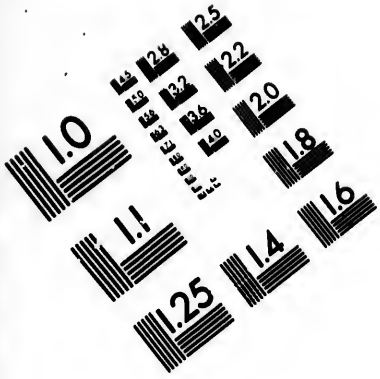

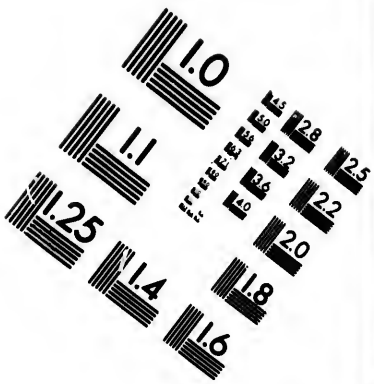

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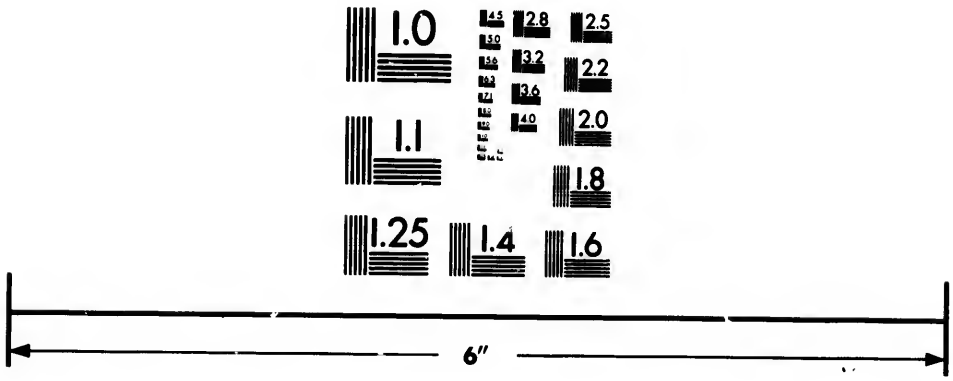

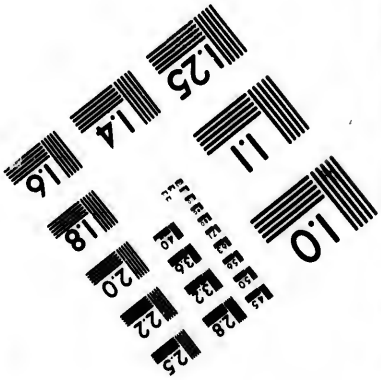

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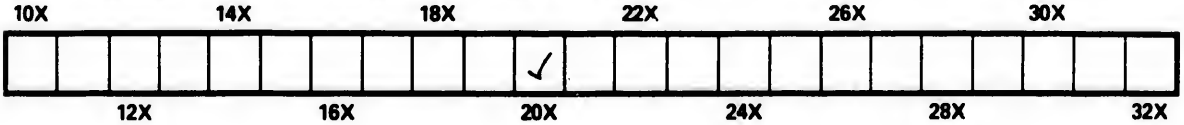

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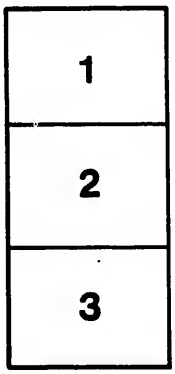

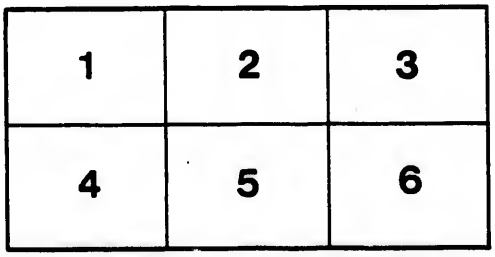

OBSERVATIONS

ON

THE USURY LAWS,

BY THE

HON. HENRY SHERWOOD, M. P. P.

