

THE PUNJAB REGULATION OF ACCOUNTS
ACT, 1930.

Second (1935) Edition

THE
Punjab Regulation of Accounts
Act, 1930.

BEING AN EXHAUSTIVE COMMENTARY

ON THE

PUNJAB ACT I OF 1930

WITH

Most Useful Appendices giving the Text and Commentary

ON

the Usurious Loans Act, 1918, Relevant Provisions of the Negotiable Instruments Act, 1881, Code of Civil Procedure, 1908, Indian Contract Act, 1872, Indian Stamp Act, 1899, Indian Court Fees Act, 1870 as amended by Punjab Act VII of 1922, Indian Limitation Act, 1908, English Money Lenders' Act, etc., etc.

BY

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To
The Hon'ble Justice Jai Lal, R. B.,
Bar-at-Law,
Judge of the High Court of Judicature
at Lahore.

This work

is

As a Token of

Regard for his Profound learning and ability,
By His Lordship's Permission
Most Respectfully Dedicated.

INTRODUCTION.

The Punjab Regulation of Accounts Act, 1930, is the first measure of its kind that has been enacted by an Indian Legislature. Much heat and controversy centred round it, when it was on the anvil. Some hailed it as a most beneficent piece of legislation, which might prove a panacea for most of the ills, to which the Punjab peasantry is subject. Others condemned it outright, as a class measure, calculated to lay axe at the very root of the credit of the rural population in the Province. The trade, it is predicted by the latter, is bound to shrink and the agricultural operations hampered as the moneyed classes will be reluctant to advance money in the face of the restrictions and penalties laid down in this Act.

There is much to be said on either side. The State in all times, owes a duty to its subjects, to so organize its activities of administration as to secure the greatest happiness of the greatest numbers. It has, therefore, to concert the necessary measures if it is convinced that a few astute and unscrupulous members of the society are preying upon the ignorance and helplessness of the masses. But adequate safeguards must, at the same time, be provided against the restrictions working to the other extreme and affecting adversely the legitimate avocations of honest and innocent people. The State has to reconcile between the two extremes of individual liberty amounting to a license and the restraints which might bar the legitimate freedom of contract, not trenching upon the legitimate right of others, in distress or difficulties.

As one reads this Act, the idea grows upon one's mind that this measure is of far-reaching consequences and it is therefore, of utmost importance that the public, the members of the bar and the Bench should study the Act and thoroughly, understand its provisions.

HARNAM SINGH.

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THE
Punjab Regulation of Accounts
Act, 1930.

PUNJAB ACT I OF 1930.

(Received the assent of His Excellency the Governor on the 19th January, 1930, and that of His Excellency the Viceroy and Governor-General on the 9th March 1930, and was first published in the Punjab Government Gazette of the 21st March, 1930):—

**An Act to regulate the keeping of accounts
of certain transactions.**

WHEREAS it is expedient to make provision for
regulating the keeping of accounts
Preamble. relating to certain transactions in the
Punjab, and whereas, the previous sanction of the
Governor-General under Section 80-A (3) of the
Government of India Act has been obtained; it is
hereby enacted as follows :—

Short title, ex- 1. (1) This Act may be called the
tent and com- Punjab Regulation of Accounts Act,
mencement. 1930.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf :

Provided that this date shall not be earlier than six months or later than one year after the date of final publication of the rules made under Section 6.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context—

(1) "Bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature.

(2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.

(3) "Co-operative Society" means a society registered under the provisions of Co-operative Societies Act, 1912.

(4) "Court" includes a court acting in the exercise of insolvency jurisdiction,

(5) "Creditor" means a person who in the regular

course of business advances a loan as defined in this Act and shall include subject to the provisions of section 3 the legal representatives and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan.

(6) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(7) "Loan" means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include—

- (i) a deposit of money or other property in a Government Post Office Bank or any other Bank or in a company or with a co-operative society ;
- (ii) a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment ;
- (iii) a loan advanced by Government or by any local body authorised by Government ;
- (iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act ;
- (v) a loan advanced to a trader ;
- (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ;

(vii) a transaction which is, in substance, a mortgage or a sale of immovable property.

(8) "Prescribed" means prescribed by rules made under this Act.

(9) "Trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include—

a wholesale or a retail merchant,

a commission agent,

a broker,

a manufacturer,

a contractor,

a factory owner,

but shall not include a person who sells his own agricultural produce or cattle, or buys agricultural produce or cattle for his own use.

3. (1) A creditor shall in order to comply with the provisions of this Act—

Duty of creditor to maintain and furnish accounts.

(a) regularly record and maintain an account for each debtor separately, of all transactions relating to any loan advanced to that debtor, in such manner as the Local Government may prescribe.

(b) furnish each debtor every six months with a legible statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on the 30th day of June or 15th

Har and the 31st December or 15th Poh in each year. This statement of account shall include all transactions relating to the loan entered into during the six months to which the statement relates, and shall be sent in such manner and in such form and containing such details as the Local Government may prescribe, on or before the 31st day of August or 15th Bhadon in the case of any balance outstanding on the 30th day of June or 15th Har and on or before the 28th day of February or 15th Phagan in the case of any balance outstanding on the 31st day of December or 15th Poh.

Explanation.—(i) The Local Government shall prescribe the forms and numerals in which the accounts required by this provision of this sub-section are to be maintained and furnished, and the creditor shall at his option use one of the following scripts and languages, namely :—English, Urdu, Gurmukhi, Nagri, or Mahajani: Provided that if the debtor in writing demands that the account be furnished in any one of the above scripts it shall be supplied to him in that script at his cost according to the scale prescribed ;

(ii) the prescribed accounts shall be so kept that items due by way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained. The creditor shall not in the absence of agreement include the interest or any portion of it in the principal sum ; and the principal and interest shall be separately shown in the opening balance of each new six-monthly account :

Provided that—

- (i) if the loan has since it was originally advanced, passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account prescribed by this section for a period of six months from the date of such passing ;
 - (ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the prescribed account in the case of a loan wherein the title to recover is *sub-judice* between two or more persons claiming as creditors adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.
- (2) Entries in the account prescribed under clause (a) to sub-section (1) shall be deemed to be regularly kept in the course of business for the purposes of section 34, Indian Evidence Act, 1872, and copies of such entries certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

Explanation.—A person to whom a statement of account has been sent under clause (b) of sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not, by itself, be deemed to be an admission of correctness of the account.

Penalty for non-compliance with the provision of section 3.

4. Notwithstanding anything contained in any other enactment in force for the time being—

- (a) in any suit or proceeding relating to a loan, the court shall, before deciding the claim on the merits, frame and decide the issue, whether the creditor has complied with the provisions of clauses (a) and (b), of sub-section (1) of section 3 ;
- (b) if the court finds that the provisions of clause (a) of sub-section (1) of section 3 have not been complied with by the creditor, the court shall, if the plaintiff's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as may seem reasonable to the court in the circumstances of the case and shall disallow costs ;
- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the creditor, the court shall, in computing the amount of interest due upon the loan exclude every period for which the creditor omitted duly to furnish the account as required by clause (b) of sub-section (1) of section 3 : provided that if the creditor has, after the time prescribed in that clause, furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation.—A person who has kept his account and sent his six-monthly statements of accounts in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 3, shall be held to have complied with the provisions of these clauses in spite of errors and omissions, if the court finds that the errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

Savings. 5. The provisions of this Act shall not apply to any loan advanced before the commencement of this Act :

Provided that if any fresh transaction relating to a loan advanced before the commencement of this Act is made after the commencement of this Act, such transaction shall be subject to the provisions of this Act.

Powers of Local Government to make Rules. 6. (1) The Local Government may make rules, not inconsistent with the Act for the purposes of carrying out all or any of the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, the Local Government may make rules :—

- (i) prescribing the forms and numerals to be used in the accounts required by sub-section (1) of Section 3.
- (ii) prescribing the manner in which the accounts required by clause (b) of sub-section (1) of section 3 shall be furnished by the creditor to the debtor, the forms to be used and

the details to be incorporated therein and the scale of costs to be paid by such debtors as may demand that the account required by this clause should be furnished in one of the particular scripts mentioned in Explanation (i) of this clause :

Provided that before making any rules under the provisions of this section, the Local Government shall, in addition to observing the procedure laid down in Section 21 of the Punjab General Clauses Act, 1898, publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby, at least thirty days before a meeting of the Punjab Legislative Council. The Local Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Council next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.

Rules made by the Local Government under Section 6 of the Regulation of Accounts Act.

The following rules were framed by the Local Government under section 6. These rules were published under Punjab Government Notification No. 37270, dated the 15th December, 1930.

1. Short title and commencement. (a) These rules may be called the Regulation of Accounts Rules.

(b) They shall come into force on such date as the Governor-in-Council may by notification appoint in this behalf.

2. Interpretation. In these rules unless there is anything repugnant in the subject or context,—

(a) The Act means the Punjab Regulation of Accounts Act, 1930.

(b) Form means the form in which the accounts prescribed by section 3 of the Act are to be maintained and furnished.

(c) The Punjab General Clauses Act, I of 1898 shall apply for the purpose of interpretation, of these rules in like manner as it applies for the purpose of interpretation of a Punjab Act.

3. The form. The account prescribed by clause (a) of sub-section (1) of section 3 of the Act shall be maintained in the form shown in the Schedule attached to these rules.

4. The form shall also be used for the statement of account required to be furnished periodically by the

creditor to each debtor under the provisions of clause (b) of sub-section (1) of section 3 of the Act.

5. Supply of forms. Samples of the form printed in English, Urdu, Gurmukhi, Nagri and Mahajani (Amritsari) and bound into registers containing fifty or a hundred forms shall be available for sale at all Post Offices, Branch Post Offices, Treasuries and Sub-treasuries throughout the Province and shall be supplied to printing presses in districts. A creditor while being solely responsible for obtaining the requisite number of forms shall be under no obligation to purchase the forms from official sources, but may obtain supplies on the open market or from such other source as he may desire.

Explanation.—Government accepts no responsibility for the supply of forms.

6. Numerals to be used. The numerals to be used for the purpose of making entries in the form shall be the numerals ordinarily used with the particular script and language selected by the creditor or demanded by the debtor, as the case may be, in accordance with Explanation (d) to Section 3 of the Act.

7. Method of maintaining the prescribed accounts Each entry in the form shall as far as possible be made on the date to which the transaction in question relates.

8. The name and address of the debtor, and in the case of joint-debtors, of each joint-debtor, shall be entered at the head of the form after the words "loan account of."

The address so entered shall be the address supplied by the debtors or joint-debtors at the address to which the statement of account should be sent in accordance with the requirements of rule 14.

9. Particulars of each entry relating to repayments or advances, whether in cash or kind, shall be entered in words in the column provided in the form for this purpose.

Immediately after the mention of the amount in words in that column, half of this amount shall also be expressed in words.

10. The rate of interest as agreed on by the parties for each advance, whether in cash or in kind, and the amount of interest charged shall be entered in the column provided in the form.

11. The value of a repayment in kind by a debtor and the amount appropriated to principal and interest shall be entered on the due dates in the column provided in the form.

12. The form shall be kept by the creditor in duplicate, so that there shall be a foil and counter-foil. The counter-foil shall be retained by the creditor and the foil shall be sent to the debtor in the manner hereafter mentioned. The entries as in the foil so sent to the debtor shall in all respects to be an exact copy of the entries in the counter-foil retained by the creditor.

13. Where there are two or more joint-debtors the statement of account shall, in the absence of agreement to the contrary, be furnished to the joint-debtor named first at the head of the form.

14. Method of furnishing account to debtor. The statement of account shall be furnished by sending the foil to the debtor by registered post, acknowledgment due, at the address entered at the head of the form in accordance with the requirements of rule 8 :

Provided that if the debtor or joint-debtors, as the case may be, agreed in writing to accept the foil by

personal delivery it shall not be necessary to send it by post.

Explanation.—To prepare for posting the foil should be folded into packet form, with the space provided for the address left on the outside. As many foils intended for the same debtor as can be conveniently sent together may be enclosed in one packet. After folding, the open outside edge should be fastened down with a slip marked :—

“ Form of account under the Regulation of Accounts Act, 1930.”

The packet thus folded, addressed and stamped should be sent by registered post, acknowledgment due, without any outer cover.

15. Proof of acceptance by debtor. If the debtor accepts the foil when delivered to whom in person, he shall give an acknowledgment of the receipt of the form on a separate sheet of paper. This acknowledgment shall bear the debtor's signature or thumb-impression.

Explanation.—This acknowledgment shall not be deemed to be an admission of correctness of the entries in the form.

16. If the statement of account is sent by registered post the production of the postal receipt and acknowledgment shall be sufficient proof of the sending of the account.

17. Recovery of postal registration charges. The postal registration and acknowledgment charges incurred by sending the statement of account by registered post shall be recoverable by the creditor as though it were a loan advanced in cash to the debtor and shall be duly entered in the loan account form.

18. Scale of costs payable by debtor demanding that account shall be furnished in particular script. The scale of costs to be paid by such debtor as may demand that the account required by Section 3 of the Act should be furnished in one of the particular script

mentioned in Explanation (i) to Section 3 shall be as follows :—

	Rs.	A.	P.
First 200 words and figures or under	0	3	0
Every additional 100 words or figures or under	..	0	2 0

The costs so incurred shall be recoverable by the creditor as though it were a loan advanced in cash to the debtor and shall be duly entered in the loan account form.

19. Method of certification of copies. Certified copies of entries in books of account in order to be admissible in evidence under sub-section (2) of Section 3 of the Act shall be copies of the counter-foil together with a certificate written at the foot of such copy that it is a true copy of the counter-foil of which the original is still in the custody of the creditor. This certificate shall be dated and subscribed by the creditor and countersigned by some person who has examined the copy with the original.

SCHEDULE.

Foil. *Loan Account of.....son of.....caste.....residence.....*

Opening balance (if any)—
 Principal—
 Interest—

NAM							JAMA								
Date.	Particulars of advances in words whether cash or kind. (See rule 9.)	Advance in figures.			Rate of interest.	Amount of interest charged.	Remarks.	Date.	Particulars of repayment whether cash or kind in words. (See rule 9.)	Repayments in figures.			Appropriation.		Remarks.
		Cash.	Kind (number or weight).	Value of advances in kind.						Cash.	Kind (number or weight).	Value of repayment in kind.	Principal.	Interest.	

RULES UNDER SECTION 6

Balance outstanding on 30th June 19__ .
31st December
15th Har
15th Poh Sambat 19__ .

Principal. Interest.

Add opening balance as above _____

Total _____

(Signature) Creditor or Agent. _____

XV

SCHEDULE.

XVI

Counterfoil. *Loan Account of.....son of.....caste.....residence.....*

Opening balance (if any)—

Principal—

Interest—

NAM

JAMA

Date.	Particulars of advances in words whether cash or kind. (See rule 9.)	Advance in figures.			Rate of interest.	Amount of interest charged.	Remarks.	Date.	Particulars of repayment whether cash or kind in words. (See rule 9.)	Repayments in figures.			Appropriation.		Remarks.
		Cash.	Kind (number or weight).	Value of advances in kind.						Cash.	Kind (number or weight).	Value of repayment in kind.	Principal.	Interest.	

Balance outstanding on 30th June 19

31st December

15th Har

15th Poh Sambat 19

Principal. Interest.

Add opening balance as above _____

Total _____

(Signature) Creditor or Agent. _____

RULES UNDER SECTION 6

Appendix No. 1

THE USURIOUS LOANS ACT (X OF 1918).

The following Act of the Indian Legislative Council received the assent of the Governor-General on the 22nd March, 1918, and is hereby promulgated for general information:—

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

Whereas it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

It is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may, be called the Usurious Loans Act, 1908.

(2) It extends to the whole of British India including British Baluchistan.

(3) The Local Government may, by notification in the Local Official Gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notifications.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context:—

(1) "Interest" means rate of interest and includes the return to be made over and above what was actually

ly lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) Loan means a loan whether of money or in kind, and include any transaction, which is, in the opinion of the Court, is substance of loan.

(3) "Suit" to which the Act applies means any suit—

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made after the commencement of the Act in respect of any loan made either or after the commencement of this Act.

Reopening of transactions.—(1) Notwithstanding anything in the Usuary Laws Repeal Act, 1855, where in any suit to which to which this Act applies, whether heard *ex parte* or otherwise, the Court has reason to believe :—

(a) that the interest is excessive ; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely may :—

(i) re-open the transaction, take an account between the parties thereto, and relieve the debtor of all liability in respect of any excessive interest.

(ii) notwithstanding any agreement, purporting to close previous dealings, and to create a new obligation, re-open any account already taken between them and relieve the debtor

of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability order the creditor to re-pay any sum which it considers to be repayable in respect thereof ;

- (iii) set aside either wholly or in part or revise or after any security given or agreement made in respect of any loan, and if the creditor has parted with the security order him to indemnify the debtor in such manner and to such extent as it may deem just.

Provided that in the exercise of these powers the Court shall not :—

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any person from whom they claim at any date more than six years from the date of the transaction ;
- (ii) do anything which affects any decree of a Court Explanation. In the case of a suit brought on a series of transactions, the expression "the transaction" means, for the purpose of proviso (i), "the first of such transactions."
2. (a) In this section "excessive" means in excess of that which the Court deems of be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

- (b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind for expenses inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.
- (c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known or must be taken to have been known to the creditor.
- (d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the creditor.

Explanation :—Interest may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for

the recovery of a loan or for the enforcement of any agreement or security in respect of a loan.

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide* and that he had, at the time of such transfer, no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purpose of this sub-section the word 'notice' shall have the same meaning as is ascribed to it in S. 4 of the Transfer of property Act, 1882.

Nothing in this section shall be construed as derogating from the existing powers of jurisdiction of any Court.

In-solvency proceedings—On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings the Court may exercise the like powers as may be exercised under S. 3 by a court in a suit to which this Act applies.

Schedule I.
Memo of Transaction.

Borrower's name _____ Father _____ Caste _____ Occupation _____ Residence _____

1	2	3	4		5	6	7
Ledger No.	Date of transaction.	Amount lent (Cash value).	Amount retained for		Rate of simple interest per cent. per annum (if any).	If interest is compound. Number of months after which compounded.	Amount repaid (cash value).
			(i)	(ii)			
			Advanced interest paid (if any).	Other charges (if any).			

Note :—In the case of loans, items No. 7 is not to be filled in. In the case of repayments by the borrower-items 3, 4, 5, and 6 are not to be filled in.

S. 6]

SCHEDULE

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Schedule II.

Six-monthly statement of Account.

Borrower's name		Father		Caste		Occupation		Residence.				
1	2	3	4	5	6	7	8	9	10	11	12	
Ledger No.	Date of the Statement.	Opening balance of principal.	Opening balance of interest.	Total amount lent (cash value) during six months.	Interest accrued.	Payment made.		Interest allowed on payments towards principal.	Interest remitted.	Total credited.	Balance of principal.	Balance of interest.
						1	2					
						Allotted to principal.	Allotted to interest.					

Appendix No. 2.

BILL NO. 10 OF 1925.

THE PUNJAB MONEY-LENDERS BILL.

*Bill as introduced in the Council on the 11th of
December 1925).*

Whereas it is expedient to provide for the regulation of money-lenders in the Punjab and whereas the previous sanction of the Governor-General to the passing of this Act has been obtained ; it is hereby enacted as follows :--

1. (1) This Act may be called the Punjab Money-lenders Act 1925.

Short title, extent, and commencement.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

2. In this Act, unless there is anything repugnant in the subject or context—

Definitions.

(1) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) "Loan" means a loan (whether of money or in kind), at interest, and includes any transaction which is, in the opinion of the Court, in substance a loan; but it shall not include:—

- (a) shares in a company;
- (b) premium of an insurance policy;
- (c) deposits (with a bank, Co-operative Society, Post Office, or with any individual or individuals specially exempted by the Local Government in this behalf);

(3) "Quasi money-lender" means a retail dealer, who advances loans in cash as well as in kind or who charges interest on his trade balances.

(4) "Money-lenders", shall mean a Sahukar and includes every person whose business is that of money-lending, or who advertises or announces himself or holds himself out as carrying on that business, or who is a quasi-money-lender, but it shall not include—

- (a) banks, co-operative societies, and insurance companies;
- (b) public companies registered under the Indian Companies Act, 1931, and the investors in such companies;
- (c) the Government or any public servant (as such) advancing loans under any law for the time being in force;
- (d) any person or persons *bona fide* carrying on any business not having for its primary object the lending of money, in the

course of which and for the purposes whereof he lends money;

- (e) the person who finances traders, whether as a regular business or incidently so far only as he finances trade;
- (f) the export and import dealer and the wholesale trader, so far as they lend money in their relations with the commission agent and the retail dealer;
- (g) the commission agent as such advancing money on behalf of his principal, or financing the export and import dealer;
- (h) a landlord who advances money to his tenants, lessees, or partner-in-cultivations
- (i) a manufacturer who advances money to his workmen;
- (j) a contractor who advances money to his employees;
- (k) the investor who makes a living out of a capital by depositing it at interest with a trader or money-lender;
- (l) any individual or individuals specially exempted by the Local Government in this behalf.

The question as to whether, at the time a loan was advanced, the lender was a money-lender shall be a question of fact to be decided by the Court.

3. A money-lender as defined by this Act—

Regulation of
money-lenders.

- (a) shall advance loans in his own, or family or usual trade name or in more than one of these names, and in no other name and under no other description ; and
- (b) shall not enter into any agreement, taken any security in the course of, and with respect to the advance and repayment of loans, otherwise than in one or more of the names allowed under clause (a) ; and
- (c) shall maintain regular accounts, in the form prescribed by the Local Government and shall enter therein details of all loan transactions as prescribed, including details of repayment towards principal and interest ; and
- (d) shall within one week of the advancing or renewing a loan of more than twenty rupees value, or of receiving a repayment of that value, send to the borrower concerned, through a registered letter-card with acknowledgment (debiting the borrowing with the actual cost of registration), a memo of transaction (in the form prescribed by the Local Government) showing accurately the particulars mentioned in schedule about the transaction ; and
- (e) shall send a combined memo, of transaction (in the form prescribed by the Local Government), through a registered letter-

card with acknowledgment (debiting the borrower with the actual cost of registration), to each of his borrowers to whom he has advanced or renewed loans (or from whom he has received repayments) of the value of rupees twenty or less each amounting to more than fifty rupees (since this Act comes into force or subsequent to the despatch of the last such memorandum whichever be later), and within one week of the closing of the calendar month in which they ultimately so amount, showing accurately the particulars mentioned in Schedule I about all such transactions with the borrower concerned in the course of that period.

4. A money-lender shall within 15 days from the 30th June and the 31st December each year, send a six-monthly statement of account (in the form prescribed by the Local Government) through a registered letter-card with acknowledgment (debiting the borrower with the actual cost of registration) to each of his borrowers who owes him a balance, showing accurately the particulars mentioned in Schedule II about the account of the borrower concerned during the preceding six months.

5. (1) In every suit, relating to a loan advanced or renewed or security taken there for Standing issues. after the commencement of this Act, the Court shall, before granting relief, frame, and adjudicate upon the following preliminary issues :—

(a) Is the plaintiff a money-lender ?

(b) If so, has he complied with the requirements of the Money-lenders Act, 192 ?

