

THE NEW ANNOTATED
Bombay Co-operative Societies
Act, 1925.

(BOM. ACT VII of 1925.)

WITH

**An Elaborate Introduction, Table of Contents, Compa-
rative Table, Explanatory Notes, Exhaustive Com-
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BY
D. G. KHANDEKAR,
Law Publisher, Poona.

“Every Society *shall keep open to inspection at all rea-
sonable times at the registered address of the Society—*
(a) a copy of this Act.”

* * * * *

vide Section 21 post.

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INTRODUCTION.

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The Co-operative Movement.

Early measures to improve rural credit:—The Bombay Presidency may fairly claim to be the pioneer of the movement in India for improving rural credit by the establishment of Agricultural Banks. In 1883 under the inspiration of Sir William Wedderburn, I. C. S., a committee of capitalists in the Poona District was formed with the object of founding a bank to finance the agriculturists of the Purandhar Taluka. Relying on the grant of powers of recovery through the Revenue Officers, and on a few smaller concessions, they were in a position to raise a capital of 10 lakhs, and intended to begin operations by redeeming all the outstanding debts of the ryots. However Lord Kimberley, who was Secretary of State at the time, was obliged to take objection to the scheme on the ground that the bank would virtually be a Government Institution and that his constitution was faulty on the financial side. In the meantime the Land Improvement Loans Act (XIX of 1883) and the Agriculturists' Loans Act (XII of 1884) were passed, and hopes were entertained that operating in conjunction with the Dekkhan Agriculturists' Relief Act (XVII of 1879) they would go far to meet the needs of the situation. The scheme was therefore allowed to drop.

Introduction of Co-operation into India:—It was some time before the example that had been given began to be taken up elsewhere. In 1892 Lord Wenlock, then Governor of Madras, placed Mr. (now Sir Fredrick) Nicholson on special duty to study the theory and practice of co-operative credit in Europe, and to suggest means by which the movement might be popularised in India. The Madras Presidency afforded a hopeful field for experiment because a number of indigenous societies known as Nidhis, analogous to the Friendly societies and provident Funds of Great Britain, had already sprung into existence there and attained a considerable degree of success. In 1899 Mr. Nicholson issued an exhaustive report in two volumes, copies of which were sent to all local Governments for consideration. At the same time Mr. Duperneux under the instructions of Sir A. P. Macdonell had been making inquiries along similar lines in the United Provinces, and had issued a brief but suggestive study on "People's Banks in Northern India." In the Punjab the District Officers of Multan and Dera Ismailkhan districts had formed few societies on their own initiative

with promising results, and in Bengal similar experiments were being started. All indications pointed to a widespread demand for the amelioration of rural credit and the possibility of the co-operative system proving a royal road to this end.

The first Co-operative Credit Societies Act:—In 1901 a committee under Sir Edward Law was appointed by the Government of India to examine and report upon the whole question. The result of its deliberations was the Co-operative Credit Societies Act (X of 1904). This Act was superseded by the second Co-operative Societies Act (II of 1912), but the classic memorandum of Sir Denzil Ibbetson discussing its underlying principles is as applicable to-day as on the date of its issue. The Act itself was a short one and aimed at maintaining simplicity and elasticity and at imposing no avoidable restrictions on local experiments.

Progress in India.—In all provinces of India Registrars were at once appointed to give effect to the intentions of the Act and in no case did they fail to secure striking results.

Progress in Bombay—In the Bombay Presidency the first Registrar was Mr. J. Mc Neill, I. C. S., and the first Co-operative Credit Society organised by him was at Kangilhal in the Dharwar District and was registered on 8th May 1905. Since that date the progress has been steady and no untoward incidents have occurred.

It is true that progress in Bombay has been relatively slower than in most other parts of India. But for this there are adequate economic causes, and the fact in itself is not necessarily a cause for regret. Sir Robert Carlyle said at Simla "I wish to emphasise the fact that there is a danger in too rapid extension which may endanger the movement itself. Weak societies will in the long run tend to prevent the movement developing as it otherwise would do". It should be remembered that in Germany it took 40 years to create 1,729 Raiffeisen banks, and only 15 years (1890-1905) to increase this total to 13,181. If the movement is on right lines, it will gather its own momentum.

The Second Co-operative Societies Act.—Under Act X of 1904 the problem of credit only was taken up. The success which was attained in dealing with this opened up further horizons and suggested the possibility of extending the principles of co-operation to purchase, sale, manufacture and distribution. The new wine of the expanding movement had already burst the old bottles and was overflowing in directions which had not yet been

fully mapped out. The Government of India met these new needs by passing an entirely new Act, the Co-operative Societies Act (II of 1912). It swept away the old distinction between rural and urban societies, and substituted a more scientific distinction based on the character of the members' liability. The registration of new types of association for the supervision or finance of primary co-operative societies was for the first time legalised. Co-operative organisations with other objects besides that of furnishing credit were allowed. The exact form which these should take was not definitely laid down; and pending fuller experience, Registrars were left a wide discretion in building up the higher storeys of their provincial co-operative structures. In 1914 a committee, presided over by Sir Edward MacLagan, was appointed to review the whole position and to advise the Government of India more particularly on the higher organisation of the co-operative movement and the financial connexion of the various parts of the system. Their report known as "the Report of the Committee on Co-operation in India, 1915" gives full information regarding the systems followed in the various provinces and contains useful criticisms and suggestions on nearly every detail of co-operative organisation.

The third Co-operative Societies Act.—The progress and development of the co-operative movement since 1912 made it necessary to revise the law under which co-operative societies worked. Several points for amendment had been brought to notice by various co-operative conferences and by the Central Co-operative Institute and other co-operative bodies and non-official gentlemen interested in the movement. Co-operation is now a transferred subject and as such falls within the scope of the provincial legislature. To carry out these amendments the Bombay Co-operative Societies Act (Bom. Act VII of 1925) was passed. It has made provision for the following matters:—

(1) A distinct classification of the various societies whose objects, finance, and methods of working are different.

(2) Introduction of a clear cut system of winding up, liquidation and dissolution of societies on the analogy of the Indian Companies' Act, 1913, and

(3) Provisions desired by a majority of co-operators in the Bombay Presidency for the summary recovery of dues in arbitration cases through the revenue authorities.

Comparative Table.

*Chart shewing Distribution in the new Act of the
Sections of the Act Repealed.*

**The Bombay Co-operative Societies Act,
(Bom Act VII of 1925).**

Section of Act II of 1912.	Section of the New Act.	Section of Act. II of 1912.	Section of the New Act.
1	1,2	29	84
2	3	30	85
3	4	31	86
4	5	32	37
5	6	33	39
6	7	34	42
7	8	35	43
8	9	36	44
9	10	37	45
10	11	38	46
11	16	39	47
12	17	41	49
13	18	42	50
14	19	43	71
15	20	43 (1)	54
16	21	44	65
17	22	45	66
18	23	46	67
19	24	47	62
20	25	48	68
21	26	49	72
22	27	50	73
23	28		
24	29		
25	30		
26	31		
27	32		
28	33		

TABLE OF CONTENTS.

SECTIONS.

- Preliminary.*
1. Short title.
 2. Extent.
 3. Definitions.
- Registration.*
4. The Registrar.
 5. Societies which may be registered.
 6. Restrictions on interest of member of society with limited liability and a share capital.
 7. Conditions of registration.
 8. Power of Registrar to decide certain questions.
 9. Application for registration.
 10. Registration.
 11. Evidence of registration.
 12. Annual general meeting.
 13. Special general meeting.
 14. Change of name : its effect.
 15. Amalgamation or transfer of societies.
 16. Amendment of the by-laws of the society.
- Rights and liabilities of members.*
17. No rights of membership to be exercised till due payments are made.
 18. Votes of members.
 19. Restrictions on transfer of share or interest.
- Duties of Societies.*
20. Address of Societies.
 21. Copy of Act, etc., to be open to inspection.
 22. Audit.
- Privileges of Societies.*
23. Societies to be bodies corporate.
 24. Prior claim of Society.

SECTIONS.

