

tion of persons borrowing money upon personal security. The policy of the law is to allow the borrower and the lender to agree upon any rate of interest, and the borrower having agreed to it must pay it, provided the rate per annum is stated in the contract. This proviso is his only protection, and it is introduced to prevent his being kept in the dark by the lender as to the real rate of interest per annum which he is agreeing to pay. To allow a borrower when making his contract, to agree that the Act should not apply, would be to allow two private individuals to set at naught an Act passed in the public interest. If these clauses of waiver were held to be valid, they would become a common form, and the Act would speedily become a dead letter. There is a singular lack of authority in English and Canadian reports. *Mabee v. Crozier*, 22 Hun (N.Y.) 264, *Bosler v. Rheem*, 72 Pa. St. 54 Am. & Eng. Encyc. of Law, 1st ed., vol. 28, pp. 533-4, and *Graham v. Ingleby*, 1 Ex. 651, referred to.

Appeal dismissed with costs.

NOVEMBER 21ST, 1903.

DIVISIONAL COURT.

TRAVISS v. HALES.

Husband and Wife—Liability of Husband for Torts of Wife
—*Marriage before 1884.*

Appeal by defendant Richard Hales from judgment of STREET, J., ante 309, in favour of plaintiff for \$1 and costs against both defendants in an action against husband and wife to recover damages for a slander uttered by the wife in April, 1901. The defendants were married in 1875. Street, J., held upon conflicting authorities that the marriage being before the Act of 1884, the husband was liable for the torts of his wife.

F. A. McDiarmid, Lindsay, for appellant.

J. W. McCullough, for plaintiff.

THE COURT (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.) referred to *Amer v. Rogers*, 31 C. P. 95, an article by Mr. T. Cyprian Williams in 16 Law Quarterly Review, p. 191, Lush on Husband and Wife, 1st ed., p. 256, 2nd ed., pp. 290, 291, upon the one hand; and to *Lee v. Hopkins*, 20 O. R. 566, *Seroka v. Kattenburg*, 17 Q. B. D. 177, and *Earl v. Kingscote*, [1900] 2 Ch. 585, on the other; and decided to follow the decision of the Court of Appeal in