

THE BOMBAY MONEY LENDERS ACT

By

Trumbaklal Kushalji Dave B.A., LL.B., Pleader

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CHANDRAKANT CHIMANLAL VORA

Law Publishers & Law Booksellers

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1947

THE BOMBAY MONEY LENDERS ACT

(Bombay Act No. XXXI of 1947)

(With Rules and Forms thereunder)

With

Exhaustive Commentary by

TRAMBÄKLAL KUSHÄLJI DAVE

B. A., LL. B. Pleading.

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PREFACE

This Little volume hardly requires any introduction. However I am inclined to respect the practice prevalent amongst the writers and would like to say a few words.

Some of the other Provincial Governments of India have also passed similar acts governing the regulation and control of transactions of money-lending in their Provinces. I have read them very carefully but as it is not uncommon, though similarity in spirit does exist there are many sections which are not quite similar and hence it will only be wise to request the learned Advocate friends to refer to them for comparative study at a proper time, as the provisions of this Act are not *Pari Materia* with those of the other acts.

The acts governing money-lending in other provinces are enumerated herebelow :

- (1) Bengal Money-lenders' Act (VII of 1933) and (X of 1940).
- (2) Behar Money-lenders' Act (III of 1938).
- (3) Behar Money-lenders (Regulation of Transactions) Act (VII of 1939).
- (4) C. P. Money-lenders' Act (XIII of 1934).
C. P. Money-lenders' (Amendment of) Act (XXIV of 1937).
C. P. Money-lenders' (Amendment) Act (XVII of 1939).
- (5) Madras Money-lenders' Act (IV of 1939).
Orissa Money-lenders' Act (III of 1939).
Punjab Registration of Money-lenders' Act (III of 1938).

Wherever, convenient, I have tried to quote some useful rulings with a hope that a careful study will throw considerable light on the point.

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Punjab Registration of Money-lenders' Act (III of 1938).

Wherever, convenient, I have tried to quote some useful rulings with a hope that a careful study will throw considerable light on the point.

The Act secures efficient control of the business of money-lending and being not retrospective in effect will do no harm to the interests of the money-lenders because the Act applies to any suit or proceeding for the recovery of a loan made after the date on which this Act comes into force, or for other transactions made after the date on which this Act comes into force.

I trust this little book will be of use to the learned friends and busy money-lenders and the debtors.

Ahmedabad, } Trambaklal Kushalji Dave,
17th Nov. 1947. } B. A., LL. B., Pleader.

THE BOMBAY MONEY LENDERS ACT, 1946

BOMBAY ACT No. XXXI of 1947.

(First published, after having received the assent of the Governor General in the "Bombay Government Gazette" on the 31st May 1947).

An Act to regulate the transactions of money-lending and to make better provision for the regulation and control of transactions of money-lending in the Province of Bombay.

Whereas it is expedient to make better provision for the regulation and control of transactions of money-lending in the Province of Bombay; it is hereby enacted as follows :—

1. (1) This Act may be called the Bombay Money-Lenders Act, 1946.

(2) It extends to the whole of the Province
Short title,
extent & com-
mencement. of Bombay.

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

The Provisions of this act are made applicable in the whole of the Province of Bombay with effect on and from 17-11-1947.

The subject of money and money-lenders being classes as a subject within the exclusive province of the Provincial Legislatures (No. 27 of the Provincial Legislative List in Schedule VII of the Government of India Act 1935 (25 and 26 Gls. 5-e-42), the development of the law relating to the subject will progress along provincial lines and in accordance with the requirements of each of the Provinces. The Statement of Objects and Reasons published in the Bombay Government Gazette is as under :—

Statement of Objects and Reasons :

If a concerted attempt is to be made to improve the economic condition of the bulk of the rural population and the poorer sections of the population in towns and cities, it is necessary that adequate measures should be taken to protect these persons from exploitation by other sections of the community. The poorer individual is at present unable to resist the economic forces that surround him; and unless the state intervenes and protects his legitimate

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economic rights, it will not be possible to restore to him the keenness and initiative which are essential for increased productive effort on his part. In the case of the agrarian population the Agricultural Debtors Relief Act will adjust and liquidate existing debts, but controlled credit must be provided in future for short-term and long-term agricultural finance in order to secure that the agrarian population will not get hopelessly into debt again. Similarly, in towns and cities a large section of the labour and lower middle class population are exploited by many unscrupulous money lenders and it is therefore necessary to control the operations of the latter all over the province.

2. A bill to regulate the transactions of money lenders in the Province of Bombay was introduced by the popular Government when it was in power in 1938; but this Bill could not be enacted before it left office in 1939. The present bill is drafted mainly on the basis of the old bill introduced in 1938 with a few changes considered necessary to secure more efficient control of the business of money lending and expeditious disposal in the Administration of the Act.

3. Broadly speaking, the provisions of the Bill aim at securing the following :—

- (1) Registration and Licensing of money-lenders (clauses 3 to 17).
- (2) Maintenance of accounts by Licensee money-lenders in prescribed forms (clause 18).
- (3) Furnishing of periodical statements of accounts to debtors (Clause 19).
- (4) The enforcement of the rule of Damdupat (clause 23).
- (5) Limitation of the rates of interest (clause 25).
- (6) Prohibition against taking any unlawful charges for expenses, etc., (clause 26).
- (7) Making the provisions of the Act applicable to persons to whom money lenders may assign their interests in the loans after the coming into force of this Act (Clauses 27 and 28).
- (8) Applications to court by debtors for taking accounts and for having amounts due from them determined (clause 30).
- (9) Provision to entitle a debtor to deposit at any time in a court of law an amount in part or full payment of the loan to be paid to his creditor (clause 31).

(10) Prohibition against leaving blanks or omitting to enter or incorrectly entering the amount of the loan in any document (clause 32).

(11) Protection of debtors from molestation and intimidation (clause 33); and

(12) Freedom from arrest or imprisonment in execution of a money decree so far as agricultural debtors are concerned (clause 36).

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

(1) "bank" means a banking company as defined in VII of 1913. section 277 F of the Indian Companies Act, 1913, whether incorporated in or outside British India;

(2) "Business of money-lending" means the business or advancing loans whether or not in connection with or in addition to any other business;

(3) "capital" means a sum of money which a money-lender invests in the business of money-lending;

(4) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in VII of 1913 pursuance of an Act of Parliament, or by Royal Charter or Letters Patent, or by an Act of the Legislature of a British Possession;

(5) "Co-operative society" means a society registered or deemed to have been registered under the Bom. VII of 1925. Bombay Co-operative Societies Act, 1925, or 11 of 1912. the Co-operative Societies Act, 1912, or any act of any other Provincial Legislature relating to co operative societies;

(6) "Interest" includes any sum, by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged by a mony lender for or on account of costs, charges or expenses in accordance with the provi-

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sions of this Act, or any other law for the time being in force;

(7) "Licence" means a licence granted under this Act;

(8) "licence fee" means the fee payable in respect of a licence;

(9) "loan" means an advance at interest by way of credit, whether of money or in kind, but does not include-

(a) a deposit of money or other property in a Government Post Office Bank or in any other bank or in a company or with a co-operative society;

(b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration XXI of 1860 Act, 1860, or any other enactment relating to a public religious or charitable object;

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced by a co-operative society;

(e) a loan to, or by a scheduled bank;

(f) an advance made on the basis of negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;

(g) except for the purposes of section 23 and 29, a loan to a trader;

(10) "money-lender" means-

(i) an individual, or

(ii) an undivided Hindu family, or

(iii) a bank, or

(iv) an unincorporated body of individuals, who or which-

(a) carries on the business of money-lending in the Province; or

(b) has his or its principal place of such business in the Province;

(11) "prescribed" means prescribed by rules made under this Act;

(12) "principal" means in relation to a loan the amount actually advanced to the debtor;

(13) "Province" means the Province of Bombay;

(13A) "recognised language" means in Greater Bombay Marathi or Gujarati and elsewhere the language of the Court;

(14) "register" means a register of money-lenders maintained under section 4;

(15) "rules" means rules made under this Act;

(16) "scheduled bank" means a bank included in the second schedule to the Reserve Bank of India Act, 1934.