25. Charge and set-off in respect of shares or interest of member.
 26. Shares or interest not liable to attachment.
 27. Transfer of interest on death of member.
 28. Liability of past member.
 29. Liability of the estates of deceased members.
 30. Register of members.
 31. Admissibility of copy of entry as evidence.
 32. Exemption from compulsory registration of instruments relating to shares and debentures of Society.
 33. Power to exempt from income-tax, stamp-duty, registration and Court fees.
 - 33A. Government may give loans or guarantee interest.
 34. Restrictions on loans.
 35. Restrictions on borrowing.
 36. Restrictions on other transactions with non-members.
 37. Investment of funds.
 38. Restrictions on dividend.
 39. Reserve fund.
 40. Restrictions on distribution of profits.
 41. Provident Fund.
 42. Contribution to charitable purpose.
- Inspection of affairs.*
43. Inquiry by Registrar.
 44. Inspection of books of indebted Society.
 45. Costs of inquiry.
 46. Recovery of costs.

TABLE OF CONTENTS.

SECTIONS.

Liquidation and Arbitration.

- 47. Winding up.
- 48. Society may be wound up.
- 49. Effect of cancellation of registration.
- 50. Power of a liquidator.
- 50 A. Power of Registrar to assess damages against delinquent promoters.
- 51. Bar of suit in winding up and dissolution matters.
- 52. Disposal of surplus assets.
- 53. Surplus assets of housing Society.
- 54. Arbitration.
- 55. Attachment before award.
- 56. Appeal against award of arbitrator.
- 57. Finality of order.
- 58. Powers to enforce attendance.
- 59. Money how recovered.

Offences.

- 60. Offences—
 - Defaults by a Society, officer or member.
 - Wilful neglect or default by a Society. Wilful furnishing of false information. Disobedience of summons, requisition or order.

SECTIONS.

- 61. Penalty for offences not otherwise provided for.
- 62. Prohibition of the use of the word "Co-operative."
- 63. Cognizance of offences.

Appeals and Revision.

- 64. Appeal.
- 64A. Power of Government and the Registrar to call for proceedings of Subordinate officers and to pass orders thereon.

Miscellaneous.

- 65. Recovery of sums due to Government.
- 66. Power to exempt Societies from conditions as to registration.
- 67. Power to exempt Societies from provisions of Act.
- 68. Indian Companies Act not to apply.
- 69. Branches &c. of Societies outside the presidency.
- 70. Notice necessary in suits.
- 71. Rules.
- 72. Saving of existing Societies
- 73. Repeal.

*Schedule.**Enactments repealed.*

The Bombay Co-operative Societies Act, 1925.

BOMBAY ACT No. VII OF 1925.

[4th December 1925.]

An Act to consolidate and amend the law relating to co-operative societies in the Presidency of Bombay.

WHEREAS it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help, and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the Presidency of Bombay; and whereas the previous sanction of the Governor General required by sub-section (3) of section 80-A of the Government of India Act has been obtained for the passing of this Act: It is hereby enacted as follows:—

Preliminary.

Short title.

1. *(1) This Act may be called the Bombay Co-operative Societies Act, 1925.

What is Co-operation.—'Co-operation' is a form of organization, wherein persons voluntarily associate together as human beings, on a basis of equality and for the promotion of the economic interests of themselves.—*Calvert on Co-operation.*

The essence of co-operation is that each shall work for all and all shall work for each in the attainment of their common need.—*Ibid.*

Co-operation is an alternative form of organization to capitalism; it is especially suitable to people who have no capital sufficient for the full satisfaction of their needs on the joint stock basis; it is essential to the best progress of agriculture, so much so that it is practically impossible for a country of small holdings to achieve prosperity without it.—*Ibid.*

* Such bracketed numbers show the numbers of the sections of the repealed Act.

object of the Act.—The object of this Act is to encourage thrift, self help, co-operation among the agriculturists, artisans and persons of limited means.—*The Zaminda Bank, Sheerpur Kalan v. Suba, 1924 Lahore, 418.*

Extent. 2. (1) This Act extends to the whole of the Presidency of Bombay.

Definitions. 3. (2) In this Act, unless there is anything repugnant in the subject or context,

(a) "by-laws" means by-laws registered under this Act and for the time being in force and includes a registered amendment of such by-laws:

(b) "Committee" means the Committee of Management or other directing body to whom the management of the affairs of a society is entrusted:

(c) "Member" includes a person joining in the application for the registration of a society or a person admitted to membership after registration in accordance with the rules and by-laws applicable to such society:

(d) "Officer" includes a chairman, secretary, treasurer, member of committee or other person empowered under the rules or under the by-laws of a society to give directions in regard to the business of such society:

(e) "Society" means a society registered or deemed to be registered under this Act:

(f) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act:

(g) "Rules" means rules made under this Act:

(h) (1) a "Resource society" means a society formed with the object of obtaining for its members the credit, goods or services required by them;

(2) a "Producers' society" means a society formed with the object of producing and disposing of goods as the collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society;

(3) a "Consumers' society" means a society formed with the object of obtaining and distributing goods to or of performing services for its members, as well as to other consumers and of dividing among its members and customers in a proportion prescribed by the rules or by the by-laws of such society the profits accruing from such supply and distribution;

(4) a "Housing society" means a society formed with the object of providing its members with dwelling houses on conditions to be determined by its by-laws;

(5) a "General society" means a society not falling under any of the four classes above mentioned.

The registrar shall classify all societies under one or other of the above heads and his decision shall be final.

A society formed with the object of facilitating the operations of any one of the above classes of societies shall be classified as a society of that class.

A list of all such societies so classified shall be published annually in the *Bombay Government Gazette*.

By-laws.—'By-laws' correspond to the articles of association of companies. The object and the by-laws completely define and restrict the society's activities. The Act itself does not empower a society to make by-laws. It must have them before it is registered [s. 9 (3)] and it may amend them (s. 16). The Local Governments may by rule under s. 71 (2) (c) empower a society to make by-laws. A by-law is a standing rule of a corporation or society, made for the regulation of its internal organization and conduct; it is distinguished from a provision of its constitution in being more particular and more readily altered.

Member.—In the Indian Companies Act a member is one who subscribes to the memorandum and who agrees to become a member; he must take not less than one share.

Person.—A person shall include any Company or Association or body of individuals, whether incorporated or not.—General Clauses Act (X of 1897) s. 3 (39).

Officer.—'Officer' refers to those dealt with by rule under s. 71 (g). It does not include an auditor.

The definitions of "Resource Society," "Consumers' Society," "Housing Society" and "General Society" are new.

Registration.

4. (3) Government may appoint a person to be Registrar of Co-operative Societies for the presidency or any portion of it, and may appoint a person or persons to assist such Registrar, and may, by general or special order, confer on any such person or persons all or any of the powers of a Registrar under this Act.

Government.—“Government” or “the Government” shall include the Local Government as well as the Government of India.—*General Clause Act (X of 1897), s. 3 (21).*

“Local Government” shall mean 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, and shall include a Chief Commissioner.—*Ibid s. 3 (29).*

Registrar.—Under this Act the Registrar is constituted the very foundation of the movement. It is left entirely to his discretion to register or to refuse to register a society (*cf. s. 10*) and the by-laws and every amendment of them require his approval (*cf. ss. 10 and 16*). He is not intended to be merely a registering officer, but he is also expected to provide supervision, assistance, counsel and control.

5. (4) Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability:

Provided that, unless Government by general or special order otherwise directs—

(1) the liability of a society of which a member is a society shall be limited:

(2) the liability of a society of which the primary object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited and the members of such a society shall, on its liquidation, be jointly and severally liable for and in respect of all obligations of such a society.

(New) Provided further that when the question, whether the liability of a society is limited or unlimited, has once been decided by the Registrar at the [time of registration his decision shall be final.

Note.—The last twenty-seven words of sub-clause (2) of the 1st proviso and the 2nd proviso are new.

Object.—The objects must be clearly and fully specified as they have to be approved before registration. They correspond to the memorandum of association of a company and they restrict the transactions of a society as it cannot have any other object than those specified.

"May be registered."—It must be registered under this or under the Companies Act. Cf. s. 4 of the Companies Act.

"Limited."—'Limited' may mean limited to the amount, if any, unpaid on the shares respectively held by the members,

Restrictions on interest of member of society with limited liability and a share capital.

6. (5) Where the liability of the members of a society is limited by shares, no member other than a society shall

(a) hold more than such portion of the share capital of the society, subject to a maximum of one-fifth, as may be prescribed by the rules: or

(b) have or claim any interest in the shares of the society exceeding three thousand rupees: provided that if the society is a housing society a member may have or claim an interest in the shares of the society not exceeding Rs. 10,000.

Note.—The proviso is new.

