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## A CRITICAL STUDY OF THE USURY LAW (ACT 2655)


BY MANUEL V. GALLEGO, B.A., LL. B.


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*(Continued from August Number)*


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SEC. 6. ANY PERSON OR CORPORATION WHO, FOR ANY SUCH LOAN OR FORBEARANCE, SHALL HAVE PAID OR DELIVERED A HIGHER RATE OR GREATER SUM OR VALUE THAN IS HEREINBEFORE ALLOWED TO BE TAKEN OR RECEIVED, MAY RECOVER THE WHOLE INTEREST PAID OR DELIVERED WITH COSTS AND ATTORNEY'S FEES IN SUCH SUM AS MAY BE ALLOWED BY THE COURT IN AN ACTION AGAINST THE PERSON OR CORPORATION WHO TOOK OR RECEIVED IT, IF SUCH ACTION IS BROUGHT WITHIN TWO YEARS AFTER SUCH PAYMENT OR DELIVERY: PROVIDED, HOWEVER, THAT THE CREDITOR SHALL NOT BE OBLIGED TO RETURN THE INTEREST COLLECTED BY HIM IN ADVANCE WHEN THE DEBTOR SHALL HAVE PAID THE OBLIGATION BEFORE IT IS DUE, PROVIDED SUCH INTEREST DOES NOT EXCEED FROM TEN TO TWELVE PER CENTUM PER ANNUM, ACCORDING AS IT FALLS UNDER SECTION TWO OR SECTION THREE OF THIS ACT.

The law allows the recovery of the whole interest paid not only for the protection of the payer but also as a punishment of the lender, because the law presumes that such a payment was done through oppression and undue advantage. Beside the recovery of the whole interest paid, the law permits also costs and attorney's fees to be reimbursed the debtor for they are expenses incident to the bringing of the suit which the payer would not otherwise incur. Since the determination of the costs and attorney's fees is left to the sound discretion of courts, the latter are likely to follow the provisions of Chapter XXI of act 190 regarding costs and lawyer's fees. The two years period within which action must be brought, begins to run from the time of actual payment and not from the time of the agreement to pay

the usurious interest. (Rushing *v.* Rhode 6 Ga. 228.) The action is not barred if brought within the statutory period after the last of a series of successive usurious payments. (Steward *v.* Fowler, Harp (S. C.) 403.)

If the action to recover usurious interest paid is brought against the assignee of the original creditor, the period of limitation will be computed from the time the debt is paid to the assignee rather than from the time the loan was made to the assignor. (See Williams *v.* Wilder 237 Vt. 613) (39 C 1083.) Most cases hold that the payer of usury or his personal representative, is the proper party to sue for its recovery. (Mathews *vs.* Paine 47 Ark. 54.) Ordinarily, as long as any part of the usurious debt remains unpaid, the usurious payments made or agreed to be made may be set-off against the total sum contracted to be paid; and this too, although the statute may either expressly or impliedly authorize the recovery of usury which has been paid. (Farwell *v.* Meyer 35 Ill. 40.)

The last part of the section provides that interest paid in advance is not usurious and therefore action will not lie if such interest does not exceed from 10% to 12% per annum, according as it falls under section two, regarding debt secured by duly registered title to realty or under section three when loans are secured otherwise. Since the rate of interest in case of advance payment as provided in this section is lower than that allowed and payable at the end of the year, it is obvious that there can be no usury. Most authorities hold that taking the highest rate of interest in advance, so that the borrower receives less than the principal sum he contracts to repay, is unquestionably usurious in principle and was so considered at first; but an early concession was made to the usage among banks and other persons dealing in commercial paper whose customary short term loans made the violation of the law insignificant. In the course of time, however, the usage has widened with the custom of the law merchant, until it became a settled rule now that interest may be recovered in advance at the highest legal rate without rendering the loan usurious, if the loan is for a short term. (Fowler *v.* Equitable Trust Co. 141 U. S. 384.) It should be clearly understood that the rule permitting interest in advance, must be confined to short term loans, otherwise the borrower might incur an obligation to repay a large sum in consideration of the present receipt of an insignificant amount. Since the cases do not fix and define the exact meaning of the word "short term," the writer is of the opinion that it should be interpreted to mean a period of time less than one year. Thus, it has been generally held that stipulations for the payment of accrued interest at the highest legal rate semi-annually, or quarterly, are not usurious. ((Hawley *v.* Howell 60 Iowa 79; Mowry *v.* Shumway 44 Com. 493).

No other words can portray better the opinion of a famous authority on usury who condemns the taking of advance interest in the following words: "Why there should be such profligate expenditure of learning, consumption of words, and vexation of mind over a question of which there is but one solution, is difficult to

understand. Interest is the compensation for the use of money. If the amount of the interest is deducted in advance, it is plain that the borrower never uses the interest so paid; he does not receive the full amount of his loan; it renders the borrower no service, performs no purpose, pays no debts, buys no property, satisfies no wants, and accomplishes nothing for the borrower. If mathematical accuracy and justice should be aimed at, it seems that interest should be paid at maturity." (Webb on Usury, sec. 113.) The writer agrees with the opinion just quoted to the extent that it should only be applicable to cases where the amount of interest collected in advance together with the interest upon it, is more than would be allowed by law as interest upon the principal.

SEC. 7. ALL CONVEYANCES, MORTGAGES, BONDS, BILLS, NOTES, AND OTHER CONTRACTS OR EVIDENCES OF DEBT, AND ALL DEPOSITS OF GOODS OR OTHER THINGS, WHEREUPON OR WHEREBY THERE SHALL BE RESERVED, SECURED, TAKEN, OR RECEIVED, DIRECTLY OR INDIRECTLY, A HIGHER RATE OR GREATER SUM OR VALUE FOR THE LOAN OR FORBEARANCE OF MONEY, GOODS, OR CREDITS THAN IS HEREINBEFORE ALLOWED, SHALL BE VOID: PROVIDED, HOWEVER, THAT NO MERELY CLERICAL ERROR IN THE COMPUTATION OF INTEREST, MADE WITHOUT INTENT TO EVADE ANY OF THE PROVISIONS OF THIS ACT SHALL RENDER A CONTRACT VOID: AND PROVIDED FURTHER, THAT NOTHING HEREIN CONTAINED SHALL BE CONSTRUED TO PREVENT THE PURCHASE BY AN INNOCENT PURCHASER OF NEGOTIABLE MERCANTILE PAPER, USURIOUS OR OTHERWISE, FOR VALUABLE CONSIDERATION BEFORE MATURITY, WHEN THERE HAS BEEN NO INTENT ON THE PART OF SAID PURCHASER TO EVADE THE PROVISIONS OF THIS ACT AND SAID PURCHASE WAS NOT A PART OF THE ORIGINAL USURIOUS TRANSACTION. IN ANY CASE, HOWEVER, THE MAKER OF SAID NOTE SHALL HAVE THE RIGHT TO RECOVER FROM SAID ORIGINAL HOLDER THE WHOLE INTEREST PAID BY HIM THEREON AND, IN CASE OF LITIGATION, ALSO THE COSTS AND SUCH ATTORNEY'S FEES AS MAY BE ALLOWED BY THE COURT.

