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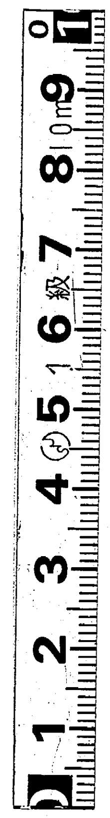

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# CURSORY INQUIRY

INTO THE

EXPEDIENCY OF REPEALING THE

**Annuity Act,**

AND

RAISING THE LEGAL RATE OF

*INTEREST;*

IN A SERIES OF LETTERS.

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# CURSORY ENQUIRY,

*&c. &c.*

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## LETTER I.

FIVE-and-thirty years have elapsed since the legislature interfered to repress the sale of life annuities. The act then passed (17 Geo. III. c. 26) was entitled, "An act for registering the grants of life annuities, and for the better protection of infants against such grants." The preamble states, that the *pernicious* practice of raising money by the sale of life annuities had of late years increased, *and was much promoted by the secrecy with which such transactions were conducted.* It was *therefore* enacted, that from that time grants of life annuities should be publicly enrolled, and should be under certain regulations, which I shall presently have occasion to notice.

The object of the present enquiry is to ascertain, whether the intent of the legislature has been effected; whether the *pernicious* practice (as it was termed) of raising money by the sale of life annuities, has been crushed or lessened by the publicity given to them; whether the act has been productive of good or evil; and, if the latter, whether it ought not to be repealed or modified.

The practice of raising money by the sale of life annuities is a mere shift to evade the statutes of usury. The evils which attended this mode of raising money at the time the act passed, were principally two:—First, the enormous interest given; and, secondly, the want of a power in the grantor to redeem or re-purchase the annuity. The rate of interest paid did not often appear on the face of the instrument: a fair price was commonly stated, but the consideration was actually advanced in goods, which were immediately afterwards purchased by the lender, through an agent, at a much less price than the borrower gave for them; on the deeds it appeared, perhaps, that only 10 per cent. was taken, whereas, in point of fact, 20 was possibly obtain-



ed by the fraudulent reduction of the purchase money. This practice exists at this moment in loans by professed money-lenders to necessitous persons, and always will exist while extravagant and needy persons are desirous to borrow money on slender securities. A power to re-purchase was omitted in the grants of life annuities, not because these transactions were bona fide sales, but on account of a notion which then prevailed, that a power of repurchase, even in the grantor, tainted the transaction, and rendered it usurious. It had long been held, that the sale of a life annuity, at a rate exceeding legal interest, was not usurious, because the principal was bona fide put in hazard. But so late as in 1743, Lord Hardwick laid it down, that when annuities were redeemable, the Court looked upon it as an evasion of the statute of usury, and only a loan of money. Under this impression, upon all grants of annuities, the object of which was to raise money at an illegal interest, it was understood between the parties, though not so expressed in the deeds, that they might be redeemed on payment of the principal sum, with the arrears, and

half a year's payment as a bonus (*a*). It has been decided, that where the power to repurchase, although agreed upon, was omitted by the mutual consent of the parties, upon the understanding that it would be usury, a court of equity cannot relieve the grantor in case the grantee refuses to let the purchase be redeemable, and of course the grantor had no remedy at law; but this decision was not made till several years after the passing of the annuity act. There are several cases in which the point has been decided, which circumstance sufficiently proves, what is otherwise well known, that before the passing of the annuity act, it was the common practice to suffer the right of re-purchase to rest on parol agreement. Lord Mansfield, in the debate on the bill in the House of Lords, did not hesitate to say, that, to induce grantees to suffer the annuities to be redeemed, was, indeed, according to his apprehension, *the grand object of the Bill.* The evil, as the preamble states, was thought to be much promoted by the secrecy of the transaction.

(*a*) Commons Journal, vol. 36, p. 489.



The bill was brought in by the late Lord Rosslyn, when Solicitor General. In its inception, it only extended to annuities for the lives of *grantors*, which it required to be registered. It made them all redeemable, prohibited dealings with infants under severe penalties, and moderated the allowance for brokerage. Clauses were afterwards added, which required the consideration to be particularly stated; and that, in case it consisted in goods, or in any other thing than money, the nature, quality, and value of such things should be specified; and summary jurisdiction was given to the Courts to set aside annuities not granted for the true value, or for goods not of the value set upon them; and the bill was extended to annuities for the lives of *grantees*. Ultimately the clause making all annuities redeemable, was expunged, and certain exceptions were introduced which now stand in the act. The bill in this state passed the Commons. In this stage Mr. Hargrave offered some reasons against the bill, which are printed in the 2d volume of his Jurisconsult Exercitations, p. 167.

When the bill was sent up to the House of Lords, Lord Mansfield moved several amend-

ments, the objects of which were, not to make the security absolutely void in the given cases, but to let it stand as a security for the money really advanced with interest; to put an end to all considerations in goods, and to make money considerations the only valid ones; to get rid of the enquiry into the adequacy of the consideration, and to substitute an enquiry, whether the annuity was obtained by fraud, or other undue means, or whether the grantor was entitled to redeem. An amendment was also moved, by which any voluntary annuity granted without regard to pecuniary consideration, was excepted out of the provisions in the bill. With these amendments the bill passed the Lords; but upon its being sent back to the Commons, a new bill was ordered, which was ultimately passed in its present shape.



## LETTER II.

The Act, after the preamble which has been stated, enacts.

1. That a memorial of every instrument, whereby any annuity shall be granted for one or more life or lives, or for any term of years, or greater estate determinable on one or more life or lives, shall, within 20 days of the execution of such deed, bond, &c. be enrolled in the High Court of Chancery, and that every such memorial shall contain the day of the month and the year when the deed, bond, &c. bears date, and the names of all the parties, and for whom any of them are trustees, and of all the witnesses, and shall set forth the annual sum or sums to be paid, and the name of the person or persons for whose life or lives the annuity is granted, and the consideration or considerations of granting the same, otherwise every such deed, bond, &c. shall be null and void.

2. It contains a provision as to annuities already granted, which it is not now necessary to advert to.

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3. That in every deed, instrument, or other assurance, whereby any annuity or rent charge, shall from and after the passing of that act be granted or attempted to be granted, the consideration really and bona fide, (which shall be in money only) and also the name or names of the person or persons, by whom or on whose behalf the said consideration, or any part thereof, shall be advanced, shall be fully and truly set forth, and described in words at length, otherwise every such deed &c. shall be null and void.

