

R E P O R T

FROM THE

SELECT COMMITTEE

ON

MONEY LENDING;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE,

MINUTES OF EVIDENCE,

APPENDIX, AND INDEX.



*Ordered, by The House of Commons, to be Printed,
29 July 1897.*

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MONEY LENDING.

*Ordered,—[Tuesday, 6th April 1897]:—*THAT a Select Committee be appointed to inquire into the alleged evils attending Money Lending transactions at high rates of interest or under oppressive conditions as to repayment, between the poorer classes and professional Money Lenders, and to report thereon.

THAT the Committee have power to send for Persons, Papers, and Records.

Committee nominated—*[Monday, 10th May 1897]—of—*

Mr. Ascroft.	Dr. M'Donnell.
Mr. Thomas Bayley.	Mr. Price.
Mr. Caldwell.	Mr. T. W. Russell.
Captain Chaloner.	Mr. Warr.
Mr. Garfit.	Mr. George Whiteley.
Mr. Hazell.	Mr. Yerburgh.
Mr. Jeffreys.	

THAT Five be the Quorum of the Committee.

*Ordered,—[Tuesday, 25th May 1897]:—*THAT Mr. Lloyd-George and Mr. A. K. Lloyd be added to the Select Committee on Money Lending.

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R E P O R T.

THE SELECT COMMITTEE appointed to inquire into the alleged evils attending MONEY LENDING TRANSACTIONS at high rates of interest, or under oppressive conditions as to Repayment, between the poorer classes and professional Money Lenders;—HAVE agreed to the following REPORT:—

YOUR Committee find that at this late period of the Session it is not in their power to conclude their inquiry. They have, therefore, agreed to report the Evidence already taken to the House, and to recommend that a Committee on the same subject be appointed in the next Session of Parliament.

29 July 1897.

PROCEEDINGS OF THE COMMITTEE.

Thursday, 13th May 1897.

MEMBERS PRESENT :

Mr. T. W. Russell.
Mr. Thomas Bayley.
Captain Chaloner.
Mr. Garfit.
Mr. Hazell.

Mr. Jeffreys.
Dr. M'Donnell.
Mr. Price.
Mr. Warr.
Mr. Yerburch.

Mr. T. W. RUSSELL was called to the Chair.

The Committee deliberated.

[Adjourned till Tuesday next, at Twelve o'clock.]

Tuesday, 18th May 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Yerburch.
Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Garfit.

Mr. Warr.
Mr. George Whiteley.
Dr. M'Donnell.
Mr. Jeffreys.

The Committee deliberated, and resolved, "That the evidence of all witnesses examined before the Committee shall be taken on oath."

Mr. *Thomas Farrow* was sworn, and examined.

[Adjourned till Thursday next, at Twelve o'clock.]

Thursday, 20th May 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Captain Chaloner.
Mr. Ascroft.
Mr. Jeffreys.
Mr. Thomas Bayley.
Mr. Garfit.

Mr. Hazell.
Mr. Price.
Mr. Warr.
Mr. Yerburch.

Mr. *Thomas Farrow* was further examined.

[Adjourned till Tuesday next, at Twelve o'clock.]

SELECT COMMITTEE ON MONEY LENDING.

Tuesday, 25th May 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Garfit.
Dr. M'Donnell.

Mr. Price.
Mr. Warr.
Mr. Yerburgh.

Mr. *Thomas Farrow* was further examined.

[Adjourned till Thursday next, at Two o'clock.]

Thursday, 27th May 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Thomas Bayley.
Mr. Ascroft.
Captain Chaloner.
Mr. A. K. Loyd.

Mr. Garfit.
Mr. George Whiteley.
Mr. Warr.
Mr. Hazell.

Mr. *Thomas Farrow* was further examined.

[Adjourned till Tuesday next, at Twelve o'clock.]

Tuesday, 1st June 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Thomas Bayley.
Captain Chaloner.
Mr. Garfit.
Dr. M'Donnell.
Mr. A. K. Loyd.
Mr. Price.

Mr. Warr.
Mr. George Whiteley.
Mr. Lloyd-George.
Mr. Ascroft.
Mr. Jeffreys.

Mr. *Thomas Farrow* was further examined.

[Adjourned till Thursday next, at Twelve o'clock.]

Thursday, 3rd June 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Garfit.
Mr. Price.

Mr. Warr.
Mr. A. K. Loyd.
Mr. Lloyd-George.

Mr. *Thomas Farrow* was further examined.

[Adjourned till Tuesday, 29th June, at Twelve o'clock.]

Tuesday, 29th June 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Garfit.

Mr. A. K. Loyd.
Mr. Warr.
Captain Chaloner.

Mr. M. J. G. Scobie, Mrs. Isabel Russell, and Mr. Isaac Samuel were sworn, and examined.

[Adjourned till Thursday next, at Twelve o'clock.]

Thursday, 1st July 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Thomas Bayley.
Mr. Caldwell.
Mr. Garfit.
Mr. Hazell.

Mr. A. K. Loyd.
Mr. Price.
Mr. Warr.

Mr. Isaac Samuel, Mr. H. H. Hope, Mr. Edward Ives, Mr. C. W. Inman, Mr. Frederick Corbett, and Mr. Thomas Higgs were sworn, and examined.

Mr. Thomas Farrow was further examined.

[Adjourned till Tuesday next, at Twelve o'clock.]

Tuesday, 6th July 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Warr.
Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Caldwell.
Captain Chaloner.
Mr. Garfit.

Mr. Jeffreys.
Dr. M'Donnell.
Mr. Price.
Mr. George Whiteley.
Mr. Lloyd-George.
Mr. A. K. Loyd.

Mr. Isaac Gordon was sworn, and examined.

[Adjourned till Thursday next, at Twelve o'clock.]

Thursday, 8th July 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Garfit.
Mr. Jeffreys.

Mr. Price.
Mr. Warr.
Mr. George Whiteley.
Mr. A. K. Loyd.

Mr. Hamilton Cuffe, C.B., and Mr. John Smith, C.B., were sworn, and examined.

[Adjourned till Tuesday next, at Twelve o'clock.]

Tuesday, 13th July 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Garfit.
Mr. Hazell.

Mr. A. K. Loyd.
Mr. Warr.
Mr. George Whiteley.

Mr. William Carters, Mr. F. A. Sargeant, and Mr. John Faux were sworn, and examined.

Mr. John Kirkwood affirmed, and was examined.

[Adjourned till Thursday next, at Twelve o'clock.]

Thursday, 15th July 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Ascroft.
Mr. Thomas Bayley.
Mr. Jeffreys.
Mr. Warr.

Captain Chaloner.
Mr. Garfit.
Mr. Hazell.
Mr. A. K. Loyd.

Mr. John Kirkwood was sworn, and further examined.

Mr. W. H. Goodman was sworn, and examined.

On the witness, John Kirkwood, refusing to answer certain questions addressed to him—
Room cleared.—The Committee deliberated.

REPORT, proposed by the *Chairman*, read the first time, as follows :—

Mr. T. W. Russell reported from the Select Committee on Money Lending; That John Kirkwood, a witness summoned to attend the Committee, had refused to answer certain questions addressed to him by the Committee.

Question, That the Report be read a second time,—put, and *agreed to*.

Ordered, To Report.

[Adjourned till Tuesday next, at Eleven o'clock.]

Tuesday, 20th July 1897.

MEMBERS PRESENT :

Mr. T. W. RUSSELL in the Chair.

Mr. Ascroft.
Mr. Thomas Bayley.
Captain Chaloner.
Mr. Garfit.
Mr. Hazell.
Mr. Jeffreys.

Dr. M'Donnell.
Mr. Price.
Mr. Warr.
Mr. George Whiteley.
Mr. A. K. Loyd.

A letter was read from W. H. Goodman, clerk to John Kirkwood, stating that John Kirkwood was unable on account of illness to attend, and enclosing a medical certificate to that effect.

Room cleared.—The Committee deliberated, and decided to summon John Kirkwood to attend on Tuesday next, at Twelve o'clock.

His Honour Judge Owen was sworn, and examined.

His Honour Judge Lumley-Smith was sworn, and examined.

[Adjourned till Tuesday next, at Twelve o'clock.]

EXPENSES OF WITNESSES.

N A M E OF W I T N E S S.	PROFESSION OR CONDITION.	From whence Summoned.	Number of Days Absent from Home under Orders of Committee.	Allowance during Absence from Home.	Expenses of Journey to London and Back.	TOTAL Expenses allowed to Witness.
				£. s. d.	£. s. d.	£. s. d.
Mrs. Isabel Russell -	- - -	Oxford - - -	1	- 5 -	- 15 7	1 - 7
Mr. M. J. G. Scobie -	Official Receiver and Solicitor.	Hereford - - -	2	4 4 -	2 6 -	6 10 -
Mr. Isaac Samuel -	Gentleman - -	Cardiff - - -	4	4 4 -	1 13 4	5 17 4
Mr. Henry H. Hope -	Gentleman - -	Leominster - -	3	3 3 -	2 1 3	5 4 3
Mr. Thomas Higgs -	Tradesman - -	Condover - - -	2	1 10 -	1 16 2	3 6 2
Mr. Frederick Corbett	Solicitor - - -	Worcester - - -	2	4 4 -	1 17 6	6 1 6
Mr. Isaac Gordon -	Gentleman - -	Birmingham - -	2	2 2 -	1 17 -	3 19 -
Mr. William Carless -	Solicitor - - -	Hastings - - -	1	2 2 -	1 2 4	3 4 4
Mr. F. A. Sargeant -	Solicitor - - -	Reading - - -	1	2 2 -	- 14 6	2 16 6
Mr. John Faux -	Tradesman - -	Shenton, Nuneaton -	2	1 10 -	1 5 10	2 15 10
His Honour W. S. Owen.	County Court Judge -	Abergavenny - -	3	3 3 -	2 13 6	5 16 6
Dr. Furner - -	Physician - - -	Brighton - - -	1	3 3 -	- 18 -	4 1 -
Mr. John Kirkwood -	Gentleman - -	Brighton - - -	3	3 3 -	2 14 -	5 17 -
Mr. W. H. Goodman	Gentleman - -	Brighton - - -	1	1 1 -	- 18 -	1 19 -
				TOTAL - - -	£.	58 9 -

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A P P E N D I X.

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A P P E N D I X.

APPENDIX, No. 1.

PAPER handed n by Mr. *Edward Shuckburgh*, Thursday, 17 March 1898.

I do solemnly and sincerely
declare as follows :—

Stamp
2s. 6d.

1. The above Christian and Surname are my proper name or names, and I am not known and have never passed by any other name or names, and my sole occupation is that of
2. The whole of the household furniture, fixtures, utensils, books, plate, linen, china, glass, ornaments, pictures, goods, chattels, and about the dwelling-house and premises situate at now being in upon are my sole and absolute property, and are not, nor is any part thereof, in any way settled, charged, or incumbered by me or by my authority or cognizance, and are free and clear of and from any settlement, mortgage assignment, judgment or execution, or any incumbrance whatsoever.
3. The said household furniture, fixtures, utensils, books, plate, linen, china, glass, ornaments, pictures, goods, chattels, pianoforte are still in, upon and about the dwelling-house and premises aforesaid.
4. The rent of the aforesaid premises has been paid and discharged up to the second day of April 1894.
5. The whole of my debts and liabilities do not exceed the sum of one hundred and twenty pounds, and my household furniture, fixtures, utensils, books, plate, linen, china, glass, ornaments, pictures, goods, chattels are of the value of pounds.
6. I am in no way indebted as a borrower or as a surety to any money-lender, private person or persons, loan office or monetary firm for any loan or advance up to the date I sign this statutory declaration.
7. I have requested to lend me the sum of pounds, and he has agreed to advance the same upon the faith that all the above statements on my part are true.

AND I make this solemn Declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

DECLARED at
the day of
One thousand, eight hundred and

Before me

A Commissioner to administer Oaths in the Supreme Court of Judicature in England.

APPENDIX No. 3.

PAPER handed in by Mr. Warr, Thursday, 31st March 1898.

Dear Mr. Warr,
I SEND you the statistics of the Liverpool County Court, showing the number of administration orders in the year 1897 in which loans by money-lenders were scheduled. The number of administration orders in this court is curiously small. If you refer to the Blue Book, "County Courts, Plaints and Sittings, 1896," you will see that the numbers vary in an extraordinary manner in different courts. I confess I find this difficult to account for.

82, Huskisson Street, Liverpool,
30 March 1898.
Yours, &c.
(signed) J. F. Collier.

PARTICULARS of ADMINISTRATION ORDERS made in the LIVERPOOL COUNTY COURT in 1897 in which DEBTS to MONEY-LENDERS are Scheduled.

No.	Date of Order.	Initials of Debtor.	Total Amount of Debts in Schedule.	Amount of Debts to Money-lenders.	Order for Payment whether in full or by Composition.	Amount of Instalments.	REMARKS.
1	10 March 1897	W. McK.	£. s. d. 45 14 11 Total - £. 11 4 8	£. s. d. 2 13 6 1 8 - 5 3 - 1 10 0	15s. in the £.	10s. every 28 days	This order was rescinded by reason of non-payment.
2	12 April 1897	J. M.	£. s. d. 51 10 6 Total - £. 39 11 -	£. s. d. 6 18 6 8 1 - 1 4 - 6 6 - 5 9 6 6 - - 6 12 -	In full	£.1 12s. every 28 days.	
3	19 May 1897	M. R.	£. s. d. 49 14 8 Total - £. 24 - -	£. s. d. 11 - - 5 - - 8 - -	In full	£.2 per calendar month.	
4	2 June 1897	F. J.	£. s. d. 41 15 3 Total - £. 33 7 2	£. s. d. 14 7 2 9 - - 6 10 - 8 10 -	In full	20s. every 28 days.	
5	14 July 1897	B. J.	£. s. d. 25 2 1 Total - £. 11 1 -	£. s. d. 2 - - 5 - - 4 1 -	In full	20s. every 28 days.	
6	20 Sept. 1897	J. P. J.	£. s. d. 22 12 10 Total - £. 7 6 6	£. s. d. 4 4 - 3 2 6	In full	10s. every 28 days.	
7	4 Oct. 1897	F. A.	£. s. d. 30 15 8 Total - £. 6 14 -	£. s. d. 4 - - 1 12 - 1 2 -	10s. in the £.	10s. every 28 days.	
8	18 Oct. 1897	W. J. M.	£. s. d. 21 9 8 Total - £. 3 7 6	£. s. d. 3 7 6	10s. in the £.	8s. every 28 days.	
9	26 Oct. 1897	L. W.	£. s. d. 21 - 11 Total - £. 11 14 -	£. s. d. 4 2 - 7 12 -	In full	7s. 6d. every 28 days.	
10	16 Nov. 1897	W. H. E. P.	£. s. d. 31 18 5 Total - £. 4 8 -	£. s. d. 4 8 -	15s. in the £.	8s. every 28 days.	
11	17 Nov. 1897	M. L.	£. s. d. 45 9 6 Total - £. 13 - -	£. s. d. 13 - -	In full	20s. every 28 days.	
12	9 Dec. 1897	B. T.	£. s. d. 17 5 10 Total - £. 7 6 -	£. s. d. - 10 6 6 16 6	In full	10s. every 28 days.	

30 March 1898.

J. F. Collier.

APPENDIX, No. 4.

PAPER handed in by Mr. A. K. Loyd, 26 April 1898.

[As adopted by the Council, 22 April, 1898.]

REPORT OF SPECIAL COMMITTEE OF THE COUNCIL OF THE INCORPORATED LAW SOCIETY.

COMMITTEE.

Mr. William Godden (President).

Mr. C. B. Margetts (Vice-President).

Mr. J. T. Atkinson.
Mr. O. F. Daniel.
Mr. W. H. Gray.
Mr. G. Keen.

Mr. F. K. Munton.
Mr. Thos. Rawle.
Mr. E. C. Sewell.
Mr. A. Wightman.

THE committee have considered the communication (referred to them by the council on March 25) from the Select Committee of the House of Commons on Money Lending, inquiring if the council had any suggestions to offer as to remedies, or alterations to recommend in the present state of the law with regard to money lending.

The committee find that in the evidence taken by the Select Committee the following among other suggestions have been made :—

- (1) That professional money lenders should be registered.
- (2) That professional money lenders should be compelled to take out a licence to be granted to a person only in his own name.
- (3) That the minimum limit of bills of sale should be raised from 30*l.* to 50*l.* ; in other words, that bills of sale for less than 50*l.* should be illegal.
- (4) That the provision in the Bills of Sale Act, 1878 (repealed by the Amendment Act, 1882, as regards bills of sale by way of security), that bills of sale should be attested by a solicitor, and state that the document had been previously explained by him, should be re-enacted : or, in substitution, that attestation should be before a registrar of a county court.
- (5) That it should be made a criminal offence for professional money lenders to issue false and misleading advertisements.
- (6) That power should be given to the court to fix a fair rate of interest in all cases where there is anything unfair or oppressive in the bargain.
- (7) That the practice of interference with contracts by professional money lenders should be assimilated to that which is adopted by courts of equity in setting aside "unconscionable bargains made with expectant heirs and reversioners."
- (8) That further discretionary powers should be given to county court judges.

The committee consider that their remarks and suggestions may conveniently follow the order of these suggestions.

While recognising the advantages which would accrue from the check which proper registration and licensing would put upon professional money lenders, the committee consider that such a measure is not practicable. They see difficulty in giving a legal definition of a "professional money lender" so as to confine it to the class concerned with the mischief to be dealt with, and to avoid bringing in bankers, financial and trust companies and firms, discount houses, stockbrokers, solicitors, insurance companies, and others, who lend money with or without security.

They also agree in the opinion which has been expressed that professional money lenders, if registered and licensed, would make use of that fact in pushing their trade, and thus obtain additional power over the unwary. The committee also think that if registration were practicable, the registers would not in practice be resorted to by the classes for whose protection they would be intended. Moreover, to be of any use the entries on the register must be renewed at frequent intervals, and a system of supervision would be needed to ensure compliance with the law, and to prevent its becoming a dead letter.

The proposal that professional money lenders should be compelled to trade only in their own names, also involves the practical difficulty of defining professional money lenders in such a way as to include only the so-called professional money lender, and to exclude bankers and others who lend money. There are many firms and companies who trade under names which do not indicate the individuals who actually carry on the business, and it would seriously interfere with business if this long-established custom were prohibited.

The committee approve of the proposal that the minimum limit of bills of sale should be raised from 30*l.* to 50*l.*, and that bills of sale for less than 50*l.* should not be allowed. In some cases it may no doubt happen that a bill of sale is the only security which borrowers in great need can offer, and the restriction may shut out all chance of help. But those cases must be comparatively few, while the cases of oppression by means of small bills of sale are numerous. The committee are of opinion that the rate of interest on bills of sale might be limited to 15 per cent. per annum on bills of sale to secure 100*l.* and under, and 10 per cent. per annum on bills of sale to secure over 100*l.*, following the principle of the Pawnbrokers Acts. The committee are also in favour of the re-enactment of the provision in the Bills of Sale Act, 1878, that bills of sale should be attested by a solicitor, and that the

attestation should state that the effect had been explained to the grantor by the attesting solicitor. It is considered that this safeguard constitutes a valuable check upon usurious bills of sale, and tends to ensure that illiterate borrowers do not sign documents without proper knowledge of their contents.

With deference to the weighty opinions expressed before the Select Committee, the committee consider that the suggestion to make it criminal for professional money lenders to issue false and misleading advertisements and circulars is not capable of being carried out in practice, much as they would wish to see some remedy of this character put in force to check the evils of such advertisements and circulars. Suggestions of this kind would meet with universal approval provided they could be made operative and be restricted to the classes of cases intended; but it seems to the committee that any proposals dealing with money lending advertisements as such must of necessity go beyond the limits intended, and might produce disastrous results.

The committee consider that the chief remedy for the evils under consideration must be sought in the direction indicated in the proposals that unjust and oppressive transactions should be revised by the courts of law, including county courts, and, in proper cases, a fair rate of interest fixed.

It is no doubt a serious thing to meddle with "freedom of contract," but the Legislature has seen fit to do so on more than one occasion and to prohibit certain classes from contracting themselves out of protective statutes. It would be still more serious to interfere with banking and mercantile business or to place any obstacle in the way of ordinary commercial transactions. But the remedy of granting relief by the court against unconscionable bargains does not necessarily involve interference with freedom of contract. It is more analogous to cases where contracts are avoided as being against public policy, and it is assumed that the suggested legislation need not forbid contracting out, because the remedy will, of necessity, override any contract.

In all ages and in all countries endeavours have been made by legislation to deal with the evils of money lending at high rates of interest, but with small success, as will be seen on reference to the useful book on "The Law of Unconscionable Bargains," by Bellot & Willis, recently published. An interesting history of the efforts to repress usury and hard dealing, and of the shifts of money lenders is there given, together with the reasons which led to the total abolition of the Usury Acts in 1854. The extreme difficulty of dealing with the evil by repressive legislation is there abundantly illustrated.

But, even while the usury law existed, extensive classes of transactions were always free from restriction. Among these may be mentioned contracts in a foreign country or loans to be repaid abroad, and cases where the right to recover the money lent is put in jeopardy. As instances of the latter class may be mentioned sums lent on *bottomry* or at *respondentia*, and also annuities for lives or other contingencies. Moreover, in ordinary banking and mercantile transactions commission in addition to interest is frequently charged, and when money is dear the commission may be at a high rate. Legislation would be disastrous which interfered with such transactions, especially in times of panic or financial embarrassment. Cases, too, not unfrequently occur in which money is lent at great risk, and consequently at large interest, where no unfair advantage is taken by the lender.

For these reasons the committee are of opinion that restrictive legislation attempting to re-introduce to any extent the laws against usury, or fixing a maximum rate of interest in the case of professional money lenders, is undesirable, except in the cases of bills of sale. In their opinion legislation in the direction of rectifying unconscionable bargains is more likely to be attended with success in remedying the undoubted evils attendant upon the present system of money lending by professional money lenders.

The committee suggest that the legislation might take the form of a declaration that the law against unfair dealings might be enforced by order of any judge or master of the high court, or of any judge or registrar of the county courts, declaring the bargain unfair, or the rate of interest excessive, and substituting a lower rate of interest or other modification of the contract, as occasion may require.

It has been suggested that the practice of the High Court exercising its equitable jurisdiction in setting aside unconscionable bargains with expectant heirs and reversioners should be adopted. It may be remarked that this doctrine of the court is not confined to the Chancery Division nor to bargains with expectant heirs or reversioners. In more than one case eminent common law judges have applied the same doctrine. Lord Mansfield, C.J., did not hesitate in several actions in the King's Bench to grant relief in cases of hard and unconscionable bargains, and Lord Chancellor Hardwicke, in *Chesterfield v. Janssen*, stated that there were instances where the common law had given relief, giving as an example a case before Justice Hyde in 1663. In another case, *Thornbury v. Whitacre*, a court of law stated that in the event of the case going to trial the jury would consider the folly of the defendant and give only reasonable damages.

There are, in fact, numerous cases in the reports, from the leading case of *Chesterfield v. Janssen*, decided in 1750, down to the present time, to prove that relief may be given in all cases where, from the circumstances or conditions of the parties contracting, or from weakness on one side or usury on the other, or extortion or advantage taken of that weakness, the presumption of fraud arises, and that fraud in this sense does not mean deceit or circumvention, but it means an unconscientious use of the power arising out of these considerations and conditions. The late Mr. Justice Denman, in *Neville v. Snelling*, 15 Ch. D. 679, said that the doctrine might be applied to all cases of undue advantage taken by money lenders. At the same time, the mere high rate of interest will not be conclusive, because, as was pointed out by Mr. Justice Byles, a merchant or manufacturer, under pressing necessities may require an immediate advance, and the security he can offer may be such that some additional interest, in the nature of a premium of insurance against the risk, may be required; or the demand for temporary financial accommodation may be so great that the supply may not be commensurate with the demand. In such cases it may be absolutely essential, in the manufacturer's or merchant's interest and for the benefit of the whole community, that lenders should be at liberty to advance money at high rates of interest.

The county courts having only a limited equitable jurisdiction have not power to give effect to the equitable doctrine of relief against unconscionable bargains. Under the County Courts Act, 1888, sec. 67, the jurisdiction in equity is limited to eight classes of actions or matters, and no action not coming within those classes can be safely commenced in a county court. Actions for relief against fraud or mistake are included, but they do not, it is conceived, embrace cases in which the presumption of fraud arises from the circumstances of the parties.

It might be convenient that any new Act of Parliament should contain a preamble showing that it is directed against the evils attendant upon the system of money lending by professional money lenders at high rates of interest or under oppressive conditions as to repayment, and especially in cases where misleading advertisements or circulars have been resorted to, or where young or aged or ignorant persons or married women have been concerned, or persons under fear of publicity to themselves or their friends, or where the business is carried on under false or misleading names. The object of such a preamble (and there are many precedents in forcible language in the old statutes against usury) would be to indicate the class of cases in which the court is expected to interfere, and not to specify or limit the circumstances which would justify interference. The committee think that it would not be expedient to attempt in any such Act of Parliament to define the cases which should constitute unfair dealing, or that legislation should be limited to lending money at high rates of interest. Such transactions may be carried on under many specious disguises, such as sale and repurchase of goods, or hire and purchase of goods, or the loan of property, or they may take the form of mortgage transactions, or annuities on lives or other contingencies.

What seems desirable is that it should be recognised that in all cases the court, of its own initiative, and without any request on the part of a defendant, should have power at any time to set aside or rectify any dealing or bargain where the parties have not been on equal terms, and where any advantage has been taken by one party against the other, either from necessity or pressure or ignorance, and to open up any accounts or transactions purporting to have been closed under such conditions, and to go behind and set aside any judgment of the court, and to order repayment of any amounts already paid in excess of the amount held by the court to be reasonable.

The committee think that any proposed legislation might also enable the county court to restrain a grantee under a bill of sale from removing or selling chattels or otherwise as provided by the Bills of Sale Act, 1882, section 7. And that in money lending transactions the lender should be bound to furnish at the time to the

borrower and his sureties, if any, copies of every document signed by him or them, and that any breach of the duty should be taken into consideration by the court upon any question of unfair dealing. It is also thought that it should be a matter for consideration in the drafting of any bill dealing with the money lending question whether transactions of the nature of renewals of loans should be valid between judgment debtor and judgment creditor so long as the judgment remains unsatisfied. And further, that the powers of the county court to order payment by instalments should be extended to judgments for sums exceeding 20*l.*, and that the power given by Section 1 of the County Courts Act, 1888, in cases such as sickness should be extended to all cases of money lending, if for any reason the defendant is unable to discharge the debt or damages.

There is another point to which the committee attach especial importance, and that is that the process of obtaining such relief should be easy, inexpensive, and not accompanied with unnecessary publicity. It is matter of common experience that the business of professional money lenders depends to a large extent on the fact that needy borrowers cannot, or will not, face publicity.

The committee therefore recommend that the proposed Act of Parliament should enable either party to invoke the aid of the court privately, and not necessarily on a trial in open court. It is suggested that this end might be attained by giving a right in any existing action or proceeding to either party to have any question of unfair dealing referred without pleadings or any interlocutory proceeding in the Queen's Bench Division to an official referee, or in the Chancery Division to a master or judge in chambers; and in the county courts to the registrar or judge sitting in chambers. And that, where there is no existing action or suit, proceedings might, without writ or pleadings, be commenced by originating summons or plaint, asking relief against unfair dealings, and be disposed of in chambers. The committee are of opinion that the evils of the existing system of money lending would be to a large extent remedied if the relief could be granted without publicity. In many cases needy borrowers are deprived of any independent advice or protection when they have recourse to professional money lenders, and they submit to any conditions for immediate and secret relief.

In conclusion the committee recommend that the following suggestions be communicated to the Parliamentary Select Committee:—

(1) To raise the minimum limit of bills of sale from 30*l.* to 50*l.*, and to limit the rate of interest to 15 per cent. per annum on bills of sale to secure 100*l.* and under, and to 10 per cent. per annum on bills of sale to secure over 100*l.*

(2) To re-enact the provision in the Bills of Sale Act, 1878, that bills of sale should be attested by a solicitor, and that the attestation should state that before the execution of the bill of sale the effect had been explained to the grantor by the attesting solicitor.

(3) To give a borrower under a bill of sale liberty to repay a loan, nominally payable at a fixed date or by instalments, by tendering at any time the principal sum with interest at the rate specified, together with 1 day's interest in lieu of notice.

(4) To declare and extend the powers of the High Court and county courts, so as to enable them to interfere as referred to above, where there has been oppression or unfair dealing, and especially that this relief should be rendered available without unnecessary publicity.

APPENDIX, No. 5.

PAPER handed in by His Honour Judge Snagge.

RETURN OF BILLS OF SALE registered in each of the 15 Courts forming County Court Circuit No. 36, under the Bills of Sale Act (1878) Amendment Act (1882); showing the Rates of Interest charged per centum per annum.

Court Town.	Number Registered.	Rate of Interest not exceeding									Rate of Interest exceeding	Number. Rate of Interest not stated.
		5.	7½.	10.	15.	20.	30.	40.	50.	60.	60.	
Northampton -	210	112	14	13	1	4	5	8	2	28	4	19
Oxford - -	156	70	8	15	3	1	5	2	3	26	3	20
Banbury - -	56	37	1	2	-	-	-	-	-	14	2	-
Wellingborough -	54	30	4	1	1	1	2	-	-	15	-	-
Kettering - -	54	28	3	2	-	-	-	1	2	17	1	-
Abingdon - -	35	29	1	-	-	-	-	-	1	4	-	-
Wantage - -	33	18	2	1	-	-	1	1	-	10	-	-
Thame - - -	59	33	-	1	1	1	3	1	-	16	3	-
Buckingham -	39	20	-	-	-	-	1	-	2	11	-	5
Marlborough -	22	10	-	-	-	1	2	-	-	9	-	-
Towcester - -	42	23	4	2	1	-	-	-	-	6	-	6
Bicester - -	36	22	2	1	-	-	1	3	1	2	1	3
Witney - - -	30	24	2	-	-	-	1	-	-	2	1	-
Woodstock - -	30	18	1	-	1	1	1	1	-	5	2	-
Brackley - -	25	13	2	-	-	1	1	-	1	4	-	3
TOTAL - - -	881	487	44	38	8	10	23	17	12	169	17	56

Prepared from returns received from the registrars of the respective courts, by

J. H. Fletcher,
Chief Clerk of the Circuit, Northampton.

APPENDIX, No. 6.

PAPER handed in by Mr. Willis.

A BILL to Regulate the Award of Interest in Suits for simple Money-Debts and Mortgage-Debts.

WHEREAS it is expedient to regulate the award of interest in suits for simple money-debts and mortgage-debts ;
it is hereby enacted as follows :—

No Civil Court shall, in any suit for a simple money-debt or a mortgage-debt instituted after the commencement of this Act, decree or award interest exceeding in amount the original principal, or, where there has been payment in reduction of the principal, exceeding in amount the reduced principal.

Explanation.—The word “interest” means the amount of interest due or payable at the date of the suit, exclusive of payments previously made.

STATEMENT of Objects and Reasons.

At present there is an anomaly of practice in our Courts in the matter of awarding interest and there is no limit to the amount up to which interest may be awarded. In a recent case decided by the Calcutta High Court compound interest at 33 per cent. amounted in ten years to $17\frac{1}{2}$ times the principal, or, in other words, the interest was on an average 175 per cent. of the principal per annum. The High Court held that the defendant was bound by “the bargain which he had entered into,” and stated in its judgment that the rate of interest was not higher than had been allowed in other cases.

The object of this Bill is to remove the existing anomaly of practice and to place a limit upon the award of interest.

March, 1895.

Mokiny Mohun Roy.

No. 6148 of 1895.

Judicial Department, Bombay Castle, 29th August, 1895.

From the Honourable Mr. G. W. Vidal, I. C. S., Acting Chief Secretary to Government, Bombay ; to the Secretary to the Government of India, Legislative Department.

SIR,

I AM directed to acknowledge the receipt of your letter No. 586, dated the 13th of March 1895, forwarding a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, with a Statement of Objects and Reasons, and requesting that the opinions of the Governor of Bombay in Council, the Honourable the Judges of the High Court and of such selected officers and other persons as this Government might think fit to consult, may be communicated to the Government of India.

The Honourable the Advocate General.
The Remembrancer of Legal Affairs.
The Judicial Commissioner in Sind.
The Chief Judge of the Court of Small Causes, Bombay.
The Special Judge under Act XVII of 1879.
The Honourable Mr. W. H. Crowe, I. C. S.
The Honourable Mr. Ranchodlal Chotalal, C.I.E.
The Honourable Mr. Nowroji Nasarvanji Wadia, C.I.E.
Mr. S. Tagore, I. C. S.
Mr. G. C. Whitworth, I. C. S.
Mr. A. Shewan, I. C. S.
Mr. Fazalbhai Vishram, C.I.E.
The Secretary, Bombay Chamber of Commerce.

2. In reply I am to state that copies of the Bill, with the Statement of Objects and Reasons, were forwarded to the High Court and to the officers and persons named in the margin, and I am to transmit herewith, for the information of the Government of India, copies of the opinions received.

3. In doing so, I am to invite special attention to the recommendations for modifying the terms of the draft Bill, made in the communications from Messrs. Whitworth, Fazalbhai Vishram, Jopp, Tagore and the Honourable Messrs. Ranade and Candy, and to state that the Governor in Council, while approving of the principle of the Bill and the general object in view, is inclined to share the opinion expressed by several of the officers consulted that the Bill, if it became law, would probably be of but slight efficacy ; and considers that the objects sought would be best obtained by an enlargement of the equitable jurisdiction of the ordinary Courts, a proposal for which, he believes, is now under the consideration of His Excellency the Governor General in Council.

4. With reference to paragraph 2 of your letter under reply, I am to intimate that the Bill and the Statement of Objects and Reasons were published in the “Bombay Government Gazette” in English on the 14th March 1895, and in Marathi, Gujarati and Kanarese on the 9th May last. The Bill and the Statement were also published in the “Sind Official Gazette,” both in English and in Sindhi, on the 18th April, 1895.

I have, &c.
(signed) G. W. Vidal,
Acting Chief Secretary to Government.

LETTER from the Honourable Mr. Basil Lang, Advocate General, to the Under Secretary to Government, Judicial Department, No. 33, dated 23 April 1895.

WITH reference to Government Resolution, No. 2334, of the Judicial Department, dated 8th April 1895, requesting my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I have the honour to state that I think there is no necessity for a general alteration of the law as proposed by the Bill.

In the Bombay Presidency, the rule of Hindu law called “Dámdupat,” which limits the amount recoverable at one time by way of interest to the amount of the principal, is acted upon by the Courts ; but the rule has not often to be applied. With regard to the other communities in this Presidency, no circumstances have been brought to my notice which would seem to render legislation, as proposed in the Bill, to be necessary.

MEMORANDUM by the Honourable Mr. *Norroji N. Wadia*, C.I.E., dated 23 April 1895.

Two objects are sought to be remedied by the proposed legislation.

The first is to remove the anomaly which exists in favour of Hindu defendants, by the system of "Dām dupat" in force in the Bombay Presidency and in some parts of India.