Although the law says that all contracts tainted with usury are void, yet, strictly speaking they are not *ab initio*, but simply voidable at the instance of the debtor. The debtor may discharge the usury or he may be guilty of such laches as to forfeit his right to set up usury as a defense in an action on the loan. Hence, if the mortgagor of property given as a security of a usurious debt allows his property to be sold under foreclosure proceedings, without attempting to avoid the mortgage, he cannot afterwards allege usury to the prejudice of an innocent purchaser. (Brown *v.* Nevitt 27 Miss. 801.) The right of the debtor to recover property delivered under a usurious contract cannot be more graphically portrayed than in the following

words: "The contract upon which these securities (referring to mortgages) were received by the defendant being usurious, was wholly void and thereby he acquired no right to them; nor was his possession, although by manual delivery from the plaintiff, a rightful possession. On the contrary, it was not only acquired in violation of a positive law, but as respect the plaintiff, was compulsory and oppressive. The law regards, whatever is done to obtain money on usurious terms, not as a voluntary act, but as the direct result of constrain and violence on the part of the usurer. The borrower on such terms, is the slave of the lender; nay, more, a slave in chains, and utterly incapable of resistance. As to the usurer, anything is held to be oppressive and tyrannical to which an unresisting and passive submission, is yielded by his victim. It is on this principle alone that the law gives redress to one who submits to usurious transactions." (5 Denio 236.)

It has also been held that a conveyance of property, absolute in form, may be shown to be in fact a mere security for a usurious contract. (Pope *v.* Heartwell 79 Ga. 482; Louis *v.* Leonus 53 Ark. 454).

Again, where the consideration or an inseparable part of a mortgage is usurious, the whole security is defective to the extent provided by the usury statute. (Marks *v.* McGehee 35 Ark. 217.)

Another important question which presents itself refers to the extent of the amount to which the lender is entitled in case a contract is declared void for violating the usury law. In a few states, usurious contracts are entirely void as to both principal and interest. (Ormund *vs.* Hobert 36 Minn. 306.) Turning now to the provision of our law, the writer believes that although sec. VII is silent as to what part of a usurious contract is void, yet from the contents of sec. VI, VIII and X which provide for the recovery of the whole interest paid in civil cases and the forfeiture of an equal amount in criminal cases, it can be reasonably inferred that the principal may be recovered by the lender since the forfeiture can extend no further than which the statute specifically provides. This view is sustained by the great weight of authority which upholds that a usurious contract is void only as to all interest, but the principal may be collected. Thus, it has been held that, "The amount to be forfeited is only the interest—the whole of the interest, legal and illegal, but no principal and no part thereof." (Lamier *v.* Cox 65 Ga. 266; Meddock *v.* West 16 Ohio 417.)

The director of Agriculture, Mr. Hernandez, in a letter addresssed to the members of the Rural Credit Association and published in the local papers, expounded the idea that all usurious contracts falling under section seven, being void, "the effect will be that the victim will not have to pay either the capital or the interest." He goes further and says that the law looks on usurious interest exactly as it does on contraband opium; anyone dealing in it will have his whole stock confiscated and will be punished besides." With the utmost respect to this opinion, the writer cannot help but to differ from it. Lest he be accused of partiality, it must be under-

stood at the outset that the writer in expressing his view, in this connection, is guided only by a sincere and firm conviction that he is voicing the right spirit of the law and the legislative intent; he bases his contention on the following grounds:—

(1) The law does not expressly say in any of its provisions that the whole capital is to be confiscated; on the contrary, it simply provides for the recovery of the whole interest agreed upon. Neither can it be rightly implied from section seven or from any other part of the law an intention on the part of the legislator to impose a severer penalty than the forfeiture of interest; for the explanatory statement found in the official legislative records says that "subsidiary imprisonment in lieu thereof (referring to the fine) in case of insolvency is better than the forfeiture of the capital"; —meaning thereby, that the thought of forfeiting the capital was not entertained. Moreover, Webb, a famous authority on usury, says that the forfeiture of capital can only take place by *express* provision of law, while that of interest, may take place either by *express* provision or by *implication* of law. (Webb on Usury sec. 287).

(2) It is undisputed that the criminal responsibility of the usurer upon conviction extends only to a fine equivalent to the total interest stipulated or to the value of the products agreed upon as interest; in other words, after the crime of usury is consummated the criminal is punished by the forfeiture of the whole interest stipulated. Now, even admitting that all usurious contracts are absolutely null and void, at most, there is only an attempt or rather an *intent* on the part of the lender to commit the crime of usury. The latter may at any time abandon his evil intent before the capital is returned or before the payment of the usurious interest upon is made, and even supposing that the capitalist continues in his desire to evade the law, still, it is only after an *actual* receipt of the unlawful interest that the crime is consummated. Consequently, to interpret the law as meaning that, the contract being void, the capital and interest are to be forfeited, would be unreasonable, unjust and illogical for then, an attempted crime would be more severely dealt with than a crime wholly consummated. In other words, to forfeit the capital and interest of usurious contracts coming under section seven, would be an act of the greatest inconsistency on the part of the Legislature and revolting against all sound rules of statutory construction in that a mere intent to commit a crime would be more harshly punished than an actual commission of the same.

(3) To forfeit both capital and interest would be to encourage fraud, deceit and bad faith on the part of the debtors; for then debtors would silently consent and even induce capitalists to enter into usurious contracts with them and afterwards avoid the contract, thus, unjustly enriching themselves at the expense of the lender. It would be at the same time oppressive to the capitalist for whether a loan is usurious or not, it cannot be doubted that the debtor derives at least some benefit from it. The writer does not however mean that usurers should not be punished but he simply advocates that they should be punished according to the mandantes of the law and the sound principles of justice and equity.

(4) The writer does not deny the existence in other countries of the world of usury laws which provide for the forfeiture of the whole capital and interest, but in every case it is provided in a *clear, express* and *unequivocal* language and the law never allows it to be inferred merely by deduction. Furthermore, such laws even provide where the forfeited capital should go; for instance, in some states of the Union where the usury law allows the forfeiture of capital, it also provides that the confiscated capital shall be used for school purposes. (See Oregon Statute of 1890 sec. 3589).

No similar provision can be found in our law, for in its failure to provide in any way that capital should be forfeited, it likewise failed to provide where the confiscated capital should go; and to pressume that it would go to the borrower is, as I have already said, to encourage fraud among debtors and eventually to multiply usurious contracts for it will serve as inducement to those that are badly in need of money.

