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**THE PUNJAB RELIEF
OF INDEBTEDNESS ACT**

THE
**PUNJAB RELIEF OF
INDEBTEDNESS ACT**

(VII OF 1934)

WITH
A COPIOUS COMMENTARY ON ORIGINAL LINES
AND
ALL THE PUNJAB AND U. P. ACTS
BEARING ON RELIEF TO DEBTORS
AND
THE CENTRAL PROVINCES DEBT CONCILIATION ACT
TOGETHER WITH
RULES FRAMED AND FORMS PRESCRIBED
UNDER THE PUNJAB AND C. P. ACTS

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TO
THE POOR TOILING EXPLOITED MILLIONS
THIS WORK IS
AS A TOKEN OF
ARDENT SYMPATHY AND DEEP DEVOTION
WITH THEIR TACIT PERMISSION
MOST AFFECTIONATELY DEDICATED.

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INTRODUCTION

It was not without a good deal of trepidation that I undertook to write this book. The calls of political life and professional engagements upon my time and attention are so numerous and pressing that I can hardly think of adding to my commitments without serious risk to my health or practice or both. My close connection with some of the tribal institutions which bear the name of the class to which I have the honour to belong has only been maintained at the expense of my practice. So when I was faced with the question of deciding, in the midst of increasing political activities, for or against my launching upon this book I felt not a little diffident. However the feeling that I stand in the position of a god-father to the Punjab Government's particular legislative child which is the theme of this book decided me in favour of the venture.

The book has been written during the intervals which I was able to snatch from my engagements in other directions. Sometimes these intervals were far apart, and I only hope that the intervening gaps have not resulted in any marked unevenness of quality or lack of cohesion and proper sequence. With the handicaps under which I had to work I could not expect to attain a very high standard of excellence in the execution of my task. However,

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within the limits—rather severe—of my opportunities I have tried to make the book readable and useful.

I have written a long preface to this book. In this preface I have reproduced a good deal of interesting and important information—not easily available to an ordinary reader or a busy official—which I had collected from various authentic sources. Further, I have attempted in this preface a complete political and economic justification of a measure which has been attacked so virulently in certain quarters, and, although an authoritative verdict as to how far I have succeeded in this object must necessarily rest with impartial judges, I feel satisfied that the array of facts and figures marshalled by me cannot fail to impress an unbiassed reader.

A few words may also be added with regard to the general scheme of the book. For facility of reference I have first given the bare text of the Punjab Relief of Indebtedness Act as a whole. A repetition of the text with commentary under each section has then followed. The commentary is as full and critical as I could make it. I have, however, refrained deliberately from loading the book with unnecessary or irrelevant rulings which can easily swell the size of a book without much trouble to its author. I have quoted and discussed certain rulings, mostly in the first three chapters, to illustrate certain points or elucidate certain principles. But, generally speaking, I have resisted the temptation to

enrich my book with the wealth of forensic knowledge which is found scattered in abundance in so many publications.

I have added six appendices to the book. Appendix I reproduces Orders V, X, XIII and XVI of the Civil Procedure Code. Appendix II reproduces the rules made by the Local Government under the Punjab Relief of Indebtedness Act. Appendix III contains the text of the Punjab Regulation of Accounts Act and the rules thereunder. Appendix IV contains the text of the Punjab Debtors' Protection Bill as passed by the Punjab Legislative Council in the autumn of 1935 and as subsequently modified in pursuance of the Governor's recommendations (and a minor amendment thereto) by the Council on the 30th March, 1936. Appendix V contains the Central Provinces Debt Conciliation Act together with the rules framed, and the forms prescribed, thereunder. Appendix VI contains the five Acts passed by the United Provinces Legislative Council on the subject of the relief of indebtedness together with amending Acts.

Chapter IV of the Punjab Relief of Indebtedness Act is mainly modelled on the Central Provinces Debt Conciliation Act. I have discussed and compared the corresponding provisions of the two Acts fairly frequently. But comparisons have not been very frequent between the provisions of our own Act and those of the debt legislation

of the United Provinces. The United Provinces Usurious Loans Amendment Act has been referred to in two or three places. The United Provinces Agriculturists' Relief Act has furnished a larger number of points for comparison. But the other three Acts, concerned as they are with the peculiar economic and agrarian conditions of the United Provinces, proceed on lines which provide hardly any points for useful comparison. However, being the legislation of an adjoining province on a subject of absorbing interest, these Acts have been included in this appendix in order to illustrate the degree in which our neighbours seem to have surpassed us in enacting laws which, besides being retrospective in effect, are what the champions of money-lending interests in our province describe as confiscatory in nature.

I hope that the book, with all its shortcomings and blemishes, will prove acceptable to the general public no less than to the Bench and the Bar. I also hope that friends will kindly oblige me with their suggestions for the improvement of the book in the next edition.

CHHOTU RAM.

June, 1936.

PREFACE

Exploitation of the weak by the strong, of the poor by the rich and of the ignorant by the intelligent has been a fairly marked feature of human history in almost all ages and all countries. Usury is one of the most common forms of exploitation and indebtedness is the occasion for it. Human ingenuity has so far failed to find a cure for the economic malady of indebtedness, and usury has dogged the footsteps of indebtedness as surely as day follows night.

But although indebtedness has baffled the resources of human ingenuity and usury has, like the hydra-headed monster, revived—sometimes with redoubled strength—after each successive attempt to kill or suppress it, usury is so abhorrent to religion, so repugnant to morality and so baneful to the economic emancipation of large sections of humanity that prophets, philosophers, kings and law-givers have all bent their energies to the suppression or regulation of this ugly economic evil. Manu sought to cope with it by laying down the rule of *dandapat* in his famous institutes. Moses forbade it in the case of the debtors of his own race. Plato and Aristotle both condemned it without any reservation. Cato, the great Roman Stoic, when asked what he thought of usury, is reported to have replied by asking his questioner what he thought of murder. The Christian Church denounced usury. Muhammad banned all interest almost absolutely. Solon cancelled, by a stroke of the pen, all debts secured on the land or the person of the debtor. King John had the teeth of the more extortionate money-lenders extracted. Jews were banished from England in 1290 because they had contravened the Canon Law by carrying on money-lending secretly. In 1488, money-lending was made a penal offence in England by law under which both the lender and the borrower were rendered liable to a fine of £100.

It will appear from the references in the preceding paragraph that relief from the baleful effects of usury has both religious and secular sanction. When circumstances demanded it, kings and prophets alike have intervened—sometimes by the adoption of very drastic means—to rectify the incalculable mischief which the exploitation of the poor and the unwary by the rich and the astute has wrought at various times in various countries. The attempt to relieve by legislation the grinding

burden of huge accumulations of debt is, thus, quite in consonance with past precedents and traditions.

The unprecedented slump which began to make itself felt in 1929 and gathered fresh momentum with each succeeding year had a most violent effect on the economic equilibrium of all countries in the world. Germany, Belgium, Italy, France and England were forced to plead inability to meet their financial obligations to their creditors. When mighty nations and prosperous countries like England and France were reduced to a position in which they had to plead inability to pay their dues in accordance with the terms of their original contracts it would be sheer cant to maintain that the so-called sanctity of contract should be held inviolate in the Punjab alone.

It will be in the recollection of everybody that legislation of some sort to tackle the problem of indebtedness was in contemplation or pending practically in all provinces more or less simultaneously. While every province had naturally to pursue the lines which would suit best its own peculiar conditions it may be asserted with truth that, all things taken together, the Punjab Relief of Indebtedness Act is not half so revolutionary or radical as its critics would have the world believe. In fact, it falls definitely short of the actual requirements of the situation and, as a glance at the relevant appendices containing the debt legislation of the United Provinces will show, it is distinctly less effective in several important respects than the laws which our immediate neighbours across the Jumna have passed without half the noise and stir which we have witnessed in the Punjab.

Nor did India stand alone in initiating measures of relief for the distress which had followed in the wake of economic depression. It is an admitted fact that although all countries had suffered in varying degrees from the effects of this depression, agricultural countries had been hit hardest by it. Consequently several countries had preceded India in the matter of affording relief to the agricultural section of their population. The International Institution of Agriculture at Rome issued in 1933 a publication under the name of *The Agricultural Situation in 1931-32* which summarizes Government measures of relief in forty different countries. Professor Brij Narain in his *India in the Crisis* gives a brief abstract of these measures relating to Australia, Bulgaria, Denmark, Egypt, Estonia, Finland, East Prussia, Hungary, Latvia, Poland, Rumania and Spain. Relief took the form of bounties, advance of loans on very low rates of

interest, reduction of accumulated interest, reduction of capital debts, prohibition of forced sales of land in execution of decrees, and the exemption from attachment of various items of property according as circumstances in each country seemed to permit, justify or demand. Generally speaking, relief in more forms than one was given simultaneously.

In Australia a Wheat Bounty Act was passed in October 1931 under which "payment is made to wheat growers at a flat rate of $4\frac{1}{2}$ d. a bushel on all wheat grown in Australia, irrespective of selling price". In addition to this positive financial assistance, other concessions were also made to the farmer at the expense of the creditor.

In Bulgaria an Act was passed in April, 1932, according to which all debts not exceeding 200,000 levas (about Rs. 8,000) and incurred before January 1, 1931, could be reduced by as much as fifty per cent. Under this law the following property of the farmer is exempt from attachment:—

(1) food required up to the time of the new harvest, both for the family and for live stock,

(2) seed, (3) agricultural equipment up to the value of 25,000 levas (about Rs. 800), (4) land up to 5 hectares (about $7\frac{1}{2}$ acres), (5) a given number of sheep, pigs, goats, hives of bees, one pair of work animals and one buffalo.

In Denmark repayment of debts has been facilitated by means of advances from a special loan fund. But the advances from this fund are allowed only if creditors agree to accept payment at the rate of 35 per cent. of their claims. A further addition of 35 per cent. to this payment is possible "if during a period of five years, after the agreement the average weekly quotations for butter and bacon rise to at least 35 per cent. above the average of the latter half of 1931.....If the prices of the two products do not rise at all nothing further is to be paid."

Another remarkable measure of relief adopted in Denmark was the allocation of 30 million crowns (over two crores of rupees) "for distribution among owners and tenants in order to lighten the burden of taxes and interest on mortgages,..... The amount is to be refunded by instalments beginning July 11, 1937, but only if the prices of butter and bacon during the years 1932-36 rise at least 30 per cent. above the average for the latter half of 1931."

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In East Prussia if attempts to bring about a voluntary agreement between the farmer and the creditor fail "the method of dealing with the debt is determined by competent authority." The arrears of interest may be remitted altogether and the rates of future interest may be reduced. But if such remission and reduction fail to give adequate relief, reductions in capital debts up to fifty per cent. without reference to or the consent of the creditor, and of still higher proportions, with the consent of the creditor, are permissible.

In Rumania the reduction of private debts in the case of farmers owning land up to a maximum of 10 hectares (about 25 acres) amounts to 50 per cent., and even this reduced debt of 50 per cent. is to be paid by instalments extending over a period of 30 years.

It is manifest that the concessions contained in the Punjab Relief of Indebtedness Act are not even faint facsimiles of the concessions accorded in the five countries whose specific measures of relief have been alluded to in brief above.

Neither officials nor non-officials outside the ranks of those who are in constant and intimate touch with the debtor classes have realised the real extent of the disaster which has overtaken the people. Nor have they realised, with anything like adequate clearness, the full implications of the straits to which the debt-laden agriculturists and their dependents have been reduced. In the boom period the agricultural population including both the zamindar and village menial had been raised to a level of prosperity to which it was not accustomed. With the usual improvidence characteristic of those connected with land the agriculturist frittered away his newly acquired and greatly enhanced resources on unproductive objects, and miserably failed to conserve the wealth which flowed, in an almost ceaseless stream, into his ungrateful hands for nearly fifteen years. He raised his standard of life to an unconscionably high pitch for his normal means, and when the fall in the prices of agricultural produce came, he was not quick enough to realise that the fall had come to stay. Standard of living is easy to raise, but is extremely difficult to lower. The necessary adjustment in full is not possible of achievement, and even the degree of adjustment which is possible can be achieved only slowly. Moreover while the prices of his own produce fell so egregiously wages which he had to pay for agricultural labour would not come down either easily or proportionately. Similarly the prices of the articles, which he had to purchase for his own consumption or for the

pursuit of his avocation were extremely reluctant to leave the level which they had once attained while Government dues—land revenue, water-rate, local-rate, *chowkidara* and other cesses—were not only inexorable in respect of their pitch but were also inflexible and rigid as wood in respect of their collection. And, official protests and denials notwithstanding, it is literally true that land-owners were, here and there, compelled to sell their daughters in order to meet their pecuniary obligations to Government.

In order to supply a clear notion of the gradual rise and the sudden fall in the prices of agricultural commodities a table is given below showing the prices per maund of five principal products prevailing at Lyallpur from 1905-06 to 1931-32 :—

Year	Gur Kupas (Desi)			Wheat	Rape-seed	Bajra									
1905-06	5	0	0	7	4	0	2	8	0	4	0	0	3	4	0
1906-07	4	0	0	5	11	0	2	11	0	4	7	0	2	5	0
1907-08	5	0	0	6	11	0	3	8	0	6	4	0	4	0	0
1908-09	3	5	0	5	14	0	3	12	0	4	11	0	2	10	0
1909-10	3	14	0	7	3	0	2	10	0	4	9	0	2	4	0
1910-11	3	14	0	10	0	0	2	10	0	4	3	0	2	4	0
1911-12	5	4	0	8	4	0	2	14	0	4	8	0	3	2	0
1912-13	4	0	0	8	8	0	3	0	0	5	0	0	3	1	0
1913-14	4	0	0	7	0	0	3	0	0	5	0	0	3	4	0
1914-15	4	0	0	4	8	0	3	8	0	4	0	0	3	10	0
1915-16	6	0	0	6	0	0	3	0	0	4	6	0	4	3	0
1916-17	5	0	0	10	0	0	3	12	0	4	4	0	3	5	0
1917-18	4	0	0	18	0	0	3	12	0	3	7	0	3	1	0
1918-19	8	0	0	21	12	0	5	6	0	8	0	0	5	11	0
1919-20	9	4	0	19	0	0	4	12	0	11	8	0	4	7	0
1920-21	8	0	0	9	8	0	5	8	0	9	0	0	5	11	0
1921-22	8	8	0	10	0	0	5	12	0	7	8	0	6	15	0
1922-23	5	0	0	12	0	0	4	0	0	7	0	0	3	9	0
1923-24	5	0	0	20	0	0	4	0	0	7	0	0	3	0	0
1924-25	10	6	0	18	8	0	5	12	0	8	12	0	4	14	0
1925-26	7	8	0	14	0	0	5	5	0	7	10	0	5	15	0
1926-27	5	14	0	9	0	0	4	10	0	8	0	0	4	1	0
1927-28	5	7	0	12	0	0	4	6	0	7	12	0	4	0	0
1928-29	5	8	0	11	0	0	4	0	0	6	8	0	5	11	0
1929-30	5	9	0	6	12	0	3	0	0	5	15	0	4	8	0
1930-31	3	12	0	4	15	0	1	10	0	3	12	0	1	8	0
1931-32	3	8	0	7	8	0	1	14	0	3	8	0	1	10	0

N.B.—The price of Bajra for 1916-17, 1917-18, 1918-19 and 1919-20 is that which prevailed in Gujrat District. (Vide p. 36 of the Abiana Committee's Report).

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Another table designed to bring out the relative economic condition of land-owning classes which are also the most numerous debtor classes of the province in the years 1905-06 and 1931-32 respectively, is given below showing the comparative pitches of water-rates (on the Western Jumna Canal) and agricultural prices in the same two years.

(Rates shown in annas per acre and prices shown in annas per maund.)

Commodity	Water-rates		Prices	
	1905-06	1931-32	1905-06	1931-32
Gur	90	192	80	56
Kapas (Desi)	40	88	116	120
Wheat	40	84	40	30
Rape-Seed	40	68	64	56
Bajra	28	52	52	26

(Vide page 38 of the Abiana Committee's Report).

It may also be noted that fresh settlements took place in most of the Punjab districts between 1905 and 1921 with consequent increase in land revenue, local rate and cesses. Thus, apart from the violent and steep fall in prices since the expiry of the boom years, there was a very marked deterioration in the economic condition of the agriculturist in 1931-32 even when compared with his condition in 1905-06.

It should not be difficult, under the circumstances, to concede that ever since the commencement of the slump the agriculturist found himself in a most embarrassing condition. His embarrassment became more acute and his distress became deeper with the passage of time. By 1932 he was at the end of his tether. Low prices synchronised with bad harvests and in order to save himself from civil imprisonment for non-payment of Government dues or decretal debts, he was soon deprived of all his moveable property including every head of cattle which he could possibly spare and every piece of jewellery which he could humanly induce the women folk of his family to part with. Not only this; in not a few cases he had also to mortgage his house or his land. Thus in an overwhelming majority of cases the agriculturist had nothing left but his land, his house and his plough cattle to pay his debts with.

Before attention is drawn to the terrible consequences which might have followed as a result of Government's abstention

from any legislation of relief, three more circumstances deserve to be noticed, (a) the proportion of the population in debt, (b) the burden of debt, and (c) the present aggregate value of the Punjab crops.

From the fairly extensive enquiries made by Mr. Darling, the author of the famous book "The Punjab Peasant", it is plain that even at the time of his enquiry more than twelve years ago over 80 per cent. of the proprietors of the Punjab were in debt. To be precise, 83 per cent. of the proprietors of the Punjab were in debt according to Mr. Darling in or about 1923. Since then a very considerable proportion of those who were free from debt at that time must have run into debt. In fact, it may safely be presumed that not less than 90 per cent. of the agricultural population of the Punjab is in debt at the present time.

While 90 per cent. of our agriculturists have the mill-stone of debt round their neck the burden which they have to bear is simply staggering. The Banking Enquiry Committee calculated this burden to be 135 crores in 1929. The agricultural debt of the Punjab in 1921 was estimated at 90 crores. In eight years of unprecedented prosperity this debt rose by 50 per cent. The years which followed 1929 have been unusually lean in respect of yield and most depressing in point of prices. During this period repayments have been neither large nor numerous while advances, up to 1932, were ample as well as free. Therefore the total amount of debt at present may be safely placed at 200 crores.

Statement No. 13 on page 349 of the Report of the Punjab Provincial Banking Enquiry Committee shows that rates of interest charged by rural money-lenders range between 12 and 18 per cent. in most of the districts. They are nowhere less than 12 per cent., and rise in some districts to 20, 25 and even 37.5 per cent. The burden of annual interest alone will be 24 crores at 12 per cent., 30 crores at 15 per cent., 36 crores at 18 per cent., and 48 crores at 24 per cent. An average of at least 15 per cent. may be adopted safely for the province as a whole. This means that the agricultural population has to bear an annual burden of no less than 30 crores of rupees in the form of interest alone. This burden will be sufficient to cause serious embarrassment to the rural population even during periods of the highest prosperity. At a time of low prices the burden simply cannot be borne, and unless it is lightened the agricultural population will sink under it with inevitable disaster all round.

There is another aspect of the dead weight of indebtedness which is apt to be lost sight of by all except the most vigilant observers, and such observers are, unhappily, rare. The reason for this oversight is that the particular feature alluded to here is, so to speak, only a by-product of indebtedness. The rural money-lender is also the trader, the middleman, and the shop-keeper rolled into one. According to time-honoured traditions and conventions the debtor has to sell all his produce to him, and to purchase nearly all his requirements from him or through him. This exposes the debtor to further exploitation by the money-lender in a variety of ways.

Many people may be unaware of the manner in which the money-lender fleeces his debtor in the mutual transactions of sales and purchases. When the debtor parts with his produce to his *Sahukar* the latter cheats him twice over. In the first instance, the *Sahukar* weighs the produce in a tricky balance or with incorrect weights with the result that, normally, from 42 to 44 seers will be taken for a maund. Secondly, if the produce is selling at ten seers to the rupee the *Sahukar* will credit the price only at twelve seers to the rupee. When, on the other hand, the debtor purchases anything from the shop of his *Sahukar* the process is reversed with the result that the debtor receives only from 36 to 38 seers for a maund and is debited with a price at ten seers to the rupee when the commodity purchased by him is selling at twelve seers to the rupee in the market.

It may, perhaps, be suggested that the accusation against the *Sahukar* in this behalf is not well-founded. However the Banking Enquiry Committee found that false weights were used by shop-keepers even when dealing with ordinary customers who were not indebted to them. This will, *a fortiori*, be the case when the customer concerned is indebted to the shop-keeper. On page 52 of the Report of this Committee a reference is made to the subject in the following words:—

“Out of 1,407 scales tested in five districts, 69 per cent. were found to be incorrect, and of 5,907 weights 29 per cent.”

In another portion of the same Report (p. 219-220) the Committee says:—

“Of 2,777 weights checked.....1,164, or 42 per cent., were found to be incorrect.....75 per cent. of the 2½ seer weights were wrong, and in the categories above this the percentage of inaccurate weights was never less than 36. The effect upon retail transactions is obvious, and is aggravated by the fact that

one seer and two seer weights are often used to make up heavier weights. Scales are even more inaccurate. Of 763 tested nearly two-thirds (65 per cent.) were found to be in error when unloaded, and nearly half (49 per cent.) when loaded."

".....Some of the shop-keepers are said to keep two sets of scales and weights, one for buying and the other for selling. Various purchases were made which on re-weighment were found to be incorrect."

Apart from inaccurate scales and incorrect weights, there is another factor which affects weighments. All expert weighmen—and most shop-keeping money-lenders are these—acquire, by constant practice, a peculiar knack for overweighing or underweighing by fingering the pans or giving a twist to the fulcrum of the scale in a manner known only to the initiated. As weighing by hand is the universal practice in rural areas this knack is almost invariably pressed into service to the great detriment of the debtor.

Measures also are as faulty as scales and weights in almost all areas.

With one thing and another the debtor has to pay a premium of at least 25 per cent. over the prevailing market rates on all his purchases from his *Sahukar* and has to submit to a discount of a similar proportion on all his sales to him.

Free service of various kinds and free gifts of milk, sugarcane, green gram, fodder and other seasonal produce on the part of the debtor are other indirect means of profit to the *Sahukar* and causes of impoverishment to his victims.

The circumstances relating to the recurring burden, both direct and indirect, of indebtedness having been examined, the means of repayment available to the agricultural debtor may also be briefly noticed.

Statement No. 26 on page 376 of the Provincial Banking Enquiry Committee's Report gives the "approximate gross value of agricultural produce of the Punjab in the three years ending with 1928-29." From this statement it appears that the average annual gross value of this produce calculated over a period of three years—1926-27, 1927-28 and 1928-29—stood at 98.86 crores or roughly at 99 crores.

A glance at the table of prices reproduced above from the Abiana Committee's Report will make it plain that there has been a very heavy drop in prices since the period to which this

estimate of the gross value of agricultural produce relates. The average price per maund of gur, kupas (desi), wheat, rape-seed and bajra respectively was as follows during this period:

Gur	Kupas (desi)	Wheat	Rape-seed	Bajra
5-9-8	10-10-8	4-5-3	7-6-8	4-9-4

The same prices in 1931-32 were Rs. 3/8/-, Rs. 7/8/-, Rs. 1/14/-, Rs. 2/8/- and Rs. 1/10/- respectively. Prices since 1931-32 have fluctuated within a comparatively narrow margin. The approximate drop in the annual gross value of agricultural produce may thus be put at nearly 50 per cent. on the score of lower prices apart from any deterioration due to lower yields in any particular year. Thus an estimate in the neighbourhood of 50 crores of the gross value of annual average produce under present conditions will, if anything, err on the side of exaggeration. When we remember that this value will suffer another substantial diminution in consequence of the handicaps under which the agricultural population labours, as stated above, in the matter of getting a proper value for the fruits of his labour, we can form some judgment of the hopeless economic plight to which the wealth-producing section of the Punjab population has been reduced.

Roughly speaking 80 per cent. of the population lives by agriculture. This means that 188 lakhs depend on agricultural produce for their livelihood. Allowing even one anna per head per day for the barest necessities of life, nearly 43 crores will be needed to enable the agricultural population to keep body and soul together.

This being the case, it will be patent to the meanest intellect that debts could be repaid only out of capital assets, and the only capital assets left with the agriculturist are his land and his house. In the absence of the present legislation, the decree-holder would have sought and obtained either the arrest of the judgment-debtor in order to coerce him into parting with his land or the attachment and sale of his house or both. This would have happened on a colossal scale. Evictions and ejectments through the process of court would have become the order of the day, and so would cases of resistance and riot. Jails would have become full to overflowing. More police, more magistrates, and more Jail establishment would have been needed. Imprisonments and ejectments would have thrown agriculture out of gear. Collection of land revenue would have become increasingly difficult. Growing expenditure and shrinking revenue would have ruined the finances of the province.

The picture drawn in the preceding paragraph is not painted in unduly sombre colours. The reality would, possibly, have been even more gloomy. Human flesh and blood cannot be expected to view with equanimity the prospect of eviction from one's patrimony. The shelter above one's head is not only a stark necessity but has one's dearest affections woven round it, and the sight of one's children being turned out into the street requires the heart of a Stoic to remain unmoved or even fully self-controlled. Harassed between the harshness of the legal process issued by civil courts at the instance of the creditor class and the apathy of a Government unduly oppressed by a sense of legal rights and sanctity of contract who knows what the ignorant populace might have attempted in despair. Let us not forget that

Whilst timorous Knowledge stands considering
Audacious Ignorance may do the deed.

The lesson of the Mahratta Land League and the Deccan Riots which led to the appointment of a Commission of Enquiry and ultimately to the enactment of The Deccan Agriculturists' Relief Act need not be lost upon us.

In any case the peasantry of the province which is at once the pride of the Punjab and the boast of British administration would have been ruined, perhaps, beyond repair,

For a bold peasantry, their country's pride,
When once destroyed, can never be supplied.

But who could have survived if the peasantry had perished? The parasite must perish when the source of its sustenance disappears. The peasantry sustains a whole army of parasites including the money-lender. The death of the peasantry would have meant the death of the money-lender also. Moreover the peasantry is also the pivot of the Government's fiscal system. Nobody will care to kill the goose which lays the golden eggs if he has his wits about him.

In fact, the enactment of an effective measure of relief was dictated equally by humanity, prudence and administrative necessity.

The Punjab Relief of Indebtedness Act has been vehemently attacked from both sides. The representatives of debtor classes have condemned it as being inadequate for the purpose for which it was intended. The fact that another private Bill under the designation of the Punjab Debtors' Protection Bill has followed close on the heels of this Act is a sure indication of the trend of

feeling in those classes. The champions of money-lending interests, on the other hand, have described this Act by very uncomplimentary epithets. "Anti-Hindu" and "communal" are the most usual terms in which reference is made to this Act. "Radical" and "revolutionary" are not, in the opinion of some of these critics, sufficiently strong terms to describe its real and full character. "Lawless law," "spoliatory enactment," "broad day robbery" and "expropriatory measure" are some of the other descriptions which have been applied to this legislation. It will not be amiss to examine these criticisms.

To call this law either anti-Hindu or communal is an outrage both on language and common sense. There is absolutely nothing anywhere in this law to warrant the suggestion that it is anti-Hindu. It seeks to benefit all debtors without distinction of caste or creed, and such distinctions as do exist in it were introduced at the special request and earnest pleading of those who claim to represent the interests of moneyed and commercial classes. Further, the Act affects all creditors alike excepting those who were exempted from its operation in deference to the wishes of those who were opposed to it. The help of the descriptions of anti-Hindu and communal seems to have been requisitioned in order that these descriptions may serve as a cloak to conceal the iniquity of the opposition. The opponents, probably, did not feel very easy, mentally or morally, and called in the help of communal slogans because communalism, like patriotism, can cover a multitude of sins. Money-lenders are only 40,000 in number. They include Hindus, Sikhs and Muslims alike. Khojas, Beoparis and Pathans among Muslims contribute a considerable number to the ranks of money-lenders. Khatris, Aroras and Jats among Sikhs are as keen money-lenders as their confreres in the Hindu community. But even if all the money-lenders were Hindus, the Act could not be called anti-Hindu for the simple reason that 63 out of 70 lakhs of Hindus are indebted and thus share in the benefits which will flow from this legislation.

The Act is neither radical nor revolutionary although it makes very important changes in certain respects. But these changes are not, as will be pointed out in the body of this book, even as far-reaching as those made by recent debt legislation in other provinces.

Some young enthusiasts even in official ranks have been carried away by the current of their feeling and called this legislation spoliatory. They argue that certain rights had already accrued to money-lenders and ought to have been enforced by

Government. Normally this is exactly what would happen. Already accrued legal rights would be ensured and enforced by the State under all ordinary circumstances. But are we living under ordinary circumstances? Are the prevailing conditions normal? Are the so-called accrued rights the natural offspring of original transactions? Have they or have they not been swelled into high multiples of their natural selves by the sudden inroad of most abnormal conditions? No fair-minded person can deny that the value of debts, in terms of produce, has been inflated artificially to thrice and, in some cases, even four times its normal dimensions. The measure of this artificial inflation is in the nature of unearned income to the creditors. When the issues at stake are so tremendous the state is perfectly within its rights to mitigate or nullify the effects of such inflation by keeping or bringing the rights of a small section of its subjects within the compass of their natural or normal growth in order to save the bulk of the community from economic annihilation. Law is an instrument for the general good of society, and so long as it serves that purpose it must be maintained and the rights flowing from it must be respected. But when the enforcement of this law or of the rights springing from it becomes an obvious menace to society itself, the State has a perfect right to suspend or set aside that law and to interdict the unrestricted operation of those rights so that society may be saved from being wrecked.

It is also worthy of note that the only portion of the Act which affects substantive rights retrospectively is the one which prescribes certain maximum rates for interest. The rates prescribed compare very unfavourably with those adopted in the United Provinces, and militate against the whole object of this legislation. Decrees obtained by creditors long ago are being offered for sale at $12\frac{1}{2}$ and 25 per cent. of their face value, but purchasers are not forthcoming. Recovery of debts by annual instalments of Rs. 20 extending over a period of 50 years and bearing no interest is known to have been agreed to by creditors outside the court. Many debts were bound to become time-barred because creditors were either unable or unwilling to pay the requisite court fees. Conciliation Boards open a very cheap avenue of seeking relief. Critics forget that this Act relates to debts most of which had become practically irrecoverable in the ordinary course, and provides new facilities for the recovery of even these debts by mutual agreement. A talk of accrued rights being taken away is, under the circumstances, very much beside the mark.

A large proportion of critics, both among officials and non-officials, maintain that the money-lender cannot be so dark as he is painted, and that as he fulfils a very useful function in village society nothing should be done to discourage him unduly. It need not be denied that the money-lender may, within limits, be regarded as a useful functionary in the economic life of our country-side under existing conditions, and that, so long as those conditions last, no attempt tending to eliminate him from society as a necessary unit should be made. The question whether the present legislation will eliminate the money-lender or even discourage him unduly will be noticed shortly. In the meantime it may be stated that the picture of the money-lender drawn by his victims is a much truer copy of the original than the picture imagined by those who have not known him from close quarters. Most of the officials and many of the non-officials who ascribe an almost innocent role to the money-lender and even wax eloquent in his defence are acquainted only with an impersonal banking system or with respectable bankers whose ways of dealing are necessarily attuned to the much higher and far better educated strata of society than those represented by our agricultural population. In any case their knowledge of the ways of the rural money-lender is not first-hand; it is not derived from actual life, but from reports, oral or documentary, supplied by others.

The apprehensions that, as a result of the present legislation, the village money-lender will be wiped out of existence and the whole system of rural credit will be shattered are not well-founded. Such apprehensions proceed upon an incomplete and inaccurate knowledge of rural money-lending. They have been expressed before, but have never come true. In fact, on each occasion when a legislative attempt has been made to restrict undue credit fears of a break-down of the normal credit system have been expressed. When the Punjab Alienation of Land Act and the Punjab Regulation of Accounts Act were on the anvil, most frightful consequences were predicted. Nothing calamitous has fortunately happened, and the gloomy forebodings to which expression has been given by all varieties of experts, economic, financial and administrative, who derive their knowledge, not from the book of life, but from the books of academic theorists, will prove ill-founded even in respect of the present legislation. It is true that the Punjab Relief of Indebtedness Act will, as it is designed to, place an effective check on undue credit being given to agricultural debtors, and may even cause real inconvenience for two or three years, but it is equally

true that things will adjust themselves to changed conditions in the course of time, and, perhaps, more quickly than most of us are inclined to believe. In any case, the rural money-lender will rise, phoenix-like, from his own ashes 'to serve society' again. The amazing capacity of the money-lender to adapt himself to changed or changing conditions under which he has to work is his greatest armour, and his nervous well-wishers may rest assured that he will yet save himself.

Apart from the temporary disturbance which will inevitably occur, no permanent damage to the rural credit system is likely to ensue. Those who have a real knowledge of the tremendous profits of money-lending in rural areas cannot believe that the village money-lender is likely, in any undue numbers, to transfer his attentions to other spheres of life. In spite of the contempt in which certain aspects of money-lending are deservedly held the profession has certain other very substantial compensating features to offer. *Shah Padshah*—the *Sahukar* is the King—is a well-known expression which indicates the power and the prestige associated, in the mind of the rural population, with the profession of money-lending. The power and influence which the *Sahukar* enjoys in rural society are still large and real, and although advancing knowledge and increasing education have laid bare the essentially dubious character of some of his ways, it will be long before the halo of glory round his position in rural society is seriously dimmed or entirely disappears. However the concrete and tangible advantages which go with the profession of money-lending and to which the *Sahukar* attaches more value than to the esteem in which he has certainly been held in the past, are so great and real that he is not, in the least, likely to leave the field of his proverbially profitable activities unless he is bodily removed from it.

The various ways in which the *Sahukar* makes his profits have already been alluded to. Over and above the usual rates of interest charged by him on the loans advanced, he earns very substantial profits from his *asamis* as a shop-keeper and middleman. As a purchaser of the raw produce of his *asamis* and as a supplier of the articles of their usual requirements he scores—and scores immensely—all along the line. Rates, calculations, weights and measures are all subservient to the promotion of his own ends and interests. His claims to free service and free presents at all times and on all occasions are fully recognised. As a result of the combined operation of all these advantages, allowed by universal custom and sanctioned by in-

variable practice, the rural money-lender makes profits on a scale which cannot be conceived by those who are not privileged to know all the secrets of rural money-lending. And this scale being what it is, the gloomy forecasts of the influence of this legislation on the rural money-lender's continuance in or withdrawal from his present field of operations may be largely discounted.

What effect will this Act have on the credit of the agriculturist? That a contraction of his credit was fully intended is amply clear from the debates in the Punjab Legislative Council. But what is not known to many people is the deliberate omission by the Select Committee of the words "and to improve rural credit" which followed, in the original preamble, immediately after the words "to regulate the relations between debtor and creditor". The reason for this omission is a deep conviction in the minds of the representatives of debtor classes that easy and excessive credit which the debtor in the Punjab receives at the hands of the money-lender is mainly responsible for the extent of indebtedness in the province, and that any legislation which aims at the permanent protection of the debtor must secure a reasonable contraction of his credit.

The exact extent of this contraction is impossible to foresee. It may exceed the limits contemplated by the advocates of this legislation. It may fall short of those limits. But some real contraction of credit is bound to result from the Punjab Relief of Indebtedness Act. Those who are not fully acquainted with the real nature of the problem of agricultural indebtedness will be surprised at the anxiety of the professed well-wishers of the agricultural population for this contraction of credit. However the truth is that the excess of credit which the agriculturist enjoys in the Punjab has proved his ruin. In the case of a man of normal prudence his borrowings will be limited by his actual requirements. In the case of a Punjab agriculturist borrowings are limited only by his credit. So long as he can get a loan he will go on borrowing without the least thought as to how and when he is going to repay. How excess of credit has helped in ruining the Punjab peasantry will appear from the following extracts from Mr. Darling's famous book, *The Punjab Peasant* :

- (a) "In a backward country, where expenditure is less determined by income than dictated by custom and necessity, small incomes sooner or later mean debt. Only one thing can prevent this—lack of

credit. But in the Punjab, owing to the great rise in the value of land, every owner enjoys two or three times as much credit as he did thirty years ago."

- (b) "The money-lender, who might have been shaken off altogether, has secured a firmer hold than ever. Values are so inflated that everyone's credit is good, and where everyone can borrow few refrain."
- (c) "We saw that with the advent of British rule the old village system of barter gradually gave way to a money economy, that land which had been almost valueless became an object of general desire, that the money-lender, seeking an outlet for his increasing wealth, did his utmost to make the cultivator borrow, and that the cultivator was unable to resist the temptation. In a word, money was plentiful, security good, credit easy, and borrowing uncontrolled..... 'Credit', says Professor Gide, 'holds up the land-owner as the rope holds up the hanged man'."

Mr. Trevaskis, another Punjab Civilian (now retired), speaking of easy and excessive credit with its disastrous results writes in his *Indian Babel* as follows :—

"No wonder he (the peasant) availed himself of the loans which seemed to be had for the asking, and rapidly got involved in the toils of the money-lender. Debt in fact tended to be proportioned not to the needs but to the credit of the borrower. The object of the money-lender was not to finance but to entrap his client."

Thus it will be easy to see that in order to save the peasant from the consequences of his indebtedness it is essential to curtail his credit, and, whether specifically avowed or not, most of the protective legislation undertaken in the interests of the peasant during the last forty years in the Punjab has been informed by this purpose. The Punjab Relief of Indebtedness Act has also been inspired by this object among others.

A very favourite line of criticism against this legislation relates to its alleged offence against the sanctity which usually attaches to contracts. Sanctity of contract is a dearly cherished principle of British Jurisprudence. That the principle is essentially sound and worthy of all respect and praise will be conceded by every normally-constituted person. But sanctity of contract, as a principle of adjudication of rights, proceeds on the assumptions (a) that the contracting parties were on a footing

of equality when they entered into the contract, and (b) that each party fully understood its terms and implications. These two conditions fulfilled, nobody is justified in falling foul of this principle. But if these conditions remain unfulfilled it is ridiculous to drag in this principle. The Contract Act definitely recognises that (1) coercion, (2) undue influence, (3) fraud, (4) misrepresentation or (5) mistake vitiates a contract. What a happy or unhappy blend of some of these elements enters into the texture of most of the so-called free contracts between debtors and creditors can hardly be guessed by those whose mode or sphere of life prevents them from coming into close and frequent social touch with the poverty-stricken population of this province living far away from the haunts of modern amenities, pleasure, ease and comfort in large cities and towns.

To show that the peasant and the money-lender can rarely transact business on a footing of equality, a few passages may be quoted from the writings of non-Indian gentlemen.

Mr. Darling whom nobody can accuse of partiality for the peasant or of prejudice against the *Sahukar*, when speaking of the mental equipment of the peasant, describes him as being "ignorant, no doubt, and unimaginative, and with a mind that is often as empty as the horizon that surrounds him."

The same gentleman while speaking of the money-lender and the advantages brought to him by the advent of British rule says:—"He is the evil genius in the background, aggravating and manipulating every factor to the cultivator's hurt and to his own advantage. Formerly the ally, if not the servant of the village community, he threatened at one time to become its master. The security of British rule and a legal system in which the spoils are always to the astute gave him an opportunity which he was quick to seize."

Mr. Trevaskis in his book already referred to, brings out the essential inequality of footing, on which mutual dealings between the money-lender and the peasant take place, in one pregnant sentence thus:—

"Even if the money-lender had been honest, his superior astuteness, business training and command of capital would have rendered the cultivator a mere child in his hands."

Again, the peasant is not only ignorant and illiterate, but is also over-trustful. He has a pathetic faith in the honesty of his *Sahukar*. He hears unsavoury stories, off and on, about the tricks practised by his *Sahukar* on others, but he finds some

excuse or other to disbelieve, discredit or doubt each individual story as it reaches him. At any rate, he seldom fails to look out for extenuating circumstances to white-wash the reported guilt of his *Sahukar*. Even when genuine doubt protrudes itself on his mind he generally succeeds in persuading himself in the end that, at least in his case, the *Sahukar* will not resort to fraudulent practices. He clings to this faith until he is thoroughly disillusioned. Disillusionment generally comes too late, and is often caused by a total denial on the part of the *Sahukar* of all repayments made by the debtor since the last balance was struck. Ordinarily the debtor puts his thumb-impression, without demur or hesitation, to any entry or document without knowing or caring to know what the actual contents of the entry or document are. The greatest marvel is that even when he has once been fully disillusioned he will again relapse into his old overtrustfulness as soon as he starts dealings with another *Sahukar*. This over-trustfulness is so incredible that it may well give rise to a suspicion that it is partly genuine and partly assumed in consequence of the economic helplessness of the debtor.

The truth is that need, ignorance and credulity make the peasant mere wax in the hands of a clever and none-too-scrupulous business man who worships money and generally looks upon honesty as a virtue of fools. Any disposition to plead sanctity of contract in respect of transactions which take place under circumstances of such notorious inequality is sheer bunkum.

Since the advent of British rule the debtor has suffered under four different handicaps. In the first instance, the former restraints on the rapacity and harshness of a money-lender have disappeared. In troubled times when the peace of the country was liable to be disturbed violently at any time, the money-lender had to depend for his protection on the help and good-will of the community. Therefore he could not afford to alienate the sympathy and good-will of those among whom he lived. This sense of dependence prevented him from doing anything which would be repugnant to justice, equity and fairplay. Now he can count upon the help of Police and courts not only for his own protection but, through the magic of his wealth, for the harassment and persecution of those who dare to defy him. The *Pax Britannica* enables him now to snap his fingers at those to whom he was in the habit of looking up for help and protection in times of trouble. In pre-British days demands for sums not advanced or for larger sums than those advanced, or refusals to give

credit for actual repayments, or fictitious entries in account books were not only unknown but unthinkable. Now they are matters of painfully frequent occurrence.

Secondly, under Muslim and Sikh rule there were no regular courts to entertain claims for debts, and recovery of debts was entirely a matter of private settlement. Probably the village Panchayat intervened in a few cases of dispute, and, very rarely, the local executive officer was approached for help. But in no case were false claims put forward, and the amounts directed to be recovered, whether by the Panchayat or by the local *Hakim*, were always proportioned to the means of immediate repayment available to the debtor. Decrees and their execution through courts were entirely foreign to the system of administration adopted by Indian rulers. So forced sales of land, ejection from houses and civil imprisonment for non-payment of debts which, with minor exceptions, are the recognised coercive methods under the present civil law, were unknown in all the periods of Indian history prior to the establishment of British *Raj* in this country.

Thirdly, our present civil law is highly technical and distinctly favourable to the creditor. Rules of procedure, evidence and pleading, entirely unsuited to the conditions of our country and completely foreign to the genius of our countrymen, have been introduced in utter disregard of surrounding circumstances and local considerations. The result has been disastrous to the poor and the ignorant. Substantial justice is the exception rather than the rule, and such technical justice as can be had is ruinously expensive. The latter feature is epigrammatically expressed in the well-known vernacular saying—*Jita so hara, hara so mara*, that is, he who wins in litigation is as good as a loser, and he who loses is as good as dead. The effect of such a system on those who are poor in both intellectual and pecuniary resources can be better imagined than described.

To prove how favourable to the creditor our present civil law is, three or four concrete instances may be quoted. (1) Order XXI, Rule 2 of the C. P. C. casts on the decree-holder an obligation to certify to the Court any payment or adjustment made in respect of his decree out of Court. But if that obligation is not discharged by the decree-holder within ninety days the penalty for this failure falls on the judgment-debtor inasmuch as "a payment or adjustment which has not been certified.....shall not be recognised by any Court executing the decree."

(2) No objection after a sale in execution has taken place can be entertained by the executing Court however surreptitiously that sale may have been effected.

(3) If any property really belonging to a third party is attached in execution at the instance of a decreeholder and that third party raises an objection that the property attached does not belong to the judgment-debtor but to himself, the burden of proof lies on the third party. The natural and just course would be to place on the decree-holder who asserts that any particular property, by the attachment of which he seeks to gain, belongs to his judgment-debtor, the burden of providing that this assertion is correct. But it is the third party who is saddled with the burden of proof. Even in respect of agricultural land which is entered as belonging to a third person in revenue records to which a presumption of correctness applies under section 44 of the Punjab Land Revenue Act the burden of proof is placed on the third person simply because the decreeholder states the contrary.

(4) A small land-owner who is a cripple and cannot cultivate land with his own hands on account of his physical disability but depends for his livelihood entirely on the produce of his small holding is not an agriculturist for the purposes of section 60 of the Civil Procedure Code. The fact that he is compelled by his disability to get his land cultivated through tenants or *Sanjhis* takes him out of the category of agriculturists and disentitles him to the benefit of this section. Minors and women share the same misfortune. The Law does not pause to consider what else, if not agriculturists, are those petty land-owners who, though solely dependent upon the produce of their land for their living, are yet prevented, by age, sex or infirmity, from cultivating their holdings with their own hands.

Fourthly, the composition of the civil judiciary is detrimental to the interests of the debtor. Apart from the initial difficulty that courts must administer the law as it stands, there are other factors which operate to the disadvantage of the debtor. Courts are mostly manned by officers who are out of touch with rural life and its conditions and, in a large number of cases, also out of sympathy with the debtor as a result of the bitter controversy which has been going on in the press for the last ten years about the clash of class interests.