(2) Any person who has been declared a money-lender by the finding of a Court which has not been upset shall be presumed to be a money-lender.

6. Notwithstanding anything to the contrary in any enactment, rule, by-law or any other provision of law—
Penalty.

(a) No Civil Court shall entertain any suit or pleading (relating to a loan advanced or renewed or security taken therefor after the commencement of this Act) by a money-lender unless the money-lender had complied with the requirements of the provisions of Section 3 of this Act with respect to the subject matter of the suit.

(b) No Civil Court shall, grant any interest to a money-lender, with respect to a loan advanced or renewed after the commencement of this Act, for any period of six months for which a statement of account was due but had not been supplied in accordance with Section 4 of this Act, unless money-lender satisfy the Court that the omission was due to some reasonable excuse and that he had submitted the six-monthly statement of account in the prescribed form and manner as soon as he was able to do so.

7. The Local Government may after previous publication make rules for the purpose of carrying out the provisions of this Act.
Power to make rules, etc.

Appendix No. 3.

STATEMENT OF OBJECTS AND REASONS.

The proposed Bill provides that every money-lender in the Punjab shall maintain regular accounts in the form prescribed by the Local Government and shall send regular information (as prescribed) to his borrowers, and that he would incur certain penalties if he fails to comply with the provisions of this Bill. It seeks to ensure an accurate and up-to-date account in the books of the lender and to secure to the borrower regular information about his account. It is suggested by the poverty, ignorance, and indebtedness of the agriculturists of this Province.

The Punjab is mainly an agricultural Province. According to the Census of 1921 about 15 millions of the Punjabis live by agriculture, and they constitute nearly two-third of the whole population. Their average annual income is calculated at Rs. 40 to Rs. 60 per head while only feeding and clothing of a prisoner in the Punjab Jails costs over Rs. 92 yearly.

Indebtedness is one of the main causes of this poverty of the Punjab cultivators. About 70 per cent of these borrow from the Sahukar, often at usurious rates of interest. This deprives them of a big slice out of the low yields of their crops, and stifles all initiative. The average gross value (which includes cost of production) of produce of the Punjab is Rs. 100 crores a year; out of which land revenue takes away about four crores, the interest paid annually to the money-lender is about twelve crores; litigation costs about four crores;

mortality amongst cattle costs another three crores; and the loss from insect pests is nearly nine crores.

The extortionate interest charged by the money-lender, however, is not the only evil of the present system of rural finance. The trickery and uncertainty in the account kept by many money-lenders is perhaps its most dangerous defect. The experience of the Co-operative Societies have shown that one of the greatest incentives for the borrowers to re-pay their debts is that they always know how they stand with their Society, how much they have paid to it, and what is still owing. This is not so with the ingenious system of book-keeping of the Sahukar. The latter prefers---because it pays him---to keep a loose running sort of account, on a *bahi* which admits of insertion or removal of pages conveniently and with little or no possibility of detection. He seldom likes to strike a balance; and consequently there is a despondent feeling amongst his victims, that they owe a debt "still paying, still to pay" from which it is impossible for them to get out. Moreover, there have been resported many instances of unscrupulous money-lenders debiting their ignorant borrowers with more than was actually advanced or crediting them with less than was actually repaid without the latter being able to know anything about it till they are actually sued. A plea, under these circumstances, for timely information to the borrower to enable him to check errors, when the transaction is more or less fresh and to know at harvest time how he stands with his money-lender, needs no argument.

The Usurious Loans Act, 1918 (which applies both to rural and urban transactions) empowers the Court, in certain suits between lenders and borrowers, to re-open the transaction, to take an account between the parties and to relieve the debtor of excessive interest. But

this Act can be, and is being, defied by getting a new bond executed, shortly before coming to Court, describing all the old interest and principal as fresh principal lent, without any reference to old documents or loans. Thus the borrower is unable to show that he has had an old account with the lender, and that the so-called principal includes a big item of interest, and the Court is unable to help him because under that Act it has no discretion to reduce the principal. A convenient device, therefore, of enabling the borrowers and the Courts to trace back the history of money-lending transactions seems necessary. Moreover, regular books of account (paged and bound), kept in uniform regular way, will materially facilitate work of the Courts in taking an account between the parties, and will promote interests of justice.

The Punjab is dominated by the money-lender to an extent unknown in any other province. The population of the Punjab is only one-eleventh of the whole, about one-fourth of all money-lenders found in British India reside and work here. Moreover, there exists a large number of persons who add to their incomes by secretly carrying on the business of lending money on usurious terms, often worse than those of the worst type of professional money-lenders. It is obviously desirable, in the interests of the borrowers as also of fair-play that the money-lending transactions of these types of money-lenders should be regulated. However, it is not intended to apply this Bill to the trader as such, except to the limited extent of a *quasi*-money-lender which is necessary in order to prevent wholesale evasion of the Act by the Sahukar class.

The preponderating majority of borrowers in the Punjab belong to rural areas and are both ignorant and poor. It is for their benefit that the present

bill is primarily intended. But for these reasons the urban money-lenders have also been included. Firstly, because there are practical difficulties in excluding them. Secondly, because they deal with rural as well as urban borrowers. Thirdly, because there is evidence to show that the poorer classes of urban borrowers are also being exploited by the unscrupulous money-lenders and need protection against the latter.

The proposed legislation would, no doubt, deprive the unscrupulous from amongst 33, 750 money-lenders in the Punjab, of the convenience and profits of some of their irregular, secret, and unfair dealings ; but it would protect 15 millions Punjabi agriculturists besides poor urban borrowers, of whom 33 per cent. are Hindus, 15 per cent. Sikhs and about 50 per cent. Musalmans. The Schedules annexed to the Bill are so revised as to require all entries, except name and description of the borrower, to be made in figures.

(Sd.) MAQBOOL MAHMOOD.
Member, Legislative Council.

Lahore.

The 11th December 1925.

(Sd.) ABNASHA SINGH.
Secretary, Punjab
Legislative Council.

Appendix No. 4.

STATEMENT OF OBJECTS AND REASONS TO THE PUNJAB REGULATION OF ACCOUNTS

BILL NO. 6 OF 1929.

A Regulation of Accounts Bill was passed by the Punjab Legislative Council on 1st July 1926 but in refusing either to commend this Bill for the final assent of the Governor-General or to return it to the Council for reconsideration, His Excellency, Sir Malcolm Hailey in his address to Council on 25th October 1926, gave an assurance that Government was convinced that legislation would be beneficial for the regulation of certain classes of accounts and that steps should be taken to place a Government Bill of a somewhat simpler scope before the Council.

It was felt that the Bill as passed by the Council was not calculated to effect the main object in view, viz., protection of the ignorant borrower without undue interference in trade and credit. In particular the definitions of "loan" and "money-lender" appeared likely to prove a stumbling block to the practical utility of the Bill; while the penalty of non-suiting provided in the case of non-compliance with the provisions of the Bill seemed unnecessarily harsh.

In the present Bill, which is the fulfilment of His Excellency Sir Malcolm Hailey's promise made to the Legislative Council in his address on October 25, 1926, the aim has been to secure as between certain classes of creditors and debtors an improved

system of keeping accounts which will give to the latter a means of ascertaining periodically how their accounts stand and how they are composed. At the same time the Bill designedly avoids any unnecessary degree of regimentation which might tend unduly to harrass the lender and to construct the facilities for credit so useful in the rural system of economy. Secondly by excepting certain classes of loans it expressly avoids interference with accounts connected with trade and commerce.

Subject to these restrictions, the Bill is of general application. The term "money-lender" has been throughout replaced by the term "creditor" suitably defined. The definition of "loan" has been improved. The positive portion of the definition follows the definition given in the Usurious Loans Act and embodies the result of the experience gained by Courts in dealing with attempts made by money-lenders to evade law. The negative portion excepts a number of transactions from the operation of the Act with the object of avoiding undue interference with trade, commerce and industry. The penalty for non-compliance with the provisions of the Bill has been greatly modified. If it is found that the creditor has failed to maintain the requisite ledger the Bill while not permitting, non-suiting or even any reduction in the principal amount found due, renders obligatory the disallowance of costs and portion of the interest, though it leaves the Court a discretion as to the exact amount of interest to be allowed. Similarly, if it is found that the creditor, though keeping the necessary ledger, has without lawful excuse failed to submit the periodical accounts to his debtor, the Bill provides that he will lose the interest for the period or periods for which he has defaulted.

Appendix No. 5.

PUNJAB LEGISLATIVE COUCIL.

Bill No. 6 of 1929.

THE PUNJAB REGULATION OF ACCOUNTS BILL.

A Bill to regulate the keeping of accounts of certain transactions.

Whereas it is expedient to make provision for regulating the keeping of accounts relating to certain transactions in the Punjab, and whereas the previous sanction of the Governor-General to the passing of this Act has been obtained ; it is hereby enacted as follows :—

1. (1) This Act may be called the Punjab Regulation of Accounts Act, 1929.

Short title, extent and commencement.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government, may by notification, appoint in this behalf.

2. In this Act, unless there is anything repugnant in the subject or context :—

Definitions.

(1) "Bank" means a company carrying on the business of banking and registered under any of the

enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature.

(2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.

(3) "Co-operative Society" means a society registered under the provisions of Co-operative Societies Act, 1912.

(4) "Court" includes a court acting in the exercise of insolvency jurisdiction.

(5) "Creditor" means a person who in the regular course of his business advances a loan as defined in this Act and shall include legal representatives and the success or-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan.

(6) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(7) "Loan" means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include:—

- (i) a deposit of money or other property in a Government Post Office Bank or any other Bank or in a company or with a co-operative society.
- (ii) a loan to or by or a deposit with a person belonging to any class of persons specified for the purpose of this section by the Local Government by notification ;
- (iii) a loan advanced by a Bank, a company or a co-operative society ;
- (iv) a loan advanced by Government or by any person authorised by Government ;
- (v) a loan advanced by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business ;
- (vi) a loan advanced to a trader for the purpose of trading or carrying on the business of a commission agency ;
- (vii) a loan advanced by a landlord to his tenant, lessee, partner in cultivation, or co-sharer for the purpose of carrying on agriculture ;
- (viii) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ;
- (ix) a transaction which is, in substance, a mortgage of immovable property or a sale.

(8) "Prescribed" means prescribed by rules made under this Act.

Duty of creditor to maintain and furnish accounts.

3. (1) A creditor shall in order to comply with the provisions of this Act—

- (a) regularly record and maintain in *addition to such* accounts as he may ordinarily maintain an account of transactions relating to loans for each debtor separately in such form as the Local Government may prescribe :

Provided that the Local Government shall prescribe the forms, language, script and numerals in which the accounts are to be recorded and maintained.

- (b) if on the thirtieth day of June or on the thirty-first day of December in any year any balance or amount is due to him from a person on account of a loan, sent to such person before the thirty-first day of July or the thirty-first day of January next following a statement of account including an account of all transactions, if any, relating to the loan during the next preceding six months in such manner and in such form and containing such details as the Local Government may prescribe.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, entries in books of account prescribed under clause (a) of sub-section (1) shall be deemed to be relevant for proving any transaction to which they relate, and copies of such entries

certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

Explanation.—A person to whom a statement of account has been sent under clause (b) of sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not, by itself, be deemed to be an admission of correctness of the account.

4. Notwithstanding anything contained in any other enactment in force for the time being—

Penalty for non-compliance with the provisions of section 3.

- (a) in any suit or proceeding relating a loan, the court shall if necessary, before deciding the claim on the merits, frame and decide the issue, whether the creditor has complied with the provisions of clause (a) and (b) of sub-section (1) of section 3;
- (b) if the court finds that the provisions of clause (a) of sub-section (1) of section 3 have not been complied with by creditor, the court shall if the plaintiff's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as may seem reasonable to the court in the circumstances of the case and shall disallow costs;
- (c) if the court finds that the provisions of clause (b) of sub-section 3 have not been

complied with by the creditor, the court shall in computing the amount of interest due upon the loan exclude every period for which the creditor omitted duly to furnish the account as required by clause (b) of sub-section (1) of section 3 provided that if the creditor has after the time prescribed in that clause furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation. A person who has kept his accounts and sent his six-monthly statements of accounts in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 3 shall be held to have complied with the provisions of these clauses, in spite of error and omission, if the court finds that the errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

5. The provisions of this Act shall not apply to any loan advanced before the commencement of this Act.

Savings.

6. (1) The Local Government may make rules not inconsistent with the Act for the purpose of carrying out all or any of the provisions of this Act.

Power of Local Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Local Government may make rules :—

- (i) prescribing the forms, language, script and numerals to be used in the accounts required by clause (a) of sub-section (1) of section 3 ;
- (ii) prescribing the manner in which the accounts required by clause (b) of sub-section (1) of section 3 shall be submitted by the creditor to the debtor, the forms to be used and the details to be incorporated therein.

Appendix No. 6.

REPORT OF THE SELECT COMMITTEE ON THE PUNJAB REGULATION OF ACCOUNTS BILL.

The Select Committee appointed to consider and report on the Punjab Regulation of Accounts Bill held meetings on the 30th, 31st October, 1st, 2nd and 10th November under the presidency of the Hon'ble Finance Member. All members attended the meetings except Sardar Harbakhsh Singh on 31st October and 1st November, Rana Firoz-ud-Din on the 1st November and 10th November, and Messrs. Mohan Lal, Maqbool Mahmood and V. F. Gray on the 10th November.

The Committee beg to report as follows :—

1. *Preamble.* It was decided that in line 6 for the words "to the passing of this Act" the following words should be substituted, namely :—

" under section 80-A. (3) of the Government of India Act. "

2. *Clause 1.* It was unanimously decided that after sub-clause (3) the following proviso should be added namely :—

" Provided that this date shall not be earlier than six months after the date of final publication of the rules made under section 6. "

3. *Clause 2. Sub-clause (5).* It was decided unanimously that in line 2 of sub-clause (5) the word "his" should be omitted; and that between the word "include"

and the word "the" in line 3 the words "subject to the provisions of section 3" should be inserted ;

(b) *Sub-clause (7), exemption (ii).*—It was decided unanimously that all the words occurring after the words "deposit with" in the first line should be omitted and the following words substituted thereof;—

"any society or association registered under the Societies Registration Act, 1860, or under any other enactment."

(c) *Sub-clause (7), exemption (iv) renumbered (iii).* It was decided unanimously that exemption (iv) of this sub-clause should be renumbered (iii),

and in exemption (iv) as renumbered (iii), for the words "any person" in line 2 occurring between the word "by" and the word "authorised" the words "any local body" should be substituted.

(d) *Sub-clause (7), exemption (iii) renumbered (iv).*—It was decided unanimously that exemption (iii) of this sub-clause should be renumbered (iv) and by a majority that for the word following the word "bank" in the first line the following should be substituted, namely:—

"a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act."

(e) *Sub-clause (7), exemption (v).*—It was decided by a majority that exemption (v) of this sub-clause should be deleted and exemption (vi) renumbered (v).

(f) *Sub-clause (7), exemption (vi) as renumbered (v).*—It was decided unanimously that in exemption (vi) as renumbered (v) the words occurring after the word "trader" in the first line should be deleted.

(g) *Sub-clause (7), exemption (vii).*—It was decided unanimously that exemption (vii) of this sub-clause should be deleted and exemptions (viii) and (ix) renumbered (vi) and (vii) respectively.

(h) *Sub-clause (7), exemption (ix) as renumbered (vii).* It was decided by a majority that in exemption (ix) as renumbered (vii) the words “or a sale” occurring in the last line should be transported and inserted in the second line between the word “mortgage” and the word “of”.

(i) *New sub-clause 9.* It was decided unanimously that after sub-clause (8) the following new sub-clause should be inserted, namely :—

“(9) “Trader” means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include—

a wholesale merchant,
a commission agent,
a broker,
a manufacturer,
a contractor,
a factory owner”.

4. *In clause 3 sub-clause (1).* (i) It was decided by a majority that for sub-clause (1) (a) the following should be substituted, namely :—

“(a) regularly record and maintain, in addition to such accounts as he may ordinarily maintain and account for each debtor separately, of all transactions relating to any loan advanced to that debtor in such manner as the Local Government may prescribe”.

(ii) That the proviso should be transposed and inserted as hereinafter altered after sub-clause (1) (b).

(iii) It was decided unanimously that in sub-clause (1) (b) for the word "July" in line 6 the word "August" should be substituted; and for the word "thirty-first day of January" in line 7 the words "twenty-eighth day of February" should be substituted: and that between the word "a" and the word "statement" in line 8 the word "legible" should be inserted.

(iv) It was decided by a majority that the proviso^o to be inserted after sub-clause (1) (b) as directed in (ii) above should be redrafted as follows:—

Provided that—

"(i) the Local Government shall prescribe the forms language, script and numerals in which the accounts required by the provisions of the sub-section are to be maintained and furnished".

(v) It was decided by a majority that after proviso (i) as inserted by (iv) above the following new proviso should be inserted, namely:—

"(ii) the prescribed accounts shall be so kept that items due by way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained. The creditor shall not, in the absence of agreement, include the interest or any portion of it in the principal sum; and the principal and interest shall be separately shown in the opening balance of each new six-monthly account."

(vi) It was decided unanimously that the following two provisos should be added after proviso (ii) as provisos (iii) and (vi), namely :—

“(iii) if the loan has, since it was originally advanced passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account prescribed by this section for a period of six months from the date of such passing.

(iv) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the prescribed account in the case of a loan wherein the title to recover is sub-judice unless and until the title has been finally decided by a court of competent jurisdiction.”

5. *Clause 3, sub-clause (2).*—It was decided by a majority that the words “Notwithstanding anything contained in the Indian Evidence Act, 1872, entries in books of accounts prescribed under clause (a) of sub-section (1) shall be deemed to be relevant for proving any transaction to which they relate” occurring in the first five lines of sub-clause (2) should be deleted and the following words substituted therefor, namely :—

“Entries in the accounts prescribed under clause (a) to sub-section (1) shall be deemed to be regularly kept in the course of business for the purpose of section 34, Indian Evidence Act, 1872.”

6. *Clause 4. (a)*—It was decided by a majority that the words “if necessary” occurring in the second line of sub-clause (a) should be deleted.

7. *Clause 5.*—It was decided by a majority that the following proviso should be inserted after clause 5, namely:—

“ Provided that, if any fresh transaction relating to a loan advanced before the commencement of this Act is made after the commencement of this Act, such transaction shall be subject to the provisions of this Act.”

8. *Clause 6. (2)*—It was decided unanimously that the following proviso should be added after sub-clause (ii) of clause 6 (2), namely:—

“ Provided that before making any rules under the provisions of this section the Local Government shall, in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act, 1898, publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby at least thirty days before a meeting of the Punjab Legislative Council. The Local Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Council next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.”

9. In the opinion of the Select Committee, the Bill has not been so altered as to require republication.

10. A copy of the Bill as redrafted by the Com-

mittee is appended. The Bill was originally published in the *Punjab Gazette* of 9th August 1929.

- * GOKAL CHAND NARANG.
- * CHHOTU RAM.
- * FIROZ-UD-DIN.
- * MOHAN LAL.
- * MAQBOOL MAHMOOD.
- * V. F. GRAY.
- HARBAKHSI SINGH.
- * AKBAR ALI.
- C. M. G. OGILVIE.
- S. L. SALE.
- * HABIBULLAH.
- A. M. STOW.

MINUTE OF DISSENT.

It is a great pity that the Select Committee on the Punjab Regulation of Accounts Bill has not been able to write an agreed report. So far as we are concerned we have made, willingly, all the concessions which we could, in reason, be expected to make without nullifying the object of the Bill. That we have been prepared to meet more than half way those of our colleagues who consider it their duty to oppose the Bill root and branch will be apparent from the shape in which the Bill has emerged from the Select Committee.

It is a matter for speculation whether the official members of the Select Committee would not have been more favourably disposed to our views if they had not felt themselves bound by the grounds on which Sir Malcolm Hailey withheld his assent to the Bill as passed in July 1926. But in this connection it requires to be borne in mind that the Bill of 1926 as passed by the

* Subject to a minute of dissent.

Council was to all intents and purposes the handiwork of Government. In deference to the wishes of Government on whose good-will and active support the passages of the Bill depended the author of the original Bill and his supporters had agreed to radical changes all along the line until the title, aim and scope of the legislation contemplated by the author at the outset underwent a complete metamorphosis. Thus the immediate predecessor of the present Bill was, nothing more nor less than a measure deliberately framed by Government itself. Violent agitation which had preceded the passage of that Bill, vehement opposition in the Council itself and threats of still more violent agitation in case the bill became law induced in Sir Malcolm Hailey's mind a doubt as to the wisdom of the previous view and action of his own Government, and eventually led to the Bill being vetoed. From this we are driven to the conclusion that the veto had not very much to do with the merits of the Bill, but was the result of the sensitiveness of Government to agitation. This again carries with it a moral lesson which need not be pressed too insistently on the consciousness of those who have still a lingering faith in the spontaneous benevolence of Government to come to the rescue of the poor and the helpless.

And now to come to the points of complaint which necessitate this note of dissent. It need hardly be said that we proceeded on the assumption that the evil of malpractices on the part of creditors actually exists in a sufficient measure to justify some legislation to stop those malpractices, and that Government is, in the words of Sir Malcolm Hailey "convinced that legislation would be beneficial for the regulation of certain classes of accounts". The main object of this legislation would be the "protection of the ignorant borrower without under interference in trade and credit." The

aim will be "to secure as between certain classes of creditors and debtors an improved system of keeping accounts which will give to the latter a means of ascertaining periodically how their accounts stand and how they are composed". The need for some legislation for the "protection of the ignorant borrower" having been admitted by Government, no apology is needed for the present Bill. The aim being the provisions of means by which a debtor will be in a position to "ascertain periodically" the actual state and composition of his accounts, it follows that a debtor must receive at stated intervals an itemised statement of his accounts. The debtor being too weak and unintelligent to demand a statement, of his accounts, this aim could only be secured by imposing a statutory obligation on the creditor to send a six-monthly statement of accounts to his debtors. That the debtor is really helpless in such matters will be apparent from the fact, so well known to all who are directly or indirectly connected with Courts, that he can very seldom, if ever, obtain a receipt for what he repays to his creditor unless he is prepared to pay off the whole of his debt.

In view of what has been stated in the preceding paragraph, it is vitally important to secure three things if the present Bill is to be anything more than an empty gesture :—

- (a) No loopholes should be allowed to remain for the evasion of the Bill ;
- (b) To make the Bill really effective, the sanction to enforce its provisions should be stern and unqualified ;
- (c) Nothing or little should be left to the discretion of Courts.

The loopholes which, we fear, exist in the shape of items (ix) and possibly (iii) of sub-clause 7 of clause 2, Item (ix) will be freely used by money-lenders to cover their loan transactions under. We wanted these items to be deleted but were defeated by the Official Members having made common cause with the remaining non-official Members. Similarly we are not at all sure of the effect of private companies being exempted under item (iii) in spite of the safeguard which has been added in the shape of a system of audits.