Share-capital.—'Capital' here means the funds contributed or guaranteed by share-holders or members (Findlay Shirras—Indian Finance and Banking, p. 406). Share-capital consists of three sorts—(1) authorized capital, (2) subscribed capital, and (3) paid-up capital.

Interest means not interest on capital, but the whole stake of the member in the funds of the society.

7. (6) (1) No society, other than a society of which a member is a society, shall be registered under this Act, which does not consist of at least ten persons above the age of eighteen years and, where the object of the

Conditions of registration.

society is the creation of funds to be lent to its members, unless such persons—

(a) reside in the same town or village or in the same group of villages; or

(b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.

(2) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

Above the age of eighteen years.—This condition is prescribed at the time of registration.

Cl. (2).—This clause includes societies limited by guarantee and unions. A society would not be registered by the name of a Company.

8. (7) When any question arises whether for the purpose of the formation, or registration or continuance of a society under this Act a person is an agriculturist or a non-agriculturist, or whether any person is a resident in a town or village or group of villages, or whether two or more villages shall be considered to form a group, or whether any person belongs to any particular tribe, class, caste or occupation, the question shall be decided by the Registrar, whose decision shall be final.

Agriculturist.—The term 'agriculturist' is not defined by this Act. The Dekkhan Agriculturists Relief Act (XVII of 1879), s. 2, defines the term agriculturist thus :—

"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

Application for Registration. **9. (8) (1)** For purposes of registration an application to register shall be made to the Registrar.

(2) The application shall be signed

(a) in the case of a society of which no member is a society, by at least ten persons qualified in accordance with the requirements of section 7, sub-section (1); and

(b) in the case of a society of which a member is a society, by a duly authorised person on behalf of every such society and where all the members of the society are not societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by a copy of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

The application shall be signed. The application must be in writing. "Sign" 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 (General Clauses Act (X of 1897), s. 3 (52)).

10. (9) If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules and that its proposed by-laws are not contrary to this Act or to the rules, he may register the society and its by-laws.

11. (10) A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

12. (New) Every society shall within a period of three months after the date fixed for making up its accounts for the year under the rules for the time being in force call a general meeting of its members.

Sections 12 to 16.—These sections make provision in regard to amendment of by-laws, meetings, and resolutions, which was lacking in the old Act and which it is necessary to have in the Act. Section 15 in particular is required to meet the case of a society which may be perfectly business-like but ceases to be co-operative in spirit. There is no reason why such a society should not choose to work under the Indian Companies Act, 1913. Under the Act of 1912 this was impossible. The new section provides the means for such a transfer.—
Statements of Objects and Reasons.

13. (New) A special general meeting may be called at any time by a majority of the committee and shall be called within one month—

(1) on the requisition in writing of one-fifth of the members of the society, or

(2) at the instance of the Registrar.

14. (New) A society may, by a resolution of a general meeting and with the approval of the Registrar, change its name; but such change shall not affect any right or obligation of the society, or of any of its members, or past members and any legal proceedings pending may be continued by or against the society under its new name.

15. (New) (1) Any two or more societies may, with the approval of the Registrar by a resolution passed by a three-fourths majority of the members present at a special general meeting of each such society held for the purpose, amalgamate as a single society; provided that each member has had clear fifteen days' written notice of the resolution and the date of the meeting. Such an amalgamation may be effected without a dissolution, or a division of the funds, of the amalgamating societies. The resolution of the societies concerned shall on such amalgamation be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

(2) Any society may by a resolution passed in accordance with the procedure laid down in sub-section (1) transfer its assets and liabilities to any other society which is prepared to accept them.

Provided that when any such amalgamation or transfer of assets and liabilities involves the transfer of its liabilities by any society to any other society, it will not be made without giving three months' notice to the creditors of both or all such societies:

Provided further that if a creditor or creditors of any of the societies concerned objects or object to such amalgamation or transfer of assets and liabilities and gives or give written notice to that effect to the society or societies concerned one month before the date fixed for such amalgamation or transfer, the amalgamation or transfer shall not be made until the dues of such creditor or creditors have been satisfied.

16 (11) (1) No amendment of the by-laws of a society shall be valid until approved by the resolution of a general meeting, and registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar.

Amendment of the by-laws of a society. (2) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the rules, he may register the amendment.

(3) When the Registrar registers an amendment of the by-laws of a society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

Rights and liabilities of members.

17. (12) No person shall exercise the rights of a member of a society unless or until he has made such payment to the society in respect of membership, or acquired such interest in the society as may be prescribed by the rules or the by-laws of such society.

No rights of membership to be exercised till due payments are made. **Person.**—In the old section there was the word "member."

18. (13) (1) No member of any society shall have more than one vote in its affairs, provided that in the case of an equality of votes the chairman shall have a casting vote.

Votes of members. (2) A society which has invested any part of its funds in the shares of another society, may appoint one of its members to vote in the affairs of such other registered society.

Note.—This section extends the principle which in all countries is accepted as the basis of co-operation to all classes of societies instead of restricting it as before to unlimited liability societies (*Statement of Objects and Reasons*).

19. (14) (1) The transfer or charge of the share or interest of a member in the capital of a society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

Restrictions on transfer of share or interest.

(2) A member shall not transfer any share held by him or his interest in the capital or property of any society or any part thereof unless

(a) he has held such share or interest for not less than one year; and

(b) the transfer or charge is made to the society or to a member of the society or to a person whose application for membership has been accepted by the society.

"Interest."—'Interest' here means personal possession or right of control or participation in ownership, the legal concern of a person in the society, or the right of enjoyment of advantages (*Century Dictionary*).

Duties of societies.

20. (15) Every society shall have an address registered in accordance with the rules, to which all notices and communications may be sent, and shall send notice in writing to the Registrar of any change in the said address within 30 days of such change.

Address of societies.

Note.—The words "in writing" and "within 30 days of such change" are new.

The object of the address is that all communications may be addressed to it; it need not be the place of meeting, and the place of meeting may be changed without notice being sent to the registrar. (*Calvert, p. 100*).

21. (16) Every society shall keep open to inspection at all reasonable times at the registered address of the society—

Copy of Act, etc., to be open to inspection.

(a) a copy of this Act,

- (b) a copy of the rules governing such society,
- (c) a copy of the by-laws of such society, and
- (d) a register of its members.

Note.—Clause (d) is new.

22. (17) (1) The Registrar shall by himself or by some person authorized by him in writing by general or special order in this behalf audit the accounts of every society once at least in every year.

(2) The audit under sub-section (1) shall include an examination of overdue debts, if any, the verification of cash balance and securities, and a valuation of the assets and liabilities of the society.

(3) The Registrar or other person auditing the accounts of any society shall have free access to the books, accounts and vouchers of such society and shall be allowed to verify its cash balances and securities.

The Directors, Managers, and other officers of the society shall furnish to the Registrar or other person appointed to audit the accounts of a society all such information as to its transactions and working as the Registrar or such person may require.

(4) The Registrar and every other person appointed to audit the accounts of a society shall have power, when necessary

(i) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give valuable information in regard to any transaction of the society or the management of its affairs, or

(ii) to require the production of any book or document relating to the affairs of any cash or securities belonging to the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

Note.—In the Bill as introduced, there was the term "any society" in sub-section (1). The Select Committee substituted the word "every"

for "any" to secure that the account of every society shall be audited at least once every year.

Para. 2 of sub-section (3) and sub-section (4) are new.

Audit—'Audit' may be defined as such an examination of the books, accounts and vouchers of a business, as shall enable the auditor to satisfy himself whether or not the balance sheet is properly drawn up, so as to exhibit a true and correct view of the state of the affairs of the business, according to the best of his information and the explanations given to him and as shown by the books; and if not, in what respects it is untrue or incorrect. (Spicer and Pegler's Practical Auditing quoted in Calvert.)

Privileges of societies.

23. (18) The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution.

Societies to be bodies corporate.

Cf. section 23, cl. 2 of the Indian Companies Act.

24. (19) Subject to any prior claim of Government in respect of land revenue or any money recoverable as land revenue or of a landlord in respect of rent or any money recoverable as rent,

(a) any debt or outstanding demand owing to a society by any member or past member shall be a first charge (i) upon crops or other agricultural produce raised in whole or in part with a loan taken from the society by such member or past member, and (ii) upon any cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture or work-shops, godown or place of business, supplied to or purchased by such member or past member in whole or in part from any loan whether in money or goods given him by the society:

Provided that nothing contained in this clause shall affect the claims of any *bona fide* purchaser or transferee for value without notice of any such crops or other

agricultural produce, cattle, fodder for cattle or raw materials for manufacture or workshops or agricultural or industrial implements; and

(b) any outstanding demands or dues payable to a housing society by any member or past member in respect of rent, shares, loans, or purchase money or any other rights or amounts payable to such society shall be a first charge upon his interest in the immoveable property of the society.