Brief extracts from the opinions of eminent men and high officials with sound administrative experience may be quoted

with advantage to show the consequences which have followed upon the introduction of the present civil judicial system.

Mr. Darling says :—“Kindly feeling.....prevailed between debtor and creditor till well into the sixties. In 1866 the Chief Court was established and pleaders were allowed to practise. Eight years later (1874-75) suits for debt were handed over to civil courts presided over by professional judges, called Munsiffs, men trained in the strictest sect of the law, for the most part born in the town, knowing little of the village and often allied with the money-lender by caste if not by actual relationship... ..Once the Munsiff and the lawyer were enthroned in the courts, legality and chicanery were apt to be found in forced alliance, to the confusion of justice and equity.....With the establishment of civil courts and the decline of the village community, the reign of the money-lender began.”

With regard to the disposal of cases, Mr. Thorburn says that they were too often rushed through and decided ‘on unreliable evidence by over-worked Munsiffs, helped by undermanned, under-paid, and, consequently, corrupt establishments, almost all town-bred men of the desk ignorant of rural affairs.’

“In 1888 the Chief Commissioner of the Central Provinces stated that the villagers everywhere considered that they were being gradually ruined by the civil Courts.”

Writing about the influence of law and civil court procedure on the expropriation of land-owning classes, Sir James Lyall remarked that ‘under the influence of indebtedness and of our present law and civil court procedure, transfers of land were proceeding in all districts in an increasing ratio, and in many with dangerous rapidity.’

Mr. Trevaskis in his *Indian Babel* observes :—“But with the introduction of the British judicial system this happy state of affairs came to an end.....The money-lender was no longer interested in the prosperity of the peasant.....He need no longer trust in the cultivator’s good faith and honesty. He had only to go to law to get what he wanted. It paid him to encourage extravagance in the peasant until the toils had closed round him and escape was impossible.”

Reviewing the situation created by the functioning of civil courts, the Governor in Council (Bombay) remarked in 1858 that he “believed that our civil courts have become hateful to the masses of our Indian subjects from being made the instruments of the almost incredible rapacity of usurious capitalists.”

Speaking of "the disastrous effect of the application of the English Judicial system to the conditions of Indian agriculture" Sir John Strachey complained that under the new order of things District officials had been reduced to the position of "mere machines for grinding revenue out of the people. No one who has not had the matter brought practically and directly to his notice can have the least conception of the knavery and rapacity of the money-lenders, to whom the land-holders of these provinces are obliged to have recourse. Our civil courts have unhappily been the ready instruments for these dishonest operations and our system of judicial procedure, instead of checking, has stimulated and exaggerated them."

The above quotations ought to be enough to convince any fair-minded person that the representatives of debtor classes are not alone in viewing with disapproval and alarm the pro-creditor working of our civil courts. Nor is their judgment wrong or biassed regarding the reasons which account for such working. The lack of accurate knowledge of rural conditions and the inability or unwillingness to appreciate, and sympathise with, the difficulties of the debtor in a very large proportion of the presiding officers of our civil courts combined with the complicated technicalities of the present system tend to make our courts the hand-maids of the creditor.

The foregoing pages contain an attempt to present the readers with a political, moral and economic justification for the Punjab Relief of Indebtedness Act. The business of courts is to administer the law as it is, and the business of lawyers is to help—and according to some to hinder—in that process. Thus neither courts nor lawyers are concerned with the political need of, or moral and economic justification for, any piece of legislation. Viewed in this light, this long preface may be regarded as either irrelevant or as a waste of energy. But if the whole back-ground of this legislation in all its aspects is expounded clearly and candidly it may be helpful in a more liberal and more sympathetic interpretation of it in courts. In any case, where the language is not clear and the meaning is not plain the intention of the legislature and the history of the legislation concerned may legitimately be consulted in order to arrive at a correct interpretation of a provision of law. The Punjab Relief of Indebtedness Act is not free from defects of language or ambiguities of meaning, and this long preface may prove useful in clearing up doubts and removing ambiguities wherever they exist in this Act.

24 PUNJAB RELIEF OF INDEBTEDNESS ACT

This preface owes a good deal to Mr. Darling's *The Punjab Peasant* and Mr. Trevaski's *Indian Babel*. These excellent works have been freely drawn upon for quotations and references in the preface.

June 1, 1936.

CHHOTU RAM

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The Punjab Relief of Indebtedness Act, 1934.

Punjab Act No. VII of 1934.

[Received the assent of His Excellency the Governor on the 4th February, 1935, and that of His Excellency the Viceroy and Governor-General on the 5th April, 1935, and was first published in the Punjab Gazette, Extraordinary, of the 8th April, 1935.]

An Act to provide for the Relief of Indebtedness in the Punjab.

WHEREAS it is expedient to amend the law governing the relations between debtors and creditors;

And whereas the previous sanction of the Governor-General required under section 80-A (3) of the Government of India Act and the previous sanction of the Governor required under section 80-C of the said Act have been obtained;

It is hereby enacted as follows:—

PART I.

Preliminary.

Short title, extent and commencement. 1. (1) This Act may be called the Punjab Relief of Indebtedness Act, 1934.

(2) This Part and Parts III, IV, V; VI, VII and VIII shall extend to the whole of the Punjab and Part II to such areas as the Local Government may from time to time, by notification, direct.

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

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

- (1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise;
- (2) "Loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the court, in substance a loan.

PART II.

Insolvency Procedure.

Amendment of section 10 of the Provincial Insolvency Act, 1920. **3.** In section 10 (1) of the provincial Insolvency Act, 1920, after the existing clause (a) the following clause shall be inserted—

"(aa) his debts amount to two hundred and fifty rupees, and he satisfies the court that he is entitled to summary administration of his estate under section 74 of this Act; or."

Amendment of section 74 of the Provincial Insolvency Act, 1920. **4.** In section 74 of the Provincial Insolvency Act, 1920, for the words "five hundred rupees" the words "two thousand rupees" shall be substituted.

PART III.

Usurious Loans.

Amendment of the Usurious Loans Act, 1918. **5.** In section 3 of the Usurious Loans Act, 1918—

- (i) for the word "and" in clause (a) of sub-section (1) the word "or" shall be substituted:
- (ii) for the word "may" where it appears for the first time in sub-section (1) the words "shall" shall be substituted:
- (iii) for the word "may" after the words "namely" in sub-section (1) the word "shall" shall be substituted:
- (iv) to sub-section (2) the following clause shall be added—

"(e) The court shall deem interest to be excessive if on secured loans it exceeds twelve per centum per annum simple interest, or nine per centum per annum compound interest with annual rests, and if on un-

secured loans it exceeds eighteen and three-quarter per centum per annum simple interest, or fourteen per centum per annum compound interest with annual rests: provided that the court shall not deem interest in excess of the above rates to be excessive if the loan has been advanced by the Imperial Bank of India, or any banking company registered under the Indian Companies Act, 1913, or any law relating to companies for the time being in force in British India.

6. The provisions of this part of the Act shall apply to all suits pending on or instituted after the commencement of this Act.
- Retrospective effect.

PART IV.

Debt Conciliation Boards.

7. (1) "Debt" includes all liabilities of a debtor in cash or in kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether mature or not, but shall not include debts incurred for the purposes of trade, arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any debt which is barred by the law of limitation, or debts due to co-operative banks or to co-operative societies or to the Imperial Bank of India or to any banking company registered under the Indian Companies Act, 1913, or the law relating to companies for the time being in force in British India.

(2) "Debtor" means a person who owes a debt, and

- (i) who both earns his livelihood mainly by agriculture, and is either a landowner, or tenant of agricultural land, or a servant of a landowner, or of a tenant of agricultural land, or
- (ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agriculture.

Provided that a member of a tribe, notified as agricultural under the Punjab Alienation of Land Act, 1900, shall be presumed to be a debtor as defined in this section until it is proved that his income from other sources is greater than his income from agriculture.

Explanation.—(i) A debtor shall not lose his status as such through involuntary unemployment or an account of incapacity, temporary or permanent, by bodily

infirmity, or, if he is or has been in service of His Majesty's Military or Naval Forces, only on account of his pay and allowances or pension exceeding his income from agricultural sources.

- (ii) A debtor shall not lose his status as such by reason of the fact that he makes income by using his plough cattle for purposes of transport.
- (iii) A debtor shall not lose his status as such only because he does not cultivate with his own hands.

If any question arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final.

(3) "Agriculture" shall include horticulture and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables and the like.

(4) "Prescribed" means prescribed by rules made under this part of the Act.

Setting up of Debt Conciliation Boards. 8. (1) (a) The Local Government may for the purpose of amicable settlement between debtors and their creditors establish debt conciliation boards.

(b) The Local Government shall define the local limits of the area in which a board shall have jurisdiction.

(c) The Local Government shall determine the pecuniary limits of the jurisdiction of the board, provided that no board shall have jurisdiction to make a settlement between a debtor and his creditors if the total debts of the debtor exceed Rs. 10,000 or such larger amount as the Local Government may prescribe for any area.

(d) Such board shall consist of a chairman and two or more members to be appointed by the Local Government.

(e) The chairman and every member of a board so established shall be appointed for a term not exceeding three years, but shall be eligible for re-appointment on the expiry of his term.

(f) The quorum of a board shall be prescribed by the Local Government.

(g) Where the chairman and members of a board are not unanimous, the opinion of the majority shall prevail, and, if the

board is equally divided, the chairman shall exercise a casting vote.

(2) The Local Government may cancel the appointment of any member of a board or dissolve any board.

(3) The Local Government shall notify in the Gazette—

- (a) the establishment of a board and the appointment of its members; and the board shall be deemed to have been established and its members appointed from the date specified in such notification or notifications;
- (b) the cancellation of the appointment of any member of a board; and from the date specified in such notification the member shall cease to be a member of the board;
- (c) the dissolution of a board; and from the date specified in such notification the board shall cease to exist.

(4) When a board is dissolved or ceases to exist otherwise, the Local Government may at any time establish another board within the same local limits in which the former board had jurisdiction and may declare this board to be the successor in office of the first board and may confer on it power to dispose of such applications under section 13 (2) and section 23 as the Local Government may direct.

9. A debtor or any of his creditors may apply to the board appointed for the area in which a debtor resides or holds any land, to effect a settlement between the debtor and his creditors:

Application for settlement between a debtor and his creditors. Provided that no application shall be made if the debtor's debts exceed ten thousand rupees or such larger sum as the Local Government may prescribe for any particular area.

10. Every application to a board shall be in writing and be signed by the applicant and verified in such manner as may be prescribed.

Verification of application.

11. (1) Every application presented by a debtor to a board shall contain the following particulars, namely,—

Particulars to be stated in application.

- (a) the place where he resides or holds land;
- (b) the particulars of all claims against him together with names and residences of his creditors;

- (c) the particulars of all his property, together with a specification of the value of such property and the place or places at which any such property is to be found;
- (d) a statement that he is unable to pay his debts, and that they do not exceed the prescribed amount.

(2) Every application presented by a creditor shall contain the following particulars, namely,—

- (a) the place where the debtor resides or holds land;
- (b) the amount and particulars of his claim against such debtor;
- (c) a statement that the debtor is unable to pay his debts.

12. (1) On receipt of an application under section 9 the board shall pass an order fixing a date and place for hearing the application:

Procedure on receipt of application.

Provided that the board may at any time dismiss the application if, for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and the creditors.

(2) Notice of the order under sub-section (1) shall be sent to creditors by registered post, acknowledgment due, and where the debtor is not the applicant, notice of the order under sub-section (1) shall be sent to him in a similar manner.

13. (1) On the date fixed the board shall publish, in such manner as may be prescribed, a notice, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be submitted to the board in writing within two months from the date of publication of the notice:

Notice calling upon creditors to submit statements of debts.

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such direction within the time fixed, it may extend the period for the submission of his statement of the debts owed to him.

(2) Every debt, of which a statement is not submitted to the board in compliance with the provisions of sub-section (1),

shall be deemed for all purposes and all occasions to have been duly discharged :

Provided that if a creditor proves to the satisfaction of the board, or, if no board is vested with jurisdiction by the Local Government, to the satisfaction of a civil court, that the notice was not served on him and that he had no knowledge of its publication, the board or court may revive the debt.

14. (1) Every creditor submitting in compliance with a notice issued under sub-section (1) of section 13 a statement of the debts owed to him shall furnish, along with such statement, full particulars of all such debts, and shall at the same time produce all documents (including entries in books of account) on which he relies to support his claim, together with a true copy of every such document :

Provided that a decree or order of a civil court shall be conclusive evidence as to the amount of the debt to which the decree relates, but the amount may be reduced as the result of an agreement arrived at in accordance with section 17.

(2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

15. The board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

16. Any board empowered under this Act may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on civil courts by the Code of Civil Procedure, and every proceeding before the board shall be deemed a judicial proceeding.

17. (1) If the debtor and all or any of the creditors come to an amicable settlement, the board shall forthwith reduce such settlement to writing in the form of an agreement setting forth the amounts payable to each creditor and the manner in which and the times at which

they are to be paid. Such argeement shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties: provided that if the board is of the opinion that the period fixed for payment is excessive, the board may refuse to authenticate the agreement. The board shall also pass an order dismissing the application so far as it relates to the creditors who have not come to an amicable settlement.

(2) An agreement thus made shall take effect as if it were a decree of a civil court having jurisdiction in the area of the jurisdiction of the board.

18. If in the opinion of the board any applicant fails to conduct his application with due diligence, the board may dismiss the application at any stage.

19. If once an application has been made by a debtor and disposed of, no board shall entertain a second application within two years of the date of disposal of the first application.

20. (1) Where, during the hearing of any application made under section 9, any creditor refuses to agree to an amicable settlement, the board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed, in respect of the debts owed by him to such creditor:

Provided that the board shall not grant a certificate unless the board is satisfied that creditors to whom not less than forty per centum of the debtor's debts are owing have come to an amicable settlement with the debtor.

(2) Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court notwithstanding the provisions of any law for the time being in force shall not allow the plaintiff any costs in such suit, or any interest on the debt after the date of certification under sub-section (1) in excess of simple interest at six per centum per annum on the amount due on the date of such certificate.

(3) Where after the date of an agreement made in accordance with section 17 or of certification any unsecured creditor sues for the recovery of a debt in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit notwithstanding anything contained in the Code of Civil Procedure, 1908, shall not be executed until six months after the expiry of the period fixed in the agreement authenticated under sub-section (1) of section 17.

Bar of civil suits. 21. No civil court shall entertain—

(a) any suit—

- (i) to question the validity of any procedure or the legality of any agreement made under this Act, or
 - (ii) to recover any debt recorded as wholly or partly payable under an agreement made in accordance with section 17 from any person who, as a debtor, was party to such agreement, or
 - (iii) to recover any debt which has been deemed to have been duly discharged under sub-section (2) of section 13;
- (b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 20.

22. No appeal or application for revision shall lie against any order passed by a board.

23. A board may, on the application from any person interested, review any order passed by it and pass such order as it thinks fit:

Provided that it shall not under this section pass an order reversing or modifying any order affecting any person interested without giving such person an opportunity of being heard:

Provided, further, that no application for review shall be entertained if presented more than twelve months after the date of the order which the person interested seeks to have reviewed.

24. In any proceedings under this part of the Act, any party may with the permission of the board be represented by an agent authorised in writing or by a legal practitioner.

25. When an application has been made to a board under section 9, no civil court shall entertain any new suit or other proceeding brought for the recovery of any debt for the settlement of which application has been made to the board, and any suit or other proceeding pending before a civil court in respect of any such debt shall be suspended until the board has dismissed the application or an agreement has been made under section 17.

26. The time spent in proceedings before a conciliation board and time during which a person is debarred from suing or executing his decree under the provisions of this part of this Act shall be excluded when counting the period of limitation for any application, suit or appeal.

27. The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code.

28. (1) The Local Government may make any rules consistent with this part of this Act to carry out the purposes thereof, and in particular and without prejudice to the generality of the foregoing power may make rules—

- (a) prescribing the amount of debt for the purposes of section 8 (1) (c);
- (b) prescribing the quorum for and regulating the procedure before a board;
- (c) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;
- (d) prescribing the records to be kept and the returns to be made by a board;
- (e) prescribing the allowances to be paid to members of a board;
- (f) prescribing the place at which and the manner in which an agreement shall be registered;
- (g) prescribing the form of certificate to be granted under sub-section (1) of section 20; and
- (h) generally, for the purpose of carrying into effect the provisions of this part of this Act.

(2) The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication.

29. In making any rule the Local Government may direct that a breach thereof shall be punishable with a fine which may extend to fifty rupees, and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

PART V.

Damdupat.

30. (1) In any suit brought after the commencement of this Act against a debtor as defined in section 7 for the recovery of a loan borrowed before the commencement of this Act, no court shall grant a decree in satisfaction both of principal and interest for a larger sum than twice the amount which the court finds to have been due at the commencement of this Act.

(2) In any suit brought against a debtor as defined in section 7 for the recovery of a loan borrowed after the commencement of this Act, no court shall pass a decree for a larger sum than twice the amount of the sum taken as principal.

PART VI.

Deposit in Court.

31. (1) Any person who owes money may at any time deposit in court a sum of money in full or part payment to his creditor.

(2) The court on receipt of such deposit shall give notice thereof to the creditor and shall, on his application, pay the sum to him.

(3) From the date of such deposit interest shall cease to run on the sum so deposited.

32. (1) The Local Government may make rules for carrying into effect the provisions of this part of this Act.

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

(a) for determining the court into which the sum shall be deposited;

(b) the procedure for keeping accounts of such deposits and the manner in which notices are to be served on creditors and payments made to them.

(3) The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication.

PART VII.

Redemption of Mortgages.

33. In section 1, sub-section (3) (a) of the Redemption of Mortgages (Punjab) Act, 1913, for the figures and word "30 acres" the figures and word "50 acres" shall be substituted, and in sub-section (3) (b) of the same section for the figures "1,000" the figures "5,000" shall be substituted.

Amendment of section 1 (3) (a) of the Redemption of Mortgages (Punjab) Act, 1913.

PART VIII.

Miscellaneous amendments of the Civil Law.

34. Notwithstanding anything to the contrary contained in any other law for the time being in force, no judgment-debtor shall be liable to arrest for default in the payment of any money due under a decree unless the court is satisfied that the judgment-debtor has, without just cause, contumaciously refused to pay the amount of the decree, in whole or in part, within his capacity to make payment :

Warrant of arrest. Provided that the court shall before issuing a warrant of arrest, give an opportunity to the judgment-debtor to show cause against its issue :

Provided further that when a court has power under the law to order a temporary alienation of the land of a judgment-debtor in execution of a decree, the court shall not for the purpose of this section take into account the value of any such temporary alienation in considering the capacity of the judgment-debtor to pay : and

Provided, further, that save in so far as is otherwise provided in this section the court in considering the capacity of the judgment-debtor to pay shall take into consideration the value of the property of the judgment-debtor only to the extent to which a civil court can dispose of it under the law in execution of a decree.

PUNJAB RELIEF OF INDEBTEDNESS ACT 39

Amendment of section 60 (1) (c) of the Code of Civil Procedure, 1908. **35.** In section 60 (1) (c) of the Code of Civil Procedure, 1908, for the words "occupied by him" the following words shall be substituted :—

"not let out on rent or lent to others or left vacant for a period of a year or more."

Amendment of Order XXI, rule 2 of the Code of Civil Procedure, 1908. **36.** In Order XXI, Rule 2, of the Code of Civil Procedure, 1908, sub-rule (3) shall be omitted.

37. Where, in a suit for the recovery of a loan, the court is satisfied that an entry relating to the loan has been made in any document showing the amount of the sum advanced to be in excess of that actually advanced *plus* legitimate expenses incurred, the court may, at its discretion, disallow the whole or any part of the sum claimed by the plaintiff.

The Punjab Relief of Indebtedness Act, 1934.

Punjab Act No. VII of 1934.

[Received the assent of His Excellency the Governor on the 4th February, 1935, and that of His Excellency the Viceroy and Governor-General on the 5th April, 1935, and was first published in the Punjab Gazette, Extraordinary, of the 8th April, 1935].

An Act to provide for the Relief of Indebtedness in the Punjab.

WHEREAS it is expedient to amend the law governing the relations between debtors and creditors;

And whereas the previous sanction of the Governor-General required under section 80-A (3) of the Government of India Act and the previous sanction of the Governor required under section 80-C of the said Act have been obtained;

It is hereby enacted as follows:—

The Preamble :—

The opening portion of an Act immediately preceding its numbered sections is known as its preamble. The preamble sets forth, in very succinct terms, the object which an enactment is designed to achieve or the purpose which it seeks to accomplish. In the preamble, as it stood originally, the objects specified were two, namely, (a) to amend the law governing the relations between debtors and creditors, and (b) to improve rural credit. It was contended by the critics of the Bill as introduced that one of the surest effects of its provisions would be the curtailment of credit. The supporters of the Bill, on the other hand, conceded the soundness of this criticism, and further maintained that if the credit of rural debtors was allowed to remain intact their relief from indebtedness would continue to be as difficult as ever. This agreement between the two sets of critics, though the result of entirely different standpoints, led,

during the Select Committee stage, to the deletion of the words which purported to secure an improvement of rural credit. This deletion, whether viewed from the stand-point of reason or logic, was essential. The preamble should harmonise with the actual provisions of a statute both in the language used therein and the spirit underlying it. This harmony was secured by the deletion of the words referred to above.

The relation of the Preamble to an Act :—

The Preamble is no integral part of a statute. It is merely introductory to an Act. It does no more than explain the intention of a legislation in a few terse words. It is, as already explained, a sort of a preface setting forth in a concise form, the aim which a particular enactment has in view.

How far Preamble can be used to help interpretation :—

The Preamble cannot be used to dominate the operative part of a statute. The well-recognised canon of interpretation is that where the language of a statute is clear it cannot be made to bear a meaning which would appear to be more in consonance with the Preamble, if that meaning is not justified by the language. The intention of a statute is to be gathered from the language used in the statute itself, and not from the Preamble. Where the language of a statute is clear and the meaning plain, not only can the Preamble not be allowed to override the statute, but it must be ignored totally if it suggests, even in explicit terms, a conclusion contrary to that suggested by the statute. It is only where the language of the statute is ambiguous and the meaning vague that the Preamble can be resorted to for the elucidation of the real meaning and intention of the statute.

Whereas it is expedient to amend the law governing the relations between debtors and creditors :—

The Preamble always opens with the word 'whereas'. What subsequently follows gives the general drift of the legislation concerned. In this particular case the intention of the legislature was to enact a law which would amend the various legislative enactments bearing upon the relations between debtors and creditors. There are several legislative enactments of this kind. Four such enactments have been amended by the present Act. Sections 3 and 4 of the Act amend the Provincial Insolvency Act, V of 1920. Sections 5 and 6 of the Act amend the Usurious Loans Act, X of 1918. Section 33 of the Act amends the Punjab Redemption of Mortgages Act, II of 1913. Sections 34, 35 and 36 of the Act amend the Code of Civil Procedure, Act V of 1908.

There are certain other directions in which provision has been made to regulate the relations between debtors and creditors. Sections 8 to 29 of the Act deal with the establishment of Debt Conciliation Boards, their powers and jurisdiction, and their procedure. Section 30 of the Act embodies the well-known rule of the Hincū Law styled "Damdupat". Section 31 of the Act enables a debtor to deposit in court any amount towards the satisfaction, in full or in part, of his debt. Section 33 of the Act modifies the Punjab Redemption of Mortgages Act in order that a larger number of mortgagors may be able to claim the benefit of a summary procedure for the redemption of mortgages. Section 34 of the Act abolishes imprisonment for default in the payment of a decretal amount except in certain well-defined circumstances. Section 35 of the Act affords a much ampler and more effective protection against attachment of houses belonging to agriculturists. Section 36 of the Act amends Order XXI, Rule 2 of the Code of Civil Procedure by the omission of Sub-rule (3), the object of the amendment being to enable a judgment-debtor to plead any payment or adjustment made outside court in relation to a decree, although that payment or adjustment has not been certified to court. Section 37 of the Act provides a penalty in cases where a creditor who has made, in any document, an entry relating to a loan for a larger amount than has been actually advanced, sues for the recovery of that amount.

The changes referred to above have been made in the law of the land because according to the Preamble it was expedient to do so for bringing about more healthy relations between debtors and creditors. The expediency leading to the enactment of this legislation consisted in the development of an unusual economic situation as a result of an unprecedented fall in the prices of agricultural produce. This development violently shook the existing economic equilibrium, and unless changes in the law were introduced in order to place the relations between debtors and creditors on a revised footing, very undesirable consequences were apprehended. The development of this novel economic situation and the undesirable consequences threatened by it account for the genesis of this legislation.

Although the Preamble speaks of the relations between debtors and creditors, these words as used in the Preamble, have not been defined anywhere in the Act. It is true that the word 'debtor' has been defined in section 7 of the Act, but that definition holds good only for proceedings before a Conciliation Board or for the purposes of the application of the rule of "Damdupat".

So far as the general signification of the words 'debtor' and 'creditor' is concerned no definition has been attempted, and it is unscientific to leave undefined any words or terms which enter so essentially into the texture of a law. However these words are of common use, and are so well-understood that, technical and scientific objections apart, no real difficulties would arise about their interpretation even if these terms occurred frequently in the body of the Act. But fortunately, outside Part IV, the word 'creditor' occurs only in sections 31 and 32 of the Act and the word 'debtor' occurs, in its undefined form, only in section 34 of the Act in conjunction with the word 'judgment.' The signification of these words under those sections would be dealt with when those sections are reached.

Previous sanction of the Governor-General and of the Governor :—

Section 80-A of the Government of India Act defines the powers of local legislatures for making laws. Sub-section (3) of this section lays down the restrictions subject to which alone a local legislature can make or take into consideration certain classes of laws. These restrictions relate to the previous sanction of the Governor-General being obtained. Similarly section 80-C of the Government of India Act lays down that in certain cases the previous sanction of the Governor is necessary before a particular measure is introduced in the Council.

Section 80-A of the Government of India Act runs as follows :—

Powers of local legislatures. "(1) The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

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

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

(a) imposing or authorising the imposition of any new tax, unless the tax is a tax scheduled as exempted from this provision by rules made under this Act; or

- (b) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty; or
- (c) affecting the discipline or maintenance of any part of His Majesty's Naval, Military, or Air Forces; or
- (d) affecting the relations of the Government with foreign Princes or States; or
- (e) regulating any central subject; or
- (f) regulating any provincial subject which has been declared by rules under this Act to be, either in whole or in part, subject to legislation by the Indian Legislature, in respect of any matter to which such declaration applies; or
- (g) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force; or
- (h) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919, by any authority in British India other than that local legislature, is declared by rules under this Act to be a law which cannot be repealed or altered by the local legislature without previous sanction; or
- (i) altering or repealing any provision of an Act of the Indian Legislature made after the commencement of the Government of India Act, 1919, which by the provisions of such first-mentioned Act may not be repealed or altered by the local legislature without previous sanction :

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

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

Section 80-C of the Government of India Act runs as follows :—

“It shall not be lawful for any member of any local legislative council to introduce, without the previous sanction of the Governor.....any measure affecting the public revenues of a province, or imposing any charge on those revenues.”

Under clause (h) of sub-section (3) of Section 80-A of the Government of India Act power has been given for the framing of rules which specify what laws can and what laws cannot be repealed or altered by the local legislature without previous sanction. These rules are known as “The Local Legislatures (Previous Sanction) Rules.” It is in pursuance of these rules that the previous sanction of the Governor-General is sought and obtained in respect of laws of a certain kind. In the present case the previous sanction of the Governor-General was necessary because “The Punjab Indebtedness of Relief Act” was intended to alter certain laws of this kind. It is doubtful, however, whether the previous sanction of the Governor was necessary. Under section 80-C of the Government of India Act the previous sanction of the Governor is necessary only when it is intended to introduce “any measure affecting the public revenues of a province, or imposing any charge on those revenues.” The present Act does not affect the public revenues of the province, nor does it impose any charge on these revenues. It is true that the amendment of the Provincial Insolvency Act abolishes certain charges which would otherwise have been payable by a person seeking relief under the Insolvency Act. Similarly the creation of Conciliation Boards will involve a certain amount of expenditure. But Section 80-C could hardly have meant such indirect and incidental financial results as measures “affecting the public revenues of a province, or imposing any charge on those revenues.”

The previous sanction rules are given in Appendix III to the Punjab Constitutional Manual Volume II. The appendix containing these rules and the schedule thereto are given below :—

APPENDIX III.

THE LOCAL LEGISLATURES (PREVIOUS SANCTION) RULES.

Government of India Notification No. 312-S., dated 16th, December, 1920.

Whereas by section 47 of the Government of India Act, it is provided that the said Act shall come into operation on such

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date or dates as the Governor-General in Council, with the approval of the Secretary of State in Council, may appoint;

And whereas clause (h) of sub-section (3) of Section 80-A of the said Act confers power to make certain rules, and it is expedient for the purpose of bringing into operation the provisions of the said Act on such date as may hereafter be appointed to make such rules prior to the said date; :

And whereas a draft of such rules was laid before both Houses of Parliament and was duly approved by them;

Now, therefore, in exercise of the powers conferred by Section 37 of the Interpretation Act, 1889, read with the power conferred by clause (h) of sub-section (3) of Section 80-A of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to make the said rules in the form so approved, the same being as follows :—

Short title and commencement. 1. (1) These rules may be called the Local Legislatures (Previous Sanction) Rules.

- (2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Law requiring previous sanction. 2. A local legislature may not repeal or alter without the previous sanction of the Governor-General—

- (1) Any law made by any authority in British India before the commencement of the Indian Councils Act, 1861 : provided that the Governor-General in Council may, by notification in the Gazette of India, declare that this provision shall not apply to any such law which he may specify and, if he does so, previous sanction shall not thereafter be necessary to the alteration or repeal of that law; or
- (2) any law specified in the schedule to these rules or any law made by the Governor-General in Council amending a law so specified.

Year.	No.	Short title.
1860	XLV	The Indian Penal Code.
1864	III	The Foreigners Act, 1864.
1865	III	The Carriers Act, 1865.
"	X	The Indian Succession Act, 1865.
"	XV	The Parsi Marriage and Divorce Act, 1865.
"	XXI	The Parsi Intestate Succession Act, 1865.
1866	XXI	The Native Converts Marriage Dissolution Act, 1866.
"	XXVIII	The Trustees' and Mortgagees' Powers Act, 1866.
1867	XXV	The Press and Registration of Books Act, 1867.
1869	IV	The Indian Divorce Act, 1869.
1870	XXI	The Hindu Wills Act, 1870.
1872	I	The Indian Evidence Act, 1872.
"	III	The Special Marriage Act, 1872.
"	IX	The Indian Contract Act, 1872.
"	XV	The Indian Christian Marriage Act, 1872.
1873	X	The Indian Oaths Act, 1873.
1874	III	The Married Womens' Property Act, 1874.
"	XIV	The Schedule I Districts Act, 1874.
"	XV	The Laws Local Extent Act, 1874.
1875	IX	The Indian Majority Act, 1875.
1877	I	The Specific Relief Act, 1877.
1881	V	The Probate and Administration Act, 1881.
"	XIII	The Fort William Act, 1881.
"	XXVI	The Negotiable Instruments Act, 1881.
1882	II	The Indian Trusts Act, 1882.
"	IV	The Transfer of Property Act, 1882.
"	VII	The Powers-of-Attorney Act, 1882.
1889	IV	The Indian Merchandise Marks Act, 1889.
"	VII	The Succession Certificate Act, 1889.
"	XV	The Indian Officials Secrets Act, 1889.
1890	VIII	The Guardians and Wards Act, 1890.
"	XVIII	The Bankers Books Evidence Act, 1891.
1895	XV	The Crown Grants Act, 1895.
1897	III	The Epidemic Diseases Act, 1897.
"	X	The General Clauses Act, 1897.
"	XIV	The Indian Short Titles Act, 1897.
1898	V	The Code of Criminal Procedure, 1898.
"	IX	The Live Stock Importation Act, 1898.

Year.	No.	Short title.
1899	IX	The Indian Arbitration Act, 1899.
1903	XIV	The Indian Foreign Marriage Act, 1903.
"	XV	The Extradition Act 1903.
1908	V	The Code of Civil Procedure, 1908.
"	IX	The Indian Limitation Act, 1908.
"	XIV	The Indian Criminal Law (Amendment Act, 1908).
"	XV	The Indian Ports Act, 1908.
"	XVI	The Indian Registration Act, 1908.
1909	III	The Presidency Towns Insolvency Act 1909.
"	IV	The Whipping Act, 1909.
"	VII	The Anand Marriage Act, 1909.
1910	I	The Indian Press Act, 1910.
1911	X	The Seditious Meetings Act, 1911.
1912	IV	The Indian Lunacy Act, 1912.
"	V	The Provident Insurance Societies Act, 1912.
"	VI	The Indian Life Assurance Companies Act, 1912.
1913	VI	The Mussalman Wakf Validating Act, 1913.
"	VII	The Indian Companies Act, 1913.
1914	II	The Destructive Insects and Pests Act, 1914.
"	III	The Indian Copyright Act, 1914.
"	IX	The Local Authorities Loans Act, 1914
1916	XV	The Hindus Disposition of Property Act, 1916
1917	I	The Inland Steam Vessels Act, 1917.
"	XXVI	The Transfer of Property (Validating Act, 1917.)
1918	X	The Usurious Loans Act, 1918.
1919	XI	The Anarchical and Revolutionary Crimes Act, 1919.
1920	V	The Provincial Insolvency Act, 1920.
"	X	The Indian Securities Act, 1920.
"	XIV	The Charitable and Religious Trusts Act, 1920.

PART I.

Preliminary.

1. (1) This Act may be called the Punjab Relief of Indebtedness Act, 1934.

Short title, extent and commencement.

(2) This Part and Parts III, IV, V, VI, VII and VIII shall extend to the whole of the Punjab and Part II to such areas as the Local Government may from time to time, by notification, direct.

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

NOTES.

The Act came into force on the 19th, April, 1935, by means of Notification No. 15669 Dated 18th, April, 1935, published in an Extraordinary Gazette.

2. In this Act, unless there is any-
 Interpretation clause. thing repugnant in the subject or
 (Definitions.) context,—

- (1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise;
- (2) "Loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the court, in substance a loan.

NOTES.

Unless there is anything repugnant in the subject or context:—

These are the usual saving words with which the interpretation clause in every legislation opens. The object of these words is to ensure that a definition will not over-ride absolutely any meaning which a word defined in the interpretation clause bears inevitably and unmistakably in a particular context. Such a conflict between the meaning of a word as defined in the interpretation clause and its meaning as used in a particular context hardly ever occurs. But if it does occur, the contingency is covered by the insertion of these saving words in the beginning of the interpretation clause. Such a precaution is not unfair although, to laymen, it may seem uncalled for. Legislation ought to anticipate every contingency which it is

humanly possible to anticipate. These saving words will prove extremely useful in case a word defined in the interpretation clause is, by some over-sight or otherwise, used in a sense which is different from that attached to it in the relevant definition. In such a case, if the meaning attached to a word in the interpretation clause, is irreconcilable to the context in which that word occurs or is inconsistent with the subject treated in the section containing that word it is only fair that the meaning imported by the definition should give place to the only natural and appropriate meaning indicated by the subject or context.

Interest is a very well-known and most ancient institution. It has had a chequered career, no doubt, but has subsisted through all the ages. Though sanctioned by general usage and recognised by almost universal practice, interest has hardly ever been in good odour. Logically speaking, there is nothing inherently wrong about it. Men receive salaries for their personal service. They make a charge, say, for conveyances supplied by them to others on hire. They receive rent for the use or occupation of their lands and houses by tenants. On the same analogy, if a man accepts, or insists on making, a charge for the use of his money by others there is nothing unnatural about it. But the fact remains that most people look askance on interest. The reason, presumably, is that interest always tends in the direction of excess and harshness, has a distinctly demoralising influence on the taker and produces a decidedly ruinous effect on the payer.

Interest defined :—

The definition of interest has been taken bodily from the Usurious Loans Act. When analysed, this definition falls into three parts :—

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

The first portion is no definition at all for the simple reason that it repeats the term sought to be defined. But 'rate of interest' being the basic idea running through the Usurious Loans Act, not only was the usual connotation of "interest" extended in that Act to cover this idea but the primary place in the conception of interest was also conceded to it. This was

hardly logical. What ought to have been done was to assign the primary place in the definition to the usual connotation of the word and then to extend that connotation so as to include 'rate of interest.' However, possibly, the desire to emphasise the importance of 'rate of interest' in connection with that legislation determined the course to be adopted. A more logical course could, with advantage, have been adopted in the present Act.

The second portion deals with the usual conception of interest and contains the crux of the definition. It is the return, made by the borrower to the lender, in excess of what is actually lent, which represents the central idea of interest.

The third portion is designed to make it clear that the excess, no matter in what form or manner it is charged or paid or recovered, cannot cease to be interest. What is, in substance, interest must be regarded as interest even though it is not described as interest in explicit terms. There are many types of transactions in which interest is cloaked under various other forms. An agriculturist, in several parts of the Punjab, takes grain from his *Sahukar* for use as seed or for the purpose of other domestic needs and, under a well-recognised convention, repays it in kind at the next following harvest with an addition the precise measure of which varies from tract to tract. This addition is interest although it is not described or charged as such. With certain *Sahukars* the practice is to make a reduction in advance equal to a year's interest and to enter in the document evidencing the loan concerned an amount which equals what is actually lent together with what is deducted as interest in advance. Another variation of the same practice is to enter as principal the amount actually advanced *plus* a year's interest or a larger premium to cover other incidental risks. The creditor will not, in the nature of things, seek to recover this excess as interest, but it is interest all the same. Similarly, partners in cultivation known as *Sajhis* in the South-east and *Sanjhis* in other parts of the Punjab receive advances of money and even of grain from zamindars and in consideration of those advances they work as *Sajhis*, the value of their services being, by convention, set off as payment towards interest or principal or both, in whole or in part, according as circumstances require or permit. In not a few cases no mention of interest as such is made in these transactions, and, yet, nobody can deny that the services rendered take the place of interest and are nothing but interest. There is another class of cases, met

with in certain districts of the Punjab, in which the debtor places the personal services of one or more members of his family at the disposal of his *Sahukar*. In these cases, the value of these services is, generally, accepted towards the payment of interest as such, but even if interest as such were not mentioned these services or their value would be nothing but interest in spirit and in substance.

Loan.—

In ordinary parlance the word "loan" means something lent to another for his temporary use. We speak of the loan of a book or any other article. The word "loan" always means the return after some time of the thing lent. In the domain of business the word "loan" usually carries with it the idea of cash. However, understood in a wider sense, it may include other things. It is in this wider sense that the word "loan" has been used in this Act.

When we use the word 'means' in connection with a definition, the definition becomes exhaustive and self-contained. It means neither less nor more than what is contained within the four-corners of the words actually used. When we use the word 'includes' with regard to a definition, the definition means not only what follows the word 'includes' but something over and above which is left unspecified. When we use the word 'means' and 'includes' simultaneously in a definition, the definition becomes enlarged. It covers not only what is specifically laid down in the words following the word 'means' but goes further and covers also what is indicated in the words following the word 'includes.'

The definition of "loan" contained in the present Act has been taken bodily from the Usurious Loans Act. "Loan", as defined in the Act, means not only a loan of money but also a loan in kind. For instance, if grain or seed is advanced by a *Sahukar* to his client it will not cease to be a loan simply because it is not a loan of cash. In actual life there are numerous transactions between a *Sahukar* and his clients which consist of advances in kind. The return which is made on loans of this kind is frequently a definite proportion in weight of what is lent to an *Asami*. However it is also equally usual that the value of the grain or seed borrowed by an *Asami* is turned into cash and entered as a cash item bearing interest at the same rate as other advances of cash do.

In the South-eastern districts of the Punjab there was a very common practice within living memory that the items com-

prised of the cash value of grain or seed did not carry any interest for a harvest or a year in accordance with locally prevailing conventions. The idea underlying this practice was that a *Sahukar* had already included in these items the interest due for the period of a harvest or a year by calculating the value of grain or seed on a higher level than prevailing market rates justified. Both the *Sahukar* and his *Asami* clearly understood this idea without speaking of it in so many words. If grain covering the value of these items was not paid at the time of the harvest or at the end of the year interest at the agreed rate became chargeable on these items also with retrospective effect. However, this convention or tacit understanding between the *Sahukar* and his *Asami* has now practically disappeared. It has been replaced by a more businesslike method of charging interest on the items representing the value of grain or seed advanced at the same rate as items of cash advance bear.

Other transactions treated as loan.—

The definition of 'loan' covers not only advances of cash and kind, but also includes any other transaction which the court finds to be a 'loan' in substance. This means that not only transactions which are 'loans' on the face of them but other transactions also may fall under the category of 'loans'. It is for the court to decide whether a transaction which does not purport to be a 'loan' in express terms is or is not a 'loan' in substance. The mere form of a transaction is not the determining factor. A transaction may ostensibly be something other than a 'loan,' but it may turn out to be a 'loan' in substance when its incidents and characteristics are examined critically or are laid bare in their true colours.

It will also be noticed that the definition of 'loan' repeats the term to be defined, and is, thus, not a definition which can lay claim to being scientific. Another noticeable feature is that there is no reference to 'interest' in this definition, and it seems to have been understood that the word 'loan' will be interpreted as involving the idea of 'interest'. This, again, is hardly scientific.

The definition of 'loan' adopted in the Regulation of Accounts Act is more scientific and clearer in this respect. The definition in that Act runs as follows :—

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

The wording adopted in the Regulation of Accounts Act makes it clear that 'loan' means an advance *at interest*. Another feature which distinguishes the definition of 'loan' in the present Act from the definition of 'loan' in the Regulation of Accounts Act is that the definition of 'loan' in the latter Act excludes from its scope many transactions of which no mention has been made in the present Act. The transactions which have been excluded from the category of 'loans' by the definition of 'loan' adopted in the Regulation of Accounts Act are as follows :—

- (i) a deposit of money or other property in a Government Post Office Bank or any other Bank or in a company or with a co-operative society;
- (ii) a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1890, or under any other enactment;
- (iii) a loan advanced by Government or by any other local body authorised by Government;
- (iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under the Companies Act;
- (v) a loan advanced to a trader;
- (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;
- (vii) a transaction which is, in substance, a mortgage or a sale of immovable property.

PART II.

Insolvency Procedure.

Amendment of section 10 of the Provincial Insolvency Act, 1920. 3. In section 10 (1) of the provincial Insolvency Act, 1920, after the existing clause (a) the following clause shall be inserted—

“(aa) his debts amount to two hundred and fifty rupees, and he satisfies the court that he is entitled to summary administration of his estate under section 74 of this Act; or”

Amendment of section 74 of the Provincial Insolvency Act, 1920

4. In section 74 of the Provincial Insolvency Act, 1920, for the words "five hundred rupees" the words "two thousand rupees" shall be substituted.

NOTES.

Section 10 of the Provincial Insolvency Act at present stands as follows :—

10. (1) A debtor shall not be entitled to present an insolvency petition unless he is unable to pay his debts and :—

- (a) his debts amount to five hundred rupees; or
- (b) he is under arrest or imprisonment in execution of the decree of any court for the payment of money :
or
- (c) an order of attachment in execution of such a decree has been made, and is subsisting against his property.

(2) A debtor in respect of whom an order of adjudication whether made under the Presidency-towns Insolvency Act, 1909, or under this Act has been annulled, owing to his failure to apply, or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made."

The amendment to section 10 adds another clause (aa) after the present clause (a) of that section. The object of this amendment as also the object of the amendment to section 74 of the Provincial Insolvency Act is to enable a larger number of persons to avail themselves of the benefit of a simplified, expeditious and less expensive procedure of insolvency. Previously to this amendment only those persons could have taken advantage of this simplified procedure whose debts amounted to five hundred rupees. Now this limit has been brought down to two hundred and fifty rupees with the result that even those who owe no more than two hundred and fifty rupees will be able to seek

the benefit of a simpler, quicker and comparatively inexpensive procedure of insolvency. But in order to be able to avail himself of this extended benefit a debtor shall have to satisfy the court that he is entitled to summary administration of his estate under section 74 of the Provincial Insolvency Act. In the case of a debtor whose debts amount to five hundred rupees it is not necessary for him to prove anything beyond the fact that the debts owed by him total five hundred rupees. In the case of persons owing debts between two hundred and fifty rupees and five hundred rupees it will be necessary for a debtor to satisfy the court that he is entitled, on other grounds, to summary administration of his estate.

Section 74 of the Provincial Insolvency Act as it stands at present runs as follows :—

“74. When a petition is presented by or against a debtor, if the court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value 500 rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely :—

- (i) unless the Court otherwise directs, no notice required under this Act shall be published in the local official gazette;
- (ii) on the admission of a petition by a debtor, the property of the debtor shall vest in the court as a receiver;
- (iii) at the hearing of the petition, the Court shall enquire into the debts and assets of the debtor and determine the same by order in writing, and it shall not be necessary to frame a schedule under the provisions of section 33;
- (iv) the property of the debtor shall be realised with all reasonable despatch and, thereafter, when practicable, distributed in a single dividend;
- (v) the debtor shall apply for his discharge within six months from the date of adjudication, and
- (vi) such other modifications as may be prescribed with the view of saving expense and simplifying procedure;

Provided that the Court may at any time direct that the ordinary procedure provided for in this Act shall be followed in regard to the debtor's estate, and thereafter the Act shall have effect accordingly."