The second is to limit the amount up to which interest may be awarded.

As regards the first, the Bill would remove the anomaly, and put all Her Majesty's subjects on an equal footing, and so far this would be an advantage.

But it is in the limiting of the amount up to which interest may be awarded, that I see a serious objection to the Bill. If it is framed to protect the poor against exorbitant and extortionate rates of interest, it will fail in doing this, as the principle which underlies it is the same as involved in the Usury Laws of England, and which were always known to have been evaded, and were found to interfere with the freedom of contract, so that eventually they were repealed.

The Bill is not such as to restrict or fix any rate of interest, and, if passed into a law, its practical effect would be to compel creditors to sue debtors just before the interest equals in amount the principal, instead of waiting beyond that period, thus tending to make creditors more exacting.

Further, if the Bill becomes law, creditors will be more chary in accepting payments on account of principal, as that would reduce the amount of interest to be recovered, and thus make payments by instalments, which are so convenient and general amongst the poor classes more difficult of arrangement.

The most serious objection, however, to the Bill is, that it unnecessarily interferes with freedom of contract, without doing any appreciable good in the other direction, as its provisions can be easily evaded. In my opinion, therefore, to pass such a Bill would be to take a retrograde step; for it allows every creditor to charge interest up to 100 per cent., provided he recovers such interest as soon as it becomes due (i.e. at the end of every year), and does not allow it to fall into arrear. If this is all the protection it affords to the poor against usury, it is not worth legislating for.

LETTER from Mr. *G. C. Whitworth*, I.C.S., to the Secretary to Government, Judicial Department, dated 24 April 1895.

In reply to Government Resolution, No. 2334, of the 8th instant, I have the honour to observe that, as the principle of the Bill, is one that is already enforced by the Courts in this Presidency, there is no need of the proposed legislation here, though the enactments may be desirable in the interests of other parts of India.

2. The only objection that I see to the proposed Act is, that it will have the effect of altering the conditions of contracts entered into before its enactment. For the word "instituted" in the seventh line of the Bill I would substitute the word "contracted," so as to avoid such retrospective operation.

LETTER from the Honourable Mr. *Ranchorelal Chotalal*, C.I.E., to the Secretary to Government, Bombay, dated 30 April 1895.

WITH reference to your letter, dated 8th April 1895, No. 2337, with enclosures, I have the honour to state that in my opinion, the provisions of the proposed Bill, prohibiting the award of interest exceeding in amount the principal, are fair and desirable. I think many right-thinking persons would be glad to see the said Bill duly passed.

LETTER from the Honourable Mr. *W. H. Crowe*, I.C.S., District Judge, Poona, to the Secretary to Government, Judicial Department, Bombay, No. 848, dated 4 May 1895.

In reply to the request, contained in Government Resolution, No. 2334, of the 8th April 1895, I have the honour to submit the following observations.

2. The principle involved in the Bill is not a new one. It is known to the Hindu law as the rule of Dām dupat and is thus laid down in the text of Manu :—

"Interest on money received at once (not month by month, or day by day, as it ought) must never be more than double the debt (that is, more than the amount of the principal paid at the same time)."—Vyavahāra Mayukha, C. V. S. I., 6—9.

3. The rule is at once equitable and convenient, as it ensures vigilance on the part of the creditor.

4. The proposed amendment in the existing usury laws, which will bring the law in accordance with the principle which has worked well for many centuries in India, and will substitute a positive enactment for the varying discretion allowed at present to the Courts is in my opinion desirable.

MEMORANDUM by Mr. *Fazulbhai Vishram*, C.I.E., dated 6 May 1895.

In my opinion, the principle apparently intended to be enacted by the Bill in question, viz., that a creditor should not be enabled by a decree of a civil Court to enforce a claim for interest in excess of the amount of principal remaining due, is a wise one for the protection of the borrower, and one which might well be enacted, as it only enforces the Hindu rate known as "Dām dupat." With regard, however, to the drafting of the Bill, the following remarks occur to me :—

1. The relief apparently intended to be given will not be complete unless the creditor is also prohibited from retaining or setting off interest in excess of the amount proposed to be allowed, as in the case of a mortgagee retaining such a claim out of proceeds of mortgaged property or selling it off against a counter-claim.

2. It should be made clear whether the Court is at liberty to go behind adjustments between debtor and creditor, whereby interest then in arrear is converted into principal, and fresh bonds or securities are then given for the new debt, which consists partly of principal and partly of interest. Of course, this process may be repeated frequently, and it often is for generations among the lower classes.

If the Court is not to go behind such adjustments, their existence will defeat the object aimed at, while if it is to do so, a new and most important restriction on the right of contract will be imposed.

3. Under Section 59, Contract Act, the debtor has the right to appropriate his payments to either principal or interest. If the Bill be passed, it would obviously be to the debtor's interest to appropriate all payments to principal instead of interest, and to prevent this injustice to the creditor, the law would be required to be altered.

4. For a similar reason when making up his account, the creditor should be allowed to apply all recoveries on account of the mortgage debt, e.g. rents and profits against interest from time to time due.

5. Compound interest payable under express contract would fall to be dealt with by the Act.

I understand that the practice in the Bombay High Court is, following English cases, not to allow compound interest, payable only by virtue of the course of dealing between the parties as in a trading account, after the account has ceased to be a mutual account, i.e. after it has become a one-sided account.

If this Bill is to be passed, it would seem well to enact some such provision.

6. The question whether it is necessary to allow the Act to extend to decrees of British Indian Courts against debtors out of British India is one which requires consideration.

If a foreign Court should be bound by no such rule, this fact might induce creditors to prefer to sue in a foreign Court, and further, their debtors might have a cross claim, for which they might in a foreign Court obtain a decree at a higher rate of interest than that allowed in the decrees passed in the British Indian Court.

LETTER from Mr. T. Hart-Davies, I.C.S., Acting Judicial Commissioner in Sind, to the Secretary to Government, Judicial Department, Bombay, No. 842, dated 7 March 1895.

WITH reference to Government Resolution, Judicial Department, No. 2334, of the 8th April 1895, I have the honour to report that in my opinion the Bill, though it is no doubt well meant, is hardly adapted to have much practical effect. The Hindu rule of *dām dupat* is of course well known in this Presidency, and is acted on by the Courts in cases where the parties are Hindus; but I presume the object of this law is to prevent undue exaction in the case of non-Hindus, or where only one party is a Hindu. Now, in the vast majority of cases, I venture to think that this law will be so easily evaded as to be practically useless. Were this Bill passed, the sole result would be that the creditors would insist on a very much larger sum, including interest in advance, being entered in the bond as cash received, and so the last state of the unfortunate creditor would be worse than the first. If this were done, and it is pretty certain that the lender would manage to get it done, it is obvious that the effect of the proposed Act would be neutralised, if the Courts did not go behind the bond to find out exactly what the actual transaction was; and this the Subordinate Courts are always remiss at doing. In such cases, in fact, what is wanted is that Courts should always, if a bond is disputed, go behind the bond and ascertain exactly what the real state of affairs between the parties was. Under the existing law even, there is no reason why they should not go behind the bond. Section 92 of the Evidence Act provides that, though a contract has been reduced to writing, want of consideration may be proved, and "the obligor of a bond is not estopped by a recital therein contained to the effect that the consideration has passed from showing that in fact no consideration was given" (*vide* Field's Law of Evidence, page 402). But, as a matter of fact, the Subordinate Courts, partly from habit and partly from a misapprehension of Section 92 of the Evidence Act, take the bonds as they are and pass decrees on them accordingly. As regards exorbitant interest, though there are conflicting decisions in the various High Courts, the dictum of the Privy Council, I.L.R., XII. Calc., 239, is, I think, the one that our Courts, sitting as Courts of Equity, should follow. Their Lordships said: "It has been laid down in case after case that the Court, whenever there is a dealing of this kind looks at the reasonableness of the bargain, and if it is what is called a hard bargain, sets it aside." In that case the dealing was between a *pardah nishin* woman and her own mukhtiar, but I apprehend that the same principle holds good between parties so grossly disparate in position and intelligence as a sowkar and a rayat. I am aware that the High Courts, both at Calcutta and Bombay, have held diametrically opposite views, and though it is universally admitted that a party can be relieved against, the general current of decisions is to the effect that when a rate of interest has been stipulated between the parties that rate must be enforced by the Courts. I venture to think that in the case of agriculturists this ruling should be modified, and that in every case in which an agriculturist is concerned, for that is the class which the policy of Government especially desires to protect, the Courts should have full equitable jurisdiction to cut down interest at a reasonable figure and also should be bound to go behind the bond to ascertain exactly what has passed between the parties. If a short Act authorising and directing Courts to do this in suits in which agriculturists are concerned were passed, I think the results would be beneficial; but I fail to see much object in a tinkering piece of legislation like the present, though no doubt a provision like the one under consideration might well be inserted in the short Act which I suggest.

LETTER from the Secretary, Bombay Chamber of Commerce, to the Secretary to Government, Judicial Department, Bombay, dated 15 May 1895.

I HAVE the honour to acknowledge the receipt of your letter, No. 2339, of 8th April, with accompaniments relating to a "Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts," on which you ask for the opinion of the Chamber.

2. In reply, I am directed to say that after giving the subject most careful consideration the Chamber does not approve of the Bill.

3. The object of the proposed measure has the entire approval of the Chamber as eminently calling for legislation, but the provisions of the Bill do not provide the remedy required, as without infringing them a plaintiff might recover 100 per cent. for one year's interest, a limit which for simple money-debts or mortgage-debts is surely far beyond what an enactment of this character contemplates.

4. On the other hand there are circumstances under which it is quite conceivable very exceptional rates of interest might reasonably be exacted, and in order to avoid affixing unnecessary limits on such cases, while at the same time placing a desirable restriction on usury, it seems to the Chamber that the safest and most advisable course legislation could take would be to expressly invest Civil Courts with power to control the rate of interest to be allowed on borrowed money, which at the same time would necessarily involve power to disallow any rate of interest which in their opinion would be exorbitant or usurious.

5. So far as the Chamber is aware the Courts at present either have no discretionary power, or if they have, do not exercise it, and it would accordingly be in favour of an Act being passed expressly conferring the power, if need be, within certain defined limits, so as to place the question on a known basis and beyond doubt.

LETTER from Mr. C. H. Jopp, I.C.S., Special Judge under Act XVII. of 1879, to the Secretary to Government, Judicial Department, Bombay, No. 312, dated 22 May 1895.

I HAVE the honour to submit the report called for in Government Resolution No. 2334, dated the 8th April 1895, Judicial Department.

The Bill, if it becomes law, could in no way affect suits for simple money-debts or for mortgage-debts brought in the four districts where the defendant is an agriculturist. The award of interest and the taking of the account in such cases are fully provided for by Sections 12 and 13 of the Relief Act.

In suits for simple money-debts against non-agriculturists in the four districts, Section 17, of Act VI. of 1895, empowers the Courts to limit the rate of interest. In such suits, either within or without the four districts, where the defendant is a Hindu, the Bill will affect the parties only inasmuch as it clearly directs that where there has been a reduction of the principal, interest only up to the amount of the principal so reduced is to be awarded. This, though it is apparently opposed to a remark of West and Nanabhai, J.J., in *Sitaram v. Nana*, Printed Judgment for 1883, page 298, that the rule of *dām dupat* comes into operation only when on finally making up the account the amount due for interest exceeds the original amount of the principal, is, I believe, in accordance with the general practice of the Courts, though that practice has not, as far as I know, been settled by any recorded decision. The Bill will do good by placing the matter beyond doubt. If the defendant is a non-Hindu, the Bill will give him the benefit of the rule of *dām dupat*, the operation of the rule being, as I have just observed, more clearly defined than hitherto. There would seem to be no objection whatever to this in the case of Mahomedans, who are as a rule uneducated and at the mercy of the money-lenders, and the regulation of interest is not in any way opposed to Mahomedan Law, which objects to usury altogether. The case of Europeans and Parsis is somewhat more doubtful, but their number is so small in the mofussil that they may be left out of consideration. These remarks apply also to suits for mortgage-debts outside the four districts and to such suits inside the four districts where the defendant is not an agriculturist. But the Bill will have a further effect on such suits, which, I think, will be productive of good. It will make the rule of *dām dupat* applicable in all suits for mortgage-debts, whether an account of the rents and profits is to be taken or not, and will sweep away all the decisions of the Bombay High Court on this point.

I have discussed the Bill as if the words suits for a simple money-debt "or a mortgage-debt" meant "suits for money-debts unsecured by any writing, and suits for mortgage-debts both from defendants personally and by the sale of the mortgaged property." If I am right in this view, it is not apparent why the Bill should not be made applicable to bond suits and to suits for rent on leases, or if suits for a mortgage-debt denotes "suits for a mortgage-debt from the mortgagor personally" only, why suits for mortgage-debts by sales of the mortgaged property should not be included within the scope of the Bill. Further it is not clear why if it is considered that the debtor ought to have the benefit of the rule of *dām dupat* in suits brought against him for mortgage-debts he should be deprived of it when he sues for redemption.

The Bill will, I think, if it becomes law, be of considerable benefit to the poor and ignorant debtor in the mofussil. As to its effect in the Presidency towns I am of course not competent to give an opinion. In conclusion I have only to add that the author of the Bill has in drafting it apparently overlooked the fact that the rule of *dām dupat* is in force in the Bombay Presidency.

LETTER from the Chief Judge of the Court of Small Causes, Bombay, to the Secretary to Government, Judicial Department, Bombay, No. 56, dated 18 June, 1895.

IN accordance with Government Resolution, No. 2334 (Judicial Department), dated the 8th April, 1895, I have the honour to submit the following remarks on the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

2. Although in theory it might be highly advisable to curtail extravagant rates of interest and for that purpose to discountenance claims of an exorbitant nature on this account in Courts of law, yet in practice it has been found impossible to do this. The danger of interfering with the agreements which parties to a contract willingly make as to the rates of interest to be charged between them led to the repeal of the usury laws in England and in India; and in order to pass this Bill into law, it would be necessary to repeal or substantially modify the provisions of Act XXVIII. of 1855. I do not understand that this is contemplated, though the provisions of this Bill appear to me to nullify the provisions of Section 2 of that Act.

3. As a matter of fact I have very grave doubts as to whether the passing of the proposed measure would remedy the real evil which is sought to reach. Indeed, I may say, that in my opinion it would not do so. So long as there are means of evading the statute (and in this case there are many) the astute money-lender will not allow himself to be balked by its provisions. There are several expedients open to him. Either (1) he would extort a far larger premium from the borrower at the time of the loan than he would at present require, or (2) he would insist on the indigent debtor renewing his bond from time to time and making the interest appear as principal, or (3) he would file the inevitable suit at an earlier date and thus litigation would be considerably increased.

4. The probable course to be adopted would be the second, and it will be easily seen that, so far from reducing the claim for interest or lessening the rate, such a proceeding will have the effect of allowing compound interest at a figure probably far higher than it would otherwise be. It may be said that the debtor can refuse to execute the fresh bond; but anyone with a very slight knowledge of the Indian money-lender and his victims is well aware that that is out of the question. The debtor will do anything to put off the evil day at whatever cost, and in the hope of borrowing a few more rupees will put his signature to any document that is laid before him.

5. The Bill in effect codifies the law or rule of *dām dupat* now in force among Hindus. So far as my experience of the Courts of this city extend, I can say that as such it is practically unnecessary. It is a curious coincidence, and whether it is done in ignorance or with some object I cannot say; but it is nevertheless the fact that though the rule of *dām dupat* applies only to Hindu defendants, the Mārwarī money-lenders almost invariably apply it in cases against defendants who are not Hindus. It cannot be supposed that they willingly incur a loss or rather forego a gain in such cases. This is therefore a strong proof that the Bill if passed into law would not in any way curtail the money-lender's facilities of making large profits by way of interest.

6. As to the statement of the objects and reasons of the Bill I am not aware of any such anomaly of practice as is there mentioned in the Courts of this Presidency. It is true that there is no limit to the amount of interest which may be awarded, but this is in consequence of the provisions of Act XXVIII. of 1855 above referred to. Such a case as that referred to has never come before my notice directly or indirectly, and I think that such cases must be very rare.

7. On the whole, I am of opinion that the Bill if passed into law would not serve any good purpose, and being as I have shown, so easily evaded, would in effect soon become a dead letter.

LETTER from Mr. S. Tagore, I.C.S., District Judge of Sátara, to the Secretary to Government, Judicial Department, Bombay, No. 1587, dated 29 June 1895.

WITH reference to Government Resolution, No. 2334, dated 8th April 1895, forwarding the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts for my opinion, I have the honour to submit the following remarks :—

There are two sides of the question. On the one hand it may be urged that the borrower and lender should be left complete liberty of action to regulate the rate of interest in their own dealings, and that it is a mistaken kindness of the law to interfere with the freedom of contract in such cases. As observed by Mill (Political Economy, Bk. V, Ch. X, Sec. 2): "In so far as the motive of the restriction may be supposed to be, not public policy, but regard for the interest of the borrower, it would be difficult to point out any case in which such tenderness on the legislator's part is more misplaced. A person of sane mind and of the age at which persons are legally competent to conduct their own concerns must be presumed to be a sufficient guardian of his pecuniary interests. If he may sell an estate or grant a release, or assign away all his property without control from the law, it seems very unnecessary that the only bargain which he cannot make without its intermeddling should be a loan of money."

These observations, however applicable to countries advanced in civilization, are hardly suited to circumstances existing in this country, where the bulk of the inhabitants are agriculturists, improvident, and steeped in ignorance and exposed to the wily tactics of the village Shylock who, dealing with necessitous persons, can take advantage of their necessities and exact conditions limited only by his pleasure. I am decidedly of opinion that the necessity for some measure of protection for the borrower in India is urgent.

It is difficult no doubt to frame a really effective usury law, and the proposed enactment cannot be said to meet all the evils which arise from the present state of things, but I think that it is a step in the right direction.

The rule of Hindu law known as *dám dupat* is applied by the Bombay High Court in cases in which the parties to the contract are Hindus, but has not been held to apply in the other Presidencies, nor is it acted upon in the case of debtors other than Hindus. The Bill now under discussion would remove the anomaly by making the rule part of the general law of the country, and would, I think, commend itself to the people. It would be no hardship to apply the rule to the Hindus whose old custom it was; it would be no hardship to apply it to the Mahomedans by whose religion the receiving of interest is formally interdicted.

The Bill in itself is only a small and partial measure of relief; it appears to me that the Act of 1855 will have to be amended to make it more effectual. An honest debtor continues to pay interest for years, and it is only when he makes default for a year or two that he is dragged before a Civil Court. The principal and interest claimed in such cases may not look oppressive or offend against the rule of *dám dupat*; but when the interest already pocketed by the creditor is taken into account, the hardship of the case becomes manifest. I would, therefore, suggest that in applying the rule of *dám dupat*, the principal from time to time advanced, whether under one bond or under bonds merged in a subsequent bond, should be ascertained separately from the interest, no matter whether or not it was agreed between the parties that interest should be treated as principal. The scope of the measure should be so extended as to meet effectually any cases of hardship that may arise by giving the Courts a discretion in a proper case to disallow interest altogether and to decree the principal only, or to allow interest at a reasonable rate, having due regard to the status and circumstances of the debtor.

I am of opinion that grain transactions should be included. The honourable mover assigns a reason for not controlling the increase on grain. He says: "Grain is lent at a season when it is dearest and becomes payable when it is cheapest;" but when it is claimed in a Court, the increment claimed is often out of proportion to the principal advanced, and instances of hard bargains in grain are by no means rare. The salutary rule of Hindu law as to three times the quantity advanced being claimable (the rule of *Kan-tipat*, see Mandlik's Hindu Law, p. 204, Sec. 39) may be adopted with advantage in the cases of grain dealings.

The word 'mortgage-debt' would require further explanation. In *Nathubhai v. Mulchand* (5 B. H. C. A. C., 196) it was held that the rule does not apply to mortgages when they are accompanied with possession. An honest debtor who parts with the mortgaged property in the interest of the mortgagee is placed in a worse position than the mortgagor, who has not parted with possession, by the rule of *dám dupat* as interpreted by the Bombay High Court. The mortgage-debt should, in my opinion, be made to include debt due on a mortgage accompanied with possession.

The Bill, should it become law, may have an important effect on the alienation difficulty in certain parts of the country, where not only is the interest exacted often unconscionably high, but in many cases it enables the usurer to obtain actual possession of the soil, ousting the peasant proprietor, whom it is the State's first duty to protect and preserve.

LETTER from Mr. A. Shewan, I.C.S., District Judge of Khándesh, to the Secretary to Government, Judicial Department, Bombay, No. 1152, dated 1 July 1895.

I HAVE the honour to report, as directed in Government Resolution, No. 2334, of 8th April last, on the subject of a bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

2. I am opposed to the legislation proposed. Very strong grounds should be made out for the introduction of an usury law, even if only by way of the extension of a principle already embodied in the law which, in this Presidency at least, applies to the great mass of the population. I do not think circumstances exist to justify the conclusion that the relief which the Courts are at present empowered to grant in cases of unconscionable bargains is inadequate.

3. Nor do I think that the object in contemplation would be obtained. Persons of sound credit can always obtain loans on reasonable terms. With those who are in embarrassed circumstances any terms can be made, and any interference between them and the lenders of money will only drive the latter to make still harder bargains, or to protect themselves in other ways. The law would also, I think, tend to increase litigation; creditors will sue as soon as the amount due is approaching the doubled principal. The expense of this litigation would all fall on the class whom it is sought to benefit.

4. Ráo Bahádúr Chunilal Maneklal, one of the sub-judges in this district, whom I have consulted, points out that the proposed measure goes much beyond the Hindu law. He says: "Under the Hindu law if interest in arrears is added to the principal and a fresh bond is taken for the aggregate, the latter sum is looked upon as the principal amount for the purposes of *dám dupat* rate. The Bill in question, however, looks to the original principal. In ascertaining the original principal the work of the Civil Courts would be much hampered. In most cases money-lenders deny keeping regular accounts. Old bonds are alleged to have been returned to the debtors, and it would be very difficult indeed to ascertain original principal in most of the cases."

LETTER from the Registrar, High Court, Appellate Side, Bombay, to the Honourable Mr. G. W. Vidal, I.C.S., Acting Chief Secretary to Government, Judicial Department, Bombay, No. 1251, dated 18 June 1895.

I AM directed by the Honourable the Chief Justice and Judges to acknowledge the receipt of your letter, No. 2335, of the 8th April last, forwarding copy of a letter from the Government of India, Legislative Department, No. 586, of the 13th March last, and of a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

mortgage-debts, together with a statement of objects and reasons, and requesting that Government may be favoured with the opinion of the Honourable the Chief Justice and Judges on the provisions of the Bill before the 1st July next.

2. In reply I am directed to forward the accompanying copies of minutes recorded by the Honourable Mr. Justice Bayley, the Honourable Mr. Justice Parsons, the Honourable Mr. Justice Farran, the Honourable Mr. Justice Candy, and the Honourable Mr. Justice Ránadé on the provisions of the Bill.

MINUTE by the Honourable Mr. Justice *Bayley*, dated 11 April 1895.

I APPROVE of this Bill.

MINUTE by the Honourable Mr. Justice *Parsons*, dated 11 April 1895.

I DISAPPROVE of the Bill. I am not aware that there is any anomaly of practice in the Courts; the only thing is that where the Hindu law of *dám dupat* applies, the Courts must give effect to it. This Bill proposes to extend that law universally. I fail to see on what principle the proposal is made. If it is that the Courts ought not at one time to award such a large amount of interest, then a better proposition would be to forbid a suit for more than a certain number of years' arrears of interest, in other words apply a Limitation Act. If it is that the Courts ought not to award interest at a very high rate, then the remedy would be to enact that compound interest or interest above a certain rate shall be illegal. Either of these remedies would be logical, but it appears to me that to enact that a Court shall only award a part of a claim merely because the whole is so large is not only illogical but also mischievous, as tending to raise the rate of interest and interfering with freedom of contract. It is also useless, since no creditor would allow interest to run on to such an extent.

MINUTE by the Honourable Mr. Justice *Farran*, dated 13 April 1895.

WITHOUT entering upon the principle of the proposed legislation, of which I do not approve, I would point out that the Bill, as framed, will be found difficult to work. When a bond on mortgage has been renewed and interest has been added to principal, how is it to be known what the original principal was? On a simple money or mortgage-bond is the Court to embark on an inquiry as to the original principal or the original reduced principal? If the "original" principal is only intended to mean the principal sum mentioned in the instrument, it would be advisable to define it, but then the Act will be futile. Creditors will take care to have their bonds renewed before coming into Court. Impecunious debtors are always ready to renew.

The Hindu law of *dám dupat* seems to accord with Hindu ideas. It might by legislation be made applicable everywhere to all Hindus whether plaintiffs or defendants. The exception which the rulings of the Bombay High Court have introduced in the case of mortgagees in possession seems to be an anomaly which might advantageously be removed if legislation is deemed advisable upon the subject.

MINUTE by the Honourable Mr. Justice *Ránadé*.

I THINK there can be no valid objection to the principle of the Bill, at least on this side of India, where the *dám dupat* rule has been the recognised law all along. It does not affect those who are not subject to the Hindu law and usage in such matters, but these constitute a very small minority; and as this minority itself deals generally with Hindu creditors, the extension of the *dám dupat* limitation now proposed will be decidedly in their interest. It may be the wording of the draft Bill admits of improvement, but that is a question of detail. I would, myself, suggest that the exception in Section 13, Clause *g*, of Act XVII. of 1879, may be usefully consulted for this purpose. What is proposed is a rule of equitable procedure intended to regulate the action of the Courts in the final award of debt claims. It does not in any way restrict the freedom of private transactions as long as they do not seek the coercion of the law. The principle of the Bill is clearly to restrain the abuses of usurious dealing, by legislation, instead of by conflicting judicial decisions; and to do this by laying down a rule for the guidance of Courts rather than by interference with private transactions. Restrictions of time in regard to claim for arrears will be open to much stronger objections and will be more easily evaded. The same objections apply to the formulation of a maximum rate of interest. The present proposal will not be so easily evaded; it will not raise the rate of interest, and it will have an indirect reflex effect in moderating the abuses of usury.

The word "original" used in the draft Bill is no doubt open to objection, and may be omitted safely. A definition of principal should be added to the definition of "interest" given in the draft Bill.

MINUTE by the Honourable Mr. Justice *Candy*, dated 14 June 1895.

I APPROVE of the principle of the Bill.

In my opinion there is at present an anomaly of practice in our Courts. For instance, it is an anomaly that the rule of *dám dupat* should apply to persons governed by Hindu law, and not to all persons whether Hindus or not. If it is a good rule it should be universal. It is not founded on any special characteristic of Hindus. It is founded, of course, on certain texts in the Hindu law books; but if those texts enunciate a principle which may reasonably be made of general application, it is an anomaly as long as the rule is limited to a section only of the general community.

I understand that the Bill simply enacts, as applicable to all money-debts, the rule in Hindu law of *dám dupat*. This appears to me to be far more logical than to pass a law forbidding suits for more than a certain number of years' arrears of interest, or enacting that compound interest or interest above a certain rate should be illegal. I am not aware that the rule of *dám dupat* has been found amongst Hindus to raise the rate of interest or interfere with freedom of contract.

There is another anomaly which will be corrected by the Bill. I may illustrate this by a reference to the case of *Daud Durwesh v. Vallabhdas Parshotam*, L.R., XVIII. Bom., p. 227, in which a Mahomedan mortgagor sued a Hindu mortgagee for redemption of the mortgage, and claimed the benefit of the rule of *dám dupat* on the ground that the defendant was a Hindu, the charter of the Court providing that "all matters of contract and dealing between party and party shall be determined . . . where one of the parties shall be a Mahomedan or a gentoo by the law and usages of the defendant." Thus it was argued that, though if the Hindu mortgagee has been suing the Mahomedan mortgagor for sale or foreclosure, the rule of *dám dupat* would not apply; it must apply when the defendant whether mortgagor or mortgagee is a Hindu. To avoid this anomaly Mr. Justice Starling held that the word defendant in the provision of the Charter above quoted meant debtor. If the rule is made of universal application the anomaly will cease.

Again,

Again, I am glad to see that the Bill is meant to apply to mortgage as well as simple money-debts: and I would suggest that it should be clearly enacted that the rule applies even when an account is taken on both sides. To illustrate my remark I append printed copies of the interlocutory judgment and the judgment of the Full Bench in First Appeal 100 of 1891 of this Court. I may say that the late Chief Justice (Sir Charles Sargent) and Mr. Justice Fulton and myself would have been inclined, had the matter been *res integra*, to follow the views of the late Mr. Justice Telang as to the applicability of the rule of *dám dupat* in cases of running accounts of mortgage-debts (see pages 640, 641 of I. L. R., 15 Bom.); but we felt that looking at the uniform decisions for 25 years, which ruled that *dám dupat* does not apply to cases in which an account is taken on both sides, we were bound to adhere to the maxim *stare decisis*, and not by a contrary decision assume the function of the Legislature.

I trust therefore that the Bill will become law, though, no doubt, it will require amendment in its phraseology.

APPEAL No. 100 of 1891 from original decree.

Gopal Ramchandra Limaye (Original Plaintiff)

Appellant.

versus

Gangaram Anandaji Shet Marwadi, deceased, by his sons and heirs Panha and Dewa, of whom Panha, deceased, by his brother and heir Dewa, also deceased, by his son and heir Chunilal, minor, by his guardian and administratrix mother Nathibai kom Dewa Gangaram Marwadi (Original Defendants)

Respondents.

Appeal from the decision of Ráo Bahádúr G. A. Máńkar, First Class Subordinate Judge of Thána, in Suit No. 962 of 1885.

The Honourable the Advocate-General with Mr. Máńeksháh Jehángirsháh for the appellant.

Mr. Inverarity with Mr. M. C. A'pte for the respondent.

Interlocutory Order.—This is an appeal by the assignee of the equity of redemption against the account taken by the Subordinate Judge in accordance with the directions of this Court to be found at p. 77 of I. L. R., 14 Bombay.

In 1761 (A.D. 1839) two fields were mortgaged for Rs. 125, the profits being received by the mortgagee in lieu of interest.

* Both fields were sold off by the mortgagee in 1776 (A.D. 1848), and 1782 (A.D. 1860), for Rs. 330.

In 1776 (A.D. 1844), 60½ bighás and one pánd of the Karkhodakhar were mortgaged for Rs. 250, on condition that the debt was to bear interest at 18 per cent. per annum, and that the rents and profits should be applied towards payment of the interest and principal. This deed necessitates an account of the rents and profits on the one side, and of the principal, interest and other charges on the other.

The subordinate Judge rejected the suit as champertous; but took the whole evidence in the case, and recorded findings on the questions of account. On appeal by the plaintiff this Court held that the suit to redeem would lie, and that

(1.) The accounts of the two mortgages should be taken separately, the mortgagee to be debited with Rs. 330 in taking the account of the mortgage of 1761, (A.D. 1839.)

(2.) A signed account of 1769 (A.D. 1847), in which unsecured debts were included, was a general and not a mortgage account; these items must, therefore, be omitted in taking the account.

(3.) Compound interest should be charged in the account.

The case was, therefore, sent back for the mortgage accounts to be taken afresh, and a new decree to be passed.

The Subordinate Judge has now found that Rs. 1,821-6-10 are due at foot of the mortgage of the Karkhodakhar and that plaintiff is entitled to recover from defendant on account of the mortgage of 1761 (A.D. 1839) the sum of Rs. 205 (i.e. Rs. 330 minus Rs. 125).

Plaintiff in his appeal has taken several objections to this account; but a preliminary objection must be noticed, preliminary, though it was only raised at the close of the arguments, and that is, that by the ruling (1) I. L. R., 15 Bom., pp. 640, 641. in *Shri Ganesh Dhanidhar Maharájdev v. Keshavráv Govind Kulgávkár* (1), applying the rule of *dám dupat* the mortgagee is entitled to have interest added to the principal at the rate stipulated in the mortgage-deed, and to appropriate the rents and profits received by him in or towards satisfaction of such interest; but that after such appropriation, if the amount of interest now due and payable on foot of the mortgage exceeds the amount of the principal, the decree on that part of the claim must be limited to double such principal amount.

In the present case, by the mortgage-bond of 1761 (A.D. 1844), the mortgagee in possession was to make up an account of the interest at the end of every twelve months, and was to pay the Government assessment from the produce, and the mortgagor was to be charged interest on the money spent by the mortgagee on repairs and on a sepoy at Rs. 3 a month, which salary was to be debited to the account, the balance of profits after paying assessment, repairs and peon's salary as above, being taken towards the principal and interest. The account taken on those terms was to be signed by the mortgagor every year.

Applying the ruling just quoted, if the mortgagee is entitled to have interest added to the principal (Rs. 250) at 18 per cent. (compound) and to appropriate the rents and profits received by him in or towards satisfaction of assessment and other expenses noted above, and the balance in or towards satisfaction of such interest and principal, the same interest being charged on all unsatisfied arrears of assessment and interest, and if after such appropriation the amount of interest now due exceeds the amount of principal, and if the interest now awardable by the decree must be limited to double the original principal, then it is evident that the account found by the subordinate Judge must be materially amended.

Mr. Apte objected to the application of the rule of *dám dupat*, first, because he contended the rule as shown by the texts (Stokes, pages 110 to 113) applies only to loans in general, and not to pledges, and, secondly, because the ruling in *Shri Ganesh v. Keshavráv* was given without consideration of a long course of decisions of this Court that the rule of *dám dupat* does not apply to cases of running account between mortgagor and mortgagee.

We are not inclined to agree with the first contention, for the rule has been continually applied to mortgage-debts, and a reference to the texts shows that it is included in the section "of pledges." Thus the author of the *Vyavahara Mayukha* closes this section by quoting two texts of *Bṛhaspati* and *Yājñavalkya*. Thus "*Bṛhaspati* :—When land or other [immoveable property] has been enjoyed, and more [than the principal debt] has accrued therefrom, then the principal and interest having been realized, the debtor shall obtain his pledge. *Yājñavalkya* :—Whenever a debt under mortgage has become doubled by interest, then the pledge shall certainly be returned whenever double the sum lent has been received."