(5) The writer believes that all usurious contracts are only voidable at the election of one of the parties. Bishop on Contracts, section 611, says: "A contract is void when it is without any legal effect; voidable, when it has some effect, but is liable to be made void by one of the parties or a third person," from the above definitions it appears that usurious contracts are really voidable only since they may have some effect and in fact they will produce all the consequences of a valid contract if no one will question their validity. Again, it has been held that strictly speaking no contract for money is void but only voidable, (Ewell *v.* Dugs 108 U. S. 143; Masterson *v.* Grubbs 70 Ala. 406). Such being the case, then it follows that each party in case of rescission, can recover back whatever he has paid or delivered under it, that is, the lender shall recover his capital although the borrower cannot be compelled to pay the interest agreed upon.

(6) Those who support the theory that the whole capital and interest are to be forfeited look upon the money employed in usurious contracts as they do upon contraband opium. But the writer thinks that there should be distinction between the two; opium is *malum per se* while money loaned on usurious contracts is simply *malum prohibitum;* opium is in itself bad while money becomes bad only because of a certain use to which it is devoted; opium is used, as a rule, to violate the law while the ordinary use of money is not a violation of the law. Not only that, the Opium Law provides in clear and express words that opium unlawfully possessed by anybody is subject to forfeiture but no where can similar provisions be found in our Usury Law.

(7) It is a universally accepted principle of law that when a contract is tainted with illegality and it can be separated into parts, only that part of it which is illegal cannot be enforced while the residue or the good will stand. Now, since section six, eight and ten simply provide for the recovery and forfeiture of the whole inter-

est agreed upon, these provisions recognize therefore in an express manner that the contract is void only to the extent of the total interest; hence, enforceable as to the rest, or to be more concrete, the lender should receive back his capital.

(8) According to a legal principle which admits of no contradiction, penal laws are to be strictly construed. In support of this proposition, it is sufficient to cite a usury case in which the court laid down the following doctrine: "In construing a penal statute, we are not allowed, as in the case of those that are not penal, to look to the motives or to the mischief which was in the legislative mind. The rule is peremptory, that the case must fall within the plain language of a penal statute before the penalty can attach" (Coble *v.* Shoffner 75 N. C. 42). A similar doctrine was also enunciated by the Supreme Court of these islands in a number of cases. (Malcolm's Philippine Government p. 732 and cases cited therein).

(9) Out of the forty-eight states of the Union, there are only about two whose usury laws expressly and clearly allow the forfeiture of the whole capital; there are about twenty which provide for the forfeiture of the total interest agreed upon, and the rest have laws which simply permit the confiscation of the interest in excess of that allowed by law, (See Appendix of Webb on Usury p. 621 *et seq.*) for the trend of modern authorities and the tendency of courts at present is "to discard the old doctrine that all usurious contracts are essentially inequitous and void and to treat them as illegal only to the extent of the excessive interest, unless the statute otherwise directs." (27 Am. and Eng. Enc. of Law p. 942 citing Farmer's Bank *v.* Harrison, 57 Mo. 503, Badle *v.* Wardell, 25 N. J. Eq., 349, Tarner *v.* Calvert, 12 Serg. & R. 46 and many others.) From these authorities it is obvious that if it were not for the fact that our Usury Law expressly provides for the forfeiture of the total interest agreed upon, we would come under the general rule in vogue nowadays that the confiscation extends only to the illegal excess of interest, in the absence of express statutory provision to the contrary.

Even in the Philippines, authorities are not wanting who entertain the idea that the proper interpretation of section seven simply permits the forfeiture of the interest in excess of that allowed by law. The writer sustains a view, however, which aside from being a compromise between the two extremes, is founded upon the proper interpretation of our Usury Law considered as a whole.

(10) As a further support of the writer's contention, he cites the editorial of the Free Press of Nov. 24, 1917, part of which reads as follows: "All that the usurer has to face is the risk of a fine double the illegal interest collected—this on a criminal charge; and, if civil suit be brought, repayment of the illegal interest." In proposing a remedy, the editorial continues, "What is needed is a law such as prevails in other countries, confiscating the capital of the loan, and sending the usurer to jail." In other words, the Free Press advocates the confiscation of capital through legislation and not through interpretation, for usury laws, being founded upon principles of public policy that have been recognized for ages," if there is any injustices or

policy in these enactments, the fault rests with the legislature and it must provide the proper corrective and not the courts," (Ferguson *g.* Sutphen 8 Ill. 547) nor any one else.

The law wisely provides that mere clerical error in the computation of interest, with no intent to evade the law, does not make a contract void for the mistake being made in good faith, there cannot be usury; thus it has been wisely held that mistake in calculation or other mistakes of fact, resulting in the lender's unintentionally charging or receiving excessive interest, negatives the existence of the unlawful intent necessary to constitute usury (Aldrich *v.* McClay, 75 Ark. 387). It follows therefore, that the party injured by the error may recover the excess or deficit. But if the mistake be as to the legal right to require the excessive payment, which is received in good faith, nevertheless, there is usury, for ignorance of the law excuses no one, not even an honest money lender. (Bank *v.* De Shon 41 Ark. 331.) We can conclude therefore that mistake of fact is excusable but mistake of law excuses no one.

As a rule, the taking of interest slightly in excess of the legal rate due to the rules of computation customarily adopted in similar transactions, for the purpose of avoiding complicated calculations, or for other innocent reasons is not regarded as usurious; and this is specially true when the slight excess of interest is taken by mistake; but all are agreed that if the special means of computation are used with usurious intent, the transaction is in violation of the usury law. In most places, it is considered as a matter of convenience in calculation and is held not to work usury, to consider one year composed of 360 days and one month as made up of 30 days.

Error in the allowance of interest in a judgment, when ascertainable by mere computation, will generally be corrected by permitting the prevailing party to return the excess without reversing the judgment. Such an error is always corrected by the appellate court itself and judgment for the proper amount entered, without remanding the case to the lower court; but in other instances the higher court used to remand the case to the lower court with instructions to correct the error and enter judgment for the proper amount. The writer is of the opinion that error in the allowance of interest, ascertainable by mere computation, does not require the remanding of the case for such ground alone, but that the error should be corrected by the higher court so as to avoid further trouble and to expedite the administration of justice.

The latter part of this section rightly protests bona fide holders of negotiable instruments; but in order to claim protection under the law he must be; (1) An innocent purchaser. (2) A holder for a valuable consideration, (3) Before maturity. (4) There must be no intent to evade the law on the part of the purchaser. (5)

Lastly, the purchase must not be a part of the original usurious transaction. The absence therefore of any one of the above elements, deprives the holder of the protection of the law.

It has always been held that usury laws should be liberally construed where the rights of innocent persons are concerned; such contracts, however, as are absolutely void for usury in its inception, is void in the hands of all subsequent holders whether bona fide or not, (German Bank *v.* De Shon, 41 Ark. 331.); but if a contract is not void *ab initio* (from the beginning) a *bona fide* purchaser may acquire rights which could not have been enforced by a party to the original contract. (Scott *v.* Lewis, 2 Conn. 132).

One who acquires negotiable paper from a *bona fide* indorsee or bearer, who purchases same for value before maturity, obtains the title and rights of such indorsee or bearer, and will not be affected by the facts that he purchased the paper after maturity. (Robinson *v.* Smith, 62 Minn. 62.) Whenever a note is purchased after maturity, the maker is entitled to the defense of usury, in a suit by the indorsee, as fully as if the note had remained in the hands of the payee (Wing *v.* Dunn, 24 Me. 128).

