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THE  
**Bombay**  
**Co-operative Societies Act**  
( With Rules )  
( Bombay Act VII of 1925 )

WITH

Introduction, exhaustive commentary, The Bombay  
Co-operative Societies Rules, The Co-operative  
Societies Act II of 1912 and cases up-to-date.

BY

**K. S. Gupte**, B. A., LL. B.,  
PLEADER, POONA.

( Author of The Mamlatdars' Courts Act of 1906,  
The Dekkhan Agriculturists' Relief Act,  
The Bombay Land Revenue Code, etc. etc., )

*With a foreword*

BY

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1932



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Table of Contents 9178

	Pages.
Foreword ... ..	1-4
Preface ... ..	5-6
Introduction ... ..	7-17
Contents of the Act ... ..	1-4
Act VII of 1925 ... ..	1-356
Preamble ... ..	1-11
Preliminary ... ..	11-25
Registration ... ..	25-96
Rights and liabilities of Members ... ..	95-105
Duties of societies ... ..	105-133
Privileges of societies ... ..	133-222
Inspection of affairs ... ..	221-232
Liquidation and Arbitration ... ..	231-282
Offences ... ..	282-288
Appeals and Revision ... ..	288-289
Miscellaneous ... ..	289-355
Enactments repealed ... ..	356
<b>Appendix (A).</b>	
[ Bombay Co-operative Societies Rules, 1927. ] ...	1-23
<b>Appendix (B).</b>	
[ The Co-operative Societies Act, II of 1912 ]	24-41
Index ... ..	1-29

ARRANGEMENT OF SECTIONS.

SECTIONS.	Pages.
Preamble ... ..	1
<i>Preliminary.</i>	
1. Short title. ... ..	11
2. Extent. ... ..	12
3. Definitions ... ..	12
<i>Registration.</i>	
4. The Registrar. ... ..	25
5. Societies which may be registered. ... ..	34
6. Restrictions on interest of member of society with limited liability and a share capital. ... ..	64
7. Conditions of registration ... ..	68
8. Power of Registrar to decide certain questions ... ..	77
9. Application for registration ... ..	79
10. Registration ... ..	84
11. Evidence of registration ... ..	85
12. Annual general meeting ... ..	86
13. Special general meeting ... ..	89
14. Change of name : its effect ... ..	91
15. Amalgamation or transfer of societies ... ..	92
16. Amendment of the by-laws of a society ... ..	93
<i>Rights and liabilities of members.</i>	
17. No rights of membership to be exercised till due payments are made ... ..	96
18. Votes of members ... ..	98
19. Restrictions on transfer of share or interest ... ..	101
<i>Duties of societies.</i>	
20. Address of societies ... ..	105
21. Copy of Act, etc., to be open to inspection ... ..	106
22. Audit ... ..	109

SECTIONS.	Pages
<i>Privileges of societies.</i>	
23. Societies to be bodies corporate	133
24. Prior claim of society	134
25. Charge and set-off in respect of shares or interest of member	140
26. Shares or interest not liable to attachment	142
27. Transfer of interest on death of member	145
28. Liability of past member	150
29. Liability of the estates of deceased members	153
30. Register of members	155
31. Admissibility of copy of entry as evidence	156
32. Exemption from compulsory registration of instruments relating to shares and debentures of society	159
33. Power to exempt from income-tax, stamp-duty, registration and court fees	161
33A. Government may give loans or guarantee interest	170
34. Restrictions on loans	172
35. Restrictions on borrowing	183
36. Restrictions on other transactions with non-members	195
37. Investment of funds	198
38. Restrictions on dividend	201
39. Reserve fund	204
40. Restrictions on distribution of profits	211
41. Provident Fund	217
42. Contribution to charitable purpose	218
<i>Inspection of affairs.</i>	
43. Inquiry by Registrar	222
44. Inspection of books of indebted society	227
45. Costs of inquiry	229
46. Recovery of costs	230
<i>Liquidation and Arbitration.</i>	
47. Winding up	231
48. Society may be wound up	233