As to the other contention, it certainly does appear that the ruling of the Division Bench in *Shri Ganesh v. Keshavráv* conflicts with previous decisions of this Court. It is unnecessary to quote at length the many decisions in which it is shown that the rule of *dám dupat* does apply to all cases in which the mortgagee has had no possession of the mortgaged property, or in which being in possession he takes the rents and profits in lieu of the whole or part of the interest. In such cases no account is taken on both sides, and, therefore, the rule of *dám dupat* applies. But

we are dealing with a case in which there is an account on both sides. In such a case it has been held the rule of *dāmdupat* is not applicable :—

- (2) 9 B. H. C. R., 83. (1) By Westropp, C. J., and West, J., in *Nārāyan v. Satvāji*.⁽²⁾
 (3) P. J., 1876, p. 229. (2) By Westropp, C. J., and Melvill, J., in *Rājārām v. Gopāl*.⁽³⁾
 (4) P. J., 1881, p. 291. (3) By Westropp, C. J., and Kemball, J., in *Shankarabāwa v. Bābāji*.⁽⁴⁾
 (5) P. J., 1883, p. 312. (4) By West and Nānābhāi, J.J., in *Bālamakat v. Sitārām*.⁽⁵⁾
 (6) P. J., 1886, p. 76. (5) By Sargent, C. J., and Birdwood, J., in *Rango v. Bālāji*.⁽⁶⁾

It is noteworthy that the decisions in the cases marked above (1) (2) and (5) purport to be founded on the decision of Couch, C. J., and Newton, J., in *Nathubhai v. Mulchand*⁽⁷⁾, while the decision in the case marked (3) is based on the decision in the case marked (1), which itself, as just remarked, is based on the case of *Nathubhai v. Mulchand*. On the other hand it is to be remarked that in the judgment in *Shri Ganesh v. Keshavráv* the decision in *Nathubhai v. Mulchand* is equally relied on. But, it is said, the ground of equity upon which the rule, laid down in that case, is rested, does not justify a decree in favour of a mortgagee for more than double the amount actually advanced; it only prevents the rents and profits being deducted from the amount so doubled. So here, assuming that the rents and profits have paid off all charges on account of assessment and other expenses, and all arrears of the same with interest, then the amount payable on foot of the account cannot exceed Rs. 500.

As against the five cases noted above, in which it was held that the rule of *dāmdupat* was inapplicable because they were cases of accounts on both side, reference may be made to the case of *Bāpuji v. Gangādhār*⁽⁸⁾, in which the District Judge, on the authority of the ruling in *Nathubhai v. Mulchand* held that the rule of *dāmdupat* was inapplicable to a case of running account, but on appeal to the High Court, Melvill and West, J.J., said, "Under the terms of the mortgage there was nothing to prevent the defendants from causing the mortgaged property to be applied to the liquidation of the debt whenever the amount of interest due became equal to the amount of the principal. Under these circumstances we consider that there is no injustice in following the previous rulings of the Court which make the rule of *dāmdupat* applicable to such cases."

Such being the various rulings on this important point, we do not think it advisable to express an opinion on the merits of the contention raised before us. We, therefore, adjourn the hearing of this appeal till November, when the Chief Justice, Sir C. Sargent, will be sitting in this Court, and when, if he so directs, the question can be considered by a bench of three Judges.

C. F. Furrar.

E. T. Cundy.

8 August 1894.

APPEAL NO. 100 OF 1891 FROM ORIGINAL DECREE.

Gopal Ramchandra Limaye (Original Plaintiff) - - - - - Appellant.

versus

Gangaram Anandaji Shet Marwadi, deceased, by his sons and heirs Panha and Dewa, of whom Panha, deceased, by his brother and heir Dewa, also deceased, by his son, and heir Chunilal, minor, by his guardian and administratrix mother Nathubhai kom Dewa Gangaram Marwadi (Original Defendants) - - - - - Respondents.

Appeal from the decision of Ráo Bahádur G. A. Mákar, First Class Subordinate Judge of Thana, in Suit No. 962 of 1885.

Mr. Máneksháh Jehángirsháh for the appellant.

Mr. M. C. A'pte for the respondents.

Full Bench Judgment.—The leading case as to the application of the Hindu law of *dāmdupat* to mortgages is that of *Nathubhai Pánáchand v. Mulchand Hiráchand*⁽¹⁾. Sir R. Couch, in delivering the judgment of the Court, referred to several cases in which the question had arisen, and came to the conclusion that the law was applicable to mortgages "where there is no account on both sides and no charge for rents and profits, but that it would be inequitable that the interest should cease when it amounts to the same sum as the principal, if the rents and profits continue to be charged." Alluding to the circumstances of the case before him where the mortgagee had been in possession of a shop for several years, Sir R. Couch says, "As the mortgagee is to be charged with rents and profits, it would not be just to stop his interest, and consequently the rule of Hindu law cannot be applied." The exception so enunciated to the application of the law of *dāmdupat* has, we cannot doubt, been always understood as excluding the law whenever an account had to be taken between the parties of interest on the one side and rents and profits on the other. This is clear from a series of cases beginning with *Nārāyan v. Satvāji*⁽²⁾, where Sir Michael Westropp, referring to the remarks of Sir R. Couch in the above case, treats that case as deciding that the law is applicable to mortgages "if there was only an account to be taken of principal and interest due on the mortgage and no account of rents and profits on the other side." In *Rājārām v. Gopāl*⁽³⁾, Westropp, C. J., and Melvill, J., say, referring to the above decision of Sir R. Couch in *Nathubhai Pánáchand v. Mulchand Hiráchand*, that the rule of *dāmdupat* would have been applicable if the mortgagee had not been accountable for rents, and the decree passed by the Court shows that the application of the rule was treated as quite independent of the result of the account. The cases—*Nārāyan v. Satvāji*⁽⁴⁾; *Bālabhat v. Sitārām*⁽⁵⁾; *Rango v. Bālāji*⁽⁶⁾—are further illustrations of the application of the exception so understood to the Hindu law of *dāmdupat*. It is true that in the case of *Bāpuji v. Gangādhār*⁽⁷⁾ the law of *dāmdupat* was applied in the case of a running account, but the Court (the members of which had all taken part in the decision above cited) relied in that case on a particular term in the mortgage which the Court considered would prevent any injustice in applying the rule, and did not dispute the correctness of the previous rulings.⁽⁸⁾ In *Shri Ganesh Dharnidhar v. Keshavráv*⁽⁹⁾ the Court for the first time treated the application of the rule enunciated in the case of *Nathubhai Pánáchand v. Mulchand Hiráchand* as depending on the state of the account when taken—holding that the equity upon which it was grounded did not justify its application, if after the rents and profits received by the mortgagee were appropriated to the interest there was a balance of interest still due exceeding the principal, and that the decree on that part of the claim must be limited to double the principal amount. We think that this distinction cannot be reconciled with the judgment in the case of *Nathubhai Pánáchand v. Mulchand Hiráchand*, as it has been uniformly understood and acted upon since 1868, and that the long course of decisions requires us to hold that the exclusion of the law of *dāmdupat* in that case of mortgages depends on there being an account current between the parties and not upon the state of the account.

C. Sargent.

E. T. Cundy.

E. M. H. Fulton.

14 March 1895.

LETTER from the Honourable Mr. H. Batty, Remembrancer of Legal Affairs, to the Secretary to Government Judicial Department, No. 861, dated 29 July 1895.

THE Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts on which Government Resolution No. 2334, dated 8 April 1895, calls for my opinion, appears, I have the honour to submit, to be drafted in a manner fully adapted to the carrying out of the purpose set forth in the Statement of Objects and Reasons of placing a limit upon award of interest.

2. If, however, it is open to me to express any opinion as to the expediency of giving effect to that purpose, I would venture to submit that the policy appears to be somewhat retrograde, and opposed to that advocated and acted on in England ever since the days of Adam Smith, and in India since Act XXVIII. of 1855 (an Act for the repeal of the Usury Laws).

3. My own experience, if I may venture to refer to it, has always been that difficulties placed in the way of money-lenders, limiting their power of recovery, force them, and, by contracting the market, enable them to exact more unfavourable terms from the borrowing class than would either be necessary or possible if the parties were left free to make their own bargain.

4. Evasion of an usury law is generally easy, and the fear of detection only raises the rate of insurance, which the creditor, in one form or another, will always require as a condition of his loan.

5. An instance was recently given me of the immediate effect produced by a rumour that special legislation was contemplated of the nature of an Encumbered Estates Act.

Local money-lenders, who had been perfectly content to receive a moderate annual return on their loans, at once telegraphed instructions to file suits against their debtors, insisting on the full rigour of bonds, which would otherwise have been settled in the more usual way of not altogether unreasonable compromise.

6. If the proposed Bill became law, it would have, I fear, the effect of obliging creditors either to sue earlier than they otherwise would, or to obtain from time to time by threat of suit new agreements for the payment as principal of past interest.

7. How this could be prevented by the Bill does not appear. Nor, as the onus of disproving consideration for an admittedly executed document is on the borrower, would it be easy to prevent the creditor from insisting, as is even now not infrequently the practice, on the insertion in an agreement as principal of a sum otherwise thereafter payable by the debtor as interest.

8. Unless the Courts are in each instance "to go behind the bond" and examine minutely the whole series of transactions between money-lender and borrower, the Bill would, it is to be feared, have an effect the contrary of that apparently anticipated.

No. 255, dated Bankipore, 7 May, 1895.

From J. Tweedie, Esq., District Judge of Patna, to the Chief Secretary to the Government of Bengal.

I HAVE the honour to acknowledge receipt of your Judicial No. 2113J., dated the 13th April 1895, with annexures, and to state that, in my opinion, any provision to limit the amount of interest which can be decreed on suits for money will be wholly evaded by a development of the practice already thoroughly understood by which a large fictitious sum is entered on the bond as principal.

2. The only way, as far as my experience enables me to judge, by which we can get unconscionable bargains under any kind of control by the Courts is to have short terms of "limitation," with absolute power to Courts to pass whatever seems an equitable decree, with reference to time running after suit brought—any provision in the bond notwithstanding.

3. If in addition to this we could follow the analogy of English law, and make recitals in registered deeds "conclusive proof" of the truth of what is recited, borrowers would soon drop the present practice of allowing fictitious sums to be set down as the "consideration" of their transaction.

No. 1417, dated Hooghly, 27 May 1895.

From J. F. Bradbury, Esq., District Judge of Hooghly, to the Chief Secretary to the Government of Bengal.

THE Bill moved by Mohini Babu embodies a most desirable amendment of the law. No Court should be allowed under any circumstances to award interest double and treble the amount of the principal. I have had to deal with claims for interest far exceeding even that. We have to protect an unthrifty, improvident class. With restraints on the freedom of contract we are all now familiar, and contracting out of the operation of statutes is also being rigorously interdicted. *Ergo* the proposed legislation is unexceptionable on that score.

2. Nor is exorbitant interest an incident of legitimate investment or business. Those who demand it are the lowest and most unscrupulous class of money-lenders, who prey on the ignorant and the poor, and merit no consideration.

3. Now, the mode in which iniquitous claims are made is this:

First, a preposterously high rate of interest is stipulated; and secondly, the interest is allowed to accumulate for a long term. The usury laws were repealed in 1855, and the suggestion of their revival in any form may be premature; but why should interest be allowed to accumulate for three years and even longer?

We permit any rate of interest, however iniquitous, and the accumulation thereof for an absurdly long period, and then we step in and say "You may stipulate and accumulate as you please, but you shall not recover more than 100 per cent." Why sanction accumulation to the extent of 100 per cent.? Why not restrict claims for interest to six months' arrears? The debtor will be all the better for a shock in the shape of a reminder of his obligation, and all temptation to let—nay, the very opportunity of letting—interest accumulate till it equals the principal will be removed.

4. Further amendment of the law is needed before the poor and ignorant will be properly armed against the rapacious; but meanwhile Mohini Babu's Bill is a welcome instalment of reform.

No. 635, dated Noakhali, 27 May 1895.

From *W. H. M. Gun, Esq.*, District Judge of Noakhali, to The Chief Secretary to the Government of Bengal.

I HAVE the honour to acknowledge the receipt of your letter No. 2113J., dated the 13th April asking for an expression of my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, the text of which was forwarded with your letter.

2. The subject is one of interest and importance, and there seems to be a very general feeling that some measures should be taken to protect debtors from the exorbitant claims for interest which under the present state of the law the Courts are obliged frequently to award against them. Only one Munsif in the district is of opinion that no legislation is necessary. All the other gentlemen whom I have consulted agree in thinking that something should be done, but opinions differ as to the expediency and sufficiency of the remedy proposed by Babu Mohini Mohan Roy. The Munsifs of Lakhipur, Babus Har Kumar Das and Surendranath Ghose, the Munsif of Hatia, Babu Latu Bihari Bose, and the Munsifs of Fenny, Babus Debendra Nath Pal and Rajendra Lal Lahiri, consider that the Bill as drafted will, if passed into law, be a great relief to debtors, although its scope is not as wide as it should be. Babu Debendra Nath Pal thinks that there should also be a legislative limit to the rate of interest, which he suggests might be three per cent. a month.

3. Other gentlemen point out that the Bill is defective, that its provisions may be evaded, and that it may be productive of mischief also. It is considered to be defective, inasmuch as it relates only to suits for money- and mortgage-debts, and omits other classes of cases in which the remedy is as urgently called for. One of these classes is that of suits for rent on kabulyats, in which there is very frequently a stipulation for payment of interest on arrears of rent at 37½ per cent. per annum, and sometimes at the rate of 75 per cent. No doubt rayats are protected against such terms since the Bengal Tenancy Act came into force, but there is a certain proportion of men of this class holding under leases or kabulyats executed before the passing of the Act, and they are not protected. And in this part of the country talukdars and hawaladars are often men of the cultivating class, and just as careless and improvident and just as apt to agree to such terms without due consideration, and as their interests are permanent, they are not protected by section 67 of the Tenancy Act.

Another class of cases which the Bill will not touch is those which are brought on contracts for the repayment in kind of a debt. A man borrows 100 rupees and gives a bond stipulating to deliver at the due date 100 maunds of rice, or to pay the market value of it. The price of rice might rise greatly before the time for repayment came, and the borrower be required to pay as much as three times the amount he had borrowed. It would be advisable to include such suits within the scope of the Bill.

4. The provisions of the Bill as drafted might also be easily evaded. A creditor might require his debtor to execute fresh bonds for the interest as it accrued due from time to time, which could be taken as the principal of the new bonds. The creditor could then recover the original principal together with fresh interest to the same amount, as well as the amounts of the new bonds and interest thereon. It seems to be the general opinion that in such cases the debtor would agree to give a fresh bond for the interest rather than have a suit brought against him at once on the original bond. In fact it is supposed that a debtor will do almost anything to put off the time when his creditor will sue him.

5. It is also objected to the Bill that its effect will be to increase litigation by leading creditors to sue as soon as the interest due amounts to the same sum as the principal instead of waiting till the latest time allowed him by the law of limitation. In my opinion if this effect was produced it should not be considered a mischievous one. The feeling here is that the longer a man can put off the inevitable, the better it is for him, and that it would be a misfortune for him if his creditor were to sue him before the last moment allowed by the law of limitation. But there can be little doubt that in many cases it would be better for a debtor if his debt was not allowed to run on. If he was sued and compelled to pay the debt before it had reached proportions beyond his means, he might be induced to make an effort to pay it off and be left with some of his property, and with an experience which might make him more cautious in contracting loans in future. It is no benefit to such a man to let him remain in fancied security while the interest on his debt is accumulating to such a sum that all he owns is insufficient to satisfy his creditor. The crash must come sooner or later, and when it comes later the debtor is generally completely ruined. This consideration does not, however, affect the objection put forward in the last preceding paragraph, that creditors would probably take fresh bonds for the interest from time to time.

6. Another mischief which it seems to me may arise from the proposed change in the law is, that the amount borrowed may be overstated in the bond, so as to enable the creditor to recover the interest which he would have got if there were no restriction on the amount. One Munsif, Babu Lal Sing, says that he does not think there is any fear of this, as it would be opposed to the morality of the money-lenders. They have a sort of morality of course, and a regular trader and money-lender might have scruples of conscience as to stating in his bonds a larger sum than he advanced, but it would be as well not to expose them to the temptation of doing so. And a great many loans are taken from persons who are not regular "mahajans" and who are more unscrupulous as a rule than these are, and in their case I think there is little doubt that the sum advanced would be overstated.

7. One consequence of the amount being overstated in some cases would be that in a great many cases debtors would allege when they were sued that they had not received the whole amount set out in the bond, and false pleas of the kind would multiply infinitely, just as false pleas of payment in rent suits have been multiplied by the provisions of sections 149 and 150 of the Bengal Tenancy Act. By the latter section a defendant is not entitled to be heard at all unless he pays into Court any rent which he may admit to be due. Tenants when they have been sued generally object to paying anything before they are compelled to do it, and so they plead that no rent is due, all the arrears claimed having been paid up. This is often done even when it is not intended to attempt to prove the alleged payment.

8. In my opinion the Bill proposed is too limited in its scope, is such that its operation can be evaded with great ease, and is likely to lead to further mischiefs, such as those set out in paragraphs 6 and 7 of this letter. And the explanation annexed to it is most mischievous, for it gives a premium to the debtor who omits to meet his obligations. According to this explanation "interest" in the Bill means the interest due at the date of the suit exclusive of payments previously made; that is to say, an honest debtor who tries to pay the interest as it accrues due, and does so to some extent, is not to get any credit for such payments if in consequence of the high rate the interest is equal to the principal when the suit is brought, and put on the same footing as a debtor who has never paid a rupee of interest.

9. There are, it seems to me, only three modes of relieving debtors against usurious contracts. One is by regulating the rate of interest which may be legally recovered, as was done by the usury laws. Another is by limiting the aggregate sum that may be legally recovered, as is proposed in the Bill under discussion. The third is by allowing the Courts a wider discretion in awarding interest than they possess under the present law. The first method may be evaded without much difficulty, and is generally condemned in civilised communities. I am not certain that they are altogether out of place in parts of India, and in default of some more effectual remedy I should not be sorry to see the law reintroduced here. But in my opinion the best and safest remedy is the last—that of giving a wider discretion to the Courts. The Courts in India have even now a certain discretion in cases where there is any unfairness, or advantage has been taken of the borrower, but it is very limited, and most of the hard

cases which come before them are not of such a nature that this discretion can be exercised. I think a Court should be authorised, whenever it considered that the interest sued for was exorbitant, to reduce it to a reasonable amount, provided that it did not reduce the interest below a certain rate, say 12 per cent. per annum. This is a rate which is an ample return for money lent, but of course if the Court considered that in the circumstances the plaintiff was fairly entitled to a higher rate, it would give him interest at that rate. And where the defendant was a person who was capable of meeting the plaintiff on equal terms, the full rate might be awarded, no matter how high it might be. I think that, in Bengal at least, this extended discretion might be given to the Courts, especially as there is the power of appeal in all cases in which the amount at stake is of any consequence.

Dated Calcutta, 29 May 1895.

From *Rui Raj Kumar Sarvadhikari Bahadur*, Secretary, British Indian Association, to The Under-Secretary to the Government of Bengal, Judicial Department.

I HAVE the honour to acknowledge the receipt of your letter No. 2114J., dated the 13th ultimo, with annexures, and to submit below the opinion of the Managing Committee of the British Indian Association on the "Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts."

2. The first attempt made to restrict the award of interest in money suits, since the repeal of the Usury Law in 1855, was in 1873, when, at the instance of the Secretary of State for India, the Government of India consulted several public bodies and a large number of judicial and executive officers, with a view to decide whether any legislative measure could be passed on the lines suggested by the Secretary of State. The decision come to by Government is well known. It was deemed undesirable to interfere, even to a small extent, with the provisions of Act XXVIII. of 1855, and to re-enact what could not but be regarded a Usury Law.

3. On that occasion the Committee of the Association, having regard to the different circumstances of England and India, stated that they "are of opinion that the interest after decree till the date of payment of the debt should ordinarily be calculated at the rate originally stipulated, except in such cases in which the court may find that the creditor has not exercised reasonable diligence to enforce his claim, or has wilfully evaded receipt of payment. It is observable that there cannot be much room for presumption against the creditor, when it is always in the power of the debtor to satisfy his debt, and thus be done with it."

4. The Committee consider it highly undesirable that for the purpose of preventing a few rare cases of hardship, the provisions of section 2 of Act XXVIII. of 1855, should be in any way modified. If engagements made with regard to the rates and payments of interest be not fully given effect to it, all the objectionable results of the old Usury Laws would repeat themselves. Instead of benefiting intending borrowers, further difficulties would be placed in their way, trades and industries would suffer, money-lenders would be forced to resort to objectionable devices for the purpose of defeating the law, and a new cause for the demoralisation of the trading community would be introduced.

No. 912, dated Suri, 4 June 1895.

From *G. Gordon, Esq.*, Officiating District Judge, Birbhum, to The Chief Secretary to the Government of Bengal.

IN reply to your letter, Judicial, No. 2113J., dated the 13th April 1895, I have the honour to state that I have called for an expression of opinion on the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts from the Subordinate Judge and the Munsifs in this district, and I have consulted other gentlemen of business experience and capacity, with the following result.

2. I am informed that it is by no means uncommon for loans to be contracted at most extortionate rates of interest in cases where Government demands have to be met, or where there is other similar immediate and pressing urgency. The money-lenders having the monopoly of the trade are able to exact the most extravagant terms, and interest at 100 or 120 per cent. is sometimes stipulated for. In one instance, given by the Munsif of Rampur Hat, a decree was given for a sum of 749-15 Rupees upon a bond, executed only three years and three months previously, in which the total consideration was the trifling sum of 50 Rupees. The Munsif does not give the details as to the rate of interest charged, but it was probably compound interest, calculated monthly, or a very high daily interest, which is not infrequent. I have had personal experience of a case of daily interest which came to, as far as I remember, 175 per cent. per annum.

3 The officers above mentioned seem to be generally in favour of the Bill; but as they do not give any sound logical reasons, it is hardly worth while to quote from their opinions. Some of them seem to comprehend what the immediate result of such an Act would be, i.e., to put a stop to a system, under which an apathetic or indifferent debtor can allow a debt that he has contracted to swell to an inordinate amount, and to compel the creditor to either a renewal of the contract or a resort to legal steps to recovery; but they have none of them grasped the principle which underlies the proposal of the extreme ingenuity of which I can only speak with the greatest admiration.

One of my Munsifs has thought that the result of the Act would be to increase the liability of the debtor rather than to reduce it. He supposes that it would introduce a continuous system of renewals, in which the principal and interest will be continually added, and so the claim would be swelled by compound interest of simple interest. He fails to see that the position of the parties is necessarily different at the time of these renewals from what it was at the date of the original loan, and it by no means follows that because, in order to save his patrimonial estates or for other urgent reasons, a man was willing to bind himself to pay 100 Rupees or 120 per cent. interest, he will be equally under the necessity to do so when the imminency of the danger has passed. It may be laid down as more or less obvious that he will be able to obtain better terms.

The important factor of the measure in which the cleverness of the device is so artfully concealed is the not mere alteration, but the actual reversal of the position of the creditor and debtor after the interest has reached what may then be aptly termed its legal limits. It will be the creditor and not the debtor who will be forced to move, and whereas it was the latter who before was anxious to accept any terms to get the money that he required, it will be the former now who will be called upon to exert himself to get the money back. The creditor knows that, if he takes the claim into Court, he will get nothing but a decree for the sum claimed, with a nominal rate of 6 per cent. interest, and that it may be difficult for him to realise the amount so due, for the execution of a decree is sometimes an exceedingly troublesome matter. If he finds that the debtor is unable to pay, he will accept any terms of renewal rather than proceed to such extremities. In any case, anything is better than the present system, where it is in the interest of the creditor to postpone proceedings until the last day within which he can file his suit. Every day that he lingers adds more to his ultimate profits, which is the most iniquitous state of affairs that can be conceived.

4. One consideration remains, and that is whether the law, as so framed, would lend itself to evasions, and so would become inoperative. I do not think so. The idea is essentially different from that of a minimum of interest legally chargeable, a restriction of which the methods of evasion are so simple and so numerous as to require no explanation. It is not easy to see how a money-lender, even if he desire to do so, can escape the confines so put upon his claim. No doubt, by the insertion in the bond of a higher sum than the consideration

consideration money, the creditor can recover more than double the amount actually advanced, but that is not a matter of importance, for it is not easy to see why a man should not stipulate to repay more than he actually borrowed. In any case it is not conceivable that the difference between the money actually advanced and that noted in the bond could be so great as to make the claim so entirely disproportionate to the advance as now frequently happens.

I have therefore every reason to anticipate that the measure will prove a success.

No. 881, dated Midnapore, 7 June 1895.

From H. R. H. Core, Esq., Officiating District Judge of Midnapore, to The Under-Secretary to the Government of Bengal, Judicial Department.

I have the honour to submit the following reply to your letter No 2113J., dated the 13th April 1895.

2. I have availed myself of the advice of the judicial officers subordinate to me, and find in their opinions a preponderance in favour of the Bill to regulate the award of interest in certain suits. The two Subordinate Judges and eight of the Munsifs are in favour of the Bill. Their approval is based chiefly on the ground that the existing practice of permitting unlimited interest has caused widespread distress. In particular, the Munsif of Garhbeta has informed me that the Sonthals within his jurisdiction have been greatly impoverished in past years by falling into the hands of usurers, and that the well-to-do class of Sonthals is rapidly disappearing. On the other hand, five Munsifs are opposed to the Bill, and one of them, the 1st Munsif of Tamluk, expresses an opinion that 80 per cent. of debts of the kind dealt with by the Bill are settled before the interest amounts to the principal, and that in the remaining 10 per centum a portion at any rate of the debtors owe their embarrassments more to their own dishonesty than their misfortunes.

3. For my part I am inclined to think that little reliance can be placed on the opinions of officers on the comparative distress that the present practice causes. We know little of the dealings that do not come into court, and can only conjecture what proportion they bear to the dealings which end in civil suits. This much, however, may be safely said, that a large amount of distress is caused by the accumulation of interest, though it is beyond our power to say if that distress is important or insignificant in comparison with the amount of money-lenders' business that results in mutual advantage. I think the evil that is known to be caused is sufficient to justify the introduction of the proposed Bill.

4. Several objections have been raised to the proposed measure. It is said that the Legislature cannot regulate a matter that depends on the demand and supply of money, that sometimes borrowing is an absolute necessity, and that if the state of the law prevents creditors from lending money as they wish, lenders will combine with them to circumvent the law. These and similar objections appear to me to be more relevant to proposals to interfere with the rate of interest than to the Bill now under consideration. The great evil of the existing system is that, provided a creditor can periodically squeeze out a few rupees from his debtor in part payment of the account, there is no limitation in time to the presentation of a suit to recover a loan. Thereby the principal rolls along like a snowball in its own interest till its original proportions are quite forgotten. The debtor abandons all thought of paying it, and sinks into a mere dependent of the creditor. Probably, in most cases the creditor is satisfied with this, keeps the man from entire ruin, and even in his own way treats him well, provided that the victim pays all he can spare beyond a mere subsistence, and makes no attempt at insubordination. It is only when the victim rebels that the case comes into court; but probably such a case is rare in comparison with the numbers of cases in which the victim is leading a life not of misery, perhaps, but of dependence unfit for a human being.

5. No certain remedy can be seen for this state of things, but an experiment might, and should, be made of the effect of a strict limitation of the period that a debt can run. It is because I think that the present Bill supplies this limitation in a peculiarly advantageous form that I support it. Under the Bill, the higher the rate of interest, the sooner must the creditor sue to avoid loss; and as there is no reason why the Bill should increase the desire of creditors for prompt payment, it will probably have little or no effect on the rate of interest.

6. There seem to me to be three great defects in the Bill. The first is the exclusion from consideration of payments of interest out of court. This permits, though to a modified extent, of the existence of those debts that run on for ever without any hope to the debtor of extricating himself. Many such debtors must, and do, pay all they can spare beyond the bare necessities of life without making any impression on the principal. I would certainly include all payments of interests, whether made in court or not, within the purview of the Act, if the Bill is enacted at all.

7. The second defect is the absence of guidance to courts respecting renewals. If creditors are able to take fresh bonds from their debtors when the interest on the original bond equals the principal, and the courts are only concerned with the fresh bonds, it is clear that the whole object of the Bill will be defeated. If such renewals are permitted at all and can be sued upon, they should be only permissible on registered instruments, so that the debtor should be compelled to have full knowledge of what he is doing. But I am of opinion that it would be better not to permit renewal at all, or rather to direct that the court should have regard to the original loan only.

8. The third defect is the exclusion of grain dealing from the Act. In this business there is quite as much extortion as in money lending, and debtors need quite as much protection. Moreover, the exclusion of grain dealing affords lenders and borrowers an easy means of contracting out of the Act.

9. On the whole, I think the Bill should, with some alterations, be passed into law. No extravagant hopes should be entertained of its effects, but it is not impossible that it will be a greater boon to the poorer classes, and it is fully worth trial as an experiment.

No. 5461. V., dated Chittagong, 7 June 1895.

From C. P. Caspersz, Esq., District Judge, Chittagong, to the Chief Secretary to the Government of Bengal.

In reply to Government letter, No. 2113J., dated the 13th April 1895, I have the honour to submit the following expression of my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

2. Much as I sympathise with the object of the Bill, I do not think that it should be passed into law. Whether a complete Act on the subject of usury is desirable or practicable is a larger question, upon which, I believe, no opinion is invited. But the present Bill is open to criticism of various kinds, as for instance:—

(a) It does not meet the case of paddy bonds, that is, the case of Muhammadan money-lenders who are forbidden by their religion to take interest *eo nomine*.

(b) Such an act will increase litigation or lead to frequent renewals of bonds.

- (c) Creditors could evade the provisions of the Act by deducting interest in advance from the principal amount lent.
 - (d) The Bill is apparently based on a misconception of the rule of dandapat, which does not forbid the realisation of interest in excess of the principal, but merely the realisation at any one time of arrears of interest when such arrears exceed the principal sum, i.e., it forbids the accumulation of interest beyond the principal.
 - (e) It will tend to convert simple interest into compound interest (*cf. b*).
 - (f) The word exclusive (not inclusive) in the explanation to the Bill seems to nullify the principle sought to be enforced by law.
 - (g) The Bill draws no distinction between borrowers who deserve protection and those who borrow for business purposes to make a profit.
3. These weighty considerations induce me to pronounce an opinion entirely adverse to the measure introduced by Babu Mohini Mohun Roy.

No. 986, dated Alipore, 8 June 1895.

From *J. Pratt, Esq.*, District Judge of 24 Parganas, to The Chief Secretary to the Government of Bengal.

With reference to your No. 2113J. of the 13th April last, calling for an expression of my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I have the honour to submit as follows:—

2. The primary object of the Bill is to introduce the old law of dandapat under which no interest exceeding the principal is recoverable by the creditor. The question is not altogether free from difficulty, but the best solution will probably be found in a review of the statutory enactments and judicial interpretations bearing on it.

3. The first enactment which is deserving of notice is Act XXXII. of 1839, by which the provisions of the Statute 3rd and 4th Will. IV., c. 42, s. 28, concerning the allowance of interest in certain cases, was extended to the territories under the Government of the East India Company, as well as within the jurisdiction of Her Majesty's Courts as elsewhere. The Act gave the Court power to allow interest at the current rate on all debts and sums certain from the due date of repayment, if fixed by a written instrument, or, if otherwise, from time of demand of payment and notice to the debtor that interest will be claimed from such date. The question as to whether interest exceeding the principal, which is due under any agreement, should be allowed, or how long interest should run, or down to what period it should be calculated by the Court, does not appear to have been touched by the Act.

4. The year 1865 saw the repeal of the Usury Laws which were principally contained in 13 Geo. III., c. 63, s. 3, and Regulation XV., Bengal Code, by Act No. XXVIII. passed in that year. The Usury Laws did not similarly contain any provisions as to how long interest should run, or down to what period it should be calculated by the Court. The rate of interest only is dealt with by the Act, which, however, is silent as to the questions, the absence of which are noticeable in Act XXXII. of 1839 or in the Usury Laws.

5. Section 193 of Act VIII. of 1859, Section 10 of Act XXIII. of 1861, and Section 209 of Act X. of 1877, all dealt with the question of interest which the Court might adjudge after the date of suit. These sections are repealed, and a similar provision is contained in Section 209 of Act XIV. of 1882, which is the Civil Procedure Code now in force. It is settled by the Full Bench case of *Mangin Ram Marwari v. Dhontol Roy and others* (Indian Law Reports 12, Calcutta, page 569) that in a suit for non-mortgage debt the award of interest after the date of suit is, under Section 209 of Act XIV. of 1882, entirely discretionary with the Court, whether there exists a contract for the payment of a fixed rate of interest till realisation or not.

6. In cases which are not regulated by any contracts, the award of interest seems to be a question of easy solution, for it is either regulated by the existing law or precedents, or if such law or precedents do not exist, by the discretion of the Court. In the latter case the interest, to speak more correctly, is allowed more in the shape of damage than as interest strictly so called. In cases which are governed by any contracts, a question is not infrequently raised whether the Court should not have the power of reducing the interest to any extent if, under the circumstances disclosed in them, it thinks it fit to do so.

7. Under Section 10 of Act IX. of 1872, all agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration, and with a lawful object, and are not under the Act expressly declared to be void. This is a provision which is founded upon the fundamental principles of the English law of contract, and has not been repealed by any legislative enactment or by the Bill in question. In the Statement of Objects and Reasons for the Bill is cited a case in which the Calcutta High Court adjudged interest which was on an average 175 per cent. of the principal per annum. There are other reported cases in which interest at an inordinate or unusual rate has similarly been awarded. The principle which underlies these cases is that the debtor is bound by the contract which he himself has entered into. It will be sufficient for the present purpose to cite the case of *Mackintosh v. Wingrove* reported in Indian Law Reports, Calcutta, page 137. In that case Sir Richard Garth, C.J., observed that it was only the concurrence of two elements—(1) an inequitable bargain, and (2) ignorance of the unfair nature of the transaction on the part of the debtor—which justified the Court in modifying the stipulated interest. It was a case in which the bargain was extortionate and the rate of interest grossly exorbitant, and yet the contract was fully enforced. "If," as the Chief Justice observed, "people with their eyes open choose wilfully and knowingly to enter into unconscionable bargains, the law has no right to protect them."

8. The only exception to the general principle is to be found in the case of Presidency towns, in which the law of dandapat is applicable. This law is founded upon the text of Manu, which is to the following effect:—

"Interest on money received at once, not year by year, month by month, or day by day, as it ought, must never be more than enough to double the debt, i.e., more than the amount of the principal paid at the same time."

9. The 17th section of the Parliament of 1781, among other things provides that all the matters of contract and dealing between party and party should be determined in the case of Muhammadans by the laws and usages of Muhammadans, and in the case of Gentoos by the laws and usages of Gentoos, and where only one of the parties is a Muhammadan or Gento, by the laws and usages of the defendant. This law has not been repealed, and therefore in cases in which the parties are Hindus, or where the defendant is a Hindu, the law of dandapat is applicable to the Presidency towns. This has been settled by a great number of authorities, out of which *Ram Kumar Adicari v. Jhahar Lall Dutt* (Indian Law Reports 5, Calcutta, page 867) may be referred to as a leading case.

10. It is an anomaly that the law of dandapat is not applicable to cases arising beyond the limit of the Presidency towns, and that even in cases arising within the limits of the Presidency towns the jurisdiction of the High Court is confined only to a limited class of suits, viz., those in which both the parties are Hindus, or where the defendant is a Hindu

11. The prohibition of interest exceeding the principal would certainly interfere with the terms of a contract which has been entered into between the creditor and debtor. Section 10 of the Contract Act, as has been said, is unrepealed, and the binding nature of contracts which are not otherwise bad in law has been upheld by the highest tribunals and eminent Judges presiding over them. The Bill, which seeks to unconditionally introduce such a radical alteration in a well-recognised principle of law should not therefore be supported. Cases may well be conceived in which the postponement of a suit is not prejudicial but advantageous to the interests of the debtor; indeed, it would in some cases operate as a hardship to the debtor if the creditor, in consequence of the law which it is proposed to enact, be obliged to seek redress in Court earlier for fear of losing the interest exceeding the principal. Instead, therefore, of prohibiting interest in excess of the principal generally, as is sought to be done by the Bill, I would suggest that it might be left discretionary with the Court either to allow or to refuse interest above the principal according to the circumstances of each case. The discretion of the Court should, of course, be exercised in a judicial and not in an arbitrary manner. The amendment of the law of interest upon the lines thus indicated by me would not only remove the anomaly, but generally maintain the binding character of contracts.