4. That if any part of the consideration shall be returned to the person advancing the same, or in case the consideration, or any part of it, is paid in notes, if any of the notes with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid, or if the consideration, or any part of it, is paid in goods, or if any part of the consideration is retained on pretence of answering the future payments of the annuity, or on any other pretence, in all the aforesaid cases it shall be lawful for the person by whom the annuity or rent charge is made payable, to apply to the Court in which any action is



brought for payment of the annuity, or judgment entered, by motion, to stay proceedings on the judgment or action; and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order the deed, bond, instrument, or other assurance, to be cancelled, and the judgment, if any has been entered, to be vacated.

5. It contains a provision specifying the mode and charges of enrolment.

6. That all contracts for the purchase of any annuities, with any person being under the age of 21 years, shall be utterly void, any attempt to confirm the same after such person shall have attained the age of 21 years notwithstanding; and every attempt to procure or confirm such an annuity, to be construed a misdemeanor, punishable with fine and imprisonment.

7. It makes it penal to take more than 10 *s.* per cent. for brokerage.

Lastly, it contains an exception out of its provisions of any annuity or rent charge, given by will or by marriage settlement, or for the advancement of a child, and of any annuity or rent charge, secured upon lands of equal or

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greater annual value, whereof the grantor is seized in fee simple or in fee tail, in possession, at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity, and of any voluntary annuity granted without regard to pecuniary consideration, and of any annuity or rent charge granted by any body corporate, or under any authority or trust created by Act of Parliament, and of any annuity where the sum to be paid does not exceed 10 *l.* annually, unless there shall be more than one such last mentioned annuity, from the same grantor or grantors to or in trust for the same person or persons.

It appears, then, that the principal objects of the legislature were, first, to give publicity to the grants of all life annuities upon infirm securities, whether redeemable or not, and whether held for the life of the grantor or of the grantee, and particularly to put on record the name of the real purchaser, which it was hoped would restrain the *pernicious* practice mentioned in the preamble; and, secondly, to prevent life annuities from being granted for any other than a money con-



sideration, and wholly to crush all such dealings with infants. The idea which was at first entertained of making all annuities redeemable, was abandoned, as well as the intention to set aside annuities not granted for an adequate consideration, but in case the directions of the act, in regard to the statements in the deed, or to the enrolment, were not obeyed, the securities were declared to be null and void, and were not allowed to stand, according to the amendment in the House of Lords in the first bill, as a security for the money really advanced with interest.

It was, however, in the contemplation of the legislature, by a separate act, to supply the omission in the one actually passed, of a power to grantors in *all* cases to repurchase annuities for lives, and to make adequate provision against the enormous rates of interest then received upon loans in the shape of life annuities. With this view a committee was appointed to enquire into the laws against usury, and the practice of granting life annuities. A very able report was framed, which is printed in the 36th volume of the Journals of the House of Commons, p. 489. The result of the enquiries as to the practice of

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granting life annuities, was, that six years purchase was the market price on any life from twenty-one to fifty inclusive: that the charge even amongst fair practitioners, was 5 per cent. upon the price, including the expense of the deeds, except the judgment, for which 5 *l.* more was paid: that it was understood, though not so expressed in the deeds, that they might be redeemed on payment of the principal sum with the arrears, and half a year's payment as a bonus. In stating the result of their enquiry into the real value of life annuities, the committee observed, that they were satisfied that before the period when annuities became so common, annuities for life of the grantor were purchased at a price much nearer their real value than they had been since. They stated that the transaction was formally a sale, but in substance it was a loan of money upon a perishable security, where the advantage taken bears no proportion to the hazard, though that hazard may be estimated, and in other transactions where there is a real sale of a life interest, or a reversion expectant upon it, is estimated with reasonable certainty. They justly dwelt with great force on the evil



tendency of this practice, and stated, that all advantage beyond the rate to be prescribed, ought to be deemed usurious, and made subject to the penalties against usury, with an exception only of the lives of those who from the nature of their employment are exposed to peculiar hazard; and that all annuities ought to be redeemable, because if a fair consideration is paid, the redemption never can be a loss to the person possessed of an interest which is daily diminishing.

A string of resolutions founded on this report was moved. By the first it was resolved, that the purchase of annuities for the life of the grantor, being generally intended as a loan of money, ought to be regulated accordingly. This resolution was agreed to. The other resolutions went to establish a scale of the compensations to be taken for risks, and to make it usury to take any greater sum by way of life annuity, than such compensation and legal interest. These were postponed, but leave was given to bring in a bill founded on the report, which was accordingly brought in, but afterwards dropped.

The provisions actually made, therefore,

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although they extended to all life annuities granted upon infirm securities, were only to give publicity to the transaction, and to guard the grantors from the payment being made in goods. The legislature renounced the attempt to fix the price of annuities, and to make them all redeemable.

How far the act has been beneficial, may now be enquired. In the course of the enquiry, I shall consider the probable effect of the bill which was dropped, had it passed into a law.



## LETTER III.

It is much to be regretted that, with all the laudable anxiety which men evince to carry into effect any measure which is likely to prove of public utility, their care of the object generally ceases at the very time when it stands most in need of aid. It is not enough to bring forward a measure which appears likely to be useful, but its effect and operation as a law, ought to be watched without intermission, in order that it may be ascertained whether or not it has had the beneficial effect which was intended. The advocates for the abolition of the slave trade, to whose merits I wish my feeble pen were capable of paying a just tribute, have set an admirable example in this respect. In this example the necessity and effect of strictly watching the actual operation of every act of the legislature, particularly where it is levelled at any practice which long habit has rendered familiar to the people, are at once happily and strongly exemplified.

I have before observed, that Lord Mansfield

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avowed that the grand object of the bill was, according to his apprehension, to lead to the redemption of annuities granted without any power to re-purchase. Irredeemable annuities no longer exist. But this has not been a direct consequence of the act. The consideration which the subject received, led to a general opinion, that a power in the grantor to redeem was not usurious; and this was so fully admitted in the original frame of the bill, that it was no longer left to the honor of the lender or purchaser, as he is called, but an express power to re-purchase was inserted in every grant of a life annuity. The point is so clear at this day, that the transaction cannot be impeached, although it appears on the face of the deeds that the lender has secured his principal by an assurance on the borrower's life. It is not unusual to make the grantor covenant to appear at a life insurance office, at the request of the lender, in order that the grantor's life may be insured; and if the grantor is likely to quit the kingdom, he further engages to pay any additional premium which may become payable on account of the increased risk.