49.	Effect of cancellation of registration ... ..	234
50.	Powers of a liquidator ... ..	236
50A.	Power of Registrar to assess damage against delinquent promoters etc. ... ..	247
51.	Bar of suit in winding up and dissolution matters ... ..	250
52.	Disposal of surplus assets ... ..	253
53.	Surplus assets of housing society ... ..	256
54.	Arbitration ... ..	257
55.	Attachment before award ... ..	269
56.	Appeal against award of arbitrator ... ..	271
57.	Finality of order ... ..	272
58.	Powers to enforce attendance ... ..	274
59.	Money how recovered ... ..	275

*Offences.*

60.	Offences.	
	Default by a society, officer or member.	
	Wilful neglect or default by a society, etc. Wilful furnishing of false information. Disobedience of summons, requisition or order. ... ..	282
61.	Penalty for offences not otherwise provided for...	285
62.	Prohibition of the use of the word "Co-operative"	285
63.	Cognizance of offences ... ..	287

*Appeals and Revision.*

64.	Appeals ... ..	288
64A.	Power of Government and the Registrar to call for proceedings of Subordinate Officers and to pass orders thereon ... ..	288

*Miscellaneous.*

65.	Recovery of sums due to Government... ..	289
66.	Power to exempt societies from conditions as to registration ... ..	290
67.	Power to exempt societies from provisions of Act ... ..	292
68.	Indian Companies Act not to apply ... ..	292
69.	Branches &c., of societies outside the Presidency.	294

SECTIONS.	Pages
70. Notice necessary in suits ... ..	294
71. Rules ... ..	295
72. Saving of existing societies ... ..	355
73. Repeal ... ..	355
Schedule ... ..	356
	<i>Enactments repealed.</i> 356

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## FOREWORD.

BY

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*Registrar, Co-operative Societies, Bombay Presidency. ]*

I HAVE great pleasure in recommending to the public this annotated edition of the Bombay Co-operative Societies Act ( VII of 1925 ) by Mr. K. S. Gupte of Poona. Mr. Gupte has already earned a reputation as a commentator on various Acts, and in particular, his commentary on the Dekkhan Agriculturists' Relief Act is well-known. Having come into contact with the rural classes and their problems particularly as regards indebtedness, in his capacity as a pleader for them in various Civil proceedings, Mr. Gupte is amply qualified to write a commentary on the Bombay Co-operative Societies Act which is essentially a measure for the uplift of the agriculturist and the small worker and the artizan. Unlike, other local Acts, the Co-operative Societies Act hardly gives adequate scope for a strictly lawyer's commentary. As is well known, the jurisdiction of the Civil Courts is barred in respect of ordinary co-operative transactions and judicial decisions on the subject are, therefore, necessarily few and far between.

A small book dealing with the rulings and brief comments on the sections is already published, but Mr. Gupte's book is much more ambitious and thorough-going and gives an exposition of the principles of Co-operative organization which have been commonly accepted, in essentials, in all the principal countries of the world. It, therefore, necessarily deals with the objects and reasons underlying the characteristic provisions of Co-operative Law in this Presidency:

Co-operative Institutions constitute a special type of associations formed for the economic well-being of the constituent members and as such they bear considerable affinity to the Companies registered under the Indian Companies Act. A close comparison between the relevant sections of the two Acts dealing with the same topics is, therefore, extremely illuminating with a view to understand the real purport of the Co-operative Act, and Mr. Gupte, therefore, has wisely given an elaborate comparison of the provisions

made in the two Acts relating to cognate subjects. Similarly, he has clearly brought out the characteristic distinctions which differentiate the Co-operative organisations from ordinary commercial or joint stock companies.

