

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 Proce-
dure, 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 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.	

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.		

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 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 :—

Preamble.

NOTES.

Preamble—Preamble sets forth in a few words, the reasons which prompted the Legislature to enact the Act. It is not strictly speaking, a part of the Act, but

may be referred to only, when there is something ambiguous in the provisions of the Act, whose preamble it is. 1

Enacting part not co-extensive with the preamble.—Where, the enacting part of the statute is not exactly co-extensive with the preamble, the former if expressed in clear unequivocal terms, will override the latter. 2

Similarly, it is not within the province of the Court to look to the Statement of Objects and Reasons or the proceedings in the Legislative Council, with a view to discover whether the words used mean something above and beyond what they say. 3

With respect to a preamble, the rule of construction is that the preamble of an Act may be referred to in a case of ambiguity or where it is necessary to interpret the Act itself so as to give effect to its purport but it is doubtful whether the meaning of definite and unambiguous words can be strained because their natural interpretation would seem to extend the alleged scope of the Act. 4

“It is expedient.”—The Punjab Regulation of Accounts Bill, 1929 (now Act I of 1930) was a Government measure and it was sponsored in the Punjab Legislative Council by the Finance Member (The Hon'ble Mr. A. M. Stow). The term 'expedient' taken in this connection, may be interpreted to mean that in the opinion

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1. 104 I C. 661 ; 28 P. L. R. 595.
 2. Raj Mal v. Harnam Singh, 9 Lab. 260, following 11 Cl. and Fin. 85, 143.
 3. Pretty v. Solly, 26 Beav. 606, 610, Churchill v. Crease, 5 Bing. 180.
 4. Kersavala v. the Corporation of Madras, A. I. R. 1926 M. 381, 92 I. C. 1053.

of the Government, this is a piece of legislation which is necessary for the collective happiness of the people of the Punjab.

The history of this Act is closely associated with the change of opinion, brought about in England on account of the revulsion of feeling from the individualistic tendency in legislation, advocated by Bentham and other Utilitarians, to the views of the so-called Collectivists.

"No doubt, in England usury laws were repealed under the influence of English public opinion, voiced as it were, by several eminent authors, of whom Bentham was perhaps the foremost, of the latter part of the 18th Century and the early beginning of the 19th Century. Bentham's defence of usury supplied every argument which is available against laws which check freedom of trade in money lending".¹

The period before Bentham was a period of restrictions and prohibitions against interest. This topic will be dealt with more in detail, under the heading of 'interest' under Section 2, post. Suffice it here, to state that under Edward the Confessor, usury was forbidden while, under the cannon law, it was a sin. The year 1291, witnessed the expulsion of the Jews from England and they too, although permitted before, were forbidden to indulge in usury. In the times of Henry VIII and Edward VI and his successors, the absolute ban on usury was taken off, but the attempt was continued to bring down the rate of interest, permissible by law, until by 12 Anne St. 2 C. 16 the same was set down at 5 per cent. Who does not remember the figure of

1. The Law of Interest in Br. India by Aiyer, Ed. 2^d p. 39.

Slylock immortalized in the Merchant of Venice, being subjected to scorn and ridicule by all the Christians for his sole sin of claiming a "breed of the barren metal."

As pointed out in the penultimate para, the beginning of 19th Century with Bentham, enunciating his principles of individual liberty and good, and publishing his famous work on Usury; Mill-giving to the world his work on 'Liberty' and Adam Smith making a landmark by his monumental work: "The Wealth of Nations" saw great impetus given to the spirit of individualism.

As a result of the cry for freedom, due to this spirit of individualism, the Usury Laws Repeal Act, 1854, was passed in England and as the legislation has proceeded in India on the lines, parallel with those in England, the Indian Legislature enacted in the very next year, the Usury Laws Repeal Act, 1855.

In the beginning of the 20th Century, however, the pendulum swung on the other side and the spirit of individualism gave way to collectivistic tendencies. "The advance of political science demonstrated, that society is to be regarded as a living organism, and not merely as a collection of independent units. The interests of the nation as a whole, were considered as more paramount than the special interests of particular individuals." The Select Committee appointed in England in 1898 reported :—

"It is no doubt, a serious thing to meddle with the freedom of contract, but the legislature has seen fit to do so, on more than one occasion and to prohibit certain classes from contracting themselves out of protective statutes. It would be still more serious to interfere with

banking and mercantile business or to place any obstacle in the way of ordinary commercial transactions. But the remedy of granting relief by the Court against unconscionable bargains does not necessarily involve interference with freedom of contract. It is more analogous to cases, where contracts are avoided as being against public policy. ”

The results of the labours of the Committee were embodied to a certain extent in the provisions of the English Money Lenders Act, 1900.

In India, the Legislature enacted the Usurious Loans Act 1918 to control the practices supposed to exist in India, similar to those found, as rampant in England.

Mr. Muhammad Yamin Khan in 1925, introduced in the Indian Legislature, a Bill modelled on the lines of the English Money-Lenders Act, 1900. The Bill, however, was subjected; on the whole to adverse opinion and it was dropped as being altogether unsuited to the Indian conditions and the provision for the compulsory Registration of the Money-Lenders evoked an almost universal condemnation.

Mr. Maqbool Mahmood not allow the grass to grow under his feet, and introduced his bills under the title of “The Punjab Money-Lenders’ Bill, X of 1925 ” (Vide Appendix No. 1). After the Punjab Alienation of Land Act, 1900, this was *par excellence*, the second piece of class Legislation, which was interpreted by a bulk of the non-Moslem public of the Punjab and by the Hindu Members of the Punjab Council and a number of the Sikh Councillors, as calculated to hamper the legitimate avocations of the Money-

Lenders in order to placate the Moslem opinion. The Moslem Members of course, stood by the measure as a piece of Legislation, necessary to protect the weak and the necessitous from the grips of unscrupulous money-lenders. The Government members supported the measure and it was passed by the Council. The general consensus of the opinion of the Commercial and Trading classes including the European business men was, however, ranged in opposition to the Bill and Sir Malcolm Hailey, the then Governor not only, withheld his assent but did not even remit it for reconsideration. The Bill was therefore, still born, but while explaining the reasons for his action, Sir Malcolm Hailey addressed the Punjab Legislative Council thus :—

“I have considered the question anxiously and I have finally come to the conclusion that, in its present form the drafting of the Bill falls so short of the requirements I have already described that I could not conscientiously commend it for the final assent of the Governor-General..... It will remain for us to place before your successors in the form of a Government measure a Bill somewhat simpler and possibly of more restricted scope, which will serve to secure the end in view without involving the danger which I have apprehended in this measure”.

In introducing the Punjab Regulation of Accounts Bill (now Act I of 1930) on 26th July, 1929, the Finance Member who was incharge, reminded the House that it was in fulfilment of the pledge, contained in the address of Sir Malcolm Hailey, delivered on 25th October, 1926.

The new Bill was in the words of Sir Malcolm

(1) Punjab Legislative Council debates Vol. XIII No. I, 26th July, 1929, pp. 27, 28.

Hailey, to be :—

“for securing the better keeping of accounts as between certain classes of creditors and debtors..and to guarantee to the debtor, some means of ascertaining exactly, how his account stands and how it is composed”.

The task however, of drafting a measure which would not result in interference with the ordinary methods of keeping trade and commercial accounts, or, would not prove so lacking in precision or definition as to involve the increase of litigation or uncertainty in its result” was a difficult one.

In the statement of objects and reasons, (*vide* App. 4) appended to the Punjab Regulation of Accounts Bill (now Act I of 1930) it is claimed for the Bill (now Act) that 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 it is further stated, the Bill (now Act) designedly avoids any unnecessary degree of regimentation which might tend unduly to harass the lender and to contract 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”.

It was during the debates on the Bill in its various stages strenuously, urged by the Hindu Members almost *en bloc* that this was a class measure which aimed at the annihilation, of the business of the money-lenders. The Muhammadan Members and one or two Hindu Members

replied that it was calculated only to afford protection to the helpless illiterate borrowers at the hands of the wily Money-lenders.

The provisions that the copies of accounts were to be maintained in languages and scripts which the lender may not even know how to read or write, that the copies of accounts were to be sent irrespective of the number of the borrowers dealing with a lender and regardless of the education, station in life or profession, of the borrower or even whether he wants the copies or not :—all these and others, *e. g.* the non-exemption of private companies and even the transactions evidenced by registered deeds and that even if the debtor does not protest against the correctness of the accounts, there was to be no presumption of correctness thereof, can not but arrest the attention of the reader.

It serves no useful purpose to remind us of the success of Money-Lenders' Act in England. In the words of the Government of Bombay when recording their opinion against the Bill of Mr. Muhammad Yamin Khan introduced in the Legislative Assembly, in 1923, "the problem of dealing with money-lenders in England is totally different from that of dealing with them" in India, "and arguments from the success of Money-Lenders' Act in England are in the view of the Governor in Council full of danger. In England a small and fairly

well-defined class of professional lenders catering for a comparatively small class of borrowers has been taken under control without difficulty and without interfering with or unsettling the whole of the credit system of the country. In India, practically every one with a little money in hand, lends it out and the agriculturist who has saved a few rupees is often quite as rapacious as any *sahukar*."

For regulating the keeping of Accounts.—As the text of the various sections of the Act would show, this Act not only regulates the account-keeping but it also imposes restrictions also and controls the money-lenders' actions. It restricts the language and the script to be used and directs copies of the accounts to be despatched half-yearly. The provisions of the Act itself, go much farther than the professed object, enunciated in the preamble. It imposes penalties and directs what will constitute evidence, and of what value, when the creditor resorts to a court of law.

The term "Keeping of Account" is not accurate in view of the language of the succeeding sections. It is not concerned merely with the keeping of Accounts. It deals also with the despatching of Accounts and so the more correct description of the object would be "keeping and despatching of accounts."

Certain transactions — What are those transactions? In the statement of objects and reasons (Vide appendix No. 4) to the Panjab regulation of Accounts Bill No. 6 1930) occur the words :—

"It was felt that the Bill (10 of 1925) 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.*" Evidently, therefore, the transactions aimed at, originally, were those between ignorant debtors and professional money-lenders. But the Sections, as enacted seek to protect all borrowers (with a few exceptions) even though, they may be perfectly fitted to look to their own interests, by virtue of their experience, position, or education.

Previous sanction of the Governor-General under Section 80-A (3) of the Government of India :—

Section 80 of the Government of India Act is worded as below :—

Powers of Local legislature.—S. 80-A. (1) The local legislature of any province has power, subject to the provisions of this Act, to make law for the peace and good government of the territories for the time being constituting that province.

(2) The local legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature,

(3) The local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

(a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled

as exempted from this provision by rules made under this Act ; or

- (b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty ; or
- (c) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces ; or
- (d) affecting the relations of the government with foreign princes or states ; or
- (e) regulating any central subject ; or
- (f) regulating any provincial subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian legislature in respect of any matter to which such declaration applies ; or
- (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or
- (h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India

other than that local legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local legislature without previous sanction ;
or

- (i) altering or repealing any provision of an Act of the Indian legislature made after the commencement of the Government of India Act, 1919, which by the provisions of such first-mentioned Act may not be repealed or altered by the local legislature without previous sanction :

Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament.

Act of 1930 compared with the Bill No. 10 of 1925:—1. The definition of 'loan' in the Act of 1930 exempts a larger number of transactions from the operation of the Act than that given in Bill No. 10 of 1925.

2. The term 'Money Lender' has been replaced by the expression 'creditor.'

3. The penalty imposed under the Act is much less harsh than that in the Bill of 1925.

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

NOTE.

Name of the Act—As discussed under the preamble, the name "The Regulation of Accounts Act" is a misnomer. The real scope of the Act is much wider than the mere regulation of Accounts. It not, only, prescribes the forms in which the accounts are to be maintained: it prescribes also, the modes in which copies are to be sent to the debtor and the penalties with which the breach of these provisions, is to be visited. Besides, it directs the courts to try prescribed issues, whether deemed necessary or superfluous by them in the circumstances of each case lays down a procedure different from that prescribed by the High Court for the verification of copies of the account books.

The originally proposed appellation of Bill No. 10 of 1925 namely, "the Punjab Money-Lenders Act" is more accurate and goes much nearer the mark in expressing its scope, as evidenced by the provisions in the sections of this Act.

It extends to the Punjab.—In the Punjab Legislative Council, Rai Bahadur Mohan Lal moved the following amendment :—

That in Sub-clause (2) of Clause I, after the word 'Punjab' the words "but shall apply to such districts or group of districts to which the Government may by notification, apply" be added." The object of the amendment was that as the measure was a novel one, and it had divided the Punjab and the Council into two camps, one crying it down as born of hatred of one class by another, and the other welcoming it as the panacea for most, if not all, the ills to which the Zamindars especially the Muhammadan agriculturists in the Punjab were subject, its experiment should at first, be confined to only one district or a group of only a few districts. Mr. S. L. Sale, Legal Remembrancer opposed the amendment on behalf of the Government, pleading the difficulty in the enforcement of the Act, if the amendments were accepted. "Under the Civil Procedure Code," argued he, "a suit can be brought before a Court in whose jurisdiction the cause of action wholly or in part arose."