These observations, which relate to cases of non-mortgage-debts, are also generally applicable to those of mortgage-debts.

12. Suits relating to mortgages which are those for foreclosure, sale or redemption are now brought under Act IV. of 1882. Under Section 86 of the Act, account is taken of what is due to the mortgagee for principal and interest on the mortgage and for his costs of the suit; a similar provision is contained in Section 92 of the Act. In *Surja Narayan Singh v. Jogendra Narain Roy Chowdhury* and others (Indian Law Reports 20, Calcutta, page 361), it has been held that Section 86 excludes the discretion vested in the Court by Section 209 of the Civil Procedure Code, and that when there is a stipulation for the payment of interest at a certain rate till realisation, that stipulation should be given effect to for the period of grace, as contemplated by Section 86. In that case not only was the stipulated rate of interest allowed, but the contract as to the payment of compound interest was given effect to for the period of grace. Section 86 is unrepealed, and the Bill does not contain any provision superseding it. For reasons which need not be repeated, the law of interest in cases of mortgage-debts should be similarly modified, it being left discretionary with the Court to allow or to refuse interest exceeding the principal, according to the circumstances of each case. Section 209 of the Civil Procedure Code, as has been said, gives the Court a discretion in the matter of the award of interest in cases of non-mortgage-debts after the date of suit, and a similar provision may, in the case of mortgage-debts, be introduced in the Bill, the Court being given the power to allow or to refuse interest after the date of suit according to the circumstances of each case.

13. Briefly stated, my suggestions are these :—

(1) That it may be enacted in the proposed law that in suits both for simple money-debts and mortgage-debts, the Court may, in the exercise of its judicial discretion, allow or refuse interest in excess of the principal according to the circumstances of each case ;

(2) That a provision similar to that contained in Section 209 of the Civil Procedure Code may, in cases of mortgage-debts, be enacted in the proposed law, the Court being vested with the power to allow or to refuse interest after the date of suit according to the circumstances of each case ; and

(3) That Sections 86 and 92 of the Transfer of Property Act, so far as they contemplate the award of stipulated interest till the period of grace, be modified.

Dated Calcutta, 12 June 1895.

From *Babu Sita Nath Roy*, Honorary Secretary, Bengal National Chamber of Commerce, to The Under-Secretary to the Government of Bengal, Judicial Department.

I HAVE the honour to acknowledge the receipt of your letter No. 2114J., dated the 13th April last, forwarding copy of a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

2. In reply, I am desired by the Committee of the Bengal National Chamber of Commerce to observe that while the Government and the public have all along deprecated the idea of interfering, even to a small extent, with the provisions of Act XXIII. of 1855, the introduction of the present Bill, with no higher justification and no other reason than that of removing a supposed anomaly of practice in our Courts, seems to be inexpedient. The measure appears to be a covert attempt to re-enact the Usury Laws in a different form, and is an indirect menace on the liberties of the people with respect to a particular class of contracts, namely, mortgage contracts.

3. While parties are left free to enter into all other sorts of contracts, whether conscionable or unconscionable, the validity of which is left for decision to the discretion of the Courts of law, it is somewhat of an anomaly that it is in loan contracts alone, however otherwise fair they may be, the law should step in and impose fetters on the discretion of judicial officers in the matter of award of interest.

4. True it is that the hon'ble mover of the Bill has been able to find out and cite a few isolated cases of hard bargains from the records of different High Courts, but the British Courts of law being guided by the principles of justice, equity, and good conscience, there is always the inherent power in them to set aside or modify such hard bargains ; and even if such power was doubted for a few isolated cases of hardship here and there, happening after long intervals, there would be no justification for the enactment of a special law on the subject.

5. Forbearance on the part of a creditor to sue is often exercised at the earnest solicitation of a debtor or of his friends, and not from any motive of self-interest, but the consequence of the enactment of the present Bill would be that no more indulgence would be shown to a debtor in temporary embarrassment, and as soon as the amount of interest due on a debt would show a tendency to come up to the principal, the debtor would be dragged into Court and saddled with unnecessary costs, or he would be obliged to raise money at a higher rate of interest for repaying his former debt. This would be especially harassing to poor peasants in times of scarcity and famine.

6. Under all these circumstances it would be desirable, in the interest of all parties concerned, to drop the Bill and let them alone ; otherwise, all the evils of the old Usury Laws would revive ; petty traders and peasants would be confronted with new difficulties, and they as well as money-lenders would not hesitate to resort to new devices and shifts to get rid of the Usury Laws.

7. Laws limiting the rate or amount of interest have in all countries been systematically evaded in a multitude of ways, and it is no light work for the Legislature to devise means by which they can be enforced where the borrower and the lender combine to defeat them.

No. 864, dated Dacca, 25 June 1895.

From *Kumar Gopendra Krishna Deb*, District Judge of Dacca, to The Under Secretary to the Government of Bengal, Judicial Department.

WITH reference to your letter No. 2113J., dated the 13th April last, and its enclosures, I have the honour to say that the Judicial officers and the members of the Bar Library, whom I consulted, are unanimous in thinking that the time has arrived when the Legislature should enact some law to prevent money-lenders from recovering a high rate

rate of interest from their debtors, but that the provisions of the present Bill are not likely to attain that object for two reasons, viz. :—

(1) To defeat the object of the Bill, the money-lenders will compel their debtors to renew the bonds, consolidating the original sum lent and the interest when the latter amount equals or exceeds the principal.

(2) The money-lenders will bring a suit for recovery of every instalment of interest due whenever a default is made in paying it, so that the debtors, instead of being benefited by the proposed enactment, will be harassed by numerous suits.

2. The existing evil cannot be effectually dealt with unless the Legislature is prepared to interfere with freedom of contracts to some extent. It is of course impossible to try to save a man who contracts debts recklessly, but I think some step ought to be taken for the protection of honest debtors, and especially the vast body of ignorant and poor raiyats who are now entirely at the mercy of their creditors.

3. I would, therefore, propose that (1) the maximum rate of interest in all cases be fixed at 12 per cent. per annum; (2) that stipulation for payment of compound interest be considered void. In case, however, it is deemed inexpedient to put a limit on the rate of interest, the Bill should provide that "interest means not the amount found due under the renewed bond at the time of suit, but the amount claimable as such under the original bond."

4. There is also another way of dealing with the evil effectually, viz., giving the Civil Courts absolute discretion to award interest at any rate which, under the circumstances of each particular case, they may consider fair, both to the creditors and the debtors, irrespective of the rate stipulated for in the simple or mortgage bonds.

5. I also consider that any enactment which does not deal with repayment of interest in kind on paddy loans will be imperfect as failing to deal with a class of debtors who are perfectly helpless, and who are now most in need of protection at the hands of Government.

No. 373G.C., dated Chittagong, 1 July 1895.

From *W. B. Oldham*, Esq., C.I.E., Commissioner of the Chittagong Division, to The Chief Secretary to the Government of Bengal.

IN reply to your No. 2113J., dated 13th April 1895, I have the honour to say that the draft Bill therewith forwarded would, if enacted, defeat its own objects. It would be easy to evade, and in a way which would make the state of the debtor worse than it was before the new law was passed. This is the opinion of almost every one whom I have consulted, and it of course rests on the Regulation law that a bond, the due execution of which is proved, may not be unripped. In the non-regulation tracts (the Sonthal Parganas, the Chittagong Hill Tracts, &c.) there is no difficulty in carrying out Usury Laws or rules, because the Courts can go behind the bonds.

2. I think the object sought would be best attained by giving Courts a discretion as regards the award of interest. Evasion, which is easy to practice when it is known what a Court must do, would not be easy or attractive when it was unknown what the Court might do.

No. 479, dated Gaya, 2 July 1895.

From *H. Holmwood*, Esq., District Judge of Gaya, to the Officiating Under-Secretary to the Government of Bengal, Judicial Department.

WITH reference to your letter No. 2113J., dated 13th April 1895, enclosing a letter from the Government of India, No. 537, dated 13 March 1895, and its enclosures, and requesting me to report before the 1st August 1895, I have the honour to report as follows :—

2. I have consulted the two Subordinate Judges, three Munsifs at head-quarters, the Government pleader, and Mr. Howard, barrister-at-law and leader of the bar at this place.

3. The First Sub-Judge fully agrees with the principle of the measure, and thinks it is urgently required in this district, but he fears that it will be evaded by fresh bonds being taken for a new principal whenever the interest equals the principal. This periodical renewal without reference to previous bonds would entirely defeat the object of the Bill. To obviate this the Sub-Judge proposes to amend the explanation of "interest" so that it should include payments previously made.

4. The Second Sub-Judge also approves of the Bill, and cites two cases decided by him on 28th February last, in one of which, suit No. 188 of 1893, the debtor had to pay on a principal of Rs. 800 only, Rs. 13,945 odd on decree, and in the other, suit No. 189 of 1893, on a principal of Rs. 1,000, the decree was for Rs. 15,751 odd. These cases speak for themselves. The First Munsif says the object of the Bill is a very desirable one, but he doubts whether in its present form it will attain its object. He apprehends that when the limit of interest is reached, the creditor, by threats of a suit, will induce the debtor to pay up the interest, leaving the principal untouched for the accumulation of further interest. He also apprehends that foolish people will borrow money for a month at cent. per cent. interest rather than not get it. He would therefore, instead of the principle of damdupat, enact that the courts will not decree interest at any higher rate than 12 per cent. per annum.

5. The Second Munsif has carefully collated the older and more recent ruling of the Calcutta and Allahabad High Courts on the subject, and I subjoin his digest of those rulings here :—

"As observed by the Honourable Babu Mohini Mohan Roy while introducing the Bill in the Legislative Council, there is at present undoubtedly a great anomaly in the matter of awarding interest in the Civil Courts. The decisions of the several High Courts on this point are not at all uniform. Since the repeal of the Usury Laws by Act XXVIII. of 1855, the tendency of the modern rulings has been that there is no legal restriction to the rate of interest contracted by the parties. The case of *Ananda Mai Gupta v. Ambica Charan Guha*, mentioned in the Statement of Objects and Reasons of the Bill, in which compound interest at the rate of 33 per cent. amounted in 10 years to 17½ times the principal, is a case in point. It may be convenient, for purposes of easy reference, to state here briefly the case law on the subject, in order to show at a glance the diversity of opinions in the matter,

Case law on the subject.

as expressed by the Honourable Judges of the several High Courts.

"In the case of *Umda Khanum v. Brajendra Coomer Roy*, 12 B. L. R., 451, plaintiff demanded interest at the higher stipulated rate of 75 per cent. The Judges differed in opinion, the Honourable Mr. Justice Birch holding that the interest was inequitable and oppressive, while the Honourable Mr. Justice Markby was of opinion that the parties were bound by the terms of their contract. It was held on appeal under the Letters Patent that the higher rate of interest charged was

Old Calcutta High Court rulings.

- (1) *Umda Khanum v. Brajendra Coomer Roy*, 12 B. L. R., 451.
- (2) *Bichhook Nath Panday v. Ramlochan Singh*, 11 B. L. R., 135.
- (3) *Pitamber Chatterjee v. Kali Charan Roy*, 11 B. L. R., 137 note.
- (4) *Sahodra Bibi v. Dindayal Lal*, 11 B. L. R., 138, note.
- (5) *Braja Kishore Roy v. Madhab Pershad*, 12 B. L. R., 456, note.
- (6) *Harballabh Narain Singh v. Genda Maharaj*.

not in the nature of a penalty.

"In

"In the case of Bichhook Nath Panday v. Ramlochan Singh, 11 B. L. R., 135, interest at the higher rate of 48 per cent. was claimed from the date of the bond. It was held that this rate was in the nature of a penalty. But in the case of Pitamber Chatterjee v. Kali Charan Roy, 11 B. L. R., 137, note, the higher rate of interest claimed was not held to be in the nature of a penalty. Similarly, in the cases of Sahodra Bibi v. Dindayal Lal, 11 B. L. R., 138, note, and Braja Kishore Roy v. Madhab Pershad Missir, 12 B. L. R., 456, note, the higher rate of interest, namely, at the rate of 60 per cent., was allowed. But in the case Harballabh Narain Singh v. Genda Maharaj, 12 B. L. R., 473, note, the stipulation to pay half as much again, i.e., interest at 50 per cent., was considered to be in the nature of a penalty.

"In the cases of Bansidhar v. Buali Kahn, I. L. R., 3 Allahabad, 260; Kharram Singh v. Bhawani Baksh,

Allahabad High Court rulings.

- (1) Bansidhar v. Buali Khan, I. L. R., 3 Allahabad, 260.
- (2) Kharram Singh v. Bhawani Baksh, I. L. R., 3, Allahabad, 440.
- (3) Kharag Singh v. Bholanath, I. L. R., 4, Allahabad, 8.
- (4) Narain Das v. Chait Ram, I. L. R., 6 Allahabad, 179.

I. L. R., 3 Allahabad, 440; Kharag Singh v. Bholanath, I. L. R., 4 Allahabad, 8, the rates of interest claimed were all held to be in the nature of penalties. Only reasonable compensations were allowed in those cases. Similarly, in the case of Narain Das v. Chait Ram, I. L. R., 6 Allahabad, 179, the Honourable Chief Justice

Stuart was of opinion that the stipulation to pay the higher rate of interest, in case of non-payment of interest at the lower rate, was in the nature of a penalty.

"In the case of Mathura Pershad Singh v. Lagan Koer, I. L. R., 9 Calcutta, 615, the stipulation to pay the

Conflicting rulings on the Doctrine of Penalty in the several High Courts.

- (1) Mathura Pershad Singh v. Lagan Koer, I. L. R., 9 Calcutta, 615.
- (2) Mackintosh v. Hunt, I. L. R., 2 Calcutta, 202.
- (3) Mackintosh v. Craw, I. L. R., 9 Calcutta, 689.
- (4) Sungut Lal v. Baijnath Roy, I. L. R., 13 Calcutta, 164.
- (5) Munjappa v. Nanjappa, I. L. R., 12 Madras, 161.
- (6) Sajuji Panhaji v. Mavati, I. L. R., 14 Bombay, 274.
- (7) Arjon Bibi v. Asgar Ali, I. L. R., 13 Calcutta, 200.
- (8) Baijnath Singh v. Shah Ali Husain, I. L. R., 14 Calcutta, 248.

increased rate of interest was construed to be in the nature of a penal clause. In the case of Mackintosh v. Hunt, I. L. R., 2 Calcutta, 202, the stipulation to pay interest at the "defaulting rate," namely, at the rate of 10 per cent. per mensem, was not considered to be in the nature of a penalty, but it was held to be exorbitant, and so was not allowed to be enforced. The principle of this ruling was followed in the case of Mackintosh v. Craw, I. L. R., 9 Calcutta, 689, where it was held that the stipulation to pay a higher rate of interest from the date of default was not a penalty. In the case of Sungut Lal v. Baijnath Roy, I. L. R., 13 Calcutta, 164, it was held that the increased rate of interest having been made payable from the date of the bond, was in the nature of a penalty. This was also the view taken in the cases of Munjappa v. Nanjappa, I. L. R., 12 Madras, 161, and Sajuji Panhaji v. Mavati, I. L. R., 14 Bombay, 274. In the cases of Arjon Bibi v. Asgar Ali Chawdhri, I. L. R., 13 Calcutta, 200, and Baijnath Singh v. Shah Ali Husain, I. L. R., 14 Calcutta, 248, the Honourable Judges were, however, of opinion that the increased rates of interest, 2 annas per rupee per month in the former case and 48 per cent. in the latter case, were stipulation within the meaning of Section 2 of Act XXVIII. of 1855, and so could be enforced from the dates of the bonds. This unsettled

Recent Calcutta High Court Full Bench ruling on the point.

Kalachand Kyal v. Shib Chandra Roy, I. L. R., 19 Calcutta, 392.

state of law came for consideration before a full bench in the case of Kalachand Kyal v. Shib Chandra Roy, I. L. R., 19 Calcutta, 392, where it was held that a provision in the bond to the effect that the principal should be repaid with interest on the due date and that, on failure thereof, interest should be paid at an increased rate from the date of the bond, amounted to a provision for a penalty. The principle in the case of Mackintosh v. Craw, I. L. R., 9 Calcutta, 689, where it was held that the higher rate of interest from the date of default of payment of the principal and interest agreed upon originally could be recovered in its entirety, was, however, approved in this Full Bench.

"The Honourable Babu Mohini Mohan Roy has, in his speech in the Council, referred to the Privy Council case of Kamini Sundari Chowdhra v. Kali Prasanna Ghosh, reported in I. L. R., 12 Calcutta, 225, where it has been held that the Courts should not give effect to hard and unconscionable bargains. He has also mentioned the facts that in accordance with the above ruling, the High Court of Allahabad considerably reduced the amount of interest claimed on a mortgage bond in the case of Madhu Singh v. Kasi Ram, reported in I. L. R., 9 Allahabad, 228. But I do not see that any mention has been made by him of the case of Chunni Koer v. Rup Singh, reported at 11 I. L. R., Allahabad, 57, in which a rather limited construction has been put upon the Privy Council ruling referred to above. Their Lordships (the Honourable Sir John Edge, Chief Justice, and the Honourable Justice Tyrrell) observe (please see page 71) as follows on the point :—

Doctrine of hard and unconscionable bargain as laid down in the Privy Council case of Kamini Sundari v. Kali Prasanna Ghosh, I. L. R., 12 Cal., 225.

"We do not gather from the judgments of their Lordships of the Privy Council in Srimati Kamini Sundari Chowdhra v. Kali Prasanna Ghosh, that the doctrine which the Courts of Equity in England have applied to cases of snatching bargains with expectant heirs, reversioners, or remainder men, is to be applied in India to cases, except where it would have been applied in England, or except where the case in some way analogous to a case of snatching a bargain with an expectant heir, reversioner, or remainder man, or except there is some fiduciary relationship between the lender and borrower, although there may be no fraud or undue influence, or except there is incapacity, such as ignorance on the part of the borrower to appreciate the true effect of his or her bargains. To apply it to all cases where the contracted return was exceptionally large, or the rate of interest was high, would be for the Judges to make contracts for the parties which they never intended to make for themselves. It is, I believe, on account of this limited construction put upon the doctrine of equity on the subject of hard and unconscionable bargains, as laid down by their Lordships of the Privy Council, that there is at present practically no limit to the amount up to which interest may be awarded."

Construction put upon the ruling by the Allahabad High Court, Chunni Koer v. Rup Singh, I. L. R., 11 All. 57.

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6. He then follows Sir Alexander Miller in his expression of apprehension that provisions in restraint of money, unless very carefully worded, always tend to the injury of the debtor. He therefore recommends that the words "original principal" be very strictly defined so as to exclude the possibility of the renewals contemplated by the First Sub-Judge. This, he thinks, will result in suits being rigidly brought on the very date when the limit of interest is reached, and this will result in hardship to the debtor, who, in this country, is seldom able to pay up any demand on a given date, and will again lead to an increase in the already almost insuperable difficulties placed in the creditor's way in getting execution. The remedies he suggests are as follows :—

1. That compound interest should be rendered penal.
2. That it should be left to the Courts to decide what are hard and unconscionable bargains in each case.

7. He instances the case of a man who is suddenly called upon to give security to keep the peace, or to be of good behaviour. Having no ready money, and being a suspicious character, he can only borrow at a high rate of interest. This he omits to pay, and when at last sued, denies the bond altogether, and has quite an even chance of escaping his liabilities in the Law Courts, and this chance is ever increasing the more years the debt is allowed to run, as the witnesses and persons who were acquainted with the original circumstances die or cannot be found. I agree with this Munsif that these cases represent a very large proportion of the litigation on bonds that come before the Courts in the mufassal, and the long terms and accumulation of interest is much more often the deliberate choice of the debtor than of the creditor. The Indian mahajan is not really so black as he is painted. In times of scarcity he will lend money to the most hopeless debtors as long as they are old clients of his, and every device of cajolery and chicanery is resorted to by the debtor to escape paying his just dues.

8. The Third Munsif thinks that the rule of damdupat is itself an anomaly in this commercial age, and that to impose it universally would be to extend an anomaly, and, at the same time, to fetter the hands of the Court so as to compel them to give effect to unconscionable bargains where the interest did not exceed the limit of damdupat.

In few cases now is the limit of damdupat exceeded, and in those cases it is my opinion that the Court should have a discretion to apply the rule. But in numerous cases excessive interest is sued for long before the rule of damdupat can be applied, and in these it seems to me the Courts should have equal discretion. In this I agree with the Second and Third Munsifs.

9. The Government Pleader, who says he has consulted other pleaders and intelligent persons, apprehends that the Bill, as drafted, will do more harm than good to debtors. Suits will be more frequent, and, as a necessary consequence, the debtor who is unable to pay one creditor with interest will have to borrow the whole amount, principal plus interest, from another person at probably a higher rate of interest, and this, owing to the rigid limitation fixed by the Bill, will be a constantly recurring thing. He would, therefore, recommend the abolition of compound interest and a limitation to the rate of interest.

10. Mr. Howard approves of the principle of the Bill, but would not apply it to any case where the original rate of interest agreed upon between the parties does not exceed 8 per cent. per annum.

This is, of course, only another way of putting the general objection to the Bill as drafted, that it is hard both on debtor and creditor.

A banker who lends Rs.100 at eight per cent. and is not paid for 20 years is met by the same rule as a usurer who lends Rs.100 for a month at cent. per cent. Each, on coming into court, gets Rs.200 only. Yet the one man is robbed and the other is a robber. From my experience of civil justice in this country, I am convinced that any rule limiting interest among the parties to a contract must fail, as there are such innumerable ways of evading it. Further, the classes of cases which come before a Court are as opposite in principle as the two examples I have just cited, and there is no possible means of adjusting the scale mechanically.

Abolish compound interest, and leave each bargain as it stands to the equitable adjudication of the Courts, and we shall get rid of all the evils now complained of without interference with the freedom of contract, when exercised by persons who are fit to exercise it. The fact is lost sight of that besides minors, females, idiots and others legally incapable of making contracts, except under certain safeguards, there are millions of illiterate persons in this country who are quite as incapable mentally and morally, and ought to be equally incapacitated by law.

11. An equitable jurisdiction given to the Courts to treat each case on its merits would raise up an all-powerful protector for those who most need protection, and would, at the same time, prevent the professional debtor from escaping his first dues. Compound interest I would abolish, because there can be nothing advanced in its favour, morally or economically, and all classes without exception, even the mahajans themselves, would, I believe, be glad to see the last of it.

12. I see that the Judges of the Allahabad High Court have taken up the question of the alienation of landed property for debt in this connection. I have always considered that the two questions are so intimately connected that it is impossible to keep them separate. Were the alienation of land for debt altogether prohibited, however, borrowing and lending would practically cease, as in this country there is little or no personal property, except plough bullocks and cows, the alienation of which would be even a greater evil than that of landed property. I would, however, insist on landed property which is to be alienated being pledged by way of security in the bond, and would not allow any landed property beyond that so pledged to be sold. In each bond it should be certified by the creditor that the land is the equivalent in value of the money advanced with interest up to a certain date, and he then could not complain if he did not get his value for his money at the auction sale. This would also act as an automatic limitation to the accumulation of interest, as he would be bound to sue as soon as the value of his mortgage was reached.

13. I am convinced that far greater evils arise from the fact that land is sold for sums far less than its value in every rent, money, and title suit than from the excessive rate of interest. It is the organised system of land jobbing which goes on at every Civil Court in this country which ruins the borrower, and to strike at that alone will be strike at the root of the evil.

14. Land is the only commodity in the mufassal, and a ring of sharks are generally the only bidders at an auction sale at the Civil Courts. The consequence is land never sells for its true value, and the difference between Civil Court sales and revenue sales is ascribed solely to the avoidance of incumbrances by the latter. This is, no doubt, part of the reason, but it is only part. The evil is so bad here that I have made it a rule never to confirm a sale at a sum below the market value of the property unless the bid list shows that the sale has been fairly attended by *bona fide* landholders and capitalists. To recapitulate, therefore, my opinion on the draft Bill is that the principle aimed at is sound, but the means suggested useless, if not worse than useless. In lieu thereof, I would suggest three reforms:—

1. The abolition of compound interest.
2. The vesting of an equitable jurisdiction in all Civil Courts to reduce hard and unconscionable bargains, of whatever nature, to fair and equitable limits, 12 per cent. per annum being the standard where there are no other grounds for making it more or less.
3. The abolition of sale of immoveable property for debt, except where immoveable property of the declared value of the debt with interest is hypothecated, and the limitation of the sale of immoveable property under the decree to the property hypothecated.

No. 3262G., dated Jessore, 17 July 1895.

From S. N. Huda, Esq., Officiating District Judge, Jessore, to the Chief Secretary to the Government of Bengal.

I HAVE the honour to acknowledge the receipt of your letter, No. 2113J., dated the 13th April last, and its enclosures, and in reply to submit that the principle of the Bill has been generally affirmed by the subordinate judicial officers, among whom it was circulated for opinion. It has also my approval. I think it is wanted to prevent creditors from taking undue advantage of their position. From various causes, debtors in this country are more or less dependent on their creditors, and cannot contract on equal terms with them. There exists a real necessity for the interference of the State to prevent undue advantage being taken by them. It has been suggested that the country will be deluged with litigation if the Bill is allowed to become law, as mahajans, who look only to the interest, will institute suits when they see they cannot get any more interest; but in my opinion, there is no real ground for this apprehension, as those debtors who can pay, pay up within a reasonable time, and it is only the impecunious who allow the interest to accumulate; and these persons are almost always sued in the Courts.

2. Probably the proposed legislation may give rise to attempt to evade it, but I do not think the attempt at evasion will or can be made to any appreciable extent. It is apprehended that the principal sum may be put at a higher figure, and that the creditors will insist upon short dates of repayment with higher rates of interest. The apprehension does not appear to me to be well grounded, as debtors now-a-days are not so helpless as the suggestion would imply.

3. The

3. The words "original principal" sum, however, are calculated to produce some confusion. It obviously means the principal sum lent, and not the sum which under any agreement for payment of compound interest is added to the principal. But it may be thought by some that it extends to cases of novation of debts. I do not think it has that meaning, as it is not proper to interfere where a person voluntarily incurs a liability. I would, therefore, suggest that it be explained that the law does not apply to novation of debts.

4. I think the Bill, as it stands, is open to the objection of being unfair to the honest debtors. A man who has striven to pay his liabilities would, under the Bill as it now stands, have to pay more than a man who has entirely failed to pay; and when a man learns that by omitting to pay at all he will eventually have to pay a lesser sum, we may be sure he will prefer not to pay. There will be thus an inducement not to settle debts amicably—a state of things which is not desirable.

5. The Bill, as framed, applies only to money debts. Debts of grain or other produce are often incurred by the agricultural community. I think the Bill may with advantage be extended to these debts.

No. 419, dated Arrah, 17 July 1895.

From *F. H. Harding*, Esq., District Judge of Arrah, to the Chief Secretary to the Government of Bengal.

IN reply to your office letter, No. 2113J., dated the 13th April 1895, I have the honour to submit the following report on the provisions of the Bill, to regulate the award of interest in suits for simple money-debts and mortgage-debts.

On receipt of the letter in reply, I called for reports in expression of opinion from the Bar Association of Arrah, the Subordinate Judges and Munsifs.

The members of the local Bar are against legislative action being taken in the matter, on the following grounds:—

1. The proposed Bill will defeat its own end by inducing creditors to take large amounts as salami or nazarana from debtors, who will be obliged to submit to their terms, however hard.

2. Creditors will fix short terms for repayment of debts and charge usurious rate of interest, and the debtors will suffer in consequence of the speedy institution of suits.

3. Creditors will have greater opportunity than they now possess of dictating hard terms, and debtors will, in consequence, be situated much more disadvantageously than they are at present.

4. The freedom of contract, which at present exists, is a much safer guarantee against extortionate and dishonest proceedings on the part of creditors, than any statutory limitation of the rate of interest is likely to afford.

5. The anomaly of practice noticed by the mover of the Bill does not appear to be a greater evil than the consequences which are likely to result from passing the Bill.

The first Subordinate Judge, Babu Madhub Chunder Chukervarti, is of opinion that it is highly desirable that there should be some such enactment as is proposed to regulate the award of interest, but that the provisions of such a Bill are likely to be evaded in ways beyond the power of the Courts to grant relief, and to augment usury.

The Second Subordinate Judge, Babu Bhugwan Chunder Chatterjee, has no hesitation in recommending the Bill as framed, and believes that the Bill is very necessary and calculated to do good.

Babu Mohim Chunder Sircar, Munsif of Arrah, First Court, is of opinion that in the unsettled state of the law with regard to the award of interest, and on account of the conflicting decisions of the High Courts with reference to the interpretation of the term "penalty," it is desirable that some positive enactment should be passed, in order to do away with the existing anomaly of practice. He is of opinion that the proposed Bill will serve this purpose, and is unobjectionable.

Babu Chundra Cumar Rai, Munsif, Second Court, Arrah, is of opinion that the Bill is likely to interfere unduly with freedom of contract, and that a sufficient case is not made out for the passing of such a Bill. He is of opinion that the Bill, if it becomes law, is likely to place debtors in a worse position than they are at present. Creditors will press for payment of interest, and in default will compel debtors to renew bonds, including the unpaid interest on the principal amount, or take them at once to court. He suggests that if the Government really considers it to be necessary to place a limit upon the rate of interest, it should be empowered to declare from time to time what is the general rate of interest prevalent in each district or particular tract of country, and that the Courts should be precluded from decreeing interest at a higher rate.

Babu Sripati Chatterjee, Munsif of Third Court, Arrah, regards the Bill as a move in the right direction, although he does not approve of the principle of regulating by law the amount of interest to be awarded by Courts, instead of the rate of interest which may be contracted for between debtors and creditors. He suggests that it is preferable for Government to fix the maximum rate of interest which may be contracted for. The result of the Bill will be to deter debtors from paying their debts amicably, and to increase litigation. At present a creditor frequently defers instituting a suit at the request of the debtor.

Babu Nand Lal De, Munsif of Buxar, First Court, is in favour of the Bill.

Babu Lalit Kumar Bose, Munsif of Buxar, Second Court, is also in favour of the Bill, so far as simple money-debts are concerned. He points out, however, that mortgage debts stand on an altogether different footing. Mortgage bonds are not as a rule written hurriedly, and in the majority of instances the rate of interest is reasonable. The law allows a mortgagee 12 years to enforce his mortgage, and if the Bill be extended to mortgage debts, creditors will be obliged to sue before the expiration of this period, frequently to the very great disadvantage of the debtors, who will have to borrow from other persons in order to satisfy the mortgage.

Babu Ram Narayan Sircar, Munsif of Sasaram, is in favour of the Bill, as also is Maulvi Sheikh Abdullah Khan, Subdivisional Officer of Bhabua, with powers of a Munsif.

It will be seen from the above that the opinions expressed vary very much.

My own opinion is as follows. There can be no doubt that it is necessary to take some step for the protection of debtors, more particularly those of the lower and more ignorant classes, from extortion on the part of creditors. I am very doubtful, however, whether this end is likely to be secured by the proposed Bill. It is now generally admitted that the operations of the Usury Laws which were introduced into England from time to time for the purpose of restricting the maximum rate of interest to be paid, tended only to raise the real rate of interest, by driving men in distress to adopt extravagant methods of raising money, the bonuses thus paid being really and in effect an addition to the nominal interest.

I would suggest that instead of making a hard-and-fast rule such as that contained in the Bill, prohibiting the award of interest exceeding in amount the principal, the courts should be authorised to apply the doctrine which the Courts of Equity in England have applied to cases of snatching bargains with expectant heirs, reversioners, and remainder men, if not to all cases between lenders and borrowers, at least to all cases in which there is incapacity, such as ignorance on the part of the borrower to appreciate the true effect of his or her bargain, or in which there is a fiduciary relation between the lender and the borrower, although there may be no fraud or undue influence.

It should be declared that a presumption of fraud may arise 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. As was

observed by Lord Selborne, L.C., in *Aylesford v. Morris*, 8 Ch. App., 484, "fraud does not here mean deceit or circumvention; it means an unconscientious use of the power arising out of the circumstances or conditions."

When the relative position of the parties is such as *prima facie* raises the presumption above named, the transaction should not be allowed to stand, unless the person claiming the benefit of it is able to repel the presumption by contrary evidence, showing it to have been, in point of fact, fair, just, and reasonable.

The Government might, after due inquiry made, ascertain and declare what appears to be a fair rate of interest in each district for simple money-debts and mortgage-bonds as a guide to the Courts, and in the event of the rate of interest in any case exceeding this rate, and the circumstances being such as to raise a presumption of fraud as above described, the Courts should be authorised and directed to give equitable relief. It would be possible, I think, to effect the change which I propose by adding a proviso to Section 2 of the Interest Act, XXVIII. of 1855, to the effect that when the relative position of the parties is such as *prima facie* to raise a presumption of fraud (as above defined), the Court can set aside the stipulation for interest, unless the obligor is able to repel the presumption by contrary evidence, proving the agreement to have been fair, just and reasonable, and by adding a Clause to Section 3 of the Indian Evidence Act, to the effect that in a case under the proviso above referred to the burden of proof shall lie on the obligee. It might also be necessary to add to the definition of fraud in Section 17 of the Contract Act, the definition by Lord Selborne above quoted. I am, of course, aware that very able English judges have frequently declared it to be of the greatest importance, as regards contracts between adult persons not under disability and at arm's length, that the Courts of law should maintain the performance of the contracts according to the intention of the parties. As, however, Sir George Jessel, in the case of *Wallis v. Smith*, L. R., 21 Ch. D., 243, after expressing an opinion to the above effect, observed:—

"There are exceptions, but they are exceptions of a legislative character."

I think that the circumstances of the greater part of the borrowing classes of the country are so exceptional and peculiar as to justify interference on the part of the Legislature, in the mode indicated above, for their protection.

No. 629, dated Dinajpur, 17 July 1895.

From *R. R. Pope*, Esq., District Judge of Dinajpur, to The Chief Secretary to the Government of Bengal.

WITH reference to the Government letter No. 2113J. of the 13th April last, and its enclosures, calling for an expression of my opinion upon the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts now before the Government, I have the honour to state as follows:—

2. The object of the Bill, as it appears from the Statement of its Objects and Reasons, is to place a limit upon the award of interest, and it is proposed to enact thereby that in no case shall the Court award an amount of interest in excess of the original principal, or, where there has been payment in reduction of the principal, in excess of the reduced principal. This I understand to mean that the interest to be awarded by the Court shall not exceed the amount of the principal due to the creditor at the time of the suit, and actually sued for.