The act has certainly had the operation of entirely preventing the payment of the consideration in goods; but this is substantially of little moment. The device is no longer necessary; for at law an annuity is valid, although the consideration is so small in amount, as to be merely nominal; and equity at this day will not set aside an annuity for mere inadequacy of consideration, although it appears that the lender has secured his principal by an assurance on the grantor's life; consequently a man lending money on an annuity, has now no temptation to increase his gain by the nominal sale of goods.



It seems quite manifest from the rejection by the Commons of the amendments made in the first bill by the House of Lords, that the transaction was intended to be cut up root and branch if the directions of the act were not obeyed. But it has long been held, that although the security is void, the lender may recover back his purchase money from the borrower, deducting the payments of the annuity received. The consequence of this has been, that in many cases the object of a proceeding to set aside an annuity on some objection under the act, was not so much to relieve the borrower from the an-

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nuity, as to let in some other incumbrance on the property by which it was secured, and leave the lender merely a right of action against the borrower for the price of the annuity. This evil was greatly increased by a decision, that where the memorial was defective, the securities were actually void, and not merely voidable; and therefore a person, not a party to the transaction, as a judgment creditor, might take advantage of the defect.

If, as the preamble of the act states, the pernicious practice of raising money by the sale of life annuities was much promoted by the secrecy with which such transactions were conducted, yet the converse has not followed by the publicity given to them; on the contrary, the enrolment enabled lenders to search for incumbrances against needy men, and so far rendered loans to them more secure, and the legality of annuities, with a power of repurchase, having been admitted, the transactions complained of were infinitely promoted by the very act which was intended to repress them. The stigma which attached to persons dealing in annuities would in some instances deter respectable per-



sons from buying them, inasmuch as the transaction would be put on record. This very circumstance, however, operated strongly against borrowers. It threw the whole supply of the market into the hands of men who did not scruple to make the most of it, and did not hesitate to publish the transaction. It did not, indeed, require much knowledge of the world to foresee that, after the novelty of the regulation had passed over, no man would search the Inrolment Office through idle curiosity, and that if any one did, the immense number of lenders would prevent any stigma from attaching to any particular individual. This consideration, the pressure of the times, and the increased rate of interest which could be legally obtained by way of annuity, had a strong tendency to open the market to more respectable buyers, but this tendency was checked by the decisions on the act, which I shall presently notice. These decisions presented such formidable obstacles in the way of annuity transactions, as to deter fair meaning men from engaging in them. Thus the market was still left in the hands of the former buyers, and the difficulty occasioned by the act had one

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inevitable operation—to lower the price of life annuities: first, because the number of buyers was small; and, secondly, because the purchasers required to be paid not only the common rate of annuity interest, but also the value of the risk of the transaction being void under the act.

## LETTER IV.

The object of the act being merely to give publicity to sales of life annuities, did not seem to call for any equitable construction in favour of grantors. If the annuity was made public, and the strict injunctions of the act were substantially complied with, public policy seemed rather to require that the contract should be supported. But the transaction had been stigmatized, and through perhaps it may be thought a mistaken zeal, the Courts put what was termed a *liberal* construction on the act. Its express enactments were totally lost sight of. It was asserted, that the intention of the legislature was, that all the



*res gestæ* should appear. The legality of the transaction had been fully acknowledged by the legislature, and yet the courts endeavoured to crush it by a liberal interpretation of the act in favour of borrowers. The inevitable consequence, as I have already observed, was, that borrowers were forced to pay not only for the money borrowed, but also for the risk under the act.

That the decisions under this act went beyond the intention of the legislature seems evident. I will mention some of the leading cases. The statement of the payment of the consideration has been a fruitful subject of litigation. If paid by a check on a banker, (which really was payable on demand) and it is stated in the memorial to have been paid, yet the deeds are void if the day when the check was payable is not stated, because if not payable immediately, it would not be worth the consideration stated, *because of the discount,* and yet the purchaser might with impunity have given 100*l.* less for the annuity! So even a statement generally that the consideration was paid in notes on the Bank of England, and Country bank notes, without specifying the dates and times of payment of the latter, was held bad,

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although it was in evidence that the borrower had the option of being paid in cash or notes, and accepted the latter, as equally convenient to himself. The Court to be sure in the latter case deplored extremely, that it was compelled to make such a decision, " but the question had been decided, and so decided that the judge was bound hand and foot." Bank of England notes, however, were considered as cash. As to the mode of payment it is still unsettled whether if the money be expressed to be paid to two, where it was (of course necessarily) paid to one with the consent of the other, and both signed the receipt, such a statement was good; and after considerable doubt it was decided by the House of Lords, that payment by an agent, for example, payment by the clerk of the lender's bankers, by his direction, must be stated, together with the name of the agent, although payment *to* an agent need not. And yet the rule of law is, that a payment by a man's agent is a payment by himself, for *qui facit per alium facit per se*; and in regard to the policy of the act, if the money comes home to the borrower, and the name of the lender is made public, it cannot be necessary to



state whether the money was handed over by the lender or his attorney. It has been held that all trusts must be stated, although they do not affect the annuity. This has been carried so far that the omission of a trust declared of the estate for the grantor, until default in payment of the annuity, has been held fatal, although it only expresses what would be the rule of law in the absence of such a provision, and men of the first eminence in the profession, regularly omitted the trust in the memorial as superfluous. A statement in the memorial, whereby it appeared that the annuity itself was granted to the lender, " that one of the parties was a trustee nominated on the part of the grantee," without specifying the trusts, was of course held void. It is usual in case the annuity determine between the quarterly days of payment, to give the annuitant a proportionate part of the annuity, for the time which has elapsed of the current quarter of a year; and it is yet undetermined, although the question has often been discussed, whether or not the omission of this stipulation in the memorial, will vitiate the whole transaction. An annuity has been set aside, because the memorial by mistake

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stated, that the warrant of attorney was to enter-up judgment in the King's Bench, when it really was to be entered-up in the Common Pleas. Several annuities have been deemed void, because the memorial stated generally, that a bond was executed by the grantor, instead of stating that he thereby bound his *heirs* as well as his executors and administrators, and yet there is no instance in practice, unless by mistake, in which heirs are not bound by a bond, and in the cases in question the conditions of the bond were correctly stated.