We cannot help feeling that the sanction provided in Section 4 (a) is entirely inadequate. The disallowance of costs or interest or both, whether in whole or in part, will prove futile. A creditor can easily avoid the consequences of non-compliance by including beforehand in the principal to be entered as advanced, a sum equal to the interest that may accrue up to the time of suit and the costs that may have to be incurred. A necessitous customer cannot resist such a demand by the creditor if the latter chooses to make. In fact the danger is that order to evade the law the creditor will generally fortify himself behind a fictitiously swollen entry of principal, and unless the dismissal of claim *in toto* is provided as a sanction the provisions of the Bill will be rendered nugatory. Sir John Maynard was a keen advocate of this sanction and, while he was prepared to allow time before the sanction was enforced in its entirety, he would not hear of any other sanction as a substitute. Mr. Calvert, who has such an intimate knowledge of the economic conditions and habits of the people, is of the same opinion.

And after all where does the hardship come in? The State lays down certain conditions under which alone it will lend its aid for the recovery of private debts. A creditor refuses to comply with those condi-

tions; the judicial machinery of the state refrains from coming to his help. What right has that creditor to complain if the state refuses to lend its aid to him? Has he not placed himself in the wrong by refusing to comply with the clear injunctions of the law? Can any State afford to see its laws thwarted or slighted? While the State is anxious enough to enact fiscal laws non-compliance with which puts suitors out of Court, why should it be so reluctant to enact a similiar measure when the interests of a helpless section of its subjects require it?

Courts should be allowed little or no discretion under this Bill. If such discretion is allowed, that discretion will almost invariably be used in favour of the creditor. The present complexion of the judiciary in this province as well as in others, is not calculated to inspire confidence in the debtor classes. It is a notorious fact that the sympathies of the judiciary are with the creditors. As observed by Mr. Calvert, this indictment of the judiciary is fully borne out by the complete failure of the Usurious Loans Act. If any further proof was needed, it has been furnished by the opinions which have been received on this Bill from judicial officers.

Some of us would also have liked the deletion of sub-clause (2) of clause 3. After all there is no real risk of any judiciary, far less our own judiciary, refusing to recognise accounts books maintained under a statutory obligation, as books maintained in the regular course of business and thus relevant under Section 34, of the Indian Evidence Act. This being so, the sub-clause is superfluous if it is not designed to go beyond the scope of Section 34 of the Indian Evidence Act. On the other hand, if it is designed to go beyond the scope of that section, it is undesirable to retain it because the

present Bill is not meant to provide fresh advantages for the creditor.

The deletion of the words "by itself" also seems desirable. If these words are allowed to stand, any flimsy circumstance would be pressed into service in order to raise the presumption of correctness about the accounts sent and not challenged.

The 12th November 1929. CHHOTU RAM—12-11-29.
HABIB ULLAH—12-11-29.
AKBAR ALI—12-11-29.
FIROZ-UD-DIN—12-11-29.

MINUTE OF DISSENT.

Clause 2, sub-section (4). Should be deleted.

Clause 2, sub-section 7, section V. I strongly object to this being deleted. The deletion of this will alter the whole scope of the Bill; all the criticisms have been received with the knowledge that this exemption will prevent this Bill interfering with ordinary business transactions; if this exemption had not appeared, there would have been a storm of protest from all commercial circles, and if this deletion is insisted on, the Bill should be recirculated. This deletion was not contemplated at the meetings I attended when the matter was discussed.

Clause 3, sub-section (1) (a) should read: "Regularly record and maintain an account for each debtor separately." It seems to me that a six-monthly detailed statement as provided for in sub-section (1) (b) should suffice and would interfere less with *bona fide* business concerns.

Sub-section (1) (a) and (b) as now read are not clear as to whether the accounts must be kept in actual

Government books, or merely in the form required by Government.

Clause 3, sub-section (2).—Explanation should be deleted as some obligation should be on both sides.

Clause 5.—As originally drafted should remain.

Clause 4, sub-section (b). Insert in first line between the words "that" and "the" the words "if without sufficient cause," and in the last line the word "may" be substituted for "shall".

V. F. GRAY—121-1-29.

MINUTE OF DISSENT.

We very much regret that we cannot agree with the Bill as redrafted by the majority of the Select Committee. We have already expressed our opinions that no case has been made out for introducing such a Bill in the Council. The evil which it is claimed to remedy hardly exists in any noticeable degree at the present moment.

It has become fashionable with a certain class of people to talk about "simple-minded *zamindars* and cunning *bunniahs*," but, as remarked by Johnstone and Rattigan, J.J. in 40 P. R. 1906, "Now-a-days the ignorant, credulous rustic is met with far more frequently in the arguments of learned counsel (shall we say the Council) than in the realities of life." If it was so in 1906, it must *a fortiori* be true in 1929.

The Government, no doubt, brought forward this Bill in fulfilment of a promise made by His Excellency Sir Malcolm Hailey in his speech made to the Council

after refusing sanction to the old Bill which had been passed by the Council. When, however, the Council by a compromise agreed that the Bill would be circulated for eliciting public opinion and the meetings of the Select Committee were for that reason postponed we expected that the Government would realize the futility of a measure like the present one in view of the strong condemnation of its provisions by the Honourable Judges of the High Court and by the various experienced and learned District Judges and by some of the well-informed members of the public and the press

We venture to think that His Excellency Sir Malcolm Hailey did not contemplate bringing forward a Bill like the present one which, milder as it is in comparison with the old Bill, is still a very harsh and undesirable measure.

Assuming, however, that some sort of Bill of this kind has to be placed before the Council, we think it necessary to point out the defects from which the Bill suffers even after it has been remodelled by the Select Committee.

We are of opinion that it is not necessary to bring the whole province by one sweep under the operation of this law and it would be much wiser to try its effects in a single district or a group of districts before making it of universal application in the whole province.

The time recommended by the Select Committee for the coming into force of the Bill, *viz.*, six months after the final publication of rules, is too short to familiarise the people with the provisions of the law which are absolutely novel in their character and practically lay a trap for the unwary though entirely innocent money-lender and expose him to heavy penalties

for failure to comply with them. We would recommend that at least two years' time should be given to enable the parties concerned to become familiar with the provisions of the law and to allow time to the illiterate money-lenders to wind up their business altogether and find out some other occupation as such money-lenders would find it impossible to carry on their business when the Bill becomes law.

We are of opinion that clause 2 (4) should be totally omitted as the inclusion of Insolvency Court in the definition of a Court would create great complications and would prolong insolvency proceedings.

In clause 2 (7) we recommend that the words "And shall include any transaction which the Court finds to be in substance a loan" should be deleted as it would lend to great complications and impose too difficult a duty on the Courts.

We strongly oppose the deletion of exemption (c) from clause 2 (7), and we are of opinion that, unless this clause is restored with suitable amendments, if necessary, a great hardship would be caused to persons who are carrying on *bona fide* business not having for its primary object the lending of money who may happen to advance a loan directly or indirectly in pursuance of such business. It should also provide for the protection of a person who happens to advance a casual loan.

In clause 2 (9) we would recommend the inclusion of a money-lender. We would also exempt loans advanced to such persons as Pleaders, Judges, Engineers, Civil Servants and such other people who by their education and position not only do not require any protection, but would resent receiving any half-yearly

notices from their creditors in the manner sought to be provided under the Bill.

We would also recommend that a loan advanced on a registered bond, the consideration of which is duly acknowledged by the borrower before the registering authority, should also be exempted from the operation of the law.

As regards clause 3 (b), we are emphatically of opinion that it is absolutely unnecessary. The object of the Bill would be fully served by providing that a creditor shall be bound to supply a copy of the accounts on demand by the borrower and on his offer to pay for the copy, as has been recommended by the Hon'ble Mr. Justice Agha Haidar. In any case, it should not be obligatory on the creditor to send any accounts to the borrower if no transaction has taken place during the half-year, nor when the borrower by a writing in his own hand exonerates the creditor from compliance with 3 (1) (b).

In our opinion clause 3 (1) (c) laying down that the Local Government shall prescribe the forms, language, scripts and numerals in which the accounts are to be recorded and maintained should be deleted, restricting the authority of the Government to the prescribing of numerals only, such as was provided for in the old Bill passed by the Legislative Council and it should be made clear in the statute that the Government shall not prescribe any language or script as was originally decided by the Select Committee unanimously after two days' discussion.

We are also of opinion that the Bill should not be taken into consideration until the Government has also framed the rules so that it may become quite clear

what duties are going to be imposed upon creditors under this law.

As regards the first proviso to clause 3 (1), we are of opinion that six months' time allowed to widows and minors is too inadequate. The widows should be altogether exempt from the operation of the Act, and minors should be exempt until the attainment of majority.

We are strongly of opinion that the explanation appended to clause 3 (2) should be deleted. In our opinion, some reciprocal duty should be cast upon the borrower, and the natural presumption from his silence and failure to protest on receipt of accounts should be made against him. Moreover in our opinion, if no duty whatsoever is cast upon the borrower, the object of the Bill would be defeated as he would rarely, if at all, take the trouble of looking at the accounts at all.

As to clause 4 (a), we are of opinion that the words "if necessary" as existing in the original draft should not have been deleted. It will, as pointed out by the Hon'ble Judges of the High Court, simply prolong litigation. Moreover, it is against fundamental principle of law that the Courts should be bound to raise issues on matters on which the parties are themselves not at issue.

As regards clause 4 (b), we are strongly of opinion that the penalty prescribed is still extremely excessive, and we think that the object of the Bill would be served if the disallowance of a portion of the interest and costs is left to the discretion of the court. Leaving the court no discretion whatsoever even in the matter of costs, is against all principles of jurisprudence, and we are entirely at one with the Hon'ble Mr. Justice Agha Haidar that costs should be left in the discretion of the Court.

It is really unfortunate that the Select Committee should have paid no attention whatsoever to the opinions given by the Hon'ble Judge of the High Court exposing the inequity of disallowing costs if a defendant has set up utterly false defences and has put the plaintiff to heavy expense in establishing his case in Court after a prolonged trial. If no discretion is left to the Courts even in the matter of costs, it is bound to encourage defendants to put up false defences and prolong the case and ruin the plaintiff's because they would know that even if the plaintiff succeeds he is not going to get any costs against them.

We are not aware of any such procedure in any civilised country. Another serious defect in this sub-clause is that no provision has been made for a sufficient cause having prevented the creditor from complying with the provisions of clause 3 (1) (a).

As regards clause 4 (c) also, we are of opinion that the penalty is still too severe.

Clause 5 has been entirely changed by the Select Committee, and we are of opinion that it has become utterly, useless as the Bill under the remodelled clause is bound to have a retrospective effect and would envelope almost all old accounts within its operation.

As regards clause 6, in view of what we have said above sub-clause (2) (i) should be entirely deleted or modified in the light of our foregoing remarks. We are of opinion that the Bill has been so materially altered that it requires republication.

GOKAL CHAND NARANG
MOHAN LAL.

The 13th November 1929.

MINUTE OF DISSENT.

I am in general agreement with the recommendations of the Select Committee, but deem it my unpleasant duty to record my dissent on the following points :—

(1) I am anxious with the majority of my colleagues, to ensure that this Act should not be applied to the traders as such except to the minimum extent necessary to prevent whole-sale evasions by the class against whom the ignorant borrower needs protection. The line, however, between the dyarchy of functions,— *i. e.*, advancing of loans and charging interest on cash balance *as a business* of an average rural “creditor” is very subtle, and it would be easy for the unscrupulous type, and it is this class that really needs some check, to enter loans as sales to evade this Act entirely. I hope I am not guilty of any impropriety or breach of Select Committee etiquette in recording the fact that the reality of this danger was not fully appreciated and discussed by the Committee, and that even certain alternatives were favourably considered which would eliminate the danger without interfering with the legitimate trade in Municipal areas, cantonment, and even in rural areas if the interest charged on such (rural) trade balances does not exceed some reasonable specific rate. It was, however, thought later than such amendments could be made, if considered necessary, after the practical working of the Act has been closely followed, and as such, I have agreed to let the relevant provisions have a trial. I would, however, strongly urge that in view of the peculiar circumstances, the important, and the new grounds covered by this Act, effective arrangements should be made by the Government to watch the results of its application in actual practice, and that six-monthly statements of the results of its working should be laid on the table of the Council.

(2) I have no fetish for non-suiting as a penalty and I have seriously endeavoured to hit on any other alternative which may not appear so drastic and yet be effective. I have failed to do so, and in this matter I found myself in good company in the last Select Committee with such an experienced administrator as Sir John Maynard. In fairness, the sole criterion for the Government and the House to decide this question should be the minimum of sanction necessary to make the Act effective. Applying this standard, I hold that the penalty now proposed is not effective. I would strongly press its amendment and would be willing to consider any practical alternative, of gradually or successively increased penalty, provided ultimately it is non-suiting. Moreover, in order to give further latitude in this matter I would be prepared to incorporate some such provisions that non-suiting shall ordinarily be the penalty unless there is strong cause shown to award some lesser penalty provided the minimum penalty is also prescribed.

MAQBOOL MAHMOOD.

19th November 1929.

Appendix No. 7.

BILL AS AMENDED BY THE SELECT COMMITTEE.

[The amendments made are shown in Italics.]

A Bill to regulate the keeping of accounts of certain transactions.

Where as it is expedient to make provision for regulating the keeping of accounts relating to certain transactions in the Punjab, and whereas the previous sanction of the Governor-General *under section 80-A (3) of the Government of India Act* has been obtained; it is hereby enacted as follows:—

Short title, extent and Commencement. 1. (1) This Act may be called the Punjab Regulation of Accounts Act 192

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may by notification, appoint in this behalf.

Provided that this date shall not be earlier than six months after the date of final publication of the rules made under section 6.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context

(1) "Bank" means a company carrying on the

business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature.

(2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.

II of 1912. (3) "Co-operative Society" means a society registered under the provisions of Co-operative Societies Act, 1912.

(4) "Court" includes a court acting in the exercise of insolvency jurisdiction.

(5) "Creditor" means a person who in the regular course of his business advances a loan as defined in this Act and shall include the legal representatives and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan.

(6) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(7) "Loan" means an advance whether of money or in kind at interest and shall include any transaction

which the court find to be in substance a loan, but it shall not include :—

- (i) a deposit of money or other property in a Government Post Office Bank or any other Bank or in a company or with a co-operative society.
- (ii) a loan to or by or a deposit with *any society or association registered under the Societies Registration Act, 1860 or under any other enactment.*
- (iii) a loan advanced by a Bank, a company or a co-operative society ;
- (iv) a loan advanced by a bank, *a co-operative society or a company whose accounts are subject to audit by certificated auditor under the Companies Act.*
- (v) a loan advanced to a trader ;
- (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note ;
- (vii) a transaction which is, in substance, a mortgage of immovable property or a sale.

(8) "Prescribed" means prescribed by rules made under this Act.

(9) "Trader" means *a person who in the regular course of business buys and sells goods or other property whether movable or immovable, and shall include:—*

a wholesale merchant.

a commission agent.

a broker.

a manufacturer.

a contractor.

a factory owner.

Duty of creditor to maintain and furnish accounts

3. (1) A creditor shall in order to comply with the provisions of this Act—

- (a) *regularly record and maintain, in addition to such accounts as he may ordinarily maintain, an account for each debtor separately, of all transactions relating to any loan advanced to that debtor, in such manner as the Local Government may prescribe.*
- (b) if on the thirtieth day of June or on the thirty-first day of December in any year any balance or amount is due to him from a person on account of a loan, send to such person before the thirty-first day of July or the thirty-first day of January next following, a statement of account including an account of all transactions, if any, relating to the loan during the next preceding six months in such manner and in such form, and containing such details as the Local Government may prescribe.

Provided that—

- (i) *the Local Government shall prescribe the forms, language, script and numerals in which the accounts required by the provisions*

of this sub-section are to be maintained and furnished;

- (ii) *the prescribed accounts shall be so kept that items due by way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained. The creditor shall not in the absence of agreement, include the interest or any portion of it in the principal sum; and the principal and interest shall be separately shown in the opening balance of each new six-monthly account;*
- (iii) *if the loan has since it was originally advanced, passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account prescribed by this section for a period of six months from the date of such passing;*
- (iv) *nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the prescribed account in the case of a loan wherein the title to recover is sub-judice unless and until the title has been finally decided by a court of competent jurisdiction.*

(2) *Entries in the account prescribed under clause (a) to sub-section (1) shall be deemed to be regularly kept in the course of business for the purpose of section 34, Indian Evidence Act, 1872, and copies of such entries certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.*

Explanation. A person to whom a statement of account has been sent under clause (b) of sub-section (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall not, by itself, be deemed to be an admission of correctness of the account.

Penalty for non-compliance with the provision of section 3.

4. Notwithstanding anything contained in any other enactment in force for the time being :—

- (a) in any suit or proceeding relating to a loan, the court shall if necessary before deciding the claim on the merits, frame and decide the issue, whether the creditor has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3;
- (b) if the court finds that the provisions of clause (a) of sub-section (1) of section 3 have not been complied with by creditor, the court shall if the plaintiff's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as may seem reasonable to the court in the circumstances of the case and shall disallow cost ;
- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the creditor, the court shall in computing the amount of interest due upon the loan exclude every period for which the creditor omitted duly to furnish the account as required by clause (b) of sub-section (1) of section 3 provided that if the creditor has after the time prescribed in that clause furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission,

include any such periods for the purpose of computing the interest.

Explanation. A person who has kept his accounts and sent his six-monthly statements of accounts in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 3 shall be held to have complied with the provisions of these clauses, in spite of errors and omissions, if the court finds that the errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

5. The provisions of this Act shall not apply to any loan advanced before the commencement of this Act.

Savings.

Provided that, if any fresh transaction relating to a loan advanced before the commencement of this Act, is made after the commencement of this Act, such transaction shall be subject to the provisions of this Act.

6. (1) The Local Government may make rules not inconsistent with the Act for the purpose of carrying out all or any of the provisions of this Act.

Power of Local Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, the Local Government may make rules :—

- (i) prescribing the forms, language, script and numeral to be used in the accounts required by clause (a) of sub-section (1) of section 3;
- (ii) prescribing the manner in which the

accounts required by clause (b) of subsection (1) of section 3 shall be submitted by the creditor to the debtor, the forms to be used and the details to be incorporated therein.

Provided that before making any rules under the provisions of this section, the Local Government shall in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act 1891 publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby at least thirty days before a meeting of the Punjab Legislative Council. The Local Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Council next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.

Appendix No. 8.

Relevant Provisions of The Negotiable Instruments Act, 1881.

OF NOTES, BILLS AND CHEQUES.

4. A 'promissory note' is an instrument in writing (not being a bank note or a "Promissory note." currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Illustration.

A signs instruments in the following terms:

- (a) "I promise to pay B or order Rs. 400.
- (b) "I acknowledge myself to be indebted to B in Rs. 1000 to be paid on demand, for value received".
- (c) "Mr. B. I.O. U. Rs. 1000."
- (d) "I promise to pay B Rs. 600, and all other sums which shall be due to him."
- (e) "I promise to pay B Rs. 500, first deducting thereout any money which he may owe me."
- (f) "I promise to pay B, Rs. 500 seven days after my marriage with C."

(g) "I promise to pay B, Rs. 500 on D's death, provided D leaves me enough to pay that sum."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g), and (h) are not promissory notes.

5. A "bill of exchange" is an instrument in writing containing an unconditional order, issued by the maker directing a certain person to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

7. The maker of a Bill of exchange or cheque is called the "drawer" the person thereby directed to pay is called the "drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in any case of need such person is called a "drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor."

When a bill of exchange has been noted or protested for non-acceptance or "Acceptor for honour." for better security, and any person accept it *supra* protest for honour of the drawer, or of any one of the indorsers, such person is called an "acceptor for honour:"

The person named in the instrument, to whom or "Payee" to whose order the money is by the instrument, directed to be paid, is called the "payee."

13 (1) A negotiable instrument means a promissory "Negotiable instrument." note, bill of exchange or cheque payable either to order or to bearer.

Explanation (i). A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation (ii) A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an endorsement in blank.

Explanation (iii) Where a promissory note, bill of exchange or cheque, either originally or by indorsement is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made pay-

able in the alternative to one of two, or one or some of several payees.

When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Note. It should be carefully noted that the interest is to be charged on the principal money due on promissory note or a bill of exchange.

Code of Civil Procedure, S. 532.— This section is of the Code of Civil Procedure, 1882 to which corresponds Order XXXVII, Rule 2, "Summary Procedure on Negotiable Instruments" of the Code of Civil Procedure, 1908. I give below Sections 1 and 2 of Order XXXVII as amended by Act XXX of 1926):-

Where no rate of interest specified in the instrument:— Where no rate of interest is specified in the instrument, and the case is brought in courts, other than those mentioned in Rule 1 of Order 37 of the Code of Civil Procedure, 1908, then interest at 6 per-centum *per mensem* shall be calculated.

But, where the suit is lodged in any of the courts, mentioned in Rule 1 of Order XXXVII of the Code of Civil Procedure, 1908, and no rate of interest is specified in the instrument, then, no interest will be allowed (Vide 30 C. 416).

Presumptions as to negotiable instruments. 118. Until the contrary is proved, the following presumptions shall be made :—

- (a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;
- As to date. (b) that every negotiable instrument bearing a date was made or drawn on such date
- (c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;
- As to time of transfer. (d) that every transfer of a negotiable instrument was made before its maturity.
- As to order of indorsements ; (e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.
- As to stamp. (f) that a lost promissory note, bill of exchange or cheque was duly stamped ;
- That holder is a holder in due course. (g) that the holder of a negotiable instrument is a holder in due course ; provided that, where the instrument has been obtained from its lawful owner, or from any person

in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

NOTES.

Burden of proving consideration-when shifted.—
Where the recital of the consideration in the promote is admittedly false, the burden of proving the consideration is shifted on to the holder of the promissory note as against the maker of the note himself :—

A. I. R. (1928) M. 773 See also (1915) 29 M. L. J. 236 F.; 30 I. C. 971 = (1915) 31 I. C. 739; (1896) 20 B. 367.

Appendix No. 9.

RELEVANT PROVISIONS OF THE CODE OF CIVIL PROCEDURE, 1908.

Section 20. Subject to the limitations aforesaid, every suit shall be instituted in a Court, within the local limits of whose jurisdiction—

Other suits to be instituted where defendant resides or cause of action arises

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencements of the suit actually and voluntarily resides, or carries on business, or personally works for gain or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside or carry on business or personally work for gain, as aforesaid, acquiesce in such institution ; or—
- (c) the cause of action wholly or in part, arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation. II.—A Corporation shall be deemed to carry on business at its sole or principal office in

British India or in respect of any cause of action arising at any place, where it has also a subordinate office, at such place.

ILLUSTRATIONS.

(a) A, is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta buys goods of A to deliver them to the East India Railway Company. A delivers goods accordingly in Calcutta. A may sue B for the price of goods either in Calcutta, where the cause of action has arisen, or in Delhi where B carries on business.

(b) A resides at Simla, B. at Calcutta and C. at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

COMMENTARY

Scope.—By virtue of the provisions of S. 120 of the Civil Procedure Code, this section has no application to the High Courts in the exercise of their original civil jurisdiction. This section is very often requisitioned to determine the question of jurisdiction in the cases, not covered by Sections 16 to 19. A Court cannot decide any other question, before it can find itself vested with jurisdiction. (1)

This section provides that it is optional with the plaintiff to file his suit either (1) where the cause of action has wholly or in part arisen or, (2) where the defendant actually and voluntarily resides, or, (3)

where in case of more defendants than one, some actually and voluntarily reside, or carry on business or personally work for gain and the other defendants acquiesce or the leave of the Court is granted.