With the law as it stood before the amendment contained in section 4 of this Act the benefit of a summary administration of his estate was open only to a debtor whose property was not likely to exceed in value, five hundred rupees. This limit unduly restricted the scope of the application of section 74 of the Provincial Insolvency Act. In order, therefore, to widen the scope of section 74 of the Provincial Insolvency Act, the limit of five hundred rupees was raised to two thousand rupees by the amendment contained in this section. Under the amended law all debtors the value of whose property is not likely to exceed rupees two thousand will be enabled to claim the benefit of a summary administration of their estates. The advantages which flow from summary administration are as follows :—

- (a) Ordinarily no notice, required under section 91 (1), shall be published in the local official gazette.
- (b) The charges incidental to the publication of a notice in the local official gazette shall be avoided.
- (c) No receiver shall be appointed, the property of the debtor vesting in the court as a receiver.
- (d) no schedule of debts shall be framed, the debts and assets of the debtor being determined by the court after a summary enquiry.
- (e) The debtor shall have the right to apply for a discharge within six months from the date of adjudication. At present there is an unconscionable delay and proceedings in insolvency drag their dreary course for years and years. This will no longer be the case. The combined effect of this amendment and the amendment to section 10 will be materially to enlarge the scope of sections 10 and 74 of the Provincial Insolvency Act. A far larger number of debtors will be in a position to claim the benefits of a quick and inexpensive adjudication of their petitions and speedy discharge.

PART III.

Usurious Loans.

Amendment of the Usurious Loans Act, 1918. 5. In section 3 of the Usurious Loans Act, 1918—

- (i) for the word “and” in clause (a) of sub-section (1) the word “or” shall be substituted:
- (ii) for the word “may” where it appears for the first time in sub-section (1) the words “shall” shall be substituted:
- (iii) for the word “may” after the word “namely” in sub-section (1) the word “shall” shall be substituted:
- (iv) to sub-section (2) the following clause shall be added—
 - “(e) The court shall deem interest to be excessive if on secured loans it exceeds twelve per centum per annum simple interest, or nine per centum per annum compound interest with annual rests, and if on unsecured loans it exceeds eighteen and three-quarter per centum per annum simple interest, or fourteen per centum per annum compound interest with annual rests: provided that the court shall not deem interest in excess of the above rates to be excessive if the loan has been advanced by the Imperial Bank of India, or any banking company registered under the Indian Companies Act, 1913, or any law relating to companies for the time being in force in British India.

NOTES.

The Usurious Loans Act has, to all intents and purposes, been a dead letter. The reasons for this law having proved ineffectual are two-fold. The first reason is that before the provisions of this law could be applied, two conditions had to be

fulfilled under the law as it stood, namely, (a) that the interest was excessive; and (b) that the transaction was, as between the parties thereto, substantially unfair. If only one of these two conditions was fulfilled, the provisions of this law could not be availed of, and it was most difficult, if not impossible, for the debtor to prove to the satisfaction of the court that both conditions had been fulfilled. If only the interest was excessive, and the transaction was not otherwise substantially unfair between the parties, the Usurious Loans Act had no application. On the other hand, if the transaction had all the appearances of being substantially unfair between the parties but the rate of interest was not, in the view of the court, excessive, the transaction stood outside the pale of the Usurious Loans Act.

The second reason for the Usurious Loans Act having proved abortive is that even after both conditions referred to in the preceding paragraph had been fulfilled, the court had a discretion to apply or refrain from applying the provisions of this law to a case pending before it. In the first instance courts were very chary to hold that both the conditions had been fulfilled. Secondly, there was a great reluctance on the part of courts to use their discretion against the plaintiff. The effect of the combined operation of these two reasons was that the Usurious Loans Act completely failed to serve the purpose for which it was intended.

In order to eliminate the circumstances which precluded the use of the Usurious Loans Act in the interest of the debtor, the amendment contained in this section has cast an obligation upon courts to apply the provisions of the Usurious Loans Act in all cases in which even one of the two conditions referred to above has been fulfilled. The courts have been deprived of their discretion in the matter. If either of the two conditions is fulfilled it will no longer rest with a court to refuse to apply this law to the case pending before it. If the interest is excessive the court trying the case must apply the Usurious Loans Act for the benefit of the debtor. If the rate of interest is not excessive but the transaction is otherwise substantially unfair between the parties thereto, the court must yet give the debtor the benefit of the Usurious Loans Act.

There was another difficulty which prevented the free use of the Usurious Loans Act. This difficulty consisted in the fact that there was no definition of "excessive interest". What rate of interest shall be regarded excessive was left entirely to courts. And here again courts failed to exercise their discretion

in favour of the debtor by over-riding the rates agreed upon between the parties even though these rates were manifestly high.

This difficulty has now been solved by prescribing definite limits beyond which rates of interest shall be regarded as excessive.

Section 3 of the Usurious Loans Act as amended by this section now stands as follows :—

3. (1) Notwithstanding anything in the Usury Laws Reopening of trans- Repeal Act, 1855, where, in any suit to actions. which this Act applies, whether heard *ex parte* or otherwise, the court has reason to believe—

- (a) that the interest is excessive; or
- (b) that the transaction was, as between the parties thereto, substantially unfair, the court shall exercise all or any of the following powers, namely, shall—
 - (i) reopen the transaction, take an account between the parties and relieve the debtor of all liability in respect of any excessive interest;
 - (ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;
 - (iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

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

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from

whom they claim at a date more than twelve years from the date of the transaction;

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

Explanation.—In the case of a suit brought on a series of transactions the expression “the transaction” means, for the purposes of proviso (i), the first of such transactions.

(2) (a) In this section “excessive” means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared to the creditor at the date of the loan.

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction.

(c) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d) In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known or must be taken to have been known, to the creditor.

(e) The Court shall deem interest to be excessive if on secured loans it exceeds twelve per centum per annum simple interest, or nine per centum per annum compound interest with annual rests, and if on unsecured loans it exceeds eighteen and three quarter per centum per annum simple interest, or fourteen per centum per annum compound interest with annual rests provided that the Court shall not deem interest in excess of the above rates to be excessive if the loan has been advanced by the Imperial Bank of India, or any banking company registered under the Indian Companies Act, 1913, or any law relating to companies for the time being in force in British India.

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

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security.

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

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

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any court."

It may also be noticed that the Usurious Loans Act, 1918, was amended by Act XXVIII of 1926, section 3. The Amending Act substituted 12 for 6 before the word 'years' in the last line of proviso (1) and added the words "or for the redemption of any such security" at the end of sub-section 3.

A reference has been made in the Preface to the deplorable fact that the Civil Law in India is overwhelmingly pro-creditor. Apart from this fact there is a persistent complaint on the part of the representatives of debtor classes that courts are more prone to a pro-creditor interpretation of the law than they need be or should be. A good deal of mischief has been done by false notions of the doctrine of 'Sanctity of Contract.' No body need quarrel with the soundness of this doctrine in itself. But the doctrine seems to have been misapplied in this country. No allowance has been made for local conditions. Nor has sufficient heed been paid to the surrounding circumstances which so often vitiate the genuine and free character of contracts between debtors and creditors in our country. The doctrine of 'Sanctity of Contract' cannot, and should not, be invoked where the surrounding circumstances of a contract may reasonably be held to cast a suspicion on its free character. This doctrine proceeds upon the assumption that the contract which is the subject-matter of adjudication is based upon the genuine consent of the parties. No consent can be said to be genuine in the absence of free and intelligent exercise of judgment on the part of contracting parties. It is a notorious fact that in this country

the creditor is almost always in a position to dominate the will of the debtor and he uses this position almost invariably to his own advantage. It is also equally notorious that the debtor, generally speaking, is not only economically helpless to resist the will of his creditor but is also hopelessly ill-equipped to see through the tricks and subterfuges of the creditor or to understand the consequences of what he is induced to agree to. Under the circumstances the doctrine of 'Sanctity of Contract' should be applied with due caution. On the contrary what happens in courts is that this doctrine is applied most promiscuously without any regard to the surrounding circumstances of a bargain.

Whether heard *ex parte* or otherwise :—

These words indicate that courts are under an obligation to apply the provisions of this section even when the case is heard *ex parte*. This means that the court should take up the question of its own motion, whether it has been raised by the defence or not. (Vide 130 Indian Cases, page 255).

Has reason to believe :—

This expression has a definite meaning. Section 26 of the Indian Penal Code lays down that "a person is said to have 'reason to believe' a thing if he has sufficient cause to believe that thing, but not otherwise." It has been held in 130 Indian Cases on page 255 that these words mean something more than mere suspicion. According to this ruling "it is only when the circumstances are such that a reasonable man would be led by a chain of probable reasoning to the conclusion or inference that the thing exists, though the circumstances may fall short of carrying absolute conviction to the mind of all persons, that the phrase is satisfied."

Results flowing from the operation of section 3 :—

If the court is once satisfied that in any claim the interest is excessive or that any transaction is, as between the parties thereto, substantially unfair, it is bound to exercise its powers either to re-open the transaction, or to order restitution, or to cancel either wholly or partially, or revise, or alter any security given or agreement made in respect of any loan.

Re-open the transaction :—

If the court is satisfied that the rate of interest charged is excessive then the court can re-open the whole transaction, order

a re-examination of the accounts between the parties and absolve the debtor from any liability in respect of any excessive interest. The plea that the transactions other than the one upon which the claim is based should not be looked into, cannot be entertained. The court has full powers to re-open the transactions which the creditor claims to have been closed.

Restitution :—

It is a matter of daily occurrence that the creditors calculate interest on all previous transactions, strike a balance and incorporate all the interest on previous transactions into a fresh aggregate sum composed of the value of advances and interest and shown as a fresh principal amount in the balance. This device may be regarded by the creditor as closing all previous transactions between him and the debtor, but the court is competent to set this at naught. In spite of the agreement evidenced by a fresh balance the court can scrutinise all the previous dealings which have taken place between the parties and relieve the debtor of liability in relation to any excessive interest incorporated in the balance. This is not all. If anything has already been paid or allowed in account in respect of such liability the court can order a restitution of any sum which it considers to be repayable.

Cancellation of security or agreement :—

If the debtor has given any security or entered into any agreement in respect of a loan which is tainted by an excessive rate of interest or amounts to a transaction which is substantially unfair, the court is authorised to set aside either wholly or in part or revise or alter that security or agreement. If it is found that the creditor has transferred the security to somebody else or has otherwise parted with it, that will not prevent the court from doing full justice to the debtor, for, it has the power to order the creditor to indemnify the debtor in such manner and to such extent as it may deem just. It may not be possible to order the return of the security but the creditor can be ordered to make good to the debtor the loss suffered by him in consequence of the creditor having parted with the security.

It is to be noted that although the court is not bound to exercise all the three powers referred to above yet it is incumbent upon it to exercise at least one of these powers in favour of the debtor in all cases in which section 3 of the Usurious Loans Act applies.

Savings :—

The powers of a court in re-opening any agreement purporting to close previous dealings are restricted in two ways. In the first instance no court can re-open an agreement closing previous dealings if the agreement was entered into more than 12 years before the date of the transaction in suit. Secondly, the court cannot touch the agreement if it has already resulted in a decree of a court of law.

It may be noted that previously to the Amending Act of 1926 agreements which took place more than 6 years from the date of the transaction in suit were protected against inference. The Legislature of the United Provinces has amended this sub-section of the Usurious Loans Act by substituting 17 years as compared with 12 years in the amendment adopted in our own province.

Application to suits for redemption :—

Previously to the Amending Act of 1926 the Usurious Loans Act was not applicable to suits for redemption. At all events, its application to such suits was doubtful. The Amending Act of 1926 added the words "or for the redemption of any such security" at the end of sub-section 3. In virtue of this addition the Usurious Loans Act shall now also apply, without any doubt whatever, to suits for redemption.

Interest when excessive :—

Before the present amendment came into force the law as to what interest should be regarded 'excessive' was completely vague and obscure. The case reported as 31 P. R. of 1918 will show how harsh the law was to the debtor in respect of rates of interest in the absence of the present amendment. That case related to a deed of mortgage about agricultural land. The deed provided that the principal money together with interest at Rs. 1/9/- per centum per mensem was to be paid within one year and that on default the transaction was to be deemed to be a sale. It further stipulated that interest was to be payable from year to year, and in the event of non-payment every year the debtor would be liable to pay compound interest. The report of the case does not state the amount of the principal originally advanced, nor does it state the total amount of the principal and interest which was claimed by the mortgagee as due to him. But the Judge remarked "that the amount of interest has no doubt become a large sum" and the decision of

the court is "that the mere fact that the rate of interest is excessive is no ground for relief unless it is shown that the lender was in a position to dominate the will of the borrower."

Another case which throws still more lurid light on the state of law as it existed before this amendment is reported as 124 P. R. of 1918. The case was decided by the highest judicial tribunal in the Empire, namely, the Privy Council. The facts of the case are that an expectant heir fell into the clutches of a money-lender, the original principal was only Rs. 4,471/5/9, this amount had expanded to a principal sum of no less than Rs. 61,800/- and that no less than Rs. 40,489/3/- was claimed as interest by the plaintiff. The District Judge, in delivering his judgment, remarked that "one could not avoid being struck by the fact that an original principal of Rs. 4,471/5/9 had expanded to a principal sum of no less than Rs. 61,800/-.....and that such a result certainly impressed one at first sight as distinctly harsh and unconscionable. But I doubt whether on examination it can be held really to be so, for what we have to look at, primarily at any rate, are the circumstances existing at the time of the original dealing, and not the ultimate result of these dealings....In other words, the mere fact that the principal sum now claimed exceeds enormously the amount originally advanced will be no ground for holding the transaction unconscionable." Their Lordships of the Privy Council quoted these remarks of the District Judge with approval and held that "the learned Judge has.....in this passage laid down the true principle upon which this extreme augmentation of the deceased defendant's indebtedness should be regarded and dealt with. It is not enough—indeed, it is misleading—to look at the result alone." Their Lordships further held "that the questions raised in the plea must be decided with reference to the provisions of the Indian Contract Act, 1872, as amended by the Indian Contract Amendment Act, 1899, and on these alone—the principles upon which English Courts of Equity deal with similar questions being therefore entirely inapplicable."

The passages quoted above clearly show that the Indian law of contract as embodied in the Contract Act is very harsh. It takes no account of the Hindu Doctrine of *Damdapat*, nor does it proceed upon the principles of equity recognised in England. If the case had been decided in accordance with the principles of equity respected by courts in England or in accordance with the principles enunciated by Manu the result would have been entirely different. But the law being what it was,

courts found themselves compelled to give a verdict in favour of a transaction which was obviously harsh and manifestly unfair. Happily the present amendment changes the law on the subject, and, in future, it will no longer be possible for creditors to have effect given to contracts which are harsh on the face of them, and offend against the law as contained in the present amendment.

Rates of interest vary from province to province. Even within the limits of the same province these rates vary from tract to tract. Again, these rates will vary according to the character and position of the debtor. Yet again, these rates will vary according to the absence or presence of a security, and, in the presence of a security, according to the nature of that security. Therefore it will serve no useful purpose to quote any rulings under this head beyond the ones which have already been quoted to indicate the general principles which have hitherto guided the courts in deciding cases.

The amendment contained in this section lays down definite limits above which rates of interest shall be regarded by courts as excessive :

- (a) In the case of secured loans, rate of interest shall be regarded as excessive :
 - (i) if it exceeds 12 per centum per annum simple interest ; or
 - (ii) if it exceeds 9 per centum per annum compound interest with annual rests.
- (b) In the case of unsecured loans, rate of interest shall be regarded as excessive :
 - (i) if it exceeds $18\frac{1}{4}$ per centum per annum simple interest ; or
 - (ii) if it exceeds 14 per centum per annum compound interest with annual rests.

The amendment gives a clear and unequivocal guidance to courts which will no longer be in any doubt as to what rates of interest are to be regarded as excessive.

It should be borne in mind that the laying down of the rates which shall be regarded as excessive does not preclude courts from holding as excessive any rates which are lower than the rates mentioned in this amendment. These rates represent the maximum beyond which permissible rates of interest cannot

go. In respect of all rates lower than these, courts will still have powers to exercise their discretion one way or the other. If, in their view, rates of interest agreed upon are unreasonable as between the parties concerned, courts can hold them to be excessive and exercise thereupon all or any of the powers indicated in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 3 of the Usurious Loans Act.

Certain loans have been excluded from the scope of this section. The Imperial Bank of India and any banking company registered under the Indian Companies Act, 1913, or any law relating to companies for the time being in force in British India have been excluded from the operation of this section. The reasons which have led to the exclusion of the Imperial Bank of India and other banking companies have not been stated anywhere. But these reasons can be easily imagined. In the first instance, it can be safely presumed that in the transactions of these institutions the employment of tricks and subterfuges is absent, and the transactions are nothing more nor less than what they appear to be on the surface. Moreover, the parties who deal with these institutions are generally business people, well able to look after their interests and there is no occasion for providing any special legal safeguards for this class. Again, the transactions which take place between these institutions and their customers relate to the domain of business and commerce, and the provisions of this section, if applied to them, would have meant undue and unnecessary interference with the course of trade and commerce.

Substantially unfair as between the parties :—

This expression means that the transaction should be substantially unfair as between the parties concerned. There is no criterion by which a transaction can be described as unfair in the abstract or absolutely. It must have reference to the parties concerned. No transaction can be declared to be unfair in itself or on *a priori* grounds. A transaction which may be unfair as between A and B may not be unfair as between A and C. The real test of the unfairness of a transaction is whether the creditor has, *vis-a-vis* his debtor, taken an unfair advantage. If no unfair advantage is proved to have been taken by the creditor the transaction cannot be characterized as unfair.

In order to be "substantially unfair" a transaction need not violate any specific injunctions of any law. If a transaction violates the ordinary dictates of reason or is opposed to the spirit and substance of any law it will be regarded as substan-

tially unfair. It has been held in 130 I. C. pages 254-256 that the court need not go into any elaborate and intricate questions in arriving at a conclusion whether a transaction is or is not substantially unfair. All that is needed is a resort to the tests laid down in clause (d) of sub-section 2 of section 3 of the Usurious Loans Act. The rate of interest, as laid down in the explanation to sub-clause (2), may of itself be sufficient evidence that the transaction was substantially unfair. The relations existing between the parties, such as those of guardian and ward, landlord and tenant, master and pupil, etc., might also be taken into consideration as collateral circumstances strengthening the suspicion that unfair advantage was taken provided that there are other clear indications of that suspicion.

Bona fide transferees protected:—

Sub-section 4 of section 3 of the Usurious Loans Act protects the rights of *bona fide* transferees. But this protection is contingent upon two conditions: (a) Firstly, the transferee should prove to the satisfaction of the court that the transfer to him was not a mere colourable transaction but was one for value and *bona fide*. Secondly, he should satisfy the court that at the time of the transfer to him he had no notice of any circumstances which would have entitled the debtor to the benefit of this section.

The word "notice" in this sub-section has the same meaning as is ascribed to it in the Transfer of Property Act. Curiously enough the Usurious Loans Act as printed in the latest editions of reference books which are available purports to locate the word 'notice' in section 4 of the Transfer of Property Act while, as a matter of fact, it does not occur in that section at all. On the other hand the word has been defined in section 3. The definition of the word "notice" in section 3 of the Transfer of Property Act is as follows:—

"A person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from the inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the point is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229."

Retrospective effect.

6. The provisions of this part of the Act shall apply to all suits pending on or instituted after the commencement of this Act.

NOTES.

This Act came into force on the 19th April, 1935. From that date onwards the provisions of the Usurious Loans Act as amended by section 5 of the Punjab Relief of Indebtedness Act shall apply to all suits pending on or instituted after that date. This means that the Act has retrospective effect. No Act can be given retrospective effect unless a specific provision in that behalf has been made. As the need for relief to debtors was essential in respect of their existing liabilities, the legislature has thought fit to give retrospective effect to the provisions of this part of the Act.

One serious objection made by critics against this section was that the language used here would lead to practical difficulties, inasmuch as cases ripe for judgment might have to be tried afresh and even pending appeals might have to be sent back for re-trial. This objection is well-founded. But the legislature seems to have enacted this section deliberately, regardless of the practical difficulties which may result. The object of the legislature seems to have been to give relief to the debtor in all cases in which relief could possibly have been given. In Part IV of this Act a debtor can have even the amount due under a decree reduced by a resort to proceedings before a Conciliation Board. Therefore in order to secure the primary object of giving relief to the debtor in all cases, the legislature has deliberately incurred the risk of these difficulties.

PART IV.

Debt Conciliation Boards.

Before commenting on the various sections included in this part a few prefatory remarks will not be out of place. Although individuals differed as to the measure and manner in which relief to debtor classes should be given, there was a universal feeling that the amount of indebtedness had swollen to such an extent that a reasonable and substantial reduction in the amounts of debts was absolutely essential, if any appreciable relief was to be given. The representatives of debtor classes insisted that debts should be greatly scaled down regardless of the wishes of creditors. On the other hand, the representatives of money-lending classes contended that such a procedure would be entirely unprecedented and unjustifiable. The only condition on which they expressed their readiness to make a concession in this direction was that the payment of reduced amounts should

be guaranteed by the Government. Obviously no Government could make itself responsible for the repayment of debts in the manner suggested by the champions of money-lending classes without landing itself into difficulties from which extrication would have been extremely difficult.

It is true that the State of Bhawa Nagar had composed the debts owed by the *ryots* to money-lenders at a flat rate of four annas in the rupee and repaid the reduced amount from its own resources on the understanding that the State would recover the amount it had paid on behalf of debtors in easy instalments along with land revenue. In a small State where the total amount of debts was limited and where a benevolent despotism, not handicapped by any rigid financial code, could adopt such methods of recovery as it thought best and could renounce any claims which it pleased, such an arrangement was not impossible. But in a province like the Punjab where the total debt of agricultural classes is estimated at about two hundred crores, such a procedure would be unthinkable. However, some method of scaling down debts was considered essential and the Government hit upon the plan of instituting Conciliation Boards. This idea was obviously borrowed from the Central Provinces Debt Conciliation Act. The provisions of the Punjab Legislation on this subject differ from those of the Central Provinces legislation in some very vital respects. But the central idea under both legislations is that scaling down should take place as a result of mutual agreement between the debtor and the creditor.

As will be noticed in some detail under relevant sections the provisions of this part of the Punjab Relief of Indebtedness Act differ in some important respects from the provisions of the Central Provinces Debt Conciliation Act. The main points of difference may be briefly summed up as follows :—

- (1) The definitions of "debt" and "debtor" differ substantially in the two Acts.
- (2) The normal limit beyond which claims shall not be entertained by Conciliation Boards is 10,000 rupees in the Punjab and 25,000 rupees in the Central Provinces.
- (3) Unlike the Central Provinces Debt Conciliation Act the Punjab Relief of Indebtedness Act makes no provision for the functioning of the Board when the Chairman is temporarily prevented from discharging his duties.

- (4) The Punjab Relief of Indebtedness Act prescribes no penalty as does the Central Provinces Debt Conciliation Act, if a creditor fails to produce along with the statement of his debts any document which is in his possession or under his control.
- (5) Unlike the Central Provinces Debt Conciliation Act the Punjab Act does not require the registration of an agreement under the Indian Registration Act.
- (6) If a debtor defaults in paying any amount due in accordance with the terms of an agreement the Central Provinces Debt Conciliation Act provides for the recovery of the amount due under the agreement as an arrear of land revenue. There is no such provision in the Punjab Relief of Indebtedness Act.
- (7) The appearance of Legal Practitioners before a Board is forbidden under the Central Provinces Debt Conciliation Act. In the Punjab such appearance is allowed with the permission of the Board.

7. (1) "Debt" includes all liabilities of a debtor in cash or in kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether mature or not, but shall not include debts incurred for the purposes of trade, arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any debt which is barred by the law of limitation, or debts due to co-operative banks or to co-operative societies or to the Imperial Bank of India or to any banking company registered under the Indian Companies Act, 1913, or the law relating to companies for the time being in force in British India.

(2) "Debtor" means a person who owes a debt and

- (i) who both earns his livelihood mainly by agriculture, and is either a landowner, or tenant of agricultural land, or a servant of a landowner, or of a tenant of agricultural land or
- (ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agriculture.

Provided that a member of a tribe, notified as agricultural under the Punjab Alienation of Land Act, 1900, shall be presumed to be a debtor as defined in this section until it is proved that his income from other sources is greater than his income from agriculture.

- Explanation.**—(i) A debtor shall not lose his status as such through involuntary unemployment or on account of incapacity, temporary or permanent, by bodily infirmity, or, if he is or has been in service of His Majesty's Military or Naval Forces, only on account of his pay and allowances or pension exceeding his income from agricultural sources.
- (ii) A debtor shall not lose his status as such by reason of the fact that he makes income by using his plough cattle for purposes of transport.
- (iii) A debtor shall not lose his status as such only because he does not cultivate with his own hands.

If any question arises in proceedings under this part of the Act, whether a person is a debtor or not, the decision of a Debt Conciliation Board shall be final.

(3) "Agriculture" shall include horticulture and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables and the like.

(4) "Prescribed" means prescribed by rules made under this part of the Act.

NOTES.

The corresponding definition of "debt" in the Central Provinces Debt Conciliation Act is as follows:—" 'Debt' includes all liabilities owing to a creditor, in cash or kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether due or not due, but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any money for the recovery of which a suit is barred by limitation."

The definition of "debt" adopted in the Punjab differs from the definition adopted in the Central Provinces in so far as the former excludes from its scope:—

- (a) Debts incurred for the purposes of trade;
- (b) debts due to co-operative banks;
- (c) debts due to co-operative societies; and
- (d) debts due to Imperial Bank of India or any banking company registered under the law of the land.

From the exclusions enumerated above it is apparent that the Punjab legislature has been more mindful of the interests of trade and more deferential to the wishes of commercial classes. It is also clear that the interests of the co-operative movement have been carefully kept in view. All the debts which are excluded from the purview of the definition contained in section 7 will be beside the jurisdiction of Conciliation Boards.

The definition of debt is not precise. It simply enumerates certain obligations which shall be included under it and certain other obligations which shall be excluded from its scope. Apart from the fact that the definition is not precise it is also not exhaustive. In addition to the various items of liability enumerated in this section there may be other obligations which may amount to a debt. For instances, a deposit with a person, may, in certain cases, be regarded as amounting to a debt. Similarly the amount of *mehr* promised to a Muhammadan wife will easily fall in the category of a debt.

In cash or in kind :—

Although the usual notion of debt is closely associated with cash it does not follow that obligations or liabilities arising from the loans made in kind will not be treated as 'debt'. In fact, advances whether made in kind or in cash are in no way distinguishable from each other under the law.

Secured or unsecured :—

The word 'debt' as defined in this section covers not only ordinary loans advanced on personal credit but also all those loans which are secured by means of a mortgage, charge, or lien on the property of a debtor. If jewellery has been pawned and an advance of money taken on the basis of its security the advance will be a debt within the meaning of this section. Similarly if a person mortgages his house or his land the money advanced on the security of the property mortgaged will be a debt as defined in this section. It will thus seem that a mortgagor can present an application before a Conciliation Board for the settlement of a debt due under a mortgage. As both secured and unsecured debts fall within the purview of the

definition given in this section, a mortgagor will be perfectly with- in his rights to claim the benefit of the procedure laid down in this part of the Act for an amicable settlement of his debts. However, as Conciliation Boards can intervene only when the parties give their mutual consent to an agreement, the extent to which the special procedure laid down here can be availed of by a mortgagor depends, to a large extent, upon the free consent of the mortgagee. Thus while in actual practice very few attempts of mortgagors for the redemption of their property through the instrumentality of Conciliation Boards will come to fruition, the language used here is wide enough to cover such attempts.

Payable under a decree or under order of a Civil Court :—

While section 14 of this Act makes a definite reservation to the effect "that a decree or order of a civil court shall be conclusive evidence as to the amount of the debt to which the decree relates" even a debt payable under a decree or order of a civil court can be re-opened in the sense that as a result of mutual agreement the amount due may be reduced to any extent.

Whether mature or not :—

It is immaterial for the purposes of this section whether a debt has become due for payment or not. Even before it becomes due for repayment it can be made the subject of a settlement by means of proceedings before a Conciliation Board.

Incurred for the purposes of trade :—

It is not every debt for the settlement of which the services of a Conciliation Board are available. Debts which have been incurred for the purposes of trade do not fall within the category of 'debt' as defined in this section and will thus be outside the jurisdiction of a Conciliation Board. This particular exclusion leaves a big loop-hole for the evasion of the law contained in this part of the Act. Any needy person can be persuaded to acknowledge in a bond that he was borrowing the amount entered in the bond for the purposes of trade. However, the law can never be made fool-proof, and it is extremely difficult for any law to help those who will not help themselves.

The term 'trade' has not been defined anywhere in this Act. However, the term 'trader' has been defined in the Punjab Regulation of Accounts Act, 1930 as follows :—

"Trader means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include a wholesale or a retail merchant, a commission agent, a broker, a manufacturer, a contract-

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

As the Punjab Relief of Indebtedness Act and the Punjab Regulation of Accounts Act are laws of an analogous character it will be permissible to attach the same or similar meaning to the word 'trader' and its variants under the present Act, as is ascribed to it in the Punjab Regulation of Accounts Act. Therefore the term 'trade' will mean the occupations or pursuits in which a trader engages.

Arrears of wages :—

The term 'wages' means the remuneration which is paid to household servants or manual workers by their employers. Arrears of wages have been excluded from the scope of 'debt' probably because they are not of sufficient importance, and the number of instances in which wages fall into arrears and remain unpaid for any length of time will be very limited.

Land revenue or anything recoverable as an arrear of land revenue :—

Liabilities of the category described here are, almost invariably, dues payable to Government. Their exclusion from the category of 'debt' is easily intelligible and was inevitable.

Time-barred debts :—

The reason for the exclusion of debts in respect of which a suit is barred by the law of limitation is obvious and requires no comment.

Debts due to co-operative banks :—

Co-operative banks and co-operative societies have, for reasons of policy, been placed in a position of special advantage, for the recovery of the debts due to them by the law of the land. The present Act does not affect that position of advantage. The reasons which account for the distinction which has been made between ordinary creditor and co-operative institutions are as follows :—

- (1) In the case of debts due to co-operative institutions the creditor is not a complete stranger or an entirely third person.
- (2) The profits resulting from the money-lending transactions of co-operative institutions are shared by the debtor to a certain extent.

- (3) The accounts are kept regularly in a prescribed form by all co-operative institutions.
- (4) The accounts are regularly audited by an official or semi-official agency and the account-books are open to inspection not only by responsible Government officers but also by the debtor himself at any moment in the case of village societies.
- (5) The working of co-operative institutions is controlled, regulated and guided by Government to an extent and in a manner which will secure to the debtor any relief necessitated or justified by the circumstances of the situation. Those who are not intimately associated with the co-operative institutions are not aware that as soon as the need for substantial relief became apparent, Government in the exercise of its controlling authority, issued instructions that the rate of interest should be materially lowered with retrospective effect and that individuals who owed debts to co-operative societies should not be required to pay an aggregate amount larger than that which, together with the reserve fund, will be sufficient to pay off the liabilities of the societies themselves.

Debts due to Imperial Bank of India, etc :—

The reasons which account for exemption in respect of the Imperial Bank of India and other banking companies have already been explained and need not be repeated here.

Debtor :—

The definition of the term 'Debtor' in the present Act is rather cumbersome. The corresponding definition in the Central Provinces Debt Conciliation Act is as follows :—

“ ‘debtor’ means a person who earns his livelihood mainly by agriculture and who is an occupancy tenant or absolute-occupancy tenant or *raiyat* or *raiyat-malik* or a *malik-makbuza* or a proprietor, whose debts exceed Rs. 150/-”.

It is clear that the definition of the Central Provinces Act is much simpler. The reason why our own definition is not simple is easy to divine. The economic and political conditions prevailing in our province, the delicate nature of the relations existing between the debtor and the creditor, the character of our agrarian laws and the degree of class consciousness in

the indebted section of the Punjab population account for the adoption of such a complicated and cumbersome definition.

In order to be reckoned as a debtor a person must owe debt, and over and above that must fulfil one of the following two conditions :—

- (i) he must be earning his livelihood by agriculture as well as be either a landowner or tenant of agricultural land, or a servant of a land-owner, or of a tenant of agricultural land; or
- (ii) he must be earning his livelihood as a village menial engaged in agricultural labour.

While the term 'debtor' requires the fulfilment of two conditions, namely, that of being in debt and one of the two conditions stated in (i) and (ii), the condition laid down in (i) is, in its turn, composed of two elements. In the first instance, the person concerned should depend upon agriculture as the main source of his livelihood. Secondly, he should either be a landowner or a tenant of agricultural land or a servant of one of these two types of persons. If he is only dependent on agriculture as the main source of his livelihood he will not be regarded a debtor unless he is also a land-owner or a tenant of agricultural land or a servant of one of them.

One of the two alternative conditions which a person in debt should fulfil in order to be classed as a debtor relates to his status as a village menial. If a person is in debt and is also a village menial engaged in agricultural labour on payment he will be regarded as a debtor and will be entitled to claim the benefit of the special agency brought into existence by this Act for the settlement of debts by mutual agreement.

"Village menial" is a well-understood expression and indicates a certain class of people which forms part of the agricultural community of our province. He need not necessarily be a resident of a village in order to be entitled to the status of 'village menial'. At first sight it would appear that the person of this class claiming to be a debtor must be a resident of a village. But those who are acquainted with the economy of agricultural society and agrarian vocabulary would have no difficulty in understanding the true concept of this expression. The expression simply means a person who usually works as an agricultural labourer for payment in cash or on payment of a certain share in agricultural produce, irrespective of the fact whether he resides in a village or in a town. However, the use of the word 'village' as a prefix to 'menial' is unfortunate, and courts may

easily differ and blunder in their interpretation of this expression.

A proviso has been added to the definition of 'debtor'. A person belonging to a notified agricultural tribe will be presumed to be a debtor until the contrary is proved, that is, until it is proved that his income from other sources is greater than his income from agriculture, a person belonging to one of what are known as statutory agricultural tribes shall be presumed to be a 'debtor' within the meaning of this section.

Three explanations have been added to sub-section (2) of section 7 in order to safeguard the interests of certain classes of people. The language used in the first two explanations is neither happy nor clear. What was intended, and was frequently insisted upon by the representatives of debtor classes in the course of the debates in the Council and the proceedings of the Select Committee, was the enunciation of the principle that certain types of income earned by so many members of our average agricultural population should be treated as a part of income from agriculture. Such types of income are represented by the pay and allowances or pension earned by service in His Majesty's military or naval forces or by plying carts or plough-cattle for hire. Whether this intention has been fulfilled by the language of these explanations is open to doubt.

The first explanation resolves itself into two parts:— (a) A debtor shall not lose his status as such through involuntary unemployment or on account of incapacity, temporary or permanent, caused by bodily infirmity;

(b) a debtor shall not lose his status as such if he is or has been in service of His Majesty's military or naval forces, only on account of his pay and allowances or pension exceeding his income from agricultural sources.

Not only is the language of this explanation lacking in clearness but it also offends against the requirements of literary grace and good composition. The whole sentence reads jerkily. The first part of the explanation means that a 'debtor' shall continue to be regarded as a debtor in spite of the fact that he is not employed in the pursuits of agriculture if his unemployment is involuntary, or arises from any temporary or permanent incapacity caused by bodily infirmity. The second portion of the explanation means that if a debtor is or has been in service of His Majesty's military or naval forces he shall not lose his status as such "only on account of his pay and allowances or pension exceeding his income from agricultural sources.

Now the question arises what the phrase "only on account of his pay and allowances or pension exceeding his income from agricultural sources" means? If it means that his emoluments from military or naval service will be regarded as part of his agricultural income it will carry out the intention which the representatives of debtor classes had in view. But the language used places "his pay and allowances or pension" in contradistinction to "income from agricultural sources". This language clearly militates against "his pay and allowances or pension" being reckoned as part of his agricultural income. On the other hand if it means that "his pay and allowances or pension" will not be counted on either side it will not lead to any positively undesirable results. But if it means that while the bare ground of "his pay and allowances or pension exceeding his income from agricultural sources" shall not deprive him of his status as debtor, the fact of "his pay and allowances or pension," together with even a slender income from non-agricultural sources exceeding his income from agricultural sources shall be allowed to deprive him of his status as a debtor, the whole object referred to above is frustrated. And yet this construction, however repugnant to the actual intention of the legislature, is not barred by the language in which this explanation has been couched.

The meaning of the second explanation is quite clear. If a debtor augments his income from the orthodox agricultural sources by using his plough-cattle for purposes of transport during the intervals of slackness in agricultural activities he shall not lose his status as a debtor by reason of this additional income. The language used here is less ambiguous and can reasonably be interpreted to sustain the conclusion that such additional income shall be treated as a part of agricultural income.

The third explanation is quite clear in its intention. It aims at securing the status of a debtor to a person in spite of the fact that he may not be cultivating land with his own hands provided he fulfils the other conditions which entitle a person to be accepted as a debtor.

In interpreting section 60 of the Civil Procedure Code it has been held by various High Courts that a person shall not be regarded as an agriculturist unless he cultivates with his own hands. The legislature had probably this interpretation of section 60 of the Civil Procedure Code before its mind when it inserted the third explanation. The legislature probably apprehended that a person who is not cultivating his land with his

own hands may not be regarded as earning his livelihood by agriculture, because the Dictionary meaning of agriculture is cultivation of soil with one's own hands.

It is a matter for satisfaction that the decision of a Debt Conciliation Board as to whether a person is a debtor or not has been invested with finality. Unless this had been done legal quibbling would have found a large scope for prolonging proceedings where speed and quickness are needed most.

Sub-section (3) of this section imparts extended meaning and scope to "agriculture". Horticulture and use of land for any purpose of husbandry including the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables and the like have by this definition been brought under the definition of "agriculture" without leaving any room for doubt. All the avocations mentioned in this sub-section fall within the scope of agriculture. The addition of the words "and the like" at the end will bring all the activities allied with or akin to "agriculture" within the purview of this definition.

It is worthy of note that the words 'landowner', 'tenant', 'land' and 'agricultural land' have not been defined in this Act. These words have been defined in other statutes. But it is, to say the least, both unscientific and undesirable to have to depend for the interpretation of terms used in one statute upon definitions of those terms given in other statutes. Again the same term is sometimes defined in more statutes than one, and the definitions in these statutes are not necessarily identical. The absence in this Act of the definitions of these terms is likely to cause some difficulty to courts when they are called upon to interpret these terms in the discharge of their duties, particularly in the absence of any indication as to the other statutes with reference to which these terms are to be interpreted.

8. (1) (a) The Local Government
Setting up of Debt Conciliation Boards. may for the purpose of amicable settlement between debtors and their creditors establish debt conciliation boards.

(b) The Local Government shall define the local limits of the area in which a board shall have jurisdiction.

(c) The Local Government shall determine the pecuniary limits of the jurisdiction of the board, provided that no board shall have jurisdiction to make a settlement between a debtor and his creditors if the total debts of the debtor exceed Rs. 10,000 or such larger amount as the Local Government may prescribe for any area.

(d) Such board shall consist of a chairman and two or more members to be appointed by the Local Government.

(e) The chairman and every member of a board so established shall be appointed for a term not exceeding three years, but shall be eligible for re-appointment on the expiry of his term.

(f) The quorum of a board shall be prescribed by the Local Government.

(g) Where the chairman and members of a board are not unanimous, the opinion of the majority shall prevail, and, if the board is equally divided, the chairman shall exercise a casting vote.

(2) The Local Government may cancel the appointment of any member of a board or dissolve any board.

(3) The Local Government shall notify in the Gazette—

(a) the establishment of a board and the appointment of its members; and the board shall be deemed to have been established and its members appointed from the date specified in such notification or notifications;

(b) the cancellation of the appointment of any member of a board; and from the date specified in such notification the member shall cease to be a member of the board;

(c) the dissolution of a board; and from the date specified in such notification the board shall cease to exist.

(4) When a board is dissolved or ceases to exist otherwise, the Local Government may at any time establish another board within the same local limits in which the former board had jurisdiction and may declare this board to be the successor in office of the first board and may confer on it power to dispose of such applications under section 13 (2) and section 23 as the Local Government may direct.

NOTES.

Section 8 deals with the setting up of Conciliation Boards. These Boards are an essential part of the scheme under which relief is to be afforded to debtors. As has already been explained the scaling down of debts is to be allowed only as a result of agreement between the debtor and the creditor. To bring the parties together and to secure this agreement some machinery was essential. This machinery will be supplied by these Conciliation Boards.

In the statement of Objects and Reasons it has been explained that, in the first instance, only a few Boards will be set up in selected areas experimentally. If the experiment succeeds in these selected areas it will be extended gradually to other parts of the province. If the experiment does not succeed in the selected areas then some more areas may possibly be selected in order to make sure that the failure in the previously selected areas was not due entirely to local conditions. However, if experience indicates that the chances of success are not sufficiently promising, the experiment will be given up.

Five Conciliation Boards have so far been set up in the province. They are located in the districts of Jhang, Hoshiarpur, Gurdaspur, Amritsar and Karnal. The Rawalpindi Division is still without a Conciliation Board. The reports received at the headquarters with regard to the working of these Boards are, as indicated by the answer to a Council question asked in February, 1936, very encouraging. They seem to have inspired confidence in both debtors and creditors. The applications made for the settlement of debts on behalf of creditors are considerable in numbers, a sure indication of the fact that creditors do not view these Boards with distrust or suspicion as was originally apprehended.

The local limits of the area in which a Conciliation Board shall have jurisdiction normally cover a tahsil at present.

The pecuniary limits of the jurisdiction of these Boards are also to be determined by the Local Government. The section itself indicates a normal pecuniary limit of Rs. 10,000. But it is within the competence of the Local Government to lower or raise this limit in accordance with the local conditions of the area in which these Boards exercise jurisdiction. In the Central Provinces every debtor whose debts exceed Rs. 150/- can apply to a Conciliation Board for the settlement of his debt. The highest normal limit in the Central Provinces is 25,000 rupees. But the Local Government has power to prescribe a higher limit

for any particular area. The strength of these Boards is, both in the Central Provinces and in the Punjab, a minimum of 3 including the chairman. The Punjab Act does not lay down any maximum for this strength. But the Central Provinces Act fixes the maximum at 9.

In the Central Provinces the chairman and members of the Board are to be appointed only for a year in the first instance, and are eligible for re-appointment for a further period not exceeding one year. In the Punjab the chairman and members of the Board are to be appointed for 3 years in the first instance, and are eligible for re-appointment for an indefinite period.

Under both Acts the opinion of the majority is to be the rule of decision, and the chairman is to have a second or casting vote when the Board is equally divided.

If the chairman of a Board is temporarily prevented from discharging his duties, he has, under the Central Provinces Act, the power to nominate any member of the Board to act for him during his temporary absence. The Punjab Act does not contain any such provision.

Under the Punjab Act the Local Government has the power to cancel the appointment of any member of a Board or to dissolve the Board as a whole. The Central Provinces Act has no such provision.

When the Board is dissolved by the Local Government or ceases to exist in the ordinary course the Local Government has under sub-section (4) of this section the power to appoint another Board within the same local limits. This newly-appointed Board can be invested with the power to dispose of such applications of 'revived' debt under section 13 (2) and such applications for review under section 23 as the Local Government may direct.

Application for settlement between a debtor and his creditors.

9. A debtor or any of his creditors may apply to the board appointed for the area in which a debtor resides or holds any land, to effect a settlement between the debtor and his creditors:

Provided that no application shall be made if the debtor's debts exceed ten thousand rupees or such larger sum as the Local Government may prescribe for any particular area.

NOTES.

This section is intended to lay down the conditions under which an application for a settlement of the debts of a debtor is competent. So far as a creditor is concerned he does not seem to be required to fulfil any particular condition. In the case of a debtor two conditions have been laid down. One of these conditions is that his debts should not exceed the pecuniary limit which has been prescribed by the Local Government for the particular area concerned. The other condition is that the debtor who applies should either reside or hold land in the area in which the Board applied to possesses jurisdiction.

The word 'resides' used in the section is not preceded by any qualifying word such as permanently, usually, voluntarily etc., by which this word is generally accompanied in legal enactments. However, mere casual residence or presence at a place will not be regarded sufficient for giving jurisdiction to a Board. In order to give jurisdiction to a Board, residence will have to possess an element of either permanence or of sufficient length of time. If a person carries on his business at a place, or habitually or usually dwells at a place he will be regarded as residing at that place. But if he has taken his abode at a particular place as a mere casual visitor or as a traveller in transit he cannot be said to reside at that place. Again, if a person is detained against his will in a place, such as, a jail or a detenu's camp, he can hardly be said to reside there in the sense in which the word 'reside' is used in legal phraseology.