Briefly speaking, as distinguished from ordinary Companies, the chief characteristics of Co-operative Organisations provided for in this Special Act are:—

(1) The extensive, exclusive and discretionary powers of registration, vested in the Registrar and also the duties of general superintendence, guidance and control imposed on him;

(2) The principle of unlimited liability or rather unlimited contributory liability incorporated in the Agricultural Societies;

(3) Democratic control as exemplified by the voting power being based on the human factor and not on the amount of the capital contributed. In other words, the principle of "One man, one vote;"

(4) A conscious attempt at preventing exploitation and profiteering and the consequent strict limitation of individual holdings of capital and also the concurrent limitation of profits;

(5) The principle of honorary service wherever possible;

(6) Compulsory arbitration in internal disputes and strict exclusion of the jurisdiction of the Civil Courts and the whole paraphernalia of complicated judicial procedure;

(7) The simple and summary arrangements made to facilitate recovery of the societies' debts and other special privileges and concessions given by Government to Co-operative Societies in view of the marked economic and educational value of the Movement to the people in general;

(8) The special position of the Government and the Department in relation to the Movement and the responsibilities of the Government as the sponsor and the ultimate guardian of the whole structure.

Some of those characteristics of Co-operative Institutions, particularly the extensive powers reserved for the Registrar and the Government, the exclusion of the jurisdiction of the Civil Courts, and the summary processes provided for the purpose of recovery may strike the general reader as somewhat unusual. The Government was the sponsor of the Co-operative movement in India, and in each one

of the Provinces a large amount of public money is being directly spent every year for the good of the movement in addition to the value of the numerous privileges, such as exemption from diverse fees and charges, which are enjoyed by the Co-operative Societies. Under the appropriate headings Mr. Gupte has explained how and why it has been necessary to reserve these powers in the hands of the Registrar appointed by Government, and how the existence of independent Government supervision and audit and the moral backing of Government are largely instrumental in inspiring the necessary confidence in the public mind with regard to the financial stability of the Movement. I trust that the material which has been collected together under the appropriate headings in the various parts of this Book will be greatly helpful in clearing some of the mis-understandings which are still current on the subject of official control of the Movement.

The Act itself is a bare outline of the essential structure and its great merit is the extreme simplicity and the deliberate elasticity imported into the whole arrangement. If by any chance any particular provision is found to be unduly restrictive, section 67 of the Act specially empowers the Government to exempt any particular society from any provision of the Act and the Rules thereunder. Since the Movement is still in its infancy and unexpected problems sometimes still present themselves for settlement and decision, this provision is essential though hardly ever resorted to. A large part of the detailed regulations by which the principles enumerated above are actually translated into the working of the Societies are embodied in statutory rules, the bye-laws of the various societies and the reports of various authoritative Committees and Conferences, Government Resolutions, and the vast mass of other literature on the subject.

Mr. Gupte has to a considerable extent utilised this material and given appropriate extracts under the relevant Sections. These extracts constitute a most useful part of the Book and Co-operative workers and students of the Movement will find an interesting collection of authoritative opinions explaining and amplifying the ideas underlying the actual text of the Act. A good use has also been made of the discussions in Legislative Council which took place when the original Bill,—now Act VII of 1925—was on the Legislative anvil in 1925.



It would appear that there is a good deal of scope for compression and elimination of the unessentials with regard to this portion of the work and at the time of preparing the second edition, if the remarks are suitably compressed, Mr. Gupte might find a good deal of space available for incorporating a large amount of additional useful material relating to co-operation in other countries and in the various Provinces of India. If I may venture to suggest it to him, Mr. Gupte might also, with advantage, try and get into intimate touch with the working of the various types of Co-operative Institutions at present existing in this Presidency, so that he may be able to select his material and offer his advice and suggestion in the light of the actual needs as ascertained from a first hand examination of the Institutions concerned.

By devoting his time and energy to this task Mr. Gupte has made a valuable contribution to the growing literature on the Co-operative Movement in this Presidency. The officers of the Department and the workers in the movement will find the Book particularly helpful as a book of reference in the discharge of their ordinary duties and, I trust that the Co-operative public generally will give Mr. Gupte the appreciative response which his effort so richly deserves.

POONA: }  
March 31, 1931. }

V. S. Bhide.

## PREFACE.

SINCE the passing of the Bombay Co-operative Societies Act, 1925, which has replaced the All-India Act of 1912 the development of Co-operative movement in this Presidency has been so marked that a book for occasional reference for the worker in the movement as well as the lawyer was much in demand. The advent of specially qualifying diploma examination in Co-operative Accountancy as well as the increasing number of students attending the Co-operative schools and classes that are being organised every year at various centres in the Bombay Presidency and the Sind by the Institute and the Provincial Bank is one more reason why a book where Co-operative Law as applicable to this Presidency is dealt with at some length should be compiled.