Where a note, taken *bona fide* in the regular course of business, was originally given as collateral security for money borrowed at an usurious rate, although subsequently, the usurious contract was rescinded, a lawful note substituted, it was held, that the original loan being void for usury the collateral could not be enforced (Chadbourn *v.* Watts, 10 Mass. 121).

The last part of this section fully protects the maker of the note by allowing him to recover from the original holder the whole interest paid by him, with costs and attorney's fees in case of litigation.

SEC. 8. ALL LOANS UNDER WHICH PAYMENT IS TO BE MADE IN AGRICULTURAL PRODUCTS OR SEED OR IN ANY OTHER KIND OF COMMODITIES SHALL ALSO BE NULL AND VOID UNLESS THEY PROVIDE THAT SUCH PRODUCTS OR SEED OR OTHER COMMODITIES SHALL BE APPRAISED AT THE TIME WHEN THE OBLIGATION FALLS DUE AT THE CURRENT LOCAL MARKET PRICE AND ANY PERSON OR CORPORATION HAVING PAID OTHERWISE SHALL BE ENTITLED IN CASE ACTION IS BROUGHT WITHIN TWO YEARS AFTER SUCH PAYMENT OR DELIVERY TO RECOVER ALL THE PRODUCTS OR SEED DELIVERED AS INTEREST, OR THE VALUE THEREOF, TOGETHER WITH THE COSTS AND ATTORNEY'S FEES IN SUCH SUM AS MAY BE ALLOWED BY THE COURT. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE LENDER FROM TAKING INTEREST FOR THE MONEY LENT, PROVIDED SUCH INTEREST BE NOT IN EXCESS OF THE RATES HEREIN FIXED.

The object of the law in requiring loans payable in agricultural products to be appraised according to their market price at the time when the obligation falls due, is to prevent the lender from getting more than the lawful interest. Since the price of seeds or other commodities fluctuate from time to time, if the law will not afford a remedy in favor of the debtor, the creditor is likely and in most cases will charge higher rate than that sanctioned by law so as to give allowance to the danger of the constantly changing price of commodities which may work prejudice to the money lender. The most common forms of loan of this kind found in the Philippines are: loan of money payable in agricultural products such as palay, sugar, hemp, etc., the value of which are very seldom if ever determined at all at the time of the payment, loan of seeds or other commodities payable in kind. According to the best knowledge and belief of the writer, based upon personal observation, nearly all the contracts of this nature in vogue in the provinces are highly usurious in character and is one of the greatest calamities that befall the laboring class. The writer will attempt to make a more thorough exposition of existing facts about contracts of this class in the latter part of this work.

Whenever any advantage of greater value than the lawful interest is received with either actual or implied intent to evade the law the transaction will always be considered as usurious. Thus, it was held that whatever may be the true nature of the advantage paid whether in the form of money or some other property, whether it be based upon certain or contingent event, provided that neither the capital not the lawful interest is placed at extraordinary risk, the contract is branded with usury. (Ormund *v.* Hobart, 36 Minn. 306.) In cases where some other commodity is the apparent subject of the contract, the fact that there was an application for the loan of money, and that the applicant was in great need of money, is important; as showing that although no money passed between the parties, the transaction was really a loan of money. The usury is then determined by comparing the current value of goods with the value as fixed in the contract for repayment. (Moore *v.* Vance, 3 Dana 361.)

Questions that might arise in connection with the time within which action for the recovery of interest must be brought, have already been discussed under a former section; but it may here be added that the two year's time as a period of limitation applies alone to proceedings for the recovery of the forfeiture or the penalty, and not to the defense of usury, for if it is intended to apply to the defense against usury, it would give to the party holding a usurious contract the advantage of cutting off the defense by postponing his suit until after two years had expired. (Pickett *v.* Bank of Memphis, 32 Ark. 366.)

As to the point whether or not the extinction of the principal carries with it the extinction of the interest, our Supreme Court held; "The interest upon a debt cannot be separated from the principal in order to withdraw the interest from the operation of the statute of limitations when the principal is considered to be barred by the

statute. The interest is but an incident of the principal and lives and dies with it. When the principal ceased to exist, the interest ceased to exist with it. If the plaintiff accepted the principal, he cannot afterwards bring an action for interest. (Soriano *v.* Enriquez, 24 Phil. 584.)

SEC. 9. THE PERSONS OR CORPORATION SUED SHALL FILE ITS ANSWER IN WRITING UNDER OATH TO ANY COMPLAINT BROUGHT OR FILED AGAINST SAID PERSON OR CORPORATION BEFORE A COMPETENT COURT TO RECOVER THE MONEY OR OTHER PERSONAL OR REAL PROPERTY, SEEDS OR AGRICULTURAL PRODUCTS, CHARGED OR RECEIVED IN VIOLATION OF THE PROVISIONS OF THIS ACT. THE LACK OF TAKING AN OATH TO AN ANSWER TO A COMPLAINT WILL MEAN THE ADMISSION OF THE FACTS CONTAINED IN THE LATTER.

The purpose of the oath required by this section is not only to awaken in the witness the fear of the law, but also the fear of God as the reward of truth and the avenger of falsehood. By appealing to the conscience and to the sense of accountability of the one taking the oath, good faith and utterance of truth are best secured. The law is silent as to the nature of the complaint which ought to be answered under oath; hence, the writer believes that for the proper interpretation of this section, some other law must be resorted to. The first part of Sec. 103 of Act 190 provides that "when an action is brought upon a written instrument and the complaint contains or has annexed a copy of such instrument, the genuineness and due execution of the instrument shall be deemed admitted, unless specifically denied under oath in the answer." Applying therefore the above section of the Code of Civil Procedure in connection with the section of the usury law under discussion, we can deduce that an answer under oath presupposes the existence of a complaint containing or accompanied by a copy of the usurious instrument upon which the action is based.

The next question is, by whom must a pleading be verified? As a general rule it must be verified by the party himself or by any other person having knowledge of the facts of the case. A verification made by an officer or manager of a corporation is a verification by the corporation itself and need not state the grounds of belief or source of knowledge. (Sunderland on Code Pleading, Sec. 165 and 167.) Most authors say that when a pleading is verified by an attorney or by some other person than the party himself, he must set forth in the affidavit the reason for the same.

Authors differ in their judgment as to defective verification; some say that a defective verification of a pleading should not be treated as a nullity unless the opposite party is given an opportunity to correct the defect, and that a motion to strike should first be made, while others are of the opinion that a defective verification is a nullity, and the pleading may be treated as unverified. The writer is of the opinion that a mere formal defect in a verification should not render it ineffective; but if there is a substantial defect, as in a case where the verification is made by one having no authority to do so, then it may be considered as an unverified pleading

If verification is committed, courts may allow it to be inserted (Davis *v.* Potter, 4 Howe, 155). But the omission of verification merely relieves the other party from the necessity of proving the due execution of the instrument and all other defenses of which a party can avail himself are open to him. (McClintick *v.* Johnston, 15 Fed. Cas. No. 8, 700.)

