It is plain that, in order to make the scheme more satisfactory to the teachers and really beneficial to the public service, either the ages for obtaining full pension should be substantially reduced, or arrangements should be made for taking length and character of service into account in calculating the pension a teacher should receive, particularly in cases where he has been compelled to retire through physical infirmity.

There are some other matters connected with the great question of education I would like to bring under the notice of this learned and enlightened society, but I feel that I have already trespassed too much on your valuable time, and shall therefore, on this occasion, content myself by respectfully directing your attention to the subjects alluded to in this paper, in the hope that you may be able to assist in finding out a remedy for these grievances which press so heavily on the teachers and retard the progress of education in this country.

VI.—*On the extent to which the Principles advocated in "Bentham's Letters on Usury" have still to be adopted in the Laws of England and of Foreign Countries.* By A. H. Bates, M.A., Barrister-at-Law.

[Read Tuesday, 28th February, 1882.]

THE abolition of the Usury Laws may, by many, be considered complete in England, and to have removed them and their demerits out of the class of subjects of practical importance which this Society is accustomed to discuss. If this were so, I am aware that any antiquarian interest which an examination of them might afford, would, at least in the eyes of this Society, be a poor equivalent for the absent element of utility. It may be remarked, however, that even if it were true that all trace of the Usury Laws had been swept away from our laws, and from the laws of the countries in whose progress we are interested, all questions connected with usury might still, in a certain view of the present tendencies of social ideas, form a subject of future, if not present, importance.

The view to which I allude has been expressed by one whose eminence in the science to which he especially devoted himself is now universally acknowledged. I am sure that in any tribute of praise that could be offered to the memory of the late Mr. Cliffe Leslie, this society would eagerly join. It is impossible, especially in the first meeting since his death, of a Society of which he was formerly, and until his duties called him elsewhere, a most active and distinguished member, to mention his name without uttering some expression of deep respect for his mental powers, the usefulness of his labours, the singleness of his aims, and the strength of his claim to the title of a gentleman and a man of letters.

In his article on "The History and Future of Interest and Profit," published in the *Fortnightly* of November last, Mr. Leslie says:—

> "A generation ago in this country, all restraint of the rate of interest, together with all other interference on the part of society at large, or the state, with pecuniary dealings between adult men, seemed definitely abandoned. But on the Continent of Europe the legitimacy of interest is vehemently disputed by the adherents of Socialism; a feeling against it is growing up in the United States; and even in England, though no special question about interest has been raised, there are indications of a tendency to revert to ancient ideas on kindred subjects."

Of course it is not within the scope of this paper to discuss the view here suggested; but the passage may, perhaps, lend an additional interest to the special subject of this paper. This subject is supplied by the circumstance that the abolition of the Usury Laws has not been complete, even in England, while in the greater number of foreign countries these laws still exist in their entirety, if not in their former vigour.

The question of the possible justification of these laws has been completely and finally disposed of by the "Letters on Usury." These letters are, for all purposes of argument on the subject, triumphantly conclusive. Their success, their celebrity, and the place they hold among the writings of Bentham, have made their contents known to most people, and any serious discussion here of the merits of these laws unnecessary. A few words as to the causes to which these laws owe their existence, may, however, serve as introduction to the question of how far they still continue to exist.

Causes of the existence of the Usury Laws.

The feelings and views which led originally to the Usury Laws, have been traced to "religious prejudices derived from the attempted adaptation to Christianity of doctrines and precepts drawn from the Jewish law." There appears, however, to be grounds for the opinion that, anterior to the effect which the early interpretation of the well-known passages in the Mosaic law undoubtedly produced on the church, and on the views of mediæval society, independently of these causes, there existed a primitive feeling which condemned, or at least disliked usury—that is, usury in the sense of taking any rate of interest, whether high or low. Such a proceeding appears to have been always unfavourably regarded in early stages of society, whether Heathen, Christian, or Mahomedan. Something seems to have influenced both Aristotle's reasoning, and the early interpreters of the Mosaic law. Mr. Leslie evidently believed in the existence of such a primitive feeling, and he explained it as a survival of the ideas and feelings created by the archaic community of property. Whether such a primitive sentiment existed or not, is a question of little importance. It could only have existed in the earliest stages of society, and its place was soon supplied by other feelings. "The children of those who have eaten their cake, are the natural enemies of the children who have theirs." Everyone knows the truth of this remark of Bentham's. Thrift is not naturally popular, and that form of thrift which enables its possessors to place others under inconvenient obligation to them, is decidedly unpopular. In Europe, owing to various causes, the usurers were mostly Jews, and being a hated race—while they, on the one hand, were more hated because