"I think Sir," continued he "creditors will have no difficulty, if this amendment were accepted, in arranging that the cause of action would arise in a district in which the Act does not apply. Consequently it will be very easy to evade the provisions of this Act." This amendment was thrown out and the same was the fate of another one moved by Dr. (now Hon'ble) Gokal Chand Narang which was even more reasonable and was worded as below :—

"That in place of Sub-clause (2) of Clause (1), the following be substituted :—

"It shall extend to such parts of the Punjab as the Government may notify in this behalf." The majority, however, could not trust even the discretion of the Local Government and the motion was rejected.

Evasion of the Act.—The Act now extends to the whole of the Punjab. But the evil, which the Legal Remembrancer anticipated in restricting the applicability of the Act to a few selected districts, at first, has not been eradicated altogether, even by the Act being extended to the whole of the Province. The Act is not in force, in the adjoining provinces of N. W. Fr., United Provinces and the Delhi Province and in the adjoining Indian States. It is true that in the Kashmir State the Administration tried to outstrip even the Punjab Government and the provisions of Mr. Maqbul Mahmood's Money-Lenders' Bill though in a modified form, were applied to the State even though Sir Malcolm Hailey turned it down in the Punjab. But that is something different. We will discuss later on the legal aspect of the decrees awarded in Kashmir being of any use in the Punjab.

Decrees of other Provinces.—If a Punjab creditor secures an agreement from the borrower that he would make the payment in a place. *e. g.*, one situated in the Delhi Province or the United Provinces he can select the forum accordingly and the decree awarded there, can subsequently, be transferred to any district in the Punjab and executed as if, awarded in this province.

(i) Under Section 20 of the Code of Civil Procedure 1908 :—

"every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each 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 ; 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.

Decrees awarded in Indian States or in Foreign States. The decrees awarded by the Courts of the Indian States can not be executed in British India except where in relation to the Courts of a particular state the Governor-General in Council has by notification, in the Gazette of India, declared that such decrees will be executed in

the British Indian Courts and *vice versa*¹

Judgments of Foreign Courts as distinct from those of the Indian States.—A foreign judgment, e. g., a judgment secured in Afghanistan or in the French or Portuguese India shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigation under the same title, except :—

- (a) Where it has not been pronounced by a Court of competent jurisdiction
- (b) Where it has not been given on the merits of the case ;
- (c) Where it appears in the face of the Proceedings to be founded on an incorrect view of International Law or a refusal to recognize the law of British India in cases in which such law is applicable ;
- (d) Where the proceedings, in which the judgment was obtained, are opposed to natural justice ;
- (e) Where it has been obtained by fraud ;
- (f) Where it sustains a claim founded on a breach of any law in force in British India.²

Where a foreign judgment is obtained which stands the test, laid down in this section, a Court in British

1. Section 44 of C.P.O. 1908 vide Appendix No.
2. Section 18 of C. P. C. 1908.

India may award a decree based upon the same.

To apply these observations with respect to the Punjab Regulation of Accounts Act, 1930 I may observe that if a creditor who has not conformed to the provisions of this Act, obtains a judgment in a foreign court, *e. g.*, an Indian State or in French or Portuguese India or Persia or Afghanistan and that court is not continued under the orders of Governor-General in India, then if under Section 44 of the Code of Civil Procedure, 1908, the Governor-General in Council has issued a notification then the decree of that court is good and valid for execution in the Punjab. But if no such notification has been issued by the Governor-General in Council then a decree will have to be obtained again in British India and if the creditor attempts to secure one in the Punjab, he will have to face the penalties, laid down in Section 4 post of this Act and all his labours to circumvent the law would have gone in vain.

To whom is this Act applicable?—This Act applies to all (barring the exceptions mentioned in Section 2 post) who seek to recover their money in the Courts in the Punjab due on money-lending transactions governed by this Act. It makes no distinction between the nationality or domicile of the plaintiff. The *Lex fori* governs the suit in such cases.

Other Provinces.—It is rather curious that the North Western Frontier Province, which is always ready to follow in the wake of the Punjab in the applicability of the Acts of this kind has not as yet, moved in the matter. Nor, has the Act been extended up till now, to the Delhi Province. Perhaps the results of the experiment in the Punjab will determine the attitude of the authorities in these provinces.

Date of the enforcement of the Act.—This Act came into force on the 1st of July, 1931.

By notification.— Clause 36 of the Punjab General Clauses Act, 1898 runs thus:—

“Notification” shall mean a notification published under proper authority in the Gazette”.

Local Government.—The expression Local Government has been defined as meaning “the person authorized by law to administer executive Government in the part of British India in which the Act or Regulation containing the expression operates.”¹

Proviso.—In the Bill, as originally drafted, this proviso did not exist, but the Select Committee inserted the proviso: “provided that this date shall not be earlier than six months after the date of final publication”. The Legal Remembrancer in the meeting of the Council in which the Report of the Select Committee was taken into consideration, moved the addition of the words “or later than one year” between the word “months” and the word “after” and of course, the motion was carried. All attempts to enlarge the period during which the creditors might be able to familiarize, themselves with the provisions of the Act or liquidate their business, met with a stern refusal at the hands of the majority in the Chamber.

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

(1) General Clauses Act X of 1897, Section 3, cl. 29

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 ;

(vi) a transaction which is, in substance, a mortgage or a sale of immoveable 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 moveable or immoveable, 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.

NOTES.

Definitions.—For the purposes of this Act, the terms defined in this Section, can have only, that meaning, which has been assigned to them herein, subject only, to the condition that there should be nothing repugnant in the subject or context. 1

(1) **Bank.**—The Legal Remembrancer moved in the Council that at the end of the definition of the term 'Bank' the following words be added :—

“ and shall include a bank, incorporated outside British India which has complied with the provisions of Section 277 of the Indian Companies Act, 1913.” The text of the Section 277 of the Indian Companies Act, 1913, runs thus :—

Requirements as to companies established outside British India, Section 274.—(1) Every company incorporated outside British India, which at the commencement of this Act has a place of business in British India, and every such company which after the commencement of this Act establishes such a place of business, within British India shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

(a) a certified copy of the Charter, statutes or memorandum and articles of company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof ;

- (b) the full address of the registered or principal office of the company ;
- (c) a list of the directors and managers (if any) of the company ;
- (d) the names and addresses of some one or more persons resident in British India authorised to accept on behalf of the company service of process and any notices required to be served on the company ;

and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time, file with the registrar a notice of the alteration.

(2) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

- (i) in a case where by the law, for the time being in force, of the country in which the company is incorporated such company is required to file with the public authority an annual balance-sheet,—a copy of that balance sheet; or

- (ii) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated—such a statement in the form of a balance-sheet as such company would if it were a company formed and registered under this Act, be required to file in accordance with the provisions of this Act;

Provided that the Governor-General in Council may, by notification in the Gazette of India subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such company or any class of such companies from this requirement."

(4) Every company to which this section applies and which uses the word " Limited " as part of its name shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in British India state the country in which the company is incorporated; and
- (b) conspicuously exhibit on every place where it carries on business in British India the name of the company and the country in which the company is incorporated in letters easily legible in English characters, and also, if any place where it carries on business is beyond the local limits of the ordinary original civil jurisdiction of a High Court, in the characters of one of the vernacular languages used in that place; and
- (c) have the name of the company and of the

country in which the company is incorporated mentioned in legible English characters in all bill-heads and letter paper, and in all notices advertisements and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(6) For the purposes of this section—

- (a) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;
- (b) the expression "place of business" includes a share transfer or share registration office ;
- (c) the expression "director" includes any person occupying the position of director, by whatever name called ; and
- (d) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(7) There shall be paid to the registrar for registering any document required by this Section to be

filed with him a fee of five rupees or such smaller fee as may be prescribed."

The amendment was however, disallowed as having been moved without a notice. But I do not think that in practice it would have made much difference, as the present definition covers all the companies registered in almost all parts of the British Empire and comparatively, little business is transacted in the Punjab by the sons of the soil with the Banks incorporated in any country, outside the United Kingdom, its Colonies, Dependencies and British India.

Bank.—The simplest definition of the term in general parlance would be an establishment or office where transactions for the deposit and issue of money take place. But it will be readily, recognised that this is only one branch of the activities of a modern Banking concern.

Company—Dictionary meaning.—The term 'company' in the dictionary sense, means a number of persons, united for carrying on anything jointly for example, trade or business.

In Halsbury's Laws of England Vol. V. P. 12 the term 'Company' has been defined most lucidly:—

1. It may not be possible to bring within the terms of a logical definition either a company or an association, or that which may in a certain sense be implied by either or both of these words; but it has been loosely described as the result of an arrangement by which parties intend to form a partnership which is constantly changing-to-day consisting of certain members and to-morrow consisting of some only of those members along with others who have come in-so that there is a

constant shifting of the partnership, a determination of the old and a creation of a new partnership, with the intention that, so far as the partners can by agreement between themselves bring about such result, the new partnership shall succeed to the assets and liabilities of the old partnership.

It generally consists of a considerable number of persons, and if it has shares, those shares are transferable. One of the leading differences between a company and an ordinary partnership is that in the former a member can, and in the latter he can not, sell his share without the consent of all the other members.

Companies-Private Companies.—It will be readily noticed that the definition of the term company as given in Clause 2 of Section 2 includes a "private Company," also, but in exemption (iv) of Sub-section 7 of this section, the term 'Company' has been so hedged round, as to exclude "private Companies".

Private Company.—This expression has been defined as below in Clause (13) of Section 2 of the Indian Companies Act, 1913 :—

'Private Company' mean a company which

- (i) by its articles—
 - (a) restricts the right to transfer its shares ; and
 - (b) limits the number of its numbers (exclusive of persons who are in the employ of the Company) to fifty ; and
 - (c) prohibits any invitation to the public to

subscribe for any shares or debentures of the Company; and

(ii) continues to observe such restrictions, limitations, and prohibitions :

Provided that, where two or more persons hold one or more shares in a Company jointly, they shall, for the purposes of this definition, be considered as a single member."

British India.—This term has been defined in Clause 7 of Section 3 of the General Clauses Act (X of 1897) to mean "all territories and places within Her (His) Majesty's dominion which are for the time being governed by Her (His) Majesty through the Governor-General of India or through any Governor or other, officer, subordinate to the Governor-General of India."

Co-operative Society.—The Co-operative Societies Act 1912 was amended by Act XVII of 1914. The *pre-amble* of the Act reads:—

"Whereas it is expedient further to facilitate the formation of Co-operative Societies for the promotion of thrift and self-help among agriculturists, artisans, and persons of limited means and for that purpose to amend the law relating to Co-operative Societies it is hereby enacted as follows:"

To the bulk of the Non-Moslems in the Punjab, the institution of the Co-operative Societies was the second attack upon the money-lenders, the first being the Punjab Alienation of Land Act, 1900. Whether this impression is true or not, there is no doubt that whatever hardships may be said against money-lenders as a class or

individuals in particular, the fact remains that money-lender is one of the most useful members of the Society in this country.

How many Co-operative Societies are there as yet in this country.

Co-operative money lending inspite of great stride that it has made, is still in its infancy, and that if we are to strike a blow at common system of lending money in this country, the result would be disastrous."(1)

Court:—The definition of the term 'Court' to include the Insolvency Court was adopted inspite of the opposition of Dr. (now Hon'ble Dr. Gokal Chand Narang, and others on the ground that the proceedings in the insolvency court, already much delayed, would be inordinately protracted if the provisions of this Act were extended to Insolvency Courts.

'Creditor' It will be interesting to compare this definition* of a creditor, with that of a 'money-lender' in Section 6 of the English Money-Lenders Act, 1900. The expression "money-lender" it states "in this Act shall include every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way carrying on that business."

The commentary on this definition by Messrs Thorp and Aiken on page 28 it (Ed, 1928) will throw a flood of light on an intelligent grasp of the definition of creditor in the Pujab Regulation of Accounts Act, 1930.

Whether a man is carrying on the business of money lending is always a question of fact in each case. The criterion would appear to be whether he is willing

1 Mr. Haig opposing Mr. Mohammad Yamin Khan's Bill.

to lend money to all and sundry who, in his view are eligible borrowers. Thus the plaintiff was managing clerk to a solicitor. He had on several occasions lent money, but mostly, if not entirely, to persons who might be described as friends or relatives. He had not advertised or held himself out as a money-lender. Held he was not carrying on business as a money-lender. Again, an art dealer who gave long credit to his customers taking bills in payment, which he discounted and renewed from time to time, retired from business and sold off his stock. He took bills for the greater part of the purchase price of his business. After retirement he carried on business as an expert art valuer and assisted two art businesses, discounting for them the bills of their customers. He also took bills for the interest due to him as the holder of certain debentures of one of the business, further, he made loans-about ten in all to old acquaintances in the trade. It was held that he was not a money-lender within the meaning of the Act, and as to the bills taken by him on the sale of his business and since renewed, they fell within the exception provided by Sub-section (d) of Section 6 of the 1900 Act, in that he was a person "*bonafide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purpose of which he lends money" It should be noted that there was no advertisement and that the rate of interest was 15 per cent. on discount and 10 per cent. on loans. In a similar case the plaintiff carried on business as an auctioneer and valuer and was in the habit of making advances upon bills of sale to any person against whom there was no personal objection and where the security was sufficient, charging 15 per cent. interest. He did this the better to obtain a Valuation fee, and the practice brought him in contact with other people, from whom he obtained other business. He did not lend money on personal security. Held that the plaintiff

carried on a *bona fide* business, not having for its primary object the lending of money within the meaning of the Act, and that he did not require to be registered. On the other hand, it has been held that a person who, while *bona fide* carrying on business as a solicitor, makes a practice of advancing money to clients and others must register under the Act unless the primary object of advancing the money is to maintain or increase his professional business and earn professional fees.