Note.—This section defines more clearly a prior charge already given to co-operative societies under s. 19 of the old Act.

Musical instruments are not industrial implements or machinery and do not come within any other part of the class of articles referred to in this section.—*Maung Then v. Maung Hla*, (1916) 2 U. B. L. 133.

Fat is not raw material—Fat intended to be purchased and sold at a profit and not for the purpose of manufacturing some other commodity is not "raw material" within cl. (a) of this section.—*Mohalla Khajurawalla Bank v. Mama*, 3 P. W. R. 1917.

Claim of a Co-operative Society.—Under section 73 of the Civil Procedure Code the claim of a co-operative society cannot be enforced under this section unless they have a decree or charge under section 26 *post*.—*Abdur Kadir v. Shah Baspur Co-operative Bank*, 42 Cal. 377.

25. (20) A society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set-off any sum credited or payable to a member or past member in or towards payment of any such debt.

Charge and set-off in respect of shares or interest of member.

"Set off."—These words are not used in a strictly legal sense but more in a business sense, as indicating that the society may deduct or write off the amount of a member's debt from the sum credited as paid on his share, and therefore, so long as the society is carrying on business, it may *bona fide* avail itself of this section (*Fuller*).

Bonus.—Is a sum given or paid over and above what is required to be paid or is regularly payable (*Century Dictionary*).

26. (21) Subject to the provisions of section 25, the share or interest of a member in the capital of a society or in any provident fund established under section 41 of this Act shall not be liable to attachment or sale under any decree or order of a court of justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency Towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on such share or interest.

Shares or interest not liable to attachment.

Capital.—The word 'capital' here does not refer to the whole funds of a society, or the working capital, as otherwise a member's share or interest in his deposit would not be liable to attachment. It apparently refers to the capital owned by the members in their corporate capacity, *i. e.*, the society's owned capital.—(*Calvert*).

27. (22) (1) On the death of a member of a society such society may within a period of one year from the death of such member transfer the share or interest of the deceased member to a person or persons nominated in accordance with the by-laws of the society, if duly admitted a member of the society, in accordance with the rules or the by-laws of the society, or, if there is no person so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member if duly elected a member of the society, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or by-laws :

Transfer of interest on death of member.

Provided that such nominee, heir or legal representative, as the case may be, may require that payment shall be made by the society within one year from the death of the member of the value of the share or interest of such member ascertained as aforesaid.

(2) A society shall subject to the provisions of section 25 and unless prevented by an order of a competent

court pay to such nominee, heir or legal representative, as the case may be all other moneys due to the deceased member from the society.

(3) All transfers and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Cl. (3).—Clause 3 protects the society from litigation. Claimants must sue the nominee without joining the society as a party.—*Cf Friendly Societies Act.*

28. (23) The liability of a past member for the debts of a society as they existed at the time when he ceased to be a member, shall continue for a period of two years from the date of his ceasing to be a member.

Note.—This section is intended to protect creditors by restricting a member from shuffling off his liability and by making liable for debts one who has enjoined benefits.—(*Calvert, p 113*).

Debts.—The debts referred to are debts to third parties and the expenses of winding-up, and the period of two years applies to those only.—(*Ibid*).

As they existed at the time.—This may include debts contracted before the member joined, as in the case of ordinary companies. (*Ibid*).

Past Member.—'Past member' is a person who has legally been a member and has ceased to be such by forfeiture, cancellation, surrender, or transfer of his shares (Companies Act), but not, apparently, by death.—(*Ibid*).

29. (24) The estate of a deceased member shall be liable for a period of one year from the date of his decease for the debts of a society as they existed at the time of his death.

Note.—The heirs or representatives of a deceased member cannot promote the winding up of a society in order to liquidate their liability.—(*S. 47*).

This section operates only in liquidation proceedings.—This section only comes into operation in liquidation proceedings under section 50 *post*. A judgment-debtor cannot therefore call in aid the

provisions of s. 50 as an answer to the claim of the decree-holder to execute the decree—*Kudratulla v. Upendra*, 40 C. L. J. 254.

30. (25) Any register or list of members or shares kept by any society shall be *prima facie* evidence of any of the following particulars entered therein :—

(a) the date at which the name of any person was entered in such register or list as a member ;

(b) the date at which any such person ceased to be a member.

31. (26) (1) A copy of any entry in any book, register or list regularly kept in the course of business in the possession of a society shall, if duly certified in such manner as may be prescribed by the rules, be admissible in evidence of the existence of the entry and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original entry would, if produced, have been admissible to prove such matters.

(2) In the case of such societies as Government by general or special order may direct no officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the society's books, the contents of which can be proved under sub-section (1), or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Sub-section (1)—This sub-section is on the lines of section 4 of the Bankers Books Evidence Act (XVIII of 1891). The books include ledger, day books, cash books, account books and all other books used in the ordinary business of a bank.

Book—The book need not be in use every day; it is sufficient if it be a book kept by the banker for reference if necessary.

To the same extent as the original entry.—*Cf. s. 34 of the Indian Evidence Act (I of 1872) which runs thus:—*

“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."

Sub-section (2).—A new clause (b) i. e., sub-section (2)) has been added on the lines of s. 5 of the Bankers Books Evidence Act. It was thought necessary to do this in order to safeguard the interests of large urban and central Banks, the business of which might be considerably located if their officers were summoned or their books were called for in all legal proceedings to which they might be parties.
(*Report of the Select Committee.*)

Exemption from compulsory registration of instruments relating to shares and debentures of society.

32. (27) Nothing in section 17, sub-section (1), clauses (b) and (c), of the Indian Registration Act, 1908, shall apply to—

(1) any instrument relating to shares in a society, notwithstanding that the assets of the society consist in whole or in part of immoveable property; or

(2) any debenture issued by any society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(3) any endorsement upon or transfer of any debenture issued by any society.

Note.—Section 17, sub-section (1), clauses (b) and (c) of the Indian Registration Act (XVI of 1908) run as follows:—

"The following documents shall be registered if the property to which they relate is situate in a district in which and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(b) other-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the

value of one hundred rupees and upwards, to or in immoveable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.

33. (28) (1) The Governor General in Council, by notification in the *Gazette of India*, may,

Power to exempt from income-tax, stamp-duty, registration and court fees.

in the case of any society or class of societies, remit the income-tax or super-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the society.

(2) The Local Government by notification in the *Bombay Government Gazette* may, in the case of any society or class of societies, remit

(a) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a society or by an officer or member and relating to the business of the society, or any class of such instruments or awards of the Registrar or arbitrators under this Act are respectively chargeable; and

(b) any fee payable under the law of registration and of court fees for the time being in force.

Income-tax.—The Governor General in Council was pleased to remit the income-tax payable in respect of the profits of any co-operative society for the time being registered under this Act or of the dividends or other payments received by the members of any such society on account of profits. (*Vide* Notn. No. 681 F. dated 28th December 1912.)

Stamp-duty.—The Governor-General in Council has remitted the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of any Co-operative Society for the time being registered under this Act, or instruments executed by an officer or member of any such society and relating to the business of the society are respectively chargeable. (*Vide* Notification No. 683-F,

dated 28th December 1912 as amended by Notification No. 579-F dated 2nd June 1913.

Registration.—The Government of India and Local Governments have sanctioned remission of all fees payable by or on behalf of any registered co-operative societies and all fees payable in respect of any instrument executed by any officer or member of such a society and relating to the business thereof. (*Calvert*, pp. 121-122).

33A. (New). With such safeguards as may be prescribed by rules in this behalf Government may give loans to societies or guarantee the payment of interest on debentures issued by them.

Government may give loans or guarantee interest.

Property and funds of societies.

34. (1) (29) Except with the general or special sanction of the Registrar a society shall not make a loan to any person other than a member.

Restrictions on loans.

(2) Save with the sanction of the Registrar, a society with unlimited liability shall not lend money on the security of moveable property.

(3) Government may, by general or special order, prohibit or restrict the lending of money on mortgage of immovable property by any society or class of societies.