(17) "suit to which this Act applies" means any suit or proceeding—

(a) for the recovery of a loan made after the date on which this Act comes into force;

(b) for the enforcement of any security taken, or any agreement made, after the date on which this Act comes into force in respect of any loan made either before or after the said date; or

(c) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date;

(18) "trader" means a person who in the regular course of business buys and sells goods or other property, whether moveable or immoveable, and includes—

a wholesale or retail merchant,

a commission agent,

a broker,

a manufacturer,

a contractor,

a factory owner,

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but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

Explanation:—For the purposes of this clause an "artisan" means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

Sec. 277F was inserted by section 119 of the Indian Companies (Amendment) Act, 1936.

Sec. 277F of the Indian Companies Act defines a "*banking company*" as under :—

A '*banking company*' means a company which carries on as its principal business the accepting of deposits of moneys on current account or otherwise, subject to withdrawal by cheque, draft or order, notwithstanding that it engages in addition in any one or more of the following forms of business, namely :—

(1) the borrowing, raising or taking up of moneys; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, travellers' cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit, or for safe custody or otherwise; the collecting and transmitting of money and securities;

(2) acting as agents for Governments or local authorities or for any other person or persons; the carrying on of agency business of any description other than the business of a managing agent including the power to act as attorneys and to give discharges and receipts;

- (3) contracting for public and private loans and negotiating and issuing the same;
- (4) the promoting, effecting, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, Municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
- (5) carrying on and transacting every kind of guarantees and indemnity business;
- (6) promoting or financing or assisting in promoting or financing any business, undertaking or industry, either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;
- (7) acquisition by purchase, lease, exchange, hire or otherwise of any property immoveable or moveable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability;
- (8) managing, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part-satisfaction of any of its claims.
- (9) acquiring and holding and generally dealing with any property and any right, title or interest in any property moveable or immoveable which may form part of the security for any loans or advance or which may be connected with any such security;
- (10) undertaking and executing trusts;
- (11) undertaking the administration of estates as execute, trustee or otherwise;
- (12) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company;
- (13) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable

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or benevolent objects or for any exhibition or for any public, general or useful object ;

(14) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company ;

(15) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;

(16) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this section :

(17) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company.

277 G Limitation of activities of banking company :

(1) No company formed after the commencement of the Indian Companies (Amendment) Act, 1936, for the purpose of carrying on business as a banking company or which uses as part of the name under which it proposes to carry on business the word 'bank', 'banker' or 'banking' shall be registered under this Act, unless the memorandum limits the objects of the company to the carrying on of the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or otherwise along with some or all of the forms of business, specified in section 277 F. (2) No banking company whether incorporated in or outside British India shall after the expiry of two years from the commencement of the said Act carry on any form of business other than those specified in section 277 F; Provided that the Governor General in Council may, by notification in the Gazette of India, specify in addition to the businesses set forth in clauses (1) to (17) of section 277 F other forms of business which it may be lawful under this section for a banking company to engage in.

Company—In a general way, a company is nothing more than a combination of persons, associated together for the purpose of carrying on a business, with a view to profit. In this sense, a company is not distinguishable from a partnership, as defined by

the Partnership Act of 1932. This, however, is not the meaning in which the word 'company' is used in Company Law. A company i. e. an incorporated company is something more than and different from a partnership as constituted under the Partnership Act.

'Company' is defined in Section 2 sub-clause 2 of the Indian Companies Act No. VII of 1913, as under:—

"Company" means a company formed and registered under the Indian Companies Act or an existing company.

"Existing company" is defined in sub-clause 7 of Section 2 of the Indian Companies Act as under:—

'Existing company' means a company formed and registered under the Indian Companies Act, 1861, or under any Act or Acts repealed thereby, or under the Indian Companies Act, 1882.

'Company' may be a Private Company or a Public Company.

'Private company' is defined in sub-clause 13 of Section 2 of the Indian Companies Act.

'Public company' is defined in sub-clause 13A of Section 2 of the Indian Companies Act.

"Business of money-lending" as defined, means the business of advancing loans, whether it may be a principal business or a side-business. Any person or company who advances loans will be governed by this Act. However loans advanced by a co-operative society or by Scheduled Banks are exempted from the operation of this Act. Thus it appears that the exception is not made in the case of other Banks established under the Indian Companies Act. The point whether this Act applies to the money-lending business of the Life Insurance Companies is not free from doubt. However in the definition of the "money lender", an unincorporated body of individuals is included. The Bank is specially mentioned therein. However there is no mention made of Insurance Companies which are incorporated bodies. Nor is there a mention that loans advanced by an Insurance Company are exempted from the provisions of this Act. However, looking to the sub-clause 2 of Section 2 of the Act, an act of advancing loans to the Policy-holders comes under the business of money-lending. Therefore Life Insurance companies advancing loans to policy holders will be governed by this Act so far as money-lending is concerned. It also appears that the object of the Act is to exempt persons who

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are not doing the 'business' of advancing loans, though one may advance a sum of money to oblige a relative, a neighbour or a friend without interest. Looking to the general trend of the Act, it appears that even an occasional or a solitary instance of advancing loan to a person with interest may amount to doing money-lending business.

"Capital"—in Form 2 (Rule 4) which is the form of an application for the grant of a licence to a money-lender, the applicant is required to state the total amount of the capital which he intends to invest in the business of money lending, in the year for which the application has been made.

"Interest" is defined in the sub-clause (6) of section 2. A money-lender is entitled to charge reasonable costs for investigating title to the property, costs of the stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between the parties includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force, under section 26 of the Act.

Under section 25 (1) of the Act, the Provincial Government may from time to time, by notification in the Official Gazette, fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans. The maximum rates of interest shall not exceed 6 per cent. per annum in case of secured loans and 9 per cent. per annum in case of unsecured loans. Therefore no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the Provincial Government shall be valid and no court shall, in any suit to which the Act applies, award interest exceeding the said rates.

Under Rule 10 of the Bombay Money-lenders' Rules 1947, a money-lender is required to maintain the cash book and ledger as shown in Forms 4, 5 and 6 and he is required to state the rate of interest charged and also the amount of interest received by him or payable to him, by the debtor. Also under Rule 11 a money-lender has to deliver the annual statement of accounts to each of his debtors under sub-section (1) of Section 19 of the Act.

The said statement shall be in Form No. 7 (Rule 11 (i)). In Form also the amount of interest is to be separately shown.).

So also in case of assignment of loan, a statement of information is to be supplied to the assignee under clause (b) of sub-section (1) of Section 27 of the Act. In this statement of information, the amount of repayment towards interest and the amount outstanding as interest is to be shown.

"Loan"—In order that advances or loans given without interest should not come within the purview of this Act, the words "at interest" were added by the Select Committee in the definition of loan. So where there is an advance without interest, it will not be a 'loan' as defined by the Act.

The definition of "trader" was not in the original Act. It was added by the Select Committee. In order that commercial and business transactions and advances to traders should not be included within the scope of this Act, advances to traders were exempted from the definition of "loan" except for the purposes of the power of the Court to limit interest recoverable in certain cases under sec. 23 of the Act and limitation on rates of interest under sec. 25 of the Act.

"Negotiable instrument"—A Negotiable instrument is defined in sec. 13 of the Negotiable Instruments Act XXVI of 1881, as under:—

A "Negotiable instrument" means a promissory note, bill of exchange, or cheque payable either to order or to bearer. A "negotiable instrument" may be made payable to two or more payers jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

"Scheduled Bank" means a Bank included in the second Schedule to the Reserve Bank of India Act, 1934 :

The following are the Scheduled Banks :—

Ajodhia Bank, Fyzabad.