Holds land :—

The word 'holds' has been used like the word 'resides' without any qualification. There is no indication in what capacity or character a debtor should hold land in order to be entitled to present an application for the settlement of his debts. In the absence of such indication the law can only be presumed to have used this word in its widest sense. The debtor may hold land as an owner, as an occupancy tenant, as a tenant-at-will, as a mere sub-tenant, as a lessee or as a mortgagee.

A further difficulty arises from the fact that the word 'land' has not been defined in this Act. Attention was drawn to this difficulty under section 7 also. However, there the context clearly suggests that the word 'land' has not been used in a sense which will cover both agricultural and residential lands. But the same cannot be said here. There is no reason why the word 'land' should here be confined to its connotation of agri-

cultural land. It may, both in logic and in reason, be interpreted as covering sites of houses, of shops, and of other premises in *abadis*.

If the language used in section 9 is interpreted in its plain sense some curious results which were not probably contemplated by the legislature may follow. Suppose a person belonging to the United Provinces who owes money to several creditors in his own province takes an acre of land on lease in the Punjab for cultivation and presents an application to a Board having jurisdiction in the area where this land is situated, will the Board be competent to attempt a settlement between him and his creditors under this Act? The answer to this query is that the language used in this section does not seem to bar such an attempt.

10. Every application to a board shall be in writing and be signed by the applicant and verified in such manner as may be prescribed.

Verification of application.

NOTES.

This section requires that an application to a Board shall be in writing. Thus oral applications are excluded.

Verification :—

Proceedings before a Conciliation Board will be, more or less, on a line of proceedings before an arbitrator. Technicalities and formalities have, as far as possible, been relegated to the back-ground. While a written application must necessarily be signed it is not at all necessary that it should also be verified. Verification suggests a technicality which is not quite in keeping with the general scheme of Conciliation Boards and the spirit in which these Boards are expected to discharge their functions. However, verification is under the section mandatory.

The reason for the introduction of this formality is not apparent so far as the text of this Act is concerned. However, it will not be without some interest for the general public, the legal profession, and Conciliation Boards to know that the requirement of verification was introduced in this section at the instance of the representatives of money-lending interests. The jurisdiction of Conciliation Boards has a pecuniary limit fixed under section 8. These representatives apprehended that if veri-

fication was not insisted upon, then even those debtors whose debts exceeded this limit would conceal some of their debts in order to bring their applications within the competence of Conciliation Boards. Verification, if found to be intentionally false, can form the basis of a prosecution for perjury. Therefore the consequences of any deliberate concealment of debts are likely to be serious if such concealment is accompanied by a verification of the application similar to a verification of plaints in civil cases.

Verification, wherever insisted upon, is generally to follow the manner prescribed by the Code of Civil Procedure. Under this section verification is to take place "in such manner as may be prescribed," and 'prescribed' means under section 7 (4) of this Act "prescribed by rules made under this part of the Act."

Rule 5 of the rules made by the Local Government under section 7 (4) runs as follows:—

"An application for a settlement between a debtor and his creditors shall be verified at the foot by the applicant who shall state by reference to the numbered paragraphs of the application, the paragraphs which he verifies of his own knowledge and those which he verifies on information received and believed to be true. The verification shall be signed by the applicant and shall state the date on which and the place at which it is signed."

Order 6, Rule 15 of the Civil Procedure Code which deals with verification runs as follows:—

- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the parties or one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.
- (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.
- (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed".

A comparison of rule 5 and Order 6 Rule 15 will show that, beyond trifling verbal changes, there is hardly any difference between the manner of verification laid down under this Act and under the Civil Procedure Code. The only difference of substance is that under this Act,

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verification is to be made by the applicant himself while under the Civil Procedure Code, verification can also be made by "some other person proved to the satisfaction of the court to be acquainted with the facts of the case."

Particulars to be stated in application.

11. (1) Every application presented by a debtor to a board shall contain the following particulars, namely,—
- (a) the place where he resides or holds land;
 - (b) the particulars of all claims against him together with names and residences of his creditors;
 - (c) the particulars of all his property, together with a specification of the value of such property and the place or places at which any such property is to be found;
 - (d) a statement that he is unable to pay his debts, and that they do not exceed the prescribed amount.
- (2) Every application presented by a creditor shall contain the following particulars, namely,—
- (a) the place where the debtor resides or holds land;
 - (b) the amount and particulars of his claim against such debtor;
 - (c) a statement that the debtor is unable to pay his debts.

NOTES.

This section deals with the particulars which are to be inserted in an application made to a board for the settlement of a debtor's debts. If such an application is made by a creditor then the only particulars to be entered in the application are those relating to the place where the debtor resides or holds land, the details of the creditor's claim, and a statement that the debtor is unable to pay his debts.

If the application is made by a debtor he should furnish the following additional particulars in his application :—

- (a) the names and residences of his creditors together with the details of their claims against him; and
- (b) the details of his property together with its value and the place or places where such property is to be found.

Whether the application is made by a debtor or a creditor it must contain a statement that the debtor is unable to pay his debts. But while a creditor need only state that the debtor is unable to pay his debts, the debtor must not only express in his application his inability to pay his debts but must also state that his debts do not exceed the pecuniary limit prescribed by the Local Government for the area in which he resides. The reason for this seems to be that while a debtor may be supposed to know the full extent of his debts, a creditor cannot be expected to know the aggregate liabilities of his debtor; he can only know the amount of the debts owed to him.

Insertion of particulars mandatory :—

The use of the word "shall" in relation to the insertion of the specified particulars shows that the provision to this effect is mandatory. If any application fails to comply with this direction it will necessarily be returned for amendment.

Inability to pay :—

While this section insists that the applicant, whether a debtor or a creditor, shall state in the application that the debtor is unable to pay his debts, no proof of this inability to pay is either required or suggested. On the bare statement that a debtor is unable to pay his debts, a Conciliation Board seems to be expected to take it for granted that it is so. At all events, it is not a condition precedent to a board taking action on the application that any evidence should be led to prove the inability of a debtor to pay his debts. In insolvency proceedings if the petitioner, whether a debtor or a creditor, fails to prove that the debtor concerned is unable to pay his debts, the petition for insolvency is liable to be rejected. There is no such penalty or suggestion of a penalty in the relevant provisions of this Act.

"Property":—

The term 'property' used in this section has not been defined anywhere in this Act. A definition of the term ought to have been given here for the guidance of a debtor. An ordinary debtor who is either illiterate or has had the benefit of a very rudimentary education cannot be expected to understand the legal significance of the word 'property'. All that an ignorant

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debtor understands by the term 'property' is his house, land, or cattle. For instance, mortgagee rights and shares in a village co-operative society certainly fall within the scope of the term 'property'. But an average rural debtor will not include these things among the items of his property.

12. (1) On receipt of an application under section 9 the board shall pass an order fixing a date and place for hearing the application :

Procedure on receipt of application.

Provided that the board may at any time dismiss the application if, for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and the creditors.

(2) Notice of the order under sub-section (1) shall be sent to creditors by registered post, acknowledgment due, and where the debtor is not the applicant, notice of the order under sub-section (1) shall be sent to him in a similar manner.

NOTES.

This section lays down the procedure which is to be observed on the receipt of an application for the settlement of a debtor's debts. The proviso to sub-section (1) shows that the board has power to dismiss an application even *in limine*. But if the board does not dismiss an application, there is no other intermediary stage between the presentation of an application and the passing of an order fixing a date and place for hearing. The provisions of this sub-section being mandatory in character, the board has no option but to fix a date and place for hearing outright.

Though the proviso authorizes the board to dismiss an application *in limine* yet the trend of the language used makes it clear that this power of dismissal cannot be resorted to on technical grounds or for mere defects of form. The obligation to state in writing the reasons for dismissal and a reference to the desirability (in the view of the board) of this course leave no room for doubt that the grounds of dismissal should relate to merits and not to forms or technicalities. If the board does not consider it desirable to attempt to effect a settlement, it is perfectly at liberty to dismiss an application. But the reasons why the board does not consider it desirable to attempt a settlement must be stated in writing. This obligation ensures that

before the board decides to dismiss an application, it shall apply its mind fully to the circumstances which, in its view, make it desirable for the board to refrain from making an attempt at settlement.

Notice how to be given :—

Sub-section (2) lays down the mode in which intimation of an application to the court shall be given to the persons affected. If the application is by a debtor, notice of the order fixing a date and place for hearing shall be sent to all the creditors and if the application is by a creditor, notice of the date and place for hearing shall be given to the debtor. The sub-section requires that the notice shall be sent by registered post, acknowledgment due.

13. (1) On the date fixed the board shall publish, in such manner as may be prescribed, a notice, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be submitted to the board in writing within two months from the date of publication of the notice :

Notice calling upon creditors to submit statements of debts.

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such direction within the time fixed, it may extend the period for the submission of his statement of the debts owed to him.

(2) Every debt, of which a statement is not submitted to the board in compliance with the provisions of sub-section (1), shall be deemed for all purposes and all occasions to have been duly discharged :

Provided that if a creditor proves to the satisfaction of the board, or, if no board is vested with jurisdiction by the Local Government, to the satisfaction of a civil court, that the notice was not served on him and that he had no knowledge of its publication, the board or court may revive the debt.

NOTES.

On the date fixed for hearing under sub-section (1) of section 12 the board shall publish in the manner laid down in rules framed for the purpose, a notice requiring every creditor to

submit a statement of debts owed to him by the debtor. When this requisition has been made it will be the duty of each creditor to submit the statement in writing within two months from the date of the publication of this notice.

Publication of notice :—

The notice required to be given under this section to the creditors is, under the rules framed by the Local Government, to be published (a) by being read out and explained in open session by the chairman, (b) by a copy being posted at the place where the board is sitting, and (c) in the case of the creditors who are not present before the board, by a copy being sent to them by registered post, acknowledgment due.

Extension of time :—

The proviso to sub-section (1) to this section lays down that in certain circumstances the period for the submission of a statement of debts may be extended. The extension of the usual period of two months will be granted if a defaulting creditor is able to satisfy the board that he was unable to comply with the direction of the board to submit a statement of his claim in time "for good and sufficient cause." What is and what is not a "good and sufficient cause" has been left entirely to the discretion of the court. This is in harmony with the usual practice of law. It is impossible to give a complete and comprehensive definition of "a good and sufficient cause". What may be a good and sufficient cause in one case may not be a good and sufficient cause in another case. Circumstances vary so greatly in different cases that it will be ridiculous as it will be impracticable to attempt to lay down in precise form what will be a good and sufficient cause in each and every case. The board will be free to exercise its judgment according to the merits of each case. The law of limitation being a technical law barring the rights of claimants, the usual canon is to consider them liberally, that is, unless the right is clearly barred the consideration will be in favour of the right being decided on merits. Similarly a provision of law which allows an extension of the usual period of limitation will be interpreted by courts in favour of the claimants unless there are grounds for imputing negligence or *mala fides* to them.

Consequences of failure to submit statement :—

If a creditor fails to submit a statement in pursuance of sub-section (1) within two months or within such further time as may be granted to him under the proviso to sub-section (1), all

debts owed to him by the debtor shall be deemed to have been duly discharged. All the debts owed by the debtor to any creditor must be disclosed. If any item is withheld by the creditor the extinction in respect of that item shall be complete and irrevocable. The term 'debt' as defined under section 7 includes all liabilities of a debtor. Therefore it is submitted that debts due under a decree or secured on property are also included, and if a creditor fails to submit a statement of such debts he risks their extinction.

For all purposes and all occasions :—

What does this phrase mean? It seems that the law contained in this section has been designed, of set purpose, to operate drastically. What the law seems to aim at securing is that there should be a complete statement, once and for all, of all the debts owed by a debtor to his creditors, and no transaction between a debtor and his creditors should be left outstanding after the parties have once had the opportunity of availing themselves of its provisions in behalf of settlement. Thus the debts which once become extinct under the operation of sub-section (2) cannot be pleaded by a creditor for any purpose or on any occasion. For instance, suppose a person who has pawned his jewellery with a money-lender, comes before the board for a settlement of debts, his various creditors submit a statement of their claims against him and the pawnee fails to disclose the debts due to him on the basis of this pawn, he will not be allowed to plead this debt if the owner of the jewellery sues him for its return. Similarly a mortgagee will not be allowed to plead his mortgage debt in a suit by the mortgagor for the recovery of the mortgaged property if he had failed to disclose that debt in the proceedings before the board. The significance of the expression "for all purposes and all occasions" is that a debt which is not disclosed in a statement required under sub-section (1) of this section becomes extinct completely and beyond recall. No suit can be brought for its recovery. It cannot be pleaded as a set off or otherwise in any suit brought by the debtor against the creditor. If it is due under a decree no execution can be sought in respect of it.

Revival of debts :—

The proviso to sub-section (2) lays down the conditions under which a debt which has become extinguished by the operation of this sub-section can be revived. The conditions laid down are :—

- (a) a creditor seeking the benefit of this proviso should prove to the satisfaction of a board or a civil court that the notice was not served on him, and
- (b) he should further prove that he had no knowledge of the publication of the notice. The mere fact that the notice was not served on him is not sufficient. Even in the absence of the service of a notice on him a creditor may come to know of the publication of that notice. Therefore he has not only to prove the non-service of the notice but also his actual ignorance of its publication.

Board or civil court :—

It may be that the board which heard the application of a debtor has been dissolved. In that event a creditor who seeks to revive his debt shall have to go to a civil court. If the original board has ceased to exist and another board has been appointed but has not been invested with the power of disposing of applications under this sub-section, the creditor can seek his remedy in this behalf only in a civil court. But if the original board is still in existence or a fresh board has been appointed with powers to hear and dispose of such applications, the creditor can apply only to the board for the revival of his debt; he cannot go to a civil court for the purpose.

14. (1) Every creditor submitting in compliance with a notice issued under sub-section (1) of section 13 a statement of the debts owed to him shall furnish, along with such statement, full particulars of all such debts, and shall at the same time produce all documents (including entries in books of account) on which he relies to support his claim, together with a true copy of every such document :

Procedure on submission of statement of debts.

Provided that a decree or order of a civil court shall be conclusive evidence as to the amount of the debt to which the decree relates, but the amount may be reduced as the result of an agreement arrived at in accordance with section 17.

(2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

NOTES.

Section 14 lays down that along with the statement required under sub-section (1) of section 13 every creditor (a) shall furnish all the particulars of the debts owed to him, (b) shall produce all original documents on which he relies, and (c) shall furnish the court with a true copy of every original document on which he relies.

Sub-section (2) provides for the return of all original documents after they have been marked for the purpose of identification. Before original documents are returned the board shall verify the correctness of the copies of original documents and retain those copies in lieu of them.

Full particulars :—

Sub-section (1) speaks of "full particulars" of debts. There is no indication anywhere in this Act as what is meant by full particulars? Even the rules framed by the Local Government are silent on this point and give no guidance as to the scope and character of the particulars which a creditor should furnish to the board. Thus everything will depend upon the judgment or fancy of the board as to the details required under this section. Probably the intention is to apprise the board fully of the nature of a debt. The debt may be one of very old standing. It may consist of a large accumulation of interest. There may have been repayments several times larger than the actual principal advances made by the creditor to the debtor. The debt may be composed of advances in cash and interest. It may be composed of advances in kind and interest thereon. It may be composed partly of advances in cash and partly advances in kind together with interest thereon. On the other hand a debt may be of comparatively recent origin. It may be composed entirely of advances in cash. The amount of interest entering into its composition may be negligible. There may have been no repayments or repayments of a negligible or inconsiderable nature. All these things make—at any rate they ought to make—a very real difference in the attitude of the board towards the kind of settlement at which the board should aim.

Force of Civil Court's decree or order :—

A debt due under a decree or order of a civil court is also subject to the jurisdiction of a board. In regard to the amount of a debt due under a decree an irrebuttable presumption attaches under this section to that decree. In view of the fact that the amount due under a decree can, as a result of mutual agree-

ment, be reduced to any extent the irrefutable presumption attached to a decree at first sight appears to be of no moment. But there are occasions on which this presumption can be of the utmost help. For instance, when there is a dispute as to the total amount of the debts owed by a debtor to his creditors, and the debtor, in order to bring his application for settlement within the pecuniary jurisdiction of the board, pleads that a particular decree relates to bogus claims against him or to debts which were never really due from him, the presumption laid down under this proviso will prove a determining factor in the decision of the dispute.

The reference in the opening portion of this proviso to "a decree or order of a civil court" calls for the repetition of these very words after the word 'which' in the third line and the words "to which the decree relates" in the third line should read "to which the decree or order of a civil court relates". But this is not the case. This seems to be an accidental slip and marks a blemish which should be removed.

Board to attempt amicable settlement.

15. The board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

NOTES.

The object of this section is that both the debtor and his creditors should have an opportunity to place their respective points of view in respect of each debt before the board. A debtor may say that his thumb impression was taken on a larger amount than was advanced to him or was due from him. He may contend that although the debt purports to be a new advance in cash, it is, in fact, only a balance of his previous accounts with the creditor. He may also represent that a particular advance contains an element of what is known as 'interest in advance'. Again, a debtor may represent that the amounts relating to the value of advances made in kind contain the usual amount of the *Sahukar's* profit by means of the manipulation of the selling prices in lieu of interest. In the same way the creditor may be called upon to explain the circumstances in which various items were advanced by him, the amount of interest in advance which he may have included in any particular item or items, the margin of profit which he usually includes initially in the capitalised value of advances in kind, and the proportion

which the interest actually realised by him bears to the total value of the advances made by him in cash and kind.

After the parties have explained their cases and have had their say, it becomes the function of the board to induce them to arrive at an amicable settlement. The board can depend only upon its power of persuasion. The board has no authority to give a decision which is not the result of mutual agreement. It can only use its good offices to bridge, by successive efforts, the difference between the terms offered by the debtor and the terms demanded by the creditor or creditors. It is obvious that the trend of the efforts of the board will, on the one hand, be determined by the origin, history and nature of the debt, the amount of benefit which the creditor has derived from the course of transactions between him and the debtor, and, on the other hand, by the present economic condition of the debtor and his future capacity to pay.

Power of Board to require attendance of persons and production of documents and to receive evidence.

16. Any board empowered under this Act may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on civil courts by the Code of Civil Procedure, and every proceeding before the board shall be deemed a judicial proceeding.

NOTES.

In order to be able to judge how far the debts in dispute represent good and valid claims, and how far they are capable of being lowered or adjusted in the light of the total amount of repayments made by the debtor the board may find it necessary to have the parties and witnesses before it for examination or to call for the production of documents. For this purpose the board has, by this section, been empowered to exercise all the powers which are conferred on civil courts by the Code of Civil Procedure in this behalf.

The relevant provisions of the Code of Civil Procedure are contained in Orders V, X, XIII and XVI. Order V deals with the summoning of parties, Order X deals with the examination of parties, Order XIII deals with the production of documents and Order XVI deals with the summoning of witnesses.

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The procedure to be observed by the board in regard to the summoning and examining of parties and witnesses or requiring production of documents is most likely to be free from any formality. All that is needed is that the board should have the necessary power for summoning and examining witnesses and parties and for requiring the production of documents so that if the need for the exercise of such powers arises the working of the board should not suffer for the lack of them. No appeal has been provided against the orders of a board and all hair-splitting arguments which are such a characteristic feature of all proceedings before our courts, with regard to technical errors in the service of summonses or examination of witnesses and parties or production of documents, are practically excluded in relation to conciliation proceedings. Hence a detailed knowledge of the rules under Orders V, X, XIII and XVI is not at all necessary. However, in order to make this book self-contained, the full text of these Orders is reproduced in Appendix I.

17. (1) If the debtor and all or any of the creditors come to an amicable settlement, the board shall forthwith reduce such settlement to writing in the form of an agreement setting forth the amounts payable to each creditor and the manner in which and the times at which they are to be paid. Such agreement shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties: provided that if the board is of the opinion that the period fixed for payment is excessive, the board may refuse to authenticate the agreement. The board shall also pass an order dismissing the application so far as it relates to the creditors who have not come to an amicable settlement.

(2) An agreement thus made shall take effect as if it were a decree of a civil court having jurisdiction in the area of the jurisdiction of the board.

NOTES.

Section 17 is comprised of two sub-sections. Sub-section (2) declares that an agreement made under sub-section (1) shall have the same force as a decree of a competent civil court. Sub-section (1), in its turn, is comprised of three parts. The first

part of this sub-section deals with the recording of the terms of an agreement, the authentication of that agreement and other matters incidental thereto. This part requires the board to reduce the settlement arrived at between the parties to writing in the form of an agreement setting forth the amounts payable to each creditor and the manner in which and the times at which they are to be paid. It further requires that the agreement shall be read out and explained to the parties, and shall be signed or otherwise authenticated not only by the board but also by the parties. The second part deals with the power of the board to refuse, in certain circumstances, to authenticate an agreement arrived at between the parties. The third part deals with the dismissal of the application in so far as it relates to the creditors who have not come to an amicable settlement with the debtor.

The section in the Central Provinces Act corresponding to section 17 of our Act is section 12. This section of the Central Provinces Act permits the recording and authentication of an agreement only when "the creditors to whom not less than 40 per cent. of the total amount of the debtor's debts are owing, come to an amicable settlement with the debtor." This means that if out of 10 creditors only 2 to whom no more than 20 or 25 per cent. of the debtor's debts are owing come to an amicable settlement with the debtor, the board shall not reduce to writing or authenticate this settlement. The Punjab Act is more liberal in this respect, inasmuch as it will recognise any settlement which is arrived at between the debtor and any of his creditors regardless of the proportion which the debt due to them bears to the total debts of the debtor. The boards in the Central Provinces do not possess any power corresponding to the power which the boards in the Punjab have with regard to the rejection, in certain circumstances, of a settlement arrived at between the parties. This power in the Punjab has been given to the boards in order to thwart any collusive arrangement between the debtor and some one or more of his creditors. It was contended on behalf of money-lending interests that a debtor may include among his creditors a bogus creditor out of his friends and relations who may, in pursuance of a mutual conspiracy, accept an unreasonably long period for the repayment of his spurious debt. As the effects of an agreement authenticated by a board upon the claims of others are fairly serious, it was thought desirable to give the board power to reject an agreement if it is of opinion that the period fixed for repayment is excessive.

The other points of distinction between the corresponding sections of the Central Provinces and the Punjab Acts are

that (a) in the Central Provinces no debts are excluded from the scope of conciliation, and (b) unlike the Central Provinces Act the Punjab Act does not require the registration of an agreement under the Indian Registration Act. The use of the word 'registration' in the marginal note of this section is erroneous.

The methods of the recovery of sums due under an agreement are also essentially different in the two provinces. In the Punjab the recovery of these sums is left to the ordinary course of execution in civil courts. In the Central Provinces these sums have been made recoverable as an arrear of land-revenue. Further if the Deputy Commissioner fails to recover any part of the amount due under an agreement as an arrear of land revenue, he is required to certify it as irrecoverable whereupon the amount becomes recoverable as if a decree of a civil court had been passed for its payment.

18. If in the opinion of the board any applicant fails to conduct his application with due diligence, the board may dismiss the application at any stage.

Dismissal of application in default.

NOTES.

As the presentation of an application before a board for the settlement of a debtor's debts involves the prohibition of a recourse to civil courts and the suspension of all proceedings already pending in civil courts and this prohibition and suspension continue until the application pending before the board is finally disposed of, section 18 of the Act casts an obligation of diligence upon the applicant. If the applicant does not show due diligence in the prosecution of his application, the board has been given the power to dismiss the application at any stage.

An applicant, if so minded, can easily delay the disposal of his application by dilatory tactics in the payment of the charges for the despatch and publication of the notices under sections 12 and 13 of the Act. Any act of deliberate delay may amount to lack of due diligence. The applicant's default in appearance which does not specifically lead to a dismissal of the application under this Act may also be treated as lack of due diligence. The power of dismissal on the ground of the absence of due diligence on the part of the applicant has not been provided in the Central Provinces Act.

19. If once an application has been made by a debtor and disposed of, no board shall entertain a second application within two years of the date of disposal of the first application.

Bar to successive applications.

NOTES.

An applicant can, under the provisions of this Act, paralyse the action of civil courts by the simple process of presenting an application to a board. In the absence of a special provision discountenancing such conduct on the part of an applicant, a person can set at naught the authority of civil courts in the adjudication of the claims of creditors for an indefinite length of time by a succession of frivolous and vexatious applications. It was with the object of meeting the contingency of such frivolous tactics on the part of debtors that this section was enacted. If an application has once been presented and disposed of, no fresh application shall be entertained by any board within two years of the date of disposal of the first application.

20. (1) Where, during the hearing of any application made under section 9, any creditor refuses to agree to an amicable settlement, the board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate in such form as may be prescribed, in respect of the debts owed by him to such creditor :

Grant of certificate by board in respect of debts.

Provided that the board shall not grant a certificate unless the board is satisfied that creditors to whom not less than forty per centum of the debtor's debts are owing have come to an amicable settlement with the debtor.

(2) Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court notwithstanding the provisions of any law for the time being in force, shall not allow the plaintiff any costs in such suit, or any interest on the debt after the date of certification under sub-section (1) in excess of simple interest at

Power of court to disallow costs or interest.

six per centum per annum on the amount due on the date of such certificate.

(3) Where after the date of an agreement made in accordance with section 17 or of certification any unsecured creditor sues for the recovery of a debt in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit notwithstanding anything contained in the Code of Civil Procedure, 1908, shall not be executed until six months after the expiry of the period fixed in the agreement authenticated under sub-section (1) of section 17.

NOTES.

This section comprises three sub-sections. Sub-section (1) relates to the powers of a board to grant, in certain circumstances, a certificate in respect of certain debts. Sub-section (2) relates to the consequences which certification has on the suits brought in an ordinary civil court for the recovery of certified debts. Sub-section (3) relates to the consequences which the authentication of an agreement under section 17 or the certification of a debt under sub-section (1) of this section entails upon the decrees passed by civil courts for the recovery of certain debts.

The Board may grant a debtor a certificate in respect of a debt owed by him to a creditor if during the hearing of an application made under section 9—

- (a) the creditor refuses to agree to an amicable settlement,
- (b) the debtor has made the creditor an offer, and
- (c) the offer is, in the opinion of the board, one which is fair and reasonably deserving of acceptance on the part of the creditor.

Unless the debtor makes an offer which is, in the view of the board, fair and which should, in reason, prove acceptable to the creditor the question of issuing a certificate in respect of a debt does not arise. But this is not all. There is another condition which must be fulfilled before a certificate is issued. This condition is contained in the proviso which says "that the board shall not grant a certificate unless the board is satisfied that

creditors to whom not less than forty per centum of the debtor's debts are owing have come to an amicable settlement with the debtor". The use of the words "unless the board is satisfied" suggests that the board should not allow itself to be hoodwinked by bogus creditors, but should satisfy itself that creditors to whom at least forty per cent. of the genuine debts of the debtor are owing have come to an amicable settlement with him.

The addition of this proviso was meant to humour and placate money-lending interests, the fury of whose agitation seems to have deflected the course of this legislation to an undue extent. When a fair offer, reasonably worthy of acceptance in the opinion of the board itself, has been rejected by a creditor, the case for the issue of a certificate is complete, and no further condition is either needed or justified. But the proviso to sub-section (1) introduces a novel condition which will go a very long way to nullify the object of proceedings before a board. There is no such condition in the corresponding section of the Central Provinces Debt Conciliation Act. Sub-section (1) of section 15 of that Act which deals with this subject simply says that "where, during the hearing of an application..... any creditor refuses to agree to an amicable settlement, the board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate." Why the Punjab legislature decided to add a proviso which has the direct effect of emasculating the substantive sub-section of this section can be explained only on the hypothesis that political expediency outweighed the dictates of sound commonsense and straightforward legislation. The task of persuading a money-lender who is accustomed to driving a hard bargain at every step and whose training in life antagonises his whole soul to fair dealing is hard enough in all conscience. To insist that before a certificate can be issued, creditors to whom not less than forty per cent. of the total debts of the debtor are owing should agree to an amicable settlement is unduly to load the dice against certification.

A certificate, when once granted, has fairly healthy effects. If a creditor brings a suit for the recovery of a certified debt he loses all costs in such suit, and any interest in excess of simple interest at six per cent. per annum after the date of certification on the amount due on that date. This penalty which follows on an unreasonable rejection of a fair offer is dealt with in sub-section (2) of section 20. The fear of this penalty ought to act as an incentive to the acceptance of a fair offer on the part of a debtor.

Sub-section (2) of this section corresponds, practically verbally, with sub-section (2) of section 15 of the Central Provinces Debt Conciliation Act.

Sub-section (3) deals with the effect which an agreement under section 17 or certification under sub-section (1) of this section has on decrees passed by civil courts in suits brought by creditors after the date of such agreement or such certification for the recovery of certified debts or debts incurred after the date of such agreement. This effect is that all action in respect of the execution of such decrees is deferred until six months after the expiry of the period fixed in the agreement for the payment of the sums due under it.

The sub-section refers to two kinds of creditors, namely, (a) secured creditors and (b) unsecured creditors. Similarly it refers to two classes of debts, namely, (a) debts in respect of which a certificate has been granted under sub-section (1) of this section, and (b) debts which have been incurred after the date on which an agreement has been made in accordance with section 17.

The language used here makes it clear that the execution of a decree passed by a civil court in respect of a certified debt is postponed only if the decree-holder is an unsecured creditor. This means that if a decree-holder is a secured creditor, that is, if he holds a mortgage, charge or lien on the property of the debtor, he can proceed immediately to realise his security even though a board has granted a certificate in respect of the debt owed to him. Of course, as a result of the operation of sub-section (2), he shall lose all costs and any interest after the date of certification, in excess of simple interest at six per cent. per annum on the amount due on the date of certification. But there is no postponement of execution in the case of his decree. On the other hand, if the decree-holder is an unsecured creditor, he will have suffered, in the first instance, as a plaintiff in respect of costs and interest, and he stands to suffer, in the second instance, in the postponement of the execution of his decree in terms of sub-section (3).

So far as the recovery of debts incurred after the date of an agreement under section 17 is concerned, both secured and unsecured creditors stand on the same footing. If a creditor advances loans, in cash or in kind, to a debtor after the date of an agreement under section 17 he cannot have any decree for the recovery of such loans executed until the six months prescribed here have passed. If a creditor takes a mortgage of the property of a debtor after the date of such agreement he cannot

realise his security until the expiry of the statutory period of six months laid down in this sub-section. Obviously, every person dealing with a debtor who has had his debts settled in proceedings before a conciliation board is supposed to have notice not only of an agreement under section 17, but also of the exact terms of that agreement. This may be unpalatable to money-lenders, but it is a very sound device to deter rash creditors from lending without due care and attention.

The distinction between secured and unsecured creditors and between the respective effects which certification has on secured and unsecured debts incidentally proves one thing beyond all doubt, namely, that a mortgagor has as good a claim to have his mortgage-debt made the subject of an amicable settlement before a conciliation board as any other debtor. And if such a dispute is brought before a board, the board will be perfectly within its rights to use its good offices in order to bring about an amicable settlement and, if the necessary conditions are fulfilled, to issue a certificate in respect of the mortgage debt in dispute in the event of an agreement between the parties not having been reached. The issue of a certificate will naturally produce the results mentioned in sub-section (2) and discussed above.

The Bill as originally introduced in the Council contained no reference to the statutory period of six months which now finds place in sub-section (3). The original provision in this behalf was exactly on all fours with the provision in sub-section (3) of section 15 of the Central Provinces Act which lays down that no decrees of the description given here shall be executed "until all amounts recorded as payable under such agreement have been paid." The present provision was substituted for the original by the Select Committee on the ground that a debtor and a creditor might otherwise collude to come to an agreement which would have the effect of postponing the execution of ordinary decrees for an unconscionable length of time. Even if there is no collusion to begin with, a collusion may easily come off subsequently for the purpose of subjecting ordinary decree-holders to a deliberately unfair treatment. The substitution was well conceived and anticipated a danger which could not be characterised either as imaginary or even as remote.

Bar of civil suits. 21. No civil court shall entertain—

(a) any suit—

(i) to question the validity of any procedure or

the legality of any agreement made under this Act, or

- (ii) to recover any debt recorded as wholly or partly payable under an agreement made in accordance with section 17 from any person who, as a debtor, was party to such agreement, or
 - (iii) to recover any debt which has been deemed to have been duly discharged under sub-section (2) of section 13;
- (b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 20.

NOTES.

This section invests the decisions of a conciliation board with finality. Civil courts are forbidden to entertain both suits and applications for execution. The suits which are barred are of three kinds :—(a) all suits impugning the legality of any agreement under this Act or the validity of any procedure, (b) all suits to recover any debt payable, wholly or partly, under an agreement made in accordance with section 17, and (c) all suits to recover any debt deemed to have been duly discharged in consequence of any creditor having failed to submit a statement of his debts within the time allowed by section 13.

Section 20 lays down in sub-section (3) that certain decrees shall be postponed for purposes of execution. These decrees are those which are passed by a civil court for the recovery of a debt which has been incurred after the date of an agreement made in accordance with section 17 or which has been certified under sub-section (1). In such cases no decree can be executed until 6 months after the expiry of the period fixed for the payment of money due under an agreement arrived at between a debtor and his creditors. This section gives effect to the intention of the law contained in sub-section (3) of section 20. If an application for execution is presented to a civil court it has no authority to entertain it.

This section proceeds upon the assumption that the facts barring the jurisdiction of the civil court have been brought to its notice. Unless there is anything in the plaint or in the application for execution itself, which apprises the court of the facts

barring its jurisdiction, it is the debtor who will have to prove the circumstances which oust the jurisdiction of the court. The person who brings in a claim or presents an application for execution is not likely to disclose the facts which will result in his plaint or his application being thrown out. So in almost all cases these facts will not come to the notice of the court until the debtor comes before it.

Bar of appeal or revision. 22. No appeal or application for revision shall lie against any order passed by a board.

NOTES.

In all cases which come up before conciliation boards for decision and which are finally disposed of by them, these boards are the first and the last authority. No remedy by way of appeal or revision has been provided anywhere in the Act. The only manner in which an order made by a conciliation board can be modified is by means of an application for review under section 23.

The orders of any moment which a conciliation board is authorised to pass and in respect of which an appeal or revision may be desired by the parties relate to the following matters :—

- (1) The dismissal of a debtor's application under sub-section (1) of section 12.
- (2) The extension of time for the submission of a statement of debts under section 13.
- (3) The revival of a debt under sub-section (2) of section 13.
- (4) The recording and authentication of an agreement under section 17.
- (5) The refusal to authenticate an agreement under section 17.
- (6) The dismissal of an application for lack of due diligence on the part of a debtor.
- (7) The certification of a debt.

Power of board to review its order. 23. A board may, on the application from any person interested, review any order passed by it and pass such order as it thinks fit :

Provided that it shall not under this sections pass an order reversing or modifying any order affecting any

person interested without giving such person an opportunity of being heard :

Provided, further, that no application for review shall be entertained if presented more than twelve months after the date of the order which the person interested seeks to have reviewed.

NOTES.

Although the Act provides no remedy by way of an appeal or an application for revision, review is allowed under this section. The language of the section makes it clear that the board cannot review its order *suo motu*. In order to bring its powers into play an application by a person interested is necessary. On receiving an application for review, the board can dismiss it *in limine* if it sees no reasons to modify or reverse its order. But if the board feels that there are *prima facie* grounds for the modification of its original order, it is incumbent upon it to give the opposite party an opportunity of being heard. No reversal or modification of the original order can be made *ex parte*.

The period for the presentation of an application for review is unduly long. The application for review can, under the law as it stands, be presented within 12 months of the date of the original order.

24. In any proceedings under this part of the Act, any party may with the permission of the board be represented by an agent authorised in writing or by a legal practitioner.

Appearance of party before board by agent or by legal practitioner.

NOTES.

This section empowers the board to permit the parties to be represented by a legal practitioner. Section 20 of the Central Provinces Act which corresponds to this section does not permit the representation of the parties by legal practitioners, although under both the Acts representation by an agent authorised in writing is permitted.

The engagement of legal practitioners generally results in a prolongation of legal proceedings. The same result may follow in proceedings before a conciliation board. The Bill as originally drafted did not contain any provision permitting the appear-

ance of legal practitioners. However, the Select Committee decided to permit the appearance of legal practitioners. The Council passed this amendment. While there are disadvantages in allowing legal practitioners to represent the parties it was felt that a debtor, being less intelligent and less independent, may benefit by the services of a legal practitioner.

25. When an application has been made to a board under section 9, no civil court shall entertain any new suit or other proceeding brought for the recovery of any debt for the settlement of which application has been made to the board, and any suit or other proceeding pending before a civil court in respect of any such debt shall be suspended until the board has dismissed the application or an agreement has been made under section 17.

Bar to new suits and applications and suspension of pending suits and applications.

NOTES.

Multiplicity of proceedings has been interdicted by all systems of law. This section has the same object in view. The presentation of an application to a conciliation board produces two results immediately and automatically. One of these results is that no civil court can entertain any new suit or other proceeding for the recovery of a debt which is the subject-matter of dispute before a board. The other result is that all suits and proceedings already pending before a civil court in respect of any such debt are also suspended automatically. The bar to new suits or proceedings and the suspension of suits and proceedings already pending in a civil court take effect spontaneously without the intervention of anything else. These effects follow necessarily and inevitably upon the presentation of an application to a conciliation board. No order of injunction by the board or application by the debtor is called for. The provisions of section 25 are mandatory in their character.

But until a civil court is informed of the fact of an application having been made to a board, suits and other proceedings already pending before it will continue their course undisturbed, and even new suits and proceedings will continue to be entertained in the ordinary course of business. Such information will naturally come first from the debtor himself, and although no obligation has been imposed specifically on anybody for the conveyance of such

information to civil courts, the debtor will naturally supply this information to a civil court at the earliest possible moment.

How long the bar to new suits or proceedings and the suspension of pending suits or proceedings will last has not been defined exactly in this section. This is only natural. Precision in these matters is impossible and should not be attempted. The bar and the suspension will be in force until the board has finally disposed of the application.

The section corresponding to this section of our Act in the Central Provinces Act, is section 21. This section of the Central Provinces Act makes no mention of a bar to the institution of new suits. This is obviously due to the fact that section 16 of the Central Provinces Act forbids civil courts to entertain any suit "in respect of any matter pending before a board." Section 21 of our Act which corresponds to section 16 of the Central Provinces Act does not contain a prohibition of any suit in respect of "any matter pending before a board." This explains why section 25 of our Act prohibits the entertainment of new suits and proceedings.

26. The time spent in proceedings before a conciliation board and time during which a person is debarred from suing or executing his decree under the provisions of this Part of this Act shall be excluded when counting the period of limitation for any application, suit or appeal.

Extension of limitation.

NOTES.

The presentation of an application to a board for the settlement of the debts of a debtor results automatically in the prohibition of new suits or proceedings and the suspension of all suits or proceedings already pending before a civil court. This means that a creditor cannot resort to a civil court for seeking his remedy after an application has been made to a board, nor can he continue the conduct of his suit or application or appeal after the presentation of such an application. Therefore it follows that when the bar against the institution of new suits and proceedings is removed or the suspension of pending suits and proceedings comes to an end, a creditor should not suffer from the operation of any law of limitation in seeking or pursuing his remedy by the passage of time during the period when an application was pending before a Board. If he were prejudiced in the pursuit of his

remedy by any law of limitation owing to his forced inactivity during the period when an application was being dealt with by a board, it would be manifestly unfair. Section 26 averts any such injustice by providing that the period of a creditor's forced inactivity shall be excluded when counting the period of limitation for any application, suit or appeal by the creditor.

Members of boards
deemed to be public
servants.

27. The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code.

NOTES.

This section confers upon the members of a board the status of 'public servants'. The term 'public servant' has been defined in section 21 of the Penal Code. It is hardly necessary to repeat that definition here. A public servant has some very valuable privileges and enjoys a wide measure of protection against harassment for his official acts and conduct. It was thought desirable to confer these privileges and this protection upon the members of a board. This has been done by section 27.

28. (1) The Local Government may make any rules consistent with this Part of this Act to carry out the purposes thereof, and in particular and without prejudice to the generality of the foregoing power may make rules—

Power to make rules.

- (a) prescribing the amount of debt for the purposes of section 8 (1) (c);
- (b) prescribing the quorum for and regulating the procedure before a board;
- (c) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;
- (d) prescribing the records to be kept and the returns to be made by a board;
- (e) prescribing the allowances to be paid to members of a board;

- (f) prescribing the place at which and the manner in which an agreement shall be registered;
- (g) prescribing the form of certificate to be granted under sub-section (1) of section 20; and
- (h) generally, for the purpose of carrying into effect the provisions of this Part of this Act.

(2) The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication.

NOTES.

Section 28 relates to the power of the Local Government to make rules in order to carry out the purposes of this Part of the Act. This section is comprised of two sub-sections. Sub-section (1) deals with the matters in respect of which the Local Government has power to make rules. Sub-section (2) deals with the condition subject to which these rules are to be framed.

The condition which is laid down in sub-section (2) is that the rules should be made after previous publication. This means that before the rules framed by Government take effect, they should be published in the local official gazette.

Sub-section (1) not only enumerates the particular items in respect of which the rule-making power of the Local Government can be exercised, but it also states the general principle that any rules which the Local Government may frame, should be consistent with the statute itself. If the rules are inconsistent with the provisions of a statute they have no validity. In all cases of conflict between the specific provisions of an Act and the rules made thereunder it is the provisions of the Act which are to prevail and not the rules. Courts are bound to ignore the rules if they conflict with the law as laid down in the Act itself.

Whenever the Executive Government is invested with the power of making rules a reservation is always made in favour of this power extending to the making of rules in general apart from the detailed items specifically mentioned in the relevant section. The same course has been followed here.

The items in respect of which the Local Government has been authorized to make rules do not call for any comment beyond this

that item (f) is obviously gratuitous and uncalled for. There is no section in the Act, as it stands, requiring the registration of an agreement. This error has arisen from the fact that section 17 as originally drafted contained a requisition for the registration of an agreement arrived at between a debtor and his creditors. That requisition was, however, deleted by the Select Committee. The reference to registration in the marginal note of section 17 seems to have persisted as a result of an oversight. The reference in (f) to the registration of an agreement is on a par with the mistake which has occurred in the marginal note of section 17. Both these mistakes are the legacy of the original draft of section 17, and should be rectified by means of an amending Act as soon as circumstances permit.

The rules framed by the Local Government under this section are given in Appendix II to this book.

29. In making any rule the Local Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees; and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

Penalty for breach of the rules.

NOTES.

Section 28 empowers the Local Government to frame rules for accomplishing the objects which proceedings before a conciliation board are intended to achieve. Section 29 which is the last in this Part of the Act lays down that in making any rule the Local Government may declare the breach of a rule to be punishable with a maximum fine of fifty rupees. If the breach which is penalised is a continuing one then, apart from the fine which may be imposed for the first substantive breach, the breach shall be punishable with a daily fine of ten rupees for every day of the period during which the breach continues.

PART V.

Damdapat.

30. (1) In any suit brought after the commencement of this Act against a debtor as defined in section 7 for the recovery of a loan borrowed before the commencement of this Act,

Damdapat.

no court shall grant a decree in satisfaction both of principal and interest for a larger sum than twice the amount which the court finds to have been due at the commencement of this Act.

(2) In any suit brought against a debtor as defined in section 7 for the recovery of a loan borrowed after the commencement of this Act, no court shall pass a decree for a larger sum than twice the amount of the sum taken as principal.

NOTES.

The Hindu system of law did not recognise the principle of a debt being extinguished simply by the passage of time. Under all modern systems of law there is a limit of time after which no creditor can seek the help of courts in recovering any money which he may have lent to another person or in recovering the value of any commodity which another person may have received from him on credit. The absence of a law of limitation resulting in the extinction of debts after the expiry of a certain period led the great Hindu law-giver, Manu, to devise a principle known as 'Damdupat'. Under the operation of this principle a creditor is prevented from making exorbitant demands in the way of interest. However, the interpretation placed upon the principle of Damdupat under the Hindu Law varies so immensely that it will not serve any useful purpose to follow the various rulings of different High Courts on the subject.

The legislature seems to have sought refuge against excessive demands for interest in the principle of Damdupat, probably, under a mistaken belief that the authority of the Hindu Law and the sanctity of the principle embodied in the rule of Damdupat will appeal to the Hindu opponents of this measure and will assuage their opposition because these opponents were all drawn from what are known as the higher castes of Hindus. But the mere adoption of a terminology borrowed from Hindu Shastras or Hindu literature cannot be expected to satisfy the hunger for money of those who are living in an entirely different atmosphere and in the midst of entirely different economic conditions to the atmosphere and economic conditions which prevailed in the days of Manu. At all events, in cases where there is a conflict between the claims of religion and the dictates of economics, the former, almost invariably, go to the wall in the present age, irrespective of the race or religion of the individuals who have to face such a conflict.

Although in its basic principle section 30 rests on the old Hindu rule of Damdupat, it is free from the uncertainties and ambiguities with which Manu's rule of Damdupat is now surrounded in consequence of the varying interpretations which have been placed upon it by competent courts.

