alty of treble the amount of money loaned, if more than five per cent. interest is charged. And this privilege of the Bank of England, about which the great financiers of this body have talked so much, is simply a provision passed in the time of George I, allowing the Bank of England to borrow money at what rate it pleases. France has the same usury laws. Every enlightened commercial State of this Union has them. New York has them; Pennsylvania has them.

What are the provisions in New York down to this day? They forbid the recovery of more than a fixed rate of interest. And the courts of that State have put it upon the ground of protecting the weak against the oppressor. Chief Justice Savage, in speaking for the supreme court of New York, declares in one case:

"In making this remark, I mean not any reflection on the justice or policy of the laws prohibiting usury. On the contrary, I believe such laws perfectly just and proper.—They are necessary to protect the necessitous against their own acts of indiscretion. Nor would I impute moral guilt to those who receive more than the legal rate of interest, provided their exactions do not become oppressive. Usury is *malum prohibitum*—not *malum in se*."

And that is the ground upon which these usury laws are based. It is to protect the necessitous against the exactions of the oppressor. And here is a law as late as the year of grace 1860, of our neighboring State of Pennsylvania, where the rate of interest is six per cent. By that law all the excessive interest is forfeited, and a man who has paid it is allowed to go into a court of law and recover the amount of excessive interest he has paid, upon an action of assumpsit. What does the learned court of that State say upon this same subject? It was an action brought after a man had paid more than six per cent. interest.

Mr. CUSHING. Cannot seven per cent. interest be recovered in New York to-day?

Mr. MILLER. I say that if more than seven per cent. is taken in New York you can recover it back. And in Pennsylvania, where the rate of interest is six per cent., the court has taken this ground:

"The early disposition of the English courts was to deny the right of a party paying such interest to recover back any portion of the money paid, for the reasons that both parties to such a transaction were deemed to be "*in pari delicto*," and the excess of interest was regarded as paid voluntarily, so that the maxim "*volunti not fit injuria*" would apply.—[1 Salk., 22] The authority of this decision, however, was soon questioned, Lord Mansfield declared that the case had been decided a thousand times. [Cowper, 199.] At a later day a distinction was taken between transactions under statutes enacted on grounds of general policy, where each party violating the law is held to be in equal fault, and transactions under the usury laws, enacted to protect the weak and needy from being defrauded and oppressed. To the latter the law does afford relief. It regards the lender or usurer as an oppressor, and the borrower as the injured and oppressed."

The supreme court of Pennsylvania sanctioned that doctrine as late as 1860. Every one of the commercial States of the Union has the same provision. All the New England States, New York, New Jersey and Pennsylvania have it. And it is only in some of the western and southwestern "wild-cat" States where they have allowed parties to contract for what rate they please, in order to induce capital to go into those States. And in some instances capital has been induced to go there by the opportunity of investing at fifteen and twenty per cent. And capitalists have made a permanent investment, never having got one cent back.

Mr. CUSHING. How is it in Ohio?

Mr. MILLER. I have not looked at the provisions of Ohio. Gentlemen say that the plea of usury is a rogue's plea. Why, gentlemen who are lawyers know that in every court in this country, and in England, too, there is no head of the law under which so many cases are decided, as the head of "usury." The books are full of cases in which the usury laws have been enforced. Time and time again in England penalties have been recovered of treble the value of the amount loaned. The courts have said that the plea of usury was a just plea, and Lord Mansfield declared that it was beyond the device of man, by any contrivance whatever, to avoid the usury laws. If the contract was a contract for the loan of money, and more than five per cent. was taken, it was usury. You might cover it up as you pleased; yet a court of equity would ferret out the transaction, and if it could find the usury, it would strike down the contract, principal and all, and impose the penalty. These laws have been always the favorite of the courts; they have always enforced them.

With these views, I submit that the question is directly up before this convention, upon this report, whether we are any longer to have usury laws in Maryland. If you allow men to contract for whatever rate of interest they please, and make that contract valid, you are in effect breaking down your usury laws.

Mr. NEGLEY. The gentleman from Anne Arundel (Mr. Miller) says that the Bank of England is allowed to borrow money at any rate it pleases; and he also says that there is a law in England fixing the rate of interest at five per cent., and that any individual who takes more than that is liable to a forfeiture of the whole contract and a penalty of treble the amount. Now I suppose that corporations would not be allowed any