1899.

NEW ZEALAND.

MONEY-LENDING.

(REPORT FROM THE SELECT COMMITTEE, IMPERIAL PARLIAMENT, 29TH JUNE, 1898, ON)

(From the Politicians' Handbook.)

Presented to both Houses of the General Assembly by Leave.

A SELECT Committee was appointed in 1897, and reappointed early in the session of 1898, "to inquire into the alleged evils attendant upon the system of money-lending by professional money-lenders at high rates of interest, or under oppressive conditions as to repayment." The report deals with the evidence taken during both sessions. Forty-one witnesses were examined: Mr. Thomas Farrow, who has investigated the subject of money-lending, two Judges of the High Court, several Judges of County Courts, the Director of Public Prosecutions, the Inspector-General in Bankruptcy, and others, besides borrowers and money-lenders. The report states that the evidence shows that money-lending transactions frequently owe their inception to misrepresentations of a fraudulent character. Misleading advertisements are very common, offering to lend money "without sureties" "at low rates of interest," or at "5 per cent.," when the lender's practice is to require sureties and the actual rate is 5 per cent. per month, equivalent to 60 per cent. per annum. A professional money-lender, after exposure under different *aliases*, will sometimes resort to such descriptions as a "wealthy capitalist residing in a private house," a "widow lady," a "bank," a "finance and advance corporation," or even a "bank expressly incorporated under Act of Parliament to advance money at a low rate of interest to respectable persons." The loans are usually advanced on the security of promissory notes, with or without sureties, or of bills of sale. The minimum rate of interest is 60 per cent.—the uniform charge with some lenders, while others charge as much as they can get. One lender admitted that his rate had sometimes been as much as 3,000 per cent. In many instances, the Committee were satisfied, borrowers were not aware of the terms on which the loans were obtained. The report says, "Your Committee consider that in many cases default is inevitable, and that once a borrower has obtained a loan from a money-lender it is extremely difficult for him to get clear of the transaction. The circumstances are generally such as to force him to obtain renewal after renewal at increasingly extortionate rates until he is utterly ruined. The promissory note used by one of the largest money-lenders contains a clause to the effect that in case default is made in payment of any instalment, the whole of the amount remaining unpaid becomes due forthwith, together with interest at the rate of a half-penny in the shilling per week from the date of such default. This rate amounts to 216 per cent. per annum. Another large money-lender admitted in evidence that the 'bonus' he charges for a renewal of a bill of exchange or promissory note ranges up to 1,000 per cent. per annum. Moreover, when these renewals are granted the costs and interest are all added as principal, and the whole thing starts again with compound interest. To show the way in which the charges of money-lenders mount up, your Committee may refer to the case of Burden. Between March and December of 1894, the witness Gordon lent this man £5,178. During this period £10,274 11s. 9d. was repaid, and when the case came into the Bankruptcy Court subsequently, the money-lender proved for £3,809 11s. 10d. These facts were admitted by Mr. Gordon in his evidence; and many similar cases have been proved before your Committee." The Committee have "unhesitatingly come to the conclusion that the system of money-lending by professional money-lenders at high rates of interest is productive of crime, bankruptcy, unfair advantage over other creditors of the borrower, extortion from the borrower's family and friends, and other serious injuries to the community. And although your Committee are satisfied that the system is sometimes honestly conducted, they are of opinion that only in rare cases is a person benefited by a loan obtained from a professional money-lender, and that the evil attendent upon the system far outweighs the good. They therefore consider that there is