In preparing this commentary I have endeavoured to devote attention to the elucidation of principles and to show the nature of the changes made and the reasons therefor, in the words of those best fitted to explain them.

I wish to invite attention to appendices A and B. The former contains the rules as amended upto date with explanatory notes while in the latter the old Act of 1912 is given as a whole. I wish earnestly to invite the attention of our Legislative authorities to the suggestions which I have ventured to make for amendment of the Act which has been criticised by eminent authorities like Mr. Calvert as somewhat 'rigid'.

Special care has been taken to make the index full with references and cross-references.

I have restricted as far as possible to the literature on Co-operation in India in general and the Bombay Presidency in particular. In preparing this book I have had occasions frequently to consult the invaluable treatise on the 'Law and Principles of Co-operation' by Mr. Calvert for which I am grateful though the plan of my work is entirely different from that of his.

V. S. Bhide, Esquire, B. A., LL. B. ( Cantab ) Bar-at-law, I. C. S., the Registrar of Co-operative Societies, Bombay Presidency, has laid me under deep obligations by contributing the generously worded 'Foreword' which has considerably enhanced the value of this book,

more particularly because he wrote it in the midst of heavy official engagements. My particular thanks are due to R. B. Gunvantrai H. Desai, B. A. Personal Assistant to the Registrar for allowing me to make use of his very instructive lecture on 'Classification of societies' and also for reading portions of the work in manuscript and for general guidance and encouragement. It would be also most appropriate here to record my grateful thanks to D. G. Limaye, Esquire, B. A. of the Co-operative Department who was ever ready to place his very intimate knowledge of the working of the societies at my disposal and for the keen interest he displayed during the preparation of this volume by making valuable suggestions from time to time. My thanks are also due to R. B. S. S. Talmaki, Honorary Secretary, Provincial Co-operative Institute, Bombay and to V. L. Mehta, Esquire, the Managing Director of the Bombay Provincial Co-operative Bank for furnishing me with information regarding the constitution and working of the institutions with which they are associated. The major portion of the same however I had to reserve for my '*Hand book of Co-operation for Societies in Bombay and Sind*' which is now in print and will be published shortly.

I regret the delay in the publication of the work due to engagements legal and otherwise. It must also be attributed partly to my trip to England, which however, enabled me to get an insight into the working of some societies there. Let me in this connection acknowledge with gratitude the assistance I have derived from the Honorary Secretary of the Horace Plunkett Foundation in London who had very kindly allowed me to make use of the Institution's Library during my stay in London.

In the end, I wish to state that like many commentators I have allowed myself the liberty of airing personal views not in order to thrust them upon others but solely to stimulate reflection and to suggest the possibility of other views. I would like to mention that they are my own individual views and that the responsibility for whatever defects, (and I am sure there are many) may be found is entirely mine.

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 Poona City }  
 1st January, 1932 }

**K. S. Gupte.**

## INTRODUCTION.

**Early History.**—Debt has been the load on the agriculturist's back in India for centuries and despite all efforts it seemed almost impossible to relieve him of that load. While commerce and industry in India expanded with remarkable rapidity under the British Government, the peasant class in many parts of the country remained as deeply in debt as it had ever been. The persistent indebtedness and stagnation amongst vast masses of the agricultural population has been perhaps the greatest barrier in the way of progress of the country.