Allahabad Bank.

American Express Company Incorporated.
Bank Nactional Ultramarino.

Bank of Baroda.

Bank of Bebar.

Bank of Hindustan, Madras.

Bank of India, Bombay.

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Bank of Taiwan.
Benares Bank.
Bengal Bank.
Bengal Central Bank.
Bhagwan Das & Co. Derha Dun.
Canara Bank.
Central Bank of India.
Chartered Bank of India, Australia and China.
Comptoir National d' Escompte de Paris.
Eastern Bank.
Grindlay and Company.
Hongkong and Shanghai Banking Corporation.
Imperial Bank of India.
India Bank, Madras.
Industrial Bank of Western India, Ahmedabad.
Karnani Industrial Bank.
Lhoyde Bank.
Mercantile Bank of India.
Mitsni Bank, Bombay.
National Bank of India.
National City Bank of New York.
Nederlandse Indische Handels Bank.
Nederlandse Handel-Maatschappij.
Nedungadi Bank, Calicut.
Oudh Commercial Bank.
P. and O. Banking Corporation.
Punjab and Sind Bank, Amritsar.
Punjab Co-Operative Bank, Amritsar.
Punjab National Bank, Lahore.
Simla Banking and Industrial Company.
Thomas Cook & Sons.
Travancore National Bank, Tiruvalla.
Union Bank of India, Banbay.
Yokahama Specia Bank.
Queen Bank, Quilon, South India.
Nadar Bank, Tuticorin.

Comilla Union Bank, Comilla.
 Indo-Commercial Bank, Mayavaram.
 Comilla Banking Corporation, Comilla.

"Suit to which this Act applies".

This Act applies to all natures of transactions relating to loans effected after the date on which this Act comes into force.

3. The Provincial Government may, by notification in the Official Gazette appoint such persons, whether ~~Appointment of Registrar General, Registrars and Asstt. Registrars.~~ public officers or not, as it thinks proper, to be a Registrar General, Registrars and Assistant Registrars of money-lenders for the purposes of this Act and may define the areas within which each such officer shall exercise his powers and perform his duties.

4. Every Assistant Registrar shall maintain for the Register of areas in his jurisdiction a register of money-money-lenders. lenders in such form as may be prescribed.

The Register of money-lenders required to be maintained under this section shall be in Form No. 1, under Rule 3 of the Bombay Money-lenders Rules, 1947.

5. No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and condition of such licence.

~~Money-lenders not to carry on business of money-lending except for area under licence and except in accordance with terms of licence.~~

A licence authorising the money-lenders to carry on the business of money-lending will be in Form No. 3. The licence shall prescribe the area in which the said business is to be carried on and it shall also state the date till which the said licence shall be valid.

For Form of the Licence see Form No. 3, under the relevant Rule 6.

6. (1) Every money-lender shall annually before such date as may be prescribed make an application ~~Application for Licence.~~ in the prescribed form for the grant of a licence to the Assistant Registrar of the area within the limits of which he intends to carry on the business of

money-lending. Such application shall contain the following particulars, namely:—

- (a) the name in which such money-lender intends to carry on business and the name of the person proposed to be responsible for the management of the business;
- (b) if the application is by or on behalf of—
 - (i) an individual, the name and address of such individual,
 - (ii) an undivided Hindu family, the names and addresses of the manager and the adult co-parceners of such family,
 - (iii) a bank, the names and addresses of the directors, manager or principal officer managing it,
 - (iv) an unincorporated body of individuals, the names and addresses of such individuals;
- (c) the area and the place or principal place of the business of money lending in the Province;
- (d) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on;
- (e) whether the person signing the application has himself, or any of the adult coparceners of an undivided Hindu family, or any director, manager or principal officer of the bank or any member of the unincorporated body on behalf of which such application has been made, as the case may be, has carried the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other coparcener or any other person and whether in the same or any other name;
- (f) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made;

(2) The application shall be in writing and shall be signed—

(a) (i) if the application is made by an individual, by the individual;

(ii) if the application is made on behalf of an undivided Hindu family, by the manager and the adult coparceners of such family;

(iii) if the application is made by a bank or unincorporated body by the managing director or any other person having control of its principal place of business in British India or of its place of business in the area in which it intends to carry on the business; or

(b) by an agent authorised in this behalf by a power of attorney by the individual money-lender himself, or the family, or the bank or the unincorporated body, as the case may be.

(3) The application shall also contain such other particulars as may be prescribed.

A money-lender desiring to carry on the business of money-lending in any area shall make an application in Form No. 2 to the Assistant Registrar concerned. The application shall be delivered at the office of the Assistant Registrar either personally or by Registered post. An application for the grant of a licence for the first time may be made on any date, but an application for renewal of licence shall be made in the month of May, preceding the year for which the licence is to be renewed. Every such application shall be accompanied by an affidavit of the applicant that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has not knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending, or been found guilty of an offence under Chapter XVII of the Indian Penal Code viz. for offences under any of the sections from 378 to 462 or section 463 (Forgery), 477 (Fraudulent cancellation, destruction etc. of will, authority to adopt, or valuable security) or 477 A (Falsification of accounts) of Chapter XVIII of the Indian Penal Code.

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For the form of the application for a licence and the further particulars to be included therein under this section see Rule 4 and Form No. 2 prescribed under the said rule.

7. On the receipt of an application under sec. 6 and Grant of licence after making a summary inquiry in accordance and entry in Register with the prescribed procedure, the Assistant Registrar shall forward the application, together with his report, to the Registrar. The Registrar may after making such further inquiry, if any, as he deems fit, grant the applicant a licence in such form and subject to such conditions as may be prescribed, on payment in the prescribed manner of a licence fee of Rs. 5/- and direct the Assistant Registrar to enter the name of such applicant in the register maintained by him under section 4.

The procedure for summary inquiry under this section is given in Rule 5. The Assistant Registrar has powers to make the summary inquiry and examine the applicant personally or such other person, as he may deem fit. The Assistant Registrar is to maintain a record of such inquiry, which shall contain a brief memorandum of the substance of evidence taken and a summary of the conclusions regarding facts elicited during the inquiry. He shall then forward the application together with his report to the Registrar, who if he deems fit, may grant a licence. The Registrar may also make further inquiry if he deems fit. If a licence is granted by the Registrar, he shall direct the Asst. Registrar to enter the name of the applicant in the Register maintained by him under section 4.

The licence fee prescribed is Rs. 5/- payable before the licence is issued in the manner as laid down in Rule 7.

The licence under this section shall be in Form No. 3.

8. (1) The grant of a licence shall not be refused Refusal of issue except on any of the following grounds:— of licence.

(a) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender is disqualified from holding a licence;

(b) that the applicant has not complied with the provisions of this Act or the rules in respect of an application for the grant of a licence;

(c) that the applicant has made wilful default in complying with or knowingly acted in contravention of any requirement of this Act;

(d) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has—

(i) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending, or

(ii) been found guilty of an offence under Chapter XVII or section 465, 477 or 477-A of Chapter XVIII of the Indian Penal Code.

(2) The Registrar shall, before refusing a licence under XLV of 1860 sub-section (1) record the evidence adduced before him and his reasons for such refusal.

(3) An appeal shall lie from an order of the Registrar refusing a licence under sub-section (1) to the Registrar General, whose decision shall be final.

The licence shall be ordinarily granted except in cases enumerated hereabove in section 8.

The following are the offences under Chapter XVII of I. P. C.—
 (1) Theft, (2) Extortion, (3) Robbery, (4) Decoity, (5) Criminal misappropriation of property, (6) Criminal breach of trust, (7) Receiving of stolen property, (8) Cheating, (9) Fraudulent deeds and dispositions of property, (10) Mischief, (11) Criminal Trespass : (sections 378 to 462 I. P. C.); sections 465, 477 and 477 A of the I. P. C. relate to offence of Forgery, Fraudulent cancellation, destruction etc.; of will, authority to adopt or valuable security, and Falsification of accounts respectively.