It were endless to go through the cases. They nearly all turned on verbal niceties. Scarcely one can be found in the books, which was decided on any broad ground of a fraudulent statement of the consideration or evasion of the act. One of the immediate consequences of these decisions was, that by way of memorial all the instruments for securing the annuity were literally copied, and even then the slightest error in the statement of the consideration was fatal to the securities. This greatly increased the expense of the borrower, who *always* bears the charge of the securities, including the memorial. But



this was a light evil compared with the litigation which this construction of the act encouraged. Hundreds of annuities were questioned merely on speculation. I am not aware of any act in the statute book, on which so many cases have been decided within any thing like the same space of time. The cases reported, which are necessarily but an inconsiderable portion of those brought before the different Courts, have been the subject of several treatises, and are certainly now sufficient to fill more than one ordinary volume. In looking over these cases, numerous as are the instances in which annuities have been set aside on nominal objections, yet one cannot but observe, that numerous also are the decisions in which the borrower has been defeated in his object. In looking through fifty cases, taken at random, I found them nearly balanced, eight-and-twenty having been decided in the borrower's favour, and twenty-two in favour of the lender. If one could be jocular on so painful a subject, this might truly be called distributive justice! In the latter instanses, the expense, necessarily in many cases very severe, has immediately fallen on the individual borrower, and in the former it is un-

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deniable that the loss ultimately falls on the whole class of borrowers, because the price of annuities is decreased by the risk of litigation.

Upon a rough calculation, or rather a *guess*, I understand the number of annuities of which memorials have been registered under the act, to be from 70 to 80,000. When to these we add the number which, principally through inadvertence, and the great respectability of the grantors, has not been registered, (and which number I have reason to think very considerable,) and the great number which has been granted on fee simple property of equal or greater annual value, we may form a tolerable correct notion of the extent of the traffic.

In regard to the common expenses of the borrower of money by way of annuity they are infinitely higher even amongst regular men, than they were when the subject was under consideration in the House of Commons. Every security which can be obtained is generally taken, and, what never happens upon a regular loan, a warrant of attorney, and a judgment actually entered up on it, are, I may say,



invariably taken, with liberty to sue-out execution if the annuity is a few weeks in arrear. The charge has been considerably increased by the act: for the expense of the memorial is of very considerable amount, particularly with reference to the many annuities which are granted for paltry considerations, from 100 *l.* to 500 *l.* Even in regard to trifling annuities like these, the expense of the memorial on an average is I understand about 10 *l.* The memorial is first drawn by the solicitor, then fair copied, then settled by counsel, and then engrossed and enrolled, which with the stamp, fees, and attendances to and fro, will it may easily be supposed amount to a considerable sum.

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## LETTER V.

We come at length to the enquiry, has the act effected the object of the legislature? From what has been said, the irresistible conclusion seems to be, that the act has totally failed. If we could but ascertain the sum of money which has in consequence of the act been expended in memorials and litigation, we should at once see the evil in its true light. It would be in vain to search for a counterbalance to these evils. The publicity which the act has given to annuities, has not had the effect of crushing, or even lessening, the pernicious practice at which it was aimed. The act, has not however, fallen to the ground without doing any mischief. It has an opposite action, and adds vigour to the very system which it was intended to repress. In the present state of the law, what benefit, it may be asked, results from compelling every borrower of money by way of annuity, to put the transaction on record, and at his own expense too? If the consideration be but five years purchase for a life worth twenty, he is, I may say, without redress, al-



though under cloak of a life annuity, the real transaction is usurious. Is it to be endured, that a bait shall be held out for the needy borrower to fly, as a last resource, to the seat of justice to set aside the transaction, not on the broad ground on which it ought to be set aside—the usuriousness of the transaction, not by reason of the political evils flowing from the system—not on account of the moral depravity which results from the transaction, but because the *King's Bench* has, by mistake, been written instead of the *Common Pleas*, or half-a-dozen wholly unimportant words have been omitted? Would the legislature in 1777 have passed the act, could they have foreseen with what serious evils the measure was fraught! The judges appear to have thought that the tendency of the act to encourage litigation should be stopped. In the progress of the bill through Parliament, it was suggested, that a grantor, if defeated in one application to set aside an annuity should not be allowed to make a second; but the act was penned generally, so as to allow a grantor at any time to apply to the Court. This omission has been supplied by the judges. They have held that six years are a bar to an application, where

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the merits depend on testimony lost by delay, and that where a party applies to a Court and fails, another Court cannot entertain the same question: and that, where a rule has been dismissed, the Court will not entertain a similar application on the same state of facts between the same parties, although grounded upon an objection which was not before considered. These are unquestionably very proper and wholesome rules; but it may be thought that it would have been better to have inserted some provision in the act to meet these cases, than to leave the task to the judges, whose province it is only to *expound* the laws, and not to create new ones.

That the act ought not to exist in its present form I have no hesitation in asserting. It is with great humility that I shall endeavour to suggest a remedy for the evils complained of. It would greatly assist the consideration of this subject, if an account were ordered of the number of annuities enrolled under the act, distinguishing the number in each year, the amount of the considerations paid, and of the annual sums granted, distinguishing also those for the life of the grantor from those for the lives of one or more grantees



or nominees. This information can be readily obtained. I should not be surprized if it should appear, that on an average better terms have been obtained by borrowers since the act than were had before; but this circumstance would not be in favour of the present system; it would, on the contrary, furnish conclusive evidence, that if the obnoxious parts of the system were abolished, still better terms would be obtained.