3. This object, I have no doubt, is a very good one. Cases often occur in which the amount of interest claimed by the creditor accumulates to a sum in excess by several times of the amount of the principal, and it is desirable that an effective check should be put to such exorbitant claims.

4. Act XXVIII. of 1855 is still in force, and by Section 2 thereof it is provided that in any suit in which interest is recoverable the amount shall be adjudged or decreed by the Court at the rate (if any) agreed by the parties. The amount of interest found due to the plaintiff according to the rate agreed between the parties must, therefore, be decreed by the Court, and it has no discretion in the matter. To make the Bill effective, it is therefore necessary to repeal this enactment; for otherwise the two enactments will militate against each other.

5. The Bill, however, will be only a partial measure in itself. For there is nothing in it to regulate the rate of interest to be fixed between the money-lender and the debtor, and therefore even if Section 2 of Act XXVIII. of 1855 be repealed, there will be nothing to prevent the parties from contracting for any rate of interest that they like. The money-lender has a perfect right to propose his own terms, and to refuse a loan unless the debtor agrees to them. The parties have a freedom of contract in that respect with which, in my opinion, neither the Legislature nor the Courts would be justified in interfering. The Act of the Court in refusing to allow the interest payable to the money-lender under the contract would be regarded by the public as an arbitrary and unjustifiable interference on the part of the Court, and the creation of a public opinion like this is far from being desirable. I do not see how this unpleasantness can be avoided concurrently with the enactment of the proposed Bill into law.

6. The Bill would not be a complete law in itself unless the rate of interest to be fixed for loans of money be also regulated by it, but any attempt in that direction would savour of unjustifiable restriction of the liberty of contract, which is opposed to the policy of the law.

7. Moreover, to leave to the parties their freedom of contract, and to vest in the Courts a power to interfere with the same in every case, would be an anomaly beyond the possibility of reconciliation.

8. The amount of the accumulated interest varies according to the length of time that the debtor withholds payment of the debt due from him, and the longer the period that the money is kept back, the larger becomes the amount of the interest payable for it. The debtor, therefore, is himself primarily responsible for the large accumulation of the interest, the weight of which he could get rid of by punctual payment. It would, therefore, be an undue hardship on the innocent creditor to make him suffer for the default, often wilfully made, on the part of the debtor.

9. The passing of the proposed Bill into law would probably lead to an increase of litigation. The money-lenders would naturally institute suits for recovery of their money as soon as the amount of the interest approached that of the principal, and so the number of suits in the Civil Courts would necessarily increase.

10. To avoid the possibility of such suits, the debtors will have to come to terms with their creditors, and the result will inevitably be that the debtors will have to give renewed bonds for the consolidated sum of principal and interest treated as principal with interest running on the total amount. The result of this will be to throw upon the debtors a liability for the payment of compound interest, which instead of being advantageous will rather be prejudicial to them. Thus the Bill, instead of being a relief to the debtors, will prove to them a greater evil.

11. I think the object aimed at by the Bill might be better attained by the extension of the provisions of Section 74 of the Contract Act, so as to include therein a contract for the payment of interest, and by the concurrent repeal of Section 2 of Act XXVIII. of 1855. For, as a matter of fact, the large accumulation of interest is due to the detention of the money after the due date of the loan. A contract for loan of money is broken when the money is not repaid on the due date, and therefore if the interest for the subsequent period until the date of suit be treated as the compensation to be awarded to the creditor for breach of the contract, and the Court be left to adjudge the same in the exercise of its discretion according to the facts and circumstances of each individual case, the existing evil might be removed without the necessity for legislation; such a measure is more likely to prove successful than the proposed Bill which contains a hard-and-fast rule to be applied to all cases alike, without any regard to the special circumstances of each.

No. 850, dated Berhampore, 17 July 1895.

From *P. B. Taylor, Esq., B.A.*, District Judge of Murshidabad, to The Chief Secretary to the Government of Bengal.

WITH reference to your letter No. 2113J., dated the 13th April last, asking for an expression of opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I have the honour to report as follows :—

1. I have consulted the judicial officers (civil) in this district.
2. The consensus of opinion is that something should be done, but while some think that the law proposed will provide partial relief, others think that the law will result in worse difficulties for the debtor.
3. Several suggest that the proposed Act should be modified, so as to include advances of grain, in which the ordinary rate of interest is 50 per cent. for the season.
4. It is also suggested that 12 per cent. should be the utmost legal interest exigible by suit, and that compound interest should be forbidden.
5. The first is a reasonable suggestion; the second overlooks the fact that such interest in many cases would not be a fair return for the advance, when the security offered or the difficulty of realization is considered. If adopted, such a rule would defeat its own ends by introducing worse evils arising out of attempts to circumvent it.
6. I think the introduction of the rule of damdupat is desirable. The objection to it suggested is that money-lenders would be incited by it to harsher dealings with their clients, and would attempt to enforce more punctual payments and more speedy realization of their dues, and that it would lead to constant renewals of advances at high compound interest.
7. The present law of evidence is, however, sufficient to enable the Court to enquire whether the history of the case points to an evasion of the rule proposed.
8. Of course the rule might be evaded if a ring of lenders were formed, who kept their clients moving from one to the other, and insisted that money should be borrowed from B to pay A's debt and from A to C to repay B. It would be difficult to prove a connection between them, and several harpies would then have to be satisfied instead of one. But it is impossible to protect people against every consequence of their folly, and the proposed rule would give relief in many cases.
9. At the same time, I think it would be necessary to recognize and act upon the equitable rule against unconscionable and hard bargains, by enacting as proposed by the Allahabad High Court, that when the interest covenanted exceeded a certain sum, the burden of proving the bargain a fair and reasonable one should be on the lender, or that the Judge should be vested with the discretion of requiring such proof whether the borrower has raised the question or not.
10. The opportunity might be taken of clearly laying down which of the various interpretations of section 74, Act IX. of 1872, Contract Act, is approved by the legislature.

No. 422, dated Barisal, 18 July 1895.

From *B. L. Gupta, Esq.*, District Judge of Backergunge, to the Chief Secretary to the Government of Bengal.

I HAVE the honour to acknowledge the receipt of your letter No. 2113J., dated the 13th April 1895, with enclosures, calling for an expression of my opinion on the provisions of a draft Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

2. In reply I have the honour to state that the principle of the Bill has my entire approval, but I consider that the object in view will not be attained unless civil courts are vested with a wider discretion in matters of award of interest. As the law now stands, a civil court is bound to decree the plaintiff's claim at the stipulated rate of interest. The present practice is based on the principle that the defendant is bound by "the bargain which he had entered into." The principle is sound in the abstract, and just only on the supposition that the contracting parties stand in relation to each other on an equal footing. To those, however, conversant with the habits and customs of the people, it must be abundantly clear that the borrower is not unusually placed at a great disadvantage in relation to the lender; and that once a debt is contracted by a needy man at a high rate of interest, he gets often more and more entangled in his efforts to extricate himself from the meshes of indebtedness. Bond after bond is executed in which the accumulated interest is added to the original principal, until the debtor finds himself completely at the mercy of the creditor.

3. The proposed revival of the damdupat rule would afford only partial relief. It is sure to be evaded in many cases by various devices, in which the improvident or hard-pressed debtor will blindly play into the hands of his creditor. The subordinate judicial officers of this district whom I consulted, and among whom are officers of great experience, are almost unanimous in thinking that the proposed Bill is a halting half-measure that would result but in a very small balance of good. The interest of justice and the public good demand that in the award of interest on debts, as in other matters, the courts should be vested with a discretion within proper limits.

4. I therefore beg to express my cordial approval, and earnestly to commend to the consideration of Government, the following suggestion of the Judges of the Allahabad High Court :—

"The Judges are unanimously of opinion that where the interest is compound or exceeds 12 per cent. per annum, either the law should make it incumbent on the lender to prove that the transaction was fair and reasonable, or the discretion of requiring such proof should be vested in the Judge, whether the borrower has raised the question or not."

5. There is, in my humble opinion, no valid reason whatever why this salutary principle of justice should not be adopted and acted upon in a country where borrowers are notoriously improvident and reckless, and often at the mercy of lenders.

No. 264, dated Cuttack, 17 July 1895.

From *F. E. Pargiter, Esq.*, District Judge of Cuttack, to the Under-Secretary to the Government of Bengal, Judicial, Political, and Appointment Departments.

IN reply to your circular letter (Judicial) No. 2113J., dated 13th April last, I have the honour to submit my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

2. The object of the Bill is one of which every humane man must approve, viz., to safeguard ignorant and helpless debtors from the greed and oppression of unscrupulous creditors, and by putting some check on money-lenders to compel them to exercise more caution in giving loans. Cases in which the interest exceeds the principal are not few, especially in Orissa, for the general rate is high here, because, no doubt, of its remote and backward condition; and the Bill will tend to satisfy an unquestionable need. No objection, moreover, can be taken to its provisions on the allegation that it interferes with any one's religious tenets.

3. The object of the Bill being excellent, the main question, it seems to me, is whether the Bill will secure that object. The Subordinate Judge and Munsifs in this province are far from unanimous on this question, and it appears to me the Bill will not prevent evasions, nor is it easy to amend it so as to make it successful against persons who are determined to evade its provisions, for there can be no doubt whatever that money-lenders will not quietly submit to so great a curtailment of their gains, and will seek every means of defeating them. It is difficult for those who have not had large experience in these matters to form an idea of all the various devices which may be resorted to for that end. Gross cases come to light now and then, and abuses may probably be studied better in the Small Cause Courts than in ordinary tribunals. I should imagine a report from the Calcutta Small Cause Court would throw more light on the ways of money-lenders and debtors than reports from the mufassal, for the village mahajan, though hard and exacting, cannot well be indifferent to the sentiments of his neighbours in so small a place, nor beyond the influence of village public opinion.

4. Two certain results of the Bill would be (1) to compel creditors to sue as soon as the interest threatened to exceed the principal, instead of granting debtors time as at present; and (2) to induce debtors to renew bonds, making the aggregate principal and interest of the old bond the principal in the new bond. Such renewals are, however, I take it, guarded against in the Bill by the use of the words "original principal," and if so, the first result would not be undesirable on general grounds; for, besides keeping transactions within moderate bounds, it would compel money-lenders to be more careful than at present. Other results may be conjectured, but it is unnecessary to enter into an elaborate discussion.

5. I venture, however, to express the opinion strongly that the mere provision that interest shall not be awarded exceeding the principal will not secure the object desired; and my grounds for this are founded on general experience rather than on particular instances of oppression. It is not easy to specify a large number of the devices which would defeat that provision, because hitherto money-lenders have had no reasons for seeking out such devious ways, but the utmost ingenuity will be devoted to this problem in future, as certainly as methods are now being thought out in England to escape the heavy death duties lately imposed. As an illustration, it seems to me the meaning of the word "principal" may be played with. Unscrupulous money-lenders sometimes enter a certain sum in the bond as the sum lent, but deduct a portion under the name of "interest" or "discount," and actually hand over to the borrower the reduced sum. Which of these sums should be taken as the "principal" for the purposes of this Bill? See two atrocious cases—*Mackintosh v. Hunt* (I. L. R. 2, Cal., 202) and *Mackintosh v. Wingrove* (I. L. R. 4, Cal., 137). The special hardship to debtors would very probably consist in this, that if the bond gave no details of the way in which the principal was manipulated, or of the other details in which the real facts varied from the contents of the bond, debtors might be precluded by Section 92, Evidence Act, from showing the real particulars of the transaction.

6. It seems to me, then, that if the object of the Bill is to be really attained, it can be attained only by adding, a clause giving civil courts power to decree interest according to their discretion; nothing short of that will suffice to meet the extreme cases in which attempts will be made to defeat the object of the Bill. This of course is a very strong measure, and constitutes a grave infringement of the principle of freedom of contract; but the Bill proposes to restrict that principle, and it only remains to be decided whether the Legislature means to make the Bill secure the object desired. The addition might run thus: "Nor in any such suit shall interest be decreed which is, in the opinion of the court, exorbitant."

7. The Munsifs of Balasore and Jajpur suggest that paddy-debts and grain loans should be included, and this seems very reasonable, as loans are often made in kind in the mufassal. An explanation, therefore, might be added. "The expression 'money-debt' includes the money value of a debt due or loan made in the shape of agricultural produce." Also after the word "payable" in the explanation regarding "interest," the words "in money or in kind" might be inserted.

8. The Bill as framed does not make any distinction between interest before and after decree. The prohibition in it seems intended to apply only to interest which has accrued prior to the date of suit, and does not, I presume, prevent a court granting moderate interest on the total amount decreed till the date of realization. This matter might be rendered a little clearer.

No. 367, dated Muzaffarpur, 17 July 1895.

From A. W. Mackie, Esq., District Judge of Tirhut to the Under-Secretary to the Government of Bengal,
Judicial Department.

WITH reference to your No. 2113J., of the 13th April, and subsequent reminder, No. 3764J., dated the 10th July 1895, I have the honour to state that I find a unanimous opinion among the sub-judges and munsifs of this district in favour of the proposed Bill. On the whole, I am inclined to agree with them, as it would be possible to afford relief in, for example, a case where the creditor deliberately waited till limitation was about to take effect. At the same time I entertain considerable doubts whether the money-lending class will not be able to defeat the object of the Bill by deducting part of the principal, or by getting the original bond renewed with a new principal, including accrued interest. In both cases difficult and I am afraid frequently insoluble questions of fact would arise. The people of this country must have money on certain occasions, such as marriages and *sradhs*, when according to their ideas of honour money must be freely spent, and are then ready to sign anything, provided they get what they want. In this way they would not hesitate to sign a bond for a larger sum than they had received, but they would find considerable difficulty in proving they got a smaller sum. I may add in this connection that when Deputy Commissioner of Lohardoga, I was informed on more than one occasion of cases where landlords whose estates were being managed by the Encumbered Estates Department, and who under the Act were incapable of entering into any contract, obtained large sums on execution of post-dated bonds, so that while their debts were being paid off on the one hand, they were secretly incurring heavier liabilities on the other.

No. 701, dated Ranchi, 18 July 1895

From F. Cowley, Esq., Judicial Commissioner of Chota Nagpur, to the Chief Secretary to the
Government of Bengal.

I HAVE the honour to reply to your letter, No. 2113J., of the 13th April 1895.

2. I have consulted the nine munsifs and the two special subordinate judges in this division.

3 All the munsifs and one subordinate judge approve of the principle of the Bill, but the latter and four of the munsifs think the law should be so modified as to give the Courts a discretion in all cases in regard to the amount of interest to be awarded.

4. One

4. One subordinate judge, Babu Kedar Nath Mazumdar, is opposed to the principle of the Bill. He thinks it is useless to try to intervene between a person pressed for money and the man who is willing to lend money, unless we can deal with the causes which force men to borrow. A man urgently in need of money will always be ready to combine with the person who has money to lend in order to evade a law which stands in the way of obtaining the desired loan. He thinks the proposed Bill will, by throwing difficulties in the way, only render the terms on which money is lent the more onerous.

5. There is, I think, considerable force in this last view, but still there are undoubtedly many cases in which a court of equity might reasonably interfere as, for instance, where the interest paid has already been equal in amount to the original loan, and there are still assets from which that loan can be realised.

6. The Bill as it stands seems to me to be too absolute. There would be fewer attempts to evade it if some discretion in the matter were left to the courts. It would probably be sufficient were courts empowered to refuse to award interest exceeding in amount the original principal, or to award interest at other than current rates, where the interest already paid has exceeded in amount the original principle.

7. The explanation at the end of the Bill seems rather hard on honest debtors who might meet the demands for interest which other debtors would refuse to pay, in order to avail themselves of the benefit of the rest of the Bill.

8. In order to make the Bill of advantage to cultivators, its principle should be extended to grain bonds where the interest is payable in the form of grain.

9. If the Bill becomes law, it will be necessary to consider whether a clause should not be added to prevent it from clashing with section 86 of the Transfer of Property Act (*see* I. L. R. XX., Cal., page 360).

10. One of the effects of the Bill, if passed into law, will be to bring cases into court somewhat earlier than has been the case hitherto. But this will probably be to the advantage of the debtor, as it will compel him to face the fact of his debt, and to arrange for its payment before the accumulation of interest at exorbitant rates has rendered such a result impossible.

No. 987, dated Krishnagar, 19 July 1895.

From A. Ahmad, Esq., Offg. District Judge of Nadia, to the Under-Secretary to the Government of Bengal, Judicial Department.

IN reply to your letter No. 2113J., dated the 13th April 1895, forwarding copy of letter from the Government of India, Legislative Department, No. 587, dated the 13th March 1895, and its enclosures, for an expression of my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I have the honour to observe that the scope of the Bill under discussion is limited in its contents to the amount of the original principal. It would be better if the opportunity be taken to limit the amount of interest to 12 per cent., and if it could be enacted that a contract in simple money-debts and mortgage-debts in which the interest runs to more than 12 per cent. will be void, as has been legislated in the case of contract between landlord and tenants under the Bengal Tenancy Act. It may be urged, and with certain show of reason, that a creditor who is advancing money on doubtful security will be hampered in realising the full amount; but the creditor in such a case will take good care that the debtor does not deceive him, or the actual amount paid will not be shown, but double the amount will be shown in the deed, and only half the sum paid. This is often done in cases where minors have borrowed money from money-lenders.

2. I do not think the limiting of the rate of interest or empowering Courts of justice not to decree suit for more than 12 per cent., will be any practical hardship to a money-lender.

3. The "Explanation" in paragraph 3 of the Bill is, I think, not sufficiently clear, without defining the "original principal" mentioned in paragraph 2 of the Bill. It has been pointed to me that the object of the Legislature can be defeated if the mahajan, after the interest has exceeded the principal (the original principal as contemplated by the Legislature), forces the debtor to execute a fresh bond in which the principal and interest are joined together and designated as principal, and fresh interest charged. Then the "original principal" will be different from the one contemplated in the Bill. I therefore venture to suggest that the words "original principal" should also be explained, and following added to the explanation:—"Original principal" means the sum originally or actually advanced by the lender irrespective of any amount recited as principal in any subsequent bond, hatchita, &c.

4. I need hardly say that the necessity to legislate in this direction is recognised by everyone, and the sooner the law is amended as proposed above, the better for the people of this country, particularly the landlord and tenant classes, who are completely in the hands of their mahajans, and practically ousted out of their possessions and holdings. I do not think there is any country in the world where usury is practised to such an extent as is done in India. The former legislation has resulted in great political evils. A large body of once prosperous landowners and tenants who, if they have not lost their lands, are reduced to the position of bond slave to the banniah, and as such cannot render that assistance to Government as they did in former days; besides, it is morally wrong to allow unscrupulous banniahs to flourish in this way and actually force the hands of Courts of justice to be the instrument of ruining unsuspecting, ignorant, and careless people.

5. I may add that I consulted all the subordinate judicial officers in the district, and also the members of the local Bar, and they are all of the same opinion as myself. The Secretary of the Krishnagar Bar has the following suggestion to make, which, I think, deserves attention, and I accordingly quote it *in extenso* :—

"We venture to suggest that the object of the present legislation would be better attained by enacting a measure to the following effect, viz.—That when the interest is not compound, or when its rate does not exceed 12 per centum per annum, its amount shall be adjudged or decreed by the Court at the rate agreed upon by the parties; and that in any other case the Judge shall be entitled to go behind the bond, and throw on the lender the onus of proving that the contract was fair and reasonable."

EXTRACT from the letter of Sub-Judge, 2nd Court, Saran, No. 121, dated 5 July 1895.

(II).—Where the interest seems exorbitant or is compound, or exceeds 12 per cent. per annum, the Court shall require the lender to prove that the contract was fair and reasonable and fully understood by the debtor.

No. $\frac{1796}{XII-8}$, dated Mymensingh, 22 July 1895.

From *R. H. Anderson, Esq.*, District Judge of Mymensingh, to the Chief Secretary to the Government of Bengal.

WITH reference to your letter No. 2113J., dated the 13th April last, asking for my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I have the honour to report that I have taken the opinions of all the judicial officers in this district, and find they vary very much. Even those who think the Bill will be productive of some good, if passed into law, admit that its provisions can easily be evaded. A smaller sum will be actually advanced than is shown in the bond, or when the interest approaches the principal in amount, the creditor will exact a fresh bond, showing the total then due as principal and interest as principal only.

2. Again, it is said payments will be stipulated for in grain or kind, instead of cash. Debtors are mostly of the agricultural class. Some officers fear that even the debtors, who must have money at times, no matter on what terms, will collude with their creditors to evade the law framed for their own protection.

3. It is generally feared that the effect of such an Act as is proposed will be to lead to short loans and perpetual suits for interest to the very great harassment of debtors, and the ruin of many who now manage to get time from their mahajans, and eventually come to some agreement with them which fairly satisfies all sides.

4. Many officers think that the *rate* of legal interest should be laid down by law, but as the rate of interest current differs in different places, they admit the carrying out of the suggestion is difficult. Some would not allow interest over 12 per cent. per annum.

5. My opinion is that such an Act would be evaded, as I believe the law is in Bombay, and that after all the best course in a country like this is, in spite of the uncertainty, to leave it to the courts to decide in each case, on a consideration of all the circumstances, what interest should be allowed, no matter what the original agreement was. The only other course is to go on as at present trusting that education will slowly improve matters.

6. One or two technical points may be mentioned. The words "original capital" are considered vague. Do they mean the sum actually borrowed, or the sum apparently borrowed as it appears in the bond?

7. Will the Act apply to agreements for payment in kind? or to redemption suits?

8. How will the Act affect Sections 86 and 88 of the Transfer of Property Act, *i.e.*, as to the interest payable at the date of the suits or bonds?

9. Is simple money-debt to include or exclude rent?

No. 1019, dated Comilla, 24 July 1895.

From *H. R. H. Core, Esq.*, District Judge to Tippera, to the Under-Secretary to the Government of Bengal Judicial Department.

IN reply to your letter No. 2113J. of the 13th April last, on the subject of a Bill relating to the award of interest in certain suits, I have the honour to submit, for the information of the Lieutenant-Governor, my opinion on the provisions of the Bill. My opinion is, shortly, that the Bill should not become law. Such a law would, I think, be useless, or rather it would do much more harm than good. The only result of it would be to send the poor ignorant cultivator with greater rapidity to the ruin he is unhappily so often involved in. The money-lenders would take good care in various obvious ways enhancing the sufferings of the wretched debtors to nullify the effect of the new law as against themselves.

2. I believe it is enough to make the above remarks by way of destructive criticism: and I would only add that this view of mine is what I held at the first when the Bill came under my notice; and though I have consulted since many persons on the subject, and listened to numerous suggestions more or less impracticable and injudicious in my opinion, I do not see my way to any sort of approval of the Bill.

3. In this district the interest is often very high, and small sums grow very large in rather brief periods, and the people are commonly exceedingly stupid and ignorant. Some protection might be afforded to the inhabitants of this district, if of any: but it is not easy to propose a satisfactory measure. There is section 74 of the Contract Act, which is something giving discretion to the Courts in penalty cases, and there is also the understanding that hard and unconscionable bargains can be relieved against.

4. If only in the latter cases the Courts could be allowed a little more scope and power of giving relief, it would be well; but the High Courts are not, in my view, liberal enough in this connexion, and the lower Courts, I believe are often afraid naturally to give effect to their desires to protect poor, ignorant, weak-minded yokels from semi-dishonest mahajans and their iniquitous bargains; because these Courts feel they would probably be going beyond the rulings.

5. I can only suggest myself, as possibly about the best plan to adopt, a provision of law defining or describing the sort of the "unconscionable" bargains which the Courts might modify. But I write this with much diffidence, and I am rather inclined to hold that the law should be left as it is.

Dated Calcutta, 29 July 1895.

From *A. F. M. Abdur Rahman, Esq.*, Honorary Secretary to the Muhammadan Literary Society of Calcutta, to the Under-Secretary to the Government of Bengal, Judicial Department.

I AM directed to acknowledge the receipt of your letter No. 2114J., dated the 13th April 1895, asking the Muhammadan Literary Society for their opinion on the Bill, to regulate the award of interest in suits for simple money debts and mortgage debts.

In reply, I have to state that the Muhammadan community would gladly accept a rule of limitation upon high and unreasonable rate of interest in money and mortgage debts. The provisions of the Bill are likely to remove a longstanding anomaly, and restrain, to a considerable extent, hard and unconscionable bargains. The committee of management therefore approve of the Bill, and are of opinion that interest in excess of principal should not be decreed, and that when the interest is compound or exceeds 12 per cent., the Judge should satisfy himself that the transaction was fair and reasonable.

No. 2T., dated Camp Balasore, 23 July 1895.

From *H. G. Cooke*, Esq., Commissioner of the Orissa Division, to the Chief Secretary to the Government of Bengal.

WITH reference to your No. 2113J., of 13th April 1895, on the subject of a Bill to regulate the award of interest in suits for simple-money debts, I have the honour to report as follows:—

Mr. Maude of Cuttack and Mr. De of Balasore briefly approve the provisions of the Bill. Mr. Wylly of Angul thinks that "creditors will find means to counteract the provisions of the Bill in some way or other impossible at present to foretell, but to their own advantage," and proceeds to propose an alternative plan, which appears to me to be open to precisely the objection Mr. Wylly makes to the present Bill.

2. Mr. Sen of Puri has written by far the most thoughtful report of any of the District Officers. I entirely agree with the first two paragraphs of his letter. I do not believe in his third paragraph, which proposes to leave it to the Courts to decide the amount of interest in each case. This expedient is open to exactly the same objections that Mr. Sen alleges against the Bill, by rendering the amount of interest to be recovered doubtful; it will make the creditor more chary of lending, and when he does lend, he will protect himself against possible loss arising from the action of the Court, by taking a bond for a sum much in excess of that actually received by the debtor; any benefits that may ostensibly arise from the application of the provisions of the Bill will have been previously discounted at the time the loan was given.

3. I consider that the measure, if it becomes law, whatever its immediate effect may be, will ultimately make the raising of loans more difficult, and the terms on which money is lent more oppressive, and that even after allowing credit for the amount by which the debtor is apparently benefited by a decree passed in accordance with the Bill, the debtor will, by reason of the terms of the loan, be found to be worse off than he is at present.

4. I enclose a copy of Mr. Sen's report.

No. 896, dated Puri, 18 June 1895.

From *A. C. Sen*, Esq., Officiating Collector of Puri, to the Commissioner of the Orissa Division.

WITH reference to your memorandum No. 701R., dated 8th ultimo, forwarding for report copy of a letter from the Government in the Judicial Department, No. 2113, dated 13th April 1895, with enclosure, on the subject of a Bill to regulate award of interest in suits for simple money-debts and mortgage-debts, I have the honour to submit as follows:—

2. There can be no doubt that the subject-matter of the Bill is one of very great importance. If anything more than others has tended to prevent the mass of the population from making the progress that could be expected from the peaceful British rule in India, it is, I believe, the strictness with which, in all our civil courts, the mahajans have been allowed to enforce their claims against the poor people who had been obliged to borrow money from them. The mahajans, of course, always existed in India, and the poor people used also always to borrow money at exorbitant rates, but formerly, owing to the disturbed condition of the country, the mahajans had not half that facility for realizing their dues which they now possess. Anything tending, in the least degree, to protect the poor from the clutches of the money lending classes ought to be welcome. But the matter is beset with such difficulties, as to appear quite a hopeless one. Certain it is that the present Bill is far from being an adequate remedy or any remedy at all—nay, its practical effect may be to place the poor people in worse condition than they are at present. For it is not unlikely that by our placing a limit to the rate of interest the lenders will be less willing to give loans to the poor than they are now, or they may try to make up what they would regard a loss in other ways, e.g., by taking a bond for an amount considerably greater than what is lent.

3. After giving the subject my best consideration, the only remedy I am able to suggest in place of that contained in the Bill is the following:—

"In all simple money and mortgage suits, notwithstanding the stipulation entered in the bond on the mortgage deed as to rate of interest, it will be in the discretion of the Court to allow such a rate, which, considering all the circumstances of the case, it thinks just and equitable." This is no doubt vague and indefinite, and it is not unlikely that its practical results, in the different Courts, will, for some time at least, be very different. But I do not think any hard and fast rule will meet the requirements of all cases, and the good sense possessed by the generality of our Courts makes me firmly believe that the discretionary power, will, on the whole, be rightly exercised, and justice done.

Dated Calcutta, 22 July 1895. From *G. Hickie*, Esq., Secretary to the Calcutta Trades Association, to the Chief Secretary to the Government of Bengal.

THE Committee of the Trades Association have considered the Bill forwarded with your letter No. 2114J., dated 13 April 1895, to regulate the award of interest in suits for simple money-debts and mortgage-debts, and I have now the honour to submit the following remarks.

2. Viewing the Bill as a proposed law in restriction of usury, it is doubtful whether it would fulfil its object, experience having shown that usury laws have not succeeded in producing their desired effect. If the present Bill is passed, the Committee see no reason to suppose it would meet with any different fate. It might, in isolated cases, effect its object, but this would, in a large number of cases, be defeated where the obvious device of naming a fictitious amount of money advanced was resorted to by the unscrupulous lender; and against this fraudulent evasion of the law it would seem to be impossible to provide.

But while expressing the above opinion, the Committee of the Association would wish it to be understood that they quite approve of the principle and objects of the Bill, on the grounds that the indebtedness of the land-owning classes in some parts of India, and the transfer of their property to the money-lending class by the action of the law, entail not only very serious personal hardships, but constitute a grave political danger. The Committee of the Association would therefore suggest that provision be made in the Bill for a short period of limitation in respect of suits for money advanced on the security of crops or land, and that the latter shall not be attachable under decrees for money lent.

No. 51R.G., dated Calcutta, 15 July 1895.

From *E. V. Westmacott*, Esq., Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal.

WITH reference to your No. 2113J., of the 13th April 1895, I have the honour to annex an abstract of the opinions of the officers whom I have consulted on the subject.

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2. The attempt by legal enactment to limit the profits of lending money has been made again and again in the history of the world, and in British India there were usury laws until 1855, when they were repealed by Act XXVIII. of that year. Such laws always appeal to benevolent and sentimental persons, and are popular; but I believe I am right, though I have not studied the history of the subject deeply, in thinking that no competent statesman would, in view of the experience of centuries, hold their renewal to be worthy of consideration. I feel that it would be presumptuous in me, without some study, to discuss the subject, but the following is in brief the view that I take. Either the law would be effective in limiting the amount of interest which a lender could recover, or it would be evaded and rendered inefficacious. If effective, it must be remembered that there are improvident borrowers, who are reckless in contracting obligations so long as they can obtain ready money; there are also keen calculating men of business, who consider it worth while to borrow at enormously heavy interest for short periods, in view of the probability of securing still more enormous profits from the immediate use of the ready money. Even if it is held to be the duty of the State to protect the former class of borrower from the consequences of their own recklessness, which I think doubtful, I believe that interference with the latter class of borrowers would be positively mischievous. The proposed legislation would greatly depreciate the security; as the courts of law would not assist the lender to recover, and the interest would increase in proportion to the depreciation of the security. In this country, as Mr. Roe has justly pointed out, the mischief has been done, and interest vastly in excess of the principal has been recovered before the lender comes into court, and in such case the protection given eventually to the borrower does not amount to much. The proposed law would, however, easily be evaded, as several of the officers whose opinions I have quoted have pointed out, by a system of renewals. A loan of a hundred rupees is taken, and the law will not allow the recovery of more than a hundred rupees as interest. Payment after payment is made, but still the balance of interest due amounts to ninety-nine rupees. The lender has no wish to release his victim by going into Court and placing his affairs at the discretion of a sentimental Judge. He sends for the debtor, lends him two hundred rupees, takes repayment of a hundred and ninety-nine, and starts fresh on a new bond. It may be urged that the courts will go behind this bond, and inquire into the original debt, perhaps after three or four such renewals. I do not believe that the courts would succeed, even if they tried, in doing anything of the kind. I firmly believe that such legislation as is proposed would be mischievous, and if I could be persuaded that it would not, I am still more firmly convinced that it would be inefficacious. I am certain that a study of the history of usury laws and their results all over the world would support my opinion.

ABSTRACT of the opinions of the Districts Officers in the Presidency Division, on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

Mr. E. W. Collin, Officiating Collector of the 24-Parganas, says that it is impossible not to approve generally of the proposed legislation, but the Bill, as it now stands, is open to objections. First of all the collector says that the statement of objects and reasons does not refer to the special case which has led to the introduction of the Bill, and it is not therefore easy to judge of the necessity of the proposed legislation. The collector then states that the Bill, if passed into law, is to have retrospective effect, and to apply to debts contracted before the proposed change of law. It allows the Court no discretion to discriminate between the different classes of debtors. If legislation in the matter is necessary, it would be preferable to give the Court a discretion as to the amount of interest to be decreed. The rate of interest which is fairly recoverable on a loan depends upon the class of security, and the good or bad prospects of recovering the principal at the time the debt was incurred. A mortgage-debt where homestead lands are pledged, stands on a different footing from a money-debt, where moveable property is the only security. It would therefore be better to allow the Court some power to discriminate between cases where a high rate of interest might reasonably be allowed, and where the exaction of the full bond would be productive of hardship. Mr. Collin further says that the proposed Bill would have another bad effect, viz., that it would either compel the creditor to sue for debts, or the debtor to repay or renew loans, as soon as the interest equals the principal, and this would be injurious to the debtors, as will be seen from the example given below.

Suppose a man contracts a loan of Rs. 100 at 20 per cent. The creditor would be obliged to sue at the end of five years. It is probable that it would be inconvenient for the debtor to pay at the time, especially if he is an agriculturist (who makes up the largest class of debtors), who depends on his harvests and the seasons for opportunities to pay off his debts. Thus, if the debtor is pressed at inconvenient times, he would be obliged to undergo a fresh loan of Rs. 100 or Rs. 200 at the same rate of interest, and at the end of another five years he would have to pay Rs. 400, instead of Rs. 300 if he had kept on with the old debt.

Mr. Collin is, therefore, of opinion that the proposed Bill will yield no good result, but he considers it necessary that something should be done to obviate such hard cases as are referred to in the statement of objects and reasons of the Bill.

2. Mr. J. H. E. Garrett, Officiating Collector of Nadia, forwards a copy of a note drawn up by the deputy collector, Babu Mohendra Nath Bhattacharjee, on the provisions of the Bill. In his note the deputy collector explains how the usury laws in this country developed, and how their repeal in 1855 has very hardly operated upon the poorer classes of raiyats. The present Bill, the deputy collector says, if passed into law, will prevent the rapacious money-lender from recovering more than the amount lent on account of interest. The provisions of the Bill, he says, are strictly in accordance with the idea prevailing in the country that no lender should be allowed to realise more than double the amount he lent. The deputy collector suggests that the rate of interest should also be regulated so that no creditor may realise double the amount advanced, except in a given number of years. No Court should give a decree for interest exceeding the amount of principal in any case whatever, nor should any Court give interest to the creditor up to that amount unless the debt was contracted three, four, or five years before the institution of the suit.