Sub-section (1).—This sub-section now enables societies with the general or special sanction of the Registrar to make advances to non-members.

Loan.—'Loan' here includes loans in kind (s. g., grain) as well as in cash.

"Immovable Property."—'Immovable property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. (General Clauses Act, 1897, s. 3, cl. 25).

"Moveable property."—'Moveable property' shall mean property of every description except immovable property (*Ibids.* cl. 34).

35. (30) A society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by the by-laws of the society.

Restrictions on borrowing.

36. (31) Consumers', Producers' and Housing Societies may to the extent permitted by their by-laws trade with persons who are not members but the transactions of a Resource society with persons other than members except as provided under section 34 or 35 shall be subject to such prohibitions and restrictions, if any, as Government may by rules prescribe.

Restrictions on other transactions with non-members.

37 (32) A society may invest or deposit its funds,

(a) in the Government Savings Bank; or
(b) in any of the securities specified in section 20 the Indian Trusts Act, 1882; or

(c) in the shares or on the security of any other society, provided* that no such investment shall be made in the shares of any society other than one with limited liability; or

(d) with any bank or person carrying on the business of banking approved for this purpose by the Registrar; or

(e) in any other mode permitted by the rules.

The section is permissive.

Invest.—'Invest' means convert into some other form of wealth usually of a more or less permanent nature. (*Century Dictionary*).

Funds.—'Funds' means the stock or accumulation of money or other form of wealth available for the purpose (*Calvert*).

Proviso to sub-clause (c) has been newly added to provide against investment in the so-called shares of unlimited liability societies such as exist in Sind.

Restrictions on dividend.

38. (New) No society shall pay a dividend to its members at a rate exceeding 10 per cent.

Note.—This section is new. It introduces a limitation on dividend which is generally acceptable to co-operators and makes formal provision for a reserve fund which has been implied but not expressed in the existing (repealed) Act (Statement of Objects and Reasons).

39. (1) (33) Every society which does or can derive a profit from its transactions shall maintain a reserve fund.

(2) In the case of a Resource or Producers' society at least $\frac{1}{4}$ th of the net profits of the society each year shall be carried to the reserve fund and in the case of any other society at least $\frac{1}{10}$ th of the net profits of the society each year shall be carried to the reserve fund, and such reserve fund may be used in the business of the society or may be invested, subject to the provisions of section 37, as Government may by general or special order direct, or may, with the previous sanction of Government, be used in part for some public purpose likely to promote the objects of this Act or for some purposes of provincial or local interest.

40. (New) Subject to the provisions of section 38 the balance of the profits of a society after making the prescribed provision for the reserve fund may together with any available profits of past years be distributed among its members, and in the case of Consumers' and Producers' societies, also among persons who are not members, to the extent and under the conditions prescribed by the rules or by the by-laws of such societies provided that :—

(a) in the case of a Resource society on a basis of unlimited liability in which the members do not hold shares no distribution of profits shall be made without the general or special order of Government in this behalf; and

(b) in the case of a Resource society on a basis of unlimited liability in which the members hold shares no such distribution of profits shall be made until 10 years from the date of registration of the society have elapsed.

Sub-section (a).—An addition has been made on the lines of proviso (2) of s. 33 of the repealed Act of 1912.

41. (New) Any society may establish a provident fund for its members out of contributions from such members in accordance with by laws made by the society in this behalf and may contribute to such provident fund

from its net profits, after the prescribed payments have been made to the reserve fund, provided that such provident fund shall not be used in the business of the society but shall be invested under the provisions of section 37; and provided further, that no part of such provident fund shall be considered as an asset of the society.

This section is new.

42. (34) With the approval of the Bombay Central Co-operative Institute and after the payments prescribed by sub-section (2) of section 39 have been made to the reserve fund any society may—

(a) set aside a sum not exceeding 20 per cent. of its net profits, and

(b) utilize from time to time the whole of such sum in contributing to any public or co-operative purpose, or to a charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.

The Charitable Endowments Act (VI of 1890), s. 2 defines charitable purpose thus :—

“In this Act ‘charitable purpose’ includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.”

inspection of affairs.

43. (35) (1) The Registrar may of his own motion by himself or by a person duly authorised by him in writing in this behalf hold an inquiry into the constitution, working and financial condition of a society.

(2) The Registrar shall hold such an inquiry as is contemplated in sub-section (1) of this section :—

(a) on the requisition of a society, duly authorised by rules made in this behalf to make such requisition, in respect of one of its members, such member being itself a society,

(b) on the application of a majority of the Committee of the society,

(c) on the application of 1/3rd of the members of the society.

(3) All officers and members of the society whose affairs are investigated shall furnish such information in their possession in regard to the affairs of the society as the Registrar or the person authorised by the Registrar may require.

(4) The result of any inquiry under this section shall be communicated to the society whose affairs have been investigated.

Note.—This section extends the powers given under s. 35 of the repealed Act of 1912 in the case of an enquiry but omits the intervention of the Collector which is no longer necessary.

44. (1) (36) The Registrar may, on the application of a creditor of a society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society :

Inspection of books of indebted society.

Provided that—

(a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time ; and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The registrar shall communicate the result of any such inspection to the creditor.

This section is now made permissive and not imperative as before. It is based on s. 163 of the Indian Companies Act, 1913.

45. (37) Where an inquiry is held under section 43 or an inspection is made under section 44 the Registrar may apportion the costs, or such part of the costs, as he may think right, between the society, the members or creditor demanding the inquiry or inspection, the officers or former officers, and the members or past members of the society.

Costs of inquiry.

Provided that—

(a) no order of apportionment of the costs shall be made under this section unless the society or persons liable to pay the costs thereunder has or have been heard or has or have had a reasonable opportunity of being heard;

(b) the Registrar shall state in writing under his own hand the grounds on which the costs are apportioned.

Note.—The words “members or past members” are added, as there may be cases of such persons having been responsible for the working or the financial condition of a society (Report of the Select Committee.)

The proviso is new.

46. (38) Any sum awarded by way of costs under section 45 may be recovered, on application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides, or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person, and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself.

Note.—The power to make a reference to a magistrate for the recovery of a fine has now been allowed to the Registrar only.

Liquidation and Arbitration.

47. (39) If the Registrar, after an inquiry has been held under section 43 or after an inspection has been made under section 44 or on receipt of an application made by three-fourths of the members of a society present at a special general meeting, called for the purpose or of his own motion, in the case of a society that has not commenced working, or has ceased working, or possesses shares or members' deposits not exceeding Rs. 500, is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up, and when necessary, may appoint a liquidator for the purpose and fix his remuneration.

48. (New) Where it is a condition of the registration of a society that it shall consist of at least ten members who are majors, the Registrar may by order in writing direct the society to be wound up, if at any time it is proved to his satisfaction that the membership has been reduced to less than ten such members.

Society may be wound up if membership is reduced.

This section is new.

49 (41) When the affairs of a society for which a liquidator has been appointed under section 47 have been wound up, or, where no liquidator has been appointed, after two months from the date of an order under section 47, or after confirmation of such order in appeal, the Registrar shall make an order cancelling the registration of the society, and the society shall be deemed to be dissolved from the date of such order.

Effect of cancellation of registration.

Cf. ss. 147 and 162 of the Indian Companies Act. The Registrar, here, takes the place of the Court under that Act.

The effect of cancellation is to transfer the control of the society to the hands of the liquidator.

50. (42) A liquidator appointed under section 47 shall have power with the sanction of the Registrar to do all or any of the following things :—

Powers of a liquidator.

- (a) pay any class or classes of creditors in full ;
- (b) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the society may be rendered liable ;
- (c) to compromise all calls or liabilities to calls and debts, and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the society and all questions in any

way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt, or claim and give a complete discharge in respect thereof;

(d) from time to time to determine the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officer, to the assets of the society, such contribution including debts due from such members or persons;

(e) to institute and defend suits and other legal proceedings on behalf of the society in the name of his office;

(f) to issue requisitions under section 59 upon the Collector for the recovery as arrears of land revenue of any sum ordered by him to be recovered as dues from members or as a contribution to the assets of the society or to the cost of liquidation;

(g) to get disputes referred to arbitration;

(h) to investigate all claims against the society and subject to the provisions of this Act to decide questions of priority arising out of such claims, and to pay rateably according to the amount of such debts, the surplus if any being applied in payment of interest from the date of liquidation at a rate to be fixed by the Registrar and not exceeding the contract rate;

(i) to determine by what persons and in what proportion the cost of the liquidation shall be borne;

(j) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(k) to fix the time or times within which creditors shall prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved;

(l) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same:

Provided that no liquidator shall determine the contribution, debt or dues to be recovered from a past member or the representative of a deceased member unless opportunity has been given to such past member or to such representative to answer the claim.