Foreigners.—In the case of non-resident foreigners if the cause of action arises in British India, the Courts have jurisdiction. But there is a conflict of authority if the non-resident foreigner carries on business through an agent in British India and the cause of action does not arise here though the balance of legal opinion inclines to the view that as carrying on business need not be personal, the British Indian Courts have jurisdiction.

For commentary on the clause “actually and voluntarily resides”, vide also section 16. Temporary residence in a place where the cause of action has arisen, is also included in the term “resides”.

Referring to 2 Bom. L. R. 605 (1878) (Ugar Chand V. Suraj Mal) and I L. R. 3 All. 91 (P. C.)-7 L.A. 196 (Orde V. Skinner) Sir Donald Johnstone, C. J. Lahore, held that where the defendants lived and carried on business in Peshawar for 40 years, without an apparent intention of returning to their old home at Nurpur, their place of residence was Peshawar (1). For the interpretation of the word “reside” See 3 All. 91 P. C. and 2 B. L. R. 605.

Time.—For the purpose of this section reference is to be made to the state of things obtaining at the time of the commencement of the suit. It is the place of residence then, that determines the *forum* of the suit, (2).

Cause of action.—The whole of a cause of action is always made up of two parts (1) incidence of right in

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1. Guranditta Mal v. Ram Das. 112 P. R. 1917.
 2. Narayan v. Secy. of State, 30 B. 570 (1906).

the plaintiff or in other words, the circumstances which show that the right assailed, resides in the aggrieved person and (2) the infraction or invasion of that right. Often, it is the breach of the right that is looked to. In its wider and more complete sense, it is the infraction of the right plus that right itself.

The "cause of action" means the cause of action-set out in the plaint (*Chand Kaur v. Partab Singh*. 15 L. A. 156: 16. C. 98 at p. 102).

In the simple example of a contract and the breach of that contract, it means "both the making of the contract and its breach". The expression means every fact necessary for the plaintiff to prove in order to establish his right to the judgment of the Court. (1). It has strictly speaking, no reference to the evidence necessary to prove each fact, though the nature of evidence to be adduced is used sometimes as a test of the identity of two causes of action.

Section 20 and Presidency High Courts.—So far as this section goes, a part of the cause of action, as well as the whole of it, confers jurisdiction. In the case of the Presidency High Courts, however, this section is inapplicable and their jurisdiction is determined by clause 12 of the Charters, which lays down that the whole cause of action should have arisen within the jurisdiction of these Courts. It does not depend upon the nature of the defence to be set up or upon the nature of the relief prayed for, in the plaint.

INSTANCES OF CASES.

(1) Although an offer made by letter does not become a contract binding against the promisee until acceptance thereof is communicated to the promisor. the communication of such acceptance does not make

1. *Muhamad Yakarwaja v. Muhamad Haffi* 39 Act 506

any change in the place where the contract is made but only affects the time of its coming into force.

The proposal of the plaintiff having reached defendant at Bombay and having been accepted at that place, the contract of the parties should be deemed as made at Bombay (Muhammad Sharif v. Karamat Ali, 79 P. R. 1896, and 57 L. C. 636).

(2) Where the goods are sent by Value Payable Post, the suit lies in the Court of the place, where the goods were to be delivered and money to be paid (Ram Lal v. Bhola Nath. 59 I. C. 359 ; Boseck and Co. v. Mandleston, 70 P. R. ; 1906).

(3) A merchant at Lahore sent a certain amount of money as advance to a merchant at Cochin under a contract which provided that for the balance the Cochin Firm was to draw bills upon the Lahore Firm. It was held that the suit lay at Lahore where the contract was completed (Pranji Khetsey v. Ghulam Sarwar 36 P. R. 1908).

(4) Where goods were delivered to N. W. R. at Ludhiana and consigned to a station in East Bengal it was held that in case of loss, the plaintiff could sue N. W. R. at Ludhiana or defendant company (E. L. R.) (111 P. R. 1912).

(5) Suits for dissolution of partnership, carried on in the Jammun State, though parties's home is in Gurdaspur where part of the funds were subscribed lies in the Jammun courts and the Gurdaspur Court has no jurisdiction (42 P. R. 1916).

(6) The death of a person insured with the Hindu F. R. Fund at Lahore occurred at Lyallpur. It was held that the cause of action arose partly at Lyallpur as (1) the death took place there and (2) the agent of the Firm was working at Lyallpur and therefore the

suit lay at Lyallpur (Punjab Mutual Hindu F. R. Fund v. Sardari Mal, 99 P. R. 1918 relying on 22 Q. B. D., 128, Read v. Brown).

(7) A contract made in the Ambala District but broken outside lies in the Courts of the Ambala District (Sita Ram v. Ram Chandra, 26 P. R. 1918).

(8) Suit on a contract with a Commission agent for the sale of goods in the absence of an express agreement, cannot be brought at the Principals' place of business as under the Contract Act, there is no liability for a Commission agent to render accounts to his Principal at his place of business (Devi Dayal and another v. Hari Chand and another, 79 P. R. 1902).

(9) Plaintiffs who carried on business at Khanna in the Ludhiana District, sent an order by wire to a Firm at Khamgaon in U. P. to purchase oil seeds.

The defendants wired acceptance but failed subsequently to supply the goods. Held, that Khamgaon was the proper place of suit, inasmuch as that was the place where the defendants carried on business and where money in the ordinary course of things, was to be paid (Asa Ram-Kalu Ram v. Bakhshi Ram-Kaushya Ram, I. L. R. 1 Lah. 203).

(10) If a proposal is made from Karachi and accepted at Calcutta the cause of action for the breach of the contract must be taken to have accrued at Calcutta (Firm of Vishinji Goverdhan Das v. Firm of Jesraj Girdhari Lal, 12 S. L. R. 93=50 I. C. 146).

(11) A betrothal contract was made at Tarn Taran. A suit for the breach of the same can be entertained in the Tarn Taran Court, although the parents of the girl might then, be residing in Sialkote (Bhag Singh v. Labh Singh, 93 P. R. 1916).

(12) "A corporation resides wherever it carries on its business, irrespective of the location of its head office and if a corporation such as a Bank has 50 branch offices it has fifty separate and distinct jurisdictions and a suit can be brought in any one of such Courts for the enforcement of a right in respect of which a cause of action exists, within the limits of each independent jurisdiction (Bank of Bengal V. Sarat Chandra Mitra, (1919) Pat. 155=48 I C. 943.)

(13) In case, the provisions of Section 20 (b) C.P.C have not been complied with the only course open to a Court is to reject the plaint (46 Bom. 229).

(14) Where a creditor has paid money for his debtor a suit can be brought at the place where such payment has been made by the creditor (90 P.L.R.1909 =4 I. C. 971).

(15) A decree was obtained at Calcutta. A suit to set it aside as having been obtained by fraud, lies in Calcutta, alone (Dandial v. Minna Lal, 36 All. 564: 24 I. C. 978).

(15a) But where the decree was obtained, in one court and sent for execution in another, the suit for the decree to be set aside on the ground of fraud may be laid in either Court. The Court at the place other than where the decree was passed, has jurisdiction as part of the cause of action having arisen there (a) when only an execution application has been lodged and nothing beyond has been done (Banke Behari v. Pokhe Ram 1903, 25 All. 48), (b) when the executing Court has taken some steps *e. g.*, attachment or arrest etc (Kedar Nath v. Prosonno Kumar 1901; 5. C. W. N. 559; Khushali-Ram v. Gokal Chand, (1917) 39 All. 607, following Banke Behari v. Pokhe-Ram 25 All. 48 and Jawahir v. Neki Ram, 37 All. 189 and distinguishing

Umrao-Singh v. Hardas 29 All. 418, Din-Dyal v. Munna Lal, 36 All. 564).

(16) The Court of the place, where a promissory note is assigned can entertain the suit by the assignee (Manepalli v. Sathiraju, 31 M. L. J. 816=37 I. C. 618). An assignment of a claim whether voluntary or by virtue of adjudication of the person in whom that claim resides forms a part of the cause of action in a suit in respect of that claim and the Court within whose limits the said assignment takes place can entertain the suit.

(Official Receiver v. Narain-Das. A.I. R. 1926. Sind 31 Contra A.I. R. 1929 (C) p. 306 at p. 307; 57 P. R. 1900 (F. B). (but this is old law).

(17) Where a promote not expressly payable at Delhi was delivered there, to the payee, the presumption of its being payable, there, confers jurisdiction on the Delhi Court, 2 P. R. 1916. Muhammad Ishaq Khan v. Muhammad Islam Ullah Khan and others.

(18) Suit on a Hundi drawn at Jammun and payable at Sialkote, lies in Sialkote Court (Gholu Shah v. Pandit Kirpa Shunker, 21 P. R. 1894).

(19) Unless there is specific agreement, that the accounts were to be taken elsewhere, the place of business is the only proper one for a suit for the taking of accounts of a partnership business (Niranjan Singh v. Kundan Singh, 17 A. L. J. 1015=52 I. C. 655).

(20) In a suit by husband for the re-titution of conjugal rights against his wife, the husband's place of residence determines the Court of jurisdiction (Chhittar v. Harju. 54 I. C. 120 (All).

(21) There must be strong reasons for depriving a plaintiff of the right to bring his suit in any Court in which the law allows and the fact that the defendant's evidence in regard to one of the issues is mainly in an other place,

is not a sufficient ground for transferring the case to that place (Shiva Prashad v. Kanhaya Shah. 167 P. R. 1919 =54 I. C. 935).

(22) In a suit for the infringement of the copy-right or trade-mark, the suit should be brought either where the defendant resides or where the infringement has taken place. (Ram Kishen v. Piyare Lal, 34 All. 21=7 I. C. 101).

(23) Cause of action money-recovered under decree-subsequent decision of the Privy Council between same parties-absence of reversal or supersession of former decree-Zamindar and Tenant-decrees as to proper *patta*.

Held, that the money recovered under a decree can not be recovered back in a fresh suit, while the decree under which it was recovered remains in force.

Held, also that the decision of the Privy Council had not superseded the decrees under which the rent had been paid. (Naganna V. Payya 46 M. 895; Shama V. Hurro, 10 M. I. A. 203 foll. 3 C. 30 (F. B.) dis-approved).

(24) The plaintiffs who were grain dealers ordered the defendant, who was a Commission Agent at Karachi, to purchase some grain for them. The latter did so, and sent R. R. per V. P. P. The defendant instructed the Railway authorities not to deliver goods till balance of the price was paid. The Railway officials at Hathras refused delivery and delay occurred. The market fell in the meanwhile. Held, that the case was for compensation under S. 212, I. C. A. and that the cause of action arose at Karachi (Salig Ram V. Choha Mal, 34 All. 49).

(25) **Suit for setting aside a decree, plus injunction : jurisdiction in courts where execution taken out :—**25 All. 48 ; 37 All. 189 ; 39 All. 607 ; All India Reporter 1923 C. 425 ; 41 C. 990 ; 28 C. 475 (P. C.) ; 29 C. 395 See also A. I. R. (Lah.) 1924 (p. 398).

Contra.—29 All. 418 ; 36 All. 564 ;

(26) The assignment of a pronote, by a payee, is a part of the cause of action, under S. 20, C. P. C. (37 I. C. 681).

(27) **Suit by principal against agent.**—Held, that a suit for accounts against an agent arises where the contract of agent was made or where it was performed and where the refusal to account took place. (6 Lah. 153.)

(28) **C. P. C. S. 20—Debtor and creditor—no place fixed for payment—pre-sumption of law-duty of debtor to seek creditor.** Held, that in the absence of a covenant, the borrower ought to seek out the lender for payment (Gokal v. Aactin, 48 A. 310).

(29) **Jurisdiction—place in which the cause of action arises, duty of debtor to seek creditor—Limitation of duty Code of C. P. C. S. 20.** Held, that the duty of a debtor to find out and pay the creditor is imposed upon him only, if the creditor is within the realm. (Bansi Lal v. Ghulam. 53 C. 88).

(30) **C. P. C. S. 20—Decree obtained at Karachi—Attachment at Amritsar—Jurisdiction—suit for setting aside decree and for injunction ;** Held, that the cause of action arose partly, at Karachi and partly at Amritsar (Jawahar Singh v. E. D. Sassoon 7 Lah. 61 foll. 25 All.

48; 37 All. 189; 39 All. 607; 5 C. W. N. 559; distinguished 29 All. 418).

(31) If a firm at Calcutta draws *Hundi* upon a firm, at Madras, which is ultimately, honoured by the latter firm by payment at Madras, the payment has been made at Madras and a suit arising out of overpayment arises partly, at Madras. (Ponnusami V. Damodar, 47 M. 403=8; 1. C. 309; A. I. R. (1924) M 464.

(32) C. P. C. S. 20---Cause of action-meaning: Held, that for the purposes of a suit on a contract the cause of action includes the making of the contract, performance or completion of performance of the contract, and the payment of money, under the contract. [The Jupiter General Insurance Co. v. Abdul Aziz, A. I. R. (1924) (Rangoon) 2.]

(33) 'Cause of action' refers to the grounds set forth in the plaint as the cause of action and has no relation, whatever to defence, nor, does it depend upon the character of the relief prayed for by the plaintiff. In other words, it refers to that *media* upon which the plaintiff asks the Court to arrive at a conclusion in his favour. A. I. R. (1925) N. 54.

(34) The term 'cause of action' as used in this section means the whole bundle of material facts, which it is necessary for a plaintiff to allege and prove in order to entitle him to succeed. (11. B. 649; 29 B. 368; 22 C. 45; 35 M. L. J. 189=1918 M. W. N. 521=24 M. L. T. 209=47 I. C. 708; 78 I. C. 991.)

(35) Act IX of 1887 (Provincial Small Cause Court Act), S. 16---Suit cognizable by a Court of Small Causes,

but tried by a Munsiff--question of jurisdiction raised in appeal.

Held, that an objection to the jurisdiction must be taken notice of by any court however late it may be raised, if it happened that on the facts admitted or proved, it is manifest that there is a defect of jurisdiction (49 All. 686 follg : 51 C. 361).

21. No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless, such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases, where issues are settled, at or before such settlement and unless there has been a consequent failure of justice.

COMMENTARY.

Scope.—S. 21 applies only to Courts subject to the provisions of this Code (1).

The restrictions provided in this section relate only to Courts of appeal and revision; they do not fetter the hands of the Courts of the first instance. Where, therefore an original Court finds that a suit pending before it, ought to have been lodged in another Court, the plaint should be returned for presentation to the proper Court even if the plea is raised at a later stage (1).

(1) Hayatha V. Ghulam Hussain, 4 S. L. R. 264—10 I. C. 980.

In Sections 17 and 21, the word 'Courts' means only the Courts to which the Code applies.

An Appellate Court before allowing an objection as to the place of suing should consider and decide whether there has been a failure of justice in consequence of the suit having been instituted in the wrong Court. (1)

A defendant who objects to the jurisdiction of a Court, cannot be said to have acquiesced in the trial of the suit if he does not apply for transfer.

(Rattan Chand Dharam Chand v. Secretary of State, 10 C. W.N. 1340=27 I. C. 232).

Submission to Foreign judgment. The parties may expressly agree to a foreign judgment. (Copin v. Adamson L. R. 9 Ex. 345).

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of other parties, (if any), shall determine in which of the several Courts having jurisdiction, the suit shall proceed.

(1) Bhag Singh v. Labh Singh, 93 P. R. 916; Nand Kisbore v. Abdul Rahman, 42 All. 74=52 I. C. 801; F.A. Gregory v. Albert Pusch, 21 P. W. R. 1919-49 I; C. 441 Ratti Ram V. Kundan Lal, 87 P. R. 1914=26 I. C. 543.

COMMENTARY.

After notice.—Application for transfer must be made before or at the settlement of issues and not after. The words “after notice to the other parties”, in Section 22 means notice prior to the making of application.

The direction is mandatory and must be followed notwithstanding Section 151. Notice must be given not only to the opposite parties but it should be given to co-plaintiff and co-defendants too, as the case may be, who are not making the application. (1)

Grounds of Transfer.—This section does not in any way, abrogate the right of the plaintiff to choose the venue in which he would prosecute his suit. It merely lays down a provision by which justice may be secured to the parties by a trial in a perfectly judicial atmosphere and to the least inconvenience of the parties.

“A suit can be transferred only upon two grounds, viz., (a) that there will not be an impartial trial by the trying Court or (b) that there is a manifest preponderance of convenience to the petitioner, if the suit is transferred to the other Court. The convenience of the plaintiffs and their witnesses has also to be considered particularly, as they have, in the first instance the right to choose the venue in which they would prosecute their suit.” Ram Kumar Sheochand Rai V Tula Ram-Nathu Ram, (1920) A. I. R. Pat. 235=56 I. C. 920.

1. Gulab Chand V. Sher Singh, 11 P. R. 1917.

Convenience of the defendant alone, is not a sufficient ground for the transfer (1) nor is the institution of an analogous suit in another court in which the plaintiff is not a party, any satisfactory reason.(2).

In order that an application should lie under this section, both the Courts should have jurisdiction. So if the jurisdiction of one of these Courts is denied, no application can be entertained for transfer. (3)

23. (1) Where the several courts having jurisdiction are subordinate to the same Appellate Court, an application under Section 22 shall be made to the Appellate Court.

To what court application lies.

(2) Where such Courts are subordinate to different Appellate Courts, but to the same High Court, the application shall be made to the said High Court.

(3) Where such courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

COMMENTARY.

Scope of the section.—Section 23 does not apply to a suit pending in a Court, not subordinate to the High

1. *Shiva Parshad v. Kanahaya Shah*, 167 P. R. 1919-54 I. C. 935; *Askaran Baid V. Bhola Nath*, 21 O. C. 217-48 I. C. 105; *Syed Hussain V. Sajad Begam*, 30 O. L. J. 200-34 I. C. 686.

2. *Kbeta V. Garga Ram*, 8 P. R. 1894.

3. *Askaran Baid V. Bhola Nath*, *Ibid*; *Purna Chandra Mukerji v. Dhrno Kristo*, 12 A. L. J. 896-24 I. C. 318

Court. So, a case pending in a High Court on the original side, cannot be transferred.(1)

Appellate Court.—The phrase connotes that the subordination, for administrative purposes, does not matter under this section, the sole test for determining the Court, to which an application ought to be made, is that of appeals, from the Court, in which the suit is brought. So, where appeals from a certain class of cases go up to one Court and for another class to a different Court, the Appellate Court will be that to which an appeal lies as regards a particular suit.(2)

S. 34. (1) Where and in so far as a decree is for the payment of money, the Court may in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period, prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where, such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid, from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

1. The Hindustan Assurance Mutual Benefit Society v. Mul Raj, 27 M. L. J. 645,=27 I. C. 455.
2. Woodroffe and Amir Ali's C. P. C.

COMMENTARY.

This section covers only money-decrees or that part of a decree which has reference to money only. It does not apply to *mortgage-decrees*.

What interest a suitor may claim.—A creditor may claim interest on a principal (1) up to the date of the institution of the suit or, (2) also for the period between the date of the institution of the suit and the date of the decree on the principal adjudged as due or, (3) also from the date of the decree to date of the realization, calculated on the aggregate of the principal and interest adjudged as due in the decree.

This section deals with the cases Nos. (2) and (3) and does not apply to No. (1).

As regards the award of interest up to the date of the institution of the suit, the law, as it stood, before the passing of the Usurious Loans Act, (X of 1918) laid down that the Courts had no power to reduce interest, if the conditions have been duly agreed upon. (Raghu Mal B. Bandhu, 110 P. R. 1908).

The Punjab Chief Court however, has been taking a special view of the relations of a money-lender and an agriculturist debtor and the drift of the case law on the subject, has been steadily, towards the view that slight circumstances are sufficient, to create the presumption of undue influence making it incumbent for the plaintiff to rebut the same.(1) The instructions embodied in the Chief Court Rules and Orders, Vol. I, Chap. 11, S. 16, page 101. paras 16 to 19 were most

1. Ram Dhan v. Jiwan Khan, 110 P. R. 1879.

emphatic in their enunciation of the rule that the full rate of interest when the parties were money-lender and an agriculturist (and were at variance as regards the rate to be charged) should not be awarded, unless the Court was satisfied that the debtor understood the effect of these conditions, when entering into the agreement.

"In no case," begins para. 101, (where the right to recover it is disputed) "should exorbitant interest be decreed in favour of a money-lender suing a peasant proprietor or cultivator or any person similarly situated, unless the Court trying the case is satisfied, that the stated engagement on which the plaintiff seeks to recover, has been entered into by the debtor with knowledge of all the circumstances attending his position, and his liability in regard to his creditor, and of his entire free will, without undue pressure of any kind."

A great change has been effected by Act X of 1918, as regards to the suits to which it applies. It covers the suits "for the recovery of the loan made after the commencement of this Act" (*viz*, 22nd March 1918). section 3 lays down the criteria of the applicability, of the Act, which may be cited as below :—

"Notwithstanding anything in the Usury Laws Repeal Act, 1855, where in any suit to which this Act applies, whether heard *ex parte* or otherwise, the Court has reason to believe—

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties, thereto, substantially unfair.

The Court may exercise all or any of the following powers, namely, may,—

- (i) reopen the transaction, take an account between the parties, and relieve the debtor of all liability, in respect of any excessive interest.”

Where no rate of interest has been agreed upon the court will award interest at the Court-rate (*viz.* 6^p/) on negotiable instruments, *e. g.*, a cheque, a promissory note or a bill of exchange.

Among the traders in similar circumstances, the interest sanctioned by the usages of the particular trade, will be allowed.

The rate of interest from the date of the suit upto the date of decree and upto the realization is discretionary with the Court. But where a Judge in adjudging a specific sum as principal and interest, in terms dismissed “the rest of the claim,” it was held that as the claim for interest after the institution of the suit was part of “the rest of the claim,” and with it stood dismissed and the Court could not give interest by way of the amendments of its decree. (1).

A Division Bench of the Lahore High Court has held very recently, that having regard to the Order VII, Rule 7 of Civil Procedure Code, which lays down that it is not necessary to ask for general or other relief which may always, be given as the Court may think just, to the same extent as if it had been asked for, the Court has discretionary power to grant interest under

1. Civil Procedure Code by Woodroffe and Amir Ali Hasan Shah V. Sheo Prasad. 15 A. 121, 122 (1993)

Section 34 of the Code in a suit for money, although interest was not specifically asked for in the plaint (1).

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law, for the time being in force, costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid and to give all necessary directions for the purposes, aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons, in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent per annua and such interest shall be added to the costs and shall be recoverable as such.

COMMENTARY

Principles for the award of costs.—The theory, on which costs are now, awarded to a plaintiff, is that the default of the defendant, made it necessary to sue him, and to a defendant is that the plaintiff sued him without cause; costs are thus in the nature of incidental damages, allowed to indemnify a party against the expense of successfully vindicating his rights, in Court and

1. *Rup R. V Harphul*, (1921), I. L. R. 2. Lih. 255.

consequently the party to blame pays costs to the party, without fault. (1)

In awarding costs, a Court should take into account not only the conduct of the parties in the proceedings of the case, but also the circumstances, which led up to the litigation. (2)

Though the Courts have full discretion in the matter of costs, that discretion is not arbitrary and must be exercised in accordance with general principles. (3) Even, if a Court does not adjudicate on a whole case on merits and merely passes an order as to costs, the Court in passing the order as to costs, exercises a judicial discretion based upon certain principles and as such, its order is appealable. Again, an order of the Court of appeal, if it raises matters of principle is subject to second appeal. (4).

