

ceived the royal sanction. The preamble of this Act is: "Whereas it is expedient to abolish all prohibitions and penalties on the lending of money at any rate of interest whatsoever, and to enforce to a certain extent, and no farther, all contracts to pay interest on money lent, and to amend and simplify the laws relating to the loan of money at interest." Accordingly, by section 1, the 5th section of the 17th Geo. III, was repealed, and the 2nd section declared that all penalties for usury were abolished, but by the 3rd section every contract involving payment of interest beyond 6 per cent. was made void so far only as regarded the *excess* over and above 6 per cent. The 4th section then declared that the Act did not apply to banks, insurance companies, or corporations or associations of persons heretofore authorized by law to lend or borrow money at a rate of interest higher than 6 per cent.

Then, by the 22 Vict. c. 85, sec. 1, the 3rd section of the 16 Vict. was repealed; and by the second section it was enacted, that it should be lawful "for any person or persons other than those excepted in this act" to exact on any contract or agreement whatsoever any rate of interest or discount which might be agreed upon. These excepted "persons" were, by the subsequent sections, declared to be the banks, which were allowed to loan at seven per cent., and corporations, or associations of persons not being banks theretofore authorized by law to lend or borrow money. At this time then (16th August, 1858), the usury laws were absolutely repealed, except as to banks and corporations or associations of persons *theretofore* authorized to lend or borrow money; and consequently every other description of "persons," which not only by the Interpretation Act of the then Province of Canada, but by the 6th section of the Act itself, was made to include corporations, were free to lend at any rate of interest whatever. The language of the statute consolidating the law respecting interest directly sustains this interpretation. Chap. 58 Consol. Stat. of Canada, in the 3rd section, says:—"Except as hereinafter provided, any person or persons may stipulate for, allow, and exact on any contract or agreement whatsoever any rate of interest or discount which may be agreed upon;" and the 6th section enacts that "nothing in the three last preceding sections of this Act shall be

construed to apply to any corporation or company or association of persons not being a bank," (sections 4 and 5 applying exclusively to banks) "authorized by law before the 16th of August, 1858, to lend or borrow money"; and the penal section (No. 9), which appears to me not to consolidate or reproduce but to revive, an extinct penalty, is declared to apply to a "corporation or company or association of persons not being a bank authorized by law before the 16th August, 1858, to lend or borrow money." Then the Interpretation Act (ch. 5, Cons. Stat. of Can., sub-section 8 of sec. 6) says that the word "person" shall include any body corporate or politic. It is quite clear therefore that every corporation or company or association of persons, not being a bank, whose charter is subsequent to the 16th of August, 1858, is free to lend money at any rate of interest; and it is perfectly certain that the penalty provided by sec. 9 of the Consolidated Act is restricted to corporations, &c., chartered prior to the 16th August, 1858.

Subsequent legislation was referred to by the defendants as tending to negative this interpretation. There was the 23rd Vic., c. 34, and the 35th Vic., c. 70. The first of these statutes was passed in the session following that in which the Consolidated Statute was passed, and refers to insurance companies incorporated long before that statute (the date of which is 19th May, 1860), as it includes charters granted by the former Provinces of Upper and Lower Canada, and makes no reference whatever to companies to be incorporated after the passing of the Act. As matter of fact it seems very likely that the Act was passed, as it was said at the bar to have been, to relieve insurance companies that had been doing business in this country for a period long antecedent to the Consolidated Statutes. So also the second of these statutes refers to existing religious charitable or educational corporations existing in the Provinces of Quebec and Ontario, and not to any thereafter to be constituted, and in all probability referred to such institutions as our old religious corporations, hospitals, and colleges. Besides, a penal law must be construed strictly, and not extended; and, as I have said before, there is doubt at least whether this was such a loan or bargain as was meant by the law, and the right to contract being