Mr. Garrett says that he fully agrees with the opinion of Babu Mohendra Nath Bhattacharjee, and that he is strongly in favour of a legal limit of annual interest. He suggests that it should also be laid down that no Court shall decree interest at a higher rate than 25 per cent. per annum. As long as the rate of interest is not controlled, the money-lender's victims will get no protection, for the only effect of the Bill, as it now stands, will be that the suit will be instituted sooner than it would otherwise have been.

3. Mr. J. Webster, Officiating Collector of Murshidabad, says that there cannot be two opinions as to the desirability of the proposed legislation, as it will afford protection to the agricultural and petty trading classes against the exactions of the professional money-lenders. But he says some doubt has been expressed by the officers consulted by him in the matter as to the probable efficacy of the proposed remedy. The sub-divisional officers in his district are of opinion that the money-lender will, if he chooses, successfully evade the law by causing the bonds to be renewed periodically, and that the Act would prove disadvantageous to the creditors, as it would probably put a stop to the practice of crediting payments in part against the principal even when there is interest outstanding.

The collector, however, does not see that these difficulties will prevent the Act as framed from proving a real benefit to the debtor, and by compelling the money-lender to seek the aid of the Court for the recovery of his dues before the interest has reached the extravagant proportion which it frequently does, will protect the agriculturist, against the consequences of their own stupidity. Only in occasional instances the creditors will be able to compel the debtors to renew bonds against their own interest.

4. Mr. F. R. Roe, Officiating Collector of Jessore, says that in his opinion the Bill, as it stands, would not cover sufficient ground to relieve the evil against which it is directed. He entertains no doubt as to the desirability of
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some enactment to prevent the present extortionate treatment of needy cultivators by mahajans, but that enactment must be so drawn as to exclude from its operation those temporary accommodations which are absolutely necessary in commercial transactions. Mr. Roe says that he has had some experience of mahajans' ways and methods as Munsif, Sub-Judge and Subdivisional Officer of the Sadar subdivision in the Sonthal Parganas. By the rent regulations of 1886 it was enacted that interest at a higher rate than 2 per cent. per mensem was not to be given, but the provision of this regulation was evaded by the mahajans by persuading their debtors to execute fresh bonds at the expiration of every three years, and suing only on the final bonds. The Courts held that postponement of legal measures was "fresh consideration," and that these bonds were valid. In Regulation V. of 1893, therefore, a section was included to the effect that no interest could be given exceeding 2 per cent. per mensem, that no compound interest was to be given, that no amount should be decreed double the original principal, and that an intermediate adjustment of accounts and omissions to sue did not constitute fresh consideration. But this provision was also to a great extent inoperative, owing to the fact that the mahajan never comes to Court until he has sucked his victim dry. In most cases a raiyat's account with his mahajan runs on for years and years with small loans and large payments each month. Periodically the debtor signs the mahajan's accounts, acknowledging his indebtedness, and occasionally makes over a cow, or a bullock, or a bigha of land, when the accounts have grown unduly large. The matter never comes into Court unless there is a quarrel or a death among the parties. It is then impossible for the Court to find out what the original principal was, and it should therefore presume that the whole of the last bond or acknowledgment is interest, and give no interest on it. This, Mr. Roe thinks, is the most that can be done, and the principle of the usury clauses of Regulation V. of 1893 might, with great advantage, be extended to the whole of India.

The Bill as at present proposed would, the collector thinks, only drive the mahajan earlier into Court, and he proposes the following amendment:—

(1) No Civil Court shall in any suit instituted after the commencement of this Act decree or award interest exceeding in amount the proportion of the original principal, or where there has been payment in reduction of the principal, exceeding in amount the proportion of the reduced principal given in Schedule A:—

SCHEDULE A.

	Per cent.
1. For debt incurred or reduced less than 1 year before the institution of the suit ...	18
2. For debt incurred or reduced less than 2 years before the institution of the suit ...	30
3. For debt incurred or reduced less than 3 years before the institution of the suit ...	36
4. For debt incurred or reduced less than 4 years before the institution of the suit ...	48
5. For debt incurred or reduced less than 5 years before the institution of the suit ...	60
6. For debt incurred or reduced less than 6 years before the institution of the suit ...	72
7. For debt incurred or reduced less than 7 years before the institution of the suit ...	84
8. For debt incurred or reduced less than 8 years before the institution of the suit ...	96
Any longer periods	100

(2) The original principal shall mean the value of money or goods actually advanced in the original transactions.

(3) Reduced principal shall mean the amount of principal remaining unliquidated after deducting as interest from any gross payment made a sum not exceeding 1 per cent. per mensem on the principal or reduced principal incurred or left unliquidated at the last date of payment.

(4) No interest on interest shall be decreed or awarded.

(5) The Court shall presume, until evidence is given to the contrary, that the whole amount set forth as liability in any document executed in cancellation of any previous document is interest, and shall award no interest thereon.

(6) The original principal, when it consists in goods supplied, shall be taken to be the money value of such goods at the time of the transactions.

(7) Intermediate payments, when made in kind, shall be taken to be the money value of the payment made at the current rate at the date of payment.

5. Mr. F. N. Fischer, Officiating Collector of Khulna, is of opinion that the proposed Bill, when passed into law, will be a safeguard to some extent against the extortions of money-lenders. He considers that it would be better if the word "included" be substituted for "exclusive" in the third line of the explanation to the Bill, or otherwise little advantage would accrue to the debtors. The collector adds that although the amendment suggested by him be accepted, the creditors would derive new means to frustrate the purposes of the law by compelling the debtors to renew their bonds at short intervals, including both the principal and the accumulated interest as principal in the new bond, but still the proposed Bill is calculated to benefit the debtors on the whole.

No. 652G, dated Boalia, 24 April 1895.

From A. E. Staley, Esq., District Judge of Rajshahi, to the Chief Secretary to the Government of Bengal.

WITH reference to letter No. 2113J., dated 13th instant, calling for my opinion on the provisions of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I have the honour to state as follows:—

2. The provisions of the proposed Bill will, if enforced, I believe be beneficial. In order, however, to avoid any possible injustice, I would suggest that after the words "no civil court" shall be inserted the words "except for special reasons to be recorded in writing."

3. I believe every judicial officer will agree that there is need of some such provisions as those suggested; and every court will afford cases showing the need of them.

4. A recent case which came under notice in my court was this:—

A, being a solvent and well-to-do landowner, with a clear yearly income of some 50,000 rupees, borrowed from a plowder 10,000 rupees at heavy interest, at a short due date. A shortly after died, leaving as heir a minor son.

The guardian was a personal friend of that pleader, who generally appeared for the guardian in the guardian's own litigation.

The debt and interest were not paid, though the estate was quite solvent, and the pleader did not sue. In six years the debt had increased from 10,000 rupees to 40,000 rupees, and the pleader sued and got a decree.

5. Landlords

5. Landlords frequently use the law in this way. Rent is not demanded or is not taken from a raiyat : it is allowed to accumulate. Then a suit is instituted or threat is made of a suit for three years' arrears, costs, interest at 12 per cent., and damages at 25 per cent., increasing the amount by 50 per cent. and more, and the tenant then gives a money- or mortgage-bond at heavy interest for the amount. This again is allowed to run on at interest, till in a few years the raiyat is hopelessly involved, and must agree to any terms of enhancement or loss of rights his landlord pleases. I am referring generally to the smaller landowners and middlemen.

(No. 164.)

From *T. W. Richardson, Esq.*, Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, to the Secretary to the Government of India, Legislative Department.

High Court, English Department, Civil. Present, the Full Court.

Sir,

Dated Calcutta, 24 January 1896.

I AM directed to acknowledge the receipt of Mr. Macpherson's letter No. 597, dated the 13th March last, requesting an expression of the opinion of the Judges on the provisions of a Bill (therewith forwarded) to regulate the award of interest in suits for simple money-debts and mortgage-debts. In reply I am to request that the following remarks may be laid before His Excellency the Governor General in Council.

2. The object which the Bill aims at is doubtless laudable, and the evil which it is intended to remove does to a great extent exist, but the provisions of the Bill are not, in the opinion of the majority of the Judges, likely to secure the desired end, and the principle of limiting the amount recoverable as interest by a hard-and-fast rule is one of which they cannot express approval.

3. The payment of interest, I am to say, may affect the borrower injuriously, either by reason of the rate of interest being excessive, or by reason of the amount of interest, even though the rate be moderate, being allowed to accumulate. The Bill, it is observed, leaves the former source of evil untouched, and only seeks to provide against the latter, though the blame, if any, attaching to the lender must be greater in the former case than in the latter. And further, no distinction is made between cases in which the institution of a suit is purposely delayed and the interest allowed to accumulate for the sole benefit of the creditor, and cases in which the delay in suing is due to the debtor asking for time. The Judges think that, even if the principle of the Bill be accepted, still a distinction should be made between the two classes of Cases referred to.

4. The Judges, again, are not satisfied that the Bill, as framed, is likely to secure much practical good. Debts remain unpaid and go on increasing, either from inability of the debtor to pay or from his unwillingness to part with his property to clear off his liabilities. There is not much danger of the creditor allowing interest to accumulate in the former case ; and it is only in the latter that such a contingency might happen. But in such cases the proposed law can do very little towards remedying the evil. If the Bill becomes law, and the creditor has to sue before the interest equals the principal, the debtor who is unwilling to part with his property to pay off his debt will very often have to contract a fresh loan from some other creditor or the same creditor *benami*, and thus, in place of the interest running on the original principal alone, it will run on the sum total of that amount and the interest due.

5. In some few cases, no doubt, the evil of interest accumulating might be prevented by the proposed law ; but the amount of good likely to result is not, in the opinion of the Judges, sufficient to justify legislation of such doubtful propriety, to say nothing of the demoralising effect of the law in making parties resort to devices for evading its provisions.

6. I am to say, therefore, that the Judges do not approve of a Bill of the character proposed. In connection with the subject, however, I am to refer you to their letter No. 1769, dated the 14th August 1894, to the Government of India, in the Home Department, regarding certain proposed changes in the general law of British India, which were originally suggested in a resolution of the Government of India, dealing with the Deccan Agriculturalists' Relief Act (XVII. of 1879).

7. I am to add that Mr. Justice Pigot is in favour of the Bill, and proposes to say a few words upon the subject in a separate minute. Mr. Justice Ameer Ali also dissents from some of the observations made in this letter, and proposes to state his views separately.

I have, &c.,

Registrar.

From *T. W. Richardson, Esq.*, Officiating Registrar, High Court, Calcutta, to Secretary to Government of India, Home Department,—(No. 1769, dated 14 August 1894).

I AM directed to acknowledge the receipt of your letter, No. 616, dated the 4th June 1894, asking for an expression of the opinion of the Judges on certain proposed changes in the general law of British India, which were originally suggested in a resolution of the Government of India, No. 17 Judicial, 1497—1502, dated the 20th November 1891, dealing with the Dekkhan Agriculturalists' Relief Act (XVII. of 1879), an abstract from which is forwarded with your letter. In reply, I am to request that the following observations of the Court may be laid before His Excellency the Governor General in Council.

2. The changes referred to are set out in paragraph 4 of your letter under two heads : the first relating to changes in the Usury Laws Repealing Act (XXVIII. of 1855) and the Contract Act (IX. of 1872) ; and the second to changes in the Evidence Act (I. of 1872). Under the first head are grouped two proposals, which are in fact distinct and admit of separate consideration : these are :—

(a) To amend the law regarding usury, so as to make it clear by a specific enactment to that effect that the Courts before awarding stipulated interest shall be bound to inquire as to coercion, undue influence, fraud, or misrepresentation, whenever there is a reasonable suspicion of any of these :

(b) To provide in the Contract Act that the taking an undue advantage of a debtor's simplicity or necessities shall, equally with coercion, undue influence, &c., render an agreement voidable.

3. The Judges, I am to say, are opposed to the former of these two proposals. However desirable or necessary it may be to protect by special legislation particular classes of persons in particular localities, such as the agriculturalists of the Dekkhan, for whom Act XVII. of 1879 was enacted, the Judges consider it highly undesirable and wholly unnecessary to change the general law of British India so as to make it obligatory on the Courts, before awarding stipulated interest, to inquire of their own motion as to coercion, undue influence, &c., upon mere suspicion, however reasonable, when the party liable to pay does not raise the objection. The Judges consider any such change undesirable, because the Court, not knowing the facts beforehand, might view with suspicion many circumstances not really suspicious, and might thus be led, unasked by any party into useless inquiries entailing much

much waste of time and expense. And they consider the change unnecessary because, however much the debtor may be under the influence of the creditor when contracting the loan and stipulating as to the rate of interest, after the institution of the suit the parties almost invariably are at arm's length, and the debtor has, and as a rule avails himself of, every opportunity of contesting the claim on all possible grounds.

4. Where an objection is raised that the stipulation for interest was entered into under coercion or undue influence or the like, under the existing law the Court is bound to inquire into the objection. Section 2 of Act XXVIII. of 1855 provides for the award of interest at the rate agreed upon, and when the agreement as to the rate is impugned on any ground, the Court must inquire into the objection before it can give effect to the agreement.

5. The second proposal grouped under the first head requires, the Judges think, careful consideration. The existing law as contained in the Contract Act contains no provision for invalidating an agreement on the ground of the creditor's taking an undue advantage of the simplicity or the necessities of the debtor; but there are cases in the books in which Courts of Equity have interfered upon this ground, and to the extent to which those cases go the Judges see no objection to the amendment of the Contract Act. The difficulty lies in framing the provision so as to make it sufficiently definite for practical purposes, to include all cases that ought to be provided for and to exclude every other case. Of course, the simplicity or the necessity of the debtor is not in itself sufficient to avoid the contract. It is undue advantage taken of either that constitutes the invalidating circumstance. And the ultimate test as to whether such undue advantage has been taken or not can only be found, the Judges apprehend, in the inquiry as to whether the transaction was or was not a hard and an unconscionable one. (See *Beyon v. Cook*, L.R., 10 Ch. 389; *Kamini Sundari v. Kali Prasanna*, L.R., 12 I.A. 215.) If the provision is so restricted as to apply only to cases of hard and unconscionable bargains against which equity gives relief, the change, the Judges think, is unobjectionable. Possibly the change might be best effected by inserting a section defining "undue advantage," and amending Section 19 so as to make the contract voidable when consent has been obtained by "undue advantage."

6. In connection with this proposed change in the provisions of the Contract Act relating to voidable agreements, the Judges would suggest that Section 64 of the Act be at the same time amended so as to enable the Court, when it thinks fit, to award to the party against whom rescission of a voidable contract is decreed, compensation in addition to, or in lieu of, the benefit to be restored to such party under that section. The English Courts of Equity allow interest at a moderate rate in addition to the sum actually advanced. (See L.R., 10 Ch. 389.) Again, restitution may be impossible in some cases; but the section, as it now stands, contains no provision for compensation in any other form.

7. Under the second head of changes suggested, it is proposed "by additions to the Evidence Act to enable the Court to require independent evidence of the transaction, if it disbelieves or doubts the recorded consideration; and likewise to require proof of *bona fides* from the party who contracted when in a position of decided advantage.

It appears from paragraph 37 of the resolution already referred to, that the Government of India contemplate effecting these changes by making the following additions to the Evidence Act:—

"Section 92, Proviso 1A.—In any action founded upon a written contract for the payment of money, if the Court has reason to suspect that the true consideration for the contract is other than that which appears upon the face of the document, it may, if it shall think fit, require the plaintiff to prove his case by evidence independent of the document."

"Section 111A.—In any action founded on contract, if from all the circumstances of the case the Court is of opinion that the parties were not at the date of the contract upon equal terms with respect thereto, it may, if it shall think fit, require the party with whom the advantage lay to prove the good faith of the transaction."

8. The Judges, I am to say, consider the former of these two amendments to be undesirable and unnecessary. They are of opinion that the statement in a document as to the nature and amount of the consideration should, like the analogous instance of the recital of the receipt of consideration (as to which see *Fuli Bibi v. Basiruddin*, XII. Weekly Reporter, F.B. 25) be *prima facie* evidence against the debtor; and the burden should lie upon him, if he denies the correctness of the statement, to prove his allegation by evidence, which he can do under the existing proviso (1) of Section 92 of the Evidence Act, when the statement as to consideration comes within the substantive part of the section, or independently of the proviso when the statement is outside the scope of the section. (See L.L.R., 3 Cal. 184.) If, for example, by the terms of a contract, a person made himself liable to pay at a future date a sum in excess of that stated to have been received by him, it would be open to him under proviso (1) to prove any fact which would entitle him to be relieved from the performance of the contract. If, on the other hand, the plea raised was that the debtor had not received the full consideration stated in the contract, the terms of the section would not prevent him from giving evidence in support of the plea. The Judges do not think, therefore, that it is either desirable or necessary to change the law so as to make suspicion a ground for shifting the burden of proof.

9. As regards the latter amendment, although there are several objections to the wording of it, which they are not invited to criticise, the Judges, I am to say, approve the principle on which it is based, and which requires that where a person in a position of decided advantage enters into a contract, which *prima facie* appears to be unfair, he should be called upon to establish its fairness. This is a principle that is followed by Courts of Equity in England (see *Earl of Aylesford v. Morris*, L.R., 8 Ch. 495), and by the Courts in this country, more particularly in the case of persons dealing with *pardanashin* women. The principle is in truth very similar to that enunciated in Section 111 of the Evidence Act, and merely extends to cases of undue advantage the rule which is therein laid down as applicable in certain cases of undue influence.

From the Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Legislative Department, Shillong, 12 September 1895.

In the debate on the Bill in Council, it was pointed out that, unless provisions in restraint of bargains between money-lenders and their debtors are very carefully framed, they always tend to the injury of the debtor, and the old Usury Laws in England were quoted as an instance of measures which aggravated the evil they were intended to cure. This view seems to be shared by many of the District Officers and Native gentlemen consulted in this province, who, although they sympathise with the object of the Bill, consider that little difficulty would be experienced in evading its provisions, and that the ultimate result of the measure would probably be that debtors would experience greater difficulty in obtaining small loans, that the actual, as distinct from the nominal, rate of interest would be raised, and that the number of suits for the recovery of loans would be increased. The Chief Commissioner, I am to say, is disposed to agree generally in these conclusions, and he considers that those cases in which the creditor takes advantage of the necessities or ignorance of the borrower to charge exorbitant interest, would perhaps best be met by allowing discretion to Civil Courts to reduce the amount of interest claimed in cases in which the interest exceeds the principal, or the principal as reduced by subsequent payments.

No. 207-'96, dated Calcutta, 31 January 1896.

From *S. E. J. Clark*, Esq., Secretary, Bengal Chamber of Commerce, to the Chief Secretary to the Government of Bengal.

REFERRING to your letter No. 4244J., dated the 3rd August 1895, I am now directed to say that, after a full and careful consideration of all the information available to them on the subject of the Bill to regulate the award of interest for simple money-debts and mortgage-debts introduced into the Council of the Governor-General for making Laws and Regulations by the Hon'ble Mr. Mohiny Mohan Roy, the Committee of the Chamber of Commerce are unable to accord their support to such a measure.

The Committee admit that there are evils connected with the practice at which the measure is aimed, which demand the closest attention of Government, but they cannot see how these evils would be dealt with by so crude a measure as that under consideration. Without going so far as at this time to suggest an alternative proposal, the Committee incline to the view that an extended power to Judges in equity might be surer and safer than an attempt to legislate on particulars.

No. 115, dated Fort Aijal, 14 May 1895.

From *A. Porteous*, Esq., I.C.S. Officiating Political Officer, North Lushai Hills, to the Secretary to the Chief Commissioner of Assam.

IN reply to your No.39L&L.—1871-75J., dated the 11th April 1895, asking for an expression of my opinion on "The award of Interest Bill," I have the honour to state that the Bill appears to me to be one that can do little harm but equally little good.

Money-lenders will, if the Bill be passed into law, fix their rate of interest at a higher figure and sue earlier than at present, thus giving the Courts of Law more work, but the final result will be little or no relief to victims of extortionate interest, except where, through oversight, creditors allow the time at which the debt has doubled itself to pass without suing.

No. 1201, dated Shillong, 15 May 1895.

From *J. J. S. Driberg*, Esq., Inspector General of Police, Assam, to the Secretary to the Chief Commissioner of Assam.

I HAVE the honour to acknowledge receipt of your letter No.31L&L.—1629-33J. of the 27th March 1895, forwarding, for report a copy of the Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

2. No doubt the evil which it is contemplated the Bill, if passed into law, will lessen, 's a most serious one, but still I cannot help thinking that our efforts can so easily be set aside by the persons interested—by the lender and the borrower. It will be easy to put in a bond an amount as lent far in excess of the real loan, and in most cases the borrower would agree. Again, in the event of the Bill being passed into law, debtors will probably find it more difficult to renew bonds. But, after all, the Bill only proposes to make applicable by law to the whole of India the rule of *damdapat*, which now applies to certain portions of the country only; and if this rule of Hindu law works well in those portions, it may possibly be successful generally.

3. I may state that I have consulted several native gentlemen, and they all, on the whole, give their support to the Bill, though they seem to think that it may possibly, if passed, make it more difficult for men to borrow money, and may possibly make it more expensive to the borrowers; and this is really what has occurred to me, too.

No. 867, dated Gauhati, 17 May 1895.

From *R. B. McCabe*, Esq., I.C.S., Deputy Commissioner, Kamrup, to the Commissioner of the Assam Valley Districts.

IN reply to your memorandum No. 607, dated the 18th April 1895, I have the honour to report as follows:

"THE AWARD OF INTEREST BILL."

2. I am of opinion that it is extremely inadvisable that this Bill become law. Practical experience for centuries past has proved that any law restraining bargains between money-lenders and their debtors, always results in injury to the debtor. It is inexpedient to limit a man's power to contract, and, in fact, I would say that it is practically impossible to do so, there being so many ways of evading the provisions of any law making such restrictions.

3. It appears to me that the debtor enjoys full protection under the existing administration of the law. While it is only right that a bargain into which a man enters, with his eyes open, be strictly enforced, yet, on the other hand, the Courts, in a spirit of equity, take into consideration the attendant circumstances, and in cases of hard bargains not falling within the rule of reasonableness, give relief to the debtor by limiting the rate of interest.

4. As the High Courts of India have given so many and discrepant decisions with reference to this question of interest, I would suggest that a bill be framed, to the effect that where a contract to pay interest has been made, the question of the reduction of the rate of interest be left to the original Court disposing of the case, and shall not be a subject of appeal.

MINUTE by the Honourable Mr. Justice Ameer Ali.

I REGRET I cannot agree with my learned Colleagues in the view they take of the measure introduced by the Honourable Mohini Mohun Roy into the Viceregal Council. The object of his Bill is to restrict the lender's right to recover a larger amount by way of interest than the principal sum advanced.

For myself, I consider that the proposed enactment falls far short of what the exigencies of the situation require. As I have repeatedly pointed out, the principles which regulate the freedom of contracts in more advanced countries are wholly inapplicable to India. The half-educated zemindar dealing with the astute mahajan or pleader (who often, in these days, combines the business of money-lending with the practice of law), and the ignorant ryot dealing with the sharp village bunniah or mukhtar can hardly be said to be contracting on equal terms. To allow a free hand to money-lenders, has, in its result, proved disastrous to the best interests of the country. Property is constantly changing hands. There is no stability or security of any kind. The propertied class do nothing for their own improvement, or for the improvement of their ryots. And the pauperisation of the old families, ruined by our civilised legal machinery, does not conduce to the popularity of the Government. I think, therefore, that any attempt to minimise the evil from which the country is suffering ought to be cordially welcomed. In this view, I emphatically approve of the Honourable Mohini Mohun Roy's Bill.

At

At the same time, in order to make it more effective, I would suggest that power be given to the Civil Court to reduce the rate of interest agreed between the borrower and lender, whenever it considers that such rate is excessive, extortionate, or unconscionable, as well as to make the decretal amount, whenever expedient, payable by instalments.

If the Courts were also vested with the power of appointing a receiver to take charge of immoveable property (against which execution was sought either upon a money decree or a decree upon a mortgage), and to liquidate the debt by its rents and profits, it would go a long way to stop the destruction of families, which is going on in the country at the hands of money-lenders of all classes and degrees; and, by giving security to the propertied classes, would not only advance the interests of good government, but also develop among them a desire for material improvement.

In conclusion, I wish to add that I consider the apprehensions expressed by the advocates of "free contract" to be wholly groundless. I do not believe that, if the Honourable Mohini Mohun Roy's Bill is passed into law, with or without the additions I have suggested, it would lead to the lender making harder bargains or exacting a higher rate of interest than is customary now. In fact, in my opinion, it would not make the smallest difference in the extent or the nature of the transactions between borrowers and lenders.

31 January 1896.

Ameer Ali.

From Judicial Commissioner, Hyderabad Assigned Districts to Commissioner, Hyderabad Assigned Districts—
(No. 1923, dated 31 August 1895).

I AM not at all satisfied that it is necessary or expedient to legislate for the limitation of interest, and I certainly do not approve of crude legislation on the lines suggested. The rule of damdupat is recognised, and has been often enforced in Berar, and may be said to be a part of the law of Berar; and it is a useful provision when taken for what it is worth and applied with judgment and discretion with regard to all the other facts of the case, and other considerations which the parties consider to be fair and reasonable, and in accordance with the traditions of the country. It is one only of many equitable local rules for the settlement of outstanding claims which cannot be met in full owing to the poverty and circumstances of the debtors. The damdupat rule was originally applied to particular classes of loans, other limitations being fixed for other classes (authorities not being altogether agreed as to what limit was to be fixed in each class). The damdupat rule seems originally to have provided rather for renewal of engagements whenever the limit was reached, than for limitation of interest on the whole. When the debt was on the point of becoming doubled, a fresh engagement was to be entered into, and the whole debt turned into principal, on the whole of which fresh interest would be charged. The rule did not therefore allow the Court to go behind the last bond. So also it was applied only to payments made at one time. Recoveries ought, the people thought, to be made gradually, and it did not matter how much was paid if it was paid little by little without inconveniencing the debtor, but, if a lump sum was demanded, the demand to avoid oppression should be limited to double the original claim. This is what I gather to be the rule of damdupat as understood by the people and the Hindu law books.

The Bill proposes to substitute (for this equitable rule which has to be applied with caution as an equitable rule along with other equitable rules of a like kind) a hard-and-fast law to be applied in all cases and to all people irrespective of all the other facts of the case. Intentionally or unintentionally the Bill widens the rule so as to enable Courts to go behind the last bond in each case and look to the original principal. For the purposes of seeing what interest should be allowed, the Courts in Berar ordinarily do go behind the bond to see what the original principal, and what the subsequent repayments may have been, but they do not take the original principal as the principal for the purpose of applying the damdupat rule, and, if they did so, they would soon find themselves in difficulties, as calculation will show.

As the Bill stands, a debtor might pay off almost all the principal when he heard that the creditor was going to sue, and leave only a very small amount of principal and a large amount of interest due; but this is a defect which would, I presume, be removed before the Bill was passed by provision that in making calculations for the purposes of this Act all sums received in payment should be credited to interest as long as any interest was due. I think that the Bill might work injustice in other ways. There may be mortgage-deeds outstanding on which the interest due already exceeds the principal, and there may be mortgage-contracts by which the mortgagee is prohibited from suing for a term of years during which the interest must necessarily come to more than the principal. The damdupat rule is a good rule for old debts due by country folk, but I do not think it a just rule in the case of cash advances made to moneyed men or to traders. In their case it is not, I think, advisable to force creditors to sue or renovate contracts at frequent intervals.

In my opinion interest should ordinarily (that is, when fraud, undue influence, &c., are not shown) be allowed at the contract rates from the date of the bond to the date on which the payment falls due, that is, during the time that the creditor is prohibited from closing the contract and recovering his money by suit, but that interest charged for any other period and on any other account should be entirely in the discretion of the Court, which should, in deciding what amount is to be allowed, be at liberty to apply any equitable rule and to have regard to all and every detail of the case. While the creditor is bound by the contract not to sue, the debtor should also be strictly bound not to object to the rate of interest agreed on: as soon as the bar to suit is removed, the creditor should not be allowed to plead the contract.

(signed) *R. Obbard.*

F. J. Monahan, Esq., I.C.S., Deputy Commissioner of Sibsagar.

ANY law which would prevent effect being given to such an adjustment by prohibiting the award of interest exceeding the amount of the original principal, would be an usury law, pure and simple, restricting the freedom of contract between parties. I do not think it likely that such a law would be effectual in this country. In order to circumvent it, all that would be necessary would be a bond reciting that the amount taken as principal in the new agreement had actually been paid in cash. Even if the claim were contested later on in Court, the creditor would have no difficulty in adducing any number of witnesses to prove the cash payment, and the recital in the bond would be strong corroboration of their evidence.

No. 1905, dated Silchar, 1 August 1895.

From *A. G. Hallifax, Esq., I.C.S., Deputy Commissioner of Cachar,* to The Secretary to the Chief Commissioner of Assam.

WITH reference to your No. 31L.&L.—1629-33L., dated the 27th March 1895, forwarding, for opinion, a Bill to regulate the award of interest in certain cases, I have the honour to state that I have consulted the Government Pleader and agree with him that the Bill, as it stands, is not desirable on general principles. Interference with freedom of contracts in the matter of interest is calculated to do harm rather than good, as may be shown from historical examples. In this case, the Bill might be rendered inoperative if the creditor brought a suit as soon as the

"the interest" equalled the principal, and at the same time started a fresh loan, repeating the operation, if necessary. Some such plan would almost certainly be soon devised, and, besides nullifying the Bill, would increase litigation, and leave the debtor worse off than before, as he would have to pay costs.

The tendency of the Bill would also be to check small loans, which might cause much distress.

Although some action seems desirable, it is difficult to see what should be done; the evil is largely due to the improvidence and carelessness of the borrowers, and it is hard to remedy these defects. The proposed measure would tend rather to increase them. Possibly, a discretion might be given to the Court in certain cases where the interest is considered excessive, but such a discretion would need to be used very carefully.

From *A. L. Saunders*, Esq., Officiating Chief Secretary to Chief Commissioner, Central Provinces, to Secretary to Government of India, Legislative Department,—(No. 7153, dated 21 September 1895).

I AM directed to acknowledge the receipt of Mr. Macpherson's letter No. 590, dated the 13th March last, forwarding, for the opinion of the Chief Commissioner and of such selected officers as he may think fit to consult, a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, with Statement of Objects and Reasons.

2. In reply, I am to say that the Chief Commissioner did not think it necessary to obtain from officers any further opinions than those which they had just recorded on the cognate question of the action of the Courts in regard to the interest on bonds in the correspondence ending with this Administration's letter No. 1706, dated the 13th March 1895, to the Home Department.

This Administration has had no experience in these Provinces of the actual working of the rule of *damdupat*. The Chief Commissioner waited, however, to see whether the publication of Mr. Mohun Roy's Bill excited any discussion or comment, and as it has not done so I am to convey an expression of his own views of it.

3. It has, I am to say, the great merit—and a very attractive merit it is—of perfect simplicity and definiteness. Everybody governed by such a law would understand exactly where he was—on the one side the limits of responsibility, on the other the limits of power. And it has the further great merit—a merit of very special value in India—of being in conformity with a customary rule, the recollection of which has altogether faded out in no part of the country. But like all hard-and-fast rules, applied to very varying facts and circumstances, the Chief Commissioner is of opinion that it would certainly be evaded just as the laws limiting the maximum rate of interest were constantly, habitually and successfully evaded in England till they had to be abandoned.

As far as Mr. Woodburn can learn, this is what has actually happened in the Presidency of Bombay, where the rule of *damdupat* is still nominally in force.

4. The Chief Commissioner is compelled, therefore, with the reluctance with which one surrenders any attractive scheme, to the opinion that the lines taken by the Government of India in the correspondence above referred to are the only practical lines to follow.

5. I am to add that the Bill with Statement of Objects and Reasons was published in the Central Provinces Gazette in English on the 23rd March 1895, and in Hindi on the 3rd July 1895.

(signed) *J. P. Godfrey*,
for Officiating Chief Secretary.

From *Lala Pyure Lal*, Officiating District Judge, Manipuri. Dated 4 June 1895.

"THE excessive and exorbitant rate of interest stipulated to be payable in case of default may be declared to be of the nature of a penalty, and the Courts may be empowered to award only such damages as may appear to be just and proper."

No. 276—XIV, dated 4 June, 1895.

From *V. A. Smith*, Esq., District Judge, Gorákhpur, to The Registrar, High Court of Judicature, N.-W. Provinces.

THE alternative is the conferment by express legislation on the Courts of the power to make equitable allowances in the execution of contracts which are found to be oppressive and unconscionable.

I am disposed to think that if anything can be done, and I am far from being certain that anything can be done, the remedy must be sought in this direction.

The only practicable plan appears to be to confer the proposed equitable jurisdiction on the intermediate Courts of original jurisdiction and appeal, as well as on the High Courts.

Whether or not Subordinate Judges should be included among the officers empowered would be a question for consideration in Committee.

No. 1104, dated 12 July 1895.

From *H. M. R. Hopkins*, Esq., Officiating District Judge, Hardoi, to Registrar, Judicial Commissioner's Court, Oudh.

Sir,

I HAVE the honour to acknowledge the receipt of your endorsement No. 879, dated 25th April 1895, and to reply as follows.

I agree with the principles of the proposed legislation, which is the restriction of excessive accumulation of unconscionable interest; but it appears to me that the method indicated of imposing a rough and ready period of limitation for all debts alike, without reference to the suitability of the rate of interest in particular cases, is objectionable.

2. What is required is that Courts should have power to deal with the rate of interest in each case and adjudicate upon its reasonableness. The amount of the accumulation is a mere matter of time, and may or may not be excessive according to the circumstances.

3. The Courts have already a certain discretion in their award of interest. When the matter is one of contract they cannot at present of their own motion go behind the terms of the bond. The suggestion of the Allahabad High Court

Court that Courts should be given a discretion in the case of bonds, the terms of which are exorbitant, to call upon the lender to prove that the transaction was fair and reasonable, appears to me to go far to meet the difficulty. If legislation to this end is undertaken, that at present proposed would become unnecessary.

No. 1522, dated Lucknow, 13 August 1895.

From *R. Scott, Esq.*, Officiating Judicial Commissioner, Oudh, to Secretary to Government, N.-W. Provinces and Oudh.

Sir,

In reply to your letter No. ³¹⁶~~VII-703B~~ dated 30 March 1895, I have the honour to state that, in my opinion, the Bill in its present form is undesirable and likely to produce greater evils than those it is intended to remedy. If passed as it stands, I think it will be certain to cause creditors in many cases to sue their debtors before the interest due amounts to the principal, instead of, as at present, allowing them time. I see no greater objection to enforcing a contract to pay interest for 5 years at 25 per cent. than to pay interest at that rate for one year. The Bill should be redrafted, to meet the evil which notoriously exists and cries for a remedy. That can be done by giving Courts in all cases where the rate of interest agreed on between the parties is in excess of, say, 12 per cent. per annum, or where the agreement is, in the opinion of the Court, unfair and unreasonable, power to decree such an amount, only in the way of interest as may appear fair and reasonable.

Dated Lucknow, 9 June 1895.

From *L. DeGruyther, Esq.*, Barrister-at-Law, to Secretary to Government, N.-W. Provinces and Oudh.