Where, an order as to costs is based upon misapprehension of facts and violation of sound-principles, the Appellate Court might reasonably interfere (5) But the High Court will not interfere in second appeal in a matter of costs, except when the Lower Court has gone wrong in some matter of principle. (6) The only principle to be borne in mind by the Courts is that in awarding.

1. *Maharaja Manindra Chandra Nandy V. Aswin Kumar Acharya*, 32 C. L. J. 168.

2. 13 C. L. J. 404-10 I. C. 90.

3. *Gobind Sabai V. Ram Chand*, 56 I. C. 971 Lah.

4. *Raghunath Raha Ram V. Ram Eatan Panday*, 52 I. C. 961 Pat.

5. *Lakshmi Bai V. Radhabai*, 42 Bom. 327-47 I. C. 762.

6. *Mussamet Jeewanee V. Hakim*, 31 P. R. 1869; *Midnapore Zemindari Co. Ltd. V. Kristo Prasad*, 41 I. C. 544 Cal.

costs, no less than in the determination of other matters in dispute, they are to exercise judicial discretion.

Where, both parties make allegations which are false, the parties may be left their own costs (1) That the case involves knotty problems of law which defy easy solution, is not a good ground for disallowing the costs of a successful party. (2)

Meaning of the phrase "*costs to be costs in the cause*" is that it is left to the Court which passes the final orders, in the case, to say, by which party such costs are to be borne.(3)

The clause, that "the costs shall abide the result" only implies that the order as to costs is to await till the decision is given in the case. It has not the effect of fettering the discretion of the trying Court as to the awarding of costs, to the appellants. The order does not make it incumbent upon the Court, below, to award costs to the person who succeeds. But if the words used were "to abide and follow the result", then it may be interpreted as conveying the suggestion that the successful party must be given his costs. The words "abide the result"- "costs in the cause" (4)

S. 35-A. (1) If in any suit or other proceeding not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is as against the objector, *false or veritious*, as

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1. Nihal Singh V. Mal Singh, 160 P. W. R. 1915.
 2. Vembu V. Sriivasa, 23 M. L. J. 638 = 17 I. C. 609.
 3. Prema V. Govinda Lal, 23 P. R. 1880.
 4. Godavarthi V. Godavarthi, 39 Mad. 476 = 29 I. C. 203.

against the objector, and if thereafter as against the objector, such *claim* or *defence* is disallowed abandoned or withdrawn in whole or in part, the court may make an order for the payment to the objector of costs not exceeding Rs. 1000.

COMMENTARY.

If the creditor has complied with the provision of clause (b) of Section 4 of the Punjab Regulation of Accounts Act, 1930, he will lose the costs, *incurred by him in the suit*. But the proposition that even if the defendant has advanced a vexatious or false defence covered by S. 35-A of the Code of Civil Procedure, 1908, no compensatory costs can be awarded by the Court on account of the provision of Clause (b) of Section 4 of the Punjab Regulation of Accounts Act, 1930, is not at all, warranted. The costs of the suit are something entirely distinct from the compensatory *costs*, under Section 35— A of the Code of Civil Procedure, 1908.

39. (1) The Court which passed a decree may, on the application of the decreeholder, send it for execution to another Court,—

- (a) if the person against whom the decree is passed actually and voluntarily, resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree, sufficient to satisfy such decree and has property

within the local limits of the jurisdiction of such other Court, or

- c) if the decree directs the sale or delivery of immovable property, situate outside the local limits which passed it, or
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing that the decree should be executed by such other Court.

(2) The Court which passed the decree may of its own motion, send it for execution to a Subordinate Court of competent jurisdiction.

COMMENTARY.

Transfer by a Court of the decree passed by it to another Court, for execution, may be effected either on the application of the decree-holder, making out the existence of the circumstances specified in Cls (a), (b), (c) and (d) of Sub-S. (1) or by the original Court, of its own motion.

A Court passing a decree cannot send its decree, of its own motion, to a Court subordinate to it, when the decree is beyond the money jurisdiction of that Subordinate Court. (1) The question, however does not arise at all, if the decree is sent for execution to another Court for execution on the application of the decree-holder. (2)

1. Mohammad Sasi v. Maung Kin, 4 Bur. L. T. 224.
2. Abdul Sahib V. Ahmad Hussain Saheb, (1914) M. W. N. 97—13 M. L. T. 148—22 I C. 275.

Strictly speaking, after the Court passing the decree has sent the decree to another Court for execution, its power to execute the same, even after its transmission, remains in tact and the concurrent execution is permissible, (1) but this course, by the original Court, should be adopted only in every special circumstances, when it is calculated to protect the interests of the decree-holder, without entailing undue hardship, upon the judgment-debtor. 2

Procedure of transmission to another Court—O. XXI, R. 6 lays down that the Court which passed the decree should send (a) copy of the decree, (b) certificate showing the amount of satisfaction, and (c) copy of an order or a certificate of non-execution, to the Court, to which has been transferred to the decree for execution.

Procedure of the executing Court—O. XXI, R. 7 provides that the executing Court should file the copy and certificates referred to above, in its own office and execute the same its own decree on the application of the decree-holder under O. XXI R. 10 (vide S. 42, post).

Where in different districts, different modes of execution are prescribed, and where the question is how a decree passed in one district of which execution is sought in another of such districts, is to be executed, the executing Court must be guided by the rules in force to its own district-3

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1. *Saraswati Prasad V. People's Industrial Bank, Ltd.* 15 A. L. J. 63 = 39 I. C. 729.
 2. *Maharaja of Bobbili V. Narasaraopeda*, 37 Mad. 231 at p. 234.
 3. *C. P. C. by Woodroffe and Amir Ali, Martand Trimbak Gurde V. Vinayak Khasgivalo*, 31 Bom. 5 1906.

Section 40. Where a decree is sent for execution in another province it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province.

Transfer of decree to Court in another Province

Section 41. The Court to which a decree is sent for execution shall certify to the Court which passed it, the fact of such execution or where the former Court fails to execute the same, the circumstances, attending such failure.

Result of execution proceedings to be certified.

Section 42. The Court, executing a decree sent to it, shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Powers of Court in executing transferred decree.

COMMENTARY.

The executing Court cannot question the validity of the decree or any portion of it. Its duty is to enforce it and not to determine whether it was illegal or wrong or defective.¹ The executing Court is precluded also from questioning the correctness of the order of the execution, or of the right of the decree

1. Arunachellam V. Murugappa, 12 Mad. 503 (1881)
Chintaman Vitthoba V. Chintaman Bajaji, 22 B. 475 (1893).

holder or his representative or assignee seeking the enforcement of the execution. 1

Nor can the executing Court inquire whether the balance certified as due is incorrect or whether the judgment-debtor has any saleable interest in the property ordered to be attached. But where the decree is a nullity, e. g., decree against a minor in a case in which the minor was not represented, it may be ignored by the executing Court. (2)

Where a decree was transferred by a Court of Small Causes to the Court of a Munsiff, exercising ordinary powers, it was held that the orders of the executing Court are appealable. (3)

Under this section, the Court to which a decree is sent for execution has no power to transmit it to a Subordinate Court for execution (4) but the decree holder can move the Court which made the decree to grant transfer certificates concurrently or successively for the execution of the decree, in other Courts.

Any decree passed by a Civil Court, established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Governor-General in Council in the territories of any Foreign Prince or State, may, if it can not be

Execution of decree passed by British Courts in places to which the part does not extend or in foreign territory.

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1. Mulla Abdul V. Sakhsinaboo, 21 B 456 (1596).
 2. Sheopat Rai V. Warak Chand, 22 P. R. 1919=15 I. C. 419; TopasRam V. Tek Chand, 15 I. C. 832 (1911).
 3. Adhar Chandra Gope V. Patin Behary Saha, 0 C. L. J. 123=27 I. C. 10.
 4. Neubat Rai V. Jaffarji, 83 P. R. 1387.

executed within the jurisdiction of the Court by which it was passed, be executed in manner, herein provided within the jurisdiction of any Court in British India.

COMMENTARY.

Part of British India to which the provisions relating to execution do not extend.—The examples are of the scheduled districts (before the extension of the provisions of this Code to them). In accordance with the provisions of this section, the decree of a Court in the Scheduled Districts (before the Code was extended to these districts) could be executed in another Court, in British India. (1) Applicants making use of this section must show that the Court passing the decree is one or other of the Courts, referred to in this section. (2)

The Court of the Political Agent at Sikkim was held to be a Court established by the authority of the Governor-General in Council within the terms of this section. (3)

44. The Governor-General in Council may, by notification in the Gazette of India, declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with his Majesty and not established or continued by the authority of the Governor-General in

Execution of
decrees, passed by
court of Native
States.

1. Kashi Mohan Borwa V. Bishnoo Pira 15 C. 365 (1888).

2. Judah Chandra V. Dinanathdas, 4 B. L. R. 134 (1870).

3. Zamil Ahmad V. Maharaja of Sikkim, 38 Cal. 895= 11 I. C. 442.

Council, or any class of such decrees, may be executed in British India, as if they had been passed by the Courts of British India.

COMMENTARY

May be executed.—This section provides that a Court in British India is not bound to execute a decree of the Court of a Native State. A British Court can refuse execution, if it is vitiated by fraud, or there was a want of jurisdiction in the original Court (1) or there were other circumstances mentioned in Section 13. This section only, makes it legal and permissible for a Court in British India to execute the decree of a foreign state, if the Governor-General in Council makes the necessary notification.

By notification.—The existence of a prior notification is necessary before it can be held to be legal for a British Indian Court to execute the decree of a Court in a Native State. (2)

45. So much of the foregoing sections of this part as empowers a Court to send a decree for execution to another Court, shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor-General in Council, in the territories of any foreign Prince or State to which the Governor-General in Council, has by notification in the Gazette of India, declared this section to apply.

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1. *Hojimusa V. Purnasand Nursey*, 15 B. 216.
 2. *Ratan Mahanti V. Khotoo Saloo*, 29 Cal. 400.

COMMENTARY.

Prior notification of the Governor-General in Council is necessary under this section as in the preceding one. (1)

Order XIV Rule 1.

Settlement of issues and Determination of Suit on Issues of Law or on Issues agreed upon.

(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Fraining of
Issues.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) Issues of fact (b) issues of law.

(5) At the first hearing of the suit, the Court shall after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

COMMENTARY.

When a proposition of fact is the subject-matter of an issue, it is called an issue; of fact, when an issue is framed as to a proposition of law, it is called an issue of law.

An issue arises only, when the parties are at variance, and it is not the duty of a Court to frame issues of its own motion, when there is no dispute, in the pleadings.(1)

Order XV.

DISPOSAL OF THE SUIT AT THE FIRST HEARING

Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

1. Nrad Krishna Pal v. Indra Busan Gupta, 53 I. C. 975 Cal; Raghunath Kurmi v. Deo Narsain Rai, D. J. K. 1919 Pat. 393=51 I. C. 98; Nagappa v. Shidda Lingappa, 35 M. L. J. 372= 47 I. C. 589; Girdhar Das v. Sitarám Naik, 27 I. C. 578 Cal.

Appendix No. 10

RELEVANT PROVISIONS OF THE INDIAN CONTRACT ACT, 1872.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Who are com-
petent to contract

COMMENTARY.

Section 3 of the Indian Majority Act, 1875 runs :—

3. Subject as aforesaid every minor of whose person or property or both a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by the Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty one year and not before.

Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.

But under Section 2 :— " Nothing herein contained shall affect—

- (a) the capacity of any person to act in the following matters, namely, marriage, dower, divorce and adoption.
- (b) the religion or religious rites and usages of any class of His Majesty's subjects in India; or
- (c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him, this Act does not affect the capacity of a person for the purposes of marriage, dower, divorce and adoption.

Method of the calculation of the age.—(1) In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteenth anniversary of that day.

Illustrations.

- (a) Z is born in British India on the 1st day of January 1850, and has a British Indian domicile. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day

of January, 1871.

- (b) Z is born in British India on the twenty-ninth day of February, 1852, and has a British Indian domicile. A guardian of his property is appointed by a Court of Justice. A attains majority at the first moment of the twenty-eighth day of February, 1873.
- (c) Z is born on the first day of January, 1850. He acquires a domicile in British India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868.

According to the law to which he is subject—This means in other words, the law of the domicile of the contracting party and not *lex loci contractus* governs the capacity of a person to contract, with reference to his age.

Minors' contract—effect of,—The question to be considered with reference to a minors' contract, is whether it is voidable at the option of the minor or whether it is void. Their Lordships of the Privy Council however gave a quietus to all doubts on the subject by the authoritative pronouncement in *Mohari Bibee v. Dhurmodas Ghose* 30 C. 539; L. R. 30 I. A. 114 that minors' contract is absolutely void and not voidable.

Ratification—whether possible.—Minor's contract being *void ab initio*, there can be no question of ratification thereof, nor can there be specific performance of a contract by the minor.

Transfer by a minor contrasted with Transfer to a minor.

Under Section 7 of the Transfer of Property Act 1882, a transfer *by* a person can be effected only, by a person, who is competent to contract but minority is no bar to the transfer of immovable property *to* a *minor*, for *consideration*.

Of sound mind.—A person is said to be of sound mind {for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

What is a sound mind for the purposes of contracting?

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

- (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
- (b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Not disqualified from contracting by any law to which he is subject,—*e. g.*, a person who in Oudh is declared a disqualified proprietor under the Oudh Land Revenue Act, 1876, can not enter into any contract for the purpose of alienating his property.

A person of unsound mind—can he contract at all?—Under the Indian Contract Act, 1872 a person who is of unsound mind can enter into a contract during the lucid intervals.

Section 183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may employ agent.

Section 184. As between the principal and third person any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent so as to be responsible to his principal according to the provisions in that behalf herein contained.

Who may be an agent.

Section 185. No consideration is necessary to create an agency.

Consideration not necessary.

Section 186. The authority of an agent may be expressed or implied.

Agent's authority may be expressed or implied.

Appendix No. 11.

RELEVANT SECTION OF THE INDIAN EVIDENCE ACT, 1872.

34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

COMMENTARY.

Regularly kept in the course of business.—Where the accounts were entered up once a week, it was held by the Bombay High Court in 1880, 4 B. 576 at p. 583 and (1898) 23 B. 66 that such an account book could not be held to be one regularly kept in the course of business. But the Priv. Council has held in *Deputy Commissioner of Bara Banki v. Ram Pershad* (1899) 27 C. 118, that it gave a much too limited a meaning to the Section and that the time of making the entries they effect the value of them, but should not, if not made from day to day or from hour to hour, make them entirely irrelevant. It is thus not necessary that the entry should have been made at the time of the transaction, provided, that the book has been kept in the

regular course of business. "This section simply requires that entries in accounts should, in order to be relevant, be regularly kept in the course of business : and although it may be no doubt important to show that the person making or dictating the entries, had or had not, a personal knowledge of the fact stated, this is a question which affects the *value* not the admissibility of the entries (1).

Account-Books-admissible-when?—It is only the account books that are properly kept which are admissible in evidence. (2)

But such statements shall not alone be sufficient evidence to charge any person with liability.—The mere production of account books is not sufficient for its proof. The fact that the plaintiff states that dealings took place in his presence between the plaintiff and the defendants is enough to charge the defendants with liability (3). Similarly accounts prepared at considerable intervals from memory or possibly inadequate materials can not be treated as proof of the actual income and expenditure of the estate to which they relate, although they may be useful in cases where they corroborate other evidence. Where there were only the account books and the general statement of the plaintiff that the dealings between him and defendant it was held, that the dealings were not proved. (5)

1. Indian Evidence Act, 1872, by Woodroffe and Amir Ali, Ed. 8, p. 363.

2. Bankey Behari Lal. v. Birj Behari Lal, 51 A. 519: A. I. R. 1929 A. 170.

3. Narayan v. Vithaba 100 I. C. 863 ; A. I. R. 1927 Nag 177.

4. Rajogopala v. Subbawmal, 51 291: A. I. R. 1928 M. 180.

5. A I. R. 1927 (Lah.) 903.

Entries proved bogus—whole books discredited.—Account books are sufficiently discredited if a certain number of entries are proved to be bogus by independent evidence which precludes the possibility of error or accident. (1).

Where accounts relevant also under Section 32, I. E. Act.—But where accounts are relevant also under the second clause of Section 32, they are in law sufficient evidence in themselves and the law does not, as in the case of accounts admissible under only this section require corroboration. (2)

But such statements shall not alone be sufficient evidence to charge any person with liability. Mere entries in books of account are not by themselves sufficient to charge any person with liability. The reason is that a man can not be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate. (3).

But the plaintiffs' own statement on oath in support of entries can be sufficient to support the entries in plaintiff's account books to fix the defendant with liability (4).

1. *Seth v. Darbari Lal*, 54 M L J. 208 (P. C.); 107 I. C 113.

2. *Indian Evidence Act, 1872* by Woodroffe and Amir Ali. Ed. 8, page 361.

3. *Deni v. Bisan Diyal* A. I. R. 1925 Nag 445.

4. *Firm Jodhamal v. Ditta*, 84 I. C 909, A. I. R. 1925 Lah. 242.

Appendix No. 11.

Relevant Sections of the Indian Evidence Act, 1872. Section 34. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Entries in books of account when relevant.

Illustration.

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Appendix No. 12.

Relevant provisions of the Indian Stamp, Act, 1839.
Section 2 :—

(5) " Bond includes.—

- (a) any instrument, whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed as the case may be ;
- (b) any instrument attested by a witness and not payable to order or bearer, whereby, a person obliges himself to pay money to another ; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another ;

COMMENTARY.

The essential characteristic of a bond is that the obligor creates an obligation by the execution on himself.

Bonds are of two kinds (1). Single bond (2) Conditional bond. A single money bond embodies (a) an express obligation to pay (b) it is not payable to order or bearer and (c) is attested by a witness or witnesses.

A conditional bond and an agreement with a

penalty-contrasted.—A conditional bond creates an obligation to pay money, which obligation becomes void, if a certain act is performed or not performed by the obligor. For example, the following is a conditional bond :—

“ I owe X Rs. 200, which I do hereby, promise to pay by serving, as the clerk of X for two months at Rs. 50 p.m.” The agreement to pay Rs. 200 will become void as soon as the obligor has served X for 2 months. .

An agreement with penalty is one in which an obligation is created to do an act, in default of which the obligor has to pay the stipulated penalty. “ For instance the following is an agreement with penalty” :—

“ I promise to serve X as a clerk for two months on Rs. 50 p. m. in default of which I will be liable to pay damages.”

Table of rates of the stamp duty on bonds :

Acknowledgment promisory note distinction between.—An acknowledgment does not in so many words embody a promise to pay, though an unconditional acknowledgment does imply a promise to pay (1), but a promisory does embody an express promise to pay.

An acknowledgment does not embody a promise of payment to the bearer or order while a promisory note, does embody in express language, such a promise.

Acknowledgment-bond contrasted.—In an acknowledgment there may be only an implied promise to pay; in the bond, there is an express promise to pay.

An acknowledgment may be attested or may not be attested, a bond is always attested.

An acknowledgment ceases to be an acknowledgment if therein is contained an interest rate, while in a bond there is more often than not, a rate of interest to be charged.

Bond-pronote contrasted—The chief distinctions between a *pronote* and a *bond* are :—

A pronote is payable to order or bearer ; a bond is not payable to order or bearer.

A pronote is not attested, while a bond is always attested.

Bill of Exchange, as defined in the Negotiable Instruments Act, 1881 covers a field narrower than that traversed by the definition of the same expression in Clause 3 of Section 2 of the Indian Stamp Act, 1899.

Bills of Exchange in which no time is mentioned are called Bills of Exchange payable on demand and under Section 5 of the Indian Finance Act of 1927, they have been exempted from stamp duty.

For the stamp duty payable on Bills of Exchange, where payable otherwise than on demand, see the following table :—

Description of Instrument. Proper Stamp Duty

....	If drawn singly	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
BILL OF EXCHANGE.—	Rs. A. P.	Rs. A. P.	Rs. A. P.
(b) where payable otherwise than on demand, but not more than one year after date of sight—Rs.
if the amount of the bill or does not exceed Rs. 200.	0 3 0	0 2 0	0 1 0
If it exceeds Rs. 200 and does not exceed 400.	0 6 0	0 0 3	0 2 0
If it exceeds Rs. 400 and does not exceed 600.	0 9 0	0 5 0	0 3 0
If it exceeds Rs. 600 and does not exceed 800.	0 12 0	0 6 0	0 4 0

Description of Instrument Proper Stamp Duty *contd.*

If it exceeds Rs. 800 and does not exceed 1,000.	0	15	0	0	8	0	0	5	0
If it exceeds Rs. 1,000 and does not exceed 1,200.	1	2	0	0	9	0	0	6	0
If it exceeds Rs. 1,200 and does not exceed 1,500.	1	8	0	0	12	0	0	8	0
If it exceeds Rs. 1,600 and does not exceed 2,500.	2	4	0	1	0	0	0	12	0
If it exceeds Rs. 2,500 and does not exceed 5,500.	4	8	0	2	4	0	1	8	0
If it exceeds Rs. 5,000 and does not exceed 7,500.	6	12	0	3	6	0	2	4	0
If it exceeds Rs. 7,500 and does not exceed 10,000.	9	0	0	4	8	0	3	0	0
If it exceeds Rs. 10,000 and does not exceed 15,000.	13	8	0	6	12	0	4	8	0
If it exceeds Rs. 15,000 and does not exceed 20,000.	18	0	0	9	0	0	6	0	0

Description of Instrument Proper Stamp Duty *contd.*

If it exceeds Rs. 20,000 and does not exceed 25,000.	22	8	0	11	4	0	7	8	0
DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.								
If it exceeds Rs. 25,000 and does not exceed 30,000.	27	0	0	13	8	0	9	0	0
And for every addi- tional Rs. 10,000 or part thereof in excess of Rs. 30,000.	9	0	0	4	8	0	3	0	0

(c) Where payable at more than one year after date or sight. The same duty as a Bond (No. 15) for the same amount.

Under table 1 of Schedule I of the Indian Stamp Act, 1899, which reads as follows, the stamp duty on an acknowledgment of a debt exceeding Rs. 20 is one anna :—

STAMP-DUTY ON INSTRUMENT

Description of Instrument. Proper Stamp-duty

1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount of value, written or signed by, or on behalf of, a debtor in order to supply evidence of such

debt in any book (other than a banker's pass-book), or on a separate piece of paper, when such book or paper is left in the creditor's possession: provided that such acknowledgment does not contain any promise to pay the debt, or any stipulation to pay interest, or to deliver any goods or other property.

One anna.

Cheques.—On cheques payable on demand, under Section 5 of the Indian Finance Act V of 1927, no stamp-duty is chargeable now.

Appendix No. 13.

Relative provisions of the Court Fees Act, 1870, as amended by Punjab Act VII of 1922.