urgent need for the interposition of the Legislature with a view to removing the evil." *Remedies.*—Regarding it as of the utmost importance that no Legislature should interfere with legitimate trading, it was necessary to consider in what way transactions of professional money-lenders may be distinguished from ordinary commercial transactions. No satisfactory definition of the term "money-lender" had been suggested. Nor was such definition necessary. The Committee concluded that the transactions would be sufficiently distinguished by the expression "transactions with persons carrying on the business of money-lender in the course of such business." The two fundamental proposals made to the Committee were:—"(1.) That Parliament should enact that any interest above a certain rate on loans advanced by professional money-lenders should be irrecoverable at law, or (2.) That the Courts should have power to go behind any contract with a money-lender, to inquire into all the circumstances of the original loan and of the subsequent transactions, and to make such order as may be considered reasonable." As regards the first, since a high rate of interest is not in itself incompatible with fair dealing, no limit of interest could be prescribed which would be adapted to the widely different conditions under which loans were contracted. If a maximum rate of interest were fixed by statute the rate would tend in all cases to rise to the maximum. Moreover, any hard-and-fast rule would be evaded. The Committee do not, thereof, recommend any statutory limitation. As regards the second proposal, which was supported by high legal opinion (Mr. Justice Mathew recommended the limitation of interest to 10 per cent.), the Committee say, "After carefully considering the whole of the evidence and opinions, your Committee have arrived at the conclusion that the only effective remedy for the evils attendant upon the system of money-lending by professional money-lenders is to give the Courts absolute and unfettered discretion in dealing with these transactions. They therefore recommend that all transactions, by whatever name they may be called, or whatever their form may be, which are, in substance, transactions with persons carrying on the business of a money-lender in the course of such business should be open to complete judicial review. That in all legal proceedings to enforce, or for any relief in respect of, a claim arising out of such transactions, the Court should have power to inquire into all the circumstances of such transactions, from the first transaction up to the time of the judicial inquiry. That in such proceedings the Court should have power to reopen any account stated in the course of such 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 may think fit." That, having regard especially to the fact that money-lenders frequently take from borrowers promissory notes, or bills of exchange, which are negotiable (the borrower having no defence against the claims of the holder in due course), the Court shall have power to direct repayment by the money-lender to the borrower of any amount paid to such holder over and above the amount which the Court may direct to be reasonably due to the money-lender. That a borrower should be enabled, agreement to the contrary notwithstanding, to apply to the Court for relief from his bargain upon payment of the principal and such interest as the Court may deem reasonable. That the discretion suggested should be exercisable by any Judge of the High Court, or of a County Court. That there should be no right of appeal from any such decision, except by leave of the Court. That no renewal of the loan should be valid so long as the judgment remains unsatisfied. In view of the fact that borrowers will often submit to any degree of oppression in order to hide the consequences of their folly or misfortunes, the Committee consider that to make these remedies effective the Court should have power to hear any money-lending case in private. Concerning *Bills of Sale*, the Committee recommend that the minimum limit for all bills of sale should be raised from £30 to £50; that twenty-one clear days' notice should be substituted for five clear days under section 13 of the Bills of Sale Act; that goods assigned should not be removed by the grantee or his assignee; that every such bill should be attested and fully explained by the Registrar of the County Court in which the borrower resides; that the Registrar shall be satisfied that the whole amount has been paid over (the bill otherwise to be void); that the exact amount of principal advanced and rate of interest per annum shall be clearly stated in the instrument; that only certified bailiffs shall be empowered to take possession of goods, and that no such bailiff shall be allowed to carry on the business of a money-lender; and that any bill of sale which may result in the evasion by the grantee of the Bills of Sale Act, or amendments thereto, shall be void. The Committee recommend that when money-lending transactions are conducted by absolute bills of sale, accompanied by a hire-purchase agreement, such agreement should be registered with the bill of sale. *Warrants of Attorney and Cognovits.*—The Committee recommend the abolition of these in connection with money-lending. *Procedure.*—The money-lender should have the right to sue only in the County Court of the district in which the borrower resides. *Bankruptcy.*—Provisions of section 23 of "The Bankruptcy Act, 1890," being frequently evaded by the reason of the Official Receiver or Trustee not having power to review the whole transaction with the money-lender, and borrowers being generally forced to obtain renewal after renewal at increasingly extortionate rates, the result is that the amount of principal claimed under the last contract prior to bankruptcy is out of all proportion to the sum actually advanced. Several cases showed that the claims of other creditors are often swamped by those of the money-lender. The Committee, therefore, recommended an addition to section 23, providing for the deduction from the amount of the proof of all amounts in excess of the principal and interest at the rate of 5 per cent. per annum thereon, "without prejudice to the right of such creditor to prove for the remainder of his debt or so much thereof as the Court shall allow after all the debts proved on the estate shall be paid in full." Also providing that the creditor may be required to furnish a statement of account, "certified by affidavit, showing the whole of such transactions from the date of the first advance and distinguishing the amounts of any repayment, whether of principal, interest, commission, bonus, or other charges, and the amount of any interest, commission, bonus, or other charges, included in the account."