To the state of indebtedness could be attributed many of the evils to which the peasant is subject. For instance, it leads ultimately to the transfer of land from the agricultural class to the non-agricultural money-lender, leading to the creating of a landless proletariat with a reduced economic status. The result is the loss of agricultural efficiency as the money-lender usually sublets at a rate which leaves the cultivator with a reduced incentive to raise a good crop. As a result of the inefficiency the ryot is unable to get enough money to put in cultivation to yield first-class crops. It may also be pointed out that the agricultural Tribunal of Investigation in England in analysing the factors that go to make agriculture a paying industry has pointed out the example of Denmark as to what the creation of peasant proprietors in land can do. There the farm tenancy decreased from 42·5 per cent in 1800 to 10 per cent in 1905 and 92 per cent of the farmers in Denmark now own their own farms. Many competent observers regard the system of ownership in agricultural land as one of the influential causes in Denmark's prosperity. There is also another broad aspect of the problem regarding agriculturists. It arises out of the interest of the nation as a whole to maintain agriculture in an efficient condition and the obligation of the State in that matter. For instance, the Businessmen's Commission on Agriculture in America while emphasising this aspect in their Report says—"Agriculture is not merely a way of making money by raising crops. It is not merely an industry or a business; it is essentially a public function or

service performed by private individuals for the care and the use of the land in National interest, and the farmers in the course of their pursuit of a living and a private profit are the custodians of the basis of national life. Agriculture (and for that matter agriculturist) is therefore, affected with a clear and unquestionable public interest and its status is a matter of national concern calling for deliberate and far-sighted national policies, not only to conserve the natural and human resources involved in it but to provide for the national security, promote a well-round prosperity, and social and political stability." It is quite natural therefore, that the problem of diminishing rural indebtedness should engage the attention of Government. From time to time various remedies were tried by Government.

A very determined attempt was made in 1879 in this Presidency by the passing of the Agriculturists' Relief Act which had its origin in the agrarian disturbances of 1875 in the Deccan. The operation of the Relief Act resulted in restricting the credit of agriculturists but in the end it produced some good results inasmuch as it checked to some extent the passing of the lands of agriculturists into the hands of the non-agriculturists. This was recognised from time to time. In 1901 the Famine Commission dealt with the subject of agricultural indebtedness in the Bombay Presidency and recommended legislation to restrict transferability of lands. The Government of India expressed their decision in 1905 that an Act of the Punjab type should be passed for the Bombay Presidency and Sind. The Bombay Government in 1911 in their reply argued that the evil of transfer to non-agriculturist in Bombay was not great and was abating and that other remedies for indebtedness (Dekkhan Agriculturists' Relief Act) were making good progress.—*Note on agricultural indebtedness in India by Mr. Maclagan p. 60.* The beneficial results of the Dekkhan Agriculturists' Relief Act, 1879 were summarised by the Arthur-Bodas Commission of 1912 in the following terms:—"The agriculturist gets harder terms from the money-lender than of yore but he borrows less money from him. He would formerly, when he could get cash easily run up a long account of hand-loans without a thought and would only realise his position when it had become hopeless. Now the Savkar knows that if he lends money to an agriculturist without security he may lose it altogether and

that if he takes a mortgage, the land may be redeemed at any moment. He, therefore, generally demands a sale-deed and since under the operations of s. 10A even that is not safe and may be treated as a mortgage, he exacts terms which will guarantee him against the losses he may incur in Court, and enters as consideration a fictitious amount, often double or more than double what he has really lent. The cultivator thinks twice before he passes a sale-deed of his land and the terms exacted undoubtedly tend to make him less reckless in borrowing. The contraction of their borrowing power is making the people more thrifty. There is no tendency, for land to fall out of cultivation. The Act did help the man who was relieved of debt or redeemed his land by its operation and who was wise enough and industrious enough so to supplement his agricultural income as to become independent of the money-lender." (Whatever that may be it was soon realised that mere legislative fiat could not efficiently control the working of economic law and the problem of diminishing rural indebtedness and bringing credit facilities within the reach of agriculturists on reasonable terms remained unsolved. Another attempt to meet the problem was made again in this Presidency by the organisation of an agricultural bank. In 1882-83 under the inspiration of Sir William Wedderburn, I. C. S., a committee with the object of founding a bank with a capital of 10 lakhs was formed. It intended to begin operations by redeeming all the outstanding debts of the ryots. The scheme was not approved by the then Secretary of State, Lord Kimberley on the ground that the bank would virtually be a Government institution and that its constitution was faulty on the financial side. A system of loans from the State was adopted in 1883 by the passing of the Land Improvement Loans Act. But it was considered that what was lacking was not so much capital for land improvement as ideas for utilising it for productive purposes. Next came the Agriculturists' Loans Act of 1884, which empowered the Government to advance loans from State funds to owners and occupiers of arable lands. The purposes for which the loans were advanced were the relief of distress, the purchase of seed or cattle and any other purpose connected with agricultural objects, mostly in backward districts and tracts where credit was weak owing to the restrictive tenure of lands or special reasons. The Act was of great value in certain contingencies but it was realised that it