The proposal which I would suggest is, that the first section, requiring a memorial, be wholly repealed; and that if it should be thought necessary, a provision should be inserted in lieu of it, requiring an attested copy of the deeds to be delivered to the lender or his agent, on his request and at his expense, so as to enable him at any time to ascertain the extent of his liability. The second section has ceased to operate. The third section should be altered so as to require only a *substantial bona fide* statement of the consideration, and expressly to exclude relief, unless the misstatement of the consideration be made fraudulently. The fourth section should I think stand as it does, with the exception of a slight alteration, authorizing *all* the deeds, &c. to be

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cancelled in any of the cases there mentioned. As the clause is worded, a difference of opinion has prevailed on the bench in regard to its construction. The fifth section will of course fall to the ground with the first. The sixth, the most salutary of all the enactments, should by no means be omitted. The seventh should also stand. It is however constantly disregarded, and I remember but one instance of a conviction under it. The eighth should also stand. It has received a liberal construction, but it is still doubted whether copyholds in fee, or estates in fee, in the colonies, are within the exception: these doubts should be obviated by an extension of the exception to the estates in question.

As the act at present stands, it is only in the memorial that it is necessary to state for whom any of the parties are trustees, by the repeal therefore of the first section, money on annuities might be secretly advanced as formerly in the names of third persons. But it is highly important that the real lender should in all cases be known. I would propose therefore an additional clause to this effect, that if any annuity be purchased in the name of another, and the real



purchaser do not appear as such on the face of the security, the annuity shall belong to the person in whose name it is taken, and the real purchaser shall be without any remedy at law, or in equity, notwithstanding any declaration of trust; and any assignment of the annuity, to or by the direction, or for the benefit of the real purchaser, should be also made void. This, or some such provision, would, I apprehend, effectually bring forward the real buyers or lenders; and, in truth, experience has shewn that they are not solicitous to keep in the back ground.

The great object to be accomplished, is to guard the borrower, as far as circumstances will permit, from oppression, without encouraging him to litigation, or putting him to the expense of unnecessarily publishing the transaction to the world. I am far from supposing that the amendments above proposed are the best which can be adopted. If there is an evil, let it be remedied, and I care not from what quarter the benefit flows. In considering this question I have not stopped to enquire what are the emo-

luments of the Inrolment Office, nor in whose gift the places are. These are considerations which cannot be allowed to enter into the discussion of a great public question like this, although one may regret that *any* individual should suffer by it. Every branch of the profession of the law at all in the habit of preparing or settling securities for annuities, will also suffer by the repeal of the first section. But their interests cannot ultimately be separated from public prosperity, and if they could, they must bend to the general good.

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## LETTER VI.

In considering the effect of the Annuity Act, the mind is naturally led to reflect on the general policy of suffering money to be raised by the nominal sale of a life annuity. How forcibly this struck the legislature is manifested by the additions made to the first bill, and by the additional bill afterwards brought in, but dropped.

We have the authority of a resolution of the House of Commons, in 1777, that the purchase of annuities for the life of the grantor being generally intended as a loan of money, ought to be regulated accordingly. Since that time a new description of borrowers of money, by way of life annuities, has sprung up.—Builders and petty tradesmen, having only leasehold estates to offer as a security, and generally of insufficient value—a security not like a life estate, which is mostly sufficient in value, but insufficient in the limit assigned to its duration, whereas the former estates are generally sufficient in the extent of

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the interest, but insufficient in value. In regard to them therefore a new rule was adopted: the annuities were taken for the lives of three persons and the life of the longest liver. This was done to prevent the immediate necessity of an assurance, and the actual value of an annuity on such lives is never taken into consideration, but the lender is *perhaps* satisfied with a bare 10 per cent. without adding the charge of an assurance to it, because it is morally certain that the annuity will be redeemed before it becomes necessary to insure. In some instances more lives than three have been added. As the transaction is in effect a pure loan, at the given rate of interest, the lender would, if the law allowed it, take a perpetual annuity paying that rate, subject to redemption, because it never enters into his calculation to put his capital in hazard, but he intends eventually to receive back his capital, and in the mean time to receive the stipulated rate of interest for the use of it.

The bill which was brought into the House of Commons, but afterwards dropped, was levelled only against annuities for the lives of grantors: they were treated in every instance as



loans, a scale of risks was framed, and it was made usurious to take more than legal interest and the specified allowance for the risk. Had this bill passed into a law, there appears to be little reason to doubt but that it would soon have been evaded. Annuities would have been taken for three lives at higher rates, even from persons having only life estates, the lender would thus have been enabled, as usual, to insure the grantor's life, and at the same time to enjoy his 10 or 12 per cent. Annuities for three lives, such as are at present granted, would have remained as they now do; the act would not have embraced them.

The principle upon which the resolution was founded appears to be, that on determinable securities somewhat above the legal rate of interest should be allowed, together with a sum sufficient to cover the risk. But there were insurmountable objections to the measure. First, it is not to be endured that a man may not sell an irredeemable annuity. He may sell his life estate, and why not part of the interest in it? Secondly, as the addition to the legal interest was only allowed in the shape of an *annuity*,

that is, where the lender could not enforce the repayment of the principal, although the borrower was allowed at any time to pay it off, it is manifest that no money would ever have been lent in this way. For the small allowance beyond the actual value of the risk (which actual value would be expended in insuring the life, or if retained, would only be an equivalent for the risk,) would not be a sufficient inducement to men to tie up their money at the option of the borrower during his life. It allowed a man to take, let us say six per cent. instead of five, provided he gave up his power to call for the principal during the borrower's life. These are terms coupled with the trouble and difficulty in these cases of insuring the life and compelling payment of the annuity, which no man would accept; and yet as money will fetch greater interest in the market, it may reasonably be doubted whether it would not by some subterfuge have been obtained.



## LETTER VII.

THE notion that it was immoral to make interest of money has happily long been exploded. Paley justly smiles at a provision in a statute of James the Ist. which prohibited beyond a certain rate of interest to be taken (and consequently allowed it under that rate), *that this statute shall not be construed or expounded to allow the practice of usury in point of religion or conscience* (a). Jeremy Bentham, in his able defence of usury, is very facetious on the passage usually quoted from Aristotle, that *all money is in its nature barren.* He justly observes, that a consideration which did not happen to present itself to that great philosopher, but which, had it happened to present itself, might not have been altogether unworthy of his notice, is, that though a daric would not beget another daric, any more than it would a ram or an ewe, yet, for a daric which a man borrowed he might get a ram and a couple of ewes, and that the ewes, were the ram left with them a certain time, would probably not be barren: that then at the end of

(a) Paley's Mor. Phil. book 3. part 1. c. 10.

the year he would find himself master of his three sheep, together with two if not three lambs; and that if he sold his sheep again to pay his daric, and gave one of his lambs for the use of it in the mean time, he would be two lambs, or, at least, one lamb, richer than if he had made no such bargain *(b)*.