The last part of the section provides that failure to verify the answer under oath will mean the admission of the facts alleged in the complaint. In support of this proposition our Supreme Court has laid down the following doctrine: "By reason of the failure of the defendant to deny, under oath, the genuineness and due execution of the said promissory note, it was unnecessary for the plaintiff to prove these facts; in other words, by reason of the fact that the plaintiff had made the said promissory note a part of his complaint, and by reason of the fact that the defendant failed to deny under oath, the execution and delivery of said promissory note, specifically, the facts alleged in the complaint, constituted a prima facie case in favor of the plaintiff, and he was entitled to a judgment for the amount of the said promissory note, unless the defendant during the trial should prove the payment of same." (Sec. 103 of Act 190; Chamber of Commerce *v.* Pua Te Ching, 14 Phil. Rep. 224 and cases therein cited.)

"The defendants not having denied the execution of said promissory note, under oath, they admitted it, and no evidence was therefore necessary on the part of the plaintiff to show that the defendant owed the amount claimed. The burden of proving the payment of the said promissory note, or any similar defense was upon the defendants. (Knight *v.* Whitmore, 125 Cal. 198; McCormick Harvester Co. *v.* Doucette, 61 Minn. 40.)

SEC. 10. WITHOUT PREJUDICE TO THE PROPER CIVIL ACTION, VIOLATIONS OF THIS ACT SHALL BE SUBJECT TO CRIMINAL PROSECUTION AND THE GUILTY PERSON SHALL, UPON CONVICTION, BE SENTENCED TO A FINE EQUIVALENT TO THE TOTAL INTEREST STIPULATED OR TO THE VALUE OF THE PRODUCTS OR SEED AGREED UPON AS INTEREST, AND IN CASE OF INSOLVENCY, SUBSIDIARY IMPRISONMENT SHALL BE IMPOSED: PROVIDED, THAT IN CASE OF CORPORATIONS, ASSOCIATIONS, SOCIETIES OR COMPANIES THE MANAGER, ADMINISTRATOR OR GERENTE OR THE PERSON WHO HAS CHARGE OF THE MANAGEMENT OR ADMINISTRATION OF THE BUSINESS, SHALL BE THE ONE TO SUFFER THE SUBSIDIARY IMPRISONMENT PROVIDED BY THIS ACT IN THE CASE OF A SENTENCE OF CONVICTION.

In order to discourage as much as possible the taking of usurious interest, the law makes the usurer not only civilly liable but also criminally responsible. Some confusion has arisen because of the broad and misleading statement made by authors to the effect that usury is not complete until the principal sum and the excessive

interest have been actually paid or received. The true rule however, is that so far as the validity of the contract is concerned usury becomes a good defense although no part of the principal or illegal interest has been paid; but when the question involved is the imposition of penalty fixed by law, the offense is not consummated until the unlawful interest is actually received. As has been said before at the beginning of this work there are two indispensable elements which constitute the crime of usury; first, there must be an agreement for the payment of usurious interest, and second, there must be an actual taking of the unlawful interest.

The most important opinion as to the proper interpretation of this section, is that delivered by Attorney-General Paredes already alluded to. Regarding the first point, the Attorney-General said that in order to sustain a criminal action it must be shown, in the first place, the existence of a loan. And in order to have a loan according to him, there must be a contract by virtue of which one delivers to another a certain sum of money which the latter bound himself absolutely to return with the conventional rate of interest. If there is such intent on the part of the contracting parties, the transaction should be considered as a loan, regardless of its form. In support of this proposition, the opinion cites the case of Floyer *v.* Eduards, Cowps. 112, wherein Lord Mansfield said: "In all questions, in whatever respect repugnant to the statute, we must get at the nature and substance of the transaction: the view of the parties must be ascertained, to satisfy the court that there is a loan and borrowing; and that the substance was to borrow on the one part and to lend on the other, and where the real truth is a loan of money, the wit of man cannot find a shift to take it out of the statute. If the substance is a loan of money, nothing will protect the taking more than five per cent, and though the statute mentions only for loan of moneys, wares, merchandise, or other commodities, 'yet, any other contrivance, if the substance of it be a loan, will come under the word' indirectly'"

"And in Scott *v.* Lloyd, 9 Pet. 446, in which the bona fide purchase of an annuity is admitted to be valid, although more than six per cent profit be secured, Marshall C. J. said:

" 'Yet it is apparent, that if giving this form to the contract will afford a cover which conceals it from judicial investigation, the statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form and examining into the real nature of the transaction. If that be in fact a loan, no shift or device will protect it.' "

The Attorney General further says that, as a second prerequisite it must be shown that in consideration of the sum loaned, there was a receipt, directly or indirectly, of a rate of interest, greater than that sanctioned by law; hence, the real gist of the offense is in the *actual taking* of the various interest. (State *v.* Security Bank, 2 S. D. 538, 51 N. W. 337; Murphy *v.* State, 3 Head 249.) The reason is based upon the principle that mere intent is not punishable by law.

It is a well known fact that most of the victims of usury belong to the lower class; consequently, the legislator deemed it best to have the fiscal intervene for the protection of the poor and in order not to render the law a dead letter.

This section fails to provide for a period within which a criminal action should be brought, but taking into account the provisions of sections 6 and 8 regarding civil cases, it is inferred by some that criminal action likewise prescribed after two years' time. Others however, differ in opinion, and hold that the law is defective in this respect.

When a usurious contract is annulled or charged by the act of the parties, or mutually abandoned in good faith, it may be considered purged of usury as far as subsequent contracts between the same parties are concerned. (Pinkard *v.* Pouder, 6 Ga. 253.) Again, the refunding of usurious interest that has been paid upon a note, and its acceptance by the makers, or the person in interest as such, under an agreement that only legal interest shall be thereafter charged, free the note from the taint of usury, and renders both principal and interest collectible. (Phillips *v.* Building Association, 53 Iowa 719.)

Most authorities maintain that it is no defense to allege on the part of the lender that he received the usurious interest innocently, in ignorance of his violation of the law, or that the usury was voluntarily paid, or that the debtor was *in part delicto.*

The provision of this section requiring the manager of a corporation or of any other juridical person to suffer the subsidiary imprisonment in case of insolvency is based upon sound and practical reasoning; for a corporation, being an imaginary person existing only in contemplation of law and acting only through natural persons, cannot be punished. It is therefore its agent or the person through which it acts who must suffer the penalty of the law. In support of this proposition, our Supreme Court held: That there being no provision in the law relating to practice and procedure in criminal actions whereby a corporation, as such, may be proceeded against criminally and brought into court, the Spanish law of procedure must be resorted to, and resorting to it, we find that criminal actions should be restricted or limited, to the officials of such corporations and never against the corporation itself. (West Coast Life Insurance Co *v.* Hud, 12 O. G. 1016.)