Order passed by liquidator to wind up assets.—The Civil Court cannot interfere with an order passed by a liquidator of a registered co-operative Society under this section in order to collect the assets of the society from persons who, he thinks, are responsible to account to him for the assets.—*Ganpat v. Krishnadas*, 44 Bom. 582.

Suit for Declaration.—A Civil Court cannot entertain a suit for a declaration that an order of the liquidator is *ultra vires* and thus cannot be executed.—*Bani Mahdo Singh v. Liquidator Dewara Bank*, 44 I. O. 353.

Powers of Liquidator.—The liquidator cannot order that the debtors are jointly and severally liable for each other's mortgage, but may determine the contribution to be made by several debtors to meet the debt. Order passed by liquidator under this section must be enforced by Civil Courts. No appeal lies from the Civil Court's order under this section.—*Mathura Prasad v. Sheobalak*, 40 All. 89.

Jurisdiction of Civil Courts.—Where the liquidator had utilized in settlement of the debt to the society owned by one member, money belonging to another member, a suit by the latter against the former for the recovery of the same will lie in the Civil Court.—*Maung Po Maung v. Maung Aung Paw*, 3 Bur. L. T. 191.

Whether judgment-debtor can call in aid the provisions of this section.—Section 29 only comes into operation in liquidation proceedings under this section. A judgment-debtor cannot, therefore, call in aid the provisions of this section as an answer to the claim of the decree-holder to execute the decree.—*Kudratulla v. Upendra*, 40 C. L. J. 254.

50A. (New) (1) Where, in the course of the winding up of a society it appears that any person who has taken part in the organization or management of the society or any past or present chairman, secretary, member of the managing committee or officer of the society has misapplied or retained or become liable or

Power of Registrar to assess damages against delinquent promoters, etc.

accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just.

(2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

This section is new.

51. (New) Save in so far as is expressly provided in this Act no civil court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose.

Bar of suit in winding up and dissolution matters.

This section is new.

52. (New) After all the liabilities including the paid up share capital of a cancelled society have been met the surplus assets shall not be divided amongst its members but they shall be devoted to any object or objects described in the by-laws of the society and when no object is so described to any object of public utility determined by the general meeting of the society and approved by the Registrar or they may in consultation with them either be assigned by the Registrar in whole or in part to any or all of the following:—

(a) an object of public utility of local or communal interest.

(b) a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890.

(c) the Bombay Central Co-operative Institute, or may be placed on deposit with a Central Co-operative Bank until such time as a new society with similar conditions is registered when with the consent of the Registrar such surplus may be credited to the reserve fund of such new society.

This section is new.

53. (New) Where the society directed to be wound up is a housing society, its assets, both movable and immovable, shall for the purposes of winding up or dissolution of the society jointly vest, subject to all rights and equities, in three persons of whom one shall be nominated by the Registrar, one shall be nominated by the said Society in a general meeting specifically called for the purpose and one shall be nominated by the Bombay Central Co-operative Institute. Such persons shall, for the purpose of winding up or dissolution of the Society, be Joint Liquidators and shall have all the powers of a liquidator under this Act. They may, with the sanction of the Registrar, continue the working of the society, or may, subject to his sanction and in consultation with the members of the society in a general meeting, reconstruct the society or may sell off the premises of the society to the best advantage of all interests concerned, and when all the liabilities of the society are met may dispose of the surplus assets of the society if any, as provided in section 52.

This section is new.

54. (43) (l) If any dispute touching the business of a society arises between members or past members of the society or persons claiming through a member or past member or between members or past members or persons so claiming and any officer, agent, or servant of the society or between the society or its committee, and any officer, agent, member or servant of the society, it shall be referred to the

Arbitration.

Registrar for decision by himself or his nominee, or if either of the parties so desires, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned.

A dispute shall include claims by a society for debts or demands due to it from a member or past member or the heirs or assets of a past member whether such debts or demands be admitted or not.

Provided that if the question at issue between a society and a claimant, or between different claimants, is one involving complicated questions of law and fact, the Registrar may, if he thinks fit, suspend proceedings in the matter until the question has been tried by regular suit instituted by one of the parties or by the society. If no such suit is instituted within six months of the Registrar's order suspending proceedings the Registrar shall take action as laid down in paragraph 1 of this section.

Arbitration.—'Arbitration' means the hearing and determining of a cause between parties in controversy by a person or persons chosen or agreed to by the parties. The determination of arbitrators is called an award.—(Century Dictionary.)

Dispute.—A 'dispute includes claims on the part of a society for money due to it from its members. This would include an instalment of share capital but would not include a subscription not authorized by the by-laws. (Oalvert).

"Person claiming through a member" includes the heirs, executors or administrators and assigns of a member and also his nominee where nomination is allowed (Industrial and Provident Societies Act). The rules of a society are binding on these persons (*Ibid.*)

"Shall be referred."—This excludes the jurisdiction of the Civil Courts. (*Ibid.*)

Disputes touching the business of a society.—Disputes between a member of a Co-operative Society who happens to be an officer of the same on the one hand and the Committee or an officer on the other are disputes touching the business of the society within the mean-

ing of this section.—*Dasaratha Rao v. Subba Rao Pantulu*, (1923) M. W. N. 222.

The words "touching the business of a society" are not confined to disputes in connection with the internal management of the affairs of a society or disputes in regard to principles which would regulate the conduct of the business thereof.—*Bhuban Mohini Dasi v. Kumudbala Dasi*, 28 C. W. N. 131.

55. (New) Where a dispute has been referred to the Registrar under section 54 or to arbitration under clause (g) of section 50, the Registrar or his nominee or the arbitrators, as the case may be, if satisfied on inquiry or otherwise, that a party to such arbitration with intent to delay or obstruct the execution of any award that may be made,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar, may unless adequate security is furnished direct the conditional attachment of the said property; and such attachment shall have the same effect as if made by a competent Civil Court.

This section is new.

56 (New) Any party aggrieved by any decision of the Registrar's nominee made under section 54 or an order passed under section 55 by the Registrar's nominee or arbitrators may within one month of the date of the award or order appeal to the Registrar and the Registrar shall decide the appeal himself.

This section is new.

57. (New) An order passed in appeal under section 56 shall be final and conclusive. The award of the arbitrators or a decision by the Registrar or his nominee under section 54 shall not be liable to be called in question in any civil or revenue court.

This section is new.

58. (New) Wherever in this Act it is provided that the Registrar or person duly authorized by general or special order in writing by the Registrar in this behalf shall hold an inquiry under section 43 or shall make an inspection under section 44 or shall wind up a society or shall arbitrate, such Registrar, or person authorized, as the case may be, shall have the power to summon and enforce the attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908.

This section is new.

59. (New) (1) Every order passed by a liquidator under section 50, or by the Registrar or his nominee or arbitrators on disputes referred to him or them under clause (g) of section 50 or under section 54, every order passed in appeal under section 56 and every order passed by Government in appeal against orders passed under sections 50 and 54 shall, if not carried out, be executed

(a) on a certificate signed by the Registrar or a liquidator by any civil court in the same manner as a decree of such court : or

(b) according to the law and under the rules for the time being in force for the recovery of arrears of land revenue, provided that any application for the recovery in such manner of any such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by an Assistant Registrar to whom the said power has been delegated by the Registrar.

(2) When the property attached in execution of an order referred to in sub-section (1) cannot be sold for want of buyers, the same may be handed over to a society with the previous consent of the Registrar on such terms and

conditions as may be agreed upon between the Collector and the said society.

This section is new. Sub-section (2) provides a safeguard against combination of persons for the purpose of preventing the sale of any attached property.

Offences.

Offences.

60. It shall be an offence under this Act if—

(a) a society with a working capital of Rs. 50,000 or more or an officer or member thereof fails without any reasonable excuse to give any notice, send any return or document, do or allow to be done anything which the society, officer or member is by this Act required to give, send, do or allow to be done : or

Default by society, officer or members.

(b) a society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorized by him in writing in this behalf : or

Wilful neglect or default by a society, etc.

Wilful furnishing of false information.