Sub-section (1) relates to suits brought after the commencement of this Act for the recovery of a loan borrowed before the commencement of this Act. Sub-section (2) relates to suits brought for the recovery of a loan borrowed after the commencement of this Act. In both cases the law as contained in this section lays down in clear terms what a creditor shall be able to recover. There seems to be no room for any doubt as to the real meaning of the provisions of this section, and it is hoped that this meaning will not be mystified by attempts, on the part of the bench or the bar, at excessive refinement in the art of interpretation.

Sub-section (1) enjoins upon a court not to grant a decree in satisfaction both of principal and interest for a larger sum than twice the amount found by it to have been due at the commencement of this Act. In plain English it means that if the court finds that rupees five hundred was due to a creditor on the 19th April, 1935, it cannot grant a decree for a larger sum than rupees one thousand.

In order to make the relief to a debtor effective, the legislature ought to have indicated that a decree for a larger sum than twice the amount originally advanced as principal shall not be granted by any court after the commencement of this Act. However, in its desire to hold the scales 'even'—which in the Government's view almost always implies a complete ignoring of the trend and nett result of past transactions—the Government threw its weight on the side of money-lenders, and the halting, hesitating and half-hearted provisions contained in this sub-section were the result.

It has been suggested in certain quarters that what is forbidden in this section is the granting of a decree for a larger sum than twice the amount due at the commencement of this Act, and that this interdiction does not entitle a court to take into account any payments which may have been made by a debtor out of court and to refuse to grant a decree for a sum which, together with these payments, will be more than twice the amount due at the commencement of this Act. Such a suggestion will be inconsistent with the underlying spirit of this sub-section. In fact, it will penalise a person whose innate goodness impels him to pay as he earns which cannot be the object of any sound law. However,

in view of lower permissible rates prescribed in section 5 of this Act and the operation of the usual law of limitation this question has only an academical value. The ordinary period of limitation for the recovery of a loan is three years which, with the rates of interest permitted under section 5, is not sufficiently long to allow of a loan doubling itself. If, however, a debt is kept alive by a succession of acknowledgments and a suit for its recovery is brought after a number of years, it may provide a loop-hole for ingenious methods of interpretation by courts and lawyers.

Sub-section (2) prohibits a court from passing a decree for a larger sum than twice the amount of the sum taken as principal. This means that if a sum of five hundred rupees was borrowed by a debtor, the creditor shall not be able to obtain a decree for more than one thousand rupees.

It is to be noted that this section does not apply to the case of every debtor. It applies only to the case of a debtor as defined under section 7. A glance at the debates in the Council will show that the representatives of what are known as debtor classes desired to make this section as one of universal application. But the representatives of commercial classes claimed that if this section was made universally applicable to all debtors, the course of trade and commerce would be seriously hampered and as the representatives of Government made common cause with them, the representatives of debtor classes had to give way on the point.

This section is one of semi-retrospective effect inasmuch as sub-section (1) relates to loans borrowed before the commencement of this Act. A good deal of denunciatory criticism was directed against this section on the ground that it was retrospective in its effect. However, a glance at the United Provinces Act passed for relieving indebtedness will show that all the five Acts of the U.P. Legislature have been given retrospective effect.

Section 31 of the United Provinces Agriculturists' Relief Act deals with an analogous, though not identical object. That section is not retrospective in its effect and applies only to the loans taken after the commencement of that Act. However, it has been clearly brought out in that section that after the aggregate of the interest has reached 100 per cent. of the sum originally borrowed, the interest on that sum or the balance of it still remaining unpaid, shall not exceed the rate specified in schedule IV of that Act.

Although section 31 of the United Provinces Agriculturists' Relief Act is not retrospective in its effect, sub-section (2) of that

section secures very substantial benefit to the debtor. It lays down that any amount already received by a creditor on account of interest in excess of the amount originally borrowed shall be credited towards the principal. This excess may be sufficient to wipe out the whole principal in which case the creditor shall not be entitled to recover anything towards the payment of interest or principal.

PART VI.

Deposit in Court.

31. (1) Any person who owes money may at any time deposit in court a sum of money in full or part payment to his creditor.

(2) The court on receipt of such deposit shall give notice thereof to the creditor and shall, on his application, pay the sum to him.

(3) From the date of such deposit interest shall cease to run on the sum so deposited.

NOTES.

Section 31 introduces no novelty. Deposits into court are allowed by the Transfer of Property Act, the Punjab Redemption of Mortgages Act and Order XXIV of the Civil Procedure Code. But the Civil Procedure Code allows a deposit only if the deposit- or considers it "a satisfaction in full of the claim." The present section allows deposits whether they are in full satisfaction of a debt or are only a part payment of that debt. In virtue of this section any debtor will be at liberty to deposit any amount in court for payment to his creditor.

How far debtors will take advantage of this section is difficult to foretell. But resort to this section will prevent a very serious form of mal-practice which is indulged in by creditors. It is common knowledge that many debtors make payments either in the shape of cash or produce or cattle but these payments are, in many cases, not credited to their accounts. When a creditor comes into court these payments are naturally pleaded by debtors. But as a debtor cannot insist on obtaining a receipt for fear of giving offence to his *Sahukar* and the *Sahukar* takes pretty good care not to issue any receipt and both resents and resists any demand for one unless all his debts are cleared by the debtor, a

debtor's plea of payment is always disallowed. The provisions of this section, if availed of, by debtors will go a long way to mitigate this evil.

The effect of a deposit being made in court is that interest ceases to run on the sum deposited from the date of deposit. This is in accordance with the practice which is followed by all *Sahukars*, at least the good ones among them. Counter-interest on re-payments made by a debtor at the same rate as is charged by the *Sahukar* on his own advances is always allowed under the indigenous system.

The subject of deposits in court has been dealt with in the United Provinces Agriculturists' Relief Act under section 38. Sub-sections (2) and (3) of section 31 of our own Act are identical in terms with sub-sections (2) and (3) of section 38 in the United Provinces Agriculturists' Relief Act. Sub-section (1) of section 38 in the United Provinces Agriculturists' Relief Act states that the amount which a debtor deposits in court shall not be less than one-fourth of the amount due at the time of the deposit. Our own Act does not lay down any such restriction. Debtors in the Punjab are free to deposit in court any amount for payment to their creditors irrespective of the proportion which this deposit bears to the amount actually due at the time of the deposit.

Power of Local Government to make rules.

32. (1) The Local Government may make rules for carrying into effect the provisions of this Part of this Act.

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

- (a) for determining the court into which the sum shall be deposited;
- (b) the procedure for keeping accounts of such deposits and the manner in which notices are to be served on creditors and payments made to them.

(3) The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication.

NOTES.

This section relates to the rule making power of the Local Government. This power is to be exercised subject to the same

condition as is laid down in section 28 with regard to previous publication. The main objects for which rules are to be made in this section are: (a) the determination of the court where deposits are to be made, and (b) the procedure for keeping accounts of deposits and the manner of the service of notices upon and payments to, creditors.

No rules have so far been made under this section.

PART VII.

Redemption of Mortgages.

33. In section 1, sub-section (3) (a) of the Redemption of Mortgages (Punjab) Act, 1913, for the figures and word "30 acres" the figures and word "50 acres" shall be substituted, and in sub-section (3) (b) of the same section for the figures "1,000" the figures "5,000" shall be substituted.

Amendment of section 1 (3) (a) of the Redemption of Mortgages (Punjab) Act, 1913.

NOTES.

The Punjab Redemption of Mortgages Act provides a summary procedure enabling mortgagors to redeem their agricultural lands. Recourse to a civil court for the redemption of a mortgage involves an amount of time and expense which is both unreasonable and unnecessary. Therefore a summary method in which a mortgagor could go to a revenue officer for seeking the redemption of his land was provided by Act II of 1913. All that was required of a mortgagor under this procedure was that he should make an application to a revenue officer and deposit in court an amount which he considered was due under the mortgage. When this had been done the revenue officer was to make a summary enquiry and determine the amount on the payment of which the mortgagor was entitled to redeem his land. If the amount deposited by the mortgagor was accepted by the revenue officer as representing the full amount due under the mortgage, or if the mortgagor was prepared to deposit a further amount which together with the amount deposited would represent the sum determined by the revenue officer to be due under the mortgage, the mortgagee would be asked to vacate the land, and to go to the civil court if he felt aggrieved by this order. This marked a great improvement on the procedure to be observed in civil litigation for redemption. But the scope of the summary method

fixed by this Act was restricted in its application to those cases only in which, whatever the mortgage money, the land mortgaged did not exceed 30 acres, or in which, whatever the area, the principal money secured under the mortgage did not exceed 1,000 rupees. The amendment contained in this section increases the scope of the summary method to a very large extent by substituting 50 acres for 30 acres and 5,000 rupees for Rs. 1,000. Sub-section (3) (a) of section 1 of the Punjab Redemption of Mortgages Act as amended will read as follows :—

“(3) It shall apply only to mortgages of land—

- (a) in which, whatever the mortgage money, the land mortgaged, after excluding the area of any share in the common land of the village appertaining thereto and mortgaged therewith, does not exceed in area 50 acres, or
- (b) in which, whatever the area the principal money secured under the mortgage does not exceed 5,000 rupees :

Provided that it shall not apply to any mortgage made under section 6 of the Punjab Alienation of Land Act, 1900.”

The subject of the redemption of mortgages has been dealt with by the United Provinces Agriculturists' Relief Act in Chapter III. This Chapter covers the whole ground of our own Act II of 1913. There are differences here and there. The important differences are noted below :

In the Punjab if the summary procedure of redemption does not succeed, remedy by a regular suit still remains open. In the United Provinces this door is closed to the parties in all cases to which the United Provinces Agriculturists' Relief Act applies. Section 25 of this Act lays down in clear terms :—“No suit shall be brought in any court for any relief which can be obtained by an application under this Chapter.”

Under Act II of 1913, all the proceedings in cases to which that Act applies take place before a revenue officer. In the United Provinces applications for redemption shall be brought before the collector if the principal money secured does not exceed rupees five hundred. (Vide Section 10).

In all other cases applications for redemption shall be brought before an ordinary court. (Vide section 12).

PART VIII.

Miscellaneous amendments of the Civil Law.

34. Notwithstanding anything to the contrary contained in any other law for the time being in force, no judgment-debtor shall be liable to arrest for default in the payment of any money due under a decree unless the court is satisfied that the judgment-debtor has, without just cause, contumaciously refused to pay the amount of the decree, in whole or in part, within his capacity to make payment :

Warrant of arrest. Provided that the court shall before issuing a warrant of arrest, give an opportunity to the judgment-debtor to show cause against its issue :

Provided further that when a court has power under the law to order a temporary alienation of the land of a judgment-debtor in execution of a decree, the court shall not for the purpose of this section take into account the value of any such temporary alienation in considering the capacity of the judgment-debtor to pay : and

Provided, further, that save in so far as is otherwise provided in this section the court in considering the capacity of the judgment-debtor to pay shall take into consideration the value of the property of the judgment-debtor only to the extent to which a civil court can dispose of it under the law in execution of a decree.

NOTES.

Civil imprisonment for default in the payment of decretal money is one of the well-known coercive methods recognised under the Civil Procedure Code. This method has been abolished *in toto* in most of the civilised countries of the world. Very minor remnants, in exceptional circumstances, are to be found in some of the rest. In India, however, this relic of barbarism still persists. This section marks a good beginning towards eventual abolition, and it is a tribute to the wisdom and foresight of the Punjab Legislative Council that the Central Legislature has undertaken to amend the Civil Procedure Code with the object of circumscribing this method of coercion within as narrow limits as possible.

Notwithstanding anything to the contrary contained in any other law :—

The language used here is sufficiently wide to cover not only the provisions of the Civil Procedure Code sanctioning civil detention, but also similar provisions contained in any other law for the time being in force.

Judgment-debtor :—

This term, though not defined in this Act, has the same meaning as is attached to it under the Civil Procedure Code. Section 2 (10) of this Code defines "judgment-debtor" as "any person against whom a decree has been passed or an order capable of execution has been made." The term bears the same meaning here, and should not be confounded with the term 'debtor' as defined in section 7 of this Act. The reasons why the term 'judgment-debtor' should not be interpreted as being identical with the term 'debtor' are the following :—

(a) The term 'debtor' has been defined in Part IV which deals with conciliation proceedings and stands by itself as a separate and independent portion of the Act devoted to a specific purpose.

(b) The term 'debtor' also occurs in section 30 which constitutes Part V. But in section 30 a specific reference has been made to the fact that the term 'debtor' has been used in the sense attached to it by its definition in section 7.

(c) There is no reference in section 34 to the definition of the term 'debtor' in section 7.

(d) The context in which the term 'judgment-debtor' has been used here leaves no room for doubt as to its real meaning.

General rule as to arrest :—

As a general rule a judgment-debtor is immune from arrest. It is only in exceptional circumstances that he becomes liable to arrest. Unless and until these special circumstances have been established, the question of the arrest of a judgment-debtor does not arise, and even when this has been done it is incumbent upon the court before it issues a warrant of arrest to "give an opportunity to the judgment-debtor to show cause against its issue."

Conditions precedent to arrest :—

The special conditions which alone would justify the arrest of a judgment-debtor are as follows :—

The court should be satisfied

- (a) that a judgment-debtor has refused to pay the amount of the decree, in whole or in part,
- (b) that this refusal is without just cause,
- (c) that this refusal is contumacious, and
- (d) that this refusal is in spite of the fact that the judgment-debtor has the capacity to pay.

Has refused to pay :—

What do the words 'has refused to pay' mean? Does 'refusal' here mean a mere inability to pay, a bare failure to pay, or does it mean anything more than simple non-payment? It is submitted that refusal to pay connotes a greater element of activity in the judgment-debtor's mentality which accounts for non-payment than is conveyed by mere inability or failure to pay or by indifference, non-vigilance or inadvertence. The other concomitants of 'refusal to pay', such as, 'without just cause', 'contumaciously' and 'within his capacity' clearly indicate that it is not mere passivity but perversity on the part of the judgment-debtor which entails the penalty of arrest. Let us take an illustration. Suppose there is a decree for Rs. 2,000 against A, and he suddenly comes into funds by the death of a relation, but does not take any steps, either as a result of inadvertence or pressure of other engagements incidental to that death, to satisfy the decree immediately. He cannot, it is submitted, be arrested on the mere ground of non-payment. But suppose the court calls upon him to show cause why he should not be arrested, allows him time within which to make the payment and he still makes a default. He can and should be arrested. In the latter case, there is an element of defiance, an active and unjustifiable determination to withhold payment.

Without just cause :—

If there is a refusal to pay and that refusal is without just cause, the absence of just cause will strengthen the case for arrest while the presence of a just cause will serve as a good and valid excuse for the refusal. What is or is not a just cause will depend upon the particular circumstances of each case and will be within the discretion of the court to decide. Suppose a judgment-debtor has received rupees five hundred as a result of the sale price of his agricultural produce and there is a decree against him for rupees two thousand, but he has also to pay rupees two hundred as land revenue and rupees four hundred as *abiana*. The decree-holder calls upon him and

makes a demand for the payment of rupees five hundred to him, but the judgment-debtor refuses to pay anything to him on the ground that he must first meet his lambardar's demand for the payment of land-revenue and *abiana*. This is, it is submitted, a just cause for his refusal to pay. Again, suppose a judgment-debtor's wife is ailing, and the judgment-debtor has to call in medical aid for which he must pay rupees twenty. He has no more than rupees twenty-five with him. He has also a decree against him and the decree-holder demands that the sum of rupees twenty-five should be paid to him, but the judgment-debtor refuses to part with this money on the ground that the charges for medical attendance upon his wife have a prior claim. This should be regarded as a good cause for his refusal.

Contumaciously :—

The dictionary meaning of the word 'contumacy' is "obstinate disobedience or resistance" (Chambers' Dictionary). The meaning of 'contumacy' according to the Universal Dictionary is "stubborn and perverse resistance to authority, especially wilful disobedience to the orders of a court of law." From these meanings of the word 'contumacy' it is clear that unless there has been a wilful disobedience to an order of court, the question of arrest does not arise. It may be suggested that a decree is in itself an order of a court inasmuch as it directs a judgment-debtor to pay the amount due under it, and a refusal to pay the decretal money will amount to contumacy on the part of a judgment-debtor. But it may be reasonably contended that the directions contained in a decree are more or less formal and general in their character, and in order to bring a judgment-debtor's refusal to pay within the ambit of 'contumacy' there should be a specific order of the court directing payment which has been disobeyed or resisted. The adjectives 'stubborn' and 'obstinate' prefixed to disobedience in the meaning of the word 'contumacy' give a clear indication that simple disobedience of the terms of a decree—more or less a matter of mere routine and form—will not amount to 'contumacy'.

In whole or in part :—

The refusal to pay may be in respect of the whole amount due under a decree or only a part of it. So long as the refusal to pay is without just cause and contumacious, and relates to an amount which is within the judgment-debtor's capacity to pay, it will furnish a valid ground for his arrest.

Within his Capacity to make payment :—

This phrase does not seem to have been chosen happily. In fact, it is hardly correct even grammatically. The phrase "within his capacity to make payment" is intended to qualify the word 'amount' and the phrase, worded as it is, is not a very good specimen of composition. What is really intended to be conveyed is that the judgment-debtor should refuse to pay the amount which is within his capacity to pay. The phrase "refusing to pay the amount within his capacity to make payment" does not, to say the least, make very good reading.

Capacity to pay :—

This expression has not been used in this section in its ordinary meaning. Ordinarily capacity to pay will be judged with reference to all the resources which are at the disposal of a judgment-debtor. But this method of judging a judgment-debtor's capacity to pay has not met the approval of the legislature. Some of the items of a judgment-debtor's assets have been excluded from calculation when a judgment is formed with regard to his capacity to pay. Some of these items are as follows :—

- (a) The value of the temporary alienation of land protected under the Alienation of Land Act :

A court has power to order a temporary alienation of the land belonging to a member of a statutory agricultural tribe. But when judging a statutory agriculturist's capacity to pay, the court cannot take into consideration the return which a temporary alienation of his land may be expected to bring. Suppose a statutory agriculturist owns two hundred bighas of canal-irrigated land, neither the court nor the decree-holder can say that as a temporary alienation of this land can bring an annual income of rupees four hundred or an aggregate amount of rupees eight thousand in twenty years, therefore the judgment-debtor has a capacity to pay rupees four hundred a year or rupees eight thousand in all, and should be arrested if he refuses to pay that amount in whole or in part.

- (b) The value of the property which a civil court cannot dispose of in execution of a decree :

This will prevent the court, when judging a judgment-debtor's capacity to pay, from taking into account the value of any of the items which are exempted from attachment under section 60 of the

Civil Procedure Code. For instance, the house of an agriculturist and his plough-cattle shall have to be disregarded entirely when determining his capacity to pay. Similarly the value of the tools of an artisan will be excluded from calculation.

- (c) In the case of a person liable for the payment of land revenue any immoveable property which is exempt from sale for the recovery of an arrear of such revenue :

It may be noted that in the case of an agriculturist the exemption extends not only to his houses, plough-cattle and implements of husbandry, but also to so much of the produce of land "as the collector thinks necessary for seed-grain and for the subsistence, until the harvest next following, of the defaulter and his family and of any cattle exempted from attachment by law."

In so far as is otherwise provided in this section :—

These words have a special significance. It will be noticed that the last proviso to section 34 empowers a court, while judging the capacity of a judgment-debtor to pay, to take into consideration the value of any property of the judgment-debtor only to the extent to which the court can dispose of it. A civil court has power to dispose of the land belonging to a statutory agriculturist by alienating it for a maximum period of 20 years, and, if the words "save in so far as is otherwise provided" had not been added, the result would have been that the value of such temporary alienation could have been taken into consideration by a court in determining a statutory agriculturist's capacity to pay. However, as this course has been specifically forbidden in the second proviso of this section the court cannot take into consideration this value in determining a statutory agriculturist's capacity to pay.

Immediately after this Act came into force courts were doubtful as to whether a warrant of arrest, issued but not executed before this Act came into force, could be availed of for the arrest of a judgment-debtor after the 19th April, 1935, the date of the commencement of this Act. More than a year has passed since this Act came into force. Therefore this point has only an academic value now. But it was held in A.I.R., 1936, Lah., page 150, that a warrant issued before the 19th April, 1935, could not be executed after the enforcement of this Act. The judgment

quoted above remarks as follows:—"There is nothing in this section about the date of issue of the warrant. What the section says is that after 19th April, 1935, no judgment-debtor shall be liable to arrest unless the necessary conditions are fulfilled."

Amendment of section 60 (1) (c) of the Code of Civil Procedure, 1908.

35. In section 60 (1) (c) of the Code of Civil Procedure, 1908, for the words "occupied by him" the following words shall be substituted:—

"not let out on rent or lent to others or left vacant for a period of a year or more."

NOTES.

Section 60 of the Civil Procedure Code exempts from attachment or sale certain items of property belonging to a judgment-debtor. Clause (c) of sub-section (1) of this section relates to the exemption of houses and other buildings belonging to an agriculturist, and runs as follows:—

"Houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

Section 35 of this Act amends this part of section 60 of the Civil Procedure Code by substituting certain words for the words "occupied by him." After this amendment, clause (c) of sub-section (1) of section 60 of the Civil Procedure Code will read as follows:—

"Houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and not let out on rent or lent to others or left vacant for a period of a year or more."

The differences which result from this amendment are as follows:—(a) The words "occupied by him" placed the burden of proof in regard to occupation on the judgment-debtor. The amendment now made will shift the burden to the decree-holder who shall have to prove that the house attached by him is one which has been let out on rent or lent to others or left vacant for a period of at least one year.

(b) Previous to this amendment the decree-holder always contended, and the courts always conceded his contention, in all cases in which a judgment-debtor owned more houses than one,

that the house attached was in excess of the needs of the judgment-debtor. Not only this, but it was contended frequently, again with success, that a single house owned by a judgment-debtor was too large for his requirements and that a portion of it should be sold in execution of a decree. The present amendment brushes aside all such contentions. Whatever the number of houses or other buildings belonging to an agriculturist, not one of them can be attached or sold unless it is proved by the decree-holder that the house or building sought to be attached or sold for the realisation of his decree is one which has either been let out on rent or lent to others or left vacant for a period of at least one year.

(c) Under the old law there was a good deal of controversy as to the nature of occupation which will justify exemption, that is, unless occupation was for the purposes of agriculture exemption was held not to be justifiable. The amendment now made makes it clear that whatever the nature of occupation if the house attached or sought to be attached belongs to an agriculturist, it shall remain exempt except in cases detailed in the amendment, that is, it is only in those cases in which a house is let out on rent or lent to others or left vacant for at least one year that the house can be attached.

For a period of a year or more :—

Do these words go only with the words 'left vacant' or do they also qualify 'let out on rent' and 'lent to others'? The absence of any punctuation after the word 'others' seems to suggest that these words qualify all the three phrases namely, (a) 'let out on rent', (b) 'lent to others' and (c) 'left vacant'.

It may also be noted that these words mean a continuous period of at least one year. Isolated intervals of less than a year during which a house remains vacant will not justify its attachment.

Who is and who is not an agriculturist is a subject which can be dealt with appropriately only under section 60 of the Civil Procedure Code. No definition of the term 'agriculturist' has been attempted here, and the term will naturally be understood in the sense in which it has been held by various High Courts to have been used under section 60 of the Civil Procedure Code.

Amendment of Order
XXI, rule 2 of the
Code of Civil Procedure,
1908.

36. In Order XXI, Rule 2, of the Code of Civil Procedure, 1908 sub-rule (3) shall be omitted.

NOTES.

This section amends Order XXI, Rule 2 of the Code of Civil Procedure by directing the omission of sub-rule (3) of that rule. Order XXI Rule 2 reads as follows:—

“Rule 2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a date to be fixed by the Court, why such payment or adjustment should not be regarded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be regarded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.”

The wording of this Rule clearly states that the obligation to certify a payment or adjustment which takes place in respect of a decree out of court rests on the decree-holder. The judgment-debtor may, if he likes, also inform the court of such payment or adjustment, but he is under no obligation to do so. And yet, if a default is made by the decree-holder in the discharge of his obligation, it is not he but the judgment-debtor who is penalised. It was with a view to the removal of this anomaly that the amendment contained in this section has been made. Under the old law a judgment-debtor was not allowed to plead any payment or adjustment which was not certified to the court within 90 days of its occurrence. Under the law as amended a judgment-debtor is at liberty to plead such payment or adjustment at any time when the payment or adjustment comes in question.

37. Where, in a suit for the recovery of a loan, the court is satisfied that an entry relating to the loan has been made in any document showing the amount of the sum advanced to be in excess of that actually advanced *plus* legitimate expenses incurred, the

Penalty for false claim
of a principal sum.

court may, at its discretion, disallow the whole or any part of the sum claimed by the plaintiff.

NOTES.

As the maximum leviable rates of interest have now been prescribed by section 5, and interest larger in amount than the sum originally lent by a creditor has been forbidden under section 30 of this Act, there is a serious danger of a tendency on the part of creditors to enter in their account books evidencing loans, larger amounts than those actually advanced. To counteract any such tendency section 37 has been enacted. If it is proved to the satisfaction of the court that a creditor has debited his *asami* with an amount larger than that actually advanced *plus* legitimate expenses incurred, the court has power under this section to disallow the whole or any part of the sum claimed by the plaintiff.

This section embodies a very wholesome principle to which no reasonable exception can be taken by anybody. The United Provinces legislature has adopted a different course to counteract the mischief sought to be tackled in this section. Section 35 of the United Provinces Agriculturists' Relief Act lays down that "any creditor who, after the commencement of this Act, records in his book of accounts or in the statement of account submitted to the debtor as lent to an agriculturist a sum larger than that actually lent,.....shall be punishable for the first offence with fine which may extend to one hundred rupees, and for a second or subsequent offence with regard to the same or any other agriculturist, with fine which may extend to five hundred rupees."

APPENDIX I

ORDER V, C. P. C.

ISSUE AND SERVICE OF SUMMONS.

ISSUE OF SUMMONS.

1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear:

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court,

Copy or statement annexed to the summons.

2. Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

Court may order defendant or plaintiff to appear in person.

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day

therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within certain limits.

4. No party shall be ordered to appear in person unless he resides:—

(a) within the local limits of the Court's ordinary original jurisdiction, or

officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in his behalf, and sealed with the seal of the Court.

Mode of service.

Service of several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Service on agent by whom defendant carries on business.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Service on agent in charge in suits for immovable property.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Where service may be on male members of defendant's family.

Explanation.—A servant is not a member of the family within the meaning of this rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Person served to sign acknowledgment.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he had so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

Procedure when defendant refuses to accept service, or cannot be found.

18. The serving officer shall, in all the cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, return stating the time when, and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

Endorsement of time and manner of service.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Examination of serving officer.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit.

Substituted service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Effect of substituted service.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Where service substituted, time for appearance to be fixed.

21. A summons may be sent by the Court by which it is issued whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Service or summons where defendant resides within jurisdiction of another Court.

22. Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

Service, within presidency towns and Rangoon, of summons issued by Courts outside.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the

Duty of Court to which summons is sent.

Court of issue, together with the record (if any) of its proceedings with regard thereto.

Service on defendant in prison.

24. Where the defendant is confined in a prison, the summons shall be delivered, or sent by post, or otherwise to the officer in charge of the prison for service on the defendant.

25. Where the defendant resides out of British India, and has no agent in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service where defendant resides out of British India and has no agent.

26. Where (a) in the exercise of any foreign jurisdiction vested in His Majesty, or in the Governor-General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or (b) the Governor-General in Council has, by notification in the Gazette of India, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be a valid service, the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Service in foreign territory through Political Agent or Court.

27. Where the defendant is a Public Officer (not belonging to His Majesty's Military, Naval or Air Forces or His Majesty's Indian Marine Service), or is the servant of a Railway Company, or Local Authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Service on Civil Public Officer or on servant of Railway Company or Local Authority.

28. Where the defendant is a Soldier or Airman, the Court shall send the summons for service to his Commanding Officer together with a copy to be retained by the defendant.

Service on Soldier.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27, or rule 28, such person shall be bound to serve it, if possible, and to return it under the signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

Duty of persons to whom summons is delivered or sent for service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

Substitution of letter for summons.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post, or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and where the defendant has any agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER X C. P. C.

Examination of Parties by the Court.

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of facts as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Ascertainment whether allegations in pleadings are admitted or denied.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is ac-

Oral examination of party, or companion of party.

accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written. 3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of refusal or inability of pleader to answer. 4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XIII C.P. C.

Production, Impounding and Return of Documents.

Documentary evidence to be produced at first hearing. 1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced, provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

Effect of non-production of documents. 2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof, and the Court receiving any such evidence shall record the reasons for so doing.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rejection of irrelevant or inadmissible documents.

4. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely :—

Endorsement on document admitted in evidence.

- (a) the number and title of the suit,
 - (b) the name of the person producing the document,
 - (c) the date on which it was produced, and
 - (d) a statement of its having been so admitted;
- and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

Endorsement on copies of admitted entries in books, accounts and records.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (a) where the record, book or account is produced on behalf of a party, then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clause (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and,

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this rule, if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so :

Provided also that no document shall be returned which by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

11. The provisions herein contained as to documents shall, as far as may be, apply to all other material objects producible as evidence.

Provisions as to documents applied to material objects.

ORDER XVI.

Summoning and Attendance of Witnesses.

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Summons to attend to give evidence or produce documents.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witnesses to be paid into Court on applying for summons.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Experts.

(3) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the movable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the movable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such documents to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Summons how served.

8. Every summons under this Order shall be served as nearly as may be in the same manner as the summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned; to allow him a reasonable time for preparation and travelling to the place at which his attendance is required.

Procedure where witness fails to comply with summons.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immovable property.

If witness appears. 11. Where, at any time after the attachment may be attachment of his property, such person withdrawn. appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. The Court may, where such person does not appear or appears but fails so to satisfy the Court, Procedure if witness fails to appear. impose upon him such fine not exceeding Rs. 500/- as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment together with the amount of the said fine, if any :

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this Order as if the person whose property is so attached were a judgment-debtor.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

15. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce, it, or cause it to be produced, at such time and place.

16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. Where any person arrested under a warrant is before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail and security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. No one shall be ordered to attend in person to give evidence unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court

is situate) less than two hundred miles distance from the Court-house.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such orders in relation to the suit as it thinks fit.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

APPENDIX II

HOME DEPARTMENT.

JUDICIAL

The 10th September, 1935.

No. 29855.—With reference to Punjab Government notification No. 15943-Judicial, dated the 23rd April, 1935, and in exercise of the powers conferred by section 28 of the Punjab Relief of Indebtedness Act, 1934, the Governor in Council is pleased to make the following rules:—

RULES.

1. These rules may be called the Punjab Debt Conciliation Rules, 1935.
2. (i) In these rules:—
 - (a) "Act" means the Punjab Relief of Indebtedness Act, 1934;
 - (b) "Board" means a Debt Conciliation Board established under the Act.
3. Unless in the case of any particular Board the local Government shall order otherwise, the salary of the Chairman of a Board shall be two hundred and fifty rupees a month and that of the other members two hundred rupees each. The Chairman and the members shall be entitled to receive in addition a fixed travelling allowance of seventy-five rupees a month.
4. A Board shall have its office at such place as may be fixed by the local Government, and may hold its sittings at any place within its area of jurisdiction.
5. It may hold its sittings on all days except those which are allowed as local holidays or as holidays to all public offices in the province, but nothing in this rule shall operate to invalidate proceedings taken by a Board on a sanctioned holiday.
6. Not less than two-thirds of the total membership of a Board must be present to form a quorum. In calculating the total membership for the purpose of this rule the Chairman is to be counted, as well as the members.
7. An application for a settlement between a debtor and his creditors shall be signed by the applicant and his pleader.

(if any) and shall be verified at the foot by the applicant, who shall specify by reference to the numbered paragraphs of the application what he verifies of his own knowledge and what he verifies upon information received and believed to be true. The verification shall be signed by the applicant and shall state the date on which and the place at which it was signed.

8. (1) Every application for settlement between a debtor and his creditors shall be presented by an applicant in person or sent by registered post to the Chairman or to a member of the Board or to any person authorised by the Deputy Commissioner in this behalf. On receipt of the application the Board shall order the relevant details to be entered in the Register of Applications for Settlement of Debts.

(2) Every application shall be accompanied by all such documents will be necessary for the disposal of the proceedings before the Board.

(3) A further and better statement of the nature of the claim or defence, or further and better particulars of any matters stated in any application, may be admitted by the Board upon such terms as to costs and otherwise as may be just.

9. If the Board does not dismiss the application, it shall send to all persons concerned, at the expense of the applicant, a notice by registered post (acknowledgment due), issued under the provisions of section 12 (2) of the Act, of the date and place fixed for hearing of the application.

10. If the applicant is a debtor, and the Board does not dismiss the application, the Board shall as soon as convenient cause to be posted in a prominent place at the office of the Board a notice in form I attached to these rules. It shall similarly cause to be published, at the cost of the applicant, the same notice in some vernacular newspaper, commonly read in the area in which the Board has jurisdiction, at least twice within one month.

11. If the applicant is a creditor:—

- (i) the notice sent to the debtor under rule 8 may require him to submit to the Board, at least twenty-five days before the date fixed for hearing the application, a written statement signed and verified by the debtor in the manner aforesaid containing:—
 - (a) the particulars of all debts owed by him, together with the names and addresses of all his creditors;
 - (b) the particulars of all his property, together with a specification of the value of such property and the place or places at which such property is to be found.

- (ii) On receiving the written statement the Board shall send by registered post (acknowledgment due) a notice of the date and place fixed for hearing the application to all creditors mentioned by the debtor in his statement.

The cost of issuing these notices shall be recovered by the Board from the applicant in advance.

12. On the date fixed for hearing the application, the Board, after any other proceedings it may consider necessary, shall, unless it dismisses the application, publish in the manner prescribed in the next following rule a notice in accordance with section 13 of the Act calling upon every creditor of the debtor to submit within two months a statement to the Board of all debts owed to him by the debtor.

13. (i) The notice shall be in form II attached to these rules and shall be published as follows :—

- (a) It shall be read out and explained in open session by the Chairman of the Board to all creditors who are present, and a memorandum shall be made that this has been done. The names of the creditors present shall also be recorded.
- (b) A copy of the notice shall be affixed in some conspicuous part of the place where the Board is sitting.
- (c) A copy of the notice shall be sent by registered post (acknowledgment due) to those creditors who have been named by the applicant or debtor and are not present before the Board. The cost shall be borne by the applicant, but shall be recoverable, at the discretion of the Board, from a creditor who has had previous notice of the date fixed.

(ii) If the Board has reason to believe that the applicant has not disclosed the names of all creditors, it shall further cause the notice in form II to be published at the cost of the applicant in some vernacular newspaper commonly read in the area in which the Board has jurisdiction, at least twice within one month of the order.

14. A certificate granted under section 20 (2) of the Act by a Board to a debtor in respect of debts due from him to any creditor shall be in form III annexed to these rules, and shall be signed by the Chairman and members of the Board present and sealed with the seal of the Board. The certificate shall be prepared in triplicate; one copy shall be delivered to the debtor, one copy shall be sent to the Record Room of the district in which the Board is working, to be filed in accordance with rules

framed by the Punjab Government, and the third copy shall be attached to the record of the proceedings.

15. Every application for settlement made under section 9 of the Act and every application for review made under section 23 of the Act shall be stamped by the applicant with a court-fee, stamp of the value of eight annas.

16. (i) For every registered notice to be sent by the Board under the Act and these rules the person at whose expense it has to be sent shall pay to the Board, before the issue of the notice, the sum of six annas.

(ii) If the applicant fails to pay the expense of a registered notice within a week, his application shall be dismissed in default. But he may, within one month of the dismissal, apply to have the dismissal set aside; and if he satisfies the Board that there was sufficient cause for his non-compliance with the order of payment, the Board shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the application.

17. The Chairman of the Board shall send quarterly returns of the work done by the Board to the Collector in form IV annexed to these rules.

18. The costs of and incident to all proceedings before the Board shall be in the discretion of the Board, and the Board shall at the time of every settlement under section 17 of the Act have full power to determine the amount to be paid as costs and the person by whom it is to be paid and to give all necessary directions for the purposes aforesaid.

19. Every Chairman of the Board on demand shall cause to be given a copy of any settlements made under section 17 of the Act, on payment of two annas, together with a certificate written at the foot of such copy that it is a true copy of such settlement, and such copies so certified shall be certified copies within the meaning of the Indian Evidence Act, 1872.

20. The following registers shall be kept by a Board and entered up under the supervision of the Chairman on every day that the Board holds its sitting :—

- (a) Register of applications for settlement of debts (form V);
- (b) Register of miscellaneous applications (form VI);
- (c) Register of receipts and disbursements (form VII);
- (d) Pay roll register (form VIII).

Form I.**FORM OF NOTICE UNDER SECTION 12 OF THE PUNJAB
RELIEF OF INDEBTEDNESS ACT, 1934.***Rule 10 of the Punjab Debt Conciliation Rules, 1935.*

Notice is hereby given that _____, son
of _____ caste _____, of _____
tahsil _____ district _____, has filed an
application under section 9 of the aforesaid Act, and that the
Board has fixed the _____ day of _____ 19____ at
_____ for hearing the application. All creditors of
_____ aforesaid or other persons interested should
appear in person before the Board on the date fixed.

Dated _____ the _____ day of _____ 19 .

Chairman,

Debt Conciliation Board,

_____ District

(Seal of the Board.)

Form II.**FORM OF NOTICE UNDER SUB-SECTION (1) OF SECTION 13 OF
THE PUNJAB RELIEF OF INDEBTEDNESS ACT, 1934.***Rules 12 and 13 of the Punjab Debt Conciliation
Rules, 1935.*

1. Whereas _____, son of _____, caste _____
of _____ tahsil _____, district _____, debtor,
creditor
has submitted an application under section 9 of the aforesaid
Act for the settlement of the debts of _____, son of
_____, caste _____ of _____ tahsil _____,
district _____, and whereas the Board is of the opinion
that it is desirable to attempt to affect a settlement between
the said debtor and his creditor, you as one of the creditors
all the creditors
to whom the said debtor is indebted, are hereby required to

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submit to the Board within two months of the date of publication of this notice, a statement in writing at the Board's office at _____ on _____ of all debts owed to ~~you~~^{them} by the said debtor. The Board will scrutinize this statement at _____ on _____ day _____ when you should appear before the Board.

2. ~~You~~^{All the creditors} are also required to furnish, along with such statement, full particulars of all such debts and shall at the same time produce all documents, including entries in books of account on which ~~you~~^{they} rely to support ~~your~~^{their} claims, together with a true copy of every such document.

3. Further proceedings in this case will take place at _____ on the _____ day of _____ 19____, when all creditors should appear before the Board.

Dated _____ the _____ day of _____ 19_____.

Chairman,
Debt Conciliation Board,
_____ District,

(Seal of the Board.)

Form III.

FORM OF CERTIFICATE OF DEBTS UNDER SUB-SECTION
(1) OF SECTION 20 OF THE PUNJAB RELIEF OF
INDEBTEDNESS ACT, 1934.

Rule 14 of the Punjab Debt Conciliation Rules, 1935.

Whereas _____, son of _____, caste _____, of _____, tahsil _____, district _____, a debtor and _____, son of _____, caste _____, of _____, tahsil _____ district _____, his creditor parties to application for settlement of debts No. _____ of 19 _____ before this Board, have failed to come to any settlement of their dispute, and whereas

Form IV.

RETURN TO COLLECTOR UNDER RULE 17 OF THE PUNJAB DEBT CONCILIATION RULES, 1935.

For quarter ending _____.

1	2	3	4	5	6	7
Total number of applications made for settlement of debts.	Total number of applications dismissed without settlement.	Total number of cases in which complete settlement has been reached.	Total number of cases in which partial settlement has been reached.	Value of claims which have been compounded.	Amount for which claims mentioned in column 5 have been compounded	Total number of certificates granted.

General remarks :—

Dated _____.

(Sd.)

Chairman of Board at _____.

Form V.

REGISTER OF APPLICATIONS FOR SETTLEMENT OF DEBTS.

Debt Conciliation Board at _____.

1	2	3	4	5	6	7	8	9
No. of application.	Date of application.	Name and address of debtor.	Names and addresses of creditors.	Date of disposal of application.	Result giving details of settlement, if any.	Names of creditors against whom applications have been granted.	No. and date of review application, if any.	Abstract of order on review.

Form VI.

REGISTER OF MISCELLANEOUS APPLICATIONS.

Debt Conciliation Board at _____.

1	2	3	4	5	6	7
No. of application.	Date of application.	Description of application.	Name and address of applicant	Name and address of opposite party.	Date of disposal of application	Abstract of decision.

Form VII.

REGISTER OR RECEIPTS AND DISBURSEMENTS.

(Showing balance in hand each day).

Debt Conciliation Board at _____

1	2	3	4	5	6
Date.	Particulars of Receipts.	Amount.	Particulars of Disbursements.	Amount.	Balance.
		Rs. A. P.		Rs. A. P.	

Form VIII.

ESTABLISHMENT.

Pay-Roll Register.

Debt Conciliation Board at _____

Month—

1	2	3	4	5	6	7	8
Serial No.	Name of incumbent.	Pay, including special allowance, if any.	Deduction for leave or absence, if any.	Deduction for income-tax, provident fund, etc.	Net amount payable	Remarks.	Acquittance.

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APPENDIX III.

**THE PUNJAB REGULATION OF ACCOUNTS
ACT, 1930.**

PUNJAB ACT I OF 1930.

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

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

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

Short title, extent and commencement. i (1) This Act may be called the Punjab Regulation of Accounts Act, 1930.

(2) It extends to the Punjab.

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

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

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

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

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

Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.

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

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

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

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

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

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

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

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

- a wholesale or a retail merchant,
- a commission agent,

a broker,
 a manufacturer,
 a contractor,
 a factory owner,

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

Duty of creditor to maintain and furnish accounts. 3. (1) A creditor shall in order to comply with the provisions of this Act—

- (a) regularly record and maintain an account for each debtor separately, of all transactions relating to any loan advanced to that debtor, in such manner as the Local Government may prescribe.
- (b) furnish each debtor every six months with a legible statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on the 30th day of June or 15th Har and the 31st day of December or 15th Poh in each year. This statement of account shall include all transactions relating to the loan entered into during the six months to which the statement relates, and shall be sent, in such manner and in such form and containing such details as the Local Government may prescribe, on or before the 31st day of August or 15th Bhadon in the case of any balance outstanding on the 30th day of June or 15th Har and on or before the 28th day of February or 15th Phagan in the case of any balance outstanding on the 31st day of December or 15th Poh.

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

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

Provided that—

- (i) if the loan has since it was originally advanced, passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account prescribed by this section for a period of six months from the date of such passing;
- (ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the prescribed account in the case of a loan wherein the title to recover is *sub-judice* between two or more persons claiming as creditors adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.

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

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

Penalty for non-compliance with the provision of section 3. 4. Notwithstanding anything contained in any other enactment in force for the time being—

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

of section 3: provided that if the creditor has after the time prescribed in that clause furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

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

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

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

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

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

- (i) prescribing the forms and numerals to be used in the accounts required by sub-section (1) of section 3;
- (ii) prescribing the manner in which the accounts required by clause (b) of sub-section (1) of section 3 shall be furnished by the creditor to the debtor, the forms to be used, and the details to be incorporated therein and the scale of costs to be paid by such debtors as may demand that the account required by this clause should be furnished in one of the particular scripts mentioned in Explanation (i) of this clause:

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

Legislative Council next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.

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

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

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

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

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

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

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

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

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

4. The form shall also be used for the statement of account required to be furnished periodically by the creditor to each debtor under the provisions of clause (b) of sub-section (1) of section 3 of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided that if the debtor or joint-debtors, as the case may be, agreed in writing to accept the foil by personal delivery it shall not be necessary to send it by post.

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

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

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

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

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

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

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

18. *Scale of costs payable by debtor demanding that account shall be furnished in particular script.* The scale of costs to be paid by such debtor as may demand that the account required by section 3 of the Act should be furnished in one of the particular script mentioned in Explanation (f) to section 3 shall be as follows :—

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

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

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

SCHEDULE.

Foil.
 Opening balance (if any)—
 Principal—
 Interest—

Loan Account ofson of caste.....residence.....

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

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

Add opening balance as above Principal. Interest.

 Total _____

(Signature) Creditor or Agent.

APPENDIX III

SCHEDULE.

Counterfoil.
 Opening balance (if any) — Principal — Interest —

Loan Account ofson of caste.....residence.....

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

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

Add opening balance as above

Principal.	_____	Interest.	_____
Total	_____		_____

(Signature) Creditor or Agent.

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APPENDIX IV

ANNEXURE

THE PUNJAB DEBTORS' PROTECTION BILL

Bill No. 1 of 1935

Bill showing the amendments recommended by
His Excellency the Governor

[The amendments are shown in thick type]

*An Act to provide for the more effective protection of debtor's
in the Punjab.*

Whereas it is expedient for the more effective protection of
debtors to modify the existing law on cer-
tain points and to amend the law with res-
pect to persons carrying on business as money-lenders ;

Preamble.

And whereas the previous sanction of the Governor-General
under sub-section (3) of section 80-A of the Government of India
Act and the previous sanction of the Governor under section 80-C
of the said Act have been obtained ;

It is hereby enacted as follows :—

CHAPTER I—PRELIMINARY.