SEC. 11. ALL ACTS AND PARTS OF ACTS INCONSISTENT WITH THE PROVISIONS OF THIS ACT ARE HEREBY REPEALED.

This section repeals by implication all laws and parts of laws inconsistent with the provisions of this Act; and since repeal by implication—implied repeals—are not always favored, it is to be noted that, "before a statute can be held to have repealed a prior statute by implication, it must appear, first that the two statutes touch the same subject matter, and, second, that the latter statute is repugnant to the earlier." (Uy Chaco Sons *v.* Collector of Customs, 24 Phil. 548.) This rule should, therefore, be taken as a guide in determining whether or not any law or part

thereof is abrogated by any provision of this act, for it would be a flagrant violation of the rules of statutory construction to consider a law as repealed when in fact it can stand.

SEC. 12. THIS ACT SHALL TAKE EFFECT ON THE FIRST DAY OF MAY, NINETEENTH HUNDRED AND SIXTEEN.

The last section provides that this law shall be effective from May 1st, 1916, therefore, all contracts made prior to the above named date are not in any way affected by the Usury Law for our Supreme Court said: "All statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In every case of doubt, the doubt must be solved against the retrospective effect." (Art. 3 Civil Code; Montilla *v.* Agustinian Corporation, 24 Phil. 220.) The same principle hold good under the American law for, "Contracts which were not usurious under the law in effect at the time they were made, cannot be rendered usurious by a subsequent change in the law, since to hold a contract unenforceable to any extent because of an after-passed statute would be unquestionably to impair the obligation of such contract." (Newton *v.* Wilson, 31 Ark. 484.)

If it is true that all contracts executed before this act went into effect do not come under the operation of the same; it is equally true that all those contracts of loan, or mortgages and all renewals of former agreements entered into on or after the first day of May, 1916, wherein the stipulated rate of interest exceeds that provided by the Usury Act, come under the law.

# PART III

## CHAPTER I

### OBSERVATIONS

The public in general and government officials in particular accuse the home province of the writer (N. E.) as a strong rampant of usury; he does not mean to deny the existence of usury in his province, but he simply emphasizes the fact that usury as a social cancer finds its refuge everywhere throughout the Philippines to a greater or less extent according to the supply and demand of capital in a particular place. And if it be true that Nueva Ecija is the home of usury, it is equally true that it is now being rapidly exterminated, since the rigor of the law became widely known. The writer not only hopes but firmly believes that the first death signals of usury having been seen first in Nueva Ecija, the other provinces of the archipelago will follow her as a model along this line of social relief. In his ardent desire to help, even in a very insignificant way, to exterminate totally this social evil and

in order to promote the administration of justice, the writer attempts, in the following paragraphs, to make an exposition of the most common forms of contract used to hide usury with a view to inform those who may ignore them:

(1) Sale with the right to repurchase: The most universal form of contract employed by usurers to evade the law is th simulated sale with the right to repurchase. The document evidencing the debt is usually made before a notary public, especially, when it involves large amount, but it is drafted in such a way that the usurious interest is made to appear in the form of rent, either in money or in agricultural products as grain, varying from 20% up to 100% sometimes. Long before the passage of the usury law, our Supreme Court had always held that in every case where it could be shown that no sale was intended but simply a disguised loan, the transaction is to be considered nothing more than a mortgage. The inadequacy of consideration and the condition under which the debtor was found at the time of the agreement serve as a guide to the court in determining the true intent of the parties. According to the personal observation of the writer, more than 75% of the total amount of money involved in usurious transactions are covered under this form of agreement for *pacto de retro* is always resorted to in large-scale loans. In the native province of the writer there is a capitalist in a big town who loans as much as ₱50,000.00 a year under usurious *pacto de retro*. It does not require a far sighted mind nor a mathematical genius to imagine and estimate how much such a capitalist would earn during his lifetime if his illegal acts remain unchecked; add to this the number of such capitalists found in the different towns of the Islands and you will have before you graphic picture of the magnitude of the contribution of this contract in nourishing the social cancer called usury. It is to be noted, however, that big capitalists usuallly content themselves with loaning at a lower rate of usurious interests than ordinary lenders, for taken as a whole, their net gain is such more than that of the latter class. The work of *pacto de retro* does not end with its use as a cloak to cover usury; it goes even further than that, it is also a means to escape payment of internal revenue tax imposed upon those who habitually engage in loaning money.

(2) Loan secured by mortgage of real property is another, but less common form of contract resorted to by usurers, the interest is sometimes deducted in advance from the capital and at other times it is added to it, but in either case the rate of interest charged does not appear on the face of the written contract. On the contrary, it appears that there is no interest at all, but in reality the rate varies from 20% to 50%. This kind of contract is used only when the debtor refuses to have his land sold with the right to repurchase. To clarify the matter let me cite an example: A, the borrower approaches B, a capitalist explaining to the latter his great need of money. B then asks A what security he (A) has to offer for the loan, and usually A has some document or title of some real property with him for he knows that he would have a hard time to get what he needs without security. B after-

wards examines the document and if he finds it satisfactory, he will proceed to ask how much A needs. The capitalist will then say that the contract is to be in the form of *pacto de retro*, but if the borrower is reluctant to accept the proposition, the lender will halt for a moment and then continue, "Do not tell others that your loan is only secured by a mortgage for we never loan money if not under 'pacto,' otherwise, they will envy you." Assuming that the sum loaned is ₱200.00, and the interest agreed upon is 25%, the written instrument simply says that A owes B the sum of ₱150.00 if interest is paid in advance of ₱250.00 as the case may be, payable the year next; the description of the realty mortgaged is then mentioned.

(3) Whenever a needy person has no realty with which to secure his contemplated loan, then he brings with him one of more certificates of carabao or horse to be given as pledge on chattle mortgage; the animal pledged remains in the possession of the debtor and only the document evidencing the ownership is delivered to the creditor, but a separate agreement is entered into, whereby the usurious rate of interest is made to appear as a payment or the lease of the services, of the carabao or other animal pledged. The rate of interest in this kind of contract is usually higher than in case of loans secured by real property, the risk being usually greater for the animal pledged may die or be lost at any time.

(4) In the absence of any property which can be either pledged or mortgaged, then a simple loan without any security is resorted to. Simple loans may involve money alone, or agricultural products or seeds alone, or both. In loans of money the interest charged varies from 30% to 50%. In case of seeds, the debtor is usually compelled to pay one and one-half times the original capital and in case of failure to pay at the specified time, the poor borrower is even obliged to pay double the amount of the loan. Thus, if A, for instance, borrows from B 100 cavanes of palay this year (1917) and A obliges himself to pay next year (1918), under ordinary condition A has to return 150 cavanes in 1918, but in case of his failure to pay at that time, B may renew the written contract and charge A 300 cavanes payable in the year 1919. Contract of this nature was very common up to the passage of the usury law, but fortunately it is now less frequently resorted to. At present only small capitalists are guilty of this inhuman practice. Another prevalent form of simple loan is where the capital is in money while the interest is in agricultural products or grains. In the rice producing regions the rate of interest varies from 10 to 20 cavanes for every 100, capital payable yearly. As in all other usurious loans already alluded to, in all of these varied forms of simple loans, the usurious interest never appears on the face of the instrument, only the total amount to be paid by the obligee, or debtor is stated therein. Usury reaches its culmination under this form of contract for there being no security of any kind exorbitant rates of interest are charged to counterbalance the great risk.