Where, in answer to a claim for money lent, the defence is set up that the plaintiff is an unregistered money lender, the *onus* of proving this lies on the defendant. In determining the question the whole of the transactions of the plaintiff by way of loan must be considered, including those cases which may fall within the exceptions to Section 6. In one case, where a person carried on a business as a jeweller and lent money to customers and others coming in contract with him in connection with his jewellery business, it was held that such loans did not fall within the exceptions mentioned in Section 6. In such cases it appears that the defendants are entitled to administer interrogatories to the plaintiffs as to what (if any) other loans the plaintiffs have transacted during a reasonable period before the loan in question, and on what security and at what rate of interest and generally as to the circumstances and terms of such loans as being relevant to the issues raised by the defence: but they are not entitled to require the plaintiffs to disclose the names of the borrowers.

The term "creditor" is only a euphemism for the expression 'money-lender'.

Tests to determine whether a person is creditor.—
The definition of the term 'creditor' excludes from the

operation of this Act, the persons who do not advance loans 'in the regular course of business'. This is one of the tests of a creditor. The other criteria may be formed in the definitions of the terms 'Loan' and 'interest' given below in this section. So, we may give as follows at one place the tests which under this Act determine whether a person comes under the definition of the term 'creditor' as laid down in this Act :—

1. The person should be advancing loans in money or kind.
2. In the regular course of business, and
3. At interest.

A person will not be deemed to be a 'creditor' if he does not advance loans in the *Regular course of business*. Similarly, if he advances a sum to a friend without interest, the provisions of this Act will not be applicable to such a transaction. Again, the loan should be an advance of money or of something in kind. It will not, of course, include mere exchange of the same quantity of the goods of one kind for an equal or different quantity of another kind of goods and for the same reason the 'transactions' of 'sale' and 'mortgage' as we will see presently, have been exempted.

Person-minor.—The definition of the term "person" includes "any company or association or body of individuals whether incorporated or 'not.' This term cannot include a minor inasmuch as it is settled now beyond the possibility of cavil that as laid down by their

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1. The Punjab General Clauses Act, 1898 Section 2, Clause 40.

Lordships of the Privy Council in *Mohori Bibee vs. Dhurmodas Ghose* 30 C. 539, the contract of a minor is void, and not even voidable and therefore, a minor can neither sue nor can he be sued. A minor, if not subject to the Guardian and Wards Act, 1890, attains majority at the age of 18 and if subject to that Act at the age of 21.

Subject to the Provisions of Section 3.—The reference is to Section 3 (i), Proviso (ii) which reads :—

“(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”.

Legal Representatives.—Legal Representative means a person who in law represents the estate of a deceased person and includes any person, who intermeddies with the estate of the deceased, and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued”.¹

I think that the relationship intended to be expressed by the term ‘successor-in-interest’ is included in the expression ‘Legal representative’ as defined in the Code of Civil Procedure, 1908, cited above.

In England, the onus of proving that the plaintiff is an unregistered money-lender lies upon the party who asserts the same. In determining this question “the whole of the transactions of the plaintiff by way of loan must be considered. “In one case, where a person carried on a business as a jeweller and others coming in

1. Section 2 Clause 11 of the Code of Civil Procedure; 1908.

contact with him in connection with his jewellery business, it was held that such loans did not fall within the exceptions mentioned in Section 6. In such case it appears that the defendants are entitled to administer interrogatories to the plaintiffs as to what (if any) other loans the plaintiffs have transacted during a reasonable period before the loan in question, and on what security and at what rate of interest and generally as to the circumstances and terms of such loans as being relevant to the issues raised by the defence; but they are not entitled to require the plaintiffs to disclose the names of the borrowers." 1

The right of the defendant to interrogate the plaintiff.

In India as in England, it appears that the defendants are entitled to administer interrogatories to the plaintiffs as to what (if any) other loans the plaintiffs have transacted during a reasonable period before the loan in question, and on what security and at what rate of interest and generally as to the circumstances and terms of such loans as being relevant to the issues raised by the defence; but they are not entitled to require the plaintiffs to disclose the names of the borrowers. 2

"Or otherwise." *e.g.* by the exchange of debt-items by two different creditors.

Interest .—History of the institution of Interest.

The practice of receiving a return for the use of money over and above the principal is a matter of comparatively recent growth. In the earliest times known to history the people lived in family groups each presided by a patriarch and whatever was earned

1. Fagot v. Fine (1911) 105 L T. 583

2. Nash v. Layton (1911) c. C1. 71.

by each member became the property of the family to be used by each member as the needs arose. In such a family no question of borrowing or lending could arise. The traces of this phenomenon are observable even now in the joint Hindu families in India.

But even the idea of borrowing and lending outside the family groups could not be thought of as the institution of interest presupposed the existence of the ideas of contract and contractual obligations and it is well-known, that these conceptions took time to grow and develop "It was only when the idea of contract had come into existence, and a respect for contractual obligations began to develop, that the practice of lending money with a view to get it back with interest first originated." Long after the idea of the contract developed, the loans on interest were confined to transactions between the members of different communities and the practice of loans on interest to the members of the same community continued to be forbidden for a very long time. In the early ages the chief objects of loan between the members of the same community, were boats, houses, ploughs and cattle and they were returned after use. Gradually, with the advance of civilization increase of population, growth of trade and commerce the value of the increase of the loan by interest came to be recognized.

At first the interest took the shape of natural increase, *e.g.*, the cattle lent brought with them their young and one bushel of corn sown grew hundred fold and a share of this growth was paid to the lender along

1. For the discussion of interest I am indebted to the labours of Mr. Aiyer in his book. "The Law of Interest in British India Ed. 2,"

with the principal.

Sometimes to get over the repugnance of the idea of interest, it was simply agreed upon that to the principal, something was to be added if the principal was not to be returned on a fixed date. This was only a sort of compensation for the breach of the contract.

Another and more popular method was that money was lent on the security of usufructuary mortgages and the produce and income was appropriated in the lieu of the detention or use of the money.

"Law can not as observed by Mr. Aiver in his commentaries on the Usurious Loans Act (X of 1918) cover itself under these sundry shifts and devices. Sooner or later, the necessities of commerce and the advanced condition of the community must be met. Hence, the law was declared that the taking of interest was legal and a contract for interest was enforceable at law."

Next comes the period during which in the civilized world, the state imposed Regulations for the control of the rate of interest. To this period belongs the legislation up to the time of the many Rypal Acts passed in England and India in 1854 and 1855 respectively.

Between 1854 to 1900 in England and between 1855 and 1918 is the period of absolute freedom in contract.

"Absolute freedom of contract failed to give satisfaction, because it has omitted to take into account those classes of people who could not be expected to take care of their own interest in the competition of the world, without some sort or other of state pro-

tection." Hence the remedy adopted by the Money-Lenders, Act in England and the Usurious Loans Act, in India, by which courts are empowered to grant such relief as the peculiar circumstances of each particular case may require, having regard to the position of the parties, the state of the market, the risk involved and the several other matters which in fair competition, determine the rate of interest charged on loans of money".¹

It is doubtful however, if the Punjab Regulation of Accounts Act, 1930, is a merely regulative measure. It is apprehended that it might actually interfere with the legitimate enterprise of the money-lenders and restrict the credit of the agricultural borrower, which will tell especially hard upon him in the days ahead when there is a slump in the market and the prices are touching the bottom of the scale.

Interest defined.—'Interest' etymologically is a state or condition of having a share in anything, hence a legal or other claim to a share in property, benefits or advantages." In common language, it is the amount paid by way of compensation for the use of money advanced.

In this Act, the expression interest has been used in a sense akin to its etymological meaning. It means the return to be made by the debtor, over and above the loan; it may be a percentage of the cash lent or it may be a share by weight or measure, of the debt in kind advanced to the borrower.

This definition has been taken from clause 2 of Section 2 of the Usurious Loans Act, 1918.

1. Aiyer's Usurious Loans' Act, 1918.

Stipulation as to interest—express or implied. There may be a contract between the lender and the debtor as regards, a particular rate of interest. Such an agreement may be expressed in words, leaving no doubt as to the incidence of the interest, or there may be no express words used in the contract but the language by clear implication might lead to the clear inference of a rate of interest, agreed upon by the parties.

Usage-mercantile, or otherwise — There may be no mention of interest express or implied in the contract between the parties, but there may be a trade usage, which appears to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract.¹

“It is the universal practice amongst the trading classes of India to charge and allow one another interest (in the Bombay Presidency at nine per cent.) on all book-debts and the practice of that Court was to carry out the contracts made by the parties, by awarding interest, unless some special reason intervened to prevent it” (Per Perry, C. J. in the case reported in Perry’s Oriental Cases, p. 198, and he proceeds to say, that the Court were unanimously of opinion that the contract in suit was one of those in which the payment of interest was understood to be a term between the parties, and that it was accordingly awarded as damages. It was held that it was a recognised trade usage in the Rawalpindi city that if interest was charged on a Hundi and such Hundi was not paid on maturity, the same rate of interest would continue to be payable.²

1. Juggomohan Ghose v. Maneek Chand, 4 W. R. 8, 7 M. L. A. 263 (P. C.)

2. 21 P. R. 1015, 22 P. T. R. 1015, 20 I. C. 245.

Previous course of dealings between the parties.—Or there may be a previous course of dealings between the parties which might determine the rate of interest to be charged.

Interest payable under the statutes.—Interest is payable under certain statutes and in these cases the courts have been left no discretion in the matter, *e.g.*

(1) On account of the arrears of rent under the various Rent Acts *vide* Section 101 of U.P. Tenancy Act, 1901, Section 61 of Madras Tenancy Act, Section 141 of U.P. Rent Act 1886 (at 12% P.A.) and Section 67 of the Bengal Tenancy Act, 1885 (12½% P.A.).

(2) On compensation awarded under the Land Acquisition Act, 1894, (at 6% P.A.)

(3) On the arrears of Revenue—(*e.g.* under Section 7 Madras Revenue Recovery Act, 1864, Section 80 of C. P. Tenancy Act, 1893).

(4) On compensation under Works of Defence Act 1903, (at 6% P.A.)

(5) Under the Negotiable Instruments Act, (Section 80, 1881. This section reads:—

“When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, Section 532, be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of the suit to recover such amount as the court directs.

Explanation.—When the party charged is the endorser of the instrument dishonoured by non-payment he is liable to pay interest only from the time that he receives notice of the dishonour.”

(6) On compensation under Northern India, Canal and Drainage Act, 1873.

Interest prohibited by Statutes.

e. g.

(1) **On Arrears of Revenue.**—In U. P. and C. P. (Section 143 of U. P. Land Revenue Act, Section 119 of C. P. Land Revenue Act).

(2) **Deposits in Court.**—Vide Rule 3 of Order 24 of the Code of Civil Procedure, 1908, which reads :

“ No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full satisfaction of the claim or falls short thereof.”

(3) **Deposit under the Transfer of Property Act 1882** (as amended).

Power to deposit in Court money due on mortgage.—
“ At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor or any other person entitled to institute such suit, may deposit in any court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.—The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same court the mortgage deed if then in his possession or power, apply for and receive the money, and the mortgage deed so deposited shall be delivered to the mortgagor or such other person as aforesaid."

Interest left to the discretion of the courts.—*e. g.*

1. Section 34 of the Code of Civil Procedure, 1908:—

(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 rates 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 therefore shall not lie.

2. Section 48 of the Provincial Insolvency Act, 1920

(1) On any debt or sum, certain whereon interest is not reserved or agreed, for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum,—

- (a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication ; or,
- (b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full."

3. Section 28 of the Land Acquisition Act, 1894.

(Collector may be directed to pay interest on excess compensation).—If the sum which, in the opinion of the court, the Collector ought to have awarded as compen-

sation is in excess of the sum which the Collector did award as compensation, the award of the court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into court.

4. Section 28 of the Works of Defence Act, 1903:—

“If the sum which in the opinion of the court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date of his award to the date of payment of such excess into court”.

No Contract, or Usage, or Provision of Statutes.—Where there is no provision in the contract defining the rate of interest to be charged, or a trade use determining the same or a statutory provision laying down the rate of interest to be charged or disallowing interest altogether, the courts in India (outside the Punjab) have a discretion to allow interest under Section I of the Interest Act, 1839:—

Power of Court to allow interest It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or, otherwise, the court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give

notice to the debtor that interest will be claimed from the date of such demand until the terms of payment. Provided that interest shall be payable in all cases in which it is now payable by law".

The same principle seems to have been affirmed in some of the rulings in the Punjab. (1)

Interest awarded—equitable grounds.—The Courts have sometimes allowed interest on the grounds of equity :—

(1) Where the plaintiff was wrongfully deprived of money on which the defendant actually makes interest:
(2)

(2) Money detained by the defendant, by fraud: (3)

Award of interest by way of damages.—Interest is awarded in suitable cases, by way of damages (4)

The Punjab Regulation of Accounts Act I of 1930 however has overridden all the provisions of the Interest Act, 1839, and Trade Usage and dictates of Equity by laying down in Section 4 post that a portion of interest must be disallowed if only the lender has not maintained the accounts in the prescribed form; even though the defendant should come into court with clean hands.