Short title extent
and commencement. 1. (1) This Act may be called the
Punjab Debtors' Protection Act, 1935.

(2) It extends to the Punjab.

(3) It shall come into force at once.

Definition. 2. In this Act, unless there is any-
thing repugnant in the subject or con-
text,—

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

- (2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament or by Royal Charter or Letters Patent, and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies.
- (3) "Co-operative Society" means a society registered under the provisions of Co-operative Societies Act, 1912.
- (4) "Court" includes a court acting in the exercise of insolvency jurisdiction.
- (5) "Interest" includes the return to be made, over and above what was actually lent, whether the same is charged or sought to be recovered, specifically by way of interest, or otherwise.
- (6) "Loan" means an advance whether of money or in kind at interest and shall include any transaction which the court finds to be in substance a loan, but it shall not include :—
- (i) a deposit of money or other property in a Post Office Savings Bank or any other bank, or in a company or with a co-operative society;
 - (ii) a loan to or by, or a deposit with, any society or association registered under the Societies Registration Act, 1860 or under any other enactment for the time being in force;
 - (iii) a loan advanced by the Local Government or by any local body authorized by the Local Government;
 - (iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under the Indian Companies Act, 1913.
 - (v) a loan advanced to a trader;
 - (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;
 - (vii) a transaction which is, in substance, a mortgage or a sale of immoveable property;
- (7) "Money-lender" means a person who, in the regular course of business, advances a loan as defined in this Act and shall include the legal representatives and the successor-in-interest, whether by inheritance,

assignment or otherwise, of the person who advanced the loan.

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

- (i) a wholesale or a retail merchant,
- (ii) a commission agent,
- (iii) a broker,
- (iv) a manufacturer,
- (v) a contractor,
- (vi) a factory owner,

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

Definitions. 3. In this Chapter, unless there is anything repugnant in the subject or context—

- (1) "Land" means land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land;
- (2) "Collector" means the Deputy Commissioner of a district or any officer specially empowered by the Local Government to exercise the powers of a Collector under this Chapter.

4. (1) Notwithstanding anything contained in any other enactment for the time being in force, whenever a civil court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money the proceedings of such attachment and alienation shall be transferred to the Collector.

(2) On the proceedings being transferred to him by the civil court the Collector shall decide the period of alienation, which shall not exceed twenty years in the case of land owned by a member of a statutory agricultural tribe, determined to be such by the Local Government in exercise of the powers conferred by section 4 of the Punjab Alienation of Land Act, 1900.

5. Such portion of the judgment-debtor's land shall be exempted from temporary alienation as in the opinion of the Collector, having regard to the judgment-debtor's income from all sources except such income as is dependent on the will of another person is sufficient to provide for the maintenance of the judgment-debtor and the members of his family who are dependent on him.

6. The Collector when acting under sections 4 and 5 shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to the Court from which the proceedings were transferred to him and any party aggrieved by an order of the Collector under sections 4 and 5 shall have a right of appeal to the Commissioner who when hearing appeals under this section shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to a Civil Court of appeal.

7. The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against and shall be sixty days.

8. The Local Government may, subject to the condition of previous publication, make rules for carrying into effect the provisions of sections 4, 5, 6 and 7 of this Chapter.

9. When custom is the rule of decision in regard to succession to immovable property then, notwithstanding any custom to the contrary, ancestral immovable property in the hands of a subsequent holder shall not be liable in the execution of a decree or order of a court, relating to a debt incurred by any of his predecessors-in-interest:

Provided that, when the debt has been expressly charged by way of mortgage on ancestral immovable property by a predecessor-in-interest, the court shall determine the liability of such land as if this section had not been passed:

Provided further, and subject to the foregoing proviso, that, in respect of a debt incurred before the commencement of this Act, ancestral property in the hands of a subsequent holder may be liable, only if all the following conditions are satisfied:—

First.—That, before such liability is determined, the judgment-debtor shall be given sufficient opportunity to show cause against such liability.

Second.—That such liability was permitted by the rule of custom applicable to the judgment-debtor immediately before the

commencement of this Act, and nothing in this section shall prevent the judgment-debtor from proving the contrary:

Third.—That the decree-holder is able to show to the satisfaction of the court that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court, not in *ex parte* proceedings, holding that such a custom was applicable to the sub-tribe in the tahsil to which the judgment-debtor belongs.

Fourth.—That the judgment-debtor is not able to show to the satisfaction of the court that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent court not in *ex parte* proceedings, holding to the contrary and subsequent to the judgment relied upon by the decree-holder.

Exemption of standing crops and trees from attachment or sale. 10. Notwithstanding anything to the contrary contained in any other enactment for the time being in force:—

- (1) standing crops, other than cotton and sugarcane, shall not be liable to attachment or sale in the execution of a decree.
- (2) standing trees apart from the land on which they stand shall not be liable to sale in the execution of a decree or an order of a court.

11. (1) Notwithstanding anything to the contrary contained in any other enactment for the time being in force, where an application has been made to execute a decree passed after the commencement of this Act against a debtor as defined in sub-section (2) of section 7 of the Puniab Relief of Indebtedness Act, 1934, and not being a decree granting an injunction, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of six years from—

- (a) the date of the decree sought to be executed; or
 - (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.
- (2) Nothing in this section shall be deemed—
- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of six years, where the judgment-debtor has, by fraud or force, prevented the

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execution of the decree at some time within six years immediately before the date of the application; or

- (b) to limit or otherwise affect the operation of article 183 of the First Schedule to the Indian Limitation Act, 1908.

CHAPTER III.—BURDEN OF PROOF.

12. Notwithstanding anything to the contrary contained in Burden of proof of any other enactment for the time being in consideration. force, the burden of proving that any consideration alleged to have been paid by money-lender actually passed shall be on him; unless the consideration is acknowledged by a debtor in his own hand-writing or has been endorsed by the registering officer acting under clause (c) of sub-section (1) of section 58 of the Indian Registration Act, 1908, as having been paid in his presence.

Lahore:

26th March, 1936.

ABNASHA SINGH.

Secretary, Punjab Legislative Council.

APPENDIX V

CENTRAL PROVINCES ACT No. II OF 1933 AS AMENDED BY ACTS No. I OF 1934 AND No. XIV OF 1935

THE CENTRAL PROVINCES DEBT CONCILIATION ACT, 1933

[Published in the *Central Province Gazette*, dated the 18th March 1933.]

An Act to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness.

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**CENTRAL PROVINCES ACT No. II OF 1933 AS
AMENDED BY ACTS No. I OF 1934 AND
No. XIV OF 1935**

**THE CENTRAL PROVINCES DEBT CONCILIATION
ACT, 1933**

An Act to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness.

Whereas it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

Preamble.

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 to the passing of this Act;

It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Central Provinces Debt Conciliation Act, 1933.

(2) It extends to the whole of the Central Provinces.

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

Note.—The Act came into force on the 1st April, 1933, by Notification No. 957-765-XII, dated the 17th March, 1933.

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

- (a) the expressions “malik-makbuza”, “proprietor”, “raiyyat”, “raiyyat-malik” and village shall have the meanings assigned to them in the Central Provinces Land Revenue Act, 1917;
- (b) the expressions “agriculture”, “holding”, “land”, “occupancy tenant” and “absolute-occupancy tenant” shall have the meanings assigned to them in the Central Provinces Tenancy Act, 1920;
- (c) “Board” means a Debt Conciliation Board established under sub-section (1) of section 3;
- (d) “creditor” means a person to whom a debt is owing and includes a co-operative society;

- (e) "debt" includes all liabilities owing to a creditor, in cash or kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether due or not due, but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any money for the recovery of which a suit is barred by limitation;
- (f) "debtor" means a person who earns his livelihood mainly by agriculture and who is an occupancy tenant or absolute-occupancy tenant or *raiya*t or *raiya*t-*malik* or a *malik-makbuza* or a proprietor, whose debts exceed Rs. 150;
- (g) "prescribed" means prescribed by rules made under this Act.

3. (1) The Local Government may establish a Debt Conciliation Board for any district or part of a district. Such Board shall consist of a Chairman and two or more members, not exceeding nine*; including the Chairman, to be appointed by the Local Government which may, for reasons to be recorded in writing, cancel any appointment and dissolve any Board.

(2) The Chairman and every member of a Board so established shall be appointed for a term not exceeding one year. Such Chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding one year.

(3) A Board shall have such quorum as may be prescribed.

(4) Where the Chairman and members of a Board are unable to agree, the opinion of the majority shall prevail. Where the Board is equally divided the Chairman shall have a casting vote.

(5) †If at any time the Chairman of a Board is temporarily prevented from discharging his duties, he may nominate any member thereof to act for him during his temporary absence and such member shall, while so acting have the same powers as the Chairman.

4. (1) A debtor or any of his creditors may apply to the Board appointed for the area in which any holding, land or village of the debtor, or any part thereof, is situate, to effect a settlement between the debtor and his creditors:

*For the word "five" the word "nine" was inserted by Act I of 1934.

†Sub-section (5) to section 3 was inserted by Act XIV of 1935.

Provided that no application shall be made if the debtor's debts exceed twenty-five thousand rupees or such larger amount as may be prescribed for each area.

(2) No debtor or creditor shall simultaneously make more than one application, and where applications have been made by the debtor and any of his creditors, the applications made by the creditors shall be merged in the application made by the debtor.

5. Every application to a Board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

Verification of application.

Particulars to be stated in applications.

6. (1) Every application presented by a debtor to a Board shall contain the following particulars, namely :—

- (a) a statement that the debtor is unable to pay his debts ;
- (b) the place where he resides ;
- (c) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can, by the exercise of reasonable care and diligence be ascertained by him ; and
- (d) the amount and particulars of all his property, including claims due to him, together with a specification of the value of such property not consisting of money, and the place or places at which any such property is to be found.

(2) Every application presented by a creditor shall contain the following particulars, namely :—

- (a) the place where the debtor resides ; and
- (b) the amount and particulars of his claim against such debtor.

7. (1) On receipt of an application under section 4, the Board shall pass an order fixing a date and place for hearing the application :

Provided that the Board may at any time dismiss the application if, for reasons to be stated in writing, it does not consider it desirable to attempt to effect a settlement between the debtor and his creditors.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor or creditors, as the case may be.

8. (1) If, after examining the debtor, it is in the opinion of the Board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. *Such statement shall be submitted to the Board in writing on or before such date as the Board may fix in this behalf not being earlier than two months from the date of service or publication of the notice, as the case may be:

Provided that, if the Board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him.

(2) Every debt of which a statement is not submitted to the Board in compliance with the provisions of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged:

Provided that, if a creditor proves to the satisfaction of the Board or a civil court that the notice was not served on him and that he had no knowledge of its publication, the Board or court may revive the debt.

9. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 3 shall furnish, along with such statement, full particulars of all such debts and shall at the same time produce all documents, including entries in books of account, on which he relies to support his claims, together with a true copy of every such document.

(2) The Board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1), the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him.

10. The Board shall call upon the debtor and each creditor, respectively, to explain his case regarding each debt and shall endeavour to induce them to arrive at an amicable settlement.

*Substituted by Act XIV of 1935.

11. (1) Subject to the provisions of sections 132 and 133 of the Code of Civil Procedure, 1908, and to rules made under section 25 a Board shall have power to summon any person whose attendance it considers necessary either to be examined as a party or to give evidence as a witness or to produce any document for the purposes of any inquiry under this Act.

(2) Any person present may be required by a Board to give evidence or to produce any document then and there in his possession or power.

12. (1) If the creditors to whom not less than forty per cent. of the total amount of the debtor's debts are owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which and the times at which they are to be paid. Such agreement shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the Board and the parties :

Provided that, when a co-operative society is one of such creditors, no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies.

(2) An agreement thus made shall, within *one month from the date of its making, be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court.

(3) For the purpose of the registration of an agreement under sub-section (2), the Chairman of the Board shall be deemed to be an officer of Government empowered to execute such agreement within the meaning of section 88 of the Indian Registration Act, 1908.

13. (1) If a debtor defaults in paying any amount due in accordance with the terms of an agreement registered under sub-section (2) of section 12, such amount shall be recoverable as an arrear of land revenue on the application of the creditor made within ninety days from the date of default.

(2) Where the Deputy Commissioner fails to recover as an arrear of land revenue any part of such amount, he shall

*For the words "fourteen days" the words "one month" were inserted by Act XIV of 1935.

certify that it is irrecoverable and thereupon the agreement shall cease to subsist.

(3) Where an agreement ceases to subsist, any amount which was payable under such agreement but has not been paid shall be recoverable as if a decree of a civil court had then been passed for its payment.

Power of Board to dismiss application. 14. If no amicable settlement is arrived at under sub-section (1) of section 12, the Board shall dismiss the application.

Grant of certificate by Board in respect of certain debts. 15. (1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the Board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed, in respect of the debts owed by him to such creditor.

Power of Court to disallow costs or interest. (2) Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at six per cent. per annum on the amount due on the date of such certificate.

(3) Where, after the registration of an agreement under sub-section (2) of section 12, any unsecured creditor sues for the recovery of a debt, other than a debt incurred subsequent to such agreement, in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such registration, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, not be executed until all amounts recorded as payable under such agreement have been paid or such agreement has ceased to subsist:

*Provided that the provision in this sub-section shall not apply to the execution of a decree passed in a suit for the recovery of rent as defined in the Central Provinces Tenancy Act, 1920.

Bar of civil suits. 16. No civil court shall entertain—

(a) any suit in respect of—

(i) any matter pending before a Board, or

(ii) the validity of any procedure or the legality of any agreement made under this Act, or

*The proviso was added by Act XIV of 1935.

(iii) the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of section 12 from any person who, as a debtor, was party to such agreement whether such agreement is subsisting or not, or

(iv) the recovery of any debt which has been deemed to have been duly discharged under sub-section (2) of section 8, except a debt which is revived under the proviso to that sub-section;

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 15.

17. Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a Board under section 4 and until the agreement registered in respect of such application has ceased to subsist, shall be voidable at the option of any creditor so defeated or delayed.

18. No appeal or application for revision shall lie against any order passed by a Board.

19. A Board may, on the application from any person interested made within ninety days of the passing of an order, review any order passed by it and pass such order in reference thereto as it thinks fit:

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

20. In any proceedings before a Board any party may be permitted to appear by an agent authorized in writing, but not by a legal practitioner.

†21. When an application has been made to a Board under section 4, any suit or other proceedings then pending before a civil court in respect of any debt for the settlement of which application has been made shall be suspended until the Board has disposed of the application:

Provided that no decree, whether passed before the date of such application or passed in the suit after revival for the recovery of an unsecured debt in respect of which a certificate has been granted under sub-section (1) of section 15, shall be executed until all amounts recorded as payable under an agreement

†This revised section was inserted by Act XIV of 1935.

registered under sub-section (2) of section 12 have been paid or such agreement has ceased to subsist.

22. Where in the course of an inquiry into an application made under section 4 a Board finds that Submission of reports by Boards regarding sums due to Government. there is any sum owing to Government on account of loans advanced under the Agriculturists Loans Act, 1884, or the Land Improvement Loans Act, 1883, or otherwise, the Board shall report this fact through the Deputy Commissioner to the Commissioner.

23. In calculating the period of limitation for any suit filed Allowance of time for limitation. in, or proceeding before, a civil court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceeding had continued shall be excluded.

24. The members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code.

25. In addition to any power specially conferred by this Act the Local Government may make rules—

- (a) prescribing the quorum for, and regulating the procedure before, a Board;
- (b) prescribing the manner in which notices shall be issued and served or published under sub-section (1) of section 8;
- (c) prescribing the charges to be made by a Board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;
- (d) prescribing the records to be kept and the returns to be made by a Board;
- (e) prescribing the allowances, if any, to be paid to the Chairman and members of a Board;
- (f) regulating the power of a Board to summon parties and witnesses under section 11 and the grant of expenses to witnesses;
- (g) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 12;
- (h) prescribing the form of certificate to be granted under sub-section (2) of section 13 or sub-section (1) of section 15; and

- (i) generally, for the purpose of carrying into effect the provisions of this Act.

General provisions regarding rules.

26. (1) All rules for which provision is made in this Act shall be made by the Local Government and shall be consistent with this Act.

(2) All rules shall be subject to the condition of previous publication.

(3) In making any rule the Local Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach has been persisted in.

RULES FRAMED UNDER THE ACT

In exercise of the powers conferred by section 25 of the Central Provinces Debt Conciliation Act, 1933 (C. P. Act II of 1933), read with section 21 of the Central Provinces General Clauses Act, 1914 (C.P. Act I of 1914), the Local Government is pleased to make, after previous publication, the following rules for the purposes mentioned therein :—

RULES

1. (1) These rules may be called the Central Provinces Debt Conciliation Rules, 1933.

(2) In these rules "Act" means the Central Provinces Debt Conciliation Act, 1933.

2. The quorum necessary for the transaction of business at a meeting of a Board shall be as follows :—

Quorum.

(i) In the case of a Board where the number of members is 2 or 3.

(ii) Where the number of members is more than 3 :

Provided that a Board having a quorum may act notwithstanding any vacancy in the number of its members other than the Chairman.

3. The Chairman shall preside at every meeting of the Board and shall regulate the course of all business.

4. (1) The Board shall ordinarily hold its sittings at such place as may be appointed as its headquarters by the Deputy

Commissioner, but may sit at any other place within its jurisdiction for the convenient disposal of its business.

(2) The Board shall hold its sittings at such times as may be fixed from time to time by the Chairman and may adjourn its proceedings for any period if such adjournment is, in its opinion, necessary for the proper conduct of the proceedings.

5. The parties shall be notified by the Chairman in such manner as he may deem necessary, of the time, and, if the place is other than the Board's ordinary headquarters, of the place at which the Board's sittings are to be held unless a special method for the service of a notice is prescribed by the Act.

6. An application under section 4 shall be made in Form No. I appended to these rules, and shall be presented at any time during court hours by the applicant in person or by an agent authorized in writing to the Chairman or any member of the Board.

It shall be accompanied in the case of a debtor, who is a tenant, raiyat or *malik-makbuzā*, by his *rasid-bahi*, and in the case of a debtor, who is a proprietor, by a certified copy of entries in the register of proprietary mutations showing the village share or shares possessed by him.

7. Any member of the Board may examine the applicant in order to verify the accuracy of the particulars contained in the application and may call for additional information to complete the application.

8. If it is decided to proceed with the application the order under sub-section (1) of section 7 shall be recorded on an order-sheet in the form prescribed for revenue cases. This form shall contain a note of every interlocutory order made in the case and shall show the date and place of the proceedings at every hearing. The proceedings shall be conducted as nearly as may be, in accordance with the rules and procedure prescribed for the disposal of revenue cases under the Central Provinces Land Revenue Act, 1917.

9. Every application shall be made into a revenue case and dealt with according to the instructions in the Central Provinces Revenue Book Circular II-1.

10. An abstract of the statement made by each witness and the statements of the parties shall be filed with the record.

11. If any time during the course of the proceedings it appears to the Board that any creditor has filed a suit or started any other proceedings which should be suspended under section 21 of the Act, the Board shall grant a certificate in Form No. II appended to these rules over the signature of the Chairman to the debtor concerned, specifying the debts owing to any such creditor which may be under settlement.

12. All certificates granted by the Board and all notices, summonses and other processes issued by the Board shall be signed by the Chairman and shall be dated and sealed with the seal of the Board.

13. The proceedings of the Board shall be recorded in English unless the Chairman decides to record them in the vernacular of the district.

14. Every notice under sub-section (2) of section 7 of the Act shall be in Form No. III appended to these rules.

15. Every notice under sub-section (1) of section 8 of the Act shall be in Form No. IV appended to these rules.

16. A copy of the notice under sub-section (1) of section 8 shall be served on each known creditor. A copy shall also be posted on the district and tahsil office notice boards and the notice board of the Board's office. A copy shall also be posted in a conspicuous place in the village where the debtor ordinarily resides and all the villages within the area for which the Board has been appointed where any holding or land of the debtor or any part thereof is situate.

17. Every notice required to be served under the above rule may be served either by tendering or delivering a copy thereof or sending such copy by registered post to the creditor on whom it is to be served or his authorized agent, or if service in the manner aforesaid cannot be made, by affixing a copy thereof at his last known place of residence.

18. No notice shall be deemed void on account of any error in the name or designation of any person referred to therein unless such error has produced substantial injustice.

19. Every application to the Board shall be stamped with a court-fee stamp of the value of eight annas.

20. Process fees shall be paid for the issue of notices and summonses in accordance with the scales prescribed from time to time in the rules on the subject made under the Central Provinces Land Revenue Act, 1917, and shall be paid in court-fee stamps.

21. The cost of registering an agreement under sub-section (2) of section 12 shall be paid by the creditors amount payable by each creditor being proportionate to the compounded debt stated to be payable to him under the agreement and on default shall be recoverable from him as an arrear of land revenue.

22. The process fee on every application to the Deputy Commissioner for the recovery of any amount under sub-section (1) of section 13 shall be paid in advance by the creditor in accordance with the rules from time to time made under the Central Provinces Land Revenue Act, 1917, in court-fee stamps,

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23. The stamp duty on an agreement drawn up under subsection (1) of section 12 shall be payable by the debtor in non-judicial stamps.

24. Every application for a copy shall be addressed to the Chairman and shall bear a court-fee stamp of the value of one anna.

25. Copying fees for copies of records maintained by the Board and in its custody shall be charged at the rate of four annas for every 180 English words or 290 vernacular words, four figures being counted as one word.

26. Every application for a copy shall be accompanied by an advance sufficient to cover the estimated cost of the copy applied for.

27. The Chairman may then get the copy prepared on plain paper certified as a true copy over his signature and deliver it to the applicant or his duly authorized agent and also refund him the balance, if any, left out of the advance after meeting the copying charges.

28. The fees chargeable under rules 25 and 26 shall be in cash to the Chairman who shall forthwith give a receipt over his signature to the applicant in the prescribed form and credit the amount into the treasury. Except where it is provided otherwise in these rules the Chairman shall, as far as possible, follow in regard to the grant of copies the procedure laid down in the rules for the grant of copies of revenue records made from time to time under the Central Provinces Land Revenue Act, 1917.

29. The copying of records sent to the district office for safe custody shall be governed by the rules from time to time made under the Central Provinces Land Revenue Act, 1917.

30. (1) The following registers and books shall be maintained by a Board:—

1. Register of cases.
2. Process register.
3. Diet-money register.
4. Inspection book.
5. Copying-fee register.
6. Receipt book.
7. Register of contingent expenditure.

(2) These registers and books shall be maintained in the forms prescribed for revenue case work.

31. The registers and books specified in rule 30 and the proceedings in each case shall, on completion, be transferred to the district office.

In the district office the proceedings in each case shall be preserved as under and the registers and books for six years :—

- (1) Cases dismissed under section 7 (1) 2 years.
- (2) Cases rejected under section 14 :—
 - (a) Those in which certificates under section 15 have been issued. 20 years.
 - (b) Those in which no certificates under section 15 have been issued. 2 years.
- (3) Cases which have resulted in agreement. 3 years after payment of the last instalment or 3 years after the issue of certificate by the Deputy Commissioner under section 13 (2) of the Act.

32. The Board may also, with the approval of the Deputy Commissioner, use such other revenue forms and registers as may be considered necessary by it.

33. The Board shall submit through the Deputy Commissioner and the Commissioner, to the Local Government, a monthly progress return in Form No. V appended to these rules.

34. The Board shall also submit by the 15th of October every year through the Deputy Commissioner and the Commissioner to the Local Government a report on the following particulars :—

- (i) Progress of work and results achieved.
- (ii) Difficulties experienced in working the Act, and amendments if any, that appear to be necessary to the Act or rules.

35. All the records maintained by the Board and not sent for safe custody to the district officer shall be open to inspection at such time, in such place, and in the presence of such official as the Chairman of the Board may direct; free of charge by the parties, and on payment by others of a fee of 12 annas per hour or part thereof to be prepaid in court-fee stamps.

36. The inspection of records sent to the district office for safe custody shall be governed by the rules from time to time made under the Central Provinces Land Revenue Act, 1917.

37. (1) The Chairman or a member of the Board, if a non-official, shall be entitled to draw travelling allowance for any journey performed by him in connection with his duties as such Chairman or member at the rates admissible, and subject to the

conditions applicable to a Government servant of the second grade under the Supplementary Rules issued by the Local Government. Subject to the same conditions, he shall be entitled to daily allowance at the rate of Rs. 3 per day.

(2) The Chairman or a member of a Board, if an official, shall be entitled to draw for any journey travelling allowance and halting allowance to which he would be entitled by virtue of his official position.

(3) The Deputy Commissioner shall be the controlling officer empowered to countersign the travelling allowance bills of the Chairman and members of a Board.

38. The Local Government may provide such ministerial and menial staff as the Board may from time to time, require and may regulate the conditions of their employment and fix the salaries and allowances payable to them.

39. The power of a Board to summon a party or witness shall be the same as is conferred on a revenue officer by section 20 of the Central Provinces Land Revenue Act, 1917.

40. The form of the summons, the mode of serving and the mode of compliance shall be as prescribed, in the case of revenue officers, by sections 21 and 22 of the Central Provinces Land Revenue Act, 1917.

41. Process fees shall be recovered for the issue of summonses and payment of diet-money and travelling expenses shall be made to witnesses, in accordance with the rules from time to time made under the Central Provinces Land Revenue Act, 1917.

42. Every agreement arrived at under sub-section (1) of section 12 shall be registered at the Sub-Registrar's office for the sub-district within which the ordinary headquarters of the Board is situate.

43. A certificate under sub-section (2) of section 13 shall be in Form No. VI appended to these rules.

44. A certificate under sub-section (1) of section 15 shall be in Form No. VII appended to these rules.

45. In all administrative matters the Board shall be subordinate to the Deputy Commissioner and subject to the disciplinary control of the Commissioner and the Local Government. The Deputy Commissioner shall appoint, punish and generally control the staff of the Board.

46. All processes issued by the Board shall be served by the tahsil process-serving staff through the Tahsildar of the tahsil concerned.

47. In every case in which a debtor or a creditor is a minor or a person of unsound mind, the Board and the parties concerned shall, so far as may be, follow the procedure laid down in Order XXXII of the first schedule to the Code of Civil Procedure, 1908.

FORM No. 1

(Form of application referred to in rule 6)

To—The Debt Conciliation Board,

..... tahsil.

Under section 4 of the Central Provinces Debt Conciliation Act, I,son of caste.....resident oftahsil, beg to apply for settlement of my ^{debts}/_{claims} between my ^{creditors}/_{debtors} and myself. The particulars required by section 6 of the Act are as follows :—

Name, residence and full address of creditor or debtor, 1	Amount of debt or claim owed. 2	Particulars of debts, claims including date of commencement, rate of interest, whether secured, and if so, how, etc. 3
Total ..		

2. I hereby declare that I am unable to pay the debts owed by me as shown above.

3. The amount and particulars of my property including claims due to me are as follows :—

Property

Specification of property. 1	Village. 2	Total area or extent of share and home-farm. 3	Rent or revenue payable. 4	Value. 5	Remarks. 6
(1) <i>Immoveable</i> — Village shares .. Malik-makbuza holding .. Tenancy .. Houses ..					

(2) *Moveable, including cash.*—Description. Value—

(3) *Claims due*—

Name and address of debtor. Amount due.

N. B.—Paragraphs 2 and 3 will be scored out in the case of creditors.

Signature of applicant.

Verified that the contents of paragraph _____ of the application are true upon the personal knowledge of, and those in paragraph _____ upon information received and believed to be true by the undersigned.

Declared at.....on.....

Signature of applicant.

FORM No. II

Form of Certificate

[Section 21 of the Central Provinces Debt Conciliation Act, 1933, and rule 11 of the Central Provinces Debt Conciliation Rules, 1933.]

That is to certify that an application has been made to this Board for the settlement of the debts of(debtor) among which is a debt of Rs....., which the aforesaid debtor is said to be owing to.....of(creditor).

Datedtheday of193 .

(Seal of the Board).

Signature of Chairman,
Debt Conciliation Board,
.....*district.*

FORM No. III

Form of notice to creditors or debtor under sub-section (2) of section 7 of the Central Provinces Debt Conciliation Act, 1933.

[Rule 14 of the Central Provinces Debt Conciliation Rules, 1933.]

Notice is hereby given tothat an application under section 4 of the afore-

said Act has been submitted for the settlement of the debt of.....
and will be examined by the Board,
 together with any objections that may be preferred by any person
 interested at.....at.....o'clock on the
day of.....193 .

Datedtheday of193 .

(Seal of the Board)

Signature of Chairman,
 Debt Conciliation Board,
district.

FORM No. IV

Form of notice under sub-section (1) of section 8 of the Central
 Provinces Debt Conciliation Act, 1933

[Rule 15 of the Central Provinces Debt Conciliation Rules, 1933]

Whereas....., son of.....
 caste....., of , tahsil.....,
debtors
creditors has submitted an application under section 4 of the
 aforesaid Act for the settlement of the debts of....., son of
 , caste....., of
 tahsil....., and whereas the Board is of
 the opinion that it is desirable to attempt to effect a settlement
 between the said debtor and his creditor, you as one of the creditors
all the creditors
 to whom the said debtor is indebted are hereby required to submit
 to the Board a statement in writing on or before the.....at
 the Board's office at.....of all debts owed to you by
them
 the said debtor. The Board will scrutinize this statement at 11
 a.m. on.....day..... when you should
 appear before the Board.

2. You
All the creditors are also required to furnish, along with
 such statement, full particulars of all such debts and shall at the
 same time produce all documents, including entries in books of
 account on which you rely to support your claims, together
they their
 with a true copy of every such document.

Attention is invited to section 8 (2) of the said Act under
 which every debt of which a statement is not submitted to the

(2) *Moveable, including cash.*—Description. Value—

(3) *Claims due*—

Name and address of debtor. Amount due.

N. B.—Paragraphs 2 and 3 will be scored out in the case of creditors.

Signature of applicant.

Verified that the contents of paragraph _____ of the application are true upon the personal knowledge of, and those in paragraph _____ upon information received and believed to be true by the undersigned.

Declared at.....on.....

Signature of applicant.

FORM No. II

Form of Certificate

[Section 21 of the Central Provinces Debt Conciliation Act, 1933, and rule 11 of the Central Provinces Debt Conciliation Rules, 1933.]

That is to certify that an application has been made to this Board for the settlement of the debts of(debtor) among which is a debt of Rs.....which the aforesaid debtor is said to be owing to.....of(creditor).

Datedtheday of193 .

(Seal of the Board).

Signature of Chairman,
Debt Conciliation Board,
.....*district.*

FORM No. III

Form of notice to creditors or debtor under sub-section (2) of section 7 of the Central Provinces Debt Conciliation Act, 1933.

[Rule 14 of the Central Provinces Debt Conciliation Rules, 1933.]

Notice is hereby given tothat an application under section 4 of the afore-

said Act has been submitted for the settlement of the debt of.....
and will be examined by the Board,
 together with any objections that may be preferred by any person
 interested at.....at.....o'clock on the
day of.....193 .

Datedtheday of193 .

(Seal of the Board)

Signature of Chairman,
 Debt Conciliation Board,
district.

FORM No. IV

Form of notice under sub-section (1) of section 8 of the Central
 Provinces Debt Conciliation Act, 1933

[Rule 15 of the Central Provinces Debt Conciliation Rules, 1933]

Whereas....., son of.....
 caste....., of , tahsil.....,
debtors
creditors has submitted an application under section 4 of the
 aforesaid Act for the settlement of the debts of....., son of
 , caste....., of ,
 tahsil....., and whereas the Board is of
 the opinion that it is desirable to attempt to effect a settlement
 between the said debtor and his creditor, you as one of the creditors
 to whom the said debtor is indebted are hereby required to submit
 to the Board a statement in writing on or before the.....at
 the Board's office at.....of all debts owed to you
them by
 the said debtor. The Board will scrutinize this statement at 11
 a.m. on.....day..... when you should
 appear before the Board.

2. You
All the creditors are also required to furnish, along with
 such statement, full particulars of all such debts and shall at the
 same time produce all documents, including entries in books of
 account on which you
they rely to support your
their claims, together
 with a true copy of every such document.

Attention is invited to section 8 (2) of the said Act under
 which every debt of which a statement is not submitted to the

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Board in compliance with this notice shall be deemed for all purposes and all occasions to have been duly discharged.

3. The settlement in this case will take place at.....
at 11 a.m. on the.....day of193
when you should appear before the Board.

Dated..... theday of.....193

(Seal of the Board).

Signature of Chairman,

Debt Conciliation Board,

.....*district.*

Form No. V

Monthly progress return for the month of..... 193 of the Debt Conciliation Board, district.

[Rule 33 of the Central Provinces Debt Conciliation Rules, 1933.]

Cases ending at the beginning of the month.		Cases registered during the month.		Cases disposed of during the month.											Cases pending at close of month.		Number of certificates issued under section 15 (1).			
				Dismissed under section 7 (1).		Agreements executed under section 12 (1).				Cases in which agreement has caused to subsist.		Cases dismissed under section 14.								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Number.	Amount involved.	Number.	Amount involved.	Number.	Amount involved.	Number.	Amount.	Amount due to those who agree.	Amount in agreement.	Number.	Original.	As compounded.	Number.	Amount.	Number.	Amount.	Number of cases.	Number of certificates.	Amount due to creditor against whom certificate is granted.	Number of days on which the Board sat during the month.

FORM No. VI

Form of Certificate under section 13 (2) of the Central Provinces Debt Conciliation Act, 1933

[Rule 43 of the Central Provinces Debt Conciliation Rules 1933].

This is to certify that every reasonable effort was made by me or under my orders to recover the arrears of the amount due from..... of to of.....under agreement No..... registered at..... on by the Chairman of the Debt Conciliation Board,..... The amount of the arrear recovered is Rs..... and the irrecoverable balance is Rs.....

Datedtheday of193 .

(Seal of Deputy Commissioner). Signature of the Deputy Commissioner,district.

FORM No. VII

Form of Certificate under section 15 (1) of the Central Provinces Debt Conciliation Act, 1933

[Rule 44 of the Central Provinces Debt Conciliation Rules, 1933]

This is to certify that during proceedings No..... of.....under the Central Provinces Debt Conciliation Act, 1933, between.....of (debtor) on one hand and.....of..... (creditor) on the other hand, for the settlement of an alleged debt of Rs.....the said creditor has, in our opinion, refused a fair offer of settlement made by the said debtor, which the said creditor ought reasonably to have accepted.

2. The following particulars of the debt were furnished by the said creditor under section 8 (1) of the Act.

[Particulars]

Datedtheday of ... 193.

(Seal of the Board). Signature of the Chairman, Debt Conciliation Board,district.

Amendments to the Central Provinces Debt Conciliation Act,
II OF 1933

No. 1 dated Nagpur, the 28th November, 1935

PAGE 1

In the heading of the table of contents, *delete* the word and figure "of 1935" and *add* the following :—

"and No. XXVIII of 1935".

PAGE 3

In the heading of the Act, *delete* the word and figure "of 1935" and *add* the following :—

"and No. XXVIII of 1935".

PAGE 4

In sub-section (2) of section 3, after the words "be again appointed" in lines 4 and 5, *insert* the words *"from time to time".

PAGE 5

In the proviso to sub-section (2) of section 8, *after* the word "publication" in line 3, *insert* the following :—

"*or that he was prevented from complying with the provision of sub-section (1) on account of unforeseen or unfavourable difficulty or cause".

PAGE 6

To sub-section (1) of section 9, *add* the following proviso :—

"*Provided that if the Board is satisfied that any creditor was, for good and sufficient cause, unable to produce such documents along with the statement, it shall require them to be produced on a date fixed for the purpose".

PAGE 7

In sub-section (1) of section 13, *between* the words "made" and "within" in line 5, *insert* the words "*to the Deputy Commissioner".

*Inserted by the Act XXVIII of 1935.

[No. 1, dated the 28th November, 1935].

H. L. VARMA,

*Under-Secretary to Government,
Central Provinces.*

APPENDIX VI-A

**THE USURIOUS LOANS (UNITED PROVINCES
AMENDMENT) ACT, 1934**

(UNITED PROVINCES ACT No. XXIII OF 1934)

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED
PROVINCES OF AGRA AND OUDH]

*Received the assent of the Governor of the United Provinces of
Agra and Oudh on 15th January, 1935 and of the Governor-
General on 10th April, 1935, and was published under sec-
tion 81 of the Government of India Act on 27th April, 1935.*

An Act to amend the Usurious Loans Act, 1918, in its
application to the United Provinces.

Whereas it is expedient to amend the Usurious Loans
Act, 1918, in its application to the United
Provinces of Agra and Oudh;

And whereas the previous sanction of
the Governor-General has been obtained
under section 80-A of the Government of
India Act, to the passing of this Act;

It is hereby enacted as follows:

Short title and extent. 1. (1) This Act may be called the
Usurious Loans (United Provinces
Amendment) Act, 1934.

(2) It extends to the whole of the United Provinces of
Agra and Oudh.

(3) The provisions of this Act shall apply to all suits
instituted after the passing of this Act to which the Usurious
Loans Act, 1918, hereinafter referred to as "the principal Act"
would apply.

2. (1) In clause (1) of section 2 of the principal Act be-
tween the words "by way of interest" and
the words "or otherwise" the words "or
in the form of service to be rendered" shall
be inserted.

(2) In clause (3) of section 2 of the principal Act the
figure (i) shall be inserted between the word "means" and the

words "any suit," a semi-colon shall be substituted for the full-stop at the end of the clause, the word "or" shall be added after the semi-colon and the following shall be added :

"(d) for account of a loan by a debtor against his creditor.

(ii) any proceeding for the determination of a claim under the United Provinces Encumbered Estates Act, 1934".

Amendment of section 3 (1) (a) of the principal Act.

3. In clause (a) of sub-section (1) of section 3 of the principal Act for the word "and" the word "or" shall be substituted.

Amendment of section 3 (1) (b) of the principal Act.

substituted.

4. In sub-section (1) of section 3 of the principal Act, for the words "may exercise all or any of the following powers" the words "shall exercise one or more of the following powers" shall be

Amendment of proviso (1) to section 3 (1) of the principal Act.

5. In proviso (i) to sub-section (1) of section 3 of the principal Act for the word "twelve" the word "seventeen" shall be substituted.

Addition of provisos to sub-clause (b) of sub-section (2) of section 3 of the principal Act.

6. The following shall be added as provisos to sub-clause (b) of sub-section (2) of section 3 of the principal Act :

"Provided that in the case of loans secured by a first mortgage the Court shall deem the interest excessive if—

(1) the rate exceeds 12 per cent. per annum, or

(2) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 12 per cent. per annum and the interval between rests were six months :

Provided also that in the case of loans secured otherwise than by a first mortgage the Court may, if it considers that the nature of the security warrants it, deem that the interest is not excessive even though the rate exceeds 12 per cent. per annum or the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 12 per cent. per annum and the interval between rests six months :

Provided also that in the case of unsecured loans the Court shall, unless the contrary is proved, deem the interest excessive if—

(1) the rate exceeds 24 per cent. per annum, or

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(2) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 24 per cent. per annum and the interval between rests were six months :

Provided also that in the case of secured loans the Court shall not deem the interest excessive if—

(1) the rate does not exceed 7 per cent. per annum, and

(2) the amount of interest that might become due at any time does not exceed the amount that would become due at that time if the rate were 7 per cent. per annum and the interval between rests were six months :

Provided also that in the case of unsecured loans the Court shall not deem the interest excessive if—

(1) the rate does not exceed 9 per cent. per annum, and

(2) the amount of interest that might become due at any time does not exceed the amount of interest that would become due at that time if the rate were 9 per cent. per annum and the interval between rests were six months.”

APPENDIX VI-B

**THE UNITED PROVINCES TEMPORARY
REGULATION OF EXECUTION ACT, 1934**

UNITED PROVINCES ACT No. XXIV OF 1934

[PASSED BY THE LOCAL LEGISLATURE OF THE
UNITED PROVINCES OF AGRA AND OUDH

Received the assent of the Governor of the United Provinces of Agra and Oudh on 15th January, 1935, and of the Governor General on 10th April, 1935, and was published under section 81 of the Government of India Act on 27th April, 1935.

An Act to make temporary provisions for the regulation of execution of civil Court decrees for the debts of small agriculturists passed before the commencement of this Act.

Whereas owing to the slump in prices it is expedient to regulate the execution of civil Court decrees for the debts of small agriculturists passed before the commencement of this Act;

And whereas the previous sanction of the Governor-General under section 80-A of the Government of India Act has been obtained to the passing of this Act; it is hereby enacted as follows :

Short title, extent and commencement. 1. (1) This Act may be called the United Provinces Temporary Regulation of Execution Act, 1934.

(2) It extends to the whole of the United Provinces of Agra and Oudh.

(3) It shall come into force on such date as the Local Government may by notification in the *Gazette* direct.

2. In this Act unless there is anything repugnant in the definitions. subject or context, "cultivator" means:

(1) a person who is liable to pay rent or, but for a contract to the contrary, express or implied, would be liable to pay rent for land let for agricultural purposes, or

(2) a person who is liable to pay a sum not exceeding Re. 1 per annum as local rate under section 109 of the District Boards Act, 1922;

but shall not include a mortgagee of proprietary rights or a *thekadar*;

Provided that no person shall be deemed to be a "cultivator" if he engages in any trade or occupation other than those usually followed by persons named in the schedule.

Decrees to which this Act applies. 3. Subject to the provisions of section 4, this Act shall apply to—

(i) every final decree for sale passed under sub-rule (3) of rule (5) or sub-rule (3) of rule 8 of Order XXXIV of the first Schedule to the Code of Civil Procedure, 1908, and

(ii) every decree for payment of money passed on the basis of a loan.

Decrees to which this Act does not apply. + This Act shall not apply to—

(i) any decree passed against any person other than a cultivator, or any decree passed after the commencement of this Act;

(ii) any decree passed in favour of a co-operative credit society registered under the Co-operative Societies Act, 1912;

(iii) any decree passed on the basis of a contract whereby a cultivator promised to supply sugarcane or other agricultural produce in consideration of an advance of money made in order to enable him to carry on the operations necessary for the production thereof; or

(iv) any decree for the payment of money in which the sum decreed including costs and interest up to the date of the decree, but excluding interest thereafter amounts to less than Rs. 10 or more than such amount as may be deemed to be the maximum amount under section 5; or

(v) any final decree for sale passed under sub-rule (3) of rule 5 or sub-rule (3) of rule 8 of Order XXXIV of the first Schedule to the Code of Civil Procedure, 1908, where the amount to be paid under the preliminary decree was less than Rs. 10 or more than such amount as may be deemed to be the maximum amount under section 5;

(vi) any decree the amount of which has been reduced under the provisions of the Agriculturists' Relief Act, 1934.

5. (1) The Local Government may from time to time by notification in the *Gazette* prescribe an amount as the maximum amount for the purposes of sub-sections (iv) and (v) of section 4 and that amount shall be deemed to be the maximum amount from such date as may be specified in that behalf in the notification, or, if no date is so specified, from the date of the notification.

(2) If at any time there is no maximum amount prescribed under sub-section (1) the maximum amount shall be deemed to be Rs. 1,000.

6. Any person against whom a decree to which this Act applies has been passed or his successor or representative may, within a period of one year following the commencement of this Act, apply to the Court passing such decree or, if the decree is being executed, the Court in which execution proceedings are pending, to give him the benefit of the provisions of this Act:

Application by judgment-debtor. Provided that no person shall make such application unless he is a cultivator on the day on which this Act comes into force and is a cultivator on the date of the application.

7. Any person making an application under section 6 shall pay into Court to the credit of the decree-holder either on the date of the application or on some other date within a period to be fixed by the Court and not exceeding thirty days a sum equivalent to 25 per cent. of the amount due under the decree if the decree is for payment of money or, under the preliminary decree, if the decree is a final decree for sale.

Consequences of non-payment or payment under section 7. 8. (1) If payment is not made as required by section 7 the application made under section 6 shall be rejected.

(2) If the applicant makes payment as required by section 7 and there is nothing to show that he is not entitled to the benefit of this Act, the Court shall pass an order directing that all proceedings then pending for the execution of the decree shall be stayed and that the debtor shall pay the balance into Court by annual instalments to be fixed by the Court, subject to the following provisions, namely,—

(a) if the rate of interest at which the debt was incurred exceeds 24 per cent. per annum, the total of the instalments shall not exceed 40 per cent. of the amount due under the decree, and

(b) if the rate of interest at which the debt was incurred is equal to or is less than 24 per cent. per annum, the total of

the instalments shall not exceed 50 per cent. of the amount due under the decree.

- (c) the number of instalments shall not exceed 5, and
- (d) no interest shall be chargeable on the instalments.

(3) The Court shall issue a notice to the decree-holder informing him of the order passed under sub-section (2).

9. The decree-holder may, within one month from the service of the notice under section 8(3), or if no notice has been served on him, at any time within the period of three months from the date of the order under section 8(2), apply to the Court to have the order set aside, and, if he satisfies the Court that the application under section 6 was not in order or that the payment under section 7 was not properly made or that this Act does not apply to the decree, the order shall be set aside.