they were usurious, usury, on the other hand, was more hated because it was Jewish. To these feelings must be added those produced by the religious and philosophical condemnation of the practice. It is true that in a later age, by leaders of opposite branches of the Christian church, like Calvin and St. Thomas Aquinas, the old interpretation of the Mosaic law has been properly rejected, and the argument of Aristotle, which could hardly have defied any attempt at its refutation made with moderate courage and ability, has long since been discredited; but for centuries, Aristotle's authority on the point was unquestioned, and for centuries, and with immensely greater authority, the old reading of the Mosaic law formed social opinion on the subject.

All these facts and feelings tended to maintain the early absolute prohibition which resulted from the condemnation of the practice of taking any interest, and, when this absolute prohibition could no longer be maintained, they tended to check any movement towards entire freedom from restraint.

The first step in this direction was, of course, to limit the prohibition to the taking of interest above a rate fixed by law. Interest now becomes distinguished from usury, which is now the taking of interest at higher rates than that permitted by law. The regulating of the rate of interest by law was, however, more than a mere relaxation of the older law, it rested on grounds of its own. One of the chief grounds for regulating the rate of interest was the principle that there are persons who, as they cannot deal on equal terms with others, require the protection of the law in those dealings. In earlier times it seems to have been thought that all debtors belonged to this class of persons. There were other reasons more peculiar to the times. These were chiefly the result of false economic ideas. The regulation of the price of interest and the price of bread and of labour belonged to the same system—a system which attained its more elaborate form in the hands of Colbert. The spirit of this system was, no doubt, sincere. Rulers in those times tried to regulate commercial relations in a great measure because they believed that, if the latter were not regulated by laws of man's making, they would not be regulated by any laws at all. Thus Hume and Massie had to teach the public that there are natural laws regulating the rate of interest. The popular opinion previously seems to have been that, if unrestricted by positive law, the rate of interest might rise to any height, and vary in any manner. The maintenance of these laws was furthermore, in England at least, the result of a misguided effort of a particular class to secure its own advantage. It is clear from the provisions, and even the recitals, in some of the usury statutes that the landowners imagined that by these laws they could keep down, in their own favour, the interest on their loans. Probably this was the last sustaining cause of the usury statutes in England.

The effects of such laws form the strength of the arguments against them, and of course it is unnecessary, as I have said, to trouble this Society with such arguments. These effects have the peculiarity of being the very opposite of the effects intended by the makers of these laws. Intended to keep down the rate of interest, these laws tend to

raise it. Intended to protect certain classes of persons, these classes are the persons who suffer most from their operation. So long as they are obeyed they tend greatly to check economic prosperity: when disobeyed they exert an evil influence, not only on the debtors, by the temptation they hold out to cheat their creditors, but also on the minds of all who consciously violate existing law. They tend to make a useful and even necessary class of dealings odious, or at least discreditable. Their operation in times of commercial crises may be read in Mr. Tooke's *History of Prices*, vol. ii. p. 163, in reference to the crisis of 1825, when, it must be remembered, these laws were somewhat relaxed, and when, it is stated on that high authority, they were in many cases the direct cause of merchants, instead of being able to borrow at 8 or 10 per cent., as they otherwise would, being forced to sell stock or goods at a loss of 20 or 30 per cent.

History of the English Usury Laws.

The history of these laws in England I will only refer to very briefly. It commences in Edward the Confessor's reign and perhaps earlier, with the prohibition, by both secular and ecclesiastical law, of all interest. The 37th Henry VIII., which was repealed in six years afterwards in Edward VI.'s reign, and was re-enacted by 13th Elizabeth, first made the taking of interest lawful, and fixed the limit of lawful interest at 10 per cent. This rate was reduced to 8 per cent. by 21st James, then to 6 per cent. in Charles II.'s reign, and finally to 5 per cent. by 12th Anne.

In Scotland the movement was similar but later, interest not being permitted till the Reformation in 1587, and then at 10 per cent.; this rate was gradually reduced, till the statute of Anne fixed both Scotch and English interest at 5 per cent.

In Ireland the provisions of 37th Henry VIII. were not enacted until the reign of Charles I. The rate of interest was from time to time reduced as in England and Scotland, but never sank below 6 per cent.