USURY as it was generally defined, signified the giving of money for the use of money—whereby a gain was made by contract, above the principal, by way of remuneration for the loan; and this not only applied to money—but to goods, corn, merchandize, or any thing else; if of the latter it was commonly termed *increase*—and was uniformly prohibited in all christian countries, and in England both by the common and statute law. Since the taking of interest has been sanctioned by the Legislature under certain restrictions, *usury* may now be defined as the taking of a rate of interest above what is permitted by law.

At an early period of our history the taking of money for the use of money, or, increase upon goods was stigmatised as being contrary to the Divine law. "The objection of the people of that day" (says an able writer,) "seems to have arisen from the then current construction of the law of Moses, by which it is prohibited to the Jews in their dealings with each other in the following words:—'Thou shalt not lend money upon usury to thy brother—usury of money—usury of victuals—usury of anything that is lent upon usury.'"

"'Unto a stranger thou mayest lend upon usury—but unto thy brother thou shall not lend upon usury—that the Lord thy God may bless thee in all thou puttest thy hands to, in the land whither thou goest, to possess it.'"

According to a learned commentator on the Sacred Volume, the foundation of this precept was to

impress on the minds of the wealthier Jews, the necessity of kindness and benevolence to the poor of their own nation, who, being thus gratuitously assisted, might be enabled under Divine Providence, to better their condition.

On the other hand there were not wanting those who contended (and their opinion has been long since generally adopted,) that the precept of Moses was to be understood in a political and not in a moral sense, as it did not entirely forbid the taking of usury as a thing *malum in se,* but only restrained the Jews from receiving it of their brethren, while by express words it gave them liberty to demand it from *strangers.* "A distniction," observes another eminent writer, with much force, "which could hardly have been admitted into a law, intended by the Divine author to be of moral and universal obligation."

It is clear, therefore, that there is nothing in the Divine precept (which was evidently intended for the Israelites alone,) to prohibit any community from making such regulations for the convenience and benefit of society as would allow of money becoming as profitable to its owners as any other species of property—an opinion which is strengthened by the fact, that the practice is nowhere forbidden in the New Testament, which, on the contrary, seems indirectly to sanction it, as in the Gospel of St. Luke, we find our Saviour, though in a parable, thus expressing himself:—

"Wherefore, then, gavest thou not my money into the bank, that at my coming, I might have required mine own *with usury.*"

In St. Matthew it is still stronger:—"Thou oughtest, therefore, to have put my money to the exchangers, and then, at my coming, I should have received mine own *with usury.*"

We may be satisfied, I think, that this injunction would not have been given, even paraborically, if it were either immoral or contrary to the Mosiac law.

In the dark ages when learning was confined to the

monastery and commerce almost unknown, the strongest prejudices existed against money being taken for the use of money; and it was not until mankind became more enlightened and more alive to the advantages of the use of capital at a moderate rate of interest and foreign trade had increased, that more correct notions were entertained on the subject. And these prejudices which existed in the early period of England's history were very much strengthened by the conduct of the Jews, who had come to England from Normandy soon after the conquest, and who, as has been forcibly observed, "by their industry and frugality were possessed of the greater portion of the ready money of the Kingdom, at a time when trade and merchandize were held in contempt, and who also seem early to have availed themselves of the dispensations of the Mosiac law as to transactions with strangers." "We find them in the twelfth century," (says the same writer,) "the chief, if not the sole lenders of money for gain or usury, which then signified the same thing; and being no less odious on account of their religion, than hated for their wealth and alledged extortions, were often heavily fined and imprisoned, and at length were driven out of the Kingdom for this offence. Before their expulsion it seems to have been no uncommon thing for them to receive, for the use of money, at the rate of 50 per cent. per annum." "Incredible as this appears," (says the author from whom I have just quoted,) "it is the less improbable as we find they were restrained by an order of Henry the III., in 1272, on the petition of the poor scholars of Oxford, whose books they held in pawn, from taking more than 2d. in the week for every 20s. they lent them for the future, which is a little more than 43 per cent."