1. 2 Lab. 56; A. I. R. 1926 Lahore 464.
2. Miller v. Barlow, (1871) 14 M. I. A. 209.
3. Reshtou v. Grissel, 1870 L. R. 10 Eng. 393 (See also Earl of Hurdwick v. Vernon, 1808 14 Ves 504).
4. 42 M. L. J. 74 (1921) M. W. N. 873; A. I. R. 1922 M 55; 10 C. 785 P. C. 111, A. 88.

Loan.—The definition of this term also, has been taken from the Usurious Loans Act, 1918.

One of the Members of the opposition moved the amendment :—

The following words be omitted “and shall include any transaction which the court finds to be in substance, a loan,” “My reasons” said he, “are that as has been suggested by some people who have criticised the Bill, it will be very difficult in complicated cases for the court to determine what a loan is, unless it comes within the four corners of the definition which is given in this clause. A loan has been defined as an advance whether of money or in kind at interest. That is quite sufficient and it is not necessary at all to create complications by opening up an avenue for contentious discussion as it were, for the courts, and imposing a very difficult task on them. These words may therefore be omitted”.

The Legal Remembrancer opposed the amendment. “It seems to me that the courts should be entitled to go behind a transaction in order to see whether it is in fact a sale or a loan. The section itself defining the term loan is copied from the Usurious Loans Act which is in this respect based on the English Money-Lenders Act and has been found necessary as a result of experience. This Bill is not intended in any sense of the word to affect sales, even sales on credit. But in practice, it has been found that very often transactions which are in effect loans are brought before the courts in a form which looks as if they were sales on credit. The distinction between a sale and a loan is very clear in law. The idea of a loan is that another person is allowed a temporary possession of an article with the idea that he should subsequently return that article itself and not its equivalent. In the case of a sale, when the article is

conveyed from one person to another the ownership of the article passes. The framers of the Bill thought it very necessary that the courts should be able to go behind a transaction to see whether the ownership in the article has passed or not or whether, whatever may be the form, the intention of the parties was that the thing itself, as conveyed, should eventually be returned to its original owner. And by putting in these words, the court will be able to go behind the form of the transaction and see what the intention of the contracting parties is. It is felt that if these words were not put in the Act, the courts would possibly be bound by the form of the transaction and may hold that the transaction which is in fact a loan is not covered by this Act because it appears to be a sale. It is for this reason that we put in these words following the experience of the courts both in England and in this country which have had to deal with transactions between the money-lender and his borrower”.

For the retention of the sentence “and shall include any transaction which the court finds to be in substance a loan”, there is the authority of the text of the Usurious Loans Act, 1918, which is based on the principles of the Money-Lenders’ Act, 1900 in England. But it is perfectly true that this sentence will make another inroad upon the time of a usually over-worked Sub-judge in the Punjab.

Loan.—Whether includes Postal Registration charges and cost of copying into a particular script.

* As regards the imposition of the interest, the term ‘Loan’ as defined in this clause read with the Rules Nos. 17 and 18, as framed by the Local Government clearly includes the Postal Registration charges and costs payable by debtors demanding that account shall

be furnished in a particular script. So, these amounts will be added to the principal loan, and interest will accrue upon them as any other item of loan even though no rate of interest is agreed upon with respect to them. The courts will be satisfied in allowing the lowest rate agreed upon, during the half-year during which the item occurs, with respect to other items.

The creditor may, of course, stipulate at the commencement of the account that interest at a specified rate would be charged on these items also.

Deposit and Loan—distinguished.

The deposit is something lodged with another for safe-keeping or custody. The distinction between a loan and a deposit lies in the fact that the deposit creates a fiduciary relationship.

- (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. For the definitions of Bank, Company and Co-operative Society see above Clauses 1, 2 and 3.
- (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.

The clause (i) above only exempts deposits to a Bank or Company or Co-operative Society. The clause exempts not only deposits with but loans to and by any society.

S. 2] LOCAL BODY AUTHORISED BY GOVERNMENT 49

“Society”—“Any seven or more persons associated for any literary, scientific, or charitable purposes, or for any such purpose, as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint Stock Companies form themselves into a society under this Act”.¹

It seems to me that the terms ‘Society’ and ‘Association’ have been used interchangeably in this clause.

Any other enactment—*e.g.*, The Religious Societies Act, 1880.

(iii) a loan advanced by Government or by any local body authorised by Government.

It is to be noted that the exemption in this clause relates only to a loan advanced *by* the Government and not to the loan advanced *to* the Government.

The avowed object of the Act was to protect illiterate borrowers at the hands of sharp money-lenders. Do the Legislators in the Punjab Council think that the Government is to be clas.ed with the necessitous or illiterate borrowers and, therefore, the creditor should furnish half-yearly accounts to it also? The omission seems only to be due to an inartistic drafting.

Any local body authorized by Government. — A local body, *e.g.*, a Municipal Committee, a District Board or a Small Town Committee can advance loans only with the permission of the Government.

1. Section 1 of the Societies Registration Act XXI of 1860.

- (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.

The clause "whose accounts are subject to audit by a certificated auditor under the Companies Act," was the subject of heated controversy in the Punjab Legislative Council.

The Legal Remembrancer moved the amendment by which he wanted to substitute the following for the clause under discussion :—

"Audited annually by an auditor under the provisions of Section 144, of the Indian Companies Act."

"The object of this amendment" argued he "may be shortly stated in this way. It is a question of fact as to whether a company's accounts are or are not audited by a certificated auditor, of the kind qualified under Section 144 of the Companies Act. If the answer is in the affirmative, that is to say, if a company's accounts are audited by a certificated auditor, that company is to be exempt from the provisions of this Act. If the accounts, however, are not audited by a certificated auditor, the provisions of this Act will apply to that company as for any other creditor.

To this argument the Member for Punjab Industries made the following reply :—

"There has been some misapprehension about the words 'company' and 'private company.'" Under the Indian Companies Act two sorts of companies might be registered ; one private company, and the other public

company, The public company is required under the Act to have its accounts audited every year by a certificated auditor. But so far as the private company is concerned, it is not obligatory on it to have its accounts audited by a certificated accountant. Then the question is, that there are certain private companies a great many of them who get their accounts audited by a certificated accountant. Therefore a distinction has to be made and the point is whether those companies which get their accounts audited by certificated auditors irrespective of any legal obligation on them, should also be excepted or not. Now there is also another misapprehension on the part of my honourable friends. They think it is very easy to form a private company. Any two persons may join and form a private company and get it registered under the Indian Companies Act; but it is incumbent on a private company to have regular accounts, to have a manager, to draw up a balance sheet every year and so on. They have to observe all these things before they can be called a private company. It is not an easy matter that a money-lender may form into a private company and thus escape the sending of accounts as my honourable friends think. When a private company is keeping regular accounts, why should you insist that it should have them in the form prescribed by the Government? The company has to hold meetings every year, has to send a summary of its capital to the Registrar and so on and so forth. If the only obligation on the private company had been to get it registered, then nobody would have asked that it should be excepted. I think that the Select Committee, although, they wanted to except such companies which get their accounts audited by a certificated accountant, have not been able to express themselves properly. The provision as it stands reads: "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." There was a misapprehension in the minds of the members of the Select Committee that every private company's accounts are subject to be audited by a certificated accountant. It is not a fact. Looking at the dissenting minute of Rai Sabib Chaudri Chhotu Ram and others, we find on page 5; "We are not at all sure of the effect of private companies being exempted, under item (iii) in spite of the safe-guard which has been added in the shape of the system of audits." As the clause stands they are not exempted because private companies are not subject to audit by a certificated accountant. As I have explained I support the amendment of Dr. Gokal Chand Narang on the ground that a private company has to keep regular accounts, has to keep a manager, to hold meetings and has to prepare a balance sheet every year. So, in the first place I am in favour of that amendment. But if the members want that only such companies should be exempted which get their accounts audited by certificated auditors, then my amendment may be accepted." And the amendment given below as finally, proposed by the Legal Remembrancer should have satisfied all sections of the House :—

That for the existing sub-clause (7) (iv) substitute the following :—

" a loan advanced by a bank, a co-operative society or a company whose accounts are audited annually by a certificated auditor :

Explanation—A certificated auditor means an auditor qualified under the provisions of Section 144 of the Companies Act."

The object of the Act, as repeated so often, was to protect ignorant borrowers from the tricks of unscrupulous money-lenders. "What exactly reason could then there be to compel even those private companies, which made it a rule to get their accounts audited annually by certificated accountants qualified under Section 144 of the Indian Companies Act 1913? One of the members raised an objection to this amendment on the ground that this clause would encourage the village money-lenders to combine into private companies and thus evade the provisions of the Act. But what harm would it do if this should come to pass? We should welcome the birth of companies even if private, established under the Indian Companies Act, whose accounts are audited by certificated auditors. This amendment of the Legal Remembrancer, however, did not find favour with the majority and Captain (now Hon'ble Captain) Sikandar Hayat Khan proposed an amendment excluding the private companies by express wording. This led to an outburst on the part of the Leader of the opposition :—

"I was prepared and my honourable friends on this side of the House were equally prepared to accept the amendment which was proposed by the Honourable, the Legal Remembrancer, by way of a compromise.

But that has not appealed to honourable members on the other side of the house. What they want is really not anything calculated merely to protect the borrowers but to lay the axe at the very root of the financial organisation, by not exempting private com-

panies even with the safeguards which have been proposed by myself, the honourable Member for Industries and by the Honourable the Legal Remembrancer."

The amendment of the Legal Remembrancer was thrown out and the clause as it emerged from the Select Committee was adopted.

The words '*subject to*' make all the difference and the Private Companies are not exempted, even if they get their accounts audited annually by a certificated auditor, as they are not under Section 144 of the Indian Companies Act, subject to have their accounts audited by a certificated auditor. This clause by itself is calculated to give rise to scepticism as regards the *bona fides* of the majority of the Councillors who enacted the measure.

(2) A loan advanced to a trader.—The use of the proposition '*to*' is to be noted carefully. The loan advanced *to* a trader is exempt, *i.e.*, if a money-lender advances a loan to a trader he need not keep accounts in the prescribed form but if the trader himself advances a loan he is not exempt from keeping the accounts.

Advances by a trader.—So the advances by traders have been of a purpose not excepted.

Advances to a member of the Legal profession, etc.—Even the advances to the members of the Legal profession, members of the Indian or Provincial Service, an income tax payer and those who have passed a University examination were not exempted and the amendments which sought to exclude the loans made to such borrowers, were thrown out.

Negotiable Instrument.—Promissory Notes, Bills of Exchange (Hundis) and Cheques are negotiable instruments as the amounts payable thereunder change hands by a mere endorsement.

Promissory Note.—A “promissory note” is an instrument in writing (not being a bank note or a 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.

Illustrations.

A signs instrument in the following terms :—

- (a) I promise to pay B, or order Rs. 500.
- (b) I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand for value received.
- (c) “ Mr. B I O U Rs. 1,000.”
- (d) “ I promise to pay B, Rs. 500 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 own me."

- (f) "I promise to pay B, Rs. 500 seven days after my marriage."
- (g) "I promise to pay B, Rs. 500 on D's death, provided D leaves me enough to pay that sum."
- (h) I promise to pay B, Rs. 200 and to deliver to him my black horse on 1st January next."¹

The instruments marked (a) and (b) are promissory notes and the others are not.

The essential characteristic of a Promote are :—

(1) It is an *instrument* in writing ; (2) contains an unconditional undertaking to pay ; (3) it is signed by the maker ; (4) the sum of money is certain (payable to or order of a person or the bearer.)

The Legislature has taken care not to exempt a *promote* from the operations of this Act.

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

A promise or order to pay is not 'conditional,' within the meaning of this Section and Section 4, by

1. S. 4 Negotiable Instruments Act, XXVI of 1881.

reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be 'certain' within the meaning of this Section and Section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this Section and Section 4, although he is mis-named or designated by description only."¹

Specimen of an ordinary Bill of Exchange.

Lahore
31st July
1931

I. Providing for payment at sight or on demand.

Deva Nand Brothers, Lahore.
Rs. 2000.

Pay to Sirdar Ram Singh or his order or the bearer
Rupees Two Thousand only (for cash received).

(Sd). Mr. A. Parker,
Lahore.

¹ Section 5 Ibid.

II. Providing for payment after a fixed period:—

Lahore.

31-7-31.

To

J. S. Brothers and Son,
Lahore.

2000-0-0

Pay 2 months from date to Lala Charan Das or his order or Bearer, Rupees Two thousand only..

(Sd). Hari Ram
Manager,
Hari Ram and Sons,
Rawalpindi.

Cheque.—A 'cheque' is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. 1

Specimen of an ordinary cheque.

Lahore.
20-7-31.

Punjab and Sind Bank Ltd. Lahore.

Pay to Sardar Charan Singh, or order (Bearer)
Rupees Five hundred only.
500-0-0

(Sd). Hukam Singh.

Reason why pronote not excepted.—The reason why pronote was not excepted seems to be that a cheque evidences dealings generally, between a Banker who keeps accounts audited under the law, and the Bill of exchange too is a token of a more public transaction.

1. S. 6, Negotiable Instruments, Act, 1881.

than the one evidenced by a *pronote*.

Mortgage of sale of immoveable property.—The Legislature has exempted the sales of only immoveable property. It passes ones' comprehension why the sales of moveables were not exempted.