The abolition of these laws was gradual and tentative. Holders for value without notice of bills and notes affected by usury were protected by an Act passed in the reign of George III. Then followed a series of Acts, some merely temporary, but continued from time to time, exempting from the operation of the usury laws three months' and, subsequently, six months' bills and notes. Finally, the 17th and 18th Victoria, c. 90, a very short Act, and laconic in its terms, repealed all the existing usury, except laws as to pawnbroking, and consequently left us still a remnant. Had it not been for this exception, created by its 4th section, this Act would have admirably done the work of the "sponge," the application of which to the usury laws was recommended by Bentham.

Remnants of the Usury Laws.

Such of the provisions of the pawnbroking laws as are intended for the protection of the poor who have occasion to use the pawnshops, may be divided into two classes: first, those intended to limit the amount of interest exacted from them; secondly, those intended

as precautions against their being cheated or deprived of their property. To the latter class belong the regulations as to the sale of the articles pawned, the giving of pawn tickets and receipts, and similar regulations. Provisions of this character are not obnoxious to the objections against the usury laws, as they do not necessarily, to any sensible degree, modify the monetary terms upon which the poor obtain their loans, and they are quite justifiable on the ground that they tend to secure the poor against the fraud of others and their own ignorance. Provisions of the former class are simply those of the usury laws, and their maintenance, so far as they have any effect, involves an injustice to the persons whom they are meant to protect. The usury laws having been found to operate unfavourably for the borrowers in other ranks of life, the wisdom or justice of allowing these laws still to interfere with the dealings of the poor is not very obvious.

The English and Scotch law of pawnbroking is now embodied in the 35th and 36th Vic. c. 93. The Irish is contained substantially in the 26th George III. c. 34, and 28th George III. c. 49; its provisions can best be understood in their operation and effects by reading the Report of the Commissioner appointed in 1868 to inquire into the subject. The English, Scotch, and Irish Acts contain provisions of both classes, and the result shows that usury laws have the same effect in the case of the poor as in the case of the rich. Before the recent change, the limit fixed in the English and Scotch law to the charges of pawnbrokers was considerably less than in Ireland. In a paper read by our President before this society in 1854, it was estimated that the Irish limit on loans of 2s. 6d. (this or a somewhat larger sum being the average amount of Irish loans) was 53 per cent., and the English and Scotch limit in loans of the same amount 20 per cent. No doubt there are occasions for which the former limit is too low, and some borrowers must suffer by it; but it was high enough not to interfere with the great bulk of loans. The latter limit was not so. The result may be read in the papers referred to. It was the creation of a class of illicit pawning establishments, out-numbering, in cities like London and Glasgow, the licensed houses, and in these establishments the poor, besides being greatly prejudiced in other respects, had to pay about 433⅓ per cent. interest for their loans. The recent Act brings the English and Scotch limit nearer the Irish; but even if there were no occasions—and it is clear that this cannot be the case—on which both these limits are found too low, and consequently are prejudicial to the borrowers, such a change would not remove the objections to these restrictions. In the supposed case the restrictions would not be felt simply because they left the pawnbrokers free to charge, on all occasions what they thought proper, and so far the restrictions would be useless. But, on the other hand, even if they did not tend to fix the practical minimum of the rate of interest much above the rate which would be arrived at but for the interference of the law, there would still be the objection that in all these cases where the borrowers have neglected, or been unable, to negotiate for special terms, these limits must necessarily, as being the legal rate, oblige such borrowers to pay a rate of interest

admittedly far higher than they ought to pay. And why should pawnbrokers have this advantage over their customers?

An important change, limited however to the class of loans of 40s. and upwards, has been made, evidently on the suggestion contained in the Report of 1868, in the English and Scotch law by the recent Act. The suggestion was simply to permit express contracts in terms agreed on by the parties, and subject to these terms, regulated by the ordinary provisions of the Pawnbroking Acts. The suggestion was intended as a proposed method for the abolition of these remnants of the Usury Laws The 24th sec. of 35 and 36 Vic. adopts it, but only as to loans of 40s. and upwards. If fully adopted, and if the rate fixed by law as that payable in the absence of express contract was that which pawnbrokers' books showed to be the normal average rate, instead of one intended like the present to be very much above the nominal average rate, this suggestion would be the means of abolishing the last remnant of the Usury Laws.