Scottish Procedure Under Summary Jurisdiction.—Cases having been brought forward showing that great hardship is sometimes inflicted upon debtors in England by their being sued in Scotland under the process of Summary Diligence, the Committee recommend that this process shall not be applicable unless the borrower has a domicile in Scotland. *Garnishee.*—It has been held that clerks and other such persons in receipt of small salaries are not entitled to protection under "The Wages Attachment Abolition Act, 1870." Evidence showed that garnishee summons may be and is used as an instrument of oppression against clerks and persons in similar positions. The Committee therefore recommend that the protection of the Act should be extended to all persons whose wages or salary, together with any other income, does not exceed £200 per annum. *Registration of Money-Lenders.*—The Committee recommend: "(*a.*) All persons carrying on the business of a money-lender, whether individually, in partnership, or as a company, should be registered as such. (*b.*) That such person should be registered in every County Court district in which any premises from which any communications are addressed, or in which any money-lending business is carried on are situate. (*c.*) That the Registrar of the County Court in which such premises are situate should be the registrar; that a fee of £5 should be charged in respect of every registration, and that the register should at all reasonable times be open to public inspection free of charge. (*d.*) That the Registrar of the County Court should be required within three clear days after registration to transmit to the Registrar under "The Bills of Sale Act, 1878," a copy of the entry in his register, and that such Registrar should be required to copy such entry into a book specially kept for the purpose, and that such book should be open to public inspection at all reasonable times free of charge. (*e.*) That no money-lender should be allowed to trade individually, otherwise than in his own name, and that when he trades in partnership the firm should be registered, and the names and addresses of the partners given. (*f.*) That it should be declared an offence for any money-lender, individually or in partnership, to carry on the business of a money-lender under the name of 'bank,' 'trust,' 'corporation,' or other misleading title, or to issue or publish any false or misleading prospectus, circular, or advertisement, and that it should be the duty of the Registrar of each County Court to report to the Public Prosecutor any such offence which may be brought to his knowledge, or of which he may become cognisant. That on conviction for any of these offences it should be competent to the Court to strike the name of such money-lender off the register for any period, and to impose a penalty to be prescribed by statute. That no money-lender should be capable of recovering any debts incurred in connection with money-lending transactions during the period for which he has been struck off the register. (*g.*) That any money-lender carrying on such business without being registered should be incapable of recovering any debt incurred in connection with money-lending transactions. In cases where the business of a money-lender is carried on by a company registered under the Companies' Acts, the company should be described in the register, and in all circulars, advertisements, documents, or letters, as 'subject to the provisions applicable to persons carrying on the business of a money-lender,' and the above recommendations should apply to such a company, and the responsibility for any of the offences above referred to, or for the evasion of any of the above-mentioned provisions, should attach to the managing directors and other officers." The Committee do not recommend that money-lenders should also be licensed, because of the "serious difficulties of carrying out a system of licensing efficiently, and of the opportunity which the money-lender would have, under such system, of advertising himself as 'licensed under Act of Parliament,' and thereby implying a guarantee of respectability and fair dealing." "*Accounts of Money-Lenders.*—A further safeguard to which the Committee attach some importance is 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. Cases were brought to the notice of the Committee, in which borrowers had been kept in complete ignorance of the state of their accounts until they have been on the verge of ruin. *Documents.*—The Committee also recommend that the money-lender should be required to furnish to the borrowers and to the sureties, if any, at the time each transaction is entered into, copies of every document signed by him or them, and that any failure to do this should render the money-lender liable to lose his right of recovery of any money lent. *Co-operative Banks.*—The Committee received important evidence as to the operation of co-operative banks on the Continent, and in some parts of the United Kingdom. It appears that the establishment of such banks has been of great use in abolishing, or largely diminishing, the trade of lending money at exorbitant rates of interest to the poorer classes. The Committee, impressed with the extreme usefulness of these institutions, are of opinion that they meet a real want, especially in agricultural districts. They do not, however, recommend any State intervention in connection with them at the present time."

Approximate Cost of Paper.—Preparation, not given; printing (1,375 copies), £2 1s. 6d.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1899.

Price 3d.]