In Substance.—This expression means that the courts have a power to probe beneath the language used and they can declare a transaction to be a sale even if it goes under some other designation.¹

'Sale' is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.²

The term "price" as used here, means money³ or currency notes.⁴

Mortgage.—A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability.⁵

Rules.—The reference is to the Rules to be made under Section 6, post.

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1. 100 P. R. 1895, 104 P. R. 1918 and 40 All. 322.
 2. Section 54 T. P. Act, 1882 as amended.
 3. 11 M. 459, 25 B. 696, 42 M. L. J. 410 (F. B.) 68 I. C. 687: 45 M. 612.
 4. 3 C. 379, 18 P. R. 1905.
 5. Section 58, Transfer of Property Act, 1882 as amended.

Goods.—means moveable property of any kind.¹

Merchant.—means one who carries on trade on a large scale.

The term 'retail merchant' was added in the council when the Bill as it emerged from the Select Committee was considered.

Commission Agent and Broker.—Distinguished:—

Shall not include a person who sells his own agricultural produce or cattle.—The word "own" is bound to cause difficulty in the actual working of this Section. Suppose A wants to sell 100 maunds of wheat that he has purchased. Certainly, the grain is his *own*. Similarly a person may purchase cattle; they became his own property. The drafting is evidently defective. What was actually intended seems to be somewhat like "the produce raised by agricultural operations on the land in his lawful possession or cattle raised by himself."

Duty of Creditor to Maintain and Furnish Accounts.

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

- (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.

1. Section 76, Indian Contract Act, 1872.

- (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.—(1) The Local Government shall prescribe the forms and numerals in which the accounts required by this provision of this subsection 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 where in 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.

NOTES.

History.—As originally drafted, the period allowed to a creditor for sending accounts for the last half year was one month; but in the Select Committee, this period was extended to two months.

In Sub-section (1) (a) there were the words “in addition to such accounts as he may ordinarily maintain.”

The amendment moved for the deletion of these words was accepted. But for the omission of these words, the creditor would have been put to the necessity of maintaining both (1) the old accounts and (2) the accounts in the prescribed form.

One of the Councillors moved for the addition of the following proviso in the Council :—

“ Provided that the creditor shall not be compelled to keep accounts in a script, which he can not read or

“ I take it, to compel the creditors as defined in the Act to keep accounts in a particular form and to insist upon their sending a copy of these accounts to their debtors. It is not intended, I take it, by this legislation, indirectly to place a particular script or language in a position of preference over others. Nor could it be the desire that the creditors should be compelled to keep accounts in a language, which they can not read or write.”

The motion was, however, lost and a most unreasonable rule has been laid down restricting the choice of script from among five scripts :—

English, Urdu, Gurmukhi, Nagri, or Mahajui.

It is perfectly true that these scripts cover those in which most of the accounts in the Punjab are maintained but the principle, underlying this section, is an objectionable one.

Scope.—This section lays down (1) that the creditor must record and maintain accounts in the prescribed form and in one of the 5 scripts; (2) that the creditor should furnish each debtor every six months, with a legible statement of accounts, signed by the creditor or his agent (even if the debtor does not want the account to be sent to him) ; (3) in a prescribed form ; (4) so as to show the principal and interest separately.

Exceptions.— (1) The following lenders are exempted from the operations of this Act :—

- (a) Any society or association registered under the Societies Registration Act, 1860 or any other enactment ;
- (b) Government ;
- (c) Any Local Body, (if empowered by Government to advance loans).

- (d) A bank.
 - (e) A Co-operative Society.
 - (f) A company, whose accounts are subject to audit by a certificated auditor under the Companies' Act.
 - (g) A widow or a minor for six months after the right has accrued to them to a loan in question.
- (2) The following transactions are exempted :—
- (a) Deposit in a Government Post Office Bank ;
 - (b) Deposit in any other Bank ;
 - (c) Deposit with a company.
 - (d) Deposit with a Co-operative Society.
 - (e) Deposit with any Society registered under the Societies Registration Act, 1860.
 - (f) An advance made on the basis of a Negotiable instrument other than a promote, as defined in the Negotiable Instruments Act, 1881.

3. A transaction which is in substance a mortgage or a sale of immoveable property, is also exempted.

III. The loans to the following debtors are also, excepted :—

- (a) Loan to a society or association registered

under the Societies Registration Act, 1860.

(b) Loan to a trader including :—

- (i) A wholesale or a retail merchant ;
- (ii) A Commission Agent ;
- (iii) A broker ;
- (iv) A manufacturer ;
- (v) A contractor ;
- (vi) A factory owner.

IV. The following creditors are exempted as below :—

- (a) Widows and minors for six months after the debt has accrued to them.
- (b) Two creditors belonging to establish title to the same debt, until the matter has been decided.

V. Curious instances of non-exemption :—

Advances made to—

- (a) Government. (b) Local Bodies.
- (c) The Legal Practitioners.
- (d) Practitioners in Medicines,
- (e) Government Officers e. g. members of All India and Provincial Services,

- (e) Professors of Colleges.
- (f) Members of the Government e. g. Ministers :
- (g) Judges of the High Court, and
- (h) Advances made by traders (as distinguished to traders).

VI. Instances of the transactions which ought to have been exempted but which have not been exempted :—

- (a) Loans on Registered Bonds
- (b) Loans by Private Companies.

Record and Maintain—The two things are necessary to be done by the creditor :—

- (1) he should record each transaction regularly which includes daily ;
- (2) he should maintain the same. It is not sufficient that the creditor should only record an account. He should over and above recording it, maintain the accounts as recorded regularly in the prescribed form.

Separately : The account of each debtor should be kept separate.

In such manner:—The *manner* in which the accounts under section 3 (a) are to be maintained is prescribed in the Rules framed by the Local Government under S. 6 post and published under Notification No. 37270,

dated the 15th December, 1900, in the Punjab Govt. Gazette, dated the 19th December, 1930.

Rule 3. The account, prescribed by Clause (a) of Subsection (i) of Section 3 of the Act shall be maintained in the form shown in the Schedule attached, to these rules. For facility of reference, I reproduce here the form referred to above :—

For form of Schedule see page 69.

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).	Payments 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
 ————— Sambat 19 .
 15th Poh

Principal. Interest.
 Add opening balance as above

Total

(Signature) Creditor or Agent.

Counterfoil
 opening balance (if any) —
 Principal —
 Interest —

Loan Account of.....son of.....caste.....residence.....

70

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.	
1	2	3	4	5	6	7	8	1	2	3	4	5	6	7	8

Balance outstanding on 30th June 19 . Add opening balance as above Principal Interest
31st December Total.
15th Har
Sambat 19
15th Poh

(Signature) Creditor or Agent

REGULATION OF ACCOUNTS ACT

[S. 3

Forms in duplicate. Each form is to be in duplicate; one attached to the binding is counterfoil, the other is called counterfoil.

Supply of forms: *Rule 5.*—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 objection to purchase the forms from official sources but may obtain supplies in the open market or from such other source as he may desire.

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

Creditor can get forms printed. The creditor can purchase the forms at any Post Office or treasury or he may purchase the same from a private bookseller. Or he may himself get the forms printed. There is no prohibition against the use of loose forms, but it is most desirable that the bound books of forms be used and there is in doing so, less risk of the form of a particular debtor being misplaced or lost.

Creditor responsible for the supply of form :

The creditor is himself responsible for the necessary supply of forms. It would not do for the creditor to say he could not secure the forms.

The creditor can rule the forms by hand :

The creditor can, if he likes rule the forms by hand, but for the sake of neatness and uniformity and the facility of cutting out of the foil, printed forms should be used.

Numerals to be used, Rule 6:—“ 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 the explanation (i) to subsection (1) of Section 3 of the Act.

Numerals.—The numerals to be used must be confined to the one script selected by the creditor.

One script to be used by one creditor.—Although, there is no express prohibition against the use of more than one script by a creditor in relation to the accounts of different creditors but it is proper that he should select one for all his debtors.

He should not of course, use more than one script for the accounts of the same debtor.

Forms how to be filled. Rule No. 7.—Each entry in the form shall, as far as possible, be made on the date to which the transaction, in question relates.

The forms should be posted up as soon as a transaction takes place.

Rule No. 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 debtor or the Joint debtors as the address, to which the statement of account should be sent in accordance with the requirements of rule 14.

Name and address of the debtor.—In filling up the form (*vide* pages 69,70) the first thing to be done is to enter at the heading the name and address of the debtor. If there is a single debtor, then, of course, there is not much of a difficulty.

Address to be entered in the Bond etc. Separate Register. It would help the parties much, if the full address of the debtors is entered in the bond, pronote etc. But if the account is only on the *Bahi*, the creditor may do well, if he has to deal with a number of debtors to open a Register of addresses in somewhat following form: The creditor may call upon the old debtors and invariably a new debtor to write his address in his own hand, if he is a literate person and to have it in other cases written by a third person and thumbmarked by the debtor and attested if possible by a witness.

Date.	Full address of the debtor.	Signature of thumbmark of the debtor.	Attesting witness.	Remarks.

Joint debtors. If there are joint debtors then their account will be separate from the separate account of each one of them and in the case of joint debtors, the address of each will be given under the other at the top of the account of the joint debtor, *g*.

(1).....S/O.....Caste.....residence.....

(2).....S/O.....Caste.....residence.....

Firm. In case of a Firm, the address at the top of the Firm should be like :—

- (1) Ram Lal.....
- (2) Duni Chand.....

Proprietors of the Firm Ram Lal Duni Chand.

Joint Hindu Family. In the case of a Joint Hindu Family, the address should be written, as shown below :—

“ Joint Hindu Family of Ram Chand Daulat Ram etc. through the Manager, L. Ram Chand.

Limited Company. Where the debtor is a Limited Company, the address is to be *e. g.* :—

“ The Bombay Commercial Company Limited
Lahore through..... S/O....., Caste.....Residence.....
Manager

Rule 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.

Rule 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.

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

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

Form how to be filled up.—As each transaction takes place the same should be entered forthwith in the counterfoil.

As each advance or repayment is made, the amount is to be entered in words in column No. 2 on the side of *Nam* (Debit) if the former and in column No. 2 if the latter in words noting half of the same also, in words in the same column.

If the advance is in cash, the amount thereof in figures is entered on the *Nam* (Debit) side in Col. No. 3 and if in kind in column No. 4. In Column No. 5 the value of the advance in kind will be entered in figures. In column 6 will be entered the rate of interest agreed upon for each advance.

One rate of interest may be entered lengthwise if all the debt-items are to carry the same rate.

In column No. 7 will be entered the amount of interest that has accrued on the item.

In case of repayment, a similar procedure is to be adopted. As each repayment is made the same will be entered in words giving the half thereof, also, in words in column No. 2 on the *Jama* (credit) side.

If the repayment is in cash, same will be shown in column No. 3 in figures.

If the repayment is in kind, the weight or number thereof will be entered in column No. 4 and the value of the same in Col. No. 5.

In columns Nos. 6 and 7, the repayment or the value thereof will be entered as appropriated towards the principal or interest.

It is proper if column No. 7 on the debit (*Nam*) side should be filled at the close of the account by repayment of the whole debt, due (if earlier than the close of the six months for which the account is to be sent) or at the close of the six months, for which the account is to be sent.

New forms to be used. A new form will have to be used when one form is finished or a debt due to another creditor is assigned to a creditor.

Six monthly accounts to close—when? The six monthly accounts are to close on the 30th day of June or 15th Har and 31st December or 15th Poh.

FORM HOW TO BE FILLED UP

77

I give here—below the specimens for the filling of forms (1) when the debtor is new or no debt was outstanding at the close of the last half year :—

For Form See page 78

SCHEDULE

When nothing outstanding from

Loan Account of Ladhu Son of Rullia
From 1st July

NAM (Debit)

Date.	Particulars of advances in words whether cash or kind. (See rule 9)	Advance in figures.			Rate of interest.	Amount of interest charged.	Remarks.
		Cash.	Kind (number or weight).	Value of advances in kind.			
1-7-31	Rupees one hundred half fifty.	100-0			} 1 % P.M.	5-0	
1-9-31	Wheat twenty five maunds half twelve maunds and twenty seers.		25 Mds.	50-0			2-0
31 Dec. 1931	Total	100-0		50-0-0		7-0-0	

31st December

Balance outstanding on _____ 1931

the last half year.

Kamboh, Residence, Guranwala.
31 to 1st December 1931

JAMA (Credit)

Date.	Particulars of re-payment whether cash or kind in words. (See rule 9).	Payments in figures.			Appropriation.		Remarks.
		Cash.	Kind (number or weight.)	Value of repayment in kind.	Principal.	Interest.	
1-10-31	Maize twenty maunds half ten maunds.	...	20 Mds.	25-0	22-8	2-8	
					22-8-0	2-8-0	

Principal—127-8-0^(a)

Interest—3-13-2^(a)

(Signature) Creditor or Agent.

(a) How worked out. ?

Total due on 31-12-31.		Paid by the debtor	Balance due on 31-12-1931
Principal	150-0-0	22-8-0	127-8-0
Interest	7-0-0	2-8-0 0-10-10	3-13-2
			} Interest on 22-8-0 Principal paid during six months

SCHEDULE

Loan Account of Rup Lalson of Ram Chand
 Opening balance (if any)— From 1-1-1932 to

Principal-400-0-0

Interest-100-0-0

NAM (Debit)

Date.	Particulars of advances in words whether cash or kind. (See rule 9.)	Advance in figures.			Rate of interest.	Amount of interest Charged.	Remarks.
		Cash.	Kind (number or weight).	Value of advances in kind.			
1	2	3	4	5	6	7	8
1-2-32	Rupees Fifty half twenty five	50-0-0				5-0-0	
15-3-32	Rupees one hundred half Rupees Fifty.	100-0-0	 2% P. M.	7-0-0	
1-4-32	Wheat twelve Maunds twenty Seers, half six munda and ten seers,		Mds Srs 12 20	25-0-0		1-8-0	
30-6-32	Total	150-0-0		25-0-0		13-8-0	

Note 1. Column No. 7 on the Debit side filled on 30-6-32.

