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No. 45.

2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL

**An Act to amend the Laws concerning
the Interest of Money.**

Received and Read, a first time, Thursday, 1st
February, 1849.

Second Reading, Tuesday, 20th February, 1849.

HON. MR. SHERWOOD.

PRINTED BY LOVELL AND GIBSON.

BILL.

An Act to amend the Laws concerning
the Interest of Money.

WHEREAS certain provisions of the Preamble.
Laws concerning the Interest of
Money are unfavorable to the introduction
of capital into this Province, and retard the
5 development of its resources and enterprise,
by preventing loans and investments on such
terms as the borrower and lender may deem
to be for their mutual advantage, and com-
mensurate with the value of the money lent
10 and with the risk of loss: Be it therefore
enacted, &c.

And it is hereby enacted by the authority Laws incon-
of the same, That all enactments and provi-
sions of law inconsistent with those herein- sistent with
this Act sus-
pended.
15 after made, shall be and are hereby suspended
during the time this Act shall remain in
force, except only as to contracts for the Exceptions as
to past trans-
actions.
20 theretofore committed, with regard to which
they shall remain in full force and effect,
and the following sections of this Act shall
be construed accordingly as not applying to
such contracts or offences.

25 **II.** And be it enacted, That from and Certain Bills,
Notes, and
Loans of
money ex-
empted from
the operation
of the usury
laws.
after the passing of this Act, no Bill of
Exchange or Promissory Note made payable
at or within twelve months after the date
thereof, or not having more than twelve
30 months to run, nor any contract for the
loan or forbearance of money, shall, by
reason of any interest taken thereon or se-
cured thereby or any agreement to pay or
receive or allow interest in discounting, ne-
35 gotiating or transferring any such Bill of

Exchange or Promissory Note, be void, nor shall the liability of any party to any such Bill of Exchange, nor the liability of any person borrowing any sum of money as aforesaid, be affected by reason of any 5 Statute or law in force for the prevention of usury; nor shall any person or persons or body corporate drawing, accepting, endorsing or signing any such Bill or Note, or lending or advancing or forbearing any 10 money as aforesaid, or taking more than the present rate of legal interest in this Province for the loan or forbearance of money as aforesaid, be subject to any penalties under any statute or law, relating to 15 usury, or to any other penalty or forfeiture; any thing in any law or statute relating to usury, or in any other law whatsoever in force in any part of this Province to the contrary notwithstanding: Provided always, 20 that nothing in this section contained shall extend to the loan or forbearance of any money upon security of any lands, tenements, hereditaments, or immovables, or any estate or interest therein, but to such 25 loan or forbearance the provisions of the next following section shall apply.

Proviso as to loans upon the security of real property.

Loans on real security may be at any rate of interest.

Proviso: the contract to be void as to interest over per cent.

How payments shall be imputed.

III. And be it enacted, That no contract for the loan or forbearance of money or money's worth, upon security of lands, 30 tenements, hereditaments, or immovables, at any rate of interest whatsoever, and no payment in pursuance of such contract, shall make any party to such contract or payment liable to any loss, forfeiture, pen- 35 alty or proceeding, civil or criminal for usury; Provided, nevertheless, that every such contract and every security for the same, shall be void so far, and so far only, as relates to any excess of interest thereby 40 made payable above the rate of pounds for the forbearance of one hundred pounds for a year; and that every payment of interest exceeding the rate aforesaid, shall be taken to be in discharge of the 45

principal money, or of interest at the rate aforesaid, any agreement to the contrary or actual appropriation of the payment to the contrary notwithstanding, so that as soon as
 5 the amount of the principal sum, with interest as last aforesaid, shall be repaid, the said principal sum, with all interest due thereon, shall be deemed to be paid and satisfied: Provided always, that when the
 10 said principal sum and interest, at the rate aforesaid, shall have been paid and satisfied, any further payment voluntarily made on account of any excess of interest reserved or agreed for, by the original contract of
 15 loan or forbearance, shall be lawful and irrevocable.

Voluntary payments to be irrevocable in certain cases.

IV. Provided always, that nothing in this Act contained, shall be construed to enable any person or party to claim in any
 20 Court of Law or Equity more than six per centum per annum interest on any account, or on any contract or engagement, notwithstanding they may be relieved from the penalties against usury, unless it shall appear
 25 to the Court that a greater rate of interest was agreed upon by the parties; nor to invalidate any agreement for a less rate of interest than that last aforesaid; and that in all cases where interest shall be recoverable
 30 and no rate of interest shall have been agreed upon by the parties, the rate of interest recoverable shall be six per centum per annum as it hath heretofore been.

When there is no agreement as to the rate of interest, 6 per cent to be allowed, &c.

V. And be it enacted, That this Act shall
 35 be in force until the day of May, one thousand eight hundred and , and thence until the end of the then next Session of the Provincial Parliament, and no longer; and that
 40 this Act may be amended or repealed by any Act to be passed during this present Session.

Duration of this Act, &c.