The precept in the law of Moses, which had long been considered to stand in the way of taking any interest, was at length discovered to have related to transactions between Jews alone, and not to affect the barterings of Christians! When usury, as it was then termed, was allowed, most states fixed the amount of profit which might be taken on loans. This established a distinction in terms; what the law allowed was termed *interest*, any rate beyond that was deemed usury. The rate varied in every state and every age according to the degree of commerce in the country and the safety of loans. In most states an arbitrary rate was fixed. Hume says, that if we consider the whole connexion of causes and effects, interest is the barometer of the state, and its lowness is a sign almost infallible of the flou-

*(b)* Defence, p. 101.



rishing condition of a people. It proves the increase of industry, and its prompt circulation through the whole state, little inferior to a demonstration (*c*). This is so universally admitted, that we need not be surprised at the anxiety manifested in most countries to keep down the rate of interest. Adam Smith, however, has said, and, I think, justly, if rightly understood, that no law *can* reduce the common rate of interest below the lowest ordinary market rate at the time when that law was made. Notwithstanding the edict of 1766, by which the French King attempted to reduce the rate of interest from five to four per cent., money continued to be lent in France at five per cent., the law being evaded in several different ways *(d)*. This proposition should never be lost sight of, and it might be extended to the case of the lowest ordinary market rate of interest, rising above the rate fixed after the law had passed. Mr. Bentham has questioned this position *(e)*. It may be conceded

(*c*) Essay of Interest.

(*d*) Book 2. c. 10. vol. 2. p. 45, edit. 1802.

(*e*) Defence of Usury, Letter 7.

to him, that a law may be so strictly framed as to prevent any possible evasion *according to the letter.* But yet if the wants of mankind rise above the law, it must, however strictly penned, give way to them. It will either be openly disregarded, or evaded, with the tacit consent of all parties. This experience shews. Montesquieu observes, that "La loi de Mahomet confonde "l'usure avec le prêt à intérêt. L'usure aug-"mente dans les païs Mahométans à proportion "de la séverité de la défence: le prêteur s'indem-"nise du péril de la contravention *(f)*." He states to what a pitch usury reached in Rome, on account of the little security which the creditor had; and he justly observes, that "Les loix "extrêmes dans le bien font naître le mal "extrême; il falut payer pour le prêt de "l'argent, et pour le danger des peines de "la loi *(g)*." Bentham himself states, that in Russia, where he wrote his Defence of usury, the rate fixed by law was 5 per cent.; that many people lent money, and nobody at that rate. The mode in which greater interest was taken strongly

*(f)* L'Esprit des Loix, c. 19.

*(g)* Ib. c. 21; and see c. 22.



shews, that the letter of the law was sufficient, but was disregarded by the convention of the parties.

In England, whenever the ordinary market rate exceeded the legal rate, the law has constantly been evaded. The rate of interest was first fixed in this country, in the 37 H. 8. *(h)*, the rate was 10 per cent. *(i)*. In the 5th of Edward the 6th, it was rendered illegal to take any interest *(k)*, but notwithstanding this law, the common rate of interest was at this time 14 per cent. *(l)* from which it may be inferred, that the act of H. 8, had not been honoured much in the observance.

Ten per cent. was again allowed in the 13th of Elizabeth *(m)*. The impolicy of a total prohibition of interest, appears to have been deeply felt. It is recited in the act, by which the statute of Henry the 8th, was revived, that the act of Edward the 6th "hath not done so much good as was hoped it should, but rather the said vice

*(h)* Paley is wrong in supposing that the statute of Elizabeth was the *first* that tolerated the receiving of interest in England at all; vol. 1, p. 160, edit. 1788.

*(i)* 37 H. 8, c. 9, s. 3.

*(k)* 5 and 6 Ed. 6. c. 20.

*(l)* Hume, vol. 4, 352.

*(m)* 13 Eliz. c. 8.

of usury, and, specially by way of sale of wares, and shifts of interest, hath much more exceedingly abounded, to the utter undoing of many gentlemen, merchants, occupiers, and others, and to the importable hurt of the commonwealth."

This act was limited to five years, but " forasmuch as it was by proof and experience found to be very necessary and profitable for the commonwealth of this realm," it was in the same reign made perptual (*n*).

In the 21st of James I. interest was reduced to 8 per cent. The act was to continue for seven years only, (*o*) but it was made perpetual in the succeeding reign (*p*). In the 12th of Charles the 2nd, the rate was reduced to 6 (*q*), and finally, in the 12th of Anne, to 5 per cent. (*r*) at which it now stands, although in happier times than these, it was in contemplation still further to reduce the rate.

Five per cent., as I shall attempt to show, has long ceased to be the ordinary market rate of interest, and the inevitable consequence has

(*n*) 39 Eliz. c. 18. s. 31. 32.
(*o*) 21 Jac. 1. c. 17.
(*p*) 3 Car. 1. c. 4. s. 5.
(*q*) 12 Car. 2. c. 13, confirmed by 13 Car. 2. stat 1. c. 14.
(*r*) 12 Ann, Stat. 2, c. 16.



followed, that the law has been evaded. Loans at any interest, however large, which could be obtained, have been legally sanctioned in the shape of life annuities, although the principal has never been *bona fide* put in hazard.

It has been justly observed of these laws, that they were all *made* with propriety, as they *followed* the market rate of interest. This assertion is fully borne out by the recital in the act of Charles the 2nd, which expressly states, " that in fresh memory the like fall from 8 to 6 in the hundred, *by a late constant practice,* hath found the like success," &c. But it states, that " it is the endeavour of some at present to reduce it back again in practice to the allowance of the statute still in force, to 8 in the hundred, to the great discouragement of ingenuity, &c." And for these reasons the statute was made. The same learned writer says, that the rate of interest ought always to be somewhat above the lowest market price which is commonly paid for the use of money, by those who can give the most undoubted security. If the legal rate should be fixed *below* the lowest market rate, the effects of this fixation must be nearly the same as those of a

total prohibition of interest. The creditor will not lend his money for less than the use of it is worth, and the debtor must pay him for the risk which he runs by accepting the full value of that use. If it is fixed *precisely* at the lowest price, it ruins with honest people, who respect the laws of their country, the credit of those who cannot give the very best security, and obliges them to have recourse to exorbitant usurers. In a country, such as Great Britain, where money is lent to Government at 3 per cent., and to private people on good security at 4 and 4½, the present legal rate is perhaps as proper as any (s).