10. (1) If the judgment-debtor in any year for which an instalment is due shall pay to the decree-holder an amount equal to the total of twenty times the amount of local rate, if any, payable by him in that year and the amount of rent, if any, that he is liable to pay in that year, or, but for a contract to the contrary, express or implied, would be liable to pay in that year, as reduced by any remissions which may have been granted, he shall be deemed to have paid the instalment for that year in full:

When judgment-debtor may be deemed to have paid an instalment.

Provided that in the case of the hill *pattis* of Kumaun Division, the amount of instalment shall be five times the debtor's land revenue or the rent as the case may be:

Provided also that in the case of permanent tenure-holders and fixed-rate tenants the section shall be so read as if for the words "the amount of rent" the words "three times the amount of rent" were substituted.

(2) If two instalments are in arrears the decree-holder may proceed to execute the decree for the balance that would have been outstanding had no proceedings been taken under this Act.

(3) If the applicant shall pay all the instalments, the decree shall be deemed to be satisfied in full.

11. The Local Government may for any local area from Extension. time to time by notification in the *Gazette* extend the period of one year within which a judgment-debtor

may apply to the Court in accordance with the provisions of section 6.

12. No person who has made an application under the United Provinces Encumbered Estates Act shall be entitled to make an application under this Act.

When application cannot be made.

13. (1) The Local Government may make rules consistent with the provisions of this Act generally for carrying out the purposes of this Act.

(2) Before making rules under this Act the Local Government shall publish a draft of the same in the *Gazette* and shall concurrently cause a copy of the said draft to be sent to every member of the Legislative Council.

(3) In making the rules finally the Local Government shall consider the opinions received by them as well as any opinion expressed by the Legislative Council.

14. Notwithstanding anything in this Act no person shall be deemed to be a cultivator who has been assessed to income-tax in the year immediately preceding the passing of this Act.

Income-tax assessed not deemed to be a cultivator.

SCHEDULE

Agriculturists, agricultural labourers, general labourers, cowherds, goatherds, dairymen, blacksmiths, carpenters, fishers, hunters, boatmen, barbers, tanners and leather workers, scavengers, basket-makers, potters, midwives, watchmen, washermen, weavers or other servants of the village community, or any similar class of person, whom the Local Government may by notification in the *Gazette* from time to time include in this Schedule.

APPENDIX VI-C.

**THE UNITED PROVINCES ENCUMBERED
ESTATES ACT, 1934**

(UNITED PROVINCES ACT No. XXV OF 1934)

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED
PROVINCES OF AGRA AND OUDH]

*Received the assent of the Governor of the United Provinces of
Agra and Oudh on January 15, 1935, and of the Governor
General on April 10, 1935, and was published under section
81 of the Government of India Act on April 27, 1935.*

*An Act to provide for the relief of Encumbered Estates in the
United Provinces*

WHEREAS it is expedient to provide for the relief of Encumbered Estates in the United Provinces and whereas the previous sanction of the Governor General under section 80-A of the Government of India Act has been obtained to the passing of this Act; It is hereby enacted as follows :

CHAPTER I

Preliminary

1. (1) This Act may be called the United Provinces Encumbered Estates Act, 1934.

(2) It extends to the whole of the United Provinces of Agra and Oudh except the districts of Garhwal and Almora, the Naini Tal tahsil of the Naini Tal District and the tract of Jaunsar Bawar of the Dehra Dun District.

(3) (a) This Chapter and Chapter III shall come into force on such date as may be notified in the *Gazette* by the Local Government in that behalf.

Short title, extent
and commencement.

(b) The remaining chapters shall come into force on the expiry of a period of one year from the date notified under the provisions of clause (a) :

Provided that the Local Government may from time to time by notification in the *Gazette* bring the said chapters into effect in any district or districts on any earlier date or dates.

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

- (a) "debt" includes any pecuniary liability except a liability for unliquidated damages;
- (b) "private debt" means any debt other than a public debt;
- (c) "public debt" means a debt due to Government or to a local authority;
- (d) "land" means a share of or interest in a mahal in the United Provinces, but does not include the interest of a mortgagee or thekadar or an assignment of land revenue unless it is transferable and perpetual;
- (e) "protected land" means land to which the provisions U. P. Act V of of the Oudh Settled Estates Act, 1917, or 1917. U. P. Act of Part II of the United Provinces Estates VII of 1920. Act, 1920, apply and "unprotected land" means land to which these provisions do not apply;
- (f) "mahal" has the same meaning as in sub-section (4) U. P. Act III of of section 4 of the Land Revenue Act, 1901. 1901;
- (g) "landlord" means a proprietor of a mahal or of a share of or interest in a mahal and includes an ubaqidar, an under-proprietor or a sub-proprietor and a proprietor of specific plots, but does not include a mortgagee or a thekadar :

Provided that no person shall be deemed to be a landlord, if his land is assessed to less than a local rate of one rupee under U. P. Act X of section 109 of the District Boards Act, 1922. 1922.

- (h) "sir" has the same meaning in Agra as in the Agra Tenancy Act, 1926, and in Oudh as in the U. P. Act III of Tenancy Act, 1926, and in Oudh as in the 1926. XXII of Oudh Rent Act, 1886; 1886; U. P. Act V. (i) "khudkasht" means land, other of 1926. than sir, cultivated by the landlord, with his own or hired stock or by his servants or by hired labour;

- (j) "pre-slump profits" of land means the balance left after deducting the amount of the annual Government revenue, if any, without allowing for the remission for the fall in prices and the rates payable annually under the United Provinces Land Rates Act,

U. P. Act I of 1914, or any other Act for the time being in force, from the aggregate amount of—

- (i) the rent which the landlord is entitled to receive annually from his tenants without deducting the remission due to the fall in prices,
- (ii) the rent determined in accordance with rules framed by the Local Government which the landlord would have to pay annually for his sir and khudkasht, if any, if he were an ex-proprietary tenant thereof without making any allowance for the remission for the fall in prices,
- (iii) all other profits annually receivable by the landlord, and
- (iv) in the case of profits occasionally receivable or varying in amount from year to year other than the price of timber trees sold, the average annual amount of such profits from the end of the year 1338 *Fasli*;
- (v) one-fifteenth part of the estimated price of timber trees owned or possessed by the landlord and situated on his land.

- (k) "post-slump profits" of land mean the balance left after deducting the amount of the annual Government revenue, if any, as reduced by the remission for the fall in prices, and the rates payable annually by the

U. P. Act I of proprietor under the United Provinces Local Rates Act, 1914, or any other Act for the time being in force from the aggregate amount of—

- (i) the rent which the landlord is entitled to receive annually from his tenants as reduced by the remission for the fall in prices;
- (ii) the rent determined in accordance with rules framed by the Local Government which the landlord would have to pay annually for his sir and khudkasht, if any, if he were an exproprietary

tenant thereof after allowing for the remission due to the slump in prices ;

- (iii) any other profits annually receivable by the landlord ;
- (iv) in the case of profits occasionally receivable or varying in amount from year to year other than the price of timber trees sold, the average annual amount of such profits from the end of the year 1338 *Fasli* ;
- (v) one-fifteenth part of the estimated price of timber trees owned or possessed by the landlord and situated on his land :

Provided that in calculating the pre-slump profits no regard will be had to remissions of rent and revenue and in calculating the post-slump profits no regard will be had to remission of rent or revenue other than those for the fall in prices :

Provided also that if the pre-slump profits as calculated in accordance with sub-clause (j) are less than the post-slump profits, the pre-slump profits shall be calculated in the manner laid down for calculating the post-slump profits in sub-clause (k) ;

- (l) "instalment value" of proprietary rights in land means the sum which could be repaid with interest at the rate specified in section 27 by instalments over a period of 20 years out of the profits of that land after making due allowance for short collections, the cost of management and the maintenance of the landlord and his family ;
- (m) "transfer value" of proprietary rights in land is the valuation at which such proprietary rights would be transferred to a creditor under this Act in liquidation of a debt.

CHAPTER II

Appointment of Officers

3. (1) The Local Government may appoint any civil judicial officer to be a Special Judge of the first or second grade for any local area and such Special Judge shall, subject to the orders of Government as regards the area and extent of his jurisdiction,

exercise the powers conferred, and perform the duties imposed, on him by this Act.

(2) The Local Government may suspend or remove any Special Judge so appointed.

CHAPTER III

The Application

4. (1) At any time within one year after the date on which this chapter comes into force any landlord who is subject to or whose immoveable property or any part thereof is encumbered with private debts, may make an application in writing to the Collector of the district in which his land or any portion of his land is situated stating the amount of such private debts and also of his public debts both decreed and undecreed and requesting that the provisions of this Act be applied to him :

Application for benefit of Act and time within which it may be made.

Provided that when the property of any landlord is under the superintendence of the Court of Wards, any application under this section shall be made by the manager of his property and, when any landlord is by reason of personal incapacity disqualified from instituting any proceeding in a civil Court, an application under this section may be made on his behalf by his legal or natural guardian or any person actually managing his property :

Provided also that no application by a member of a joint Hindu family shall be entertained, unless—

- (a) all the members of such family join and the fact is stated in the application, or
- (b) the applicant makes in the application an express declaration of his intention of separating from the joint family and states the names and addresses of the remaining members of the family and the share which the applicant would be entitled to get on partition of the family property :

Provided also that no landlord who has been adjudicated insolvent and has not been discharged shall apply under this section :

Provided also that if an application under this section is made by all the heirs of a deceased debtor who are not members of a joint Hindu family, then this fact shall be stated in the application :

Provided also that if an application under this section is made by one or more but not by all the heirs of a deceased debtor who are not members of a joint Hindu family then this fact shall be stated in the application and the names and addresses of those heirs who have not joined in the application and the shares of all the heirs in the property inherited by them from the deceased debtor shall be mentioned in the application.

(2) The Local Government may by notification in the *Gazette* extend the time prescribed for making applications under this section by a further period of six months.

(3) If within three months after the date on which Chapter III of this Act comes into force a landlord has applied for amendment of a decree under the provisions of the United U. P. Act XXVII Provinces Agriculturists' Relief Act, 1934, of 1934, the period from the date of his application to the date of the final disposal thereof shall be excluded from the period within which he may make an application under sub-sections (1) and (2) of this section.

(4) If a landlord presents an application under this section within a period of six months next following the last date on which an application may be made under the provisions of sub-section (1) or (2) of this section, as the case may be, and satisfies the Collector that he was prevented by any sufficient cause from applying within the period prescribed by those sub-sections, the Collector may accept the application.

5. No landlord who has made an application under section 4 shall be entitled to make another application to any other Collector. If such other application is made all proceedings arising out of it shall be void and such application shall be reported to the Board of Revenue.

6. When an application is accepted by the Collector under section 4 he shall forward that application to the Special Judge and inform him of such public debts outstanding against the landlord as may be laid down in rules framed by the Local Government in this behalf.

CHAPTER IV

Proof of Debts and Procedure of Special Judge

7. (1) When the Special Judge has received an application under section 6, he shall call upon the applicant to submit to him within a period to be fixed by him in this behalf a written statement containing, so far as may be practicable,—

Written statement
to be submitted.

- (a) full particulars respecting the public and private debts to which the landlord is subject, or with which his immoveable property or any part thereof is encumbered;
- (b) the nature and extent of the landlord's proprietary rights in land;
- (c) the nature and extent of the landlord's property which is liable to attachment and sale under section 60 of the Code of Civil Procedure, 1908, exclusive of his proprietary rights in land; and
- (d) the names and addresses of his creditors, so far as they are known to or can be ascertained by the applicant.

V of 1908.

Verification of statement. (2) The statement shall be verified in the manner prescribed by law for the verification of plaints :

Provided that, when the application is made by the manager of any property under the superintendence of the Court of Wards, it shall not be necessary for such manager to verify the statement; but the landlord shall, so far as may be practicable, within a period to be fixed by the Special Judge in this behalf, furnish such information regarding any of the matters mentioned in clauses (a), (b), (c) and (d) of sub-section (1) of this section as the Special Judge may require.

8. (1) The Special Judge shall publish in the *Gazette* a notice calling for claims. upon all persons having claims in respect of private debts both decreed and undecreed against the person or the property of the landlord by or on whose behalf the application has been made under section 4 to present to the Special Judge, within three months from the date of the publication of the notice, written statements of their claims.

(2) The Special Judge shall also cause copies of such copies of notice to be published in such papers including at least one paper published in English as he may direct and to be exhibited at his own office, at the office of each Collector within whose district any part of the property of the landlord is situate, and at some conspicuous place in the village where the landlord resides and shall also send a copy of the notice by registered post to each of the creditors whose names and addresses are mentioned in the statement under clause (d) of sub-section (1) of section 7.

(3) The written statement must be presented within the period specified in the notice, unless the claimant satisfies the Special Judge that he had sufficient cause for not presenting it within such period, in which case the Special Judge may receive the statement if presented within a further period of two months.

(4) If one or more members of a joint Hindu family apply under the second proviso of sub-section (1) of section 4 then the Special Judge shall apportion the debts due by and the property belonging to the joint family between members who have so applied and those who have not applied and, for the purposes of this Act, those members who have applied under section 4 will be treated as if they had separated from the other members.

(5) (a) If one or more of several joint debtors, who are not members of the same joint Hindu family, apply under section 4 but all the joint debtors do not apply then the Special Judge shall determine the amount of the joint debt which is due by the debtor or debtors who have applied and the amount due by those who have not applied. For the purpose of this determination the Special Judge shall make the joint debtors who have not applied parties to the proceedings and shall hear any objection that they may make before recording his finding.

(b) If all the joint debtors have not applied under section 4 the creditor shall have a right to recover from the debtors who have not applied only such amount on account of the joint debt as may be decreed by the Special Judge to be due by them.

(6) If one or more but not all the heirs of a deceased debtor who are not members of a joint Hindu family apply under section 4, the Special Judge shall apportion the debts due by and the property belonging to the deceased debtor between those heirs who have made the application and those who have not and subject to the provisions of section 49 that portion of the debt which falls to the share of the heirs who have applied shall be liquidated from the property allotted to them and they shall not be responsible for the portion of the debt which falls to the share of the heirs who have not joined in the application.

9. (1) After the publication of the notice under sub-section (1) of section 8 the following consequences shall ensue :

- (a) all proceedings pending at the date of the publication in any civil or revenue Court in the United Provinces in respect of any public private debt to which the landlord is subject, or with which his immoveable property is encumbered, except an appeal or revision against a decree shall be stayed, all attachments and other execution processes issued by any such Court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued;
- (b) no fresh suit or other proceeding, other than an appeal or revision against a decree or a process for ejectment for arrears of rent, shall, except as hereinafter provided, be instituted in any civil or revenue Court in the United Provinces, in respect of any debts incurred before the date of the publication of the notice under sub-section (1) of section 8.
- (2) After the publication of the notice under sub-section (1) of section 8 and until proceedings under this Act are quashed under section 20 or until the Collector has liquidated the debt in full under section 23 or section 24 or granted a mortgage under section 25 or passed orders under section 27 or section 28 no decree obtained on the basis of any private debt incurred by the landlord after the publication of such notice shall be executed against any of his property, other than proprietary rights in land, which has been mentioned in the notice under section 11 and the landlord shall not be competent, without the sanction of the Collector, to make an exchange or gift of, or to sell, mortgage or lease, any of that property.

(3) After the publication of the notice under sub-section (1) of section 8 and until the Collector has declared in accordance with section 44 that the landlord has ceased to be subject to the disabilities of this sub-section no decree obtained on the basis of any private debt incurred after the publication of such notice shall be executed against any of the landlord's proprietary rights in land mentioned in the notice published under section 11 and the landlord shall not be competent, without the sanction of the Collector, to make any exchange or gift of, or to sell, mortgage or lease those proprietary rights or any portion of them.

(4) Any transfer made in contravention of the provisions of this section shall be void.

10. (1) Every claimant referred to in section 8 shall, in the written statement of his claim, give full particulars thereof and shall state so far as they are known to or can be ascertained by him, the nature and extent of the landlord's proprietary rights in land and the nature and extent, if any, of the landlord's property other than proprietary rights in land.

(2) Every document on which the claimant basis his claim, or on which he relies in support thereof, shall be delivered to the Special Judge along with the written statement or if the Special Judge so directs, on some later date or dates to be specified by him from time to time in that behalf.

(3) If the document is an entry in any book, the claimant shall produce the book before the Special Judge, together with a copy of the entry on which he relies. The Special Judge shall mark the book for the purpose of identification and, after examining and comparing the copy with the original, shall return the book to the claimant.

(4) If any document in the possession or under the control of the claimant is not delivered or produced by him, as required by this section, the Special Judge may refuse to receive it in evidence on behalf of the claimant at the investigation of the case.

11. (1) The Special Judge shall publish a notice in the manner specified in section 8 specifying the property mentioned by the applicant under section 7 or by any claimant under section 10.

(2) Any person having any claim to the property mentioned in such notice shall, within a period of three months from

the date of the publication of the notice in the *Gazette*, make an application to the Special Judge stating his claim and the Special Judge shall determine whether the property specified in the claim, or any part thereof, is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant.

(3) The Special Judge shall determine all claims made under this section before he proceeds to determine the amount due to any creditor under section 14 and shall not pass any decree under that section until the expiry of a period of one month after the last day on which he determines a claim under this section.

(4) Any order passed by the Special Judge under this section shall be deemed to be a decree of a civil Court of competent jurisdiction.

12. Any transfer of property made by a landlord or other person acting on his behalf between the day on which the first chapter of this Act comes into force and the day on which it applies under section 4, not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, may be annulled at the instance of any creditor, if the Special Judge finds that such transfer was made with a view to deprive the landlord's creditors of their rights under this Act.

13. Every claim decreed or undecreed against the landlord in respect of a private debt, other than a debt due to a Co-operative Society registered under the Co-operative Societies Act, 1912, by its members, shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and on all occasions to have been duly discharged.

14. (1) The Special Judge shall, by an order in writing, fix a date for inquiring into each claim made in pursuance of the notice published in accordance with section 8 and give notice of such date to the claimant and the person who made the application under section 4.

(2) The Special Judge shall examine each claim and after hearing such parties as desire to be heard and considering the evidence, if any, produced by them shall determine the amount, if any, due from the landlord to the claimant on the date of the application under section 4.

(3) All evidence recorded in any suit or proceeding which is stayed under sub-section (1) of section 9, may be taken by the Special Judge as evidence recorded before himself.

(4) In examining each claim the Special Judge shall have and exercise all the powers of the Court in which a suit for the recovery of the money due would lie and shall decide the questions in issue on the same principles as those on which such Court would decide them, subject to the following provisions, namely—

(a) the amount of interest held to be due on the date of the application shall not exceed that portion of the principal which may still be found to be due on the date of the application;

(b) the provisions of the Usurious Loans Act, 1918, will X of 1918. be applicable to proceedings under this Act;

(c) the provisions of the United Provinces Agriculturists' U. P. Act XXVII Relief Act, 1934, shall not be applicable to proceedings under this Act. of 1934.

(5) For the purpose of ascertaining the principal under clause (a) of sub-section (4) the Special Judge shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transaction before December 31, 1916.

(6) For the purpose of ascertaining the principal under clause (a) of sub-section (4) the Special Judge shall not treat as principal any accumulated interest which has been converted into principal at any statement or settlement of accounts or by any contract made in the course of the transaction after December 31, 1916.

(7) If the Special Judge finds that any amount is due to the claimant he shall pass a simple money decree for such Decrees of Special amount, together with any costs which he Judge. may allow in respect of proceedings in his Court and of proceedings in any civil Court stayed under the provisions of this Act, together with *pendente lite* and future interest at a rate not greater than the rate specified in section 27, and if he finds that no amount is due he may pass a decree for costs in favour of the landlord. Such decree shall be deemed to be a decree of a civil Court of competent jurisdiction but no decree against the landlord shall be executable within the United Provinces except under the provisions of this Act.

15. In determining the amount due on the basis of a loan Saving in respect which has been the subject of a decree the of existing decrees. Special Judge shall accept the findings of the Court which passed the decree except in so far as they are inconsistent with the provisions of section 14 :

Provided that the Special Judge shall not determine any claim under a decree, until any appeal or revision filed against such decree has been finally decided or the period allowed for appeal has expired, and in all such cases the finding of the Special Judge shall be based on the final decree.

16. The Special Judge shall rank all debts for priority, Ranking of debts for provided that debts in the earlier of the priority. following classes shall have priority over those in the later classes—

U. P. Act III of 1926.	XXII of 1886;	Class (1) Debts recoverable under the Agra Tenancy Act, 1926, the Oudh Rent Act, 1886, and the Land Revenue Act, 1901 :
U. P. Act V of 1926.		
U. P. Act III of 1901.		

Class (2) Public debts due to the Government and public debts due to a local authority creating a charge on immoveable property :

Class (3) Debts secured upon property against which the Collector may take action under the provisions of section 24 up to the value of the security :

Class (4) Other secured debts :

Class (5) Debts due on account of goods supplied or services rendered : and

Class (6) Unsecured debts due to a local authority, debts falling into class (3), in excess of the value of security and other unsecured debts.

17. (1) If the amount of any public debt reported by the Determination of Collector under section 6 is disputed and amount of public if a suit would lie in any civil or revenue debts reported by Court to determine the amount of that Collector. debt, the Special Judge shall, after such inquiry as may be necessary, determine such dispute.

(2) If a suit would not lie in any civil or revenue Court to determine the amount of a public debt the Collector's decision about the amount of the debt shall be final.

18. Subject to the right of appeal or revision conferred in Chapter VI, the effect of a decree of the Special Judge under sub-section (7) of section 14 shall be to extinguish the previously existing rights, if any, of the claimant, together with all rights, if any, of mortgage or lien by which the same are secured and, where any decree is given by the Special Judge to substitute for those rights a right to recover the amount of the decree in the manner and to the extent hereinafter prescribed.

19. (1) The Special Judge shall send the decrees granted under sub-section (7) of section 14 to the Collector for execution in accordance with the provisions of the next chapter. The Special Judge shall also inform the Collector of the order in which he has ranked the debts for priority.

(2) The Special Judge shall inform the Collector of the nature and extent of the property mentioned in the notice under section 11 which he has found to be liable to attachment, sale or mortgage in satisfaction of the debts of the applicant.

20. The applicant may at any time within a period of one month from the day on which the Special Judge decides any claim under section 11 apply that the proceedings under this Act be quashed and the Special Judge shall quash such proceedings and pass such order as to the costs of the proceedings before him as he thinks proper, provided that the order of quashing proceedings shall not take effect unless the landlord within one month of such order pays into Court the amount of any costs ordered by the Special Judge under this section.

CHAPTER V

Execution of Decrees and Liquidation of Debts

21. The Collector shall after hearing any objection preferred by the applicant, determine the amount of any public debt which has not been reported under section 6 and which in accordance with rules framed by the Local Government in this behalf is to be liquidated under this chapter.

22. The Collector shall allow the debtor a period of two months within which he may pay into Court the whole or any part of the amount due from him.

23. (1) If on the expiry of the said period the debtor shall have paid into Court the full amount due from him the Collector shall discharge all his debts.

(2) If on the expiry of the said period the debtor shall not have paid into Court the full amount due from him, the Collector shall expend the amount, if any, paid in discharging the debts in order of priority and shall proceed to liquidate the amount still remaining due in accordance with the provisions of the following sections.

24. (1) The Collector shall first realize the value of such of the debtor's property other than proprietary rights in land as shall have been reported by the Special Judge under the provisions of subsection (2) of section 19 to be liable to attachment or sale:

Provided that the Collector before passing orders under this section for the sale of any property shall hear any objection which the debtor may have to make to the sale of that property:

Provided also that the Collector shall leave to the debtor at least one residential house and the necessary furniture thereof if—

- (a) the debtor owns such house and furniture and desires to retain it and
- (b) such house and furniture is free from any mortgage or charge:

Provided also that if the debt can be liquidated under section 27 the Collector shall not sell any property to the sale of which the debtor has objected.

(2) The amount so realized shall be expended by the Collector in discharging the debts in order of priority.

(3) For the purpose of execution against property outside the United Provinces the decrees passed by the Special Judge shall be deemed to be decrees in favour of the Collector.

(4) For realizing the value of the debtor's property under this section the Collector may exercise all the powers of a civil Court for the execution of a decree.

25. If the sum, if any, realized under section 23 and section 24 is insufficient to liquidate the amount due by the debtor then if any person

Liquidation by grant of a mortgage.

agrees to pay the amount still due and to accept a mortgage in either of the forms set out in the schedule in consideration of such payment, the Collector shall grant such a mortgage :

Provided that the post-slump profits of the area mortgaged shall not exceed three-quarters of the post-slump profits of the debtor's entire proprietary rights in land :

Provided also that the amount for which the mortgage is granted shall not be less than the value of the property mortgaged calculated at such multiple of the post-slump profits of that property as may be fixed by the Local Government from time to time by rule in this behalf :

Provided also that if during the period of the mortgage the land revenue of the land mortgaged is altered either at a quinquennial settlement or by the granting of a remission or by a variation of the remission for the fall in prices, then the period of the mortgage shall be re-determined by the Collector in accordance with rules framed by the Local Government and shall not be subject to a limit of 20 years :

Provided also that if the land mortgaged is brought under settlement the period of the mortgage shall be re-determined by the Collector in accordance with rules framed by the Local Government and shall not be subject to a limit of 20 years.

Explanation—“Payment” in this section shall include the discharge of any debt due to the mortgagee himself.

26. If the sum, if any, realized under section 23 and section 24 is insufficient to liquidate the debt and a mortgage is not granted under section 25 then the Collector shall, in accordance with rules framed by the Local Government, determine—

Determination of instalment value and transfer value of debtor's proprietary rights in land.

- (a) the multiple to be used in calculating the instalment value of the debtor's proprietary rights in land, and
- (b) the multiple to be used in calculating the transfer value of the debtor's proprietary rights in land :

Provided that different multiples may be determined for calculating the instalment and transfer values of different portions of the debtor's property.

- (c) the instalment value of the debtor's proprietary rights in land by applying to the post-slump profits of that land in the *Fasli* year in which the application is made the multiple or multiples determined under clause (a), and

- (d) the transfer value of the debtor's proprietary rights in land by applying to the pre-slump profits of that land in the *Fasli* year in which the application is made the multiple or multiples determined under clause (b):

Provided that if the Collector, after hearing any of the parties who wishes to be heard, finds that the profits of the debtor have decreased since the year 1338 *Fasli* owing to a decrease either in the cultivated area or in the kind of profits mentioned in sub-clauses (iii), (iv) and (v) of clause (j) of section 2 or otherwise, he shall for the purpose of determining the transfer value of the debtor's proprietary rights in land add to the pre-slump profits such portion of that decrease as he may find to be due to the fall in prices.

27. If the amount still due by the debtor is less than the instalment value of his proprietary rights in land as determined under section 26 the Collector shall, in accordance with rules framed by the Local Government, order him to pay such amount to the Local Government in instalments with future interest at a rate to be determined by the Local Government which shall not be higher than $4\frac{1}{2}$ per cent. per annum, provided that such instalments shall not extend beyond a period of 20 years.

28. (1) If the amount still due by the debtor exceeds the instalment value of his proprietary rights in land but does not exceed the instalment value of his proprietary rights in protected land, if any, together with the transfer value of his proprietary rights in protected land, if any, the Collector shall, in accordance with rules framed by the Local Government under section 31, transfer to the creditors shares in the debtor's entire proprietary rights in unprotected land and in accordance with rules framed by the Local Government order the debtor to pay the difference between the amount still due by him and the total transfer value of the shares so transferred to the Local Government in instalments over a period of 20 years with future interest at the rate determined under section 27.

(2) If the amount still due by the debtor exceeds the instalment value of his proprietary rights in protected land, if any, together with the transfer value of his proprietary rights in unprotected land, if any, the Collector shall transfer to the

creditors the whole of the debtor's proprietary rights in unprotected land, if any, and order the debtor to pay an amount equal to the instalment value of his proprietary rights in protected land, if any, to the Local Government in instalments over a period of 20 years with future interest at the rate determined under section 27.

29. (1) The instalments ordered under section 27 or section 28 shall be paid by the debtor to the Local Government along with his land revenue and cesses and any such instalment not paid on due date shall be recoverable as an arrear of land revenue.

(2) If the full amount of any two consecutive instalments has not been paid within six months of the date on which the second of such instalments fell due, the whole amount remaining due from the debtor may, subject to rules framed by the Local Government, be recovered as an arrear of land revenue.

(3) Notwithstanding anything in the United Provinces U. P. Act IV of 1912, the Court of Wards shall at the request of the Local Government assume charge of the estate of any debtor who has been ordered to pay instalments under section 27 or section 28 and who has not paid two consecutive instalments within six months of the date on which the second of such instalments fell due.

30. If the Collector has proceeded under section 27 he shall, in accordance with rules framed by the Local Government, give to each creditor a bond or bonds for the amount due to him. Such bond or bonds shall bear interest at one per cent. less than the rate fixed under section 27 and shall be payable by the Local Government within a period which shall not exceed 20 years :

Provided that the Local Government may at any time pay to the creditor the whole amount remaining due at the date of payment.

31. (1) If the Collector has proceeded under sub-section (1) of section 28 he shall, in accordance with rules framed by the Local Government, liquidate the amount due to each creditor by transferring to him a share of

the debtor's entire proprietary rights in unprotected land or by giving to him a bond or bonds of the description mentioned in section 30, or partly by one of these methods and partly by the other, provided that the transfer value of any share in the debtor's

proprietary rights in unprotected land transferred to the creditor, together with the amount of the bond or bonds given to him, shall be equal to the amount due to him.

(2) If the Collector has proceeded under sub-section (2) of section 28 he shall, as far as possible, proceed as in sub-section (1) and the whole of the landlord's debt shall be deemed to be satisfied in full by the transfer to the creditors of his proprietary rights in unprotected land and by giving to them of bonds the total amount of which is equal to the instalment value of his proprietary rights in protected land.

32. If the Collector proceeds under section 28, then, as far as possible, he shall liquidate the debts of which have been ranked highest by the priority. Special Judge first by means of sale under section 24, and then by means of bonds :

Provided that any creditor or creditors who would get cash or bonds under the provisions of this section may, if he or they so desire, have land transferred to him or them in accordance with the provisions of section 31.

33. The Collector may on the application of a debtor whose unprotected land is included in more than one mahal transfer to any creditor in exchange for the share in the debtor's entire proprietary rights in unprotected land which may have been transferred to him under section 31, a share or shares in any particular mahal or mahals which do not form part of the debtor's protected land, provided that the value of the share or shares transferred under this section shall be equal to the value of the share transferred under section 31.

Explanation—For the purposes of this section the value of proprietary rights in land shall be calculated by applying to the post-slump profits of that land, the multiple determined by the Collector under clause (b) of section 26.

34. A creditor to whom a share of the debtor's proprietary rights in land has been transferred under section 31 or section 33 may within three months of the passing of the order of transfer apply to the Collector to have the share so transferred or any part thereof sold by public auction. The Collector shall sell such share or part by public auction and pay the sum realized, less a percentage determined by rule framed by the Local Government in this behalf, to the applicant.

35. If at any time after the decrees granted by the Special Judge have been sent to the Collector under the provisions of section 19, any person entitled to possession of property to be put in possession. under the provisions of this Act applies to the Collector to be put in possession of such property the Collector shall deliver possession of such property to him.

36. If in any year the produce of any portion of the debtor's property is below normal, the Collector may, in accordance with rules framed by the Local Government in this behalf, decrease the amount of any instalment which has been ordered under section 27 or section 28 and which falls due in that year and shall provide for the payment by the debtor of the amount so decreased either by increasing some or all of the subsequent instalments or by increasing the number of the subsequent instalments.

37. If during the currency of the settlement, whether at a Revision of instalments in certain cases. quinquennial settlement or otherwise, any alteration takes place in the land revenue payable by or in the circumstances of a debtor against whom an order for the payment of instalments has been passed under section 27 or section 28, the Collector may, in accordance with rules framed by the Local Government in this behalf, re-determine the number and amount of the unpaid instalments.

38. If at a revision of settlement the Settlement Officer alters either the rents payable to or the land revenue payable by a debtor against whom an order for the payment of instalments has been passed under section 27 or section 28 he shall re-determine the instalment value of the debtor's proprietary rights in land situated in the district under settlement and the amount and number of the instalments in which the balance of the debt has to be repaid shall be re-determined by the Collector in accordance with rules framed by the Local Government in this behalf.

39. Nothing in the Bundelkhand Alienation of Land Act, 1903, shall prevent the ordering of payment of instalments by the Collector under section 27 or section 28 or the transfer of the debtor's proprietary rights in land by the Collector to the creditors under section 28.

Saving. U. P. Act II of 1903.

40. Notwithstanding anything in the Oudh Settled Estates U. P. ACT V of 1917, or in the United Provinces Estates Act, 1920, the Collector shall, in accordance with rules framed by the Local Government, determine the extent to which the instalments ordered under section 27 or section 28 shall be a charge on any portion of the debtor's land which has not been transferred by the Collector under section 28 or of which a mortgage has not been given under section 25.

Instalments to be a charge on land.

41. A debtor may at any time after an order for the payment of instalments has been passed under section 27 or section 28 or a mortgage granted under section 25 pay into the Court of the Collector who passed the order or granted the mortgage any sum towards the liquidation of the debt in respect of which the order was passed or the mortgage was granted. The Collector shall receive such sum and credit it to the Local Government or pay it to the mortgagee and shall, in accordance with rules to be framed by the Local Government in this behalf, determine the number and amount of the future instalments or the future period of the mortgage.

42. (1) If a mortgagee holding possession under a mortgage granted under this Act remains in possession on expiry of the period for which he is entitled to hold and on expiry of which he is bound to deliver back the mortgaged property without any payment by the mortgagor, the Collector shall, on the application of the person entitled to possession, direct that the mortgage be redeemed, eject such mortgagee and place the person so entitled in possession and may also direct the mortgagee to pay such compensation to the person found to have been wrongly left out of possession as it may deem reasonable.

(2) The Collector may enforce the payment of any compensation ordered under sub-section (1) as if it were an arrear of land revenue.

43. When an order has been passed under section 20 quashing further proceedings under the Act, the following consequences shall ensue, namely—

(a) the whole of the proceedings under this Act shall be set aside;

- (b) notwithstanding anything contained in section 18 all rights and remedies and proceedings stayed under sub-section (1) of section 9 shall revive to the creditors as if no action had been taken under this Act; and
- (c) in computing the period of limitation prescribed for any suit or other proceeding for the recovery of debts in respect of which a written statement has been filed under section 10 the period from the date of the publication of notice under sub-section (1) of section 8 to the date of the order of the Special Judge quashing further proceedings under the Act shall be excluded;
- (d) in computing the period of limitation prescribed for any suit or proceedings in respect of a claim which has been stated before the Special Judge under section 11 the period from the date of the publication of the notice under sub-section (1) of that section to the date of the order of the Special Judge quashing proceedings under this Act shall be excluded.

Cessation of dis. abilities. 44. (1) In each of the following cases, namely—

- (a) when the debt has been liquidated under section 23 or section 24;
- (b) when a mortgage has been granted under section 25;
- (c) when the amount ordered to be paid in instalments under section 27 or section 28 has been paid in full or realized as an arrear of land revenue;
- (d) when proceedings have been quashed under section 20, the landlord shall cease to be subject to the disabilities mentioned in sub-section (3) of section 9 and the Collector shall forthwith make a declaration to that effect.

(2) In computing the period of limitations prescribed for any proceeding stayed under sub-sections (2) and (3) of section (9) the period from the date of decree referred to in those sub-sections up to the date of the declaration under sub-section (1) of this section shall be excluded.

CHAPTER VI

Appeal and Revision

45. (1) An appeal against any decision, decree or order of a Special Judge of the first grade under this Act shall lie to the High Court or Chief Court, as the case may be. The period of limitation for appeals under this sub-section shall be ninety days.

(3) An appeal against any decision, decree or order of a Special Judge of the second grade under this Act shall lie to the District Judge. The period of limitation for appeals under this sub-section shall be thirty days.

(3) An appeal against any decision, decree or order of a Collector or Settlement Officer under this Act shall lie to the Board of Revenue. The period of limitation for appeals under this sub-section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Indian Limitation Act, 1908, shall apply to appeals under this Act.

(5) The decision on an appeal under this section shall be final.

46. Any Court empowered under section 45 to hear an appeal under this Act may of its own motion, or on the application of any person concerned, call for the record of proceedings in any case under this Act pending in a Court from which appeals lie to such Court and after giving due notice to the parties concerned pass such order thereon consistent with the provisions herein contained as it thinks fit, and such order shall be final.

47. Except as provided in sections 45 and 46, no proceedings of the Collector or Special Judge under this Act shall be questioned in any Court.

CHAPTER VII

Miscellaneous

48. (1) From the date of the application under section 4 up to the date when the Collector has liquidated the debts in full under section 23 or section 24 or has granted a mortgage under section 25 or has ordered the payment of instalments under section 27 or 28 or has transferred the whole of the landlord's proprietary rights in

unprotected land under section 28 or the proceedings under this Act have been quashed—

- (a) no creditor shall be entitled to present an insolvency petition against the landlord, and
- (b) the landlord may present a petition that he be adjudged to be insolvent and, if he does so, no further proceedings shall be taken under this Act, while the insolvency proceedings are pending.

(2) Subject to the provisions of sub-section (1) the landlord or any creditor may present a petition that the landlord be adjudged insolvent but any amount or amounts due under any order passed by the Collector under section 27 or 28 shall for the purposes of the insolvency proceedings be deemed to be a debt or debts secured upon such of the landlord's subsisting property in land as has been reported by the Special Judge under sub-section (2) of section 19 to be liable to attachment or sale.

49. (1) If the debts of a landlord are the debts due from his deceased ancestor which are legally

Limited application of the Act in case of inherited debts.

recoverable only from certain property in the possession of the landlord, only such property and no other property belonging to the landlord shall be dealt with under the provisions of this Act; and all references to the property of the landlord in the various sections of this Act shall be deemed to be references only to such property and to no other.

(2) If in the course of inquiry it is proved that a landlord who has applied for the application of this

Procedure when applicant in respect of inherited debt found to be subject to personal debt.

Act only in respect of debts due from his deceased ancestor has appropriated any property received from such ancestor or that he owes also other debts which are recoverable from him personally and in respect of which claims have been preferred under section 8, the Special Judge shall give him the option of either withdrawing his application or paying the personal debts and value of any property appropriated by him as aforesaid or having the whole of his property dealt with under this Act. In case he withdraws his application all proceedings under this Act shall be quashed. If he elects to pay his personal debts and the value of any property appropriated by him the Special Judge shall give him such time for doing so as he shall think necessary and on the landlord paying the same shall proceed with the case. If the landlord fails to pay the same within the time allowed by the Special

Judge his application shall be dismissed. If the landlord elects to have the whole of his property dealt with under this Act, the Special Judge shall require him to give particulars of all such property and after giving the claimants another opportunity of giving further particulars of property as required by section 10 shall take fresh proceedings under section 11 in respect of such property. If the landlord refuses or neglects to exercise any of the options provided in this sub-section the Special Judge shall dismiss his application.

(3) In all cases in which proceedings are quashed or the application is dismissed under this section the Special Judge may make such order as to costs as he thinks proper.

50. If a landlord with regard to whom a notice has been published under section 8 dies before a declaration has been made in respect of him under section 44,—

Death of proprietor before liquidation.

- (a) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the landlord were still living; and
- (b) any person succeeding to the whole or any portion of the landlord's property shall become subject in respect of that property to the disabilities imposed by sub-section (2) of section 9 and shall continue so subject until a declaration has been made in respect of him under section 44.

51. Every investigation conducted by the Special Judge with reference to any claim made to him under this Act, or to any matter connected with any such claim, shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code, 1860; and the Special Judge shall be deemed to be a public servant within the meaning of that Code.

Investigation to be deemed a judicial proceeding. Special Judge to be deemed a public servant within the meaning of the Indian Penal Code, XLV of 1860. Power to summon witnesses, compel production of documents, and award costs.

52. For the purposes of compelling the attendance of witnesses and the production of documents, and of awarding costs, the Special Judge shall have the powers conferred on a civil Court by the Code of Civil Procedure, 1908.

53. No suit or other proceeding shall be maintained against any public servant in respect of anything done by him in good faith pursuant to this Act.

54. (1) The Local Government may make rules consistent with the provisions of this Act for regulating the procedure of the Collector, the Special Judge and the Settlement Officer in proceedings under this Act and generally for carrying out the purposes of this Act, may fix the legal fees chargeable under this Act and may confer the powers of the Collector under this Act on any Assistant Collector of the first class.

(2) Before making the rules under this section the Local Government shall publish a draft of the same in the *Gazette* and shall concurrently cause copy of the said draft to be sent to every member of the local Legislative Council.

(3) In making the rules finally the Local Government shall consider the opinions received by them as well as any opinion expressed by the local Legislative Council.

55. In framing rules to guide the Collector in determining multiples under section 26 the Local Government shall have regard to—

- (1) the market-value of land in the area or areas in which the landlord's property is situated,
- (2) the percentage of the post-slump profits which the landlord must retain to maintain himself, his family and his dependents and for the management and upkeep of his property.

56. The Local Government may at any time alter the rules which they have framed for determining the multiples under section 26 and, if they do so, the Collector may revise the instalments ordered under section 27 or section 28 either by altering the amount of each instalment or by increasing or decreasing the period over which the instalments are payable.

57. The Collector may, subject to rules framed by the Local Government, transfer any proceedings under this Act which are pending in his Court to the Court of an Assistant Collector of the first class empowered under section 54 and may withdraw any proceedings so transferred.

58. The Board of Revenue may transfer any proceedings under this Act from the Court of one Collector to that of any other Collector.

59. Nothing in this Act shall affect the powers of the Collector under the Land Revenue Act, 1901, to collect the land revenue or any money recoverable as an arrear of land revenue.

Saving. U. P. Act
III of 1901.

SCHEDULE

Forms of Mortgage.

(See section 25)

1. A mortgage by which the mortgagor delivers proprietary possession of the mortgaged land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of a specified term not exceeding twenty years the mortgaged debt shall be deemed to be fully satisfied and the land shall be re-delivered to the mortgagor without any payment by him.

2. A mortgage without possession, subject to the condition that, if the mortgagor fails to pay the principal and interest according to his contract, the mortgagee may apply to the Collector to place him in possession of the mortgaged land for such term not exceeding twenty years as the Collector may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession and to be deemed to be fully satisfied on the expiry of such term.

**THE UNITED PROVINCES ENCUMBERED ESTATES
(AMENDMENT) ACT, 1935.**

UNITED PROVINCES ACT No. IV of 1935.

*[Passed by the Local Legislature of the United Provinces of
Agra and Oudh].*

*[Received the assent of the Governor of the United Provinces of
Agra and Oudh on July 2, 1935, and of the Governor-
General on July 18, 1935, and was published under section 81
of the Government of India Act on July 27, 1935.]*

*An Act to amend the United Provinces Encumbered
Estates Act, 1934.*

United Provinces WHEREAS it is expedient to amend the
Act XXV of United Provinces Encumbered Estates Act,
1934. 1934;

And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows :

1. (1) This Act may be called the United Provinces Encumbered Estates (Amendment) Act, 1935.

(2) It shall come into force on such date as the local Government may by notification direct.

2. For section 6 of the United Provinces Encumbered Estates Act, 1934, hereinafter referred to as the "principal Act" the following shall be substituted, namely,—

Amendment of section 6 of the United Provinces Encumbered Estates Act, 1934.

"When an application has been duly made according to the provisions of section 4, the Collector shall forthwith pass an order that it be forwarded to the Special Judge and shall furnish the applicant free of cost with a certified copy of the order. He shall then forward the application to the Special Judge and shall inform him of such public debts out-

standing against the landlord as may be laid down in rules framed by the local Government in this behalf.

Addition of new section to Chapter III of the United Provinces Encumbered Estates Act, 1934.

3. The following section shall be inserted as section 7 at the end of Chapter III of the principal Act, namely,—

Consequences of acceptance of an application by the Collector.

“7. (1) When the Collector has passed an order under section 6 the following consequences shall ensue :

- (a) all proceedings pending at the date of the said order in any civil or revenue Court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered, except an appeal or revision against a decree or order, shall be stayed, all attachments and other execution processes issued by any such Court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued;
- (b) no fresh suit or other proceedings other than an appeal or revision against a decree or order, or a process for ejection for arrears of rent shall, except as hereinafter provided, be instituted in any civil or revenue Court in the United Provinces in respect of any debts incurred before the passing of the said order :

Provided that when a landlord has executed an usufructuary mortgage in respect of any of his land and is in possession of that land as a *thekadar* of the mortgagee, no fresh process shall issue for his ejection from that land for arrears of the *theka* rent.

(2) After the passing of the said order and until the application is dismissed by the Special Judge under sub-section (3) of section 8 or proceedings under this Act are quashed under section 20 or until the Collector has liquidated the debt in full under section 23 or section 24 or granted a mortgage under section 25 or passed orders under section 27 or section 28, no decree obtained on the basis of any private debt incurred by the landlord after the passing of the order under section 6 shall be executed against any of his property, other than proprietary rights in land, which has been mentioned in the notice under section 11 and the landlord shall not be competent without the

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sanction of the Collector to make an exchange or gift of, or to sell, mortgage or lease, any of that property.