Section 7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

Computation of fees payable in certain suits —

- (i) In suits for money (including suits for damage for money or compensation, or arrears of maintenance or annuities; or of other sums payable periodically) according to the amount claimed;
- (ii) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject matter of the suit and such value shall be deemed to be ten times the amount, claimed to be payable for one year;
- (iii) In suits for moveable property other than money, where the subject-matter has a market value—according to such value at the date of presenting the plaint;
- (iv) In suits—
- (a) for moveable property where subject matter has no market value, as, for instance, in the case of documents, relating to title,
- for money
- for maintenance and annuities;
- moveable property having a market value
- for moveable property of no market value.

(b) to enforce the right to share in any property on the ground that it is joint family property,
 to enforce a right to share in joint family property.

(c) to obtain declaratory decree or order where consequential relief is prayed,
 for a declaratory decree and consequential relief.

(d) to obtain an injunction
 for an injunction.

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and
 for easements.

(f) for accounts—
 according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.
 for accounts.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

(g) In suits for the possession of lands, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be—
 for possession of lands houses and gardens;

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government, or forms part of such an estate, and is recorded in the

Collector's register as separately assessed with such revenue, and such revenue is permanently settled, -ten times the revenue so payable ;

- (b) where the land forms an entire estate or a definite share of an estate paying annual revenue to Government, or forms part of such estate, and is recorded as aforesaid ; and is settled, but not permanently-five times the revenue so payable ;
- (c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint fifteen times such net profits ; but where no such net profits have arisen therefrom - the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood.
- (d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed as above mentioned - the market value of the land :

Provided that, in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be, —

Proviso as to
Bombay Presi-
dency.

- (1) where the land is held on settlement for a period not exceeding thirty years, and pays

the full assessment to Government,—a sum equal to five times the survey-assessment ;

- (2) where the land is held on a permanent settlement, or on a settlement, for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey assessment ; and
- (3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment or the portion of assessment, so remitted :

Explanation.—The word “estate”, as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor, or farmer or *rayat* shall have executed a separate engagement to Government, or, which, in the absence of such engagement, shall have been separately, assessed with revenue ;

(e) where the subject-matter is a house or garden—according to the market value of the houses or garden ;
for houses and gardens.

(v) In suits to enforce a right of pre-emption according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed ;
to enforce a right of pre-emption;

(vii) In suits for the interest of an assignee of land revenue—fifteen times his net profits as such for the year next before the date of presenting the plaint ;
for interest of assignee of land revenue;

(viii) In suits to set aside an attachment of land or an interest in land or revenue-
 to set aside an attachment; according to the amount for which
 the land or interest was attached :

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

(ix) In suits against a mortgagee for the re-
 to redeem covery of the property mortgaged,

and in suits by a mortgagee to fore-
 to foreclose; close the mortgage.

or, where the mortgage is made by conditional sale,
 to have the sale declared absolute—

according to the principal money expressed to be
 secured by the instrument of mortgage:

for specific per- (x) In suits for specific performance
 formance;

(a) of a contract of sale-according to the amount
 of the consideration;

(b) of a contract of mortgage-according to the
 amount agreed to be secured;

(c) of a contract of lease-according to the aggre-
 gate amount of the fine or premium (if any)
 and of the rent agreed to be paid during the
 first year of the term:

(d) of an award-according to the amount or
 value of the property, in dispute:

between land-
lord and tenant

(xi) In the following suits between landlord and tenant:—

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- (cc) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy,
- (d) to contest a notice of ejectment,
- (e) to recover the occupancy of "immovable property" from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent:—

according to the amount of the rent of the "immovable property" to which the suit refers, payable for the next year before the date of presenting the plaint.

TABLE OF RATES OF COURT-FEES DUTY.

The following is the Table of Rates of 'ad valorem' fees leviable under the Court Fees Act, 1870, as amended by the Punjab Act VII of 1922. This table is of constant use to the creditors who sue for the recovery of money lent:—

When the amount or value of the subject matter ex- ceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).	When the amount or value of the subject matter ex- ceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).
Rs	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
5	5	0 6 0	150	160	12 0 0
5	10	0 12 0	160	170	12 12 0
10	15	1 2 0	170	180	13 8 0
15	20	1 8 0	180	190	14 4 0
20	25	1 14 0	190	200	15 0 0
25	30	2 4 0	200	210	15 12 0
30	35	2 10 0	210	220	16 8 0
35	40	3 0 0	220	230	17 4 0
40	45	3 6 0	230	240	18 0 0
45	50	3 12 0	240	250	18 12 0
50	55	4 2 0	250	260	19 8 0
55	60	4 8 0	260	270	20 4 0
60	65	4 14 0	270	280	21 0 0
65	70	5 4 0	280	290	21 12 0
70	75	5 10 0	290	300	22 8 0
75	80	6 0 0	300	310	23 4 0
80	85	6 6 0	310	320	24 0 0
85	90	6 12 0	320	330	24 12 0
90	95	7 2 0	330	340	25 8 0
95	100	7 8 0	340	350	26 4 0
100	110	8 4 0	350	360	27 0 0
110	120	9 0 0	360	370	27 12 0
120	130	9 12 0	370	380	28 8 0
130	140	10 8 0	380	390	29 4 0
140	150	11 4 0	390	400	30 0 0

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).	When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).
Rs. 40	Rs. 40	Rs. 20	Rs. 720	Rs. 72	Rs. 30
40	45	20	730	74	30
40	45	20	740	75	30
40	45	20	750	75	30
40	45	20	760	76	30
40	45	20	770	76	30
40	45	20	780	76	30
40	45	20	790	76	30
40	45	20	800	76	30
40	45	20	810	76	30
40	45	20	820	76	30
40	45	20	830	76	30
40	45	20	840	76	30
40	45	20	850	76	30
40	45	20	860	76	30
40	45	20	870	76	30
40	45	20	880	76	30
40	45	20	890	76	30
40	45	20	900	76	30
40	45	20	910	76	30
40	45	20	920	76	30
40	45	20	930	76	30
40	45	20	940	76	30
40	45	20	950	76	30
40	45	20	960	76	30
40	45	20	970	76	30
40	45	20	980	76	30
40	45	20	990	76	30
40	45	20	1,000	76	30
40	45	20	1,100	110	30
40	45	20	1,200	130	30
40	45	20	1,300	150	30
40	45	20	1,400	170	30
40	45	20	1,500	190	30
40	45	20	1,600	210	30
40	45	20	1,700	230	30
40	45	20	1,800	250	30
40	45	20	1,900	270	30
40	45	20	2,000	290	30
40	45	20	2,100	310	30
40	45	20	2,200	330	30
40	45	20	2,300	350	30
40	45	20	2,400	370	30
40	45	20	2,500	390	30
40	45	20	2,600	410	30
40	45	20	2,700	430	30
40	45	20	2,800	450	30
40	45	20	2,900	470	30
40	45	20	3,000	490	30
40	45	20	3,100	510	30
40	45	20	3,200	530	30
40	45	20	3,300	550	30
40	45	20	3,400	570	30
40	45	20	3,500	590	30
40	45	20	3,600	610	30
40	45	20	3,700	630	30
40	45	20	3,800	650	30
40	45	20	3,900	670	30
40	45	20	4,000	690	30
40	45	20	4,100	710	30
40	45	20	4,200	730	30
40	45	20	4,300	750	30
40	45	20	4,400	770	30
40	45	20	4,500	790	30
40	45	20	4,600	810	30
40	45	20	4,700	830	30
40	45	20	4,800	850	30
40	45	20	4,900	870	30
40	45	20	5,000	890	30
40	45	20	5,100	910	30
40	45	20	5,200	930	30
40	45	20	5,300	950	30
40	45	20	5,400	970	30
40	45	20	5,500	990	30
40	45	20	5,600	1,010	30
40	45	20	5,700	1,030	30
40	45	20	5,800	1,050	30
40	45	20	5,900	1,070	30
40	45	20	6,000	1,090	30
40	45	20	6,100	1,110	30
40	45	20	6,200	1,130	30
40	45	20	6,300	1,150	30
40	45	20	6,400	1,170	30
40	45	20	6,500	1,190	30
40	45	20	6,600	1,210	30
40	45	20	6,700	1,230	30
40	45	20	6,800	1,250	30
40	45	20	6,900	1,270	30
40	45	20	7,000	1,290	30
40	45	20	7,100	1,310	30
40	45	20	7,200	1,330	30
40	45	20	7,300	1,350	30
40	45	20	7,400	1,370	30
40	45	20	7,500	1,390	30
40	45	20	7,600	1,410	30
40	45	20	7,700	1,430	30
40	45	20	7,800	1,450	30
40	45	20	7,900	1,470	30
40	45	20	8,000	1,490	30
40	45	20	8,100	1,510	30
40	45	20	8,200	1,530	30
40	45	20	8,300	1,550	30
40	45	20	8,400	1,570	30
40	45	20	8,500	1,590	30
40	45	20	8,600	1,610	30
40	45	20	8,700	1,630	30
40	45	20	8,800	1,650	30
40	45	20	8,900	1,670	30
40	45	20	9,000	1,690	30
40	45	20	9,100	1,710	30
40	45	20	9,200	1,730	30
40	45	20	9,300	1,750	30
40	45	20	9,400	1,770	30
40	45	20	9,500	1,790	30
40	45	20	9,600	1,810	30
40	45	20	9,700	1,830	30
40	45	20	9,800	1,850	30
40	45	20	9,900	1,870	30
40	45	20	10,000	1,890	30
40	45	20	10,100	1,910	30
40	45	20	10,200	1,930	30
40	45	20	10,300	1,950	30
40	45	20	10,400	1,970	30
40	45	20	10,500	1,990	30
40	45	20	10,600	2,010	30
40	45	20	10,700	2,030	30
40	45	20	10,800	2,050	30
40	45	20	10,900	2,070	30
40	45	20	11,000	2,090	30
40	45	20	11,100	2,110	30
40	45	20	11,200	2,130	30
40	45	20	11,300	2,150	30
40	45	20	11,400	2,170	30
40	45	20	11,500	2,190	30
40	45	20	11,600	2,210	30
40	45	20	11,700	2,230	30
40	45	20	11,800	2,250	30
40	45	20	11,900	2,270	30
40	45	20	12,000	2,290	30
40	45	20	12,100	2,310	30
40	45	20	12,200	2,330	30
40	45	20	12,300	2,350	30
40	45	20	12,400	2,370	30
40	45	20	12,500	2,390	30
40	45	20	12,600	2,410	30
40	45	20	12,700	2,430	30
40	45	20	12,800	2,450	30
40	45	20	12,900	2,470	30
40	45	20	13,000	2,490	30
40	45	20	13,100	2,510	30
40	45	20	13,200	2,530	30
40	45	20	13,300	2,550	30
40	45	20	13,400	2,570	30
40	45	20	13,500	2,590	30
40	45	20	13,600	2,610	30
40	45	20	13,700	2,630	30
40	45	20	13,800	2,650	30
40	45	20	13,900	2,670	30
40	45	20	14,000	2,690	30
40	45	20	14,100	2,710	30
40	45	20	14,200	2,730	30
40	45	20	14,300	2,750	30
40	45	20	14,400	2,770	30
40	45	20	14,500	2,790	30
40	45	20	14,600	2,810	30
40	45	20	14,700	2,830	30
40	45	20	14,800	2,850	30
40	45	20	14,900	2,870	30
40	45	20	15,000	2,890	30
40	45	20	15,100	2,910	30
40	45	20	15,200	2,930	30
40	45	20	15,300	2,950	30
40	45	20	15,400	2,970	30
40	45	20	15,500	2,990	30
40	45	20	15,600	3,010	30
40	45	20	15,700	3,030	30
40	45	20	15,800	3,050	30
40	45	20	15,900	3,070	30
40	45	20	16,000	3,090	30
40	45	20	16,100	3,110	30
40	45	20	16,200	3,130	30
40	45	20	16,300	3,150	30
40	45	20	16,400	3,170	30
40	45	20	16,500	3,190	30
40	45	20	16,600	3,210	30
40	45	20	16,700	3,230	30
40	45	20	16,800	3,250	30
40	45	20	16,900	3,270	30
40	45	20	17,000	3,290	30
40	45	20	17,100	3,310	30
40	45	20	17,200	3,330	30
40	45	20	17,300	3,350	30
40	45	20	17,400	3,370	30
40	45	20	17,500	3,390	30
40	45	20	17,600	3,410	30
40	45	20	17,700	3,430	30
40	45	20	17,800	3,450	30
40	45	20	17,900	3,470	30
40	45	20	18,000	3,490	30
40	45	20	18,100	3,510	30
40	45	20	18,200	3,530	30
40	45	20	18,300	3,550	30
40	45	20	18,400	3,570	30
40	45	20	18,500	3,590	30
40	45	20	18,600	3,610	30
40	45	20	18,700	3,630	30
40	45	20	18,800	3,650	30
40	45	20	18,900	3,670	30
40	45	20	19,000	3,690	30
40	45	20	19,100	3,710	30
40	45	20	19,200	3,730	30
40	45	20	19,300	3,750	30
40	45	20	19,400	3,770	30
40	45	20	19,500	3,790	30
40	45	20	19,600	3,810	30
40	45	20	19,700	3,830	30
40	45	20	19,800	3,850	30
40	45	20	19,900	3,870	30
40	45	20	20,000	3,890	30
40	45	20	20,100	3,910	30
40	45	20	20,200	3,930	30
40	45	20	20,300	3,950	30
40	45	20	20,400	3,970	30
40	45	20	20,500	3,990	30
40	45	20	20,600	4,010	30
40	45	20	20,700	4,030	30
40	45	20	20,800	4,050	30
40	45	20	20,900	4,070	30
40	45	20	21,000	4,090	30
40	45	20	21,100	4,110	30
40	45	20	21,200	4,130	30
40	45				

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870)	When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).
Rs. 1,400	Rs. 1,500	150 0 0	Rs. 4,600	Rs. 4,700	390 0 0
1,500	1,600	157 8 0	4,700	4,800	397 8 0
1,600	1,700	165 0 0	4,800	4,900	405 0 0
1,700	1,800	172 8 0	4,900	5,000	412 8 0
1,800	1,900	180 0 0	5,000	5,250	427 0 0
1,900	2,000	187 8 0	5,250	5,500	442 8 0
2,000	2,100	195 0 0	5,500	5,750	457 8 0
2,100	2,200	202 8 0	5,750	6,000	472 8 0
2,200	2,300	210 0 0	6,000	6,250	487 8 0
2,300	2,400	217 8 0	6,250	6,500	502 8 0
2,400	2,500	225 0 0	6,500	6,750	517 8 0
2,500	2,600	232 8 0	6,750	7,000	532 8 0
2,600	2,700	240 0 0	7,000	7,250	547 8 0
2,700	2,800	247 8 0	7,250	7,500	562 8 0
2,800	2,900	255 0 0	7,500	7,750	577 8 0
2,900	3,000	262 8 0	7,750	8,000	592 8 0
3,000	3,100	270 0 0	8,000	8,250	607 8 0
3,100	3,200	277 8 0	8,250	8,500	622 8 0
3,200	3,300	285 0 0	8,500	8,750	637 8 0
3,300	3,400	292 8 0	8,750	9,000	652 8 0
3,400	3,500	300 0 0	9,000	9,250	667 8 0
3,500	3,600	307 8 0	9,250	9,500	682 8 0
3,600	3,700	315 0 0	9,500	9,750	697 8 0
3,700	3,800	322 8 0	9,750	10,000	712 8 0
3,800	3,900	330 0 0	10,000	10,250	727 8 0
3,900	4,000	337 8 0	10,250	11,000	757 8 0
4,000	4,100	345 0 0	11,000	11,500	790 8 0
4,100	4,200	352 8 0	11,500	12,000	825 0 0
4,200	4,300	360 0 0	12,000	12,500	860 8 0
4,300	4,400	367 8 0	12,500	13,000	895 8 0
4,400	4,500	375 0 0	13,000	13,500	930 0 0
4,500	4,600	382 8 0	13,500	14,000	965 8 0

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).	When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
14,000	14,500	915 0 0	48,000	50,000	1762 8 0
14,500	15,000	937 8 0	50,000	55,000	1792 8 0
15,000	15,500	960 0 0	55,000	60,000	1822 8 0
15,500	16,000	982 8 0	60,000	65,000	1852 8 0
16,000	16,500	1,005 8 0	65,000	70,000	1882 8 0
16,500	17,000	1,027 8 0	70,000	75,000	1912 8 0
17,000	17,500	1,050 0 0	75,000	80,000	1942 8 0
17,500	18,000	1,072 8 0	80,000	85,000	1972 8 0
18,000	18,500	1,095 0 0	85,000	90,000	2002 8 0
18,500	19,000	1,117 8 0	90,000	95,000	2032 8 0
19,000	19,500	1,140 0 0	95,000	1,00,000	2,062 8 0
19,500	20,000	1,162 8 0	1,00,000	1,50,000	2,092 8 0
20,000	21,000	1,192 8 0	1,05,000	1,10,000	2,122 8 0
21,000	22,000	1,222 8 0	1,10,000	1,15,000	2,152 8 0
22,000	23,000	1,252 8 0	1,15,000	1,20,000	2,182 8 0
23,000	24,000	1,282 8 0	1,20,000	1,25,000	2,212 8 0
24,000	25,000	1,312 8 0	1,25,000	1,30,000	2,242 8 0
25,000	26,000	1,342 8 0	1,30,000	1,35,000	2,272 8 0
26,000	27,000	1,372 8 0	1,35,000	1,40,000	2,302 8 0
27,000	28,000	1,402 8 0	1,40,000	1,45,000	2,332 8 0
28,000	29,000	1,432 8 0	1,45,000	1,50,000	2,362 8 0
29,000	30,000	1,462 8 0	1,50,000	1,55,000	2,392 8 0
30,000	32,000	1,492 8 0	1,55,000	1,60,000	2,422 8 0
32,000	34,000	1,522 8 0	1,60,000	1,65,000	2,452 8 0
34,000	36,000	1,552 8 0	1,65,000	1,70,000	2,482 8 0
36,000	38,000	1,582 8 0	1,70,000	1,75,000	2,512 8 0
38,000	40,000	1,612 8 0	1,75,000	1,80,000	2,542 8 0
40,000	42,000	1,642 8 0	1,80,000	1,85,000	2,572 8 0
42,000	44,000	1,672 8 0	1,85,000	1,90,000	2,602 8 0
44,000	46,000	1,702 8 0	1,90,000	1,95,000	2,632 8 0
46,000	48,000	1,732 8 0	1,95,000	2,00,000	2,662 8 0

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870)	When the amount or value of the subject matter exceeds.	But does not exceed.	Proper Fee. (Act VII of 1870).
2,00,000	2,05,000	2,692 8 0	3,00,000	3,05,000	3,292 8 0
2,05,000	2,10,000	2,722 8 0	3,05,000	3,10,000	3,322 8 0
2,10,000	2,15,000	2,752 8 0	3,10,000	3,15,000	3,352 8 0
2,15,000	2,20,000	2,782 8 0	3,15,000	3,20,000	3,382 8 0
2,20,000	2,25,000	2,812 8 0	3,20,000	3,25,000	3,412 8 0
2,25,000	2,30,000	2,842 8 0	3,25,000	3,30,000	3,442 8 0
2,30,000	2,35,000	2,872 8 0	3,30,000	3,35,000	3,472 8 0
2,35,000	2,40,000	2,902 8 0	3,35,000	3,40,000	3,502 8 0
2,40,000	2,45,000	2,932 8 0	3,40,000	3,45,000	3,532 8 0
2,45,000	2,50,000	2,962 8 0	3,45,000	3,50,000	3,562 8 0
2,50,000	2,55,000	2,992 8 0	3,50,000	3,55,000	3,592 8 0
2,55,000	2,60,000	3,022 8 0	3,55,000	3,60,000	3,622 8 0
2,60,000	2,65,000	3,052 8 0	3,60,000	3,65,000	3,652 8 0
2,65,000	2,70,000	3,082 8 0	3,65,000	3,70,000	3,682 8 0
2,70,000	2,75,000	3,112 8 0	3,70,000	3,75,000	3,712 8 0
2,75,000	2,80,000	3,142 8 0	3,75,000	3,80,000	3,742 8 0
2,80,000	2,85,000	3,172 8 0	3,80,000	3,85,000	3,772 8 0
2,85,000	2,90,000	3,202 8 0	3,85,000	3,90,000	3,802 8 0
2,90,000	2,95,000	3,232 8 0	3,90,000	3,95,000	3,832 8 0
2,95,000	3,00,000	3,262 8 0	3,95,000	4,00,000	3,862 8 0

And when the amount or value of the subject-matter exceeds Rs. 4,00,000, the proper fee leviable shall be Rs. 3,862 annas 8 plus Rs. 30 for each five thousand rupees or part thereof in excess of Rs. 4,00,000.

19-A. Where any person, on applying for the probate of a will or letters of administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority (for the local area in which the probate or letters has or have been granted)

and delivers to such authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said authority may—

- (a) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

20. The High Court shall, as soon as may be, make rules as to the following matters:—

- (i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil and Revenue Courts, established within the local limits of such jurisdiction;
- (ii) the fees chargeable for serving and executing processes, issued by the Criminal Courts established within such limits in the case of offences, other than offences for which police officers may arrest without a warrant; and
- (iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules, so made.

All such rules, alterations, and additions shall after being confirmed by the Local Government, be published in the Local Official Gazette, and shall thereupon, have the force of law.

Confirmation and publication of rules.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

COMMENTARY.

The following Rules have been made by the High Court Lahore (Vide Vol. No. IV High Court rules and orders 1930 Vol. IV. Chapter 6 B.)

RULES UNDER SECTION 20, CLAUSE (iii)

Rules made by the High Court under the power conferred by section 20, clause (iii), of the Court-fees Act, 1870, confirmed by the Local Government regarding the remuneration of the process-servers and all other persons employed by leave of a Court in the service or execution of processes.

RULES.

1. The salaries of the process-serving establishment, as such, shall not, except with special sanction of the High Court, exceed the scale shown below against each officer.

	Rs.
European Bailiff	50*
Civil Nazir	30-1-50
Plus duty allowance Rs. 20.	
Naib Nazirs	30-1-50
Madad Naib Nazir	25
Execution Bailiff	22
Process-server	17

When two courts employ the same European Bailiff, his aggregate salary shall not exceed rupees eighty without the sanction of the High Court :

Provided that existing establishment and existing salaries shall in all cases remain unchanged until the sanction of the High Court has been given to any alterations.

Note.—1. Civil Nazirs, Naib Nazirs and Madad Naib Nazirs serving in Lahore, Lyallpur, Sargodha,

Rawalpindi and Amritsar will draw the compensatory allowance Rs. 5 and Bailiffs and process-serving these stations will draw a similar allowance of Re. 1.

Note 1.—European bailiffs are now paid a monthly salary of Rs. 30 and Rs. 3 for each process served.

2. Whenever it is necessary to employ additional persons as process-servers, that is to say, persons other than the registered process-servers, the pay of a person so employed shall be at the rate of seventeen rupees per month.

3. Should it appear to the Court, on the motion of a party to a suit or proceeding, or otherwise, that, for the convenience of the parties or for some other reason, it is expedient that any process should be executed by special messenger such process shall be executed, except in the case of a warrant for arrest, a special fee will be payable for such emergent service; and the Court will, at the time of making its order, declare by whom the fee shall be paid and whether it shall be included in the costs of the suit or be charged to a particular party.