Note 2. The repayment was appropriated towards interest as more than Rs. 100 were due as interest on the date of repayment.

Balance outstanding on	...	30-6-1932.
Principal	...	575-0-0 (a)
Interest	...	111-8-0 (a)

(a) How worked out ?

Principal during $\frac{1}{2}$ year	...	175-0-0	
Last principal	...	400-0-0	
Interest on principal during			} Deduct Rs. 50 paid during $\frac{1}{2}$ year towards in- terest.
$\frac{1}{2}$ year	...	13-8-0	
„ in the opening balance		100-0-0	
„ on Rs. 400 Principal in the opening balance during $\frac{1}{2}$ year.	} 48-0-0		
		161-8-0	

Signature (Creditor or Agent).

When the whole debt is discharged.—If the whole debt is discharged by payment in cash or by the execution of a promote, bond, etc. then a note to some such effect, e. g. "The debt discharged by the payment of Rs. 500 on such and such date" or "by the execution of a promote or a bond for such and such amount" should be made in the credit side. If the assignment of debt is made in favour of another the same procedure is to be adopted.

If the lender gets a debt, due to another, assigned in his favour.—If a lender gets a debt due to another creditor assigned in his own favour, then, he should enter the same noting the date of assignment and noting separately the principal and interest at the top on the left hand side as if it were an opening balance. The subsequent dealings will be noted as shown here, above.

How to calculate interest?—There are only 2 correct methods of calculating interest if a repayment has been made during the half year of which the balance is to be struck :—

(1) Interest on each item of the principal advanced is to be calculated up to the end of the half year ending 30th June or 31st December, as the case may be and similarly, interest is to be charged on the amount of repayment towards the principal up to the same date and it is to be allowed for in the account. The second method is that up to the date of the repayment of any sum towards the principal, interest on the whole principal is to be charged and then for the purposes of interest, the principal is to be deemed to be reduced by the repayment on the date of the same.

Old bahis.—This Act prescribes a form of Account to be maintained for the purposes of the provisions thereof. It does not prohibit the maintenance of old *bahis*. They may be kept as before and I would advise creditors to do so as this will facilitate the correct entries being made in the prescribed form.

Scripts to be used.—As pointed out above, the creditor must select one of the five scripts, namely English, Urdu, Gurmukhi, Nagri, and Mahajani in which to maintain the accounts.

Form printed in one script to be used for filling in another one.—Suppose forms, columns of which are printed in Urdu, are available but the creditor keeps the accounts in Gurmukhi, can he use such forms? I think he can. There is no specific bar to this in the Act.

Ink.—There is no specification of ink but the country black or blue black inks should be used. Red ink should be used for making corrections.

Bound forms-table of contents.—In case, a creditor has to deal with a number of debtors, it will be good, if he prefaces the 1st page with a table of contents which should show at a glance, the page, in which the account of each debtor will be found.

Explanation (ii) to clause (b) of Subsection (1) of section 3.—It is not in its logical position. It relates to the manner in which the accounts are to be kept and the proper place would be after clause (a) of subsection (1) It reads thus:—

“(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.”

Compound interest-agreement about.—Under the explanation (ii) of clause (b) of Subsection (1) of Section 3 of the Act, no creditor can add principal to the interest

or agreement in other words charge compound interest, without an agreement.

Agreement.—express or implied.—Such an agreement may be express or implied. It may either be expressed or it may be implied from the course of dealings between the parties.

Agreement—proof of—onus.—The *onus* of proving the existence of such an agreement is on the plaintiff.

See notes under the head "Interest" under Section 2 "Subsection (b) furnish each debtor every six months with a legible statement of account signed by the creditor or his agent if any balance or amount that may be outstanding against such debtor on the 30th day of June or 15th Har and the 31st day of 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."

This subsection lays it down as a duty of the creditor to send to every debtor (whether he asks for the same or whether he requires it or not) a statement of account as it stands on the 30th June or 15th Har and 31st December or 15th Poh, as the case may be.

Dr. (now Hon'ble Dr.) Gokal Chand Narang moved

the following amendment to this clause :—

“That for Sub-clause (1) (b) of clause 3 the following be substituted “shall once in six months supply a copy of the account giving all the items advanced and received on a requisition to that effect being received by registered post from a borrower and may debit to the borrower with such amount for copying and other charges as may be prescribed in this behalf”.

This was a perfectly reasonable amendment and as he pointed out, in Section 8 of the English Money-Lenders Act, 1927, occur the words :—

“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.” But it seems that the majority in the Punjab Legislative Council were bent upon out-doing the Parliament of England and imposing upon the creditor the task of sending to his debtor even unasked and even in some cases, unwanted copies of the accounts, every six months.

He cited the opinion of the two Hon'ble Judges Ratiigan and Johnston of the Chief Court Lahore, as expressed in 40 P. R. 1906 in support of his contention that the evils of the money-lenders were being exaggerated far too much while the ignorance of the agriculturists was being made too much of “It has become fashionable” remark the Hon'ble Judges, “with a certain class of people to talk about simple minded-Zamindars and cunning *baniyas*, but nowadays, the ignorant rustic is met with far more frequently, in the arguments of learned counsels than in the realities of life.”

Secrecy of Accounts.—There are very few debtors who like their money dealings with the creditors to be made public. But, this clause compels a creditor to give publicity to the fact that such and such a person is indebted to him even if he does not disclose the transactions in detail, in getting them copied and despatched.

Minor not excepted.—This clause does not except even a minor. Now the question is, who is to send the account, in the case of a minor? Suppose, he is a child of 5 years left in the care of his mother, and some debtors make payments in the account of the debts due to his father. The minor cannot write, nor can his mother, who is to prepare the accounts (after six months of the death of his father) and to despatch them to the creditors? The Legislators of the Punjab thought that the difficulty would be met if they added the word "agent." The mother may be a *de facto* guardian, but she is not the 'agent' of the minor for the purposes of this Act. He cannot confer any authority as an agent upon any person. Section 183 of the Indian Contract Act, 1872, runs as below :—

"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."

The minor is however, precluded by law from employing an agent.

Again, suppose, the minor is a Mohammadan child with only his mother as the surviving relative after the death of his father. A Mohammadan mother is not at all a guardian of the property of his minor child and she can not be appointed an agent as the boy is a minor. How is the account to be sent if the father came within the prescribed definition of a "creditor" and the creditor or his agent has to sign the foils."

A person of unsound mind not excepted.—It is even still more surprising that even a person of unsound mind was not been exempted from the duty of sending copies of accounts.

Solution.—The only solution is to exempt the person, who is minor, until he was attained majority under the law to which he is subject or if a lunatic, during the period that he was a lunatic.

Legible statement of account.—The statement should be so written as to be decipherable without the expenditure of an unreasonable amount of time and effort. If the account sent is illegible, it serves no useful purpose.

Signed.—“Signed” with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include “mark” with its grammatical variations and cognate expressions.¹ A person therefore, who can not sign, is at liberty to thumbmark his accounts.

In case, the account sent is neither signed nor thumbmarked, then it shall be deemed that the provisions of Section 3, (1) (b) have not been complied with and unless the case is covered by the explanation to clause (c), the penalty laid down in clause (c) to Section 4, is attracted.

His agent.—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.²

Who may be an agent?—As between the principal and third persons any person may become an agent, but no person, who is not of the age of majority and of

1. Punjab General Clauses Act, 1898, Section 2, Clause 53.

2. The Indian Contract Act, 1872, Section 183.

sound mind, can become an agent so as to be responsible to his principal according to the provisions in that behalf herein contained.¹

The dates of closing the accounts.—The six-monthly accounts will close on the 30th June or 15th *Har*, or on the 31st December, or 15 *Poh*.

It is not necessary that 30th of June may fall on the 15th *Har* or 31st December should coincide with the 15th of *Poh*, but the creditors can look either to the dates of the Gregorian Calendar or the *Bikram* era. The copies of accounts relating to the half-year closing on 30th June (or 15th *Har*) must be despatched by 31st August and for the half-year expiring on 31st December, by 28th February following.

Creditor—whether concerned about the date on which the accounts reach the debtor ?

The lender has only to look to the date on which the packet of the foil of accounts leaves his own hands. He has nothing to do with the date on which they reach the debtor.

Transactions relating to the loan during the six months.—

At the expiry of every half-year only the statement of accounts relating to those six months is to be sent to the debtor.

Shall be sent in such manner.—As observed above the forms supplied by the Government are in duplicate, the one near the binding or that which is above is the counterfoil and the form away from the binding or the one below is called a foil.

Ibid, S. 184.

As soon as a transaction takes place it should be entered in the counterfoil and then copied down in the foil.

Rule 4 is as below:—

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 Subsection (1) of Section 3 of the Act, and Rule 12 runs thus:—

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

Debtor-one-more than one. If the debtor is one, then, of course, the account is to be sent to his address as noted by the creditor, but if the debtors are more than one or joint debtors, then the copy is to be sent to him whose name is entered first at the top of the account.

Method of furnishing account to the debtor. Rule 14: 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, 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 a 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.”

It is to be carefully noted that no cover is to be used. The printed form carry on the reverse of the foil the words “Form of Accounts under the Regulation of Accounts Act, 1930, and if properly folded enough blank space is left for the address of the debtors to be written therein.

How many forms to be folded into one packet ? As many foils intended for the same debtor, as can be conveniently sent together may be enclosed in one packet. Of course, if one packet should be too big, on account of the nature and number of the entries, then, more than one packets can of course, be made.

By Registered post, acknowledgment due: The creditor should take care that the only method of despatch recognised by the Act, is per Registered packet, acknowledgment due.

Care of the Receipt and acknowledgment: The Receipt to be given to the sender at the Post Office when

he lends the packet for despatch must be taken good care of. This acknowledgment is a proof of the despatch of the accounts by the creditor.

Maintenance of a register, to record entries about the despatch of account Registered Post, acknowledgment due—suggested. For the convenience of all the parties, concerned, we would suggest that the creditors do maintain a register somewhat in the following form.

Register of the Accounts despatched per Registered post, acknowledgment due.

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REGULATION OF ACCOUNTS ACT | Section 3

Date.	No. of the receipt, date, and Post Office.	Address to which the account was despatched.	Cost of Registration.			Remarks and column for posting Receipts and Acknowledgments
			Rs.	As.	P.	

What if acknowledgment not received?—If the acknowledgment is not received in a reasonable time, then a complaint should be addressed to the Post Master General, Punjab and N. W. F. Circle, Lahore. If on reply is received then, a registered cover is to be sent to the Post Master General, Punjab and N. W. F. Circle enclosing the same complaint. These Postal registration charges also may be debited to the account of the debtor.

What if the packet refused?—In case the packet is returned as refused, then the creditor must retain the same and the receipt as tokens of sufficient despatch.

Rule 15: Proof of acceptance by debtor.—If the debtor accepts the foil when delivered to him 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.

This rule emphasizes the importance of the safe-custody of the acknowledgment and the care with which the creditor should scrutinize each acknowledgment as received, to see that it is duly signed or thumbmarked by the debtor. If there is no signature or thumbmark of the debtor on the acknowledgment, it should be returned with a complaint to the Post Master General, Lahore or the Superintendent of the Post Offices of the Division in which the Post Office at which the packet was tendered

for registration is situated.

The Postal receipt and acknowledgment constitute proof of the despatch of the accounts.

Rule No. 16 runs thus :—

“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.”

Postal Registration charges—whether—how—recoverable:—

Rule 17 is worded as below :—

Recovery of Postal Registration Charges.—The Postal Registration charges incurred by sending the statements of account by registered post, shall be recoverable by the creditor as though they were a loan advanced in cash to the debtor and shall be duly entered in the Loan Account form.

Postal Registration charges and costs of copying accounts in a script demanded by debtor—interest upon.—The Postal Registration Charges and the cost of sending the accounts in a script demanded by the debtor in writing (*Vide* Rule 18 post) are to be entered as the principal items of loan and interest will accrue thereon.

Personal Delivery of the foils of accounts.—Proviso to Rule 14 lays down that if the debtor, or the joint-debtor, 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.

Containing such details.—What details will go into the account and how they will be filled in the prescribed form has been dealt with under the commentary on Clause (a) *ante*.

Scripts to be used.—The accounts are to be maintained and furnished in one of the five scripts:—English, Urdu, Gurmukhi, Nagri or Mahajani.

Provided that if the debtor in writing demands..... scripts.—

In case the debtor demands in writing that the copy of the accounts should be sent to him in one of the five scripts mentioned above, and that script is not the one employed by the creditor in maintaining his accounts, then the creditor is bound to furnish the copy in such script. But he need not mind *his oral* request for the *same*.

Scale of costs payable by debtor demanding that accounts shall be furnished in a particular script :—

If the debtor makes such a demand in writing and the creditor supplies copy of the accounts in a script different from the one employed by him, then the costs payable by the debtor calculated according to the following scale are to be entered as if they were loan items.