(3) After the passing of the order under section 6 and until the Collector has declared in accordance with section 44 that the landlord has ceased to be subject to the disabilities of this sub-section, no decree obtained on the basis of any private debt incurred after the passing of the order under section 6 shall be executed against any of the landlord's proprietary rights in land mentioned in the notice published under section 11 and the landlord shall not be competent, without the sanction of the Collector, to make any exchange or gift of, or to sell, mortgage or lease those proprietary rights, or any portion of them.

(4) Any transfer made in contravention of the provisions of this section shall be void."

Omission of section 9 of the United Provinces Encumbered Estates Act, 1934.

4. Section 9 of the principal Act shall be omitted and sections 7 and 8 shall be renumbered as sections 8 and 9, respectively.

Consequential amendment.

5. Wherever before the passing of this Act reference is made in the principal Act to sections 7, 8 or 9, such reference shall be read as if it were a reference to sections 8, 9 or 7, respectively.

Addition to section 8 (as renumbered) of the United Provinces Encumbered Estates Act, 1934.

6. The following shall be added as sub-section (3) to section 8 of the principal Act as renumbered, namely,—

"(3) When the written statement referred to in sub-section (1) or the information referred to in the proviso to sub-section (2) has not been submitted or furnished within the period fixed without any reasonable cause, the Special Judge may dismiss the application and in that case shall inform the Collector that he has done so."

Amendment of section 43 of the United Provinces Encumbered Estates Act, 1934.

7. (1) In section 43 of the principal Act before the words "when an order has been passed," at the beginning of the section, the following shall be inserted, namely,—

"When an application has been dismissed under sub-section (3) of section 8 or."

£34-D PUNJAB RELIEF OF INDEBTEDNESS ACT

(2) In clause (c) of section 43 for the words from "publication" to "section 8" the following shall be substituted, namely,—

"order of the Collector under section 6."

Amendment of
section 44 of the
United Provinces
Encumbered
Estates Act, 1934.

8. In sub-section (1) of section 44 of the principal Act, the following shall be inserted after clause (d), namely,—

"(e) when the application has been dismissed under sub-section (3) of section 8."

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**THE UNITED PROVINCES REGULATION
OF SALES ACT, 1934.**

UNITED PROVINCES ACT No. XXVI OF 1934.

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED
PROVINCES OF AGRA AND OUDH.]

*Received the assent of the Governor of the United Provinces of
Agra and Oudh on January 15, 1935, and of the Governor-
General on April 10, 1935, and was published under section
81 of the Government of India Act on April 27, 1935.*

*An Act to make temporary provision for the regulation
of sale of agricultural land.*

WHEREAS owing to the slump in prices it is expedient to
regulate the sale of agricultural land in execution of civil Court
decrees against agriculturists;

5 and 6 Geo. V And whereas the previous sanction of
C. 61. 6 and 7 the Governor-General under section 80-A
Geo. V. C. 37. 9 of the Government of India Act has been
and 10 Geo. V. C. obtained to the passing of this Act;
10L.

It is hereby enacted as follows :

Short title, 1. (1) This Act may be called the
extent and com- United Provinces Regulation of Sales Act,
mencement. 1934.

(2) It extends to the whole of the United Provinces of
Agra and Oudh.

(3) It shall come into force on such date as the Local
Government may by notification direct.

Interpretation 2. In this Act unless there is any-
clauses. thing repugnant in the subject or context—

(1) "Agriculturist" means a person who pays land
U. P. Act X of revenue or a local rate under section 109
1922. of the District Boards Act, 1922, or is an
under-proprietor or tenant of agricultural land having
transferable rights therein.

- (2) "Agricultural land" means land which is let or held for agricultural purposes or as grove land or for pasturage and shall include any interest in such land or in any mahal (including the abadi land) or share in a mahal but shall not include standing timber, standing crops, or other ungathered produce of land when sought to be sold apart from the land itself.

3. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when agricultural land is sought to be sold in execution of a civil Court decree against an agriculturist in respect of a loan taken prior to the passing of this Act, the Collector shall, unless the Court grants instalments, determine the value of such agricultural land in the manner hereinafter following. If such value exceeds the amount of the decree, together with the proportionate amount of any prior encumbrance determined in accordance with the rules under section 70 of the Code of Civil Procedure, 1908, the Collector shall determine the amount of such agricultural land, the value of which, as calculated in the manner hereinafter following, if not subject to a prior encumbrance, is equal to the amount of the decree, or, if subject to a prior encumbrance, to the amount of the decree together with the proportionate amount of such encumbrance determined as aforesaid. If the Court grants instalments, the Collector shall reject the application for execution.

Amount of agricultural land to be sold in execution in respect of a loan taken prior to this Act.

V of 1908.

(2) For the purpose of sub-section (1) the value of the agricultural land sought to be sold shall be calculated on the net profits arrived at after ignoring the remissions in rent and revenue due to the slump in prices and other remissions, if any, and shall be such multiple of such net profits as the Collector shall, having regard to all the circumstances, consider fair and reasonable in accordance with rules framed by the local Government in this behalf.

Provided that in the districts of Almora and Garhwal and in the Naini Tal Tahsil of Naini Tal District and the tract of Jaunsar Bawar in the Dehra Dun District, the Collector may, if in his opinion that will give a fairer result, calculate the value of land by applying multiples to the land revenue assessed on that land or rates to the area of that land.

(3) Before finally fixing the net profits or the multiple under sub-section (2), the Collector shall give the parties an

opportunity of being heard and shall take into consideration any objection urged by any of them.

(4) The decision of the Collector under this section shall be appealable to the Board of Revenue within sixty days of such decision, and the decision of the Board of Revenue shall be final.

(5) The provisions of section 5 of the Indian Limitation Act shall apply to appeals under this Act.

4. When the value, and, if necessary the amount of agricultural land has been determined in accordance with section 3, the Collector shall give the decree-holder the option of—

- (a) taking the agricultural land, or the amount of agricultural land so determined as the case may be; or,
- (b) having the sale postponed till November 1, 1936; or
- (c) if the decree-holder chooses neither of the courses (a) and (b) having the decree realized by sale of the agricultural land in accordance with the provisions of section 8.

5. If the decree-holder exercises the option mentioned in clause (a) of section 4, the Collector shall transfer to him the agricultural land or the amount of agricultural land determined in accordance with section 3(2) as the case may be, in full satisfaction of the decree :

Provided that in cases where the decree is not against a particular piece of land, the Collector may allow the objection of the debtor to the sale of that land, if the judgment-debtor has got other land sufficient for the satisfaction of the decree.

6. If the decree-holder exercises the option mentioned in clause (b) of section 4, the execution of the decree shall be entirely suspended during the period of postponement of sale and such period shall be excluded from the period of limitation prescribed for execution of the decree, and for such period no interest shall accrue.

7. If the decree-holder does not exercise the option mentioned in clause (a) or (b) of section 4, the agricultural land or the amount of agricultural land determined under section 3, as the case may be shall be sold, and if the sum realized from such sale does not fully satisfy the decree and

the value of the land calculated in the manner prescribed in sub-section (2) of section 3 is not less than the amount of the decree together with prior encumbrances, the sum realized shall be deemed to satisfy the decree in full; but if the value of the land is less the sum realized shall be deemed to satisfy the decree to the extent of the value of the land calculated in the manner prescribed in sub-section (2) of section 3, and for the balance the creditor may adopt any remedy open to him.

8. The local Government may from time to time by notification extend the period of postponement mentioned in clause (b) of section 4:

Provided that if the local Government so extends the period, the Collector shall as soon as possible after the commencement of each such extension, call upon the decree-holder again to exercise his option under section 4, and the provisions of sections 5, 6, or 7, as the case may be, shall apply according to the option exercised by the decree-holder.

9. The provisions of this Act shall cease to have effect from November 1, 1936, unless the local Government extend the period by notification under section 8, in which case the Act shall continue to be in force during the period of such extension.

10. Nothing in this Act shall apply to a mortgage decree sought to be executed by sale of the mortgaged property in the hands of a subsequent transferee who has taken the transfer subject to the mortgage on the basis of which such decree has been obtained.

11. (1) The local Government may make rules consistent with the provisions of this Act generally for carrying out the purposes of this Act, and may confer the powers of the Collector under this Act on any Assistant Collector of the first class.

(2) Before making the rules under this section the local Government shall publish a draft of the same in the *Gazette* and shall concurrently cause a copy of the said draft to be sent to every member of the Legislative Council.

(3) In making the rules finally the local Government shall consider the opinions received by them as well as any opinion expressed by the Legislative Council.

12. In framing rules to guide the Collector in determining multiples under section 3(2) the local Government shall have regard to—

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- (1) the market value of land in the area or areas in which the landlord's property is situated, and
- (2) the percentage of the post-slump profits which the landlord must retain to maintain himself, his family and his dependents and for the management and upkeep of his property.

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**THE UNITED PROVINCES AGRICULTURISTS'
RELIEF ACT, 1934**

UNITED PROVINCES ACT No. XXVII of 1934

*[Passed by the Local Legislature of the United Provinces of
Agra and Oudh]*

*[Received the assent of the Governor of the United Provinces of
Agra and Oudh on January 15, 1935, and of the Governor-
General on April 10, 1935, and was published under section
81 of the Government of India Act on April 27, 1935]*

*An Act to make provision for the relief of agriculturists
from indebtedness*

WHEREAS it is expedient to make provision for the relief of agriculturists from indebtedness;

5 and 6 Geo. V. C 6L 6 and 7 Geo. V. C 37. 9 and 10 Geo. V. C. 10L.	And whereas the previous sanction of the Governor-General under section 80-A (3)(e) of the Government of India Act has been obtained to the passing of this Act;
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It is hereby enacted as follows :

CHAPTER I

Preliminary

1. (1) This Act may be called the United Provinces Agriculturists' Relief Act, 1934.

Short title, extent and commencement. (2) It extends to the whole of the United Provinces of Agra and Oudh :

Provided that the provision of Chapter III shall not apply to any mortgage to which the provisions of the Bundelkhand Land

United Provinces Alienation Act, 1903, are applicable.
Act II of 1903.

(3) The local Government may, after obtaining the approval of the Legislative Council, by notification in the *Gazette*,

direct that all or any of the provisions of the Act shall not apply to any area which it may specify in the notification.

(4) It shall come into force on such date as the Local Government may by notification direct.

Interpretation clauses.

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

(1) "Agricultural calamity" means, with reference to a particular debtor, a calamity other than a slump in prices on account of which—

- (a) if the debtor is a revenue-paying landlord, or an under-proprietor in Oudh holding a sub-settlement, there has been a suspension or remission of the revenue of any of his holdings; or
- (b) if the debtor is a landlord, holding land free of revenue, there would have been a suspension or remission of the revenue of any of his holdings if revenue had been payable therefor; or
- (c) if the debtor is a thekadar of land, there has been a suspension or remission of the rent of any holding payable to him; or
- (d) if the debtor is a tenant of land or a person other than a thekadar or an under-proprietor in Oudh holding a sub-settlement and paying rent for his land, there has been a suspension or remission of the rent of any holding payable by him.

(2) "Agriculturist" means, in all sections of the Act where the term is used—

(a) a person who, in districts not subject to the Benares Permanent Settlement Regulation, 1795, Regulation I of 1795, pays land revenue not exceeding Rs. 1,000 per annum; or

(b) a person who, in districts subject to the Benares Permanent Settlement Regulation, 1795, Regulation I of 1795, pays a local rate under section 109 of the District Boards Act, 1922, not exceeding Rs. 120 per annum; or

(c) a person holding land free of revenue, who pays a local rate under section 109 of the District Boards Act, 1922, not exceeding Rs. 120 per annum; or
 United Provinces Act X of 1922.

- (d) in Oudh, an under-proprietor holding a sub-settlement of land, the revenue of which does not exceed Rs. 1,000 per annum; or
- (e) a thekadar who holds a theka of land the revenue of which does not exceed Rs. 1,000 per annum; or
- (f) a person other than a thekadar or an under-proprietor in Oudh holding a sub-settlement, who pays rent for agricultural land not exceeding Rs. 500 per annum; or
- (g) a person holding land free of rent, the area of which does not exceed 80 acres; or
- (h) a person ordinarily living outside the limits of any municipality who belongs to any of the classes of persons mentioned in schedule I :

Provided that in sections 2(10) (a), 3, 4, 5, 8 and Chapters IV and V an agriculturist means also a person who would belong to a class of persons mentioned in parts (a) to (g) of this sub-section, if the limits of land revenue, local rates, rent and area mentioned in these parts were omitted :

Provided also that no person shall be deemed to be an agriculturist if he is assessed to income-tax, which, if he belongs to any of the classes (a) to (e) above, exceeds the local rate payable on the land which he holds, or, if he belongs to class (f) above, exceeds 5 per cent. of his rent, or, if he belongs to class (g) above, exceeds Rs. 25 :

Provided further that if a non-agriculturist joins with an agriculturist in any transaction of loan, save for the purpose of adding his name as security, the agriculturist shall not be considered as such for the purpose of that transaction.

Explanation I—In this sub-section “revenue” and “rent” mean revenue and rent payable irrespective of the remission that may be granted for the slump in prices or for agricultural calamities.

Explanation II—In the case of members of a joint Hindu family or joint owners or joint tenants, each member or owner or tenant shall be considered to be an agriculturist for the purposes of Chapters II (except sections 3, 4, 5 and 8), III and VI, whose share or interest in revenue, local rate or rent or the rent-free land, as the case may be, does not respectively exceed the aforesaid limits.

Explanation III—In Oudh an under-proprietor of specific plots not holding a sub-settlement and paying rent not exceeding Rs. 500 per annum is an agriculturist.

Explanation IV—The word “rent” in this sub-section includes, in cases where rent is payable in kind, the money equivalent thereof recorded in the *khatauni* of the previous year.

Explanation V—The word “rent” in this sub-section shall not include *said mutalba* or any amount paid in excess of the rent legally payable.

Explanation VI—When a person pays both rent and revenue, he shall not be deemed to be an agriculturist for the purposes of Chapters II (except sections 3, 4, 5 and 8), III and VI, if the total of the rent and revenue annually payable by him exceeds Rs. 1,000, or if he is excluded from the definition of agriculturist under any of the clauses (a) to (g).

Explanation VII—When a person, holding land in districts Regulation I of subject to the Benares Permanent Settlement Regulation, 1795, or holding land free of revenue, pays both rent and local rate, he shall not be deemed to be an agriculturist if the total of the rent and local rate annually payable by him exceeds Rs. 500.

Illustrations.

(i) A person who pays Rs. 800 as revenue and Rs. 400 as rent is not an agriculturist as the total of rent and revenue exceeds the limit of Rs. 1,000.

(ii) A person pays Rs. 200 as revenue and Rs. 600 as rent. He comes under clause (a) but not under clause (f) he is not therefore an agriculturist.

(3) “Bond” means a bond as defined in section 2 of the Indian Stamp Act, 1899.

II of 1899.

United Provinces
Act III of 1901.

(4) “Collector” means the officer appointed as Collector of a district under the Land Revenue Act, 1901.

(5) “Court” means a civil Court.

(6) “Co-operative Society” means a society registered under the provisions of the Co-operative Societies Act, 1912.

United Provinces
Act II of 1912.

(7) “Creditor” in Chapter V means a person who, in the regular course of business, advances a loan as defined in this Act, and includes the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise, of a creditor.

(8) “Interest” includes the return to be made over and above what was actually lent, whether the same is charged or

sought to be recovered specifically by way of interest or in the form of service or otherwise.

(9) "Land" and "landlord" shall have the same meaning as in the Agra Tenancy Act, 1926.

United Provinces Act III of 1926. (10) (a) "Loan" means an advance to an agriculturist, whether of money or in kind, and shall include any transaction which is in substance a loan, but shall not include—

- (i) a loan advanced by the Local Government or by any Municipal, District or Cantonment Board authorized by the Local Government to advance loans, or by a Co-operative Society;
- (ii) except for the purposes of sections 7, 8, 33(1), 35, 36 and 39(1), (3) and (4), small loans not exceeding Rs. 20 repayable within a year in fixed equated instalments the total of which does not exceed the principal by more than 10 or 20 per cent. according as the instalments are spread over a period of less than six months or more than six months, provided that no further interest is charged in addition to fixed equated instalments; and
- (iii) a loan of agricultural produce repayable at the next harvest with not more than one-quarter of the quantity of the said produce by way of interest.

Explanation—A loan advanced as one transaction shall for the purpose of sub-clause (ii), be deemed to be one loan, even though it is evidenced by several separate documents or by separate entries in a document.

(b) "Secured loan" means a loan for which property other than agricultural produce is specifically hypothecated as security.

(c) "Unsecured loan" means a loan which is not secured.

(11) "Money" shall be deemed to include agricultural produce, implements and stock.

(12) "Prescribed" means prescribed by this Act, or by rules made under this Act.

(13) "Thekadar" shall have the same meaning as in the Agra Tenancy Act, 1926.
United Provinces Act III of 1926.

(14) "Under-proprietor" shall have the same meaning as in the Oudh Rent Act, 1886.
United Provinces Act XXII of 1886.

CHAPTER II

Suits against agriculturists

3. (1) Notwithstanding any provision in the Code of Civil Procedure, 1908, to the contrary, the Court, at the time of passing a decree for money or a preliminary decree for sale in default of payment of money or a preliminary decree for foreclosure against an agriculturist, may, and, on the application of such agriculturist, shall, unless for reasons to be recorded it directs otherwise, direct that the total amount found due for principal, interest up to the date of the decree and costs, if any, shall be paid in such number of instalments payable on the dates fixed by the Court as having regard to the circumstances of the judgment-debtor and the amount of the decree, the Court considers proper :

Provided that the period of such instalments shall not extend beyond four years from the date of the decree in the case of an agriculturist to whom Chapter III applies, and beyond fifteen years from such date in the case of other agriculturists :

Provided further that, if the Court is satisfied that on account of an agricultural calamity the payment of any instalment by a judgment-debtor is likely to cause hardship, it may, after notice to the decree-holder, allow such further time for payment of such instalment as it may consider proper.

(2) The Court may, at the time of passing an instalment decree against an agriculturist, either attach his immoveable property, if any, or declare a charge on such property within the meaning of section 100, Transfer of Property Act, 1882, to the extent of the amount decreed.

(3) An attachment under sub-section (2) shall, unless the Court directs otherwise, subsist until the decree has been paid off or otherwise satisfied, and all provisions in the Code of Civil Procedure, 1908, relating to attachment in execution of decrees and to investigation of claims to attached property shall apply to such attachment.

(4) If the decree provides for payment by instalments, the Court shall direct that, where the number of instalments allowed is four or five and any two instalments are in arrears, or where the number allowed is six or more and any three instalments are in arrears the decree-holder may, notwithstanding the provisions of any law for the time being in force, immediately enforce pay-

ment of the whole amount then remaining due under the decree, and in the case of a decree, for sale or foreclosure apply that a final decree shall be passed.

(5) Nothing in any order made in an instalment decree shall debar a judgment-debtor from paying at any time, towards the satisfaction of the decree, the whole of the amount that may be due thereunder or any amount exceeding the amount of an instalment that may be fixed under the decree.

4. (1) Notwithstanding anything contained in the Code of Future interest. V Civil Procedure, 1908, the rate at which of 1908. future interest may be allowed in any decree for payment of money or for sale in default of payment of money or for foreclosure or in any order for grant of instalments passed against an agriculturist shall not exceed the rate notified by the Local Government in the *Gazette* under sub-section (2) as in force at the time when the decree or order, as the case may be, is passed.

(2) As soon as possible after the rate of interest at which the Government of India will lend money to the Local Government is announced, the Local Government shall notify that rate in the *Gazette*, and publish it in such other manner as it thinks proper, and that rate shall be the rate in force for future interest from such date as may be notified by the Local Government until such date as it is superseded by a new rate.

5. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court shall, unless for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to the decree-holder, direct that any decree for money or preliminary decree for sale or foreclosure passed by it or by any Court whose business has been transferred to it against an agriculturist, whether before or after this Act comes into force, shall be converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of section 3 :

Provided that any final decree for sale which has not been fully satisfied, passed before this Act comes into force, shall, notwithstanding anything contained in the V of 1908. Code of Civil Procedure, 1908, be revisable in the same manner and to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.

(2) If, on the application of the judgment-debtor, the Court refuses to grant instalments, or grants a number of period of instalments which the judgment-debtor considers inadequate, its order shall be appealable to the Court to which the Court passing the order is immediately subordinate, and the decision of the appellate Court shall be final.

6. In no case shall a decree passed by a civil Court against an agriculturist be executed by attachment or sale of agricultural produce after a period of four years calculated from the date of the filing of the first application for execution:

Limit to the execution of decree by sale of agricultural produce.

Provided that the period during which more than one-quarter of the holding of the judgment-debtor has been sub-let or during which the judgment-debtor has suffered from an agricultural calamity shall be excluded from the period of four years mentioned in this section:

Provided also that, when instalments are granted under either section 3 or section 5, the period of execution allowed by this section shall, in respect of each instalment, date from the day on which the instalment falls due.

7. Notwithstanding anything contained in any other enactment for the time being in force, every suit against agriculturists for recovering an unsecured loan in which the defendant, or, where there are several defendants, any of the defendants, is an agriculturist, shall be instituted and tried in a Court within the local limits of whose jurisdiction—

(a) the agriculturist defendant, or any of the agriculturist defendants, where there are more than one such defendants, actually and voluntarily resides; or

(b) in case the agriculturist defendant, or all the agriculturist defendants, reside outside the limits of the United Provinces of Agra and Oudh—

(1) the holding or the landed property of the agriculturist defendant, or any of them, if there are more than one such defendants, is situate, and

(2) if the agriculturist defendant or none of the agriculturist defendants has a holding or landed property, the agriculturist defendant or any of them, if there are more than one such defendants, carries on the profession by virtue of which he is classed as an agriculturist.

8. (1) No person shall be deemed to be an agriculturist for the purposes of this chapter, unless he was an agriculturist both at the time of the advance of the loan as well as at the date of the suit :

Provided that, if a person has a subsisting interest in land, but, by reason of a temporary transfer or for any other similar reason, does not for the time being pay any rent or revenue in respect thereof, he will not merely by reason of such non-payment cease to be an agriculturist.

(2) For the purposes of sections 3, 5 and 6 any change in the status of the defendant subsequent to the date of the suit in which the decree was passed shall be ignored.

CHAPTER III

Mortgages and their redemption

9. Notwithstanding anything contained in the Transfer of Property Act, 1882, or any contract to the contrary, no mortgage of land or grove by an agriculturist made after the commencement of this Act shall be valid if, under the terms of such mortgage, possession of the mortgaged land or grove is delivered to the mortgagee, unless the mortgagee is authorized to retain such possession and to receive the rents and profits of such land or grove both in lieu of interest and towards payment of the principal, on condition that after the expiry of a fixed term not exceeding twenty years, the mortgaged land or grove shall be re-delivered to the mortgagor and the mortgage-debt shall be deemed to have been discharged.

Explanation (1)—For the purposes of this section “land” means and includes land which forms a mahal or a share or a portion of a mahal or specified plots in a mahal.

Explanation (2)—Nothing in this section shall be construed to confer a right of effecting usufructuary mortgage of land on persons who do not possess transferable rights in such land.

10. Applications under this chapter shall, if the principal money secured does not exceed Rs. 500, be brought before the Collector, and the word “Court” in his chapter shall in such cases include the “Collector.”

11. If a mortgagee holding possession under a mortgage of made after the commencement of this Act Ejectment of mortgagee remaining in possession after term. by an agriculturist, remains in possession after the expiry of the period for which he is entitled to hold and on the expiry of which he is bound to deliver back the mortgage property without any payment by the mortgagor, the Court shall, on the application of the person entitled to possession, direct that the mortgage be redeemed, eject such mortgagee, and place the person so entitled in possession, and may also direct the mortgagee to pay such compensation to the person found to have been wrongly kept out of possession as it may deem reasonable.

12. Notwithstanding anything contained in section 83 of the Transfer of Property Act, 1882, or any Application for redemption. IV of contract to the contrary, an agriculturist 1882. who has made a mortgage either before or after the passing of this Act, or any other person entitled to institute a suit for redemption of the mortgage, may, at any time after the principal money has become due, and, before a suit for redemption is barred, file an application before the Court within whose jurisdiction the mortgaged property or any part of it is situate, in such form and giving such particulars as the Local Government may by rule prescribe, and praying for an order directing that the mortgage be redeemed, and, where the mortgage is with possession, that he be put in possession of the mortgaged property. The application shall be duly verified in the manner prescribed by law for the verification of plaints and shall state the sum which the applicant declares to the best of his belief to be due under the mortgage. The applicant shall at the same time deposit such sum with the Court.

Explanation—For the purposes of sections 11 and 12 the word "property" includes grove.

13. When the application has been duly presented and the Mortgagee to be summoned. deposit has been made, the Court shall issue a notice to the mortgagee to show cause on a day to be fixed in the notice why redemption should not be allowed.

14. If the mortgagee appears and accepts the deposit in full Procedure when mortgagee accepts deposit. discharge of his mortgage, the Court shall order that the mortgage be redeemed, that the money deposited by the applicant be paid to the mortgagee and that the title-deeds, if any, in possession or power of the mortgagee shall be deposited in Court and be delivered to the mortgagor.

15. If on the date fixed the applicant does not appear and the mortgagee does not accept the deposit when the applicant is absent in full discharge of the mortgage, the Court shall reject the application.

16. If, on the date fixed or any subsequent date to which the proceedings may have been postponed, the applicant appears and the mortgagee does not appear in spite of notice, or the mortgagee appears and does not accept the money deposited by the applicant in full discharge of his mortgage or objects to redemption of the mortgage on any other ground, the Court shall hold an inquiry to determine whether the applicant is entitled to redeem the mortgage and whether the money deposited by him is sufficient. If the Court finds that the applicant is not entitled to redeem, it shall reject the application. If it finds that the applicant is entitled to redeem, but must pay a larger amount than that deposited by him, the Court shall order the applicant to deposit the balance within a fixed period. If the applicant fails to deposit the said balance, the Court shall reject his application. If the Court finds that the applicant is entitled to redeem and that the amount deposited by him was sufficient or if it was not sufficient, the applicant has deposited the balance within the time fixed, it shall order that the mortgage be redeemed, that the money deposited be paid to the mortgagee, and that the title-deeds, if any, in possession or power of the mortgagee shall be deposited in Court and shall be delivered to the mortgagor.

17. Where the mortgagor has deposited with the Court a sum which is accepted by the mortgagee interest under section 14, or is held by the Court to be sufficient under section 16, interest on such sum shall cease to run from the date of deposit.

Where the Court finds that a larger amount than that deposited by the mortgagor is due, and the balance is deposited by the applicant, interest shall cease to run from the date of deposit of such balance.

18. In all cases in which the Court orders redemption, it shall, if necessary, also put the applicant in possession of the mortgaged property, subject to any condition of the mortgage whereby a season or period of the year is fixed for surrendering possession.

19. If the application is rejected, the Court shall return to the applicant the money deposited by him.

20. No sum deposited by an applicant under the provisions of this chapter shall, while in such deposit, be attached by any Court or revenue officer in enforcement of any claim against the applicant other than a claim arising out of the mortgage.

21. The words "mortgagor" and "mortgagee" in this chapter include respectively the successors-in-title of the original mortgagor and the original mortgagee.

Terms "mortgagor" and "mortgagee" to include their successors. Investment of powers on Assistant Collectors and transfer of proceedings.

22. (1) The Local Government may empower any Assistant Collector of the first class to exercise the powers of a Collector under this chapter.

(2) The Collector may transfer any proceedings under this chapter—

- (a)** from his own Court to that of an Assistant Collector empowered under sub-section (1);
- (b)** from the Court of an Assistant Collector subordinate to him either to his own Court or to that of any other Assistant Collector empowered under sub-section (1).

23. (1) An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this chapter. An appeal shall lie from the order of a civil Court passed under this chapter to the Court to which original decrees passed by such Court are ordinarily appealable, and where such decrees are appealable to more Courts than one, to the Court of lowest jurisdiction.

Appeals.

(2) No appeal shall lie from an appellate order passed under this section.

24. (1) No application under section 11 or 12 shall be filed, unless—

When application can be filed under this chapter.

- (a)** the applicant is an "agriculturist" on the date of the application, and
- (b)** the mortgagor was an "agriculturist" at the time of the mortgage.

(2) In cases in which the status of a mortgagor as "agriculturist" on the date of mortgage is at issue and no documentary evidence is forthcoming to prove it, the status of the mortgagor on that date shall be determined with reference to the entries in the

record-of-rights or the annual registers prepared under the Land United Provinces Revenue Act, 1901, of the year nearest to Act III of 1901. the year of mortgage for which they exist.

25. No suit shall be brought in any Court for any relief which can be obtained by an application under this chapter.
Bar of suit.

26. (1) The limitation for making an application for redemption under this chapter shall be the same as that provided in the Indian Limitation Act, 1908, for a suit for redemption.
Limitation and Procedure. IX of 1908.

(2) The limitation for filing appeals and for execution of orders under Chapter III shall be the same as that prescribed by law respectively for appeals under the Code of Civil Procedure, V of 1908. 1908, and for decrees passed by Civil Courts

(3) The provisions of sections 6, 7, 8, 19 and 21 of the Indian Limitation Act, 1908, shall apply to applications under this chapter and the provisions of section 5 of the said Act shall apply to appeals under this chapter.
IX of 1908.

27. The provisions in the Code of Civil Procedure, 1908, in regard to suits shall be followed, so far as they can be made applicable, to all proceedings under this chapter, and all orders passed under this chapter shall be executed in the manner prescribed for execution of Civil Court decrees.
Applicability of the Code of Civil Procedure to proceedings under this chapter. V of 1908.

CHAPTER IV

Rates of interest

28. (1) Notwithstanding anything in any contract to the contrary, no loan taken by an agriculturist after this Act comes into force shall bear interest at a rate higher than that notified by the Local Government under sub-section (2) as the prevailing rate of interest for the particular class of loan at the time the loan was taken.
Rate of interest on loans taken after the passing of this Act above which the debtor is not liable to pay.

(2) As soon as possible after the rate of interest at which the Government of India will lend money to the Local Government is announced from time to time, the Local Government shall notify in the *Gazette*, and shall publish in such other manner as it

thinks proper, the rates which shall be the prevailing rates of interest on secured and unsecured loans of the various classes mentioned in Schedule II contracted during the period such prevailing rates shall remain in force. Such prevailing rates shall come into force from such date as may be notified by the Local Government and shall remain in force until superseded by new rates.

(3) Such prevailing rates as are referred to in sub-section (2) shall be fixed at the percentage rates specified for different classes of loans in Schedule II above the rate of interest at which the local Government borrows from the Government of India.

29. If an unsecured loan taken after the date on which this Act comes into force, is, if it is not a loan for a fixed term, repaid within two years of the date of the taking of the loan, or, if it is a loan for a fixed period, is repaid within such period, the debtor shall not be liable to pay interest at a rate higher than the prevailing rate of interest for a secured loan of the same class in force at the time the loan was taken.

30. (1) Notwithstanding anything in any contract to the contrary no debtor shall be liable to pay interest on a loan taken before this Act comes into force at a rate higher than that specified in Schedule II for the period from January 1, 1930, till such date as may be fixed by the Local Government in the *Gazette* in this behalf.

(2) If a decree has already been passed on the basis of a loan and remains unsatisfied in whole or in part, the Court which passed the decree shall on the application of the judgment-debtor amend it by reducing, in accordance with the provisions of sub-section (1), the amount decreed on account of interest.

(3) A decree amended in accordance with the provisions of sub-section (2) shall be deemed to bear the date of the original decree, and, notwithstanding any provision in any law to the contrary, no appeal shall lie from any order amending a decree under that sub-section.

(4) Any amount already received by the creditor on account of interest in excess of that due under this section shall be credited towards the principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

31. (1) Notwithstanding anything in any contract to the contrary no loan taken after this Act comes into force shall bear interest at a rate higher than that specified in Schedule IV, calculated on the sum originally borrowed or such part of it as has not already been repaid after a sum equal to the sum originally borrowed has been realized or has accrued at the contractual rate on account of interest on such loan.

(2) Any amount already received by the creditor on account of interest in excess of that due under the provisions of this section shall be credited towards principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

CHAPTER V

Maintenance of accounts

Duty of creditor to maintain and furnish accounts.

32. (1) A creditor shall, after the date on which this Act comes into force,—

- (a) regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to that debtor, in such manner as the Local Government may prescribe; and
- (b) supply each agriculturist debtor every year with a full and correct statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on account of each separate loan on such date as the Local Government may prescribe in this behalf. Such statement of account shall include all transactions entered into during the year to which the statement relates, and shall contain such details and particulars as the Local Government may prescribe. It shall be supplied to the debtor within one month of the aforesaid date in such form and in such manner as the Local Government may prescribe:

Provided that, where there is a current account, it shall be sufficient for the creditor for the purposes of clause (a) to keep one account of all transactions relating thereto, and for the

purposes of clause (b) to furnish particulars of the balance due on the whole account.

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

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

33. (1) An agriculturist debtor may sue for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person.

(2) In such suit the Court shall follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act, 1918. It shall, after taking necessary accounts, declare the amount which is still payable by the plaintiff to the defendant, and shall on the application of the defendant, and if the money is payable, pass a decree in favour of the defendant.

(3) Subject to section 30(2) or section 31(2), as the case may be, if the defendant is found to have been overpaid, the Court shall pass a decree for refund of the amount of such over-payment in favour of the plaintiff.

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

Penalty for non-compliance with the provisions of section 24.

- (a) in any suit or proceeding relating to a loan against an agriculturist, if the debtor objects that the creditor has not complied with the provisions of section 32, the Court shall determine such objection before deciding the claim on the merits;
- (b) if the Court finds that the provisions of clause (a) of section 32(1) have not been complied with by the creditor, it may, if the creditor's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as it may deem reasonable

31. (1) Notwithstanding anything in any contract to the contrary no loan taken after this Act comes into force shall bear interest at a rate higher than that specified in Schedule IV, calculated on the sum originally borrowed or such part of it as has not already been repaid after a sum equal to the sum originally borrowed has been realized or has accrued at the contractual rate on account of interest on such loan.

(2) Any amount already received by the creditor on account of interest in excess of that due under the provisions of this section shall be credited towards principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

CHAPTER V

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Duty of creditor to maintain and furnish accounts.

32. (1) A creditor shall, after the date on which this Act comes into force,—

- (a) regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to that debtor, in such manner as the Local Government may prescribe; and
- (b) supply each agriculturist debtor every year with a full and correct statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on account of each separate loan on such date as the Local Government may prescribe in this behalf. Such statement of account shall include all transactions entered into during the year to which the statement relates, and shall contain such details and particulars as the Local Government may prescribe. It shall be supplied to the debtor within one month of the aforesaid date in such form and in such manner as the Local Government may prescribe:

Provided that, where there is a current account, it shall be sufficient for the creditor for the purposes of clause (a) to keep one account of all transactions relating thereto, and for the

purposes of clause (b) to furnish particulars of the balance due on the whole account.

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

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

33. (1) An agriculturist debtor may sue for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person.

(2) In such suit the Court shall follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act, 1918. It shall, after taking necessary accounts, declare the amount which is still payable by the plaintiff to the defendant, and shall on the application of the defendant, and if the money is payable, pass a decree in favour of the defendant.

(3) Subject to section 30(2) or section 31(2), as the case may be, if the defendant is found to have been overpaid, the Court shall pass a decree for refund of the amount of such over-payment in favour of the plaintiff.

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

(a) in any suit or proceeding relating to a loan against an agriculturist, if the debtor objects that the creditor has not complied with the provisions of section 32, the Court shall determine such objection before deciding the claim on the merits;

(b) if the Court finds that the provisions of clause (a) of section 32(1) have not been complied with by the creditor, it may, if the creditor's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as it may, deem reasonable

in the circumstances of the case, and shall disallow the creditor's costs ;

- (c) if the Court finds that the provisions of clause (b) of section 32(1) have not been complied with by the creditor, the Court shall in computing the amount of interest due upon the loan exclude every period for which the creditor has failed to comply with the said provisions :

Provided that if the creditor has, after the time prescribed in the said clause, furnished the account and satisfies the Court that he had sufficient cause for not furnishing it earlier, the Court shall, notwithstanding such omission, include any such period or periods for the purpose of computing the interest :

Provided further, that if the creditor has submitted an account which is not full and correct, and satisfies the Court that the omission or error was *bona fide* and due to inadvertence, the Court shall, notwithstanding such omission or error, include any such period or periods for the purpose of computing the interest.

Explanation—A person who has kept his account and submitted his yearly statement of account in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 32 shall be held to have complied with the provisions of these clauses, in spite of any errors and omissions, if the Court finds that the errors and omissions were accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

35. (1) Any creditor who, after the commencement of this Act, records in his book of accounts or in the statement of account submitted to the debtor as lent to an agriculturist a sum larger than that actually lent, whether by way of charges for expenses, inquiries, fines, bonuses, premia, renewals, or otherwise, shall be punished for the first offence with fine which may extend to one hundred rupees, and, for a second or subsequent offence with regard to the same or any other agriculturist, with fine which may extend to five hundred rupees.

(2) Where in any suit concerning a loan taken by an agriculturist the Court finds that the creditor has, without reasonable cause, refused or neglected to deliver to the debtor a receipt for any payment by him on account of such loan or to credit such payment on the written instrument securing such loan, it may

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award the debtor such compensation and the amount of such payment as it may come to.

36. The provisions of sections 32, 33 and 34 shall apply in the case of a loan advanced after the commencement of this Act, notwithstanding that the loan was advanced during the period prior to the commencement of this Act.

CHAPTER VI

Miscellaneous

37. When a loan has been advanced in kind, a debtor may at his option repay it either in the same kind or in cash at a fair rate, if no rate has been agreed upon, or in any other form and at the rate agreed upon between the creditor and himself:

Provided that if there is a dispute about the fairness of the rate, the question shall be referred either by the creditor or the debtor to the Collector, whose decision shall be final.

38. (1) A debtor may at any time, whether during the pendency of a suit or otherwise, deposit in Court a sum of money not less than one-fourth of the amount due at the time in full or part payment of a loan, not being a loan secured by a mortgage, and may apply that such sum be paid to the person to whom it is due.

(2) The Court shall give notice of such deposit to the creditor and shall on his application pay the amount of deposit to him.

(3) From the date of such deposit interest shall cease to run on the amount so deposited.

39. (1) Every loan given after the date on which this Act comes into force shall be evidenced by a written document, of which a copy shall be given to the debtor.

(2) In the case of unsecured loans, an entry shall be made in every such document specifying the date by which repayment must be made in order to earn the benefit of section 29 and the rate of interest which shall prevail if repayment is made by such date.

in interest shall accrue on any loan until a copy of the written document prepared according to the provisions of sub-sections (1) and (2) has been supplied to the debtor as required by sub-section (1).

(4) Notwithstanding anything in the Indian Stamp Act, 1899, no such written document as is referred to in sub-section (1) shall require a stamp duty higher than that which would have been payable in respect thereof had it not contained the details mentioned in sub-sections (1) and (2), and no copy supplied to the debtor as required by sub-section (1) shall require any stamp duty.

40. (1) Notwithstanding anything contained in the Indian Stamp Act, 1899, and the rules made under certain bonds by the Indian Registration Act, 1908, the stamp duty and the registration and copying fees on bonds of value or amount not exceeding rupees three thousand, executed by an agriculturist and registered under the Indian Registration Act, shall be as laid down in Schedule V.

(2) If a bond is executed on a form printed under the authority of the Local Government, no copying fee shall be leviable for making a copy or a note of the bond in the books prescribed under the Indian Registration Act, 1908.

41. (1) The Local Government may make rules consistent with this Act for the purpose of carrying out the provisions of this Act.

(2) Before making the rules under this section the Local Government shall publish a draft of the same in the *Gazette* and shall concurrently cause a copy of the said draft to be sent to every member of the Legislative Council.

(3) In making the rules finally the Local Government shall consider the opinions received by them as well as any opinion expressed by the Legislative Council.

42. Except as otherwise provided by this Act no order passed by the Local Government or the Collector under this Act shall be called in question in a civil Court.

Exclusion of jurisdiction of civil Courts.

SCHEDULE I

The classes mentioned in section 2(2)(h)

Agricultural labourers, general labourers, cowherds, goatherds, dairymen, blacksmiths, carpenters, fishers, hunters, boatmen, barbers, tanners, and leather-workers, scavengers, basket-makers, potters, midwives, watchmen, washermen, weavers or other servants of the village community or any similar class of persons whom the Local Government may, by notification in the *Gazette*, from time to time include in this schedule.

SCHEDULE II

Percentage rates mentioned in section 28 by which the prevailing rate of interest should exceed the percentage rate at which the Local Government borrow from the Government of India.

Amount of loan.	Secured loans.		Unsecured loans.	
	Compound per cent. per annum with yearly rests.	Simple per cent. per annum.	Compound per cent. per annum with yearly rests.	Simple per cent. per annum.
(a) Rs. 500 and under ...	3	51/2	71/2	101/2
(b) Rs. 501 to Rs. 5,000 ...	21/2	41/2	6	8
(c) Rs. 5,001 to Rs. 20,000 ...	2	31/2	41/2	61/2
(d) Over Rs. 20,000 ...	11/2	21/2	31/2	5

SCHEDULE III

Rates of interest for section 30

	Secured loans.		Unsecured loans.	
	Compound per cent. per annum with yearly rests.	Simple per cent. per annum.	Compound per cent. per annum with yearly rests	Simple per cent. per annum.
(a) Rs. 500 and under ..	X+21/2	X+5	X+51/2	X+91/2
(b) Rs. 501 to Rs. 5,000 ...	X+2	X+4	X+41/2	X+71/2
(c) Rs. 5,001 to Rs. 20,000 ...	X+11/2	X+3	X+31/2	X+6
(d) Over Rs. 20,000 ...	X+1	X+2	X+21/2	X+41/2

NOTE—X in this schedule means—

- (a) For the period from January 1, 1930, or the date on which the loan was taken, whichever was later, till the first date notified under section 4, a rate of 41/2.
- (b) For the period from the first date notified under section 4 till the date fixed by the Local Government as the final date to which section 30 shall apply, the rate notified under section 4 as the rate in force on the date when the loan was taken or 41/2, whichever is less.

SCHEDULE IV

Rates of interest mentioned in section 31

Simple interest at the rate notified under section 4 as in force at the time when the aggregate of interest realized or accrued becomes equal to the sum originally borrowed in the case of secured loans, and 2 per cent. above that rate in the case of unsecured loans.

SCHEDULE V

Scale mentioned in section 40

Amount or value of the bond	Stamp duty.	Regis- tration fee.	Copying fee.
	Rs. as	Rs. as	As.
Where the amount or value secured does not exceed Rs 50.	0 1	0 1	3
Where it exceeds Rs 50 but does not exceed Rs. 100	0 2	0 2	3
Ditto Rs. 100 ditto Rs. 200	0 4	0 4	4
Ditto Rs. 200 ditto Rs. 300	0 6	0 6	6
Ditto Rs. 300 ditto Rs. 400	0 8	0 8	8
Ditto Rs. 400 ditto Rs. 500	0 12	0 12	10
Ditto Rs. 500 ditto Rs. 600	1 10	2 4	12
Ditto Rs 600 ditto Rs. 700	2 0	2 4	12
Ditto Rs. 700 ditto Rs. 800	2 6	2 4	12
Ditto Rs. 800 ditto Rs. 900	2 12	2 4	12
Ditto Rs. 900 ditto Rs. 1,000	3 2	2 4	12
For every Rs. 250 or part of Rs. 250 above and up to Rs. 3,000.	Rs. 1,000 1 0	0 4	Nil

**THE UNITED PROVINCES AGRICULTURISTS' RELIEF
(AMENDMENT) ACT, 1935**

UNITED PROVINCES ACT NO. III OF 1935

*[Passed by the Local Legislature of the United Provinces of
Agra and Oudh]*

*[Received the assent of the Governor of the United Provinces of
Agra and Oudh on July 2, 1935, and of the Governor-General
on July 17, 1935, and was published under section 81 of the
Government of India Act on July 20, 1935.]*

*An Act to amend the United Provinces Agriculturists'
Relief Act, 1934*

United Provinces
Act XXVII of 1934. WHEREAS it is expedient to amend the
United Provinces Agriculturists' Relief Act,
1934;

And whereas the previous sanction of the Governor-General
has been obtained under sub-section (3) of section 80-A of the
Government of India Act, to the passing of this Act;

It is hereby enacted as follows :

1. (1) This Act may be called the United Provinces Agri-
Short title and culturists' Relief (Amendment) Act, 1935.
extent.

(2) It extends to the whole of the United Provinces of
Agra and Oudh.

(3) It shall come into force on such date as the Local
Government may by notification direct.

2. In part (b) of the footnote of schedule III to the United
Provinces Agriculturists' Relief Act, 1934,
Amendment of for the words "the rate notified under sec-
Schedule III to the tion 4 as the rate in force on the date when
United Provinces Agriculturists' Relief Act, 1934. the loan was taken" the following shall be
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each such rate is in force.²²

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