The other traces to which I have alluded of these laws are to be found in the rules of our law as to the liability of debtors for interest on debt overdue. A debtor can, of course, bind himself by any terms as to simple or compound interest; but I think it may fairly be argued that this is not enough, and that in the absence of express agreement the rights and obligations between debtor and creditor should be fixed upon principles of justice. The right of a creditor not merely to simple interest on a deferred payment, but, where interest is itself also unpaid, to compound interest, as well as the expediency of securing to him such a right, are, I think, unanswerably established in Bentham's letter "On Compound Interest." To withhold it from him is simply to expose him to a loss because he exercises forbearance towards his debtor, and to encourage the debtor not to discharge his obligations when he ought. Such a state of law tends to discourage prompt discharge of debts, and is unfavourable generally to the development of the best business relations.

Our law on this point is clearly traceable to the time when no interest was lawful. It does not recognize the right of the creditor, who has not been paid his money when he was entitled to have it paid, in all cases to exact from the debtor a fair compensation for his loss—in other words, it will not imply a contract on the part of the debtor to pay interest, on the sum he owes, though the debt may be a fixed amount, and may have been frequently demanded. This is the general rule. It has, however, been largely modified, not only by exceptions, but by positive enactment. Debts due on certain instruments, like bills, notes, bonds, policies of insurance, etc., and in certain ways, as on account stated, payment by surety, or in certain dealings where interest is customary, carry interest; and by the 3rd and 4th Vic. c. 42, the jury may give interest on all debts certain in amount, and which by a written instrument are payable on a fixed day, or payment of which has been demanded by a written instrument containing a notification that interest will be charged. The effect of these exceptions and this enactment still fall short of the complete recognition of the principle, and leave many cases unprovided for.

Compound interest could not have been formerly secured even by express agreement, such an agreement being thought usurious. Now, of course, it can be stipulated for by express agreement, but in other respects it is in much the same position as when Bentham wrote. Our law may be said never to compel a debtor to pay compound interest, except in one or two special cases, where the debtor is a trustee or a mortgagee. Yet it is perfectly clear that the principle which ought to be applied to enforce the payment of interest in a debt overdue ought equally to be applied to enforce the payment of interest on that interest when the latter has not been paid.

Usury Laws in Foreign Countries.

In the majority of the United States usury laws are still maintained. The Constitution leaves to each State the power of making its own laws in this respect. Subject to this right on the part of the individual States, the limit of lawful interest is fixed by Congress at 7 per cent., and this is the limit in all places where special State laws do not prevail. In the different States the laws on the subject and the penalties and other consequences of their violation vary greatly. Some States have abolished usury laws altogether. In some of the States that retain them their violation involves forfeiture of both principal and interest, and even of treble that amount; in others of the interest only; and in others of the excess of interest. The limit of lawful interest is in Ohio, 10 per cent.; in Georgia and Alabama, 8 per cent.; in New York, New Jersey, Iowa, South Carolina, 7 per cent.; in Texas, Maine, Winconsin, Illinois, and, I think Mississippi, there is no limit. In all the other States it is 6 per cent. By Act of Congress, of 3rd June, 1864, the national banks which, since the reform of the American banking system, form such an important institution, and transact by far the larger portion of the banking business in America, are prohibited from taking more than the limit fixed by the law of the State or territory where they are situated, or in the absence of such limit more than 7 per cent. It is easy to pronounce on the merits of such provisions as these; but it is difficult to see all their consequences. As we know, the market rate in most of the States is above, and sometimes very much above, the prevailing legal rate. Mr. Saunders in his book, *Through the Light Continent*, speaks of the western farmers as paying ordinarily to the bankers 18 per cent. for their loans. Possibly, and, indeed, necessarily, unless the usury laws are a dead letter, these laws help in some places to raise the rate of interest; but under natural conditions it would still be very high. In these circumstances it is evident that the usury laws are tolerated in America, only because they are evaded. All accounts agree on this point; but because the usury laws fail in their object, it does not follow that they are, therefore, without evil effects. They must more or less impede commercial dealings, and must exercise a bad moral influence, through the temptation to bad faith which they hold out, and by the habit of violating the law to which they lead. Their continued existence in the United States is very remarkable.

In the German Empire all restriction to the rate of interests which

might be taken on loans was abolished by the law of the 14th of November, 1867. There appears to have been a reactionary movement, however, for by the imperial law of May 24th, 1880, which was expressly intended to deal with the subject of usury, a lender is forbidden, under certain pains and penalties, to take advantage of a borrower's necessities or distress, and thereby to demand or extort a rate of interest beyond what is usual and customary. This law is evidently in the spirit and principle, pure and simple, of the ordinary usury laws, with the advantage and disadvantage, as the case may be, that its practical effect must depend on the interpretation put upon it by the courts of law. I am not in a position to say what has been the tendency of this interpretation.

