 7] should be inserted "and in full payment of all expenses for examinations under and for administration of this Act,"
(d) the sentence following [Note 7d] should be eliminated, and
(e) the sentence following [Note 7e] should be eliminated.

See also Note 16, Section 21, regarding disposition of revenues under this Act.

Note 8. Here insert the name of the department charged with the duty of administering the Act. If a subdivision of a larger department administers the Act, the principal department should be named here.

Note 9. The provisions for judicial review of the determinations, rulings, findings, and similar discretionary acts of the licensing official will necessarily vary widely with the codes of judicial procedure of the several states and the constitutional and statutory provisions relating thereto. If satisfactory general provisions exist and apply to this situation, the specific provisions hereof may be eliminated. In states which have a sufficiently flexible judicial code, a direct action to review the Commissioner's acts is the best procedure. See also similar material in Sections 9 and 24 and Note 18.

Note 10. Here insert a description of the municipality according to the system of nomenclature employed within the State, for example, "municipality," or "city," "town," or "village." The political subdivisions used should be those which best reflect an integral urban unit or community.

Note 11. Special treatment will be required in order effectually to authorize the Commissioner to require the attendance of witnesses. In some states such power cannot be so delegated. See Note 15.

Note 12. The following words may be added at this point: "or, in the case of a licensee, which refers to the supervision of such business by the State of . . . or any department or official thereof."

Note 13. This paragraph is not intended to prevent licensees from taking and recording valid judgments and must be so drawn as to prevent such a result. The exception must therefore be drafted in such language as the local law requires in order to accomplish this result.

Note 14. In the event that it is deemed desirable to incorporate in this section the specification of an exact method of computing charges on fractional months, then suitable alternative language should be employed to accomplish that purpose.

Note 15. Local considerations may require changes in or elaboration of the nature of the crime and/or its penalties. It may also be necessary to add a paragraph attaching a criminal penalty for failure of the licensee (or others) to submit to subpoena, produce documents, make reports, etc. See Note 11.

Note 16. Here insert full title of the licensing official. In this section insert the appropriate paragraphs if it is desired to create a new department or subdivision or official, providing for revenues and disbursements, defining new duties, etc. See Note 3. All general rules and regulations and all denials, revocations, and suspensions of licenses should be required to have the written approval of the head of the principal department if a subdepartment administers this Act.

In this section should also appear provisions for the disposition of license fees, investigation fees, and any other revenue, if the fiscal policy or statutory requirements of the State make such special provisions necessary or desirable; if so, the title of the Act should contain the words "providing for the disposition of revenues received hereunder." It is recommended that all revenues go direct to the supervising department for the expenses of administering the Act, if such is possible.

Note 17. Here cite any existing regulatory small loan law similar in principle to this Act.

Note 18. This section should prescribe the procedure for judicial review of all discretionary acts of the Commissioner which might be open to the construction that they are exercises of judicial powers, including all findings, decisions, and determinations and the application of all rules and regulations by demands or requirements made upon licensees. In Sections 4 and 9 general provisions are made for the right of review in the specific cases covered by such sections. In Section 24 corresponding provisions should be made to cover all other cases. In addition, if required in any State, the specific procedure for all cases should be provided for in appropriate detail. The last paragraphs of Sections 4 and 9 may have to be redrafted to bring them into accord with Section 24 as to procedure. Where the judicial code does not specifically so provide, provision should be made that review is by the State court of general, original jurisdiction.

Note 19. If a greater number of affirmative votes is required to pass an Act effective immediately, this section should be changed or eliminated, depending on local requirements.

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