The Committee of the House of Commons in 1777, fully admitted this principle in their report, which has been so frequently referred to. They observed, that the compensation for the risk of the life, ought to be taken upon a larger allowance, not only than its real value, but even than the rate at which such risk may be insured, and the reduction of the price to a lower sum, may be left to the competition that must arise in transactions which will be no longer disgraceful.

(s) Smith's W. of Nations, Vol. 2, c. 4.



## LETTER VIII.

This country has arrived exactly at that state in which, if the foregoing observations are well founded, the laws against usury must necessarily be inefficacious. I do not mean to say, that a man can justify the taking of 10 per cent. upon a simple loan, but I do mean to say, that he can, by a circuitous route, sanctioned by parliament itself, attain the same object. As to the real state of the money market, it is an undeniable fact, that money is not to be had on the most unexceptionable security at 5 per cent. Of course, from friendship or other motives, this sometimes happens; but a mortgage is rarely seen at the present day, unless where an estate is sold with an agreement to let part of the money remain for a given time on the security of it; or in some few instances of trust money directed to be laid out at interest on real securities. If we consider that a scale has always been preserved between the rates of interest, keeping within the rate allowed by law, according to the

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nature of the security, it will appear at once, why money cannot be had on mortgage at 5 per cent. When that rate was fixed, it was above 1 per cent. more than was taken on good security; and thus a man having a bad security, had a fair chance in the market, as he could legally give a greater rate of interest than could be obtained with good security. Money was then lent to Government at 3 per cent. But what is the case now? Government itself gives 5 per cent., and sometimes more; and as the security of the state is considered better than that of any individual, and money lent on such security can so readily be called in, it may be thought that Ministers have the market to themselves; and so they inevitably would, if money could by no shift be lent at more than 5 per cent. But this at present is not so. The landholder, and persons with worse securities, *must borrow*, and others *will lend* them money, although certainly not at legal rates. This at once explains the rise and progress of life annuities. In the few instances in which money is lent on mortgage, it is I believe not unusual to privately stipulate, that the property-tax shall not be deducted by the borrower,



notwithstanding the law to the contrary. And although it may startle some to hear it, yet instances are not wanting, of money being raised by way of annuity, upon three lives, paying ten per cent. upon unincumbered fee simple estates, of great annual value. Great sums are given to agents for loans at 5 per cent. on the best securities; so that the borrower pays severely, although the lender is not benefited by it. I have heard of an instance, in which 1,000*l.* was offered to an agent, to procure a loan of about 17,000*l.* Only last week, there was a newspaper advertisement, offering 100*l.* for the loan, on undeniable landed security, of 2,000*l.* The necessary consequence has been, that the laws against usury have been completely evaded, with the full knowledge, nay, with the sanction, of the legislature, under the colour of grants of life annuities, which are only real transactions to the extent of tying-up the lender's capital, during the period agreed upon; at which time he secures the repayment of it at the expense of the borrower, and in the mean time receives from 10 to 20 per cent. profit. The knowledge that this is a mere evasion of the law, which, although allowed, is

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stigmatized, drives fair purchasers, if they must be called so, out of the market, and leaves the borrower exposed to every species of oppression. There are, I should apprehend, few loans by way of annuity, for which in the first year (including expenses) the borrower does not pay 25 per cent., and there are certainly many on which more is paid. To restore the private borrower to his fair chance in the market, the rate of interest must be increased. I shall not attempt to contend, because I know it would be useless, "*in behalf of the liberty of making one's own terms in money bargains,*" nor indeed could I hope to add any thing to Mr. Bentham's able and ingenious defence of it. What I suggest is, only that the rate of interest be changed. This the legislature has frequently done, and if circumstances have formerly required it to be lowered, circumstances at present require it to be raised. To place borrowers on the same footing as they stood at the time of Queen Anne, the highest rate of interest should now be fixed at 7 per cent. This might wound the pride of the country, and probably alarm some well-intentioned people; but a little reflection would,



I think, dissipate all anxiety on this head. Experience has shewn that money will find its value in the market; that, on the one hand, if the legal rate is fixed too low, a higher will by one mean or another be obtained; that, on the other hand, if the rate is fixed too high, yet the market price will not rise on that account. The first proposition has already been considered. The second is proved by the circumstance, that although the statute of Anne authorised 5 per cent. to be taken, yet in point of fact, until in late times, 5 per cent. never was obtained. The rate of interest on good landed security, varied from 3½ to 4½ per cent. and an instance rarely occurred that 5 per cent. was taken. Where that rate was reserved, it was used only as a spur to prompt payment; for it was usual to provide, that if 4 per cent. was regularly paid, that should be accepted in lieu of the 5 reserved. Theseare facts with which every one in the habit of looking over titles is well acquainted. With this evidence before us, it would be idle to suppose, that if 7 per cent. were allowed to be taken instead of 5, the former would always be obtained. We have decisive evidence, that if

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money is not of that value in the market, the full legal rate will not be obtained, although it may be legally taken. It might as well be supposed, that any one can get what he chooses to ask for his house, because he may lawfully take what he can get. On the other hand, if 7 per cent. should be obtained without difficulty, that would be the best possible evidence that that is the proper legal rate; and any attempt to keep down the interest below the demand in the market, will have no other effect than making a law which will inevitably be broken; and at the same time *increasing* the market rate, on account of the risk of evading the law. All this, it may be said, tends to shew that there should be *no* restraint on lending money. Perhaps it may. But it certainly goes far to shew, that any restraint not adapted to the existing state of the market, cannot have a beneficial effect.