Rule 8 provides that if a Registrar refuses to grant a licence, he shall communicate to the applicant his reasons for so doing.

Rule 9 prescribes that an appeal against the order of a Registrar refusing to grant a licence shall be instituted within 30 days from the date on which the order is communicated to the applicant.

An appeal shall lie to the Registrar General, whose decision shall be final. The Registrar General shall decide the appeal after hearing the appellant or his pleader, as the case may be, vide Rule 9.

9. A licence shall be valid from the date on which it ^{Term of licence.} is granted to the 31st day of July following.

10. (1) After the expiry of six months from the date ^{Stay of suits by} on which this Act comes into force, no Court ^{money-lenders not holding} shall pass a decree in favour of a money-lender ^{not holding} in any suit filed by a money-lender to which this Act applies unless the Court is satisfied

that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender held a valid licence.

(2) If during the trial of any such suit, the Court finds that the money-lender had not held such licence, the Court may, on the application of the money-lender, stay the hearing of the suit and require him to produce within a period of three months a licence on payment to the Registrar of all the arrears of the licence fees payable by him under this Act for the period commencing from the date on which he started the business of money-lending or the expiry of six months from the date on which this Act comes into force, whichever is later, together with such penalty, not exceeding Rs 500, as the Court may direct;

Provided that when the Court is satisfied that the failure of the money-lender to obtain a licence was due to any reasonable cause, the Court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money-lender.

(3) The Court may, on sufficient cause being shown, from time to time extend the period during which the money-lender shall be required to produce a licence.

(4) If the money-lender fails to produce the licence required under sub-section (2) within the period specified therein or within such period as may be extended under sub section (3), the Court shall dismiss the suit. If the money-lender produces such licence within the aforesaid period, the Court shall proceed to hear the suit.

(5) Nothing in this section shall affect—

(a) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force;

(b) the powers of a court of wards, or a manager
Bom. XXI of 1881. Bom. VI of 1888. III of 1909. V of 1920. VII of 1913.
 of an estate taken under management under the Broach and Kaira Incumbered Estates Act, 1881, or the Gujarat Talukdars Act, 1888, or an Official Assignee, a receiver, an administrator or a court under the provisions of the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, or of a liquidator under the Indian Companies Act, 1913, to realise the property of a money-lender.

Applicability and Object :—

The expression "transactions of money-lending in the Province of Bombay in the Preamble of the Act can only mean transactions of money-lending which take place in the Province of Bombay. The Act can have no application to transactions taking place outside the Province. A similar view is expressed in *Brisray Marwan V. Anant Prasad A. I. R. 1942 Cal 509-I. L. R. (1942) 1 Cal. 505-202-I. C. 326*, a ruling under the Bengal Money-lenders Act. Further as held in *202, I. C. 137-A. I. R. 1942, Cal. 441*, the Court cannot overlook the plain meaning of the words used by the Legislature. Also See *A. I. R 1942 Cal. 370-202 I. C. 273* on the point of 'construction'-*Bhupendranath Dutt V. Devendra Nath Ash.*

"Loan" is defined in sub-clause (9) of section (2) of the Act. Every loan is a debt but every debt is not a loan. Where the defendant has executed a bond in favour of the plaintiff, in consideration of the purchase money due by him to the plaintiff, the defendant is not entitled to any relief under the Act because although the purchase money due to the plaintiff is a debt due to the plaintiff, yet it is not a loan or a transaction which in substance is a loan. *Surendra Shekhar V. Lalit-Mohan A. I. R. 1941 Cal. 538-196-I. C. 287.*

So also debt not originally loan may become loan. See *Satish Nath Bagchi V. Bhupendra Narayan A. I. R. 1944 Cal. 14-211 I. C. 428.* Also see the burden of proving that creditor is money-lender lies on person seeking to take advantage of the Act. *Sitaram V. Brijyar A. I. R. 1941 Nag. 177-195 I. C. 463.*

The gist of the section is that no court shall pass a decree in favour of a money-lender in any suit filed by him unless the court is satisfied that the money-lender held a valid licence at the time when the loan or any part thereof to which the suit relates was advanced. But it shall not affect suits in respect of loans advanced by a money-lender before the date on which this Act comes into force. The courts can however on application of the money-lender, stay the hearing of the suit and may require him to produce the valid licence within a period of three months or such further time which the court may in its discretion so grant. If the money-lender fails to produce the licence, the court shall dismiss the suit. The court may in its discretion impose a penalty not exceeding Rs. 500/-in certain cases.

11 Any money-lender who is required under sub-section (2) of section 10 to produce a licence shall make an application to the Registrar through the Assistant Registrar in the manner specified in section 6 and on receipt of such application the Registrar may, subject to the provisions of section 8, and after making such inquiry as he deems fit, grant the money-lender on payment of the arrears of licence fee, and the penalty, if any, directed by the Court to be paid, a licence in the form and subject to the conditions specified in section 7 and direct the Assistant Registrar to enter the name of the money-lender in the Register.

12 (1) Any person may, during the currency of a licence, file an application to the Registrar General for Application for cancellation of the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar may under section 8 refuse him the grant of a licence. At the time of filing his application the said person shall deposit such amount not exceeding Rs. 100/- as the Registrar General may deem fit.

(2) On the receipt of such application and deposit the Registrar General shall hold an enquiry and if he is satisfied that the money-lender has been guilty of such act or conduct he may direct the Registrar to cancel the licence of the money-lender and may also direct the return of the deposit made under sub-section (1).

(3) If in the opinion of the Registrar General, an application made under sub-section (1) is frivolous or vexatious, he may, out of the deposit made under sub-section (1), direct to be paid to the money-lender such amount as he deems fit as compensation.

Any person may file an application to the Registrar General for the cancellation of a licence issued to a money-lender on the grounds enumerated in sec. 8. At the time of filing such application the applicant has to deposit such amount not exceeding Rs. 100/- as the Registrar General may deem fit. The Registrar General shall then hold an inquiry and on being satisfied about the truthfulness of the allegations, may direct the Registrar to cancel the licence and may also direct the return of the deposit made. If the Registrar General finds that the application is frivolous or vexatious, he may direct such amount as he deems fit to be fair as compensation to be paid to the money-lender.

13. For the purposes of section 7 the Registrar and Assistant Registrar, and for the purposes of section 12 the Registrar General, shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents and material objects;
- (c) issuing commissions for the examination of witnesses, and
- (d) proof of facts by affidavits.

The Registrar and Assistant Registrar and the Registrar General are empowered to enforce attendance of any person and examine him on oath, and for compelling the production of documents and for issuing commission for the examination of witnesses and for proof of facts by affidavits.

Order XVI rules 1 and 14 of the Civil Procedure Code deal with enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects. Rule 14 of Order XI and rules 1 and 11 of Order XIII treat of compelling the production of documents and material objects, issuing commissions for the examination of witnesses. Rules 1 and 2 of Order XXVI relate to the issue of commissions for the examination of witnesses.

Proof of facts by affidavits—Order XIX rule 1 of the Civil Procedure Code treats of proof of facts by affidavits.

14. (1) (i) A court passing an order of conviction against Court's power a money-lender for an offence under this to cancel or suspend a licence Act, or—

(ii) a court trying a suit to which this Act applies, if satisfied that such money lender has committed such contravention of the provisions of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending—

(a) may order that all the licences held by such money-lender in the Province be cancelled or suspended for such time as it may think fit; and

(b) may, if it thinks fit, declare any such money-lender or if any money-lender is an undivided Hindu family, a bank or an unincorporated body such family, bank or body and also

any person responsible for the management of the business of money-lending carried on by such family, bank or body, to be disqualified from holding any licence in the Province for such time as the Court may think fit.