In France the early absolute prohibition of interest was succeeded by laws regulating its rate. These existed up to the time of the Revolution, generally fixing lawful interest at 5 per cent. By the law 5 Thermidor, an 4, all usury laws were abolished, and every citizen allowed to contract as he liked. Public opinion is said to have demanded the repeal of this law, and the Code Napoleon, supplemented by the law of the 3rd September, 1807, fixed legal interest at 6 per cent. in commercial, and 5 per cent. in ordinary transactions. Though the taking of a higher rate was forbidden, the law appears to have been in a state of imperfect obligation, no sanction being annexed to its violation. This was remedied by the law of 1850. By a law of the 8th June, 1857, the Bank of France is permitted to charge a higher rate of interest in its advances when circumstances require it; but this privilege is not extended to other banks, except when acting on behalf of the Bank of France. The usury laws are systematically evaded—most commonly by means of a bonus given by the debtor to the creditor. Such was the state of the law up to 1878, the date of the latest written authority I have been able to consult on the subject.

In Greece there are no usury laws, and the legal rate is 12 per cent. In Spain the rate of interest is, I believe, similarly unrestricted; but the legal rate is 6 per cent. In Russia and Portugal I believe that there are usury laws which fix the limit of lawful interest at 6 per cent.

The mention of Russia suggests a topic which is apparently connected with the present subject.

The recent outrages on Jews in Russia, so far as they are traceable to the existence of usury laws in that country, and apparently they are largely, perhaps chiefly, traceable to such a cause, supply a terrible proof of the evil of such laws. The class to which the persecutors of the Jews in Russia belong would require an enlightenment on questions of ethics and economics which they are not likely to acquire for some time, before regarding the Jews and their practices as they ought to regard them; but surely the rulers of Russia, in whose hands it rests to make and unmake the laws, can see that so long as these laws, by rendering illegal, dealings which are not only innocent but necessary, foster and appear to justify vulgar and barbarous prejudices against one set of persons who engage in those dealings, so long the danger will exist, amid a degraded populace, of similar outbursts of fury and brutality.

That the legal offence of usury is the moral offence which makes the Jews hateful in Russia, seems probable from what can be known of the nature of the popular clamour against them, and from similar persecutions in England and elsewhere long ago. It seems even that the rulers of Russia recognise to some extent the justice of this clamour, or at least it is quite possible that in their utterances as to the necessity of protecting the peasantry from the unlawful activity of the Jews, they mean to express their intention of enforcing more strictly the existing restraint on usury.

The explanation of why the fury of the Russian peasantry has broken bounds just at this time, is to be found not merely in the commercial and agricultural depression, due to recent causes, which must have increased immensely the need of accommodation as well as intensified the impatience of the obligations thereby incurred, but also in the altered position of the peasantry. Mr. Wallace, discussing, in his work on Russia, the effects of the emancipation of the serfs, points out that, amid the advantages which it brought to the peasant, it placed him under the necessity of seeking the accommodation he was sure to need from time to time, not as formerly from his lord, but from the village usurer, who would probably think 30 or 40 per cent. moderate interest. It seems very probable that this consequence of emancipation has had largely this effect, and that the Russian peasantry have got over head and ears in debt to the money lenders, and that the money lenders are chiefly Jews. Most probably, and indeed with usury laws in operation it could hardly be otherwise, the terms upon which the peasants obtain their loans would appear to us exorbitant. If these are the facts of the case, it is not very much to be wondered at, if we find a people like the Russian peasantry executing summary vengeance on their creditors, whom the law has taught them to regard as also their oppressors.

VII.—*Suggestions for the Amendment of the Law relating to Civil Bill Appeals.* By Thomas L. O'Shaughnessy, B.L.

[Read Tuesday, 23rd May, 1882.]

THERE can be little doubt, whatever may have been the object of those who devised the trial of small causes by assistant barristers at quarter sessions, the idea was suggested by the ancient and popular practice, which prevailed in the last century, of judges of assize hearing small cases by civil bill. The best part of a century has passed over since the establishment of the quarter sessions court, and during that period their jurisdiction has grown by legislative shreds and patches, until, with few exceptions, they now possess a limited jurisdiction in almost every class of litigation. The procedure as originally devised was and has remained simple, the expense small; and these elements, with the natural desire of the inhabitants of this part of the United Kingdom for cheap litigation, bid fair to give the courts a practical monopoly of what constitutes the great