At this time commerce, to which credit is of the first importance, and without which it cannot be successfully carried on, was at a very low ebb—for as long as Christians were forbidden to take interest for

the use of their money, few would be inclined to lend it for the purpose of trade.

On the banishment of the Jews, the English as well as the Lombards commenced practices not at all dissimilar to those which had hitherto prevailed, to exact exorbitant charges for the use of money, and this continued to a great extent notwithstanding the prohibition of the municipal law and the anathemas of the church. At this time statutable, instead of spiritual punishment, which had before then been inflicted, was obliged to be had resort to for their extirpation—but as history shows with little effect.

In 1545 an alteration allowing interest to be taken, was made, evidently more to silence the complaints that were daily made of the extortion of usurers, than with any positive view to benefit commerce which was then begun to be somewhat better understood.

By an Act passed in the 37th year of Henry the VIII., entitled, "A bill against usury," it is forbidden to take above the sum of ten pounds in the hundred, for the forbearing or giving day of payment of one whole year, and so after that rate, for a longer or shorter time—and thus, for the first time in England, interest was negatively and indirectly santioned by law. But this Act only lasted seven years, for the church which then materially influenced every thing, caused it to be repealed in the succeeding reign—the remains of ancient superstition being still too strong to allow of the existence of so salutary a law. Nothing will better demonstrate the progressive change in the feelings and opinions of the nation respecting usury than the language of the various succeeding Acts of the Legislature relating to it, from which upon perusal it will also be seen how slowly our forefathers became converts to the doctrine that usury under proper regulations was not *sinful;* and that great advantages to the commercial interests of the country would accrue from its being permitted by law.

During the whole of this period, too, the ecclesiastics were most inveterate and violent against taking interest for the use of money in any shape whatever, and it was denounced, notwithstanding the Legislature permitted it, as a most henious offence.

From this time, whatever scruples existed they were fast wearing away—trade extended—agriculture improved—experience showed how much the country had profited by allowing a moderate interest for capital employed in advancing industry, ingenuity, and commerce—and then gradually changing such rate so as to suit the state of the times.

Several Acts of Parliament on the subject were passed, reducing the rate of interest, and the law as it existed in England till within the last 10 or 12 years, was finally settled by by an act passed in the 12th year of the Reign of Queen Anne, by which the legal interest was fixed at the rate of 5 per cent.

The first step taken to obtain a repeal of this law was not till 1816, when Mr. Sergeant Onslow in the House of Commons, moved for leave to bring in a bill for the purpose, which motion he consented to withdraw at the request of the Chancellor of the Exchequer.

In 1817, Mr. Sergeant Onslow again moved for leave to bring in his bill, which was granted—but the consideration of it was postponed until another Session, at the suggestion of Lord Castlereagh.

In 1818, another course was adopted by Mr. Onslow, which was, to move that a Select Committee be appointed to consider the effects of the laws which regulate or restrain the interest of money, and to report thereon to the House, which was ordered, and the Committee subsequently reported as follows:—"That the laws regulating or restraining the rate of interest, have been extensively evaded, and have failed of the effect of imposing a maximum on such rate, and that, of late years, from the constant excess of the market rate of interest above the rate limited by

law, they have added to the expenses incurred by borrowers on real security; that such borrowers have been compelled to resort to the mode of granting annuities on lives; a mode which has been a cover for obtaining higher interest than the rate limited by law; and has further subjected the borrowers to enormous charges, or forced them to make very disadvantageous sales of their estates."

"That the construction of such laws as applicable to commerce, as at present carried on, have been attended with much uncertainty, as to the legality of money transactions of frequent occurrence, and consequently been productive of much embarrassment and litigation."