(5) Purchase and sale of agricultural products; this form of contract denominated as purchase and sale is in reality and in essence a disguise usurious loan. This

contract is usually entered into on or about the time of planting or harvesting season when small landowners are badly in need of money and are therefore compelled to sell their crop before proper time at the low price of from ₱1.00 to ₱2.00 a cavan, only to buy again when time comes, from the very same purchaser or from others, at a high rate varying from ₱2.50 to ₱3.50 per cavan. What is true of rice is also true of other crops or products such as sugar, abaca, coconut, etc.

(6) Another form of contract in vogue in the provinces is exchange of agricultural products; small farmers whose lands are not well adopted to the production of rice raise either sugar, corn, tobacco and similar products. Before harvesting season, they usually lack means of support so that they are compelled to borrow rice in time of need to be exchanged later with what they produce; a cavan of rice is generally exchanged for a pilon of sugar or for such amount of corn or tobacco sufficient to secure an interest varying from 50% to 100%. This practice is limited only in places where lands are devoted to the production of different crops.

(7) Deposit is another means resorted to by usurers to put under cover their illegal acts. The amount of money loaned is always expressed in palay as per agreement and it is then reduced to writing. On the face of the instrument it is made to appear that the debtor is the depositary who obliges himself to deliver to the creditor, on a fixed date at a secified place, a certain amount of palay. The interest charged is always beyond the limits prescribed by law. Sometimes, the usurers is not satisfied with charging excessive rate of interest so that he even goes further; upon failure of the debtor to pay the debt, for some reason or other, as in case of draught, the creditor brings a criminal action against the poor debtor for "estafa," since under the law, it is one of the obligations of the depositary to deliver back the thing deposited to the depositor. The writer saw an actual case in a Justice of the Peace wherein a borrower was accused of "estafa" arising from a written instrument of deposit in form but a usurious loan in fact. Fortunately however, the Justice of the Peace where the action was brought who well knew the facts of the case simply advised the debtor to sell what property the latter had to pay the debt and dismissed the case. Such is the lot of some of the victim of usury.

(8) Another practice among usurers is the loan of money to be used for gambling where the rate of interest varying from 20% to 50% is computed, not annually nor even monthly but usually weekly and sometimes daily. If, as I have already stated, the rate of interest is as high as 50% daily or weekly, I leave it to the reader to imagine its evil consequences. Contracts of this nature however are not only usurious but are expressly prohibited and unenforceable under the gambling law. (Act 1757, Sec. 9.)

(9) Lease of services whereby the debtor personally, or some other person in his behalf (his son or daughter), serves the creditor gratuitously in consideration of a certain sum received as a loan, is also resorted to by usurers; but courts always protect the poor under such circumstances. It is however to be regretted that al-

though such practice is very common in the provinces, only very few of them come within the knowledge of the proper authorities and given due consideration. So far, the writer only knows of one case decided by our Supreme Court regarding this point, where it was held that all usurious contracts are prohibited and that, "domestic service is always understood to be compensated and any agreement made in connection with a loan of money, whereby it is stipulated that, because of the loan such domestic service shall be absolutely gratuitous, is contrary to law and good moral. (Reyes *v.* Alojado, 16 Phil. 499.)

(10) Since the passage of the usury law minds of usurers have been always busy in inventing devices whereby to evade the law. Among the most common of these devices, is the taking of one note or the drafting of instruments in which the principal sum with legal interest appear in one document while the illegal excess appears in another, both of which bear different dates.

But while it is true that human ingenuity can devise all means to evade the provisions of the usury law, it is equally true that human mind can likewise discover a means to remedy all these deceitful inventions.

## CHAPTER II

### REMEDIES

When the usury law was passed at the last session of the legislature it was hailed as a great achievement." However, an editorial of the Free Press already alluded to, elsewhere, depicts our usury law as it stands on the statute books today as a "hollow sham a mockery, a delusion and a snare—a big bluff"; there is some truth in this quotation, but at the same time, it must be admitted that usury is a great problem the solution of which cannot be met without difficulty, on account of the causes which originate and maintain it. In proposing the remedies hereinbelow enumerated the writer does not in any way believe that they will cure all the evils arising from usury, but it is sincerely hoped, however, that they will at least diminish to some extent the practice of usury in vogue in the Philippines. These proposed remedies are the following:

(1) As to the interpretation of contracts by courts. Since nearly all usurious contracts are drawn in such a way that the amount of interest agreed upon does not in any way appear on the face of the instrument, courts should always inquire into the real nature of the transaction, taking into account the sorrounding circumstances of each case. Custom or usage as to the common rate of interest in a locality is not admissible as evidence to vary the lawful rate of interest. (Wallace *v.* Fouche, 27 Miss. 266.) The form of the contract is immaterial for "no contract, however framed, is good if the ultimate effect would be to secure more than the legal rate of interest." (Earnest *v.* Hoskins 100 Pa. St. 551.) It is the real intent of the parties which must always prevail. Most authorities hold that borrower and lender are unequal in contracting and that stipulations regarding "the payment of usurious

interest are always presumed to have been made under circumstances involving such a degree of necessity on the part of the borrower as to have deprived him of exercising his volition freely." (Munford *v.* McVeigh 92 Va. 446.) Again, "a formal release, made by a debtor who has agreed to pay usury, of all claim for usury will be regarded in law as made under the coercion of the creditor and cannot be enforced." (Browning *v.* Thompson 13 B. Mon. 387.)

(2) The abolition of the contract of sale with the right to repurchase. The Philippine Legislature can do no better than to abolish this kind of contract from our statute books, consequently, the introduction of a bill to this effect, is timely and appropriate. As I have already said in the previous chapter, more than one-half of all the capital involved in usurious contracts, are hidden under the guise of "pacto de retro"; its abolition therefore, will surely diminish usury even to a limited extent. It may be argued however, that once the sale with the right to repurchase becomes repealed, other devices to take its place might be invented. Even admitting the truth of this statement, still, it cannot be denied that anybody will find some difficulty to create a device just as good as "pacto de retro" as far as security is concerned on the other hand, even the most common people can draft an instrument of a sale with the right to repurchase without the slightest inconvenience.