(2) Where a Court convicts a money-lender of an offence under this Act, or makes an order or declaration under clause (a) or (b) of sub-section (1), it shall cause the particulars of the conviction, order or declaration, as the case may be, to be endorsed on all the licences held by the money-lender convicted or by any other person affected by the order or declaration and shall cause copies of its order or declaration to be sent to the Registrars by whom the licences were granted for the purpose of entering such particulars in the registers:

Provided that where any licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding any licence under this section he may appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(3) Any licence required by a Court for endorsement in accordance with sub-section (2) shall be produced by the person by whom it is held in such manner and within such time as may be directed by the Court and any person who, without reasonable cause, makes default in producing the licence so required shall be liable on conviction, to a fine not exceeding Rs. 500/- for each day for the period during which the default continues.

(4) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

The Court is given power to cancel or suspend a licence on a money-lender being convicted for an offence under this Act or

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where a Court trying a suit to which this Act applies is satisfied that the money-lender has committed such contravention of the provisions of this Act or the rules as would make him unfit to the carrying on the business of money-lending. The particulars of such order or declaration is to be endorsed on the licence and the copy of such order is to be sent to the Registrar.

An appeal shall lie against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order. The appellate Court or the Court sitting in Revision or the Court which passed the order may stay the operation of the order pending final decision in the appeal.

Any money lender who, without reasonable cause, fails to produce the licence required for endorsement, shall be liable, on conviction, to a fine not exceeding Rs. 500/-for each day for the period during which the default continues.

15. Where any licence is suspended or cancelled
No compensation under this Act, no person shall be entitled
to any compensation or the refund of any
licensing fee.

16. A person whose licence has been suspended or
cancelled in accordance with the provisions
of this Act, shall, during the period of
suspension or cancellation, as the case may
be, be disqualified from holding any licence
in the Province.

17. No person whose licence has been endorsed
under section 14 or who has been disquali-
fied from holding a licence shall apply for,
or be eligible to hold a licence, without
giving particulars of such endorsement or
disqualification.

18. (1) Every money-lender shall keep and maintain
a cash-book and a ledger in such form and
in such manner as may be prescribed.
Duty of money-lender to keep accounts, and furnish copies.

(2) Every money-lender shall—
(a) deliver or cause to be delivered—

(i) to the debtor within 30 days from the date on which a loan is made, a statement in any recognised language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged;

(ii) to the Assistant Registrar, within the said period a copy of the said statement;

(b) upon repayment of a loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or re-assign every assignment given by the debtor as security for the loan.

(3) No money-lender shall receive any payment from a debtor on account of any loan without giving him a plain and complete receipt for the payment.

(4) No money-lender shall accept from a debtor any article as a pawn, pledge or security for a loan without giving him a plain signed receipt for the same with its description, estimated value, the amount of loan advanced against it and such other particulars as may be prescribed.

Rule 10 relates to Forms of cash book, ledger, and of statement under section 18. These shall be in Forms Nos. 4-5 and 6 respectively-vide Rule 10-and forms thereunder.

A money-lender has to deliver or cause to be delivered to the debtor within 30 days from the date on which a loan is made, a statement as shown in Form 4 (rule 10), Form 5 (rule 10) and Form 6 (Rule 10). He has also to send to the Assistant Registrar

within the said period a copy of the said Statement. On receiving full payment of the loan, the money-lender has to mark every paper signed by the debtor with words clearly indicating payment or cancellation and shall do all acts to attest full discharge of his debts. A money-lender shall give receipt for any payment made to him. A separate statement to be furnished in respect of each loan transaction of sub-section (4) was added by the Select Committee which provides that no money-lender shall accept from a debtor any article as pawn, pledge, or security for a loan, without giving him a written-signed receipt, containing its description, estimated value, the amount of loan advanced against it etc.

The Form of Accounts has been discussed in *Yudarao v. Ramrao, A. I. R. 1943 Nag. 240-206 I. C. 504-a case under the C. P. money-lenders' Act.*

19. (1) Every money-lender shall deliver or cause to be delivered every year to each of his debtors a legible statement of such debtor's accounts signed by the money-lender or his agent of any amount that may be outstanding against such debtor. The statement shall show—

(i) the amount of principal and the amount of interest, separately, due to the money-lender;

(ii) the amount of every payment already received by the money-lender in respect of the loan during the year together with the date on which each payment was made;

(iii) all payments credited first in the account of interest, and the residue, if any, of any payment more than sufficient to discharge the balance of interest due at the time it is made, credited to the debtor in the account of principal;

(iv) the amount of principal remaining unpaid and the interest thereon.

The statement shall be signed by the money-lender, or his agent, and shall be in any recognised language.

It shall be in such form and shall be supplied to the debtor on or before such date as may be prescribed.

The money-lender shall on or before the aforesaid date deliver or cause to be delivered a copy of each such statement to the Assistant Registrar.

(2) In respect of any particular loan, whether advanced before or after the date on which this Act comes into force, the money-lender shall, on demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand, a statement, in any recognised language, signed by the money-lender or his agent, and containing the relevant particulars specified in sub-section (1).

(3) A money-lender shall, on a demand in writing by the debtor, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor to the debtor, or if the debtor so requires to any person specified in that behalf in the demand.

(4) For the purposes of this section "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

The annual statement of accounts to be delivered by a money-lender to each of his debtors under sub-section (1) of section 19 shall be in Form No. 7. Vide rule 11, Form no. 7. This statement is to be delivered or caused to be delivered within sixty days after the close of the year for which the accounts of the money-lender are ordinarily maintained.

The fee to be paid by a debtor to a money-lender for supplying a statement of accounts under sub-section (2) of section 19 shall be annas eight.

The expenses to be recovered from a debtor for supplying copies of documents by a money-lender under sub-section (3) of section 19 shall be according to the following scale :—

For copying 100 words or fraction thereof :

One anna.

For copying 100 words or fraction thereof of tabular statement:

Two annas.

Cost of paper :—1/4 anna per sheet of foolscap size.

The money-lender has also to deliver a copy of each of such statement to the Assistant Registrar on or before the aforesaid date.

Under sub-clause (2) of section (19) a money-lender shall supply on demand in writing being made by the debtor and on payment of prescribed fee by such debtor, at any time during the period when the loan or any part thereof has not been repaid, a statement containing the relevant particulars specified in sub-section (1), in respect of any particular loan, whether advanced before or after the date on which this Act comes into force.

20. A debtor to whom a statement of account has been furnished under section 19 shall not be bound to admit correctness of accounts to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the accounts.

Sending of a statement of accounts to the debtor will not imply that the debtor admits the correctness of the same nor will there be any presumption as to its correctness even if its correctness is not denied by the debtor.

21. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(a) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of sections 18 and 19 ;

(b) if the Court finds that the provisions of section 18 or section 19 have not been complied with by the money-lender, it may, if the plaintiff's claim is

established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs.

Explanation :—A money-lender who has given the receipt or furnished a statement of accounts in the prescribed form and manner, shall be held to have complied with the provisions of section 18 or section 19, as the case may be, in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

Before deciding any suit on its merits, the Court has to frame and decide the issue whether the money-lender has complied with the provisions of sections 18 and 19 of the Act. If the money-lender has so complied with, the suit will be decided on merits. If not, the Court has discretion to disallow the whole or any portion of the interest found due and may also disallow costs. But the Provincial Government may, by notification exempt any bank or unincorporated body from the operation of sections 18 to 21 of the Act.

22. Nothing in sections 18 to 21 shall apply to
~~Provisions of
certain sections
not to apply
to loans made
by bank or
unincorporated
body exempted
by Government.~~
loan advanced by any bank or unincorporated body which the Provincial Government may by notification in the Official Gazette exempt from the operation of those sections.

23. Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which this Act comes into force, decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree.