could never be the means for meeting all normal requirements of agriculture. Activities in other directions were also undertaken. Savings banks were opened and the civil law relating to debts, was frequently and extensively amended. Special legislation was initiated at various times in different areas for dealing with tenant rights, the alienation of land, the general settlement of debts, and the curbing of usury. The result of the restrictions placed on the right to alienate his most valuable security reduced the credit of the cultivator with money-lender and with trader and forced up the rate of interest. It was found that *tagavi* loans were distributed and collected by the revenue staff, a process from which harassment and extortion are not easily separable. In the meantime the success of the small village banks in Germany and Italy attracted considerable attention in India and it appeared to those who were anxiously looking for assistance in solving the problem of rural poverty that the working of those institutions deserved examination. The Government of Madras took the initiative by deputing Mr. Nicholson (afterwards Sir Fredrick) to study the system, and his monumental report was published in two parts in 1895 and 1897. In the United Provinces the co-operative movement started in 1900 when Mr. Dupernex, I. C. S., who had studied the working of co-operative societies in Europe was put on the special duty by Government. He published his conclusions in a useful booklet called "Peoples' Banks for Northern India." In the Punjab Mr. (now Sir Edward) Macleagan and Capt. Crosthwaite and in Bengal Mr. Lyon began to organise societies. A few societies then organised still survive in the Punjab. The Report of the Indian Famine Committee of 1901 powerfully advocated the introduction of mutual credit associations. Their recommendation, after careful consideration by two committees, took shape in the Co-operative Credit Societies Act of 1904. Prior to 1904 associations and societies could be formed and registered under either of the two Acts.—The Societies Registration Act, (XXI of 1860) and the Indian Companies Act of 1882. Under the Societies Registration Act of 1860 any seven or more persons associated for any literary, scientific, charitable purpose (now also for diffusion of political education) may be formed into a society by signing a memorandum of association in a form prescribed by the Act. Under the Indian Companies Act of 1882 any seven or more

persons associated for any lawful purpose may be incorporated into a Company. There being no other Act under which an association or a society could be formed for the purpose of promoting the economic interests of its members in accordance with co-operative principles, co-operative societies had to be organised under the Indian Companies Act of 1882 (now Act VII of 1913). But it was found that the elaborate provisions contained in 290 sections of that Act were wholly unsuited to societies of the kind it was desired to encourage. Legislation was, therefore, called for to take such societies out of the operation of the general law on the subject and substitute provisions specially adopted to their constitution and objects. It was also thought desirable to confer upon them special privileges and facilities, in order to encourage their formation and assist their operations. But since they were to enjoy exemption from the general law and facilities of a special nature such precautions were considered necessary as were needed in order to prevent speculators and capitalists from availing themselves under colourable pretexts of privileges which were not intended for them.

¶ The Law Committee appointed under the orders of the Government of India to consider the question of the establishment of co-operative societies in India (1903) thought that the term 'Bank' was not altogether suitable, and was likely to convey a misleading impression of the objects of the societies. The committee, therefore, preferred to use the term "Co-operative Credit Societies" as indicating more clearly the aims and scope of the institutions which it was desired to see established. The Act of 1904 was largely framed on the English Friendly Societies Act of 1896 and was put in practice throughout India. There were two cardinal objects which the Government of India kept in view in framing the Act. The first was simplicity. Some of the schemes which were laid before them were far too elaborate for the comprehension of the classes for whom they were intended but who certainly could never have complied with their provisions. The second was elasticity. It was deliberately decided to restrict the operation of the Act to credit only. It was, therefore, called the Co-operative Credit Societies Act of 1904. In the first instance it was found expedient to facilitate the formation of such credit societies for the promotion of thrift, self-help and mutual aid amongst agriculturists, artisans and persons of limited means. In any