21. A table in the English and Vernacular languages, showing the fees chargeable for each service and execution, shall be exposed to view in a conspicuous part of each Court.

Tables of process fees.

22. Subject to rules to be made by the High Court, approved by the Local Government, every District Judge and every Magistrate of a District shall fix, and may, from time to time, after the number of peons necessary to be employed to the service and execution of processes issued out of his Court and each of the Courts subordinate thereto, and for the purposes of this section, every Court of Small Causes established under Act No. XI of 1865, shall be deemed to be subordinate to the Court of the District Judge.

No. of peons in District and Subordinate Courts.

No. of peons in M o f f u s i l Small Cause Court.

COMMENTARY.

The Lahore High Court has framed the following Rules under this Section (*vide* High Court Rules and orders, Ed. 1930, Vol. IV, Ch. 6 C.) :—

RULES UNDER SECTION 22.

Rules made by the High Court with the approve of the Local Government, under the power conferred by Section 22 of the Court-fees Act, 1870, regarding the number of persons necessary to be employed for the service and execution of processes issued out of the Civil and Criminal Courts established within the local limits of their jurisdiction respectively.

RULES.

1. The High Court shall fix and shall, from time to time, as may be necessary, after the maximum number of process-servers to be retained for the Court of each

District and Sessions Judge, and for each District in the Province.

2. The number of process-servers to be retained in each district shall be allotted by the Senior Subordinate Judge, subject to the control of the District Judge and High Court to the various Courts of the District in such manner as shall be most convenient for the services of processes.

3. In submitting proposals with regard to the maximum number of process-servers to be retained in any district, and in distributing the process-servers, retained against the various Courts, the Senior Subordinate Judge should ascertain, and report, when necessary the number of processes issued from his own court and from every Civil and Criminal Court in the district during each month of the previous year, and the maximum number of process-servers fixed for each Court shall be so many as are sufficient for the service of the largest number of processes-ascertained to have been issued in any one month. In calculating the number of process-servers capable of serving such ascertained number of processes, regard shall be paid to :

- (a) the average distance travelled by the peon ;
- (b) the nature of the country to be traversed and the local circumstances ;
- (c) the number of process-servers by whom the processes were actually served.

4. The process-servers entertained under these rules shall be employed exclusively in the work of serving and executing processes.

26. The stamp used to denote any fees, chargeable under this Act, shall be impressed or adhesive, or partly impressed and partly adhesive, as the Local Government may, by notification in the Local Official Gazette, from time to time direct.

Appendix No. 14.

RELEVANT PROVISIONS OF THE INDIAN LIMITATION ACT, 1908.

4. Where the period of limitation prescribed for any suit, appeal or application expires on a day, when the Court is closed, when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens.

COMMENTARY.

This section will apply even, if during the vacation the office of the Court remains open for the reception of the plaints. (1)

5. Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by or under any enactment for the time being in force, may be admitted after the period of limitation, prescribed therefore, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed

1. 6 B. 487; 30 P. L. R. 1903; 27 B. 31; 140 P.R. 1884; 10 C. 662; 31 I. C. 150; See per contra. 49 I. C. 626 Mad.

period of limitation may be sufficient cause within the meaning of this Section.

COMMENTARY.

Principles underlying the Section.—“Section 5 gives the Court a discretion which is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles, which are well-understood, the words “sufficient cause” receiving a liberal consideration, so as to advance substantial justice when no negligence, nor inaction nor want of *bona-fides* is imputed, to the appellant. (1)

Duty of the appellant or applicant.—It is the duty of a litigant to know the last day, on which he has to file his appeal or application and if on account of his delay, he is put to the necessity of asking for an extension of time under Section 5 of the Indian Limitation Act, 1908 he must establish a sufficient cause for the same. For example, an appeal is filed in a wrong Court *bona fide*, that is, under an honest though mistaken belief formed with due care and attention that the appellant was appealing to the right Court, the period during which it was pending in the wrong Court, may be excluded. (2)

Application for leave to apply in forma pauperis.—Pendency of *bona fide* proceedings for permission to appeal in *forma pauperis* is a sufficient cause for delay

1. 33 C. 1323; 25 M. 166; 28 I. C. 82 (Sind); 14 Bom. L. R. 344; 44; All, 636 at p. 640 F. B.; 78 I. C. 953 (Sind.)

2. 52 I. C. 235 (O); 46 I. C. 116 (O); 45 C. 94 (P. C.); 68 I. C. 575 (C); 91 I. C. 865.

in appealing in case the application itself was in time (1) although the court has discretion in extending time for an application for leave to appeal in *forma pauperis*.

Revision lodged—instead of appeal.—Where by a mistake *bona fide*, a person files a revision instead of an appeal, then, time for appeal may be enlarged. (2)

Revision lodged after time—which can be treated as appeal.—The Court has power to treat a revision as an appeal but the general consensus of opinion is that a Court is competent to do so if the revision was instituted before the period for an appeal has run out. (3)

Mistake of law—whether sufficient cause.—A mistake of law may be a sufficient ground for the enlargement of time (4). But every case has to be decided on its own circumstances.

Mistake by a counsel.—A *bona fide* mistake, made by a counsel, while exercising due care and attention, may under the circumstances of the case, be a sufficient cause for an extension of time. (5)

Difficulty in procuring court fees stamp or duty caused by imprisonment, illness or poverty—sufficient cause.

1. 13 I. C. 73; 22 B. 849; 47 P. R. 189; 84 P. R. 1904 26 A. 829.

2. 20 B. 736; 58 I. C. 995.

3. 79 I. C. 1024.

4. 118 P. R. 1901; 72 I. C. 732 (L.); 59 P. R. 1913; 72 I. C. 158 (N.); 95 P. R. 1917; 93 I. C. 876 (Lah); 43 B. 376 (P. C.)

5. 95 P. R. 1917; 93 I. C. 876 (Lah.); 43 B. 376 (P. C.).

Imprisonment, illness, poverty or difficulty in procuring Court Fee Stamps may constitute a sufficient cause.

The applicant or appellant being *purdanashin* is not *per se* sufficient cause for extension. (1)

6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in subsections (1) and (2) shall apply.

Illustrations.

- (a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.
- (b) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.
- (c) A right to sue accrues to X during his minority. X dies before attaining majority and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

6. This section does not operate in favour of an appellant. It works in favour of a plaintiff or an applicant minor suing through next friend. But whether operative in appellants, favour minor can sue through a next friend.

Time is not enlarged in any case for more than three years.

7. Where one of several persons jointly entitled to institute a suit or make an application, for the execution of a decree is under any such disability and a discharge can be given without the concurrence of such person, time will run against them all : but, where no such discharge can be given, time

Disability of one of several plaintiffs or applicants.

will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Illustrations.

- (a) A incurs a debt to a firm of which B, C, and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.
- (b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E and F becomes sane, or G attains majority. See under section 6.

Joint decree-holders—one free from disability.—Where there are joint decree-holders and some or one of them can not give a full discharge, disability of one saves entire decree.

Joint Hindu family—manager's power to give discharge.—In the case of a joint Hindu family, where the right of suit is vested in all the members jointly, if the manager can give a full discharge, without the minor member's, concurrence, time would run against all the members. (1)

But a *de facto* guardian of a minor can not give a full discharge (2).

1. 22 I. C. 76 (M.); 44 F. C. 566; 52 I. C. 725,
2. 50 I. C. 730.

Obligees—tenants-in-common.—Where the debt is in favour of several creditors, who are not joint tenants but tenants-in-common, the minority of a minor creditor cannot save time, against those who are of age.(1).

Co-owners, Coheirs, Joint Trustees, Joint Payees—Test of-for availing of this section. The test for this section being available to co-owners, Co-heirs etc is, whether the adult co-owner etc. could give a valid discharge.

9. Where once time has begun to run, no subsequent disability or inability to sue stops it.

Continuous running of time.

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

COMMENTARY.

In terms, this section applies to suits but the principle thereof is applicable to executions, as well.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

Suits against express trustees and their representative.

1. 25 All. 155.

11. (1) Suits instituted in British India on contracts entered into in a foreign country are subject to the rules of limitation contained in this Act.

Suits on foreign contracts.

(2) No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract, entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

COMMENTARY.

As a general rule, *Lex Fori* governs the limitation of an action. But if the *Lex Loci Contractus* extinguished the right before the action was brought, then, the suit cannot lie even if the suit is not time-barred according to *Lex Fori*.

12. (1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion of time in legal proceedings.

(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of, was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

(4) In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

COMMENTARY.

Time requisite.—The period required for obtaining copy begins after and not before the application has been put in and even then, from the date on which an application which is 'in order' has been delivered. Although, it was held that under proper circumstances when an application for copy is dismissed for non-payment of Stamp Fee and subsequently, a second application is made, the Court may exclude the time from the date of the first application. (1) The same result would follow if the first application is mislaid. (2)

Application for copy—time for appeal expired.—The period for procuring copies can be excluded only, if the application is made while the time for an appeal has not expired. (3)

Time requisite—reference to copying agency—or in absolute.—'Time requisite' in fact, means the time taken up by the Copying Department in furnishing copies. It does not mean only the period necessary for making out copies.

Time requisite—period between the date on which the copies were ready—and the date on which they

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1. 50 I. C. 518.
 2. 28 I. C. 524.
 3. 25 B. 586; 55 I. C. 406; 25 B. 581; 42 I. C. 965; cf. 49 I. C. 664.

reached the applicant by post.—No exclusion of time between the date on which the copies are made and that on which they reached the applicant can be allowed but the same period may be allowed for under Section 5, *ante*.

Time excluded—copies obtained a second time.—Time can be excluded for obtaining *one* set of copies; the appellant can not get a *second period* by applying for a second time and in a single *petition*, all the necessary copies should be obtained.

Who can apply for copies?—Any person on behalf of the appellant can apply. (1)

Second appeal—time for copy of first Court's judgment not allowed.—Under Section 12 an allowance can be made only, in respect of the copies of judgment etc. *appealed against*. It does not apply to the time taken in obtaining copies of the judgment of the trial court (2) Nor is the time taken up by *translation* to be excluded.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

COMMENTARY.

Joint debtors—one absent from India.—The absence of one debtor saves time against all joint-debtors. (3)

1. 43 M. 633.

2. 82 B. 14 (F. B.); 68 I. C. 777; 72 I. C. 797.

3. * 44 I. C. 466 Mad; *cf* 88 M. 419.

14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a Court of appeal, against the defendant, shall be excluded. Where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation, prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I.—In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made and the day on which the proceedings therein ended, shall both be counted.

Explanation II.—For the purposes of this section a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding.

Explanation III.—For the purposes of this section, misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

COMMENTARY.

Parties-substantially the same.—The parties in both

the proceedings should be substantially the same. (1)

Due diligence.—The question of due diligence is in each case, a question of fact. If the delays are due to the action of the Court there is no absence of due diligence (2).

Court ordered the plaint to be returned—date of the termination of the proceedings.—The general consensus of legal opinion is that the proceedings terminate on the date on which the plaint is returned or is ready to be returned to the plaintiff. (3)

Time limit expired during the vacation—suit on the day of the reopening of the Court whether Section 14 applicable.—This section appears to me to be applicable even if the suit is lodged in the wrong Court on the reopening thereof after the vacation (4).

15. (1) In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the turn of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded.

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1. 1 Pat. 506.
 - 2 70 I. C. 613.
 3. 92 I. C. 373 (M). *
 - *4. (1913) 18 I. C. 121 (C).

17. (1) Where a person who would, if he were living have a right to institute a suit or make an application dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased, capable of instituting or making such suit or application.

(2) Where a person against whom, if he were living, a right to institute a suit or make an application would have accrued, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

(3) Nothing in sub-sections (1) and (2) applies to suits to enforce rights of pre-emption or to suits for the possession of the immovable property or of an hereditary office.

18. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded.

Or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be computed from the time when the

fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

COMMENTARY.

Fraud, antecedent or subsequent to the cause of action.—The acts of fraud may precede or be concurrent or follow the accrual of a cause of action. (1)

Burden of Proof.—The person alleging fraud must prove it. (2)

Fraud who should be guilty of.—The fraud must be committed by the defendant or his agent or some through whom he claims.

Terminus a quo.—The time to run from the date on which the fraud became *known* to the plaintiff.

19. Where, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing, signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions

1. 60 I. C. 801 (C); 85 I. C. 622 (Pat).
2. 36 C. 654; 41 I. C. 385 (Pat).

of the Indian Evidence Act, 1872, oral evidence of its contents shall not be received.

Explanation I.—For the purposes of this section an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery performance or enjoyment had not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off or is addressed to a person other than the person entitled to the property or right.

Explanation II.—For the purposes of this section 'signed' means signed either personally or by an agent duly authorized in this behalf.

Explanation III.—For the purposes of this section an application for the execution of a decree or order is an application in respect of a right.

COMMENTARY.

Acknowledgment-part debt-of-or present subsisting debt-of.—The acknowledgment in order that it may come within the purview of Section 19, must be of *existing, subsisting* debt. The acknowledgment must be so worded as to signify that the debt is still due, and unpaid.

But an acknowledgment of a debt in the past, without express denial of the existence of the same at the present time, is sufficient.

Admission of some or part of debt.

The wording "liability in respect of such property

or right" implies that an acknowledgment with respect to *some* or a *part* of the debt is sufficient, to give a fresh period of limitation for the whole debt. (1)

Promise to pay a debt, when proved.—If the debtor promises to pay the debt if proved, it is a sufficient unconditional acknowledgment. (2)

Acknowledgment-without prejudice.—Acknowledgment in a letter marked "without prejudice" is no acknowledgment.

Acknowledgment-only offering a compromise.—A letter offering only to compromise matters is not an unconditional acknowledgment. (3)

Acknowledgment-request for time or coupled with expressions of refusal or inability to pay.—Such an acknowledgment is sufficient under this section. But a mere willingness to go into account, the debtor, insisting that nothing was due, is no acknowledgment although a mere request to the creditor 'to send in his account was held to be sufficient'. (4)

Signed.—The signatures should be appended to the acknowledgment by the debtor himself. But initials (5) or the printed signatures may be sufficient. (6)

Acknowledgment-unstamped.—An acknowledgment

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1. 43 I. C. 893 (C).
 2. 46 I. C. 97 (M).
 3. 42 All. 390 C/22 B. L. R. 943.
 4. 116 P. R. 1881, 42 Ch. D. 424; 23 B. L. R. 1231.
 5. 15 M. 264.
 6. 6 C. at p. 345.

if unstamped is valuelss for any purpose except a collateral purpose. (1).

Date of acknowledgment-Parol evidence.—Where, the acknowledgment is undated, oral evidence can be given to prove the same.

Acknowledgments in statement as witness in the Court (provided it is signed), in a will, in the Sub-Registrar's endorsement (signed by the debtor) in an affidavit, in pleadings, in a balance sheet, telegram (the original bearing the debtors' signatures) in an insolvency Schedule: may all be sufficient as acknowledgments.

Acknowledgment to whom to be made.—The acknowledgment may be made even to third persons (2).

In the following cases, the acknowledgments were deemed sufficient:—

The acknowledgment of the mortgagor (3) or in a conveyance executed by both the creditor and the debtor; acknowledgment by a counsel on behalf of his client (4) promise by surety to make up the principal debtors' deficiency.

But the following acknowledgment were considered insufficient:—

Executor's letter informing the creditor that he

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1. 18 B. 614; Cf. 21 B. 201 F. B.
 2. 35 A. 437; 43 P. R. 1910.
 3. 36 All. 264 at p. 267.
 4. 22 B. 722; 23 C. 374.

had registered the creditors' claim.

Difference between an acknowledgment under S. 19 and S. 25 Indian Contract Act.—An acknowledgment under this section to be valid, must be made before the period of limitation has run out while the promise to pay under S. 25 of the Indian Contract Act may be made after the period of limitation.

20. (1) Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in his behalf, or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed from the time when the payment was made.

Effect of payment of interest as such or of part payment of principal.

Provided that, save in the case of a payment of interest made before the 1st day of January 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

(2) Where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment for the

Effect of receipt of produce of mortgaged land.

purpose of sub-section (1).

Explanation.—Debt includes money payable under a decree or order of Court.

COMMENTARY.

Scope.—This section extends in express terms to a *debt* or *legacy*, and therefore, it does not apply to the interest due under the mortgage (2).

Interest paid as such.—The payment does not take the case out of limitation, unless the amount is paid expressly, as *interest*. (3) So where payments are made by a debtor towards the satisfaction of a debt, without any express mention of the principal or interest, the payments do not enlarge the time. (4)

Change of Law.—The proviso to this section as given above is as substituted for the old proviso by section 2 of the Indian Limitation (Amendment) Act, 1927. The old proviso was worded as follows :—

“Provided that, in the case of part payment of the principal of a debt, the fact of the payment appears in the handwriting of the person making the same”. Under the old text of the proviso, it is necessary that the fact of the payment towards the principal, should appear in the handwriting of the person making the same, but this restriction does not apply to interest

1. 1886, 10 B. 71; 1883, 7 B. 515; 1915; 30 I. C. 491 (Pun); 119 P. R. 1908; 66 P. R. 1904; 102 P. R. 1908; 1883, 7 B. 414; 1919, 52 I. C. 115 (Pun.)

2. 22 I. C. 959; 26 A. 167; 46 B. 1000; 89 I. C. 161.

3. 87 I. C. 746 (C).

4. 20 I. C. 867 (C).

Under the new text of the proviso, even the payments of interest made on or after the 1st of January, 1928 should appear in the handwriting of the person making it.

Question. Will payment expressed as towards interest? *save time*?

The wording of this section shows that the payment towards interest even if no interest has been agreed upon between the parties, will save limitation

Payment—whether necessarily in money.—The payment need not be in money, it may be in any mode or form equivalent to money.

In the hand-writing of the person making the same.—In case the payer is literate person, the writing should be in the hand of the same person as has made the payment. (1)

Payment by money order or cheque.—A payment made by a cheque signed by the debtor or a money order, coupon of which is signed by him is sufficient. (2)

Joint debtors.—Handwriting of : where there are two joint debtors, it is not sufficient that one should make the payment and write it in his own hand. It is necessary under this section that though one may write, yet both should sign. (3)

Payment—by a third person on the debtor's behalf
—Payment by any one which can be construed as

1. 44 I. C. 516 (C)

2. 25 B. L. R. 354 .

3. * 27 All. 575 See 19 A 307; 1. P. R. 1897.

that by agent of the debtor is sufficient, *e. g.*, the payment by the Court is to be treated as of this kind. (1)

Burden of proof.—The burden of proof under this section is upon the plaintiff.

21. (1) The expression "agent duly authorized in this behalf" in sections 19 and 20 shall, in the case of a person under disability, include his lawful guardian, committee or manager, or an agent duly authorized by such guardian, committee or manager to sign the acknowledgment or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed or of a payment made by, any other, or others of them.

The First Schedule.

- Art. 52.--For the price of goods Three The date of the de-
sold and delivered, years.livery of the goods.
where no fixed period
of credit is agreed
upon.
- Art. 53.--For the price of goods Three When the period of
sold and delivered to years.credit expires.
be paid for after the
expiry of a fixed
period of credit
- Art. 54.--For the price of goods Three When the period of
sold and delivered to years.the proposed bill
be paid for by a bill elapses.
of exchange, no such
bill being given.
- Art. 57.--For money payable Three When the loan is
for money lent. years.made.
- Art. 58.--Like suit when the Three When the cheque is
lender has given a years.paid.
cheque for, the
money.
- Art. 59.--For money lent Three When the cheque is
under an agreement years,paid.
that it shall be pay-
able on demand.
- Art. 60.--For money deposited Three When the demand is
under an agreement years.made.
that it shall be pay-
able on demand, in-

cluding money of a customer in the hands of his banker so payable.

Art. 61.—For money payable Three When the money is to the plaintiff for years, paid.
money paid for the defendant.

Art. 62.—For money payable Three When the money is by the defendant years, received,
to the plaintiff for money received by the defendant for the plaintiff's use.

Art. 63.—For money payable Three When the interest for interest upon years, becomes due.
money due from the defendant to the plaintiff.

Art. 64.—For money payable Three When the accounts to the plaintiff for years, are stated in writing money found to be signed by the defendant due from the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.

Art. 66.—On a single bond, Three The day so specified,
 Where a day is years.
 specified for pay-
 ment,

Art. 67.—On a single bond, Three The date of executing
 where no such day years.the bond.
 is specified.

Art. 68.—On a bond subject Three When the condition
 to a condition. years,is broken,

Art. 69.—On a bill of ex- Three When the bill or note
 change or promissory years.falls due.
 note payable at a
 fixed time after date.

Art. 70.—On a bill of ex- Three When the bill is pre-
 change payable at years,sented,
 sight, or after sight,
 but not at a fixed
 time.

Art. 74.—On a promissory note Three The expiration of the
 or bond payable by years.first term of payment
 instalments. as to the part then pay-
 able; and for the other
 parts, the expiration of
 the respective terms of
 payment,

Art. 75.—On a promissory Three When the default is
 note or bond payable years.made, unless where the
 by instalments, payee or obligee waives
 which provides that, the benefit of the pro-
 if default be made vision, and then when
 in payment of one or fresh default is made in
 more instalments, the respect of which there
 whole shall be due, is no such waiver.

- Art. 76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen. Three years. The date of the delivery to the payee.
- Art. 80.—Suit on a bill of exchange, promissory note, or bond not herein expressly provided for. Three years. When the bill, note or bond becomes payable.
- Art. 81.—By a surety against the principal debtor. Three years. When the surety pays the creditor.
- Art. 82.—By a surety against a co-surety. Three years. When the surety pays anything in excess of his own share.
- Art. 85.—For the balance due on a mutual open and concurrent account, where there have been reciprocal demands between the parties. Three years. The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

Appendix No. 15.

ENGLISH MONEYLENDERS ACT, 1927.

(17 & 18 Geo. 5. Ch. 21).

An Act to amend the Law with respect to persons carrying on business as Moneylenders.

(29th July 1927),

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :—

1. (1) Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, an excise licence (in this Act referred to as "a moneylender's excise licence"), which shall expire on the thirty-first day of July in every year, and, subject as hereinafter provided, there shall be charged on every moneylender's excise licence an excise duty of fifteen pounds, or if the licence be taken out not more than six months before the expiration thereof, of ten pounds.

Provided that—

(a) the duty charged on any moneylender's excise licence which will expire on the thirty-first day of July 1928, shall, notwithstanding that

the licence may be taken out more than six months before the expiration thereof, be a duty of ten pounds; and

- (b) where moneylender's excise licences are taken out by two or more moneylenders in respect of any address or addresses at which they carry on their business as partners in a firm, the Commissioners of Customs and Excise shall remit, or if the duty has been paid repay, to the firm a sum equal to the aggregate of the duties charged on such number of the licences taken out as exceeds the number of the addresses in respect of which they are taken out; and
- (c) where it is proved to the satisfaction of the Commissioners of Customs and Excise that there is in force a licence for carrying on the business of a pawnbroker at any premises in respect of which a moneylender's excise licence is taken out by the person carrying on the business, the Commissioners shall remit, or if the duty has been paid repay, to that person such part of the duty charged on the moneylender's excise licence as is equal to the amount of the duty paid in respect of the licence for carrying on the business of a pawnbroker, for where in any such case moneylender's excise licences are taken out by partners in a firm in respect of the premises, the remission on repayment shall be made to the firm.