Sec. 23 does not enunciate rights of the parties but prescribes powers of the Courts. This section authorizes the Court to

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disallow interest of a sum greater than the principal of the loan due on the date of the decree. The Court has no power to call upon the money-lender to pay back to the debtor the amount of interest which the former received from the latter in respect of the 'excluded' period. See *Bana Rang Ganpat v. Pusjaji Skonji A. I. R. 1944 Nag. 151-I. L. R. (1944) Nag. 241.*

Arrears of interest at the date of suit only is to be considered. Total amounts paid as interest from time to time cannot be taken into consideration.

Ramchandra v. Madho Rao
see 1938 N. L. J-384.

According to the rule of Damdupat, the amount of interest recoverable at any one time cannot exceed the principal (Manu, VIII. 151). The amount of interest to be considered is the amount payable on the date of the decree. This section does not apply to the period subsequent to the date of the decree; when a part of the loan advanced is time-barred, the creditor can recover interest only to the extent of the amount which is not time-barred, 199 I. C. 566.

24. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may at any time, on application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

The application is to be made to the Court which passed the decree. The Court is under this section, empowered to grant instalments on application of a judgment-debtor, after notice to the decree-holder whether the decree was passed before or after the commencement of the Act. The order determining instalments, is not an order which conclusively determines the rights of the parties and consequently no appeal lies from such an order.

See *Dhanukdhari Singh v. Ramratan Singh A. I. R. 1941 Pat. 1-193 I. C. 670.* See also *Sameruddin Maltey vs. Naba Kumar Saha A. I. R. 1942 Cal., 224-201 I. C 416 And Satyanarayan Banerjee vs. Radha Nath Das A. I. R. 1942 Cal. 69-198 I. C. 739.*

25. (1) The Provincial Government may from time to time by Notification in the Official Gazette fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

Provided that the maximum rate of interest shall not exceed 6 per cent. per annum in the case of secured loans and 9 per cent. per annum in the case of unsecured loans.

(2) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the Provincial Government under sub-section (1) shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

This section gives the Provincial Government power to fix maximum rates of interest in respect of loans for any local area. The maximum rate of interest in case of secured loans shall not exceed 6 p. c. per annum and shall not exceed 9 p. c. per annum in case of unsecured loans.

Any agreement for payment of interest at the rate higher than the one that may be fixed by the Provincial Government shall not bind the parties and shall not be valid.

See. A. I. R. 1942. Pat. 73-199 I. C. 566.

26. No money-lender shall receive from a debtor or intending debtor any sum other than reasonable costs

Prohibition of charge for expenses on loans by money-lenders. of investigating title to the property, costs of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between the par-

ties include a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof ; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

27. (1) Where a loan advanced, whether before or Notice and after the date on which this Act comes into force, or any interest of such loan or given on assignment of loan. the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

(a) give the assignee notice in writing that the loan, interest, agreement or security is affected by the operation of this Act ;

(b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act ;

and

(c) give the debtor notice in writing of the assignment supplying the name and address of the assignee.

(2) Any person acting in contravention of the provisions of sub-section (1) shall be liable to indemnify any other person who is prejudiced by the contravention.

Notice and information to be given on assignment of loan:—The notice to be given to an assignee under clause (a), the statement of information to be supplied to an assignee under clause (b) and the notice to be given to the debtor under clause (c) of sub-section (1) of section 27, shall be in the Forms Nos. 8, 9 and 10.

respectively. Vide rule 12 of the Rules under the Act. The applicability of the Act is not limited to post-Act assignees: it also applies to pre-Act assignees.

See *Hemanta Kumar Mukherjee V. Basant Kumar Mukerjee A. I. R. 1943 Cal. 26-204 I. C. 295.*

Also See *Krishnadhyan Mondal V. Nalin Chandra 46 C. W. N. 388 and Bhupendra Nath Dutt V. Devendra Nath Ash A. I. R. 1942 Cal. 370- 201 I. C. 273.*

28. (1) Save as hereinafter provided, where any debt due to a money-lender in respect of money lent by him whether before or after the date on which this Act comes into force or of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, has been assigned, the assignee shall be deemed to be the money-lender and all the provisions of this Act shall apply to such assignee as if he were the money-lender.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, where for any reason any such assignment is invalid and the debtor has made any payment of money or transfer of property on account of any loan which has been so assigned, the assignee shall in respect of such payment or transfer be deemed to be the agent of the money-lender for all the purposes of this Act.

For commentary see notes under sec 27 of the Act.

29. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard ex parte or otherwise—

(a) reopen any transaction, or any account already taken between the parties;

(b) take an account between the parties;

(c) reduce the amount charged to the debtor in respect of any excessive interest;

(d) if on taking accounts it is found that the money-lender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount:

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

(i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than six years from the date of the suit;

(ii) do anything which affects any decree of a Court.

Explanation:—For the purpose of this section “excessive interest” means interest at a rate which contravenes any of the provisions of section 25.

The Court is not empowered to reopen any adjustment or agreement purporting to close the previous dealings at a date more than six years from the date of the suit. The Court will not do anything which affects any decree of a Court.

30. (1) Any debtor may make an application at any time to the Court, whether the loan to which the suit relates has or has not become payable, for taking accounts and for declaring the amount due to the money-lender.

Such application shall be in the prescribed form and accompanied by the prescribed fee.

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the money-lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of sections 18 to 29.

Form of an application under section 30 :—The application to be made by a debtor under sub-section (1) of this section shall be in Form No. 11 and shall be accompanied by a Court-fee of Re. 1/- .Vide Rule 13 of the Rules.

31. (1) At any time a debtor may tender to a money-lender any sum of money due from him to the lender in respect of a loan by way of principal, interest or both.

Deposit in Court of money due to money-lender.

(2) If the money-lender refuses to accept any sum so tendered, the debtor may deposit the said sum in Court to the account of the money-lender.

(3) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and he may, on presenting a petition stating the sum then due in respect of the loan, and his willingness to accept the said sum, receive and appropriate it first towards the interest and the residue, if any, towards the principal.

(4) When the money-lender does not accept the sum, the Court shall appropriate the said sum first towards the interest and the residue, if any, towards the principal.

32. (1) No money-lender shall take any promissory note, acknowledgement, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution.

Entry of wrong sum in bond etc. to be an offence.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000/- or with imprisonment of either description which may extend to six months or with both.

33. (1) Whoever molests, or abets the molestation of, a debtor for the recovery of a debt due to him by him to a creditor shall, on conviction, be punishable with imprisonment of either description, which may extend to three months or with fine which may extend to Rs. 500/- or with both.

Penalty for molestation.

Explanation :—For the purposes of this section a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing—

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person shall be deemed to molest such other person :

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.

(2) Notwithstanding anything contained in the V of 1898. Second Schedule to the Code of Criminal procedure, 1898 an offence under this section shall be cognizable.

Cognizable Offence-A cognizable offence means an offence for which a police officer may arrest without warrant.

Vide Cl. (F) of Sub-section (1) of section 4 of the Criminal Procedure Code.

34. Whoever fails to comply with or acts in contravention of any provision of this Act, shall, General provi-
sion regarding if no specific penalty has been provided for penalties. in this Act, be punishable-

(a) for the first offence with fine which may extend to Rs. 200,

(b) for the second offence with fine which may extend to Rs. 500/- and,

(c) for any subsequent offence with rigorous imprisonment which may extend to three months and with fine.

35. If the person contravening any of the provisions of this Act is an undivided Hindu family, or a Bank or an unincorporated body, the person responsible for the management of the business of such family, bank or body shall be deemed to be guilty of such contravention.

36. Notwithstanding any law for the time being in force, no debtor who cultivates land personally and whose debts do not exceed Rs. 15000/- shall be arrested or imprisoned in execution of a decree for money passed in favour of a money-lender, whether before or after the date on which this Act comes into force.