WHAT is the proper remedy?—I would suggest that where the rate of interest exceeds 12 per cent. per annum the Court may, in its discretion, after considering all the circumstances of the case, award such rate as it shall consider reasonable; the discretion so exercised to be capable of correction by a Court of appeal. The risk to be run, the amount of the loan, the period of the loan, the security offered, the taking advantage of the position of the borrower, and various other matters, will influence the Court in the exercise of its discretion.

From Deputy Commissioner Naini Tal, to Commissioner, Kumaun Division.

Sir,

In reply to your No. ³⁵²³~~XIV-20~~ dated 23rd April 1895, forwarding for opinion Bill to regulate the award of interests in suits for simple money-debts and mortgage-debts, I forward for your information copy of opinion given by Mr. Cockburn, Deputy Collector, who had much experience in Indian money-lending transactions.

2. In my opinion the Bill if it becomes law will do very little real good in checking excessive interest charges. It will be easy to evade the provisions, as creditors will take out fresh bonds when interest charges are mounting up, or they will deduct sums from nominal consideration money when bonds are being executed. Till Courts have power to go behind bonds and examine the true nature of the money transactions, the provisions of the Bill if it becomes law will be almost a dead letter.

No. 142, dated 10 July 1895.

From *A. Kensington, Esq.*, Deputy Commissioner, Amritsar, to The Commissioner and Superintendent Lahore Division.

I HAVE the honour to reply to your memorandum No. 95, dated 13th April, and subsequent reminders, asking for my opinion on the "Award of Interest Bill."

I fully agree with all that has been urged, both now and on many previous occasions, in favour of the object which the promoter of the Bill has in view. I regret, however, to be obliged to give it as my own opinion, and that of the more experienced revenue officials of the district, that the Bill as it stands must fail in its object, and would, if passed, only make the position of agricultural debtors worse than it is already.

OPINIONS of the Judges on a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

I THINK the question of controlling interest by legislation is much too large a one to be disposed of by a brief Act of this kind.

6 April 1895.

C. A. Roe,
Judge.

I THINK the Bill is one in the right direction. I am doubtful of its doing much good, as money-lenders will try to devise some means of circumventing it, and may be driven to make harder bargains with their debtors; but on the whole I am of opinion that it is likely to do more good than harm, and might have a trial. To be of use, it should provide that the principal should not, either in whole or part, be composed of interest on a prior transaction. Otherwise the measure is likely to be rendered inoperative by fresh bonds or mortgage-deeds being taken on account of past interest.

6 June 1895.

J. Frizelle,
Judge.

BUT, as stated in my previous opinion, some further action is necessary in regard to interest for the relief of debtors. The Courts ought to have more power to interfere with the contract as to the rate of interest than is given by this section. The principle of interference is conceded by proposed legislation, but against accumulation only. I think it should go further and give the Court power to reduce the rate where it is excessive. I understand that the learned Judges of the Allahabad High Court hold similar views.

12 July 1895.

P C Chatterji,
Judge.

No. 78, dated 11 May 1895.

From Colonel *C. H. T. Marshall*, Divisional Judge, Lahore Division, to The Registrar, Chief Court, Punjab.

IN reply to your letter No. 1170 G., dated the 5th April 1895, I have the honour to say that the proposed amendment is a desirable one in many ways, but I doubt if the objects intended by it would be fulfilled.

The money-lender would manage to evade the restriction in some way or other, and I do not believe that any benefit would accrue to the debtors by the passing of this Bill.

C.
No. —, dated Simla, 17 July 1895.
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From Pandit *Hari Kishan Kaul*, M.A., Officiating Junior Secretary to Financial Commissioner, Punjab, to the Junior Secretary to Government, Punjab.

MR. RIVAZ's view in regard to the proposed Bill briefly is that, although it is right in principle, it will fail in its object unless supplemented by (1) some provisions for enabling the Courts to go behind the bond, mortgage-deed, shop account, &c., sued on, and ascertain the real amount of principal loan taken by the debtor; and (2) some general scheme for restricting alienations of land by agriculturists. It seems to the Financial Commissioner that, as the Bill at present stands, money-lenders will be sure to circumvent it by false entries regarding principal, and also that an enactment of this nature will tend to making money-lenders in these transactions with agriculturists insist more than ever on obtaining possession of land as a condition of their loans. Mr. Young, without expressing any opinion on the larger question of restricting alienations of land, concurs in Mr. Rivaz's views.

2. The opinion of the Commissioner of Lahore, I am to add, has not been received yet, but it will be forwarded as soon as it comes in.

Hari Kishan Kaul,

Officiating Junior Secretary to Financial Commissioner, Punjab.

OPINION of *R. Clarke*, Esquire, c.s., Commissioner and Superintendent, Delhi Division, on the Bill to regulate the award of interest in suits for simple money and mortgage debts, dated 30 April 1895.

MR. STEEDMAN, Deputy Commissioner of Simla, and Captain Davies, Deputy Commissioner of Delhi, the two officers whom I consulted, are in favour of the Bill, but they give it very faint praise indeed. Captain Davies thinks that as soon as its provisions are known it would be easy for money-lenders to evade it. Mr. Steedman thinks it good in so far as it will lower the credit of agricultural borrowers.

My own opinion is that such an enactment will be useless. What is wanted is a much more drastic measure—a measure that will authorise Courts to go behind the bond in all cases and refuse to make themselves engines of oppression by enforcing unconscionable bargains. This Bill is futile, and it is only trifling with a serious subject.

R. Clarke,

Commissioner and Superintendent, Delhi Division.

No. 1305 E., dated Jullundur, 4 May 1895.

From Lieut.-Colonel *C. F. Massy*, Commissioner and Superintendent, Jullundur Division, to the Junior Secretary to Financial Commissioner, Punjab.

WHAT we require is a law which will enable the Courts to go behind the balance struck, or the bond, and enquire into the consideration actually received. Then, after the correct consideration has been ascertained, let the law further enact that interest in excess of the original principal (or the reduced principal if part payment has been made) shall not be decreed. I would suggest an explanation as follows:—The word "principal" means "consideration which actually passed from the creditor to the debtor, and does not include interest, either charged or promised to be paid."

In my opinion there are two practicable methods of coping with the money-lender, and both deserve the earnest attention of the Legislature.

The first is—while firmly respecting the sanctity of solemn engagements freely entered into—to impose on the Courts a positive duty to examine usurious agreements stringently, both with reference to Section 14 of the Contract Act (namely whether the borrower's consent was "free") and also with regard to Section 23 (as to whether the terms of the agreement are "contrary to public policy"), and to remember that high considerations of policy render "broken estates" undesirable. "So many broken estates," said (I believe) Bacon, "so many votes for troubles." There is, to my mind, clear justification for refusing to give effect in the Civil Courts to any agreement as to which it is evident that the lender could not possibly have *bona fide* expected his victim to meet his obligations, but really intended to entangle him in a hopeless liability, with a view to getting hold of his land and reducing him to a state of serfdom.

In short, my second suggestion is to disable the improvident classes from contracting usurious debts, and thus to checkmate the usurer and the lawyer at one blow. The Civil Courts will not furnish an adequate remedy if they could, and cannot do so if they would.

E. P. Henderson, Government Advocate, Punjab.

JUDICIAL DEPARTMENT.

Letter from the Chief Secretary to the Government of Fort St. George, to the Secretary to the Government of India, Legislative Department.

SIR,

IN acknowledging the receipt of Mr. Macpherson's letter, No. 585, dated the 13th March 1895, forwarding, with a Statement of Objects and Reasons, copies of the Hon'ble Mohiny Mohun Roy's Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I am directed in reply to transmit copies of the opinions recorded by the Hon'ble the Judges of the High Court, the Advocate-General, the Board of Revenue, the Inspector-General of Registration and by selected District Collectors and Judges, and to set out the views of His Excellency the Governor in Council regarding the proposed measure.

2. Most

2. Most of the reporting officers, it will be seen, are agreed in deprecating legislation on the lines proposed. The main arguments against the principle of the Bill are most forcibly stated in the letter of Mr. Nicholson, the Collector of Anantapur, who points out as to the proposed law—

- (a) That it would be a usury law which would interfere with business and contract by fixing an arbitrary limitation ;
- (b) that as such usury law it would be ineffective, as all usury laws have been ;
- (c) that it would hamper legitimate and even considerate contracts, and tend to raise the rate of interest ;
- (d) that it would not touch the mass of credit business in the country, and would be wholly ineffective in dealing with rural usury ;
- (e) that it would be a law to deal with exceptions ; and finally
- (f) that it would tend greatly to increase false documents, perjury and fraud.

3. Mr. Nicholson has made a special study of the subject, as it presents itself in this country, in connection with his inquiries regarding the establishment of agricultural banks, and in his letter referred to he sets out clearly and fully the facts and reasons which sustain each of the arguments above stated. With these conclusions His Excellency the Governor in Council would express his general concurrence.

4. On the other hand, Mr. Justice Subramania Iyer, and the Hon'ble Srinivasa Raghava Iyengar, Inspector-General of Registration, defend the bill on the grounds that it would be serviceable at any rate as a law of limitation, and would also act as an inducement to creditors to take earlier steps for the recovery of their debts, thus placing debtors in an easier position for meeting their liabilities and tending to prevent their falling into a condition hopelessly involved. In the letter to the Government of India, No. 2671, Judicial, dated the 6th November 1894, reporting upon the question of legislation in regard to the power of the courts to relieve against unconscionable bargains to pay interest, this Government commended the Hon'ble Srinivasa Raghava Iyengar's suggestion in favour of enacting the rule of *dāmdupat* as a law which would probably benefit the more ignorant and improvident classes. His Excellency in Council is well aware that the history of usury laws in all countries has proved again and again how impotent is legislation to regulate the rate of interest, or to put an artificial limit to it ; but looking to the particular classes which would be most affected, His Excellency in Council was then disposed to think that the rule might be of advantage as a rule of limitation. Since, however, the attention of the Government has been more specially and fully drawn by the reports, which form the enclosures of this letter, to the simple methods by which usurers in this country may defeat any such rule and to the risk there is that it would do more harm than good by raising the general rate of interest, which is gradually falling with the opening up of the country, His Excellency in Council is not now disposed to support the suggestion to give legislative sanction to this rule. This Government would rather trust to the other proposals contained in the letter of November 1894. These were (1) to declare that the Courts may, before awarding interest stipulated on a bond, enquire whether there has been coercion, undue influence, fraud or the like ; (2) to empower the Courts to reduce penal rates of interest when these are manifestly unconscionable or unreasonable ; and (3) to require, as in many European countries, professional money-lenders to keep regular accounts, to balance every individual account once a year at least, and to deliver to each debtor periodically a statement of his account to date. This last requirement, it may be remarked, would be particularly efficacious in forcing an ignorant debtor from time to time to realize how his liabilities are mounting up. If these provisions are passed into law this Government believes that everything will be done which the legislature can do in the way of remedying the evils which the Hon'ble Mohiny Mohun Roy's Bill is designed to obviate.

5. I am in conclusion to invite attention to the anomaly which is pointed out by Mr. Justice Subramania Aiyar in regard to the period of limitation applicable to suits brought for the recovery of *post diem* interest. This is a matter which is only remotely connected with the subject referred for opinion ; but it seems desirable that it should be brought to the notice of the Government of India.

6. The Bill, together with the Statement of Objects and Reasons, was published in the *Fort St. George Gazette* in English on the 19th March 1895, and in all the five vernaculars of the Presidency on the 23rd April, 1895

I have, &c.

(signed) G. S. Forbes,
for Chief Secretary.

Ootacamund, 8 October, 1895.

GOVERNMENT OF MADRAS.—JUDICIAL DEPARTMENT.

READ again the following papers :—

G.O., Nos. 2670, 2671, Judicial, dated 6 November 1894.

ABSTRACT.—Directing that the Government of India be addressed on the proposals to amend the law relating to usury and to introduce certain new provisions into the Contracts and Evidence Acts.

G.O., No. 751, Judicial, dated 8th April 1895.

ABSTRACT.—Inviting opinions of certain gentlemen on the Bill to regulate the award of interest in suits for simple money-debts or mortgage-debts and publishing the Bill and the Statement of Objects and Reasons in the "Fort St. George Gazette."

READ also the following papers :—

From the Acting Collector of Madras, to the Chief Secretary to Government, dated 24th April 1895, No. 1115.

In reply to G.O., No. 751, Judicial, dated 8th April 1895, I have the honour to report that I approve of the principle of the proposed legislation.

2. The principle involved is not the same as that involved in a kindred and recent reference on another subject. There the question was whether the Courts should have power generally to go behind bonds, &c., and I was obliged to give my opinion against the proposal. I mention this lest it should be supposed that there was any inconsistency in my views on the subject. The proposal under consideration is, however, one out of which the parties can, in various ways, contract themselves, and the lender will find no difficulty in driving a coach and six, somehow, through the clause under reference. It will only be necessary to put a screw on the debtor and get a fresh bond for the principal plus an equal amount of interest accrued. The result will be that there will be no relief. Under the circumstances, therefore, while the intention of the Bill is most praiseworthy it will, I think, work no good, and I would, therefore, recommend that the matter be let alone.

(signed) W. J. H. Le Fanu, Ag. Collector.

From the Government Solicitor, Madras, dated 25 April 1895, No. 254.

ABSTRACT.—Forwarding the following opinion of the Advocate-General, dated 23 April 1895 :—

[*Re* Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts.

OPINION.

There is no statutory law in force limiting the rate of interest claimable by a creditor. The Statement of Objects and Reasons declares that "the object of this Bill is to remove the existing anomaly of practice and to place a limit upon the award of interest." Anomaly means "irregularity" or "deviation from rule." I fail to see any "anomaly" in the present practice with regard to the awarding of interest, and none is disclosed in the short "Statement."

2. The Bill is practically a concise yet sweeping usury law, yet it makes no reference even to Act XXVIII. of 1855, nor proposes its repeal or the amendment of several other Acts relating to interest to be awarded by decrees.

3. The usury laws were swept away from the statute book in England in 1854 and in India in 1855. It took 161 years to abolish laws equal in absurdity to those of witchcraft*, and now in 1895, or forty years after Act XXVIII. of 1855, was passed, it is proposed to practically restore them.

4. In my opinion it would be a waste of time to discuss this branch of economics at length in order to prove the inexpediency of the proposed legislation. The burden of proving the "expediency" of this Bill is on its author, who does not even pretend to discharge the duty he has undertaken.

(signed) *J. H. Spring-Branson*, Advocate-General.

From the District Judge, Bellary, to the Chief Secretary to Government, dated 26 April 1895, No. 1128.

In reply to G.O., No. 751, Judicial, dated the 8th April 1895, I have the honour to state that it is not, in my opinion, advisable that Mr. Mohiny Mohun Roy's Bill should become law. There may, perhaps, be something to be said in favour of a law limiting the amount up to which interest may be awarded, although I am myself of opinion that there is much more to be said against any such law. If, however, any attempt is to be made to fix such a limit by legislative enactment, some effort should be made to determine the limit on some rational and intelligible principle. To fix an arbitrary limit and to enact that the interest awarded shall never, under any circumstances, exceed that limit, would, in my opinion, be a most retrograde piece of legislation.

(signed) *L. Moore*, District Judge.

From the Acting Collector, Tanjore, to the Chief Secretary to Government, dated 28 April 1895, No. 877-Ver.

In answer to G.O., No. 751, Judicial Department, of 8th April current, requesting remarks on a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I have the honour to request a reference to my letter, No. 2019, of 19 August last, written on a similar reference concerning the law relating to usury; and to state that proposals of legislation of this crude character hardly require criticism. Where a debtor has made a bad bargain for himself or been unfortunate and the creditor is merciful, it is not justice to punish the creditor for being long suffering. And where the creditor is minded to have what the law allows and the Court must award, he will be careful to bring his suit within such time that he shall not be touched by such a law as this.

2. If the rate of interest is to suffer regulation by the Legislature, it had best be done in a straightforward manner by enacting what it shall be.

(signed) *J. Thomson*, Ag. Collector.

From *G. T. Mackenzie*, Esq., Indian Civil Service, to the Chief Secretary to Government, dated Coonoor, 10 May 1895.

I HAVE the honour to reply to G.O., No. 751, Judicial, dated 8th April 1895.

2. One's sympathies are with the object of the Bill, but the Bill itself is badly drawn and is not fitted to attain its object.

3. In this country, as in Britain, the laws against usury have been repealed in recent years, and there is now no legal restriction upon the rate of interest on loans. A contract to pay interest is enforced by the Courts as is any other contract. The contract may be repudiated by defendant by any plea under the Contract Act, such as coercion or undue influence or no consideration, and if such a plea be advanced by defendant an unusually high rate of interest will be one of the matters which the Court will take into consideration, but a man is bound to fulfil a contract to pay interest as he is bound to fulfil any other contract, and the present law places no limit upon the rate of interest which a borrower may bind himself to pay.

4. The repeal of the laws against usury was brought about by the disciples of Bentham, who taught that the State must leave such matters to arrange themselves, and that laws against usury are even injurious to the borrower, because in cases in which a money-lender is willing to give a loan only at a rate of interest in excess of the legal rate the borrower will be unable to obtain a loan. But there is now a reaction, and many observers, seeing that a money-lender often takes advantage of the extreme necessity of a borrower and drives a very hard bargain, are of opinion that the State would do well to limit the rate of interest, and that such a limitation would not put an end to loans, but would only deprive the money-lender of a portion of his ill-gotten gains.

5. The Catholic Church has always forbidden usury, and I have referred to a volume of Moral Theology to see what are the grounds of this prohibition. I find that theologians teach that a money-lender may with a good conscience demand a rate of interest which will recoup him for the loss of profit caused by the withdrawal of the principal from his business and also for the risk of his losing the principal, but that he may not demand a higher rate of interest because of the urgent need of the borrower.

6. It is well known that the rate of interest in India is very high. In the Telugu districts in which I have served, twelve per cent. per annum is considered a low rate, and is called "the charitable rate of interest." A very usual rate is one anna in the rupee per mensem or seventy-five per cent. per annum. If a debtor pays this interest for eighteen months the creditor has got back his principal with interest at the rate of eight per cent. per annum. Of course, it can be said that the debtor has entered into this contract with his eyes open. But often he enters into the contract in a moment of urgent need and does not get clear for many years. Very sad cases are the cases of field labourers who are in debt to the landlord with a running account which never is worked out. They are practically

practically slaves for life. Whether the remedy for this state of things is to be found in a law limiting the rate of interest, or in the Courts being more bold in refusing to enforce such contracts is a very difficult question. Many of these cases come on in a Small Cause Court and there is no appeal. If it be decided to introduce a Bill limiting the rate of interest, that can easily be done by apt words, but this draft Bill is useless.

7. This draft Bill forbids a court to decree an amount of interest which exceeds the amount of principal due at the date of institution of the suit. Now the Contract Act enables a debtor to appropriate his payments. In other words a debtor may appropriate all his payments to reduction of principal, and when he has paid off the whole principal and only the interest is outstanding, this draft Bill prevents the creditor from recovering one anna of interest. Thus the result of this Bill will be that a creditor will get nothing but his principal.

8. Even if the debtor cannot resort to any such device, this draft Bill is founded upon an utterly unsound principle. Whether or not the interest at date of suit exceeds the principal depends, not only upon the rate of interest, but also upon the delay in repaying the debt. Why punish a creditor who is long-suffering and does not put pressure upon a debtor? The evident result of this draft Bill will be that creditors will make haste to sue so soon as interest equals principal.

9. A much better plan would be to enact that when the payments by a debtor shall have amounted to the principal sum plus interest on the principal sum at twelve per cent. per annum from date of loan the creditor shall be entitled to recover nothing further.

(signed) *G. T. Mackenzie.*

From the District Judge, South Malabar, to the Chief Secretary to Government, dated Calicut, 20 June 1895,
No. 839-Civil.

With reference to the G.O., No. 751, Judicial, dated 8 April last, inviting my opinion on the Bill to regulate the award of interest in suits for simple money-debts or mortgage-debts, I have the honour to state that I see no necessity for the Bill, and indeed think that it would be mischievous to meddle in such a piecemeal way with an intricate subject.

(signed) *J. A. Davies,*

District Judge.

Proceedings of the Board of Revenue (Land Revenue), dated 10 June 1895, Mis. No. 2919.

FULL BOARD.

READ.—G.O., No. 751, Judicial Department, dated 8 April, 1895, and the endorsement of the Revenue Department thereon, dated 22 April 1895, Mis. No. 1573.

RESOLUTION—dated 10 June, 1895, Mis. No. 2919.

The Board begs to submit its remarks on the draft Bill forwarded with the Government order read above.

2. The Bill proposes to lay down a rule that no civil court shall award interest exceeding in amount the principal debt outstanding on the date of decree. This rule appears to be in force in the Presidency towns as a rule of Hindu law known as *Damputat*. It was at one time observed in the *mofussil* also, not as a rule of Hindu law, but as a statutory provision, in Bengal under Regulation XV. of 1793, in Madras under Regulation XXXIV. of 1802, and in Bombay under Regulation V. of 1827.

3. The provisions contained in these Regulations have been repealed by Act XXVIII. of 1855, and it has been since decided in Bengal and Madras that interest in excess of the principal debt can be claimed in the *mofussil* (Indian Law Report 9 Calcutta 825 and VI Madras High Court Report 400).

4. In Bombay, however, a different view has been taken on the ground that section 12 of the Bombay Regulation merely contained a legislative declaration of the Hindu law on the subject, and that its repeal by Act XXVIII. of 1855 did not alter the rule of Hindu law (*vide* 3 Bombay High Court Report Appendix Civil 25 and 26).

5. The Bill aims at removing these anomalies of practice, and would place a limit upon the award of interest in all parts of India.

6. The Board has no objections to raise to the Bill, and considers that in certain parts of the country it may be beneficial by protecting ignorant debtors from the ruin frequently brought upon them by small loans given at rates of interest, high in themselves, which speedily swell the original debt to startling dimensions. The proposed law will merely operate as a rule of limitation (Indian Law Reports V. Calcutta 867) inasmuch as it provides that the contract to pay interest shall cease when the total interest payable at the prescribed rate shall be equal in amount to the outstanding principal debt. Its effect will thus be to induce the creditor to put pressure on the debtor either to pay the interest due (in which case the contract to pay interest will endure until the interest again accumulates and reaches the limit) or to renew the loan.

(True Extract.)

(signed) *R. C. C. Carr*, Acting Secretary.

To the Secretary to Government, Revenue Department.

Endorsement on the above.

Forwarded to the Judicial Department.

Ootacamund, 25 June 1895.

(signed) *G. S. Forbes,*
Ag. Secretary to Government.

From the District Judge, Coimbatore, to the Chief Secretary to Government, date 24th June 1895, No. 322.

Adverting to G.O., dated 8th April 1895, No 751, Judicial, I have the honour to state that the "Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts" is, in my opinion, objectionable in principle and likely, if passed into law, to be ineffectual in operation.

2. The legislation proposed is objectionable in principle, inasmuch as it would interfere with freedom of contract and the discretion of the Courts, and the experience derived from the working of the usury laws justifies the conclusion that the restrictions which the proposed enactment seeks to impose would be evaded in practice.

(signed) T. Weir, District Judge.

From the Superintendent, Government Press, dated 24 April 1895, No. 342

ABSTRACT.—Reporting the dates on which Government of India Bill No. 7 of 1895 was published in the "Fort St. George Gazette" in English and the Vernaculars.

From the Acting Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to Government, dated Madras, 13 July 1895, No. 1877.

With reference to G.O., dated 8th April 1895, No. 751, Judicial, forwarding, for the opinion of the High Court, a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts, I am directed to forward a transcript of the minutes recorded by the Hon'ble the Chief Justice and the Judges.

(signed) D. W. G. Cowie, Acting Registrar.

ENCLOSURE.

MINUTES.

The Chief Justice.—The Courts have at present power to prevent exorbitant interest being recovered in various cases. If undue advantage has been taken of the borrower either on account of his age or that, under the circumstances, undue compulsion was used, the Courts can relieve the borrower. In cases also where increased interest is provided for on the non-payment of the debt upon the day appointed, the Courts will interfere, but where persons of full age agree that one shall borrow and the other shall lend a sum of money at a stated rate of interest, I do not think the State should interfere. It will be easy to evade the proposed Act. When the interest amounts to a large sum, the money will be nominally repaid, a small further advance perhaps made, the interest added to the principal, and a fresh mortgage deed or bond executed.

It is very difficult to prevent improvident persons from ruining themselves, and this proposed Bill strikes at the principle of free contract, and I think it will be of little, if any, use. The ordinary Indian sowcar is not worse than a Jew money-lender in England; indeed, I am told he is more merciful. In this Presidency many of the large zemindaris are in the hands of the sowcar for enormous sums made up principally of interest on sums advanced, but it is a question whether the ryots are worse off under their new master, and, as I have above stated, the sowcar will easily evade the proposed Act.

Mr. Justice Parker.—This is one more of the many attempts which have been made by legislators to prevent usury and to regulate the rate of interest. All previous attempts have failed, and I imagine no sowcar will be able to read the present proposal without a smile.

The means of circumventing the Bill will be to him both obvious and easy. I should think it a matter of perfect indifference whether the Bill be passed or not. It will not effect its real object; but even though it be classed as one more legislative failure, it will still serve to record the benevolent intentions of its authors.

Mr. Justice Shephard.—The proposal to revive the Hindu rule as to interest, which, as regards the mofussil, has long ceased to be law, is, in my opinion, one which ought not to be countenanced. Experience has shown that statutes limiting the interest which a lender may exact are, in the long run, perfectly futile to protect the borrower. It is much better that a few improvident persons should suffer for their folly than that the notion should be encouraged that the law will give them facilities to evade the strict terms of a legal bargain.

Mr. Justice Best.—The proposed legislation is desirable. It merely extends to the whole of India and to all classes the rule already in force in the Bombay Presidency in cases in which the plaintiff is a Hindu.

I think it is desirable to give the Courts power to disallow interest at rates which may be considered unconscionable. No injustice can be done by reducing the interest in such cases to a reasonable rate. A reasonable rate may, if necessary, be defined as not "exceeding double the rate current at the banks on the date of the loan."

Mr. Justice Subrahmanya Aiyar.—I see no objection to an Act like this being passed.

Such a law would naturally induce creditors to take care that interest due to them does not accumulate beyond the limit prescribed by law, for fear of their being unable to enforce by suit their claim for what exceeds that limit. This vigilance on the part of creditors may probably prove beneficial to debtors generally. For of those who get into debt in this country, there are many who do not really benefit by their creditors' forbearance to demand interest at the time agreed, even supposing the forbearance is well meant, inasmuch as it often results in such accumulation of interest as to render impossible the payment by the debtors of the principal and the arrears of interest in one lump sum. In the case of these debtors it would really be doing them a service if their creditors would, by timely pressure, make them pay the interest punctually, as thereby the former would be compelled to apply towards the discharge of the same moneys that would otherwise probably be spent on purposes less useful to themselves.

Moreover, the proposed law may prove useful in putting some check on the cupidity especially of those creditors who, wishing to utilise the necessitous condition of their debtors, refrain from collecting interests periodically in order that they may, when the debtors find themselves unable to meet easily the accumulated demand, extort from them terms and advantages which they (creditors) would not otherwise be able to secure. Again, an enactment of the kind in question would occasionally absolve the Courts from having to decree exorbitant sums as interest due under contracts entered into without sufficient foresight, but which want of foresight does not invalidate them.

At the same time it is hardly necessary to observe that the wily money-lender could, even with a law like this in force, resort easily to expedients that would enable him to deal with such of his debtors as are ignorant or imprudent, practically much in the same way that he deals with them now. But no amount of reasonable legislation as to interest could absolutely protect such persons from suffering by their own ignorance or thoughtlessness.

Though I have nothing more to add in respect of the present Bill, yet I wish to take this opportunity of drawing attention to a disadvantage to which creditors of one class are subject, owing to the way in which the present law of limitation as to recovery of interest not charged on land operates in their case. I refer to that of persons who lend money on the mortgage of immoveable property without an agreement for the payment of *post diem* interest. Suppose a man lends on a registered mortgage, the principal amount being made payable with interest, say, within a year or two from the date of the mortgage,

mortgage, and no provision as to interest after due date is made. In such a case, if a suit for the recovery of the mortgage amount is brought within six years from the date of default, interest between that date and that of the suit can be awarded by the Court as damages under Act 32 of 1839; but if brought after six years the mortgagee is not entitled to get any interest, as it has been held that the claim thereto is in such cases barred by Article 116 of Schedule II of the Indian Limitation Act (Baghavat Singh v. Darayo Singh, I.L.R., 11 All., 416; see also Srinivas Ram Pande v. Udit Narain Misr, I.L.R., 13 All., 330; Mansab Ali v. Gulab Chand, I.L.R., 10 All., 85; Gudrikoer v. Bhubanaswari Coomar, I.L.R., 19 Cal., 19). This state of the law seems to me to inflict a serious hardship on mortgagees. It is quite true that they may protect themselves against it by inserting in the mortgage instruments a provision for the payment of *post diem* interest. But granting that they fail to take that precaution, I do not see the justice or expediency of the law laying down that when the claim for the principal itself is not time-barred by the lapse of six years from the date when it became due, that for interest thereon (claimed, not under the contract, but as damages) is barred on the expiry of that period. This state of the law seems to me to be anomalous, and I think Courts, in cases like those mentioned above, should, notwithstanding the institution of the suit after the lapse of six years from the date of the cause of action, be at liberty to decree interest whenever they consider it ought to be awarded as compensation for the detention of the mortgage amount after the date fixed by the written contract.

If it be said that Courts should not be empowered to give interest for so long a period as twelve years—the period of limitation applicable to cases mentioned above—it may be replied that no real difficulty on that ground would be experienced if the present Bill becomes law, as then interest in excess of the amount of the principal could not be decreed.

Even supposing the Bill does not become law, I think that, in fairness to mortgagees placed in the circumstances already explained, the law of limitation should be amended so as to put them at least in the position that persons holding in England mortgages of realty occupy under 3 and 4, William IV., Chapter 27, section 42, under which no arrears of interest in respect of any sum of money charged upon or payable out of any land or any damages in respect of such interest is recoverable but within six years after the same shall have become due or next after an acknowledgment in writing of the same.

The matter to which I have thus called attention may at first sight appear to be one of limitation law, but a closer examination would show that it is really and essentially connected with the general question raised by the present Bill, viz., the allowance of interest by Courts. Hence my venturing to offer the above remarks.

From F. A. Nicholson, Esq., I.C.S., to the Chief Secretary to Government, dated Yercaud, 10 August 1895.

I HAVE the honour to reply to G.O., No. 751, Judicial, dated 8th April 1895, forwarding, for remarks, a Bill to regulate the award of interest on suits for debt.

2. The proposal is that in "suits for simple money-debts and mortgage-debts" the Court shall not award as interest, due or payable at the date of filing the suit, any sum larger than the original principal amount due at such date.

3. I am not in favour of the proposed law for the following reasons—

- (a) it is a usury law which interferes with business and contract by fixing an arbitrary limitation;
- (b) as such usury law it will be ineffective, as all usury laws have been;
- (c) it will hamper legitimate and even considerate contracts, and will tend to raise the rate of interest;
- (d) it will not touch the mass of credit business in the country, and will be wholly ineffective in dealing with rural usury;
- (e) it is a law to deal with exceptions;
- (f) it will tend to increase false documents, perjury, and fraud, to an unconscionable degree.

4. (a) The proposal is a reversion to the old law of "damdupat," an old form of Hindu usury law re-enacted by Regulation in 1793, and abolished by XXVIII. of 1855. I think this must be carefully borne in mind; it is a usury law, pure and simple, which limits the contractual power of parties; it is a usury law which, though not regulating the rate of interest by an arbitrary standard, restricts the amount of interest by an equally arbitrary limitation. While I do not desire to condemn a law merely because it is a member of a legal family rejected by the English commercial and legislative instinct, I cannot but remember that no usury law fixing an arbitrary standard has ever yet succeeded, whether in ancient Palestine and Rome, or in modern Europe and America, while such law has always been found to interfere with business, to increase interest, and to promote fraud and falsehood.

5. (b) I hold that it will be ineffective in general in repressing usury. I might appeal to all economic history ancient and modern, to prove this *a priori*; never yet has any law circumvented the usury, though it may have hampered the borrower and discouraged the legitimate lender. The Mosaic law, the most drastic and prohibitive of usury laws, did not prevent the action of the oppressive Jewish creditor in "adding field to field" by ruining the Jewish peasant; the Roman law, even under the Republic, equally failed; the Hindu law was itself a failure as shown by the Regulation of 1893, which recites that "the rates of interest hitherto authorised by custom have amounted to the most exorbitant usury"; in the United States where, at this day, there is in each State (e.g., New York) a usury law of modern enactment, limiting interest to 6 per cent., the census disclosed that the average rate of interest, even on mortgages in such States, averaged between 7 and 8 per cent., the rates in many cases being far higher.

6. The historical argument is confirmed by practical considerations. The law is obviously aimed at the usurer proper, i.e., the person who desires for his own undue gain to take such advantage of necessity, ignorance, and extravagance as to obtain profits not legitimately warranted by the risks of business, as distinguished from the ordinary money-lender who, in the absence of banks, is to be found throughout the country doing a fairly equitable though expensive business.

Now, does anyone suppose that the usurer proper will be for one moment hindered from his gain by so simple a law, or by any law, as the one in question? There are a dozen obvious ways of circumventing the law; e.g., it is a matter of the commonest practice in France, Germany, Italy, Russia, as formerly in England under the influence of the usury law which limited interest, for usurers to enter in documents much larger sums than those borrowed; e.g., "two or three times the sum lent" ("L'usure en Russie" par M. Inostranletz); this is also found as a regular practice (*sawai* and *dirhi*) in Bombay where the *damdupat* rule is in force, and a slight development of such practice will cut at the root of the proposed reform. Then there is the obvious method of forcing a debtor, by pressure at an inconvenient time, to execute a new bond in which interest is lumped with capital to form a new principal; that is the commonest of practices; I am personally aware of a decree debt in which the original principal was about Rs. 3,000, but which by successive bonds in which unpaid interest was lumped with principal, ended in a decree for Rupees 26,000, in which *overt* interest was an inconsiderable item. Or the usurer will deduct the full interest in advance, as under the "Kanthu" system of Salem, &c., or a discount, without mentioning the fact in the bond, and so forth. Moreover, since the habits of this country are to deal rather by account current than by a single loan, not only will the bulk of the sums be paid as interest, but it will be most difficult to say what is that principal which is to be the measure of the interest charged. As a matter of fact, too, the lender will have been receiving interest for years before going into court, to which he will resort only after finding his debtor exhausted or recalcitrant. I do not consider, then, that the proposed reform will be of any considerable value.

7. (c) But

7. (c) But if ineffective in repressing usury it might easily hamper legitimate business. For instance, in the transaction recited in the "statement of objects and reasons" no interest was paid for ten years, so that at 33 per cent. compound interest Rs. 100 became about Rs. 1,770. This was considered a hard bargain, yet relief was not granted because the debtor was neither a female, nor ignorant, nor poor; the result was in fact the mere result of a bargain, not outrageous in itself, but only startling because of the arithmetical results. But had the loan been at only 9 per cent. compound interest, raised for some improvement which would not bring in any profit for some years, the interest on 100 rupees for ten years would have been about 137 rupees, which, under the proposed law, would have been reduced to 100 rupees; at 12½ per cent.—a common rate—it would have been 224 rupees, of which 124 rupees would have been disallowed.