Rule 18 runs as below :—

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 scripts

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

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

The costs so incurred shall be recoverable (like the Postal Registration Charges) by the creditor as though they were a loan advanced in cash to the debtor and shall be duly entered in the loan account form.

Principal and interest to be shown separately.—In maintaining and despatching the accounts, the entries for the *principal* sum should be shown as separate from the items, due by way of *interest* and the creditor cannot include interest in the principal sum, in other words' charge compound interest without an *agreement*.

For the purpose of section 34, Indian Evidence Act, 1872.—The text of section 34 of the Indian Evidence Act, 1872, is :—

“ 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.”

I will reserve a more detailed commentary of S. 34 of the Indian Evidence Act, 1872 for the Appendices, but suffice it here to say that the entries in the forms are relevant though by themselves alone, they are not sufficient to fix liability. Some further corroboration is needed and in some cases, the statement on oath of the plaintiff himself is deemed sufficient.

Books of Account.—A collection of sheets, bound together, with the intention that it should be permanent is a book of account. But a book containing items of which no account is made, is not an account book.¹

Weight given to an account book.—Though day books, cash books, ledgers and the forms prescribed in this Section of the Punjab Regulation of Accounts Act 1930 are all admissible in evidence, yet they differ in the weight given to each.²

Explanation.—Is there any earthly reason why, if a debtor who can now secure copy of the accounts in the language or script which he can decipher himself or get deciphered by a neighbour, receives a copy and makes no objection as to its correctness, a presumption to that effect should not be raised against the debtor? This explanation sets at naught the legal presumptions that should arise under such circumstances under Sections 8 and 114 of the Evidence Act, 1872.

1. *Makund Ram v. Dya Ram*, 28 I.C. 998—10 N.L.R. 44
Encyclopaedia of Indian Case Law. part I, p 62.

2. 28 I. C. *Ibid.*

Admission.—“An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioning.¹

Admission—use of.—The importance of an admission lies in this that under Section 58 of the Indian Evidence Act, 1872, facts admitted, need not *be proved*. Under this explanation, the plaintiff must prove the correctness of his account if the defendant does not admit the same in the pleadings or S. 32 of the Indian Evidence Act is not applicable.

Proviso (i) if.....passing.—

This proviso allows this concession to a widow or a minor to whom a debt has passed by inheritance or assignment that for a period of six months from the date of such passing, no account in the prescribed form need be maintained or despatched. But this, as we have discussed above, is a very small concession.

Proviso (ii) Nothing.....

This proviso lays down that if there is a dispute between two persons, each claiming a particular debt as due to him, no liability for the maintenance and despatch of accounts under this Act arises, until the matter has been decided and one of them has been declared to be the rightful claimant.

1. S. 17 of the Indian Evidence Act, 1872

This proviso is not applicable when the dispute is between a *creditor* and a *debtor*.

Method of certification of copies.—Rule 19 : 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 counterfoil together with a certificate written at the foot of such copy that it is a true copy 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.

This certificate shall be dated and subscribed by the creditor.—It is to be carefully noted that this rule lays down that the certificate should be subscribed by the *creditor* himself while under section (1) (b) copies of the accounts may be signed by the *creditor* or his *agent*.

The countersigning may be done by any person, other than the creditor or by the creditor himself. There is nothing in the Act or the Rules to prevent a creditor from himself countersigning the foil.

S. 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 reason-

able 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 () 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.

NOTES.

History.—Mr. Mukand Lal Puri, moved the following amendment to clause (now Section) 4 of the Act.

“That in Sub-clause (now sub-section) (a) of clause (now section) 4 the word “if necessary,” be added after the word “shall”. The section, if the amendment had been accepted, would have run as below:—

“Notwithstanding anything contained in any other enactment in force for the time being, 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.”

In moving this amendment, he made the following pertinent remarks:—

“Ordinarily, when a suit is brought, for instance on a bond, it is open to the defendant to raise any defence that he likes. He might plead that at the time of the execution of the bond, he was incapable of entering into transaction, being an infant or of unsound mind or suffering from any other disability. He may plead, that he did not execute the bond at all or his signature was taken by fraud, undue influence or co-ercion or he might not plead any of these things, he might say that he executed but did not receive any consideration or he might raise innumerable other pleas which are open to a litigant. But the courts only adjudicate upon the points on which the parties are at conflict. The courts adjudicate upon the disputes which exist between the parties and are not expected and do not create points of disputes between them. The result of the omission of the words “if necessary” which were originally proposed by the Government would be, that the courts

would be called upon to decide two issues upon which the parties may not be at all, at variance and the result will be an enormous increase in the amount of work of our courts, an increase which the existing judiciary might not be able to cope with. Now, Sir referring to the report or rather the note on the Administration of Civil Justice in the Punjab, for 1928, the total number of suits which were disposed of, by the courts are given at page 2. They were 314,159 regular suits out of which 242,689 were disposed of by them. So that 242,689 suits were disposed of in the course of one year. Now how was it possible that our courts were able to cope with such a large number of cases. This is made clear from the information which is given. That is to be found in the paragraph which follows. The following table shows the manner in which these suits were disposed of 14.3 per cent ex-parte, 59.1 per cent without contest, so that the total number of suit which were disposed of without contest or without trial was 73.4 of the total number of cases which came up before the courts. Again the proportion of money suits and suits relating to moveable property which came up before the courts was 82 per cent. So that in 1928 suits which came up before courts relating to money and movable property were 245,251, and one may safely take it that out of this the suits relating to money transactions will be well nigh about 2 lakhs. Of these suits relating to money matters, suits of the value of Rs. 10 or under were 10,787, between 11 and 15 were 57,416 between 51 and 100 were 57,309, so that the total number of suits of the value of hundred rupees or under which came up before courts, were 125,512, I have just pointed out that out of these suits which came up before courts, about 75 per cent, were un-contested and this is the reason why our Small Cause Courts in Lahore and Amritsar and other places with Small Cause Courts

and Sub-Judges, are able to cope with the amount of litigation which exists in this province. Now, Sir, if these words which, out of their wisdom were put by Government in the original draft and which I submit with due respect appear to have been omitted without conferring any benefit on the debtor or any possible disadvantages on the creditor were now, to form part of the bill, then in every such suit the court will have to decide two issues as to whether the accounts were kept in a particular form and second, whether the accounts were regularly sent. And this will have to be done not only in contested suits but in all suits whether they are decided ex-parte or whether they are as very often happen, decided on confession of judgment. Kindly realise what an amount of work you are putting on courts. Has the Government contemplated the possibility of doubling the judiciary or increasing the number of Sub-Judges which the enactment of this provision will probably entail? Now ordinarily, a case coming up before a Small Cause Court Judge which is decided ex-parte or on confession of judgment does not take more than a few minutes but if he has to decide two more issues then it will certainly take some time. After all the finding by the Sub-Judges on these two issues can only be given on evidence and I submit that the recording of evidence (and the evidence in this case in addition to oral evidence will necessarily consist of documents which will have to be exhibited in accordance with provisions of Civil Procedure Code) will take an amount of time of which the Honourable Finance Member should certainly take note before he consents to the enactment of this provision and to the omission of the words "if necessary" from the provision of sub-clause (a) of clause (1) as originally drafted. Sir, the amount of work which the courts will have to do in this matter will be still larger from the fact that the work 'court' as defined in the Act includes the Insolvency

Courts also. This note on Administration of Civil Justice in the Punjab, points to a large increase in the number of insolvency petitions. Every body who has anything to do with the courts knows that one insolvency petition means 50,60, or even 100 cases, the claims of so many creditors have to be taken into consideration ; fraudulent preferences have to be dealt with and so on. With respect to each creditor the Insolvency Court will have to frame two issues and take evidence on each issue whether any one raises any objection or not. The creditor naturally to safe-guard his interests will give evidence. So, that there will be an increase in the volume of litigation in this province which is entirely uncalled for in fact, absolutely unnecessary. Now, Sir if the enactment of this proposed provision conferred any benefit on the debtor, then the Government may possibly feel justified in enacting this provision and incurring increased expenditure. But let us see if this confers any the least benefit on the debtor. When the parties have gone to court and when the creditor has put all his evidence in court as he is required by law to file with the plaint all the documents in his possession and on which he relies, the defendant, if he finds that the creditor has not complied with any of these provisions, will certainly raise an objection, and if the creditor has to lose on any of these two points then, evidence will be abduced. But as I pointed out that 75 per cent. of the cases are decided without a contest the result will be that the debtor will be burdened with cost? Now kindly see what will happen. Let us assume that a suit for Rs. 25 is brought and the defendant does not deny the claim, a decree for Rs. 25 is given, perhaps about Rs. 2 will be added for court fee and another Re. 1 for lawyer's fee and 8 annas for another something. This will be the entire cost of the case under the present law because it has been decided.

on confession of judgment. But even if the debtor does not raise any objection, this new legislation places an obligation on the courts to decide two issues. Thus the creditor will have to give evidence on these two issues, which may be quite considerable if he does not admit being a "creditor within the meaning of the Act." He may summon witnesses which may cost him Rs. 10 or 15 or more in the way of diet money for a suit to recover Rs. 25. That will under this legislation ultimately, fall on the debtor, even though the poor debtor wanted to confess judgment for the amount. Are you thus conferring any benefit by omitting these words on the poor debtor? My submission to the House is that if the Government thinks that it is conferring any advantage on the poor debtor or even if it is conferring an advantage which is even remotely proportionate to the enormous cost and the enormous expenditure which will have to be incurred in providing courts and establishment for the disposal of that litigation, it may certainly consent to the omission of these words. Otherwise, there is absolutely no reason why these words which were originally intended by the Government to be included should be omitted, and why the Government should not stick to its original draft?

Notwithstanding anything contained in any other enactment in force:—

Instances.—Order XV Rule I, of the Code of Civil Procedure, 1908:—

"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.

It is a cardinal principle of law that *primarily*, it

is for the parties, themselves to make out their own case and the court should interfere rarely, and only, with the object of promoting the ends of justice.¹

(1) This Section is subversive of a sound principle of the administration of civil justice. In Rule 1 of Order XV of the Code of Civil Procedure, 1908, cited above, it has been laid down that where the parties are not at issue, on any point, the court is at liberty to pronounce judgment forthwith. But in clause (a) of this Section the Punjab Legislature directs that even if the parties are not at issue, the court should frame the two issues as to the maintenance and despatch of accounts, in somewhat following shape :—

1. Whether the plaintiff has maintained the accounts, as laid down in clause (a) of sub-section (1) of Section 3 of the Punjab Regulation of Accounts Act, 1930 ?

Onus on plaintiff.

2. Whether the plaintiff has furnished the defendant with the statements of accounts, as directed in Clause (b) of Sub-section (1) of Section 3 of the Punjab Regulation of Accounts Act, 1930 ? Onus on Plaintiff.

This clause (a) to put it at the best, imposes undue hardship upon the plaintiff and places additional and unnecessary burden upon the courts.

Another instance in which the provisions of this Section run counter to the existing law is afforded by

1. Maung V. Gye Maung Maik, L. B. R. 1693—1900, 658.

the provisions in clause (b) as to costs :—

Section 35 of the Code of Civil Procedure, 1908 provides :—

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law, for the time being in force, the 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 annum and such interest shall be added to the costs.

Dr. (Now Hon'ble) Dr. Gokal Chand Narang moved his amendment by which, by the substitution of the word 'may' for 'shall,' he tried to reinstate the discretion of the court, with the following speech :—

"I do not want to make any lengthy speech, but I only want to submit that it should be left to the discretion of the court to see whether interest should be disallowed or not. Whether the court sees that a creditor has behaved in a dishonest manner and his object in not furnishing accounts was to deceive or cheat the debtor, the court may disallow the whole interest and even the whole costs. But if the court finds that

it was only an accident or misfortune that prevented him from complying with the provisions of this Act or where he had sufficient cause to show, the court shall take a lenient view and disallow a small portion of the interest or a large portion of it as the case may deserve or allow the interest in full. With respect to costs, I should submit that the Bill as it stands, with due deference to the framers of the measure, is an entire contra-vention of the recognised principle that the losing party should pay the costs. The Bill lays down that the winning party should lose his claim to costs on some technical ground. In this connection, I cannot do better than refer the honourable members on this side of the House, to the opinion of the Honourable Mr. Agha Haider, a Judge of the High Court. The honourable and learned Judge says:—

“As regards Section 4 (b) of the Bill, the Court may be empowered to disallow the whole or a portion of interest if the account is not maintained in accordance with the provisions of Section 3 (1) (a) or the copy is not supplied according to the suggested clause; but I would not like to depart from the well-established rule that costs are in the direction of the court, and should ordinarily follow the event.”

This is the opinion of the honourable Judge. If this opinion had been expressed in any particular case actually pending in the court, it would have had a finality, subject of course to a Letters Patent Appeal. Even as an opinion which has been circulated to us for our benefit, it deserves our respect. I may, in this connection, also refer to the opinion, of the majority of the Judges of the High Court, there being no exception whatsoever in this case as no Honourable Judge of this High

Court has said that costs should in any case be disallowed to the successful plaintiff; two Judges out of 12 or 13 only refrained from giving an opinion. The honourable Mr. Justice Fforde as it appears, did not give his opinion and the Honourable Mr. Justice Addison also, because they thought that it was not their bounden duty to give an opinion and they would rather remain silent on this point for some other reason not known to us.