Explanation :—“To cultivate personally” has the meaning assigned to it in clause (11) of section 2 of the Bombay Tenancy Act, 1939.

“To cultivate personally :—The term “to cultivate personally” is defined in clause (11) of section (2) of the Bombay Tenancy Act XXIX of 1939 as under :—“To cultivate personally” means to cultivate on one's own account :

- (1) By one's own labour, or
- (2) By the labour of any member of one's family, or
- (3) By servants on wages payable in cash or kind but not in crop share or by hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanation I :—A tenant who is a widow or a minor or is subject to any physical or mental disability shall be deemed to cultivate personally if it is cultivated by her or his servants or by hired labour.

Explanation II :—In case of an undivided Hindu family the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family.

37. Every officer of the Crown acting under the provisions of this Act shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.

38. Nothing in this Act shall affect any of the provisions of the Bombay Agricultural Debtors Relief Act, 1939, and no Court shall entertain or proceed under this Act with any suit or proceeding relating to any loan in respect of which debt adjustment proceedings can be taken under the said Act.

39. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters :—

- (a) the form of the register under section 4;
 - (b) the form of the application for a licence and the further particulars to be included therein under section 6;
 - (c) the form and conditions of the licence, the manner of payment of licence fee and the procedure for a summary inquiry under section 7;
 - (d) the form of cash book and ledger and the manner in which they should be maintained under sub-section (1) and the other particulars to be prescribed under sub-section (4), of section 18;
 - (e) the form of the statement of accounts to be furnished and the date before which it is to be furnished under sub-section (1), the fee to be paid under sub-section (2), and the sum of expenses to be paid under sub-section (3), of section 19;
 - (f) the form of application and the fee to be paid under sub-section (1) of section 30;
 - (g) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.
- (3) The rules made under this section shall, subject to the condition of previous publication, be published in the Official Gazette.
- (4) The rules made under this section shall be laid before each Chamber of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolu-

tion in which both Chambers concur and such rule shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly.

THE RULES UNDER THE BOMBAY MONEY LENDERS ACT

Revenue department.

Bombay Castle, 20th October 1947.

BOMBAY MONEY-LENDERS ACT, 1946.

No 4312/45.—In exercise of the powers conferred by section 39 of the Bombay Money-lenders Act, 1946 (Bom. XXXI of 1947), the Government of Bombay is pleased to make the following rules, namely :—

1. *Short title.*—These rules may be called the Bombay Money-lenders Rules, 1947.

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

(a) "Act" means the Bombay Money-lenders Act, 1946 ;

(b) "Form" means a form appended to these rules; and

(c) "Section" means a section of the Act.

3. *Register of money-lenders.*—The register of money-lenders required to be maintained under section 4 shall be in Form No 1.

4. *Application for licence.*—(1) A money-lender desiring to carry on the business of money-lending in any area shall make an application in Form No. 2 to the Assistant Registrar concerned. The application shall be delivered at the office of the Assistant Registrar during office hours either personally by the applicant or through an agent duly authorised in writing in this behalf or sent by registered post addressed to the Assistant Registrar.

(2) An application for the grant of a licence for the first time may be made on any date but an application for renewal

of licence shall be made in the month of May preceding the year for which the licence is to be renewed.

(3) Every application shall be accompanied by an affidavit of the applicant that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has not knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending or been found guilty of an offence under Chapter XVII or section 465, 477 or 477-A of Chapter XVIII of the Indian Penal Code.

5. *Procedure for summary inquiry under section 7.*—The Assistant Registrar shall make the summary inquiry under section 7 by examining the applicant personally and such other person, as he may deem fit in order to satisfy himself about the *bona fides* of the applicant and his suitability for carrying on the business of money-lending. The Assistant Registrar shall maintain a record of such inquiry and shall sign below the same. The record shall contain a brief memorandum of the substance of evidence taken and a summary of the conclusions regarding facts elicited during the inquiry.

6. *Form of licence.*—The licence under section 7 shall be in Form No. 3.

7. *Manner of payment of licence fee.*—The licence fee of Rs. 5 fixed under section 7 shall be paid within such period as may be fixed by the Registrar in that behalf either in cash at the Registrar's office or by remitting it by postal money order addressed to the Registrar or by crediting to Government at a treasury, sub-treasury or the Reserve Bank of India, Bombay, and sending the receipted chalan to the Registrar.

8. *Reasons for refusing to grant licence to be communicated to applicant.*—If a Registrar refuses to grant a licence, he shall communicate to the applicant his reasons for so doing.

9. *Appeal against order of Registrar refusing to grant licence.*—(1) An appeal under sub-section (3) of section 8 against the order of a Registrar refusing to grant a licence shall be instituted within 30 days from the date on which the order is communicated to the applicant.

(2) The Registrar General shall decide the appeal after hearing the appellant or his pleader, as the case may be.

10. *Forms of cash book, ledger and of statement under section 18.*—The cash book and ledger to be maintained by a money-lender under sub-section (1), and the statement under clause (a) of sub-section (2), of section 18 shall be in Forms Nos. 4, 5 and 6 respectively.

11. *Annual Statement of accounts to be delivered by money-lender to debtor etc. under section 19.*—(1) The annual statement of accounts to be delivered by a money-lender to each of his debtors under sub-section (1) of section 19 shall be in Form No. 7.

(2) The statement shall be furnished to each of the debtors within sixty days after the close of the year for which the accounts of the money-lender are ordinarily maintained.

(3) The fee to be paid by a debtor to a money-lender for supplying a statement of accounts under sub-section (2) of section 19 shall be annas eight.

(4) The expenses to be recovered from a debtor for supplying copies of documents by a money-lender under sub-section (3) of section 19 shall be according to the following scale:—

For copying 100 words or fraction thereof—One anna.

For copying 100 words or fraction thereof of tabular statement—
Two annas.

Cost of paper— $\frac{1}{4}$ anna per sheet of foolscap size.

12. *Notice and information to be given on assignment of loan.*—The notice to be given to an assignee under clause (a), the statement of information to be supplied to an assignee under clause (b), and the notice to be given to the debtor under clause (c), of sub-section (1) of section 27, shall be in the Forms Nos. 8, 9 and 10 respectively.

13. *Form of application under section 30.*—The application to be made by a debtor under sub-section (1) of section 30 shall be in Form No. 11 and shall be accompanied by a Court-fee of Re. 1.

FORM No. I.

(Rule 3.)

Register of Money-lenders

Office of the Assistant Registrar of

Taluka

District

Serial No.	Name, fa- ther's or hus- band's name, caste or religion and full address of the money- lender. [†]	Full detail- ls of the principal business and of the branches thereof.	Date and serial of previous issue of licence of the applica- tion if any.	Date of cancellation of serial licence*	No. of the No. if any, with date of applica- tion if any.	Cancella- tion of Orders of suspension or disquali- fication under S. 14 (ii) (a) or under S. 14 (ii) (h).	Particulars of cancella- tion or suspension of licence under S. 14 (ii) (a) with dates.	No. of Signature of licence issued with dates.	District		
1	2	3	4	5	6	7	8	9	10	11	12

† (1) In the case of an Undivided Hindu Family, Column 2 should show the names and addresses of the manager and adult co-parceners of such family. In the case of a bank, the column 2 should show the names and addresses of the directors and manager or principal officer and in case of an unincorporated body of individuals, the names and addresses of all individuals.

* (2) When filling up this column the section of the Act under which cancellation is made should be entered.

FORM 2.

(Rule 4.)

Application for the grant of a licence to a money-lender.

In the Office of the Assistant Registrar of.....