(2) Subject to the provisions of this Act, money-lenders' excise licences shall be in such form as the Customs and Excise may direct, and shall be granted on payment of the appropriate duty by any officer of Customs and Excise authorised by the Commissioners to grant them, and regulations made by the said Commissioners may make provision as to the procedure to be followed in making application for moneylenders' excise licences:

Provided that a moneylender's excise licence shall be taken out by a moneylender in his true name, and shall be void if it be taken out in any other name, but every moneylender's excise licence shall also show the moneylender's authorised name and authorised address.

(3) If any person—

(a) takes out a moneylender's excise licence in any name other than his true name; or

(b) carries on business as a moneylender without having in force a proper moneylender's excise licence authorising him so to do, or, being licensed as a moneylender, carries on business as such in any name other than his authorised name, or at any other place than his authorised address or addresses or

(c) enters into any agreement in the course of his business as a moneylender with respect, to the advance or repayment of money or takes any security, for money in the course of his business as moneylender, otherwise than in his authorised name;

he shall be guilty of a contravention of the provisions of this Act and shall for each offence be liable to an excise penalty of one hundred pounds:

Provided that on a second or subsequent conviction of any person (other than a company) for an offence under this subsection, the court may, in lieu of or in addition to ordering the offender to pay the penalty aforesaid, order him to be imprisoned for a term not exceeding three months, and an offender being a company shall on a second or subsequent conviction be liable to an excise penalty of five hundred pounds.

2. (1) A moneylender's excise licence shall not be granted except to a person, who holds a certificate granted in accordance with the provisions of this section authorising the grant of the licence to that person, and a separate certificate shall be required in respect of every separate licence. Any moneylender's excise licence granted in contravention of this section shall be void.

Certificate required for Grant of Money-lender's Licence.

(2) Certificate under this section (in this Act referred to as "certificate") shall be granted by the petty sessional court having jurisdiction in the petty sessional division in which the moneylender's business is to be carried on, so, however, that within any part of the metropolitan police district for which a police court is established, a certificate shall not be granted except by a police magistrate.

(3) Every certificate granted to a moneylender shall show his true name and the name under which, and the address at which, he is authorised by the certificate to carry on business as such, and a certificate

shall not authorise a moneylender to carry on business at more than one address, or under more than one name, or under any name which includes the word "bank" or otherwise implies that he carries on banking business, and no certificate shall authorise a moneylender to carry on business under any name except:—

- (a) his true name; or
- (b) the name of a firm in which he is a partner, not being a firm required by the Registration of Business Names Act, 1916, to be registered; or
- (c) a business name, whether of an individual or of a firm in which he is a partner, under which he or the firm has, at the passing of this Act, been registered for not less than three years both as a moneylender under the Moneylenders Act, 1900, and under the Registration of Business Names Act, 1916.

(4) A certificate shall come into force on the date specified therein, and shall expire on the next following thirty-first day of July.

(5) A Secretary of State shall make rules with respect to the procedure to be followed in making applications for certificates (including the notices to be given of intention to make such an application), and certificates shall be in such form as may be prescribed by rules so made.

(6) A certificate shall not be refused except on some one or more of the following grounds—

- (a) that satisfactory evidence has not been

produced of the good character of the applicant, and in the case of a company of the persons responsible for the management thereof;

- (b) that satisfactory evidence has been produced that any person responsible or proposed to be that the applicant to be responsible for the management of the business as a moneylender, is not a fit and proper person to hold a certificate;
- (c) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is by order of a court disqualified for holding a certificate;
- (d) that the applicant has not complied with the provisions of any rules made under this section with respect to applications for certificates.

(7) Any person aggrieved by the refusal of a petty sessional court to grant a certificate may appeal to a court quarter sessions in manner provided by the Summary Jurisdiction Act as if the refusal were an order of a court of Summary Jurisdiction.

3. (1) Where any person, being the holder of a certificate, is convicted of any offence under this Act or under section two or four of the Betting and Loans (Infants) Act, 1892, or the Money-lenders Act, 1900, the court—

Suspension and
Forfeiture of
Money-lender's
Certificates

- (a) may order that any certificate held by the person, and in the case of a partner in a

firm by any other partner in the firm, shall either be suspended for such time as the court thinks fit, or shall be forfeited, and may also, if the court thinks fit, declare any such person, or any person responsible for the management of the moneylending business carried on by the person convicted to be disqualified for obtaining a certificate for such time as the court thinks fit; and

- (b) shall cause particulars of the conviction and of any order made by the court under this subsection to be endorsed on every certificate held by the person convicted or by any other person affected by the order, and shall cause copies of those particulars to be sent to the authority by whom any certificate so endorsed was granted, and to the Commissioners of Customs and Excise:

Provided that, where by order of a court, a certificate held by any person is suspended or forfeited or any person, is disqualified for obtaining a certificate, he may, whether or not he is the person convicted, appeal against the order in the same manner as any person convicted may appeal against his conviction, and the court may, if it thinks fit, pending the appeal, defer the operation of the order.

(2) Any certificate required by a Court for endorsement in accordance with the foregoing provisions of this section shall be produced, in such manner and within such time as may be directed by the court, by the person by whom it is held, and any person who, without reasonable cause, makes default in producing any certificate so required shall, in respect of each offence, be liable on summary conviction to a penalty

not exceeding five pounds for each day during which the default continues.

(3) Where a certificate held by any person is ordered to be suspended or to be forfeited under the foregoing provisions of this section, any moneylender's excise licences granted to that person, whether in pursuance of that or any other certificate, shall be suspended during the period for which the certificate is ordered to be suspended or become void, as the case may be.

4. (1) Subsection (2) of section 2 of the Companies (Particulars as to Directors) Act, 1917, (which requires certain particulars to be published in trade catalogues, trade circulars, show cards and business letters) shall apply with the necessary modifications to every company licensed under this Act notwithstanding that the company was registered or had established a place of business within the United Kingdom on or before the twenty-second day of November, 1916.

(2) Without prejudice to the provisions of the last foregoing section and of section 18 of the Registration of Business Names Act, 1916, a moneylender shall not, for the purposes of his business as such, issue or publish, or cause to be issued or published, any advertisement, circular, business letter, or other similar document which does not show—

- (a) in such manner as to be not less conspicuous than any other name, the authorised name of the moneylender; and
- (b) except in the case of an advertisement published in a newspaper, any name, other

than his authorised name, under which the moneylender, and in the case of a firm any partner therein, was before the commencement of this Act registered as a money-lender under the Moneylenders Act, 1900;

and any moneylender who acts in contravention to a sub-section shall be liable on summary conviction to a fine not exceeding twenty pounds in respect of each offence.

(3) If a moneylender, for the purposes of his business as such, issue or publishes or causes to be issued or published, any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking business, he shall on summary conviction be liable to a fine not exceeding one hundred pounds, and on a second or subsequent conviction, in lieu of or in addition to such a fine as aforesaid, to imprisonment for a term not exceeding three months or in the case of a second or subsequent conviction of an offender being a company, to a fine not exceeding five hundred pounds.

5. (1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a moneylender, or containing an invitation.—

(a) to borrow money from a moneylender;

(b) to enter into any transaction involving the borrowing of money from a moneylender;

(c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a moneylender.

(2) Subject as hereinafter provided, no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation, or by means of any poster or placard, an advertisement advertising any such particulars, or containing any such invitation, as aforesaid :

Provided that an advertisement in conformity with the requirements of this act relating to the use of names on money-lenders' documents may be published by or on behalf of a money-lender in any newspaper or in any such paper as aforesaid or by means of a poster or placard exhibited at any authorised address of the money-lender, if it contains no addition to the particulars necessary to comply with the said requirements, except any of the following particulars, that is to say any authorised address at which he carries on business as a money-lender and the telegraphic address and telephone number thereof, any address at which he formerly carried on business, a statement that he lends money with or without security, and of the highest and lowest sums that he is prepared to lend, and a statement of the date on which the business carried on by him was first established.

(3) No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person, to borrow money or to enter into any transaction involving the borrowing the money from a money-lender, and no person shall act as such agent or canvasser, or demandor receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or

undertaking to introduce to a money-lender any person desiring to borrow money.

(4) Where any document issued or published by or on behalf of a money-lender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed to be charged in terms of a rate per cent per annum or show the rate per cent per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the First Schedule to this Act.

(5) Any person acting in contravention of any of the provisions of this section shall be guilty of a misdemeanour and shall in respect of each offence be liable, on conviction on indictment, to imprisonment, for a term not exceeding three months or a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and, on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(6) Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall, notwithstanding that the money-lender was duly licensed under this Act, be illegal unless the money-lender proves that the contravention occurred without his consent or connivance.

6. (1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a money-lender after the commencement of his Act or for the payment by him of interest on money so lent and

Form of Money-lender's Contracts.

no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract be made and signed personally by the borrower, and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract; and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be.

(2) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and, either the interest charged on the loan expressed in terms of a rate per cent per annum, or the rate per cent per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act.

7. Subject as hereinafter provided, any contract made after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract.

Prohibition of Compound Interest and Provisions as to Defaults.

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest, the money-lender shall be entitled to charge

simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

8. (1) In respect of every contract for the repayment of money lent by a money-lender whether made before or after the commencement of this Act, the money-lender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of one shilling for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent showing.—

Obligation of money-lender to supply information as to State of Loan and Copies of documents relating thereto.

- (a) the date on which the loan was made, the amount of the principal of the loan and the rate per cent per annum of interest charged ; and
- (b) the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made ; and
- (c) the amount of every sum due to the money-lender, but unpaid, and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and
- (d) the amount of every sum not yet due which

remains outstanding, and the date upon which it will become due.

(2) A money-lender shall, on any reasonable demand in writing by the borrower, and on tender of a reasonable sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a money-lender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the money-lender shall be liable on summary conviction to a fine not exceeding five pound for every day on which the default continues.

9 (1) Where a debt due to a money-lender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act, 1914, relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and dividend, be calculated at a rate not exceeding five per cent. per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled.

Provisions as to Bankruptcy Proceedings for Money lender's loans.

The provisions of this sub-section shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of subsection (1) of section 66 of the Bankruptcy Act, 1914.

(2) No proof of a debt due to a money-lender in respect of a loan made by him shall be admitted for any of the purposes of the Bankruptcy Act, 1914, unless the affidavit verifying the debt is accompanied by a statement showing in detail—

- (a) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the money-lender in respect of the loan and the date on which every such payment was made ; and
- (b) the amount of the balance which remains unpaid distinguishing the amount of the principal from the amount of interest included therein, the appropriation between principal and interest being made in accordance with the provisions of this Act where the interest is not expressed by the contract for the loan in terms of a rate ; and
- (c) where the amount of interest included in the unpaid balance represents a rate per cent per annum exceeding 5 per cent, the amount of interest which would be so included if it were calculated at the rate of 5 per cent per annum.

(3) General rules may be made under section 132 of the Bankruptcy Act, 1914, for the purpose of carrying into effect the objects of this section.

10. (1) Where in any proceedings in respect of any money lent by a money-lender after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, it is found that the interest charged exceeds the rate of 48 per cent per annum, or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section of the Money-lenders Act, 1900, that the interest charged is excessive and that the transaction is harsh and unconscionable but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged although not exceeding 48 per cent per annum, is excessive.

(2) Where a court reopens a transaction of a money-lender under the said section 1 of the Money-lenders Act, 1900, the court may require the money-lender to produce any certificate granted to him in accordance with the provisions of this Act, and may cause such particulars as the court thinks desirable to be endorsed on any such certificate, and a copy of the particulars to be sent to the authority by whom the certificate was granted.

(3) The powers of a court under the said section 1 of the Money-lenders Act, 1900, with respect to the re-opening of the transactions of money-lenders, shall extend to any transaction effected under a special contract made in accordance with the provisions of section 24 of the Pawnbrokers Act, 1872, and accordingly, for the purposes of the first mentioned section the provisions of paragraph (a) of section 6 of

the Money-lenders Act, 1900, shall not apply with respect to any such transaction.

(4) The powers of a court under sub-section (2) of the said section of the Moneylenders Act, 1900, (which enables a court at the instance of the borrower, surety, or other person liable, to exercise the powers under that section with respect to the re-opening of the transactions of moneylenders although no proceedings are taken for the recovery of the money lent, and notwithstanding that the time for repayment may not have arrived), may in the event of the bankruptcy of the borrower be exercised at the instance of the trustee in bankruptcy, notwithstanding that he may not be a person liable in respect of the transaction.

(5) The powers of a court under the said sub-section (2) of section 1 of the Moneylenders Act, 1900, may be exercised notwithstanding that the money-lender's right of action for the recovery of the money lent is barred.

11. (1) Subject as hereinafter provided no
 Courts to which proceedings on Money lending Transactions are to be taken
 action by a moneylender for the recovery of money lent by him or for enforcing any agreement or security relating to any such money shall be brought in any inferior court other than a county court.

Provided that His Majesty may by Order in Council direct that any inferior court specified in the Order shall have the same jurisdiction as respects such actions as aforesaid as it would have had but for the provisions of this sub-section, and any such Order may contain such provisions as appear to His Majesty expedient with respect to the making of rules of court

for regulating the procedure to be followed in the case of any such action, and may be revoked or varied by any subsequent Order made in like manner.

(2) Before any Order in Council is made under this section, a draft thereof shall be laid before each House of Parliament for a period of not less than 21 days during the session of Parliament, and if either House before the expiration of the said period presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new draft order.

12. Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any such sum is paid to a money-lender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

13. (1) No proceedings shall lie for the recovery by a moneylender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect

of any loan made by him, unless the proceedings are commenced before the expiration of 12 months from the date on which the cause of action accrued :—

Provided that—

- (a) if during the period of twelve months aforesaid or at any time within any subsequent period during which proceedings may by virtue of this proviso be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the moneylender to pay that amount, proceedings for the recovery of the amount due may be brought at any time within a period of twelve months from the date of the acknowledgment and undertaking;
- (b) the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run in respect of any payments time to time becoming due to a moneylender under a contract for the loan of money until a cause of action accrues in respect of the last payment becoming due under the contract;
- (c) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor, the person entitled to take the proceedings *non compos mentis*, the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until

that person ceases to be *non compos mentis* or dies, whichever first occurs; and

- (d) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor, is beyond the seas, the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until he returns from beyond the seas, so, however, that section 11 of the Mercantile Law Amendment Act, 1856 (which relates to the limitation of actions against joint debtors where some are beyond seas) shall have effect as if this section were included among the enactments therein referred to as fixing a period of limitation.

(2) Without prejudice to the powers of a court under section 1 of the Moneylenders Act, 1900, if at the time when proceedings are taken by a moneylender in respect of a default in the payment of any sum due to him under a contract for the loan of money, any further amount is outstanding under the contract but not yet due, the court may determine the contract and order the principal outstanding to be paid to the moneylender with such interest thereon, if any, as the court may allow up to the date of payment.

14. (1) The provisions of sections 6, 12 and 13 of this Act shall not apply in relation to any loan by a pawnbroker on a pledge, or in relation to any debt in respect of such a loan, or any interest thereon, notwithstanding that the loan is not made in the course of the business carried on by the pawnbroker in
- Special Provisions as to Pawnbroker's Loans.

accordance with the Act for the time being in force in relation to pawnbrokers, so long as the following conditions complied with in respect of the loan :—

- (a) The pawnbroker shall deliver or send to the pawner within seven days a note or memorandum containing all the terms of the contract, and in particular showing the date on which the loan is made, the amount of the principal of the loan, the interest charged on the loan expressed in terms of a rate per cent. per annum, and any other charges payable by the pawner under the contract, and the rate of interest charged shall not exceed the rate of 20 per cent per annum.
- (b) Subject as hereinafter provided, the pawner shall not be charged any sum on account of costs, charges, or expenses incidental to or relating to the negotiations for or the granting of the loan proposed except a charge for the preparation of documents relating to the loan not exceeding the sum of one shilling, and a charge equal to the actual amount of any stamp duty paid by the pawnbroker upon any such document.

Provided that a pawnbroker shall not be deemed to have failed to comply with the foregoing conditions by reason of his having made in good faith and in accordance with the terms of the contract for the loan—

- (i) a reasonable charge in respect of the storage or care of any pledge which is not physically delivered to him or which, although so delivered, is of such weight or size that it would not under the Post Office regulations

for the time being in force, be received for transmission by parcel post; or

(ii) a charge for interest at a rate not exceeding 20 per cent. per annum upon any sum reasonably expended by the pawnbroker in respect of the storage or care of the pledge; or

(iii) a charge not exceeding one shilling for rendering any account of the sale of any pledge; or

(iv) a charge not exceeding one shilling in respect of any inspection of the pawnbroker's books.

(2) Any charge authorised by this section for the preparation of documents relating to a loan, or in respect of stamp duty upon any such document, may be deducted by the pawnbroker from the amount of the loan, and, if so deducted, shall be deemed for the purposes of this Act to be included in the principal.

15. (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

Interpretation,
&c.

“Authorised name” and “authorised address” mean respectively at which a moneylender is authorised by a certificate granted under this Act to carry on business as a moneylender;

“Business name” means the name or style under which any business is carried on, whether in partnership, or otherwise;

"Company" means an unincorporate body or two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;

"Interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a moneylender for or on account of costs, charges, or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a moneylender in consideration of or otherwise in respect of a loan;

"Principal" means in relation to a loan the amount actually lent to the borrower.

(2) Where by a contract for the loan of money by a money-lender the interest charged on the loan is not expressed in terms of a rate, any amount paid, or payable to the money-lender under the contract (other than simple interest charged in accordance with the proviso to section 7 of this Act) shall be appropriated to principal and interest in the proportion that the principal bears to the total amount of the interest, and the rate per cent. per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act shall be deemed to be the rate of interest charged on the loan.

16, (1) Where any debt in respect of money lent

Notice and Information to be given on Assignment of Money-lender's Debts.

by a money-lender whether before or after the commencement of this Act or in respect of interest on any such debt or the benefit of any agreement made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor (whether he is the moneylender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

- (a) give to the assignee notice in writing that the debt, agreement or security is affected by the operation of this Act; and
- (b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto,

and any person acting in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and shall also be guilty of a misdemeanour, and shall in respect of each offence be liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine, and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds.

(2) In this section the expression "assigned" means assigned by any assignment *inter vivos* other than any assignment by operation of law, and the

expressions "assignor" and "assignee" have corresponding meanings.

17. (1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respect any debt to a money lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or the interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and, except where the context otherwise requires, references in this Act to a moneylender shall accordingly be construed as including any such assignee as aforesaid:

Application of
Act as respects
Assignees.

Provided that

(a) notwithstanding anything in this Act—

(i) any agreement with, or security taken by, a moneylender in respect of money lent by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(ii) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been

if the agreement or security had been valid;
and

- (iii) the provisions of this Act limiting the time for proceedings in respect of money lent shall not apply to any proceedings in respect of any such agreement or security commenced by a *bona fide* assignee or holder for value without notice that the agreement or security was affected by the operation of this Act, or by any person deriving title under him.

But in every such case the moneylender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings commenced by, an assignee or holder for value who is himself a moneylender; and

- (b) for the purposes of this Act and of the Money lenders Act, 1900, the provisions of section one hundred and ninety nine of the Law of Property Act, 1925, shall apply as if the expression "purchaser" included a person making any such payment or transfer as aforesaid.

(2) Nothing in this section shall render valid for any purpose, any agreement, security, or other transaction which would apart from the provisions of this Act, have been void or unenforceable.

This Act shall apply to Scotland

Application to subject to the following modifications—
Scotland.

- (a) Certificates under section 2 of this Act

shall be granted by the licensing court under the Licensing (Scotland) Acts, 1903 to 1921, within whose jurisdiction the premises in which the moneylender's business is to be carried on are situated, and may be granted either at the general half-yearly meeting of such court, or at any adjournment thereof, which adjournment they may make from time to time for the purposes of this Act, or at some other meeting specially convened for that purpose, and an appeal against the refusal to grant such a certificate shall lie to the court of appeal under the said Acts :

- (b) The power to make rules under sub-section (5) of section 2 of this Act shall include power to make rules with respect to the procedure to be followed in appeals under the foregoing paragraph of this section :
 - (c) The provisions of sub-section (3) of section 27 of the Licensing (Scotland) Act, 1903, (which relates to the prescribing of fees), shall extend to the prescribing of fees payable to clerks of licensing courts and of courts of appeal for anything done under this Act :
 - (d) References to the presentation of a bankruptcy petition shall be construed as references to the presentation of a petition for sequestration ;
- “ Scheme of arrangement ” shall mean deed of arrangement ; references to the admission of proof of debts shall be construed as references to the ranking of claims or debts ; and “ affidavit ” shall mean oath :

- (e) The Bankruptcy (Scotland) Act, 1918, shall be substituted for the Bankruptcy Act, 1914, except where sub-section (1) of section 66 thereof is referred to; and Act of Sederunt under section one hundred and ninety of the said Act of 1913 shall be substituted for general rules under section one hundred and thirty two of the said Act of 1914:
- (f) Where decree is granted by any court in favour of a moneylender for any sum of money in respect of a loan by him, the court may, either at the time of granting such decree or at any time thereafter prior to the payment of such sum and on the application of either party, make an order that such sum shall be payable by instalments of such amount and subject to such conditions as the court shall think fit:
- (g) Section eleven of this Act shall not apply:
- (h) Notwithstanding anything to the contrary in any Act contained, summary execution or diligence shall not be competent upon any bill of exchange or promissory note or upon any bond or obligation registered in the books of any court, where such bill, promissory note, bond or obligation, has been granted to or in favour of or is held by a moneylender.

Short Title, Citation, Construction, Repeal, Extent, and Commencement.

19. (1) This Act may be cited as the Moneylenders Act, 1927, and the Moneylenders Act, 1900 and this Act may be cited together as the Moneylenders Acts, 1900 to 1927.

(2) Except where the context otherwise requires, references in this Act to the Moneylenders Act, 1900, shall be construed as references to that Act as amended by this Act, and this Act shall be construed as one with that Act, and the provisions of this Act as to moneylender's excise licences and offences in relation thereto shall also be construed as one with the Acts relating to duties of excise and the management of those duties.

(3) The enactments set out in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that section 1 of the Moneylenders Act 1911, shall continue in force as respects any agreement with or security taken by a moneylender before the commencement of this Act, or any payment or transfer of money or property made, whether before or after the commencement of this Act, on the faith of the validity of any such agreement or security.

(4) This Act shall not extend to Northern Ireland.

(5) Except as hereinafter provided this Act shall come into force on the first day of January, 1928 :

Provided that—

(a) subject to the provisions of any regulations or rules made under this Act, licences and certificates may be granted to moneylenders at any time after the first day of October, 1927; and

(b) Orders in Council may be made under the provisions of this Act relating to courts to

which proceedings on moneylenders' transactions are to be taken at any time after the passing of this Act,

so, however, that no such licence or order in Council shall come into force until the commencement of this Act.

Nothing in the foregoing proviso shall be construed to limit or otherwise affect the provisions of section 37 of the Interpretation Act, 1889.

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