(c) a society or an officer or member thereof wilfully makes a false return or furnishes false information : or

(d) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorized to do so under the provisions of this Act.

Disobedience of summons, requisition or order.

Cf. this section with s. 34 of the Friendly Societies Act, 1896.

Penalty for offences not otherwise provided for.

61. Every society, officer or member of a society or other person guilty of an offence under this Act for which no penalty is expressly provided herein shall be liable to a fine not exceeding Rs. 50.

This section is new. In the Bill as introduced, the fine was Rs. 200. But the Select Committee reduced it to Rs. 50.

62. 47 (1) No person other than a registered society shall without the sanction of Government trade or carry on business under any name or title of which the word "co-operative" or its vernacular equivalent forms part:

Prohibition of the use of the word "co-operative."

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to fifty rupees and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.

The second proviso is new. Date: 4th December 1925.

63. (New) (1) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.

Cognizance of offences.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence under this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

(3) No prosecution under this Act shall be lodged without the previous sanction of the Registrar, which shall not be given except after hearing the party concerned.

This section is new.

Appeals and Revision.

64. (New) An appeal against an order or decision of or sanctioned by the Registrar under section 10, 16, 45, 47, 50A or 54 may be made by any party aggrieved or affected by the order or decision to Government within two months of the date of the communication of the order.

Appeals.

This section is new.

64A. (New) The Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If in any case, it shall appear to the Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed the Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit.

Power of Government and the Registrar to call for proceedings of Subordinate Officers and to pass orders thereon.

Miscellaneous.

65. (44) (1) All sums due from a society or from an officer or member or past member of a society as such to Government, may be recovered according to the law and under the rules for the time being in force for the recovery of arrears of land revenue.

Recovery of sums due to Government.

(2) Sums due from a society to Government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society; secondly, in the case of a society of which the liability of the members is limited, from the members or past members subject to the limit of their liability; and, thirdly in the case of other societies, from the members or past members.

(3) The liability of past members shall in all cases be subject to the provisions of section 28.

Under this section the costs of audit by a Government auditor may be recovered.

66. (45) Notwithstanding anything contained in this Act, Government may, by special order in each case and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

Power to exempt societies from conditions as to registration.

67. (46) Government may, by general or special order to be published in the *Bombay Government Gazette*, exempt any society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order; provided that no order to the prejudice of any society shall be passed without an opportunity being given to such society to represent its case.

Power to exempt societies from provisions of Act.

68. (48) The provisions of the Indian Companies Act, 1913, shall not apply to societies, registered under this Act.

Indian Companies Act not to apply.

69. (New) Every Co-operative Society registered outside the Bombay Presidency, which has or establishes a branch or place of business in the Bombay Presidency shall within six months from the commencement of this Act or from the establishment of such branch or place of business, file with the Registrar a certified copy of the bye-laws and amendments and, if these are not written in the English language, a certified translation in English thereof, and shall submit to the Registrar such returns and information as are submitted by similar societies in the Bombay Presidency in addition to those submitted to the Registrar of the province where it is registered.

Branche, etc., of Societies outside the Presidency.

70. (New) No suit shall be instituted against a society or any of its officers in respect of any act touching the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Notice necessary in suits.

71. (43) (1) Government may, for the whole or
Rules. any part of the Presidency and for
any society or class of societies,
make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the
generality of the foregoing power such rules may—

(a) subject to the provisions of section 6, prescribe
the maximum number of shares or portion of the capital
of a society which may be held by a member ;

(b) prescribe the forms to be used and the conditions
to be complied with in the making of applications for
the registration of a society and the procedure in the
matter of such application ;

(c) prescribe the matters in respect of which a
society may or shall make by-laws and the procedure to
be followed in making, altering and abrogating by-laws
and the conditions to be satisfied prior to such making,
alteration or abrogation ;

(d) prescribe the conditions to be complied with by
persons applying for admission or admitted as members
and provide for the election and admission of members and
the payment to be made and the interests to be acquired
before the exercise of the right of membership ;

(e) provide for ascertaining the value of a deceased
member's share or interest ;

(f) provide for general meetings of the members
and for the procedure at such meetings and the powers to
be exercised by such meetings ;

(g) provide for the appointment suspension and re-
moval of the members of the committee and other officers
and for the procedure at meetings of the committee and
for the powers to be exercised and the duties to be per-
formed by the Committee and other officers ;

(h) prescribe the accounts and books to be kept by
a society and provide for the audit of such accounts and
the charges, if any, to be made for such audit, and for

the periodical publication of a balance sheet showing the assets and liabilities of a society ;

(i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted ;

(j) provide for the persons by whom and the form in which copies of documents or entries in books of societies may be certified, and for the charges to be levied for the supply of such copies ;

(k) provide for the formation and maintenance of a register of members, and where the liability of the members is limited by shares, of a register of shares ;

(l) prescribe the payments to be made and the conditions to be complied with by members applying for loans, and the period for which loans may be made, and the amount which may be lent to an individual member ;

(m) prescribe the prohibitions and restrictions subject to which societies may trade with persons who are not members ;

(n) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of a society ;

(o) prescribe the extent to which a society may limit the number of its members ;

(p) prescribe the conditions under which profits may be distributed to the members of a society and the maximum rate of dividend which may be paid by societies ;

(q) prescribe the procedure to be followed in presenting and disposing of appeals ;

(r) provide for securing that the share capital of any society shall be variable in such a way as may be necessary to secure that shares shall not appreciate in value and that necessary capital shall be available for the society as required ;

(s) provide that persons qualified under the by-laws of a society shall not be excluded from membership without due cause ;

(t) prescribe the procedure to be followed by a liquidator appointed under section 47 ;

(u) prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and for fixing and levying the expenses of determining the dispute ;

(v) provide for one issue and service of processes and for proof of service thereof ;

(w) provide for the writing off of bad debts ; .

(x) regulate the manner in which funds may be raised by means of shares or debentures or otherwise ;

(y) provide for the withdrawal and expulsion of members and for the payments to be made to them and for the liabilities of past members ;

(z) provide for the nomination of a person to whom the interest of a deceased member may be paid or transferred ;

(aa) prescribe the cases in which an appeal shall lie from the order of a liquidator appointed under section 47 ;

(bb) provide for the inspection of documents in the Registrar's office and the levy of fees for granting certified copies of the same ;

(cc) prescribe the procedure to be followed for the custody of property attached under section 55 ;

(dd) provide for the payment of contributions at such rates and subject to such conditions as may from time to time be prescribed by Co-operative Societies to any provident fund which may be established for the benefit of officers and servants employed by them ; and

(ee) prescribe the period and terms under which Government aid may be given to Co-operative Societies and the terms under which the Government may guarantee the payment of interest on debentures issued by registered societies.

(3) Government may, subject to such conditions, if any, as it thinks fit, delegate all or any of its powers to

make rules under this section to any authority specified in the order of delegation.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(5) The rules so made shall be laid on the table of the Bombay Legislative Council for one month previous to the next session thereof and shall be liable to be rescinded or modified by a resolution of the said Council tabled at its next session.

Transfer of decree—Rules 31 and 34 under s. 43 of the repealed Act (now this section) provided that awards shall be enforceable as decree of a court having local jurisdiction if application is made to it to enforce it. A Court having a power to execute an award can transfer it for execution.—*Jairam Jadwji v. Nawroji Jamshedji Plumber*, 47 Bom. 92.

An award was made at Poona under rules framed under s. 43 of the repealed Act (now this section) and then the Judge of the Small Cause Court, Poona, was requested to transfer the decree under s. 39 of the Civil Procedure Code, but he refused. *Held*, that he was empowered to transfer the decree and he could refuse to transfer it.—*Krishnaji v. Mahadeo*, 46 Bom. 128.

72. (49) (1) Every society now existing which has been registered under the Co-operative Credit Societies Act, 1904, or societies. under the Co-operative Societies Act, 1912, shall be deemed to be registered under this Act, and its by-laws shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) All appointments, rules and orders made, notifications and notices issued and suits and other proceedings instituted, under the said Acts shall so far as may be, be deemed to have been respectively made, issued and instituted under this Act.

Validity of by-laws.—A person who became a member of a Village Co-operative Bank by election to it after the death of his father was held liable to all debts due to the Bank by his father who was a mem-

ber at the time of his death over and above the assets received by him from his father under the bye-law framed by the Bank which re-
 "effectation of an heir or successor-in-interest gives successor all rights and
 subjects him to all liabilities possessed or incurred by his predecessor-
 in-interest towards the Bank." Such a bye-law was held not *ultra vires*.
 —*Village Co-operative Bank v. Kali Din*, 38 O. C. 157.