In 1819, Mr. Onslow renewed his application for leave to bring in his bill, which was granted, and the bill was accordingly brought in and read a first and second time—but was postponed for that session, at the instance of Lord Althorp, (now Earl Spencer,) who, notwithstanding, declared himself friendly to the measure. In 1821, Mr. Sergeant Onslow renewed his motion, when he again obtained leave to bring in his bill, which he did—but took no further proceeding upon it during that Session. In 1823, Mr. Onslow again brought in his bill—but a motion for its second reading was lost by a majority of 5. And in 1824, the subject was again brought forward by Mr. Sergeant Onslow, but his bill was lost by a majority of 4, and in each of the years of 1825 and 1826, it was also lost.

In 1828, Mr. Poulett Thompson, (the late Lord Sydenham,) presented a petition to the House of Commons, from certain merchants in London, praying for a repeal of the usury laws, and upon this, moved to bring in a bill to amend them—leave was granted, and the bill was introduced, and on motion for its second reading a division was called for, when there appeared to be a majority of 12 in favour of the

principle of the bill. This was the first occasion on which a majority in favour of an alteration of the laws was obtained. In 1830, Mr. Thompson again brought forward his bill, and on motion for its second reading a division was called for, when it was ascertained that the majority in its favour had increased to 29—but a dissolution of Parliament immediately after this took place, and nothing further was done in the matter during that Session, nor indeed for two or three years, as the important measure of Parliamentary Reform, engrossed at that time so much of public attention.

But in the 3rd and 4th years of the reign of Wm. 4th, by unwearied perseverance and industry, an amendment in this law was at last accomplished, and which it will be seen, was of the utmost importance. It allowed Bills of Exchange and Promissory Notes not exceeding three months date, or not having more than that time to run, to be discounted at any rate of interest that might be agreed upon, without the parties incurring the penalties of usury. And by the 2nd and 3rd Victoria, the provisions of this act are still further extended to all Notes and Bills of Exchange having not more than 12 months to run; and thus the law stands at the present period in England, affording us additional evidence, if necessary, of the wisdom, sound policy, and good sense of the British nation. Money in consequence of these recent changes has been more plentiful, and the rate of interest lower in England than at any former period.

After having given a brief history of the law of usury, from the earliest periods down to our own time, I proceed to examine into the policy of continuing the system as it now exists.

In this Province the rate of interest is fixed by law at *six per centum* per annum—*and any person who accepts a higher rate is liable not only to lose the*

money he has loaned but he is liable to be sued and have recovered from him by any individual in the community who may choose to prosecute, as well for our Sovereign Lady the Queen as for himself, treble the sum originally lent. Severe as this penalty is for an infraction of this law, it is nevertheless a matter of perfect notoriety that its provisions are very little regarded, and they are not only openly but by subterfuges and evasions of sundry kinds violated in hundreds of our daily transactions; and they will continue to be violated, so long as these impolitic laws exist.

They are vestiges of the times when the principles of commercial polity were wholly unknown—when the Legislature extended its interference with the rights of individuals to almost every act of private life—and when the price of bread, cloth, leather, wine, &c., &c., were fixed by statute. But these were days of political darkness—the wisdom of the people has been ever since increasing, and one after another of these legal abuses has been expunged from the statute book of England by succeeding and more intelligent parliaments, until scarcely a relic remains of the old regime of error; and the usury laws themselves have undergone changes there which amount to their virtual repeal.

With us, however, I regret to be obliged to say, that these obnoxious laws are still retained in their almost primitive form, indicating in this part of Her Majesty's dominions at least, that that increase of knowledge which is now fast enlightening the world is making but slow progress.

The advocates of this pernicious system do not pretend to sustain their position by anything in the shape of argument; their opposition to any change or to a repeal of these laws seems to proceed from doubts and fears as to the consequences which may follow. They readily admit the correctness of the principle in political economy that the supply of, and demand for any article of merchandize must regulate

its value in the market,—many of them admit money to be nothing more nor less than an article of commerce—but unlike any other article of this nature, they all seem to entertain some vague notion that its value can only be regulated and established by means of legislation.

They say the usury laws are a preventive against *prodigality*—that they operate as a protection of the *indigent* and the *simple*. These assertions have been over and over again met by able writers on the subject, and have been so fully and satisfactorily answered, that I do not feel myself warranted in unnecessarily occupying your time by replying to them further, than to observe that the efficacy of enacting laws for the purpose of protecting men *against themselves*, however desirable, if it could be accomplished, must now, I humbly conceive, be given up as useless and impracticable—since centuries of experience convince us, that such laws tend in a great degree to accelerate the ruin of those very persons for whose especial protection they were designed.