## LETTER IX.

In considering this question, it should never be lost sight of, that the rate of interest, in the reign of Anne, was not arbitrarily fixed, but *followed* the state of the market, leaving it still in the power of persons with inferior securities, to obtain loans at a moderate, although not at the lowest, rate of interest. It would have been a mere mockery at that period, when Government, in the then state of the nation, could obtain money at 3 per cent., to have enacted that no higher rate should be given: Such a provision would remind one of the equitable distribution which the lion made of the prey, when he hunted in company with the ass! It is manifest, that one of two consequences must have followed from such a law; either Government, whilst its credit lasted, would have had all the regular loans; and no man, upon however good security, could have obtained money (*a*), or the

(*a*) Paley says, that one part of the policy of these regulations in later years, is to enable the state to borrow the subject's

supply of individuals, would have been made at an enormous profit, in order to indemnify the lender against the impending sword of the law. If the first consequence should be supposed, a general stagnation of commerce would inevitably follow; sales would be made on the most ruinous terms, and the prosperity of the country would cease. Government would quickly discover, how intimately, how inseparably its welfare was intwined with that of every individual in the state; the baneful effect of this monopoly of credit would appear in shapes not to be misunderstood, and things would necessarily be restored to their old channel. If the second consequence were to ensue, and I am afraid that we must all admit that it would, the effect, although not so alarming, would yet be such as every well-regulated state ought to avoid. The law must necessarily

money itself. Paley, vol. i, p. 160. This wretched policy may perhaps have operated to prevent the rate of interest from being raised, since the time of Queen Anne; but it certainly did not operate then, for in loans between subject and subject, 2 per cent. more was allowed to be taken, than the state would give.



be broken, which of itself is an evil of the highest degree. Men are but too prone to evade even the most salutary laws; and, like the commission of crime, one act impels to another, a general depravity of morals ensues, and oaths are not imposed faster than perjury is increased. In the case last supposed, the borrower, I repeat, is subjected to harsher terms, and the just scale of profits no longer existing, the moderate rate of Government interest, although coupled with the supposed stability of the state guarantee, would no longer withstand the enormous profits with the degree of risk attendant on private loans. Thus, individuals would be oppressed for the supposed benefit of the state; whereas, if even their welfare could be separated, yet the sum thus withdrawn from the security of the state, would probably exceed in amount what would be lent on private security in a regular way, were a just scale of rates preserved.

If we feel disposed to condemn the policy which, in 1714, would have fixed the rate of interest at 3 per cent., because that was the rate

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at which Government then borrowed, how can we applaud the policy which, in 1812, retains the rate of interest at 5 per cent., although Government itself cannot always obtain money at that rate? If 3 per cent. was not then the proper maximum, 5 per cent. is not now. We may feel the same pain as a child would in parting with a tinsel plaything, in raising the rate of interest; but if we must legislate on this head, the rate must be raised as well as lowered, if required by circumstances. I am far from supposing, that limiting the rate of interest, may not have a beneficial operation, provided the real *bona fide* demand in the market for money be always chosen as the guide for fixing the rate.

To conclude the observations on this head: Were the rate of interest raised, and loans in the shape of life annuities abolished, men with inferior securities might, without incroaching on the demand of the state, borrow money on terms greatly below what they now can; and the rate of interest would not, *by reason of the law*, be increased.

If it should be thought too bold a measure to



allow more than 5 *l.* per cent. interest, to be taken on good security, yet as money may now be borrowed at any rate, however exorbitant, by way of annuity, some measure ought to be adopted to prevent the clashing consequences arising out of this system. For instance, let it be made legal to take 7 or 8 per cent., on such securities as annuities are now generally granted upon, viz. life interests, and reversions, and leasehold estates; (*b*) and render it illegal to grant a redeemable annuity. This would at once open the market to fair bidders; the extra interest would compensate for the risk, more especially when repayment of the money could be compelled, and borrowers with inferior securities would be saved from great oppression. The borrower where he had a determinable interest, for example, a life estate, would still have to insure his life; but, subject to the money borrowed, the assurance would belong to himself; he might keep the assurance on foot after the money was paid off for his own benefit, or he

(*b*) An enactment to this effect might be made general, with an exception, on the plan of the annuity act, of loans on fee simple estates, or the like.

might sell it: whereas an assurance for money lent on an annuity is always effected by the lender, although paid for by the borrower, and naturally falls to the ground when the annuity is paid off. —To this plan it may be objected that irredeemable annuities would be granted in order to evade the law. This objection, and the mode of obviating it, require great consideration. It would hardly be endured that the sale of an irredeemable annuity should be prohibited, nor does it seem necessary to resort to so violent a measure. It is a well known fact, that very few life annuities are ever granted without being subject to redemption. Where such an annuity is granted, it is generally a family transaction, and wholly free from fraud. It would not therefore be attended with any practical inconvenience to fix the rates at which such annuities shall be bought according to the plan proposed in the bill so often referred to, which was dropped. This measure, I am persuaded, would never affect the persons whose conduct it would seem to regulate, and it would facilitate the state plan now in action of raising money by the grant of absolute life annuities, although even in regard to this limited



traffic, individuals should be allowed to give considerably more than Government offers. It would at the same time prevent lenders from flying to this scheme in order to evade the law, making the borrower rely upon their honour in granting a redemption.

It may perhaps still further be objected, that this measure would open a door for all classes to borrow at the increased rate. A man having a fee simple estate, and also a life estate, might pledge the life estate as a security for a loan at the highest rate of interest, the lender relying on his other property, or on a lien on it by means of a judgment, as a better security. This, it must be admitted, might be done. But still no new evil would be introduced, for a man in the same circumstances, or with fee simple estates only, may, as matters now stand, under colour of an annuity, borrow money at 40 per cent.; and the greater the amount of the annuity that is taken the more it assumes the shape of a loan, for it becomes the more certain that the annuity will be paid off in a reasonable time.

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The writer trusts that his first proposition, for modifying the Annuity Act, will not be confounded with his other suggestions. They stand on separate grounds; and although the latter may not be deemed deserving of consideration, yet that ought not to lessen the attention which may be considered due to the former.

The writer has only to express his wish, that the subject may attract the attention of those who alone are capable of affording a remedy to the evil. Sooner or later, he is persuaded, the question will force itself on the consideration of the legislature, and the longer the cure is delayed, the more severe must be the remedy. He has been compelled to execute the task with great rapidity, but, deeply impressed with a sense of the public utility of the enquiry, he did not hesitate rather to execute it imperfectly, than to leave it wholly unperformed.

THE END.

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