73. (50) The enactments specified in the Schedule
 are hereby repealed in so far as they
 apply to the Bombay Presidency to
 the extent specified in the fourth column of the said
 schedule.

SCHEDULE.

ENACTMENTS REPEALED.

(See Section 73.)

Year.	No.	Short title.	Extent of repeal.
		<i>Acts of the Governor General in Council.</i>	
1912	II	The Co-operative So- cieties Act, 1912	The whole.
1920	XXXVIII	The Devolution Act, 1920.	So much as relates to Act II of 1912.
		<i>Act of the Governor of Bombay in Council.</i>	
1920	I	The Bombay Land Revenue Code (Amend- ment) Act, 1920.	The whole.

APPENDIX A.

FORM I.

Application for Loan.

Having become a member of the _____
Co-operative Credit Society, I hereby apply for a loan of
Rupees (_____) (in words _____) I wish that
it may be made repayable—

(a) after _____ months, or

(b) in _____ instalments on the following dates:—

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____

The names of the Sureties offered are given below.

The object for which the loan is required is _____

Dated _____ 192 .

Signature _____

Occupation _____

Names of Sureties offered:—

(1) _____

(2) _____

(3) _____

FORM II.

Form of Agreement for a Loan.

I acknowledge to have received from the _____
 Co-operative Credit Society a loan of Rupees (_____) (in words) _____ repayable as under:—

Principal		Interest		Total		Date of Repayment	
Rs.	p.	Rs.	p.	Rs.	p.		
(1)							
(2)							

The loan bears interest at _____ pias per rupee per month I undertake to employ the loan for the following purpose:—

I undertake to repay the loan on the date (or dates) mentioned above and to be bound in all respects by the Societys By-laws

Signature of Borrower _____

Witnesses' Signatures { _____

We _____ and _____

hereby undertake to be jointly and severally liable to the above mentioned Society for the due repayment of this loan on the date or dates shown above or on any dates to which the period may be legally extended by the Managing Committee with interest in accordance with the above conditions and the by-laws of the Society.

Dated _____ 192 .

Signatures of Sureties—

Witnesses' Signatures— (1) _____
 (2) _____
 (3) _____

FORM III.

Form of Agreement for a Loan.

I acknowledge to have received from the _____
 Co-operative Credit Society a loan of Rupees (_____)
 (in words) _____
 repayable as under:—

Principal			Interest			Total			Date of Repay- ment.
Rs.	s.	p.	Rs.	s.	p.	Rs.	s.	p.	
(1)									
(2)									
etc.									

The loan bears interest at _____ pias per rupee per month,
 I undertake to employ the loan for the following purpose:—

As security for the repayment of the loan with all interest

* If the property is surveyed and assessed land, the name of the village, survey number, area and assessment should be here inserted. Other landed property should be described fully. If any previous mortgage has been executed particulars should be given, or the fact that the property is not mortgaged should be stated.

accruing I hereby mortgage without possession the undermentioned property which is now in my ownership and possession:—*

I undertake to repay the loan on the date (or dates) mentioned above and to be bound in all respects by the Society's by-laws.

Signature of Borrower } _____
 or
 Thumb Impression }

Signature of Witnesses { (1) _____
 (2) _____

APPENDIX B.

Form of Loan Application.

1. Name of borrowing Society _____ Unlimited
 Address _____
 Taluka _____
 District _____
 Audit classification _____

2 The total amount of capital which may be raised under by-law 3 is Rs. _____

3. The position of the Society is shown by the following figures:—

- (1) fixed deposits from members Rs. _____
 (2) fixed deposits and loans from non members
 Rs _____
 (3) current deposits Rs. _____
 (4) loans from Government Rs. _____
 (5) loans from other Co-operative Societies or Banks.

Name of Bank.	Amount.

- (6) Reserve fund _____
4. The present number of members of this Society is _____
5. The amount of loans overdue by more than one month during one year prior to this application is Rs _____
6. The number of bad debts written off during the last year is _____

7. The amount of loan wanted by the Society during the next six months is estimated as follows.—

Purpose.	Amount wanted.	Period for repayment (separately for each purpose.)	Date on which advance is required separately for each purpose).
Total...			

8. The Society requests that the above loans may be added together and instalments of repayments fixed as follows:—

Amount of instalment.	Date of repayment.
Total...	

Notes.—Totals in items 7 and 8 must agree.

INDEX.

—:—:—

	Page		Page
Address—		Consumers' Society—	
of society must be regis-		meaning of	3
tered	10	Co-operation—	
object of	1	meaning of	1
Agriculturist—		" Co-operative "	
definition of	6	prohibition of	34
Annual general meeting—		Costs—	
when to be called	7	recovery of	24
Appeal—		Debts—	
against order of Registrar		means debts to third parties	15
may be made by any		Deceased member—	
party	34	liability of	15
Arbitration—		Dispute—	
meaning of	29	what the term includes	30
dispute to be referred to	29	touching the business of a	
Arbitrator—		society	30
appeal against award of	31	Distribution of profits—	
Audit of accounts—		restrictions on	21
power of Registrar to make	11	Dividend—	
Bar of suit—		restrictions on	20
in winding up and dissolu-		Entry—	
tion matters	26	admissibility of copy of, as	
Bonus—		evidence	16
meaning of	13	Funds—	
Books of indebted society—		investment of	20
inspection of	23	General society—	
By-laws—		meaning of	3
meaning of	2	Government—	
correspond to articles of	3	includes local Government...	4
association of companies..	9	Housing society—	
amendment of	9	meaning of	3
Capital—		Industrial implements—	
meaning of	5	musical instruments are	
Chairman—		not	13
included in officer	2	Inquiry—	
Charitable purpose—		costs of	23
contribution to	22	Interest—	
what does the term include	22	transfer of, on death of mem-	
Charge and set off—		ber	14
in respect of shares or in-		Limited—	
terests of member	13	means limited to the amount	
Committee—		if any	5
meaning of	2	Liquidator—	
Compulsory registration of		powers of	25
instruments—		order passed by, to wind up	
exemption from	17	assets	27

	Page		Page
Loans or guarantee in interest—		power of, to decide certain	
Government to give ...	19	questions ...	6
Local Government—		power of, to assess damages	
definition of ...	4	against delinquent pro-	
Member—		motors ...	27
what does the term include ...	2	Reserve fund—	
votes of ...	9	to be maintained by every	
register of, is evidence of		society ...	21
the date of the entry in		Resource society—	
register ...	16	meaning of ...	2
Member of Committee—		Secretary—	
included in officer ...	2	included in officer ...	2
Membership—		Shares—	
rights of, not to be exercised		restrictions on transfer of ...	10
till due payments made ...	9	Share Capital—	
Non-members—		kinds of ...	5
restrictions on transactions		Shares or interest—	
with ...	20	not liable to attachment ...	14
Officer—		Society—	
includes chairman, secre-		means a society registered	
tary, treasurer, member		under this Act ...	2
of committee, &c. ...	2	which may be registered ...	4
Person—		amalgamation or transfer of	8
includes any company or		to be bodies corporate ...	12
association of body of		prior claim of ...	12
individuals ...	3	power of G. G. to exempt,	
Past Member—		from income tax, stamp	
liability of ...	15	duty, &c. ...	18
meaning of ...	15	not to make loan without	
Proceedings of Subordinate		sanction of Registrar ...	19
officers—		to receive deposits and loans	
power of Government and		as prescribed by by-laws... 19	
the registrar for ...	35	may be wound up if mem-	
Producers' society—		bership is reduced ...	25
meaning of ...	2	addresses of, must be regis-	
Provident Fund—		tered ...	10
to be established by any		wilful neglect or default of... 33	
society ...	21	sums due from, to over-	
Raw material—		ment how to be recover-	
fat is not ...	13	ed ...	35
Registration—		power to exempt, from con-	
effect of cancellation of ...	25	ditions as to registra-	
Registrar—		tion ...	35
means person appointed to		—from provisions of Act ...	36
perform duties of Regis-		Special general meeting—	
trar ...	2	when to be called ...	8
to classify all societies		Surplus assets—	
under one or other heads... 3		disposal of ...	28
duties of ...	4	of housing society ...	28
application for ...	6		