For the habitual drunkard—the extravagant and reckless prodigal, it is clear there is no preservation short of the adoption of a plan similar to the *Roman Interdict*, which I believe is in operation, or partially so, in Lower Canada, where such characters are classed with the insane, and their persons and property consigned to the guardianship and administration of their friends.

The Legislature, it is true, has declared the rate of interest in this Province to be *six per cent.*—yet this by no means establishes it to be the true rate—to fix it by law is as vain as to fix the mercury in the barometer. Its value can only be defined by competition, and however the law may limit the amount of profit to be derived from the use of money, it will like any other commodity fluctuate in the market, and the interest of it alternately rise and fall, as the supply more or less approximates to the demand; all legis-

lation to reduce interest below the common market rates must become inoperative, and if from no other cause, from the tacit convention of the parties concerned.

The immortal Locke long since combated the policy and expediency of the usury laws. "Money" he observes, "is an universal commodity, and is as necessary to trade as food is to life; and every body must have it, at what rate they can get it, and invariably pay dear when it is scarce; you may as naturally hope to set a fixed price on the use of houses, or of ships, as of money; those who will consider things" he continues, "beyond their names, will find that money, as well as all other commodities, is liable to the same change and irregularity, and the rate of money is no more capable of being regulated than the price of land: because in addition to the quick changes that happen in trade, this too must be added, that money may be carried in, or carried out of the kingdom while land can not." And McCulloch, in his political economy, written in our own day, says, "It is plainly in no respect more desirable to limit or reduce the rate of interest, than it would be to limit or reduce the rate of insurance, or the prices of commodities,—and though it were desirable it cannot be accomplished. Legislative enactments for such an object, invariably increase the rate of interest. When the rate fixed by law is less than the market or customary rate, lenders and borrowers are obliged to resort to circuitous devices to evade the law; and as these devices are always attended with more or less trouble and risk, the rate of interest is proportionably enhanced. During the late war it was not uncommon for persons to pay ten or twelve per cent. for loans, which, had there been no usury laws, they might have got for six or seven per cent. It is singular," he says, "that an enactment which contradicted the most obvious principles, and had been so repeatedly condemned by committees of the Legislature, should have been

allowed to preserve a place on the statute book for so long a period."

Any restraint upon the absolute freedom of commercial transactions is wrong, because in order to be successful they must be left unfettered. In the case of money, which represents every other commodity, the evil is far greater than it could be in the case of any other article of traffic.

We have seen from the short history of the law of usury, which I have brought under your notice, that in former ages, when the laws by a mistaken policy, forbade the receiving of any interest, condemning it as morally wrong, commerce and the arts were almost completely destroyed; and that as the opinion of mankind changed on this subject, and the laws became more liberal, commerce revived and extended its transactions, and scattered wider and wider its blessings. And I am firmly of opinion, that neither this nor any other department of human industry, will attain its perfection until men of business are as unrestrained in buying and selling the *media* of exchange, as in buying and selling any other merchandize whatever. In a petition against the usury laws, presented to the Legislature of Massachusetts, several years ago, the following sentiments are contained, in which I entirely concur:—

"We are of opinion," say the petitioners, "that while the present restrictions were intended to favour the interest of borrowers, they are even more injurious to borrowers than to lenders,—that before demonstrating the proposition, we beg leave respectfully to express our conviction, that any attempt of the law to favour one particular class of citizens to the injury of any other class, is unjust, unconstitutional, and contrary to the spirit of freedom and equal rights, and although in this case, the attempt is wholly unsuccessful, yet we cannot regard it on that account, as less contrary to sound principle; and both as borrow-

ers and lenders we are equally hostile to the laws, which sustain the attempt.