The Honourable Judges of the High Court including the Honourable Mr. Justice Zafar Ali and the Honourable Mr. Justice Agha Haider have been unanimous in opposing this provision of the Bill. In fact, the illustration to which I referred the other day, is most apt and is absolutely applicable to this case. For instance, as the Honourable Judges have pointed out, a plaintiff sues a defendant on a registered bond and it so happens that owing to some circumstances he is not able to comply with the provisions of this clause. The defendant puts forward a plea that he has paid either the whole or a part of the amount due on the registered bond and he produces a forged receipt in proof of this alleged payment and puts the plaintiff to proof that the receipt is a forged one. Of course, ordinarily, the defendant will have to prove, but the plaintiff will also have to give evidence to rebut it and the evidence of expert is produced. A lot of money is spent by the plaintiff and ultimately, the court holds that the receipt was as a matter of fact, a forged one and that it was a deliberately false defence, put up by the defendant. Now under this bill, if it is passed into law the court will still be bound to disallow costs, because the word "shall" is there. I, therefore, submit that the provision is absolutely uncalled for and is against a well-established principle of law. It puts a premium upon falsehood in this way—the defendant knows that whatever may happen the costs will not be awarded.

S. 4] ACCOUNTS NOT DESPATCHED IN THE PRESCRIBED FROM-PENALTY FOR 115

against him, once the plaintiff, however, honest he may be, has made a slip the court is bound to raise an issue on this point. When he comes to the court he will be tempted to raise a false defence. There will be no check upon his falsehood and upon his practising fraud in his defence. In fact this will be an encouragement to him to set up a false defence and waste the time of the court thereby, knowing all the time he will not have to pay the costs because a technical mistake has been made by the plaintiff".

The amendment was however, thrown out, and the court has to disallow the costs, even if the defendant comes into court with most unclean hands if only there is the technical mistake on the part of the plaintiff in not having maintained the accounts in the form, prescribed.

Section 35 A—Whether compensatory costs also disallowed.—The words "shall disallow costs," taken in the context in which they appear, do not prohibit the awarding of compensatory costs, permissible to be imposed by the courts, under Section 35 A of the Code of Civil Procedure, 1908, if the defendant raises false or vexatious defence. But the point is arguable and open to doubt.

Accounts not maintained in the prescribed form—Penalty:—If the accounts are not *maintained* in the proper form, then, if the plaintiff brings a suit to recover his money, the court shall disallow at least, a portion of the interest found due and the *whole of the costs*, and no excuse however reasonable can save the creditor from this penalty.

Accounts not despatched in the prescribed form—penalty for—If the accounts have not at all been sent to

the debtor then, the court shall in computing the interest exclude every period, for which the creditor omitted duly to furnish the account as prescribed in this Act.

Account despatched late-penalty for.—The same penalty will accrue, if the creditor has sent the account for a half year too late, but the court has in this case a discretion to allow interest for any of such periods if it is satisfied that there was a sufficient cause for not furnishing the account, in time.

Accidental errors and omissions. If the creditor has maintained his accounts, sent his six monthly statement of accounts in the form and manner, prescribed in Clauses (a) and (b) of Sub-section (1) of Section 3 he shall be held to have complied with the provisions of these clauses even though there may be found in the account accidental errors and omissions. But only, if these errors and omissions besides being found (1) as accidental are also, found to be (2) immaterial and (3) the accounts appear to have been maintained in good faith with the intention of complying with these clauses.

In good faith.—“A thing shall be deemed to be done in good faith, when it is in fact, done honestly, whether it is done negligently or not.”¹

Explanation applicable-condition precedent to.—This explanation is applicable only, if the court finds that

(1) the errors and omissions are accidental ; and

(2) not *material* ; and

(1) Clause 22 of Section 2 of the Punjab General Clauses Act, 1898.

- (3) the accounts have been kept in good faith with the intention of complying with the provisions of the clauses (a) and (b) of Section 3 *ante*.

Evasions of the Section.—If the debtor is a new one and the loan is advanced to him after the commencement of a half-year, but the suit is brought before the expiry of the half-year, then the duty of the despatch of accounts does not arise. In spite of the case taken by Legislature there are still loopholes for the evasion of this section (*vide p. 17*).

Saving. 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.

COMMENTARY.

Applicability of Section 5.—The creditor is not bound to send a copy of the accounts of a loan item transacted before the enforcement of this Act, i. e., 1st July 1931. So, if no fresh item of loan is advanced or any payment made after the 1st of July, 1931, the creditor need not maintain or despatch any

accounts in the form prescribed in S. 3, *ante*, but if the debtor contracts any fresh loan in the same old account or he makes any repayment, then from the date of such new loan item or repayment, it becomes the duty of the creditor to maintain and despatch accounts in the form laid down in this Act.

Such transaction.—Some doubt was thrown on the applicability of the proviso and it was thought that it would make the section operate with a retrospective effect.

Mr. S. L. Sale, Legal Remembrancer, dispelled all doubts on the subject by this speech :—“The intention of this Act” observed he “is that it should not be retrospective and I should be the first to say that if this proviso could be genuinely interpreted to make the Act retrospective, it would be a wrong provision. The intention of this proviso is to ensure that debtors who contracted a loan before this Act was passed, should have the benefit of this Act in regard to transactions relating to the loan made after the commencement of this Act. Let us take a concrete example of a debt, which was contracted, say on the 1st of January 1929 when the Act was not in force ; the Act will not apply to such a loan. Let us assume for the sake of argument that the Act comes into force on the 1st January 1931. Suppose, the debtor goes to the creditor on 2nd January and says “I

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TION OF THE PROVISIO

want an additional loan which please add to the previous loan " That is a transaction which must be made subject to the provisions of this Act. Or let us put in another way. Two months after this Act comes into force the debtor makes a payment towards the principal or interest, it does not matter which; that would be a transaction relating to the loan and from the date on which that payment is made, it will be the duty of the creditor to keep an account of that and any further transaction there may be ; and send to the debtor a statement of the balance that accrues against the debtor with effect from the date of that payment, but he will not be required to send accounts of any transactions that accrued before that payment. He will only have to send accounts of that particular transaction or any further transaction that was made after the Act came into force. I still therefore do not see how it can be said that this Act could be retrospective so as to cover loans contracted before the Act in which there has been no transaction since the Act comes into force. The important words in the proviso are "*such transaction*," *i.e.*, those made after the commencement of the Act, shall be subject to the provisions of this Act."

Sound Principles of the interpretation of the Proviso.—The sound principle of the interpretation of a provision of codified law is that the courts should in the first instance, examine the language and adopt its literal meaning (1). It is not the function of a Court

1. *Rahimbux v. Central Bank of India Ltd.*, 56 C. 867, A.I.R. 1929 C. 497.

to speculate as to the meaning of the legislature, but to determine the meaning of words used. It has to interpret a statute giving the words, their natural meaning.(1)

Retrospective effect.—A provision of law will not be deemed to have a retrospective effect, unless and until there is express language shutting out the possibility of the interpretation that it is applicable to future alone.(2)

The courts have only to look to the wording of a statute. They can not seek the assistance of the debates in the Legislative Council or the report of the Select Committee.(3) No statute shall be construed to have a retrospective operation unless, such construction appears very clearly, from the terms of the provision in an enactment.(4)

The wording of the proviso does not lay down in the express language that if there have been dealings between a creditor and his debtor, before the date of the commencement of this Act, 1st July 1931, an item of loan or payment after that date will make it a duty of the creditor to send a copy of the accounts before the enforcement of the Act. Following the sound principles of interpretation, the courts cannot hold that the proviso enacts such a retrospective effect being given to the Act.

1. Lilaram v. Tikamdas, 119 I. C. 537; A.I.R. 1929 (Sind) 225.

2. Hariandra Kumar Roy v. Secy. of State, A.I.R. 1928 Cal. 808.

3. Gardial Singh v. Central Board & Local Committee, Amritsar. A I.R. 1928 Lahore 137.

4. Mr. Lahiri v. Bala, 18 N.L.R. 85; A.I.R. 1922 (Nag.) 227.

The creditor in such case has only to maintain accounts and despatch the same in the prescribed form only as regards the items of loan and payment advanced or paid after the 1st of July, 1931.

Another commentator has under this section, discussed the question whether if for the transactions entered into, before the date of the enforcement of this Act, *i.e.*, 1st July 1931, a creditor secures a decree and the payment of the decretal amount is made outside the court, the creditor is bound to keep an account of the same. This question cannot possibly arise. The accounts are to be kept and maintained with the object of securing a decree for the whole amount, interest, and costs and principal and to avoid the penalty at the hands of the court, of the disallowance of costs or a part or whole of the interest. The matter is however, at an end, if a decree has been secured already.

**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 of section 3 shall be furnished by the credi-

tor 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 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 inconsistent with the Act.—When a rule conflicts with the law as laid down by the Act, itself *i.e.* a rule which is inconsistent with the Act under which it purports to have been framed, is of no binding force.(1)

A rule framed under the Act of course, should not be

1. Emperor v. Matthews, A. I. R. 1929, Cal, 822.

referred to for the purpose of construing the Act.(1)

Expressions used in the Rules.—The expressions used in the Rules framed by the Local Government under this section, shall have the same meaning as in the Act, itself. (2)

General Procedure for framing the Rules.——The general procedure for framing the Rules under a Punjab Act has been laid down in Section 21 of the Punjab General Clauses Act, 1898, which reads thus:—

Provisions applicable to making of rules or bye-laws after previous publication.

21. Where, by any Punjab Act, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, unless such Act otherwise provides, the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be effected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or if the condition with respect to previous publication so requires, in such manner as the Local Government prescribes;

1. Shaikh Intaz V. Dina Nath, 53 C. 615, A. I. R. 1926, C. 856.

2. Section 18 of the Punjab General Clauses Act, 1898.

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date of specified;

(5) the publication in the Gazette of the rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been "duly made."

The Punjab Legislature has besides the procedure laid down in S. 26 of the Punjab General Clauses Act 1898, enacted that:—

(1) the draft rules be published by notification at least 30 days before a meeting of the Punjab Legislative Council,

(2) that the Local Government shall not take these Rules into consideration till after the meeting of the Punjab Legislative Council next following the publication of the draft.

The object of this provision is to allow time to any member of the Council to afford an opportunity for introducing a motion for discussing the draft. No such motion was however, introduced and the Rules, as proposed were passed.

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The Rules as framed by the Local Government and published under the Punjab Government Notification No. 37270 dated the 15th December, 1930 have been given after the bare Text of the Act.

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.

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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 Regula-
tion of Accounts Act, 1929.
Short title, ex-
tent and commen-
cement.

(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.) disapproved).

(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 Kisore 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 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 L. C. 90.

3. *Gobind Sabai V. Ram Chand*, 56 L. 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 L. 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. Narasarajupeda*, 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.

that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State

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 additional 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 5	Rs. 5	0 6 0	Rs. 150	Rs. 160	Rs. A. P. 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 8 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	49	22	740	75	33
40	49	22	750	76	34
40	49	22	760	77	35
40	49	22	770	78	36
40	49	22	780	79	37
40	49	22	790	80	38
40	49	22	800	81	39
40	49	22	810	82	40
40	49	22	820	83	41
40	49	22	830	84	42
40	49	22	840	85	43
40	49	22	850	86	44
40	49	22	860	87	45
40	49	22	870	88	46
40	49	22	880	89	47
40	49	22	890	90	48
40	49	22	900	91	49
40	49	22	910	92	50
40	49	22	920	93	51
40	49	22	930	94	52
40	49	22	940	95	53
40	49	22	950	96	54
40	49	22	960	97	55
40	49	22	970	98	56
40	49	22	980	99	57
40	49	22	990	100	58
40	49	22	1,000	101	59
40	49	22	1,100	102	60
40	49	22	1,200	103	61
40	49	22	1,300	104	62
40	49	22	1,400	105	63
40	49	22	1,500	106	64
40	49	22	1,600	107	65
40	49	22	1,700	108	66
40	49	22	1,800	109	67
40	49	22	1,900	110	68
40	49	22	2,000	111	69
40	49	22	2,100	112	70
40	49	22	2,200	113	71
40	49	22	2,300	114	72
40	49	22	2,400	115	73
40	49	22	2,500	116	74
40	49	22	2,600	117	75
40	49	22	2,700	118	76
40	49	22	2,800	119	77
40	49	22	2,900	120	78
40	49	22	3,000	121	79
40	49	22	3,100	122	80
40	49	22	3,200	123	81
40	49	22	3,300	124	82
40	49	22	3,400	125	83
40	49	22	3,500	126	84
40	49	22	3,600	127	85
40	49	22	3,700	128	86
40	49	22	3,800	129	87
40	49	22	3,900	130	88
40	49	22	4,000	131	89
40	49	22	4,100	132	90
40	49	22	4,200	133	91
40	49	22	4,300	134	92
40	49	22	4,400	135	93
40	49	22	4,500	136	94
40	49	22	4,600	137	95
40	49	22	4,700	138	96
40	49	22	4,800	139	97
40	49	22	4,900	140	98
40	49	22	5,000	141	99
40	49	22	5,100	142	100

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 Relief where too high a court fee has been paid. 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

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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

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

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 defend- or his agent duly ant to the plaintiff authorised in this be- on accounts stated half, unless where the between them, debt is, by a simul- taneous agreement in writing signed as afore- said, 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 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.

Courts to which proceedings on Money lending Transactions are to be taken

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 Scotland. subject to the following modifications—

- (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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