Hindrance of this fashion, however, is not of so much importance; it is the hindrance due to the fear of possible fraud that will be serious. Under Indian law* failure or defect in consideration may be pleaded and proved, even though such consideration is expressly recited in the bond; hence a defendant debtor can bring evidence to show that the consideration money was not actually entered in the bond, and the Courts would be not unlikely to accept such proof, especially where the borrower is ignorant, should it become customary, as it undoubtedly will, to enter fictitious sums in the bond. Hence it would probably become equally common for borrowers falsely to assert that the consideration in a genuine bond was fictitious, to the possible loss and certain discouragement of the lender. It cannot be doubted but that lenders would discount such risk by raising the rate of interest or refusing loans.

Interest will also arise from another cause; when a usury law declares a maximum as interest, all interest will, in the absence of a complete system of supply and demand, such as does not exist in India, tend to rise to that maximum, which will be treated as "dharmavatti" or legal interest. Similarly, if the legal maximum amount of interest awardable is that of the principal, no person will regard interest which rises to that sum as usurious, and perhaps no court will consider interference necessary, however hard the bargain, where the total interest sued for is only cent. per cent.

Moreover, if the amount of debt awardable be limited, and if the rate of interest be raised, it is clear that suits for debt would be instituted at shorter periods; a creditor will be forced to go to court more promptly, and a debtor will be the more harassed by suits.

8. (d) But the law will chiefly be ineffective because it will not touch the mass of rural usury. It is but comparatively seldom that interest is even allowed to rise at any one time to the amount of the principal; the transactions are largely continuous, with an annual settlement of accounts and perhaps fresh bonds; a debtor who had paid nothing for a year or two would promptly be put into court. Nor is the usual rate of interest such as to make interest equal to the principal in two or even in three years, within which time a suit would certainly be filed, altogether apart from the probability that some interest would have been paid the while. In above 3,000 small cause suits below 20 rupees and above 20 rupees, but below 50 rupees taken at random, I have noticed no such case. In the class of rural cases so often quoted where a man borrows 100 rupees, pays various amounts for a series of years, and yet finds himself at the end of the series with a debt of perhaps 300 rupees, the whole bond has long before been replaced by a fresh bond, in which the principal debt shown is totally different from the original debt. The proposed law cannot *per se* deal with such cases, but only a law which, as previously proposed, enables a court to go behind the bond actually sued upon, and to trace the history of that bond. But that is a very different thing from the proposed hard and fast law. Moreover, since the loans dealt with are only money loans, the grave credit system will not be affected.

9. (e) In fact the law seems only to meet exceptions or a small class of cases, probably non-rural, such as the extraordinary Madras City Court case recently reported (where a suit was brought for a principal of 45 rupees with 68 rupees as interest for 34 days) in which definite sums are borrowed at excessive rates and perhaps allowed, ignorantly or recklessly, to accumulate. It will probably be found in such cases that the borrower is able to pay, for the money-lender would not otherwise have allowed the debt to accumulate. It is a question whether such exceptions require a law of this class. If money is recklessly borrowed and payment carelessly neglected, it is not clear why a special law should be passed to protect the borrowers. If such borrowing is the result of coercion, fraud, mistake, misrepresentation or undue influence, the law of contract already provides a remedy, and the only necessary addition is that already suggested by the Government of India, viz., an addition to provide that a contract shall be void in which one party possessed "undue advantage" over the other, or as provided in the new German usury law (1880 and 1893), where one person has taken undue advantage of the necessity, thoughtlessness or ignorance of another to obtain for a loan terms not only unusual but highly disproportionate to the service rendered.

10. (f) As shown above (paragraph 7) there will be a marked and increasing tendency to fraud. Documents will falsely recite consideration, and will be duly sworn to in the Courts; debtors will falsely plead and bring false witnesses to prove an alleged deficiency in the consideration; parties will begin to treat false recitals as venial, and false swearing as praiseworthy; written contracts will be looked on with suspicion.

11. Referring to the wording of the Bill, I presume that the words "original principal" refer to the principal entered in the bond which is the basis of the suit, and not to the "original" principal which may have merely formed the first item in a series of transactions culminating in the said bond. If so, the word "original" is misleading or ambiguous, and should be omitted, the words "decreed or awarded" being entered after "principal." If by the word "original" is really meant the sum "originally" advanced as the first item of a series of transactions of lending and repaying, the Bill would be wholly inequitable and ruinous to credit; a man borrows on a simple bond 100 rupees at 18 per cent., and fails to pay the interest or principal; a year or two later he takes a further loan of 100 rupees and executes a fresh bond, and again a year or two later a further sum of 100 rupees, executing a mortgage; in this transaction what is the original "principal"?

12. Under these circumstances I fail to see the desirability of the law as now proposed.

13. If a usury law is desirable at all it should not be fragmentary or hard and fast, as in the present proposal; it should take form similar to that already proposed by the Government of India; it should give the Courts power within certain defined limits to decide in each particular case, according to the circumstances, whether there has been usury or not; for this purpose a court should have the power to go behind the bond, inquire into the circumstances of the original loan and of subsequent transactions, and give judgment according to equity. That seems already to be the tendency of the Bombay and Allahabad High Courts, which have expressly ruled in favour of the power of civil courts, as courts of equity, to "examine into the character of agreements made between persons between whom relations exist which will enable one party to take advantage of the other, and to decline to enforce such agreements unless they are shown to be fair and reasonable."

Such power would be consonant with the ideas of Germany which, in 1867, repealed its old usury law, but enacted in 1880 (and 1893) a new law, the full text of which, with the Russian law of 1893, will be found in Appendix II. of my report on Land Banks. The main section of the German law is as follows:—

"Whoever taking undue advantage of the necessity, recklessness, or inexperience (ignorance) of another, lends such person money, or consents to postpone a repayment, upon terms which, under the circumstances of the case, are greatly in excess of the customary rates of interest or highly excessive as compared with the service rendered, shall be punished as a usurer" (with imprisonment which may extend to six months, and with fine up to 150*l.*, and with the loss of civil rights).

The Russian penal law, enacted, as to these sections, in 1893, is similar :—

" If any person has granted a loan at usury, under conditions which, within the knowledge of such person, lay upon the borrower a charge of excessive burden, or if any person, being an habitual money-lender, has disguised excessive interest on such loan whether by including it with the principal or by entering it as costs of custody (*soit en leur donnant la forme de frais de garde*), he shall be liable to imprisonment of from two to six months, &c.

In both laws the habitual usurer is still more severely dealt with. The Russian law goes on to provide that interest up to 12 per cent. shall not be considered usurious.

These laws are quoted only as examples of a tendency to grant to the Courts a power to examine into the circumstances of loans apparently usurious, and to give relief; they do not lay down any hard and fast limit, but after defining in general terms a usurious loan, grant the Courts the power of deciding, in any particular case, whether such case comes within the description. * This, if a usury law is to be passed at all, seems preferable to the Bill now under consideration.

14. A further safeguard is that already alluded to in a previous letter, viz., a law to compel professional money-lenders to keep regular accounts, as is required of all *commerçants* by European law, to balance every individual account at least annually, and—a most important point—to deliver to each debtor periodically a statement of his account to date. I have dealt with these points in Appendix I to my report on Land Banks, pages 322-3, 327 and 395 (rule 27), to which I request the favour of reference; in the rule 27 above mentioned, a provision for the entry of every such balance, credit or debit, in the pass book has been accidentally omitted. I should add that since that appendix was written I have noticed that the new German usury law of 1893 expressly enacts a provision that at the end of each year every money-lender shall, under heavy penalty, deliver to each debtor not only a statement of the balance due by such debtor, but an extract from his account for the year showing all dues and payments; the commentary on this section states that it is intended to combat a favourite manoeuvre of usurers, especially rural, who deliberately avoid the receipt of their dues from ignorant or careless borrowers, so that interest may accumulate upon interest, payments made may be omitted, &c., until the wretched borrower suddenly discovers that he is ruined. To the proper provision of accounts, to the entry of every item in a pass book retained by the debtor, and to a due periodical delivery of a certified balance sheet to each debtor, I attribute great importance; it is, I believe, in such safeguards and provisions rather than in usury laws that safety will be found for the debtor.

15. Of course, the greatest of all immediate panaceas and safeguards is the establishment of co-operative village banks. I have recently dealt fully with this in my report on Land, &c., Banks, and need not here report my opinions. I will only add that the opinion of many economists is that the German usury law has increased the weight of usury, and that it is not by mere laws that abuses of this nature can be repressed; "the evil of usury is elusive in the highest degree, for it disguises itself in a thousand forms"; it is chiefly by the educative, sanative, and evolutionary powers of association acting upon habits, opinions, manners, and morals that it can be radically dealt with; it is by local institutions of thrift, providence, and credit, chiefly co-operative, springing from and worked by the people, that the evils of usury can be successfully combated.

(signed) F. A. Nicholson.

From the Inspector-General of Registration, to the Chief Secretary to Government, dated Madras, 10th August 1895, No. 2425-G.

Adverting to G.O., No. 751, Judicial, dated 8th April 1895, I have the honour to state that I approve of the general principle of the Bill "to regulate the award of interest in suits for simple money-debts or mortgage-debts" now under the consideration of the Legislative Council of the Governor General of India. The Government is already aware that I have, in my letter, dated 27th August 1894, No. 2475-G, printed in G.O., No. 2670, Judicial, dated 6th November 1894, urged the enactment of a law of this kind, and explained, in some detail, my reasons for considering that such a law is called for in the circumstances of this country, and is likely to be productive of benefit to the agricultural population; and I beg that that letter may be read along with this.

2. From the explanation appended to the section of the Bill, it appears that the Courts are to be debarred from decreeing at any time, on account of interest, the payment of a sum which exceeds the portion of the principal remaining unliquidated at the time. It is, I believe, a moot question whether the Hindu rule of *damdupat* refers to the total payments made and to be made on account of interest, or to the amount of interest recoverable at any one time. However this may be, the new law, which is to be applicable to all classes, and not merely to Hindus, should declare that the total amount recoverable, including payments previously made, shall not exceed the unpaid principal, as otherwise a person who has made some payments on account of interest will be in a worse position than one who has committed default in regard to payment of interest from the very beginning. The wording of the Bill should also be altered so as to make its provisions applicable not only to simple debts and mortgage debts, but also to loans obtained on the pledge of moveable property. Usufructuary mortgages should be excluded from the operation of the proposed enactment.

3. As regards the question of imposing restrictions on freedom of contract in regard to the settlement of the terms of loans, I may at the outset state that any revival of the usury laws repealed by Act XXVIII. of 1855 is, in my opinion, very undesirable for the following reasons. Usury laws might have been beneficial in their effects at a time when then the quantity of money in circulation was small, all ordinary transactions were carried on by means of barter, and the possession of money was monopolised by a small number of persons, who, as a class, were known to take undue advantage of the necessities of others, and make enormous gains at their expense. In former times, while on the one hand, both law and public feeling were harsh against usurers, they were equally severe on defaulting debtors, who were, in certain circumstances, treated as little better than the slaves of their creditors. The circumstances of the present time are, however, entirely different. The system of barter has mostly gone out of use, and money payments, instead of being the exception, are now the rule in all ordinary transactions. The bulk of the operations of trade are carried on with borrowed capital, and the severity of the laws against defaulting debtors, when the default is not the result of fraud, has had to be relaxed. Under modern conditions of business therefore, it is hopeless to attempt to fix by law the terms on which money shall be lent. These terms must depend on the soundness of the title of the borrowers to the property offered as security, their honesty and prudence, the legal expenses to be incurred in case of resort to the courts for the recovery of the loans, the extent to which the expenses incurred are likely to be recovered, and a host of other considerations. Even where the security is unexceptionable, it is obvious that persons who lend in small sums for short periods cannot afford to charge the same rate of interest as those who lend in large sums for long periods, in view of the trouble of dealing with a large number of persons, of recovering the money lent as it falls due and re-investing it. No single rate of interest prescribed by law will, therefore, suit the infinite variety of conditions under which loans have to be contracted, unless the rate is fixed, very high, in which case the object in view will not only be defeated, but harm will also be done by giving legislative sanction to a rate which is confessedly high in a large number of cases. If, on the other hand, the rate be fixed low, as creditors cannot be compelled to lend money, and borrowers must somehow procure money to meet their necessities, the law will, to a certainty, be evaded; and in view of the risks involved in the breach of the law, the creditors will enact harder conditions from the borrowers, whose position will be rendered worse than before.

4. The

4. The present proposal is not, however, an attempt to resuscitate the usury laws, and none of the objections stated above to the fixing by law of the rate of interest demandable for loans are applicable to it. Under the proposed law parties will be at liberty to contract for any rates of interest they please, but the law will interpose and say to the creditor, when the interest has accumulated to such an extent as to amount to the principal, interest shall not further accumulate, and he shall put pressure on the debtor either to pay up, or to enter into an entirely new contract; he shall not be allowed to let the interest grow to enormous proportions, and then all of a sudden pounce on the debtor and strip him of all his property, taking undue advantage of his carelessness. The proposed law will, therefore, be analogous to the law of limitation, but with this difference, viz., that, whereas the ordinary law of limitation prescribes the same limit of time as regards all loans, the proposed law will prescribe a self-adjusting limit of time suited to the circumstances of each case, and compel the parties to revise the terms of the loans within a period of time, long or short according as the rates of interest are low or high. In the case of a loan raised to meet a temporary pressing necessity, the payment of a high rate of interest may be unavoidable and even profitable, but the same rate of interest, if continued for a long period, would be ruinous. Such an arrangement is entered into in the expectation on the part of the parties that it is to continue for a very short period, and therefore there is nothing unreasonable in the law compelling the parties, when the interest has become equal to the principal, to reconsider the terms of the contract. In the case of Ananda Moyi Gupta *versus* Ambica Charan Guha and others quoted by the Hon'ble Mohiny Mohun Roy in his speech on the occasion of his motion asking for leave to introduce the Bill, it will be seen that though the loan of Rs. 1,500 was to bear interest at the rate of 33 per cent. per annum, it was stipulated to be repaid within three months, or in other words, the arrangement in the contemplation of the parties was really the payment of a discount of less than 8 per cent. for a bill for Rs. 1,624 payable three months after its date, though the transaction took the shape of a mortgage. Looked at in this light, there is nothing unfair in the transaction, and what makes it really unconscionable is the application of the rate of 33 per cent. compound interest with yearly rests, which was stipulated in connection with a loan for a very short period to the loan when allowed to run for a period of ten years. As a matter of fact, soon after the expiration of the stipulated period of three months, the amount of the loan was repaid, with the exception of a small sum of Rs. 353. The creditor has taken advantage of the negligence of the debtor to pay this small balance for ten years to recover from him by suit the enormous sum of Rs. 6,137 in addition to cost. Under the proposed law, it would have been the duty of the creditor to call upon the debtor, as soon as the sum of Rs. 353 amounted with its interest to Rs. 706, either to liquidate the debt or enter into a new contract. I understand that an English statute of limitation lays down an analogous principle in that it prescribes a shorter period of limitation for the recovery of the interest on mortgage debt than is applicable for the recovery of the principal. If all debtors were provident and careful, of course no laws of this kind would be necessary, but taking them as they are, there can be no objection to protecting them from the extreme consequences of their improvidence, when this can be done without causing hardship to creditors by merely requiring the latter to put pressure on their debtors, when the loan and its interest has reached the prescribed limit.

5. In view of the vicissitudes of the seasons and the precarious economic condition of the great majority of the agricultural population of this country, the bulk* of the loans contracted are for short periods at high rates of interest. In about 60 per cent. of registered mortgages, the loans are repayable either on demand or within terms not exceeding one year, and above 80 per cent. of the loans are repayable within three years. Now, a sum of money invested at 6, 12, 18 and 24 per cent. compound interest will double itself, roughly speaking, in twelve, six, four and three years respectively, and, therefore, the proposed law will not unduly restrict the period of time now usually allowed for the repayment of loans. And, as already pointed out, it will not interfere with the freedom of the parties to settle the terms of the contracts according to their circumstances and necessities. Again, in a poor country with a low scale of living, the prices of food-grains form the dominant factor in the standard of value for deferred payments, and as the prices of food-grains vary within short periods, the opportunities given by the proposed law for the revision of contracts will, in the long run, work advantageously to the ryots.

6. From the speech of the Hon'ble Mohiny Mohun Roy, it appears that loans of agricultural produce have been intentionally excluded from the scope of this Bill. I do not see any reason for this; and it seems to me that the considerations which render the proposed legislation necessary are more applicable in the case of loans in kind, in that the class of ryots who contract such loans are inferior in *status* to those who contract money loans and more dependent on the sowcars for information as to the state of their accounts. There are two cases to be considered, viz., loans of *produce* for which produce interest is stipulated to be paid; and, secondly, loans of *money* for which produce interest is to be paid. In the first case, the principal and interest should not be allowed to accumulate to more than twice the quantity of the loaned produce, and the amount recoverable should be the value of this. In the second case, the value of the produce interest should not exceed the amount of the unpaid principal.

(signed) S. Srinivasa Raghavaiyengar,
Inspector-General of Registration.

Order—No. 2080, Judicial, dated 8th October 1895.

The Government of India will be addressed.

[Here enter letter, No. 2081, dated 8th October 1895.]

(True Extract.)

G. S. Forbes, for Chief Secretary.

I N D E X.

[*N.B.*—In this Index the figures following the Names of the Witnesses, and those in the Analysis of Evidence of each Witness, refer to the Questions in the Evidence; the Figures following *App.* refer to the Pages in the Appendix; and the Numerals following *Rep.* to the Pages in the Report and Proceedings of the Committee.]

A.

ABOLITION OF MONEY LENDERS. Concurrence in the view that money-lenders are "vermin," that they serve no useful purpose, and that they should, if possible, be obliterated, *Sir G. H. Lewis* 71-75; *Judge Snagge* 1903, 1904.

Accounts and Balance Sheets. Special importance of facilities for taking an account, and for fixing a fair rate of interest, *Sir G. H. Lewis* 100-107. 188-194—Suggestions as to the procedure in taking an account so as to arrive at a fair rate of interest, *Sir F. R. Falkner* 250. 262-266. 275-280—Grounds for the proposal that money-lenders (like pawnbrokers) should be required to keep records of their transactions, and that their books should be open to inspection, *Sir H. Hawkins* 432, 433. 498-501.

Recommendation by the Committee that the court should have power to reopen any account stated in the course of the 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 shall think fit, *Rep.* vi.

Recommendation also that every person, or company, carrying on the business of a money-lender should be required to keep regular and strictly accurate accounts of each transaction, and to furnish to the borrower, on every date when an instalment falls due, a clear statement of his account up to date, *Rep.* xi.—Instances of borrowers having been kept in complete ignorance of the state of their accounts until they have been on the verge of ruin, *ib.*

See also *Courts of Law*.

ADVERTISEMENTS AND CIRCULARS:

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COURTS OF LAW (RATE OF INTEREST):

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3. *Loans from the local Joint Stock Banks, and rate of interest charged.*
4. *Explanations respecting the establishment and development of Agricultural Banks, with particulars as to the constitution and beneficial operation of the Irish Agricultural Organisation Society.*
5. *Recommendation that the Congested Districts Board be empowered by Act to make advances to small Banks or Credit Associations.*

1. *Abuses*

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Pawnbrokers. Salutory operation of the system of pawnbrokers in the interests of the poorer classes, *Snagge* 1805–1808. 1829.

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Plunkett, The Right Honourable Horace Curzon. (Member of the House.) (Digest of his Evidence.)—Outline of the objects and operations of the Irish Agricultural Organisation Society, which was founded in 1894, witness being the President, 1909–1913.

Great disadvantage to small agricultural borrowers in Ireland through the insufficient and complicated security which they have to offer, so that the rate of interest and the legal expenses are unduly high, 1914 *et seq.*—Extensive borrowing of small sums through the joint stock banks now scattered all over the country, the interest being frequently 10 per cent., deducted beforehand, together with the expense of sureties, &c.; numerous loans from 10*l.* downwards, 1916–1932.

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Conclusion that the best remedy for the evils of the present practice of obtaining loans is by the establishment of a system of associated credit and by educating the people as to their economic condition; necessity of combination and co-operation for this purpose. 1971–1973. 1992 *et seq.*; 2044–2059—Adoption by the Organisation Society of the Raiffeisen system of agricultural banks, as in operation for some time in Germany: great value of this system, the loans being for approved productive purposes, 1973 *et seq.*

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Plunkett, The Right Honourable Horace Curzon. (Member of the House.) (Digest of his Evidence)—continued.

Particulars respecting the credit societies or agricultural banks established in 1894, and subsequently at Doneraile, Kyle, and Belmullet, all of which are congested districts; very satisfactory operation of these banks in the interests of borrowers, the loans being in very small sums and being punctually repaid, 1992-2000. 2004-2015. 2044-2064. 2108-2120—Beneficial effect of agricultural banks in preventing usury on the part of the "gombeen" man, and in putting down the system of shopkeepers' credit, 1997. 2046-2055.

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Examination to the effect that witness is not conversant with the detailed operations of the banks throughout Ireland or with the rates of interest charged on small loans, but has reason to believe the charges are considerably higher than those of the credit associations, 2016-2034. 2093-2104.

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Decided demand for small agricultural banks, irrespectively of the existing joint stock banks: important advantage of the former in lending only for specific productive purposes, there being no such condition in the latter case, 2093-2120—Steps taken for the establishment of several other agricultural banks besides those at Belmullet, Doneraile, and Kyle, 2108-2110.

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Several statutory conditions proposed in the case of unsecured promissory notes obtained by money-lenders; proposed restriction of the right to recover more than 10 per cent. unless previous leave to proceed has been granted by the court, *Judge Snagge* 1838-1860. 1876-1884—Great advantage of the registration of bills of sale; conclusion as to the expediency of promissory notes being registered, *ib.* 1864-1888. 1894.

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Paper handed in by Judge Snagge showing the particulars to be required in proposed Register of Loans and Promissory Notes, *App.*

Recommendation by the Committee as regards promissory notes or bills of exchange that in order to do complete justice between borrower and lender, provision be made for empowering the court to direct repayment by the money-lender to the borrower of any amount which, upon taking an account, may appear to have been paid by the borrower to the holder over and above the amount which the court may direct to be reasonably due to the lender under all the circumstances, *Rep. vii.*

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Expediency of money-lenders, as a class, being registered, *Sir J. C. Mathew*, 1487, 1502-1506—Probable advantage if money-lenders were registered and licensed and had to make a statutory declaration; objection, however, that they would claim to be recognised by Parliament, *Judge Snagge* 1780-1789.

Several recommendations by the Committee in connection with their proposal for the registration of money-lenders, *Rep. x.*—Recommendation that the registrar of the local county court should be the registrar, that a fee of 5*l.* should be charged in respect of every registration, and that the register should at all reasonable times be open to inspection free of charge, *ib.*—Recommendation as to names being struck off the register for certain offences, *ib.*

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Risk. Varying rates of interest charged by witness, the average being about 40 per cent; considerable risk incurred, his bad debts being very heavy, *Moore* 2408-2413, 2660-2676, 2818-2840.

Roeburgh, Francis. (Digest of his Evidence.) Considerable experience of witness as to money-lending cases in his capacity of Assistant Judge of the Lord Mayor's Court of London since 1887; several years for which he has devoted attention to the subject, 3549-3556.—

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Roxburgh, Francis. (Digest of his Evidence.)—*continued*.

Statement in explanation of a letter written by witness to the Lord Chancellor in 1892; three typical cases submitted therein in illustration of conclusions arrived at by witness as to the necessity of amended legislation respecting money-lending, 3551-3558.

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Russell, George. (Digest of his Evidence.)—Part taken by witness in organising the agricultural banks in the congested districts of Ireland: several counties in which such districts are situated, 2121-2128—Result of local inquiries made by witness that he found there were many villages and small towns in the west of Ireland in which there are not branches of joint stock banks and that small borrowers from such banks are put to considerable expense for stamp and other charges over and above the rate of interest; several cases at Belmullet and elsewhere cited in illustration, 2129-2142. 2148. 2203-2238.

Heavy charges of the "gombeen" man in the West of Ireland; this system of usury is rapidly dying out, owing very much to the operations of the joint stock banks, 2142-2144. 2226-2233—Grounds for objection to the system and the management of the loan fund societies, more especially as regards the repayment of loans, 2145-2154, 2239-2250.

Information respecting the system of "trust auctions," as carried on at Ballyshannon and other places in Donegal: sham sale of cattle at some of these auctions, which are also used as a means of gambling, 2155-2183—Frequency of excessive payments for goods, manures, &c., under the system of shop credit in operation in the West of Ireland: much poverty due eventually to the high charges where credit is given to the lower classes in congested districts, 2183-2191. 2195-2202.

Summary of the advantages to be derived from an extensive establishment of agricultural banks in districts where borrowing now takes place at excessive rates of interest; thrifty and productive character of the loans obtainable from these banks, 2192-2202. 2251-2255. 2259-2263.

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Russell, George. (Digest of his Evidence.)—*continued.*

Examination to the effect that though the numerous branches of the joint stock banks throughout the country are a great advantage to small borrowers there is still much room for agricultural banks, and the latter offer greater facilities than the former as regards repayments, &c., 2203–2238. 2259–2263.

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Sales of Reversions Act. Effect of the law previous to the Sales of Reversions Act of 1867 that such sales could be set aside on the ground merely of inadequacy of price; operation of this Act in accordance with the old equity as laid down by Lord Hardwicke, *Sir F. R. Falkiner* 228 *et seq.*

Shuckburgh, Edward. (Digest of his Evidence.)—Business carried on by witness as a money-lender at Bristol and Exeter under the name of the Clerical and Medical Advance Bank: he has no special reason for not trading under his own name, 772–789. 1304–1309—Explanation that though trading as a Bank witness does not transact ordinary banking business; reference hereon to his advertisements and circulars in which loans are offered without security or a bill of sale being required, 788–804.

Denial that borrowers have been induced by witness or his agents to believe that advances would be made to them for twelve months, whereas the loans were really made repayable in two or three months, thus carrying a very high rate of interest: examination upon several specific cases at variance with witness' statements on this point, 802 *et seq.*

Case of Mr. J. H. Breach in 1894, in which witness brought an action at the Bristol Assizes for the recovery of 75*l.* but was defeated and had to pay costs, 808–821—Case of the Rev. Mr. Lovibond in 1897, in which witness claimed 125*l.* in the Ross County Court, but was awarded by the Court only 110*l.* and had to pay costs, 822–840—Case of the Rev. Mr. Temple, in 1897, in which the latter was sued by witness but the action was dismissed with costs, 841–892.

Practice as to a statutory declaration being usually taken by witness before making advances; legal requirements observed on these occasions, 857–870. 1373–1376—Case of the Rev. George Hustler, in the Newport County Court in 1894, in which witness claimed 700*l.* advanced for three months, with 300*l.* for interest: allowance by the Court of only 35*l.* 13*s.* 5*d.* for interest, 893–921.

Explanations respecting the case of the Rev. J. Large, to whom witness lent 150*l.* for three months, for which he took a promissory note for 195*l.*; reduced amount of interest received by witness in this case, the borrower having become bankrupt, 922–953. 1427, 1428—Examination upon the case of Mrs. Wickers in 1897–98; application by witness, under the Bills of Sale Act, for the rent receipt, the decision on this point having been against him, with costs, 954–969.

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Explanation that not only at Bristol and Exeter, but at Bath and Gloucester, witness has traded as a money-lender, sometimes in his own name, and that at Gloucester he has traded as the Clerical, Medical, and Legal Trust; failure of an attempt to register the latter title, 1113–1127—Very large number of circulars sent out by witness; considerable expenditure on circulars and advertisements, 1127–1133. 1233–1256—Practice of witness to send circulars to all classes, as well as to clerical and medical men, his business being by no means confined to the professions; different forms for the clergy and for different classes, 1133–1142. 1208–1217. 1261–1270. 1285, 1286.

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in some instances, of what the borrowers are to state, 1143–1160. 1271–1278. 1299–1301. 1373–1376—Very rare instances of sureties being required from professional men, 1161. 1162—Practice of adhering to the prescribed form in the case of bills of sale, 1163–1167.

Alleged inability to give even an approximate estimate of the amount of capital in witness' business; impression that he has not more than 20,000*l.* out at the present time, 1170–1174. 1192–1217—Objection to prepayment of more than the instalment due, 1175, 1176.

Non-objection to money-lenders being registered and licensed, 1177, 1178—Unfairness to money-lenders of the working of the Bills of Sale Act as regards application for rent receipts, 1178, 1179—Objection to a fuller power in the judiciary and county court judges and registrars to review the whole of each transaction, and to decide what is a fair rate of interest; great interference thereby with the money-lending trade, 1180–1185. 1408–1410.

Retirement of witness from the business if bills of sale were abolished; his loans are almost entirely granted on bills of sale, duly registered, 1187–1189. 1355–1361—Very false idea in the public mind as to the profits of money-lenders, 1190, 1191. 1302, 1303.

Explanations in connection with some special circulars to clergymen; instances of advances to clergymen at 10 per cent. 1208–1232—Very little business done by witness with lawyers, 1257–1260—Denial that witness ever charges default interest or fines, 1279–1284.

Question considered as to the bank circulars sent out by witness offering such special facilities as to mislead the clergy and others in respect of only personal security being required, 1285, 1286. 1304–1344, 1352–1364. 1399–1407. 1411, 1412—Statement as to money-lenders (as at Bristol) being a recognised class; reference hereon to banks as money-lenders, 1287–1298—Assertion that for the last three years witness has not made 500*l.* a year; he cannot state the amount of his business, 1302, 1303. 1377–1392. Examination to the effect that witness admits having circulated a statement among the clergy that he was willing to give small sums to deserving charities, 1310–1344.

Want of an alteration of the law in the direction of giving fair play to money-lenders, 1371, 1372. 1408–1410—Varying periods for which his loans are out, many advances being only for three months; constant difficulty in obtaining repayment, 1382–1398.

Small number of executions levied by witness in addition to the ordinary actions, 1413–1425—Considerable loss in cases in bankruptcy, 1426–1428—Violent attacks made upon witness in "Truth," and other papers, without his having brought any action for libel, 1435–1437.

Small Loans. Reference to a Small Loans Bill, introduced in 1896, as not having been enacted; proposed limit by this Bill upon the amount of loans, and the rate of interest, *Sir G. H. Lewis* 19–21—Recommendation that in the case of small loans under bills of sale upon the security of furniture, &c., there should be a right to redeem upon payment of interest at 5 per cent., *Sir J. C. Mathew* 1488–1494. 1499. 1547–1551. See also *Working Classes*.

Snagge, His Honour Judge (Digest of his Evidence.)—Considerable experience of witness as a county court judge, in Oxfordshire, and other counties, respecting money-lending cases, 1771–1775.

Conclusion as to the great hardship inflicted upon the poorer classes by the usurious interest exacted from them when compelled by necessity to resort to money-lenders; recent case in illustration, 1776. 1783. 1835. 1904–1908—Difficulty in preventing a money-lender trading under different names, 1777–1779—Probable advantage if money-lenders were registered and licensed, and had to make a statutory declaration; objection, however, that they would claim to be recognised by Parliament, 1780–1789.

Necessity of a definition of money-lenders in connection with the requirement of a statutory declaration; considerable difficulty apprehended on this score, 1780–1792. 1897–1902—Statement showing the large discretionary power now vested in county court judges, as under the Bankruptcy Act, in respect of the repayment of debts; further powers necessary if exorbitant debts claimed by usurers are to be reduced, 1793–1804—Salutary operation of the system of pawnbrokers in the interests of the poorer classes, 1805–1808. 1829.

Comment upon the operation of bills of sale as having gone far beyond the original intentions of the legislation on the subject; objectionable alterations under the Bills of Sale Amendment Act of 1882, as regards attestation and registration, 1808–1816—Suggestion that every bill of sale should be attested before the registrar of the local county court or his deputy, 1817–1820.

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extended establishment of co-operative banks or loan societies in England, special legislation not being necessary for this purpose, 679 *et seq.*—Several instances of co-operative banks or self-help societies already in operation in this country, such as the bank at Newport (Monmouthshire), the People's Bank at Edinburgh, the Finsbury Park Bank and others, 724–726.

Women Borrowers. Limited experience of witness in lending to ladies or to married women without the cognisance of their husbands; practice where a promissory note taken, to communicate with the husband in order to obtain his signature, *J.* 2917–2928. 3159–3161.—Rate of from 40 to 60 per cent. charged for loans to women *ib.* 2929–2932.

Examination in detail respecting witness' loan transactions with a lady who obtained for him a promissory note in her favour for 20,000*l.* bearing, as he believed, the signature of Lord Burton; reasons assigned for not making any enquiry into the genuineness of this signature, *Jay* 2936 *et seq.*—Summary of the different transactions in the foregoing case, showing the amount of cash advanced and the rate of interest charged; largely enhanced liability of the borrower through bills given in her favour by certain gentlemen not being met when they became due, *ib.* 2957–2974. 2985–2987. 3220–3222.—Statement as to witness having received a letter from the husband of the lady so that the latter was cognisant of money having been lent to her, *ib.* 2975–2984.

Circumstances under which witness and his solicitor gave a guarantee to a bill-discounter that the signature to the 20,000*l.* bill was that of Lord Burton; receipt of 2,600*l.* by witness and his solicitor for this guarantee from the lady in question out of a total of 18,600*l.* obtained by discounting the promissory note, *Jay* 3008 *et seq.*—Copy of letter received by witness from the lady in the foregoing case testifying to his kind treatment of her, *ib.* 3075–3082. 3189–3195. 3235–3246.

Explanation offered as to witness having made inquiry respecting the genuineness of the signatures of some other gentlemen who gave bills for this lady, whereas he made no such inquiry in Lord Burton's case, *Jay* 3083–3146. 3157–3158.—Statement respecting the eventual repayment of the 20,000*l.* when Lord Burton repudiated all liability, witness and his solicitor having provided 4,300*l.* and the rest having been provided by the lady's friends, *ib.* 3162–3165. 3196–3206. 3247–3251.

Working Classes. Denial that the poor could not obtain help save from money-lenders. *Sir G. H. Lewis*, 94.—Great abuse in the poorer classes being misled by advertisements in which loans are offered at "5 per cent.," whereas 5 per cent. per month is really charged, besides fees, *Sir H. Hawkins*, 416–419.—Great abuse also in connection with bills of sale given by the working classes; restrictions suggested, *ib.* 459–461. 592–594.

Protection required more especially for the working classes who borrow upon bills of sale; great hardship and sacrifice in these cases when execution is levied and when household effects are sold, *Sir J. C. Mathew*, 1488–1503.—Conclusion as to the great hardship inflicted upon the poorer classes by the usurious interest extracted from them when compelled by necessity to resort to money-lenders; recent case in illustration *Judge Snagge* 1776. 1883. 1835. 1904–1908.

See also *Bills of Sale*.