P. O.

Taluka

District

1. Name of the applicant, with father's or husband's name, surname, caste, residence and address in full.
Names of the manager and the adult coparceners of the undivided Hindu Family, with fathers' names, surname, caste, residence and address in full.
Name of the Director, Manager or principal officer managing the Bank with father's or husband's name, surname, caste, residence and address in full.
Names of all the persons forming an unincorporated body, with father's or husband's names, surnames, castes, residences, and addresses in full.
2. Name in which the applicant carries on or intends to carry on his money-lending business.
3. Name of the area within which the applicant has his business of money-lending on the date of the application.
4. Names of persons responsible or proposed to be responsible for the management of the applicant's money-lending business.
5. Location of the applicant's place or principal place of business, with full particulars thereof and the name, father's or husband's name, surname, caste and address of the person in charge.
6. Whether the person signing the application or any of the adult coparceners of an undivided Hindu family, or any Director, Manager or principal officer of the Bank or any member of the unincorporated body on behalf of which the application is made, as the case may be, carried on the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding

the date of the application either individually, or in partnership or jointly with any other coparcener or any other person and whether in the same or any other name.

7. Is the applicant or any other person on behalf of whom the application has been made, carrying on or intends to carry on the business of money-lending in any other place in the Province? If so, give complete particulars with the name, father's or husband's name, surname, caste, and address of the person in charge of each office.
8. What is the extent of the total business of the applicant on 31st March?
9. What is the total amount of the capital which the applicant intends to invest in the business of money-lending in the year for which the application has been made?
10. Has the applicant carried on the business of money-lending in the past and if so since when?
11. Has any application for licence previously been made? If so, when, where and with what results?
12. In case the application has previously been granted, give full particulars of the licence.
13. Has any licence granted previously to the applicant been cancelled or suspended or does it contain any endorsements of the Court or any disqualifications imposed by the Court? If so, full particulars should be given including the name of the officer and/or Court and the date and terms of the order.
14. Is money-lending the sole business of the applicant or is he engaged in any other business, profession or calling?

Certified that all the facts set out in the application are true to my knowledge except.....paragraphs, which are true to my belief being based on information supplied by.....

Signature of the applicant

with date.

FORM 3.

(Rule 6.)

Money-lender's Licence.

District

Taluka

Place P. O.

Licence No.

This Licence has been granted to
to carry on the business of money-lending
subject to the provisions of the Bombay Money-lenders Act, 1946,
and the rules there under and the following conditions, namely :—

- (1) The licence shall be valid upto 31st July.....
- (2) It shall entitle the money-lender to carry on the business
of money-lending in*
- (3) The licensee shall surrender the licence when ordered
to do so by the Registrar granting it or by the Registrar-General
or by a Court.

Registrar.

(Seal of the Registrar) dated

*Here insert area.

BACK.

Endorsement, if any.

Signature.

Remarks.

FORM 4. (Rules 10.)
Cash Book.

Dr.	Receipts.				Disbursements.				Cr.
	Date.	Particulars.	Ledger folio.	Amount.	Date.	Particulars.	Ledger folio.	Amount.	
			Rs. a. p.	Rs. a. p.			Rs. a. p.	Rs. a. p.	
1946.					1946.				
August 2	Brought forward ... Interest received from Jagat Ch. Mookerji on the mortgage bond dated _____ from _____ to _____		6,000 0 0		August 2 ... Lent to B. C. Son Rupees five thousand, interest per cent. per annum.		5,000 0 0	5,000 0 0	
			25 0 0	<u>6,025 0 0</u>		By Balance C/F...		1,025 0 0	
August 3	...To balance B/F ...		1,025 0 0					<u>6,025 0 0</u>	

In case of loans in kind the entry shall contain clear reference to the commodity advanced with market value of same at the date of each transaction.

FORM 5. (Rule 10)
Debtor.....

Date.	Name of the debtor	Leger Account				Details of calculation of interest.				Remarks.	
		Principal amount borrowed or debited.	Amount repaid or credited	Balance of principal due after each transaction.		Principal.	Interest.	Total.	Principal.	Interest.	
1	2	3	4	5	6	7	8	9	10	11	

FORM 6.

(Rule 10.)

Statement showing the details of condition of the loan.

Name of debtor

Address :

- (1) Amount of loan :
- (2) Date of loan :
- (3) Date of maturity of the loan :
- (4) Rate of interest per annum :
- (5) Nature of the security :
- (6) Particulars of documents, if any :
- (7) Any special conditions on which
the loan has been made :
- (8) Other connected information.

Signature of money-lender.

Name and address of money-lender.

Date :

N. B.—A separate statement shall be furnished in respect of each loan transaction.

In case of loans in kind there shall be reference to the commodity advanced along with market value of the same at the date of each transaction.

FORM No. 7.

[Rule 11 (i)]

Annual statement of accounts to be delivered by a money-lender to his debtors within sixty days after the close of the year.

Name of the Debtor.

Address.

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Number of Ledger Account.

Amount of principal and the amount of interest, separately due to the money-lender.

Amount of every payment already received by the money-lender in respect of the loan during the year together with the date on which each payment was made.

All payments credited first in the account of interest, and the residue, in any, of any payment more than sufficient to discharge the balance of interest due at the time it is made, credited to the debtor in the account of principal.

The amount of principal remaining unpaid and the interest thereon.

Date

Money-lender or his agent.

FORM No. 8.

(Rule 12.)

Please take notice under clause (a) of sub-section (1) of section 27 of the Bombay Money-lenders Act, 1946, that pursuant to the agreement made by me with you

to assign the loan
the balance of loan
interest on the loan
balance of interest on the loan

advanced to Mr.

Address

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together with accrued interest/balance of interest and benefits of the agreement under which the aforesaid loan was given to the debtor as well as security in respect of loan/interest on loan, you will be subject, with effect from*

to the provisions of the Bombay Money-lenders Act, 1946.

Signature of the Money-lender.

Prior assignee of the Money-lender.

Date

*Here insert the date of assignment.

FORM No. 9.

(Rule 12.)

Statement of information to be supplied to the assignee under clause (b) of sub-section (1) of Section 27 of the Bombay Money-lenders Act, 1946.

Name of money-lender including subsequent assignees, if any, and his/their address/addresses—

Name of debtor—

Address—

1. Date of loan—
2. Amount of loan—
3. Rate of interest per annum—
4. Total repayments made by the debtor up-to-date—

(a) Principal	...
(b) Interest	...
(c) Total	...

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5. Amount outstanding on—
 - (a) Principal
 - (b) Interest ...
 - (c) Total ...
6. Nature and value of the security—
7. Particulars of documents including previous assignments, if any—
8. Any special condition attaching to the loan—
9. List of documents of which copies are attached—
10. Other information, if any—

Signature of Assignor/Money-lender.

Address

Date

FORM No. 10.

(Rule 12.)

To

Debtor.

Please take notice under clause (c) of sub-section (1) of section 27 of the Bombay Money-lenders Act, 1946, that I propose to make an assignment

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the loan
of _____
balance of loan
interest on loan
balance of interest on loan

advanced to you on _____ together with
accrued interest and benefits of the agreement under the aforesaid loan

as well as security taken in respect of the loan _____ to
(Name of the assignee)

(Address of the Assignee) with effect from (dated) and that from
the date of such assignment, the assignee abovenamed shall exercise
all rights and shall have all the liabilities under the provisions of
the Bombay Money-lenders Act, 1946.

Signature of Money-lender.

Address

Signature of prior assignee of the
Money-lender.

Address

FORM No. 11.

(Rule 13.)

(Application to a Court under sub-section (1) of Section
30 for taking accounts.)

In the Court of

Mis. Case No.....of 19.....

The undermentioned debtor applies for taking accounts of the
loan described below and for declaring the amount due to the
money-lender.

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Particulars of Loan.

1. Document, if any, with particulars—
2. Amount—
3. Description of the money-lender—
 - (a) Name—
 - (b) Father's/Husband's name
 - (c) Address—
4. Description of the debtor—
 - (a) Name—
 - (b) Father's/Husband's name—
 - (c) Address—

Signature.

Date

By order of the Governor of Bombay,
V. N. SARDESAI, Secy.

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