(3) Notaries public should inquire into the real nature of the contract entered into before them. Written instruments evidencing debts are always drawn before notaries public or acknowledged before them. In nearly every case they are informed by the parties of the exact nature of the transaction. Were it not for the intervention of notaries, most usurious contracts involving large amounts, could not have been entered into for capitalists are reluctant to give loans which are not proven by written documents drawn by and acknowledged before notaries, on the ground that it would be easy for the debtor to deny a debt evidenced by a private instrument. Thus we see that notaries public take part, and an important part too, in violating the law. The writer is therefore of the opinion that a law should be passed making it a duty of the notary public to make a reasonable inquiry to determine the real nature of every contractual debt, the written evidence of which are drawn by or acknowledged before them. And any notary public who knowingly and in bad faith draws usurious instrument or indebtedness allows it to be acknowledged, should be deemed as a co-principal of the creditor in violating the usury law and should suffer the same penalty as the creditor himself. In this way, he will take more caution and not connive with the usurers.

(4) Proper execution of the provisions of the Usury Law. Most laws are good in themselves but the trouble lies in the person or persons who execute them. The usury law for instance, provides adequate remedy to cure the evils arising therefrom, but the officers of the government who are expected to carry its provisions into effect and who are paid by the people to protect their rights and interests, are slow and even fail completely to apply them. That law has been in force for more than a

year now, "and there is still to be reported the first conviction for usury—in fact it was only a week or two ago that the first usury case was heard of in the courts. Yet the records of the justice of the peace courts all over these islands have page after page of registrations of usurious transactions", (Free Press Nov. 24, 1917). More active steps should be taken on the part of the judicial department of the government especially, for the suppression of usury. Officers of the other departments should also contribute their respective shares in order to save the poorer class from the clutches of the usurers. In the provinces, there is a tendency on the part of the capitalists to hide from the view of the common people the contents of the Usury Law and even to deny its very existence. In fact, the writer has been told by some usurers to keep secret the provisions of the Usury Law, but of course, he is doing just the contrary. Likewise, there are fiscals who, either because they are usurers themselves or because they fear to incur the hatred of some respectable men engaged in usury business, feel indifferent to bring actions against usurers. Consequently, everybody, from the officers of the government to the law students, should contribute whatever is within their power to enforce strictly the letters of the Usury Law.

(5) Creation of Agricultural Credit Co-operative Associations. The most efficient cure for the total extinction of usury cannot be found in coercive measures alone. The writer believes that necessities will always exist in all the walks of life, and hence, the best remedy is "the creation of something that will facilitate credit and increase the money in circulation and the means and sources by and from which the same can be obtained."

The creation of "Rural Agricultural Co-operative Associations' in every municipality in accordance with Act 2508, in order to extend to their members credit on reasonable terms for agricultural purposes and to encourage thrift, activity and punctuality in the fulfilment of their obligations, will undoubtedly help much the small landowners in time of need. The Rural Credit Division of the Bureau of Agriculture is to be congratulated for the exceptional interest that it displays in initiating the work for the creation of these associations. It is to be regretted however, that such an important law as this Act (2508) remained a dead letter, for about two years, and it was only several months ago that steps were taken for its enforcement.

(6) The establishment of public depositaries of palay and other agricultural products. One of the most common causes which gives rise to usury is the absolute need for money which compels agriculturists to sell their products before the proper time at a very low and unreasonable price. The establishment of public depositaries of palay and other products, in big agricultural towns especially, will surely counteract usury and remedy financial helplessness by furnishing loans to depositors. The supervision on the part of the government of these public depositaries is advisable if not absolutely necessary, so as to avoid fraud and other irregularities on the management of the same. In order to secure the best interests of the depositors it is

believed by the writer that the managers should be required to give sufficient bonds to answer for any misconduct which may be committed by them. Government storehouses proved to be successful in Rusia and in Maryland and Virginia during colonial days.

The creation of government storehouses being a kind of direct loan to the people it should be encouraged, for it is said that if government can make loans to bankers, and the latter in turn make great profits by relending the money, it is hard to see why government should not loan directly to the people instead of obliging them to resort to these few favored banks.

(7) Creation of Provincial Banks. The establishment of provincial banks will undoubtedly be beneficial to the people for it will save them the trouble and the expenses of going to Manila. As far as the writer knows, banks are allowed to receive registered land only (under Act 496) as security for loans. Since there are very few registered lands in the Philippines, and since only the more prosperous farmers are able to meet the expenses of registration, it follows that these farmers who are less prosperous are being deprived of the opportunity of securing capital for cultivating their lands and at the same time they could not have their lands registered. Besides, owners of unregistered land must necessarily go to capitalists in case of urgent necessity, so that the banks, in refusing to lend them money compel these needy farmers to place themselves at the mercy of the usurers. The writer is therefore of the opinion that lands not registered in accordance with the Land Registration Act should be received as security for loans, at least for a limited time. It is true that greater risk is incurred by the lender in case of loans secured by unregistered land, but the remedy for this is to provide for a greater rate of interest just as the Usury Law permits a higher percentage of interest in case of loans not secured by registered title so as to counterbalance the jeopardy to which the capital is subjected. When the days of prosperity arrive, when farmers come to possess sufficient resources to cover up all the necessary expenses of living, then and only then, can they be required to have their lands registered at any cost. In other words, registration of land then, will not mean as much sacrifice to its owners, as it does now.

(8) People must learn the principles of economy and industry. Usurers alone cannot accomplish their unlawful acts without the existence of the debtor class, and debtors exist simply because their earnings are not sufficient to cover their expenses. The best remedy therefore can only be made effective through the debtors themselves, by cultivating and encouraging the habits of industry and frugality. To explain the meaning of "industry" and frugality" is out of place in a work of this kind, but the writer believes however, that it will not be amiss to suggest in this connection one of the means by which waste of money can be avoided and usury lessened. Gambling debts are among the most common causes which give rise to usury. In fact the highest percentage of interest are always charged against gamblers, because as a rule, they do not have property with which to secure their debts. Therefore, the

suppression of gambling both by the voluntary inhibition of the gamblers themselves, and by operation of the gambling act, will directly or indirectly lessen usurious contracts.

## CONCLUSION

It has been shown that during the early days the taking of interest whether usurious or not, was considered not only illegal but even against morality and religion. With the progress of civilization, however, we arrived at the universal and modern belief that the taking of interest within a reasonable limit as fixed by law is justified from legal, economic and moral points of view. We have likewise seen that our Usury Law (Act 2655) is one of the most elaborate legislations of its kind, its breadth and scope being shown by the countless number of cases that may possibly be included under it, some of which found their place in this work. Excellent as it is, our Usury Law is not however, absolutely free from criticism; for at least, its wording does not seem to include partnership and hence it leaves a room for doubt which should be made clearer. Another defect which the writer sees is its failure to provide for limitation of action in criminal cases although it so provides in civil cases. Besides, the reader has been acquainted with and been given an idea of the most common forms of contract in vogue in the provinces, as adopted to hide usury. Lastly, a proposed remedy to abolish usury as a social cancer, has been discussed. It is difficult to forecast the distant future of usury, but however high the hopes we may have, this question cannot be solved by means of coercive measures alone such as the rigid application and execution of the law. As a problem, usury is a complex one, involving the whole social movement and founded upon solid economic basis; its best solution therefore, lies in the creation of those things that will facilitate credit, increase the sources by and from which money can be obtained, and promote all lawful means so as to increase the circulation of money.