"We will now endeavour," say they, "to show that in their practical effect these laws are injurious to borrowers of money. Whenever the demand for money is such in the market as to render it worth more than the established rate of interest, the borrower, however pressing his want—however strong his necessity, can not raise the requisite loan; for the money-owner is not compelled to part with his money at less than its worth, and he will not be so foolish as to lend when he can find a more profitable mode of investment; and the borrower, although willing to pay any premium for relief, must suffer all the pressure of his emergency without the possibility of obtaining assistance. Cases of this sort we have all experienced and observed very frequently, and we know them to form the most serious obstructions to successful enterprise. So also we are aware that many instances occur in which the personal character of the borrower is such as to render the owner of money reluctant to venture on his credit at the usual rate; while, did the law allow, the applicant would be glad to pay a premium proportioned to the risk. In this manner borrowers experience a compound evil, being unable to pay for the desired article according to its market value, or their own necessities; and many a man is ruined, who, if he could have been allowed to offer seven or eight, or more per cent., would have realized a fortune.

"Can any reason be assigned (say they) why the privilege of charging interest proportionate to the risk allowed on bottomry bonds should not be extended to every other species of loan?

"The inconvenience experienced by money lenders under the laws, though great, is yet less than that felt by borrowers, although these laws were intended for the borrowers' advantage. For if the holders of money cannot lend at an interest equivalent to the

value of the capital, they can invest that capital in those more profitable modes of traffic which create the money demand. Thus to them only one avenue of business is closed, while to the borrower every *resource* is cut off.

I have heard it urged, that if money lenders are left unrestricted, they will acquire an over-grown influence and exercise an oppressive power. This is manifestly an error. Nothing of the kind could possibly take place where we have such a number of banks and other monied corporations, in addition to individual lenders—all in the market—and all engaged in active competition. No inconvenience of this kind is found to occur in the case of bottomry bonds, where the lenders are not restrained by any statute. No evil of this kind felt in the case of insurance on lives or property, where the risk is uniformly the measure of the rate.

Competition as much in pecuniary facilities, required by business men, as in the facilities of travel by land or by sea, determines the price of those facilities—and is there not as much probability that the public will be burthened with exorbitant stage and steamboat fares as with extortionate charges for the use of money? All money transactions should be regulated like those in other articles of trade, only by this spirit of competition; and no greater evils would or could, in the present age, arise from the traffic in money being thus unrestrained than are now felt from the perfect freedom allowed to traffic in other commodities—and I am at a loss to understand why money, like goods, which is made the instrument of profit to him who uses it, should not be sold at its real value.

It is the duty of every country to so order its legislation, as to encourage the introduction of capital into it, and thereby facilitate its trade and commerce. Is this the case in Canada? The answer is obvious to every one—it certainly is not. The rate of interest

in all the States of the neighbouring Republic, is one, two, and three per cent. per annum, higher than it is here. In consequence of this difference, British capitalists resort to that country to make their investments, and besides a constant drain is produced from our market. If our dealings in money were unfettered by law, a vast amount of capital would, beyond a doubt, flow into the country, which is the great and important end to be obtained; and what there is in it would remain in circulation among us, and our business would be thereby greatly extended and increased.

Again various modes are devised and in constant use, as you all know, to evade the usury laws,—modes of transacting business, which besides being circuitous and inconvenient; and besides taking away the sanction and protection of the law from those who engage in them, leaving no security but what is termed *honour* —thus increasing the risk and of course the premium paid besides; these evils which are loss of time—money—comfort and security, produce a fearful disregard of the laws, and establish a precedent of the utmost danger, while they tend to throw pecuniary negociations into the hands of unprincipled and dangerous men.

Upon the whole, it must be clear, then, to all thinking and unprejudiced persons, upon an impartial consideration of this subject, that it is expedient and highly necessary to modify the usury laws in this Province in such a way as to leave the rate of interest, like the rate of premiums on insurance, perfectly open to contract, and providing that in all cases where interest accrues, and the particular rate has not been expressly agreed upon between the parties, the present shall remain the legal rate—or, as some would recommend, to adopt the other alternative of sweeping these objectionable and injurious laws from our statute book altogether.

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