scheme of rural advancement the growth of credit was the most essential, and, therefore, it was but natural that the first attempt towards helping that growth should be in the direction of the formation of credit societies. (Mr. H. W. Wolff says that the restrictive nature of the Co-operative Act of 1904 was merely a 'slip' but that the "goal which it set before it from the very beginning was a much larger one such as is now comprehensively pursued, with all forms of beneficent co-operation kept in view.") (The Act had perforce to be framed before any experience had been gained of the working of co-operative societies in India and so could only prescribe the general outlines and leave the details to be filled in gradually, on lines which experience of failure or success might indicate as best suited to each part of the country. The Act was passed not as the outcome of any popular demand but as was the case in Japan, the new legislation was essentially the act of a Government anxious to ameliorate the conditions of the people. The public opinion sufficiently instructed to criticise or to guide had to be created. The public spirited helpers, of whom there are now such large numbers, had to be found and encouraged to come forward and assume responsibilities. In its initial stages, the movement was essentially an endeavour by the State to teach the advantages of organised thrift, self-help and mutual help. Another point to be noticed in regard to the new measure was that it became inevitable that a Government department charged with the promotion of the new policy should be established and that, as progress was achieved, that department should grow in numbers and importance. The important features of the Act may be summarised as follows:—

"Societies were classed as rural and urban; and while the latter were left a free choice the former were bound to accept unlimited liability. Their area was closely restricted. Loans might be made only to members and on personal or such but not ordinarily on chattel; security. An annual official audit was made compulsory. The interest of any member in the share capital of the society was strictly limited, and special exemption from fees payable under the stamp, registration, and income-tax Act was conceded. Societies were placed in charge of official Registrars with very wide powers of control and supervision. The operations of the societies formed under the Act were restricted only to

credit. The societies were intended to be small and simple credit societies for small and simple folk with simple needs and requiring small sums only. Besides providing cheap credit to the agriculturist, they were to perform the important task of educating him in the use of that credit and inculcating in him habits of thrift and self-help. Co-operation was not defined in that Act but it was understood as a voluntary organisation of persons who associate on equal terms for the satisfaction of their common economic needs. The ideas implicit in co-operation proved themselves very acceptable to the people. The peasantry readily grasped the new system and attempted in their own way to put it in practice in their villages. As we have shown above the original Act of 1904 was framed to meet the needs of primary credit societies only. [In the course of 7 or 8 years of the working of that Act it became evident that much progress could not be made under it in the matter of developing rural credit.] The entire capital of the movement in the year 1912 was less than Rs. 75 lakhs. It made no provision for the higher finance of the movement or for non-credit activities. These omissions had to be supplied by a new Act. With the passing of the Act of 1912 which however retained the principles of simplicity and elasticity embodied in the old Act, the movement entered on the second stage of its progress.

**The Co-operative Societies Act of 1912**, as stated above, was an outcome of the experience gained in a decade and the careful and prolonged consideration of a large mass of material Acts, rules and opinions. This Act swept away the old distinction between rural and urban societies and substituted a more scientific distinction based on the character of the members' liability. The registration of new types of association for the supervision of finance of primary co-operative societies was for the first time recognised. Co-operative organisations with other objects besides that of furnishing credit were allowed. Provision was also made for the registration of societies of various types aiming at the promotion of economic interests of their members *e.g.* societies dealing not only with credit but also with purchase and sale, insurance and other various specialised functions carried out by the recent types of societies elsewhere. The exact form which these should take was not definitely laid down; and pending further experience, Registrars were left a wide discretion in

building up the higher storeys of their provincial co-operative structures: This Act II of 1912 is still in force throughout the country except in Bombay and Burma, where it is replaced by local legislation in 1925 and 1927 respectively (see Appendix B for Act II of 1912). It must, however, be mentioned that in spite of the removal of the limitations imposed by the original Act, and the creation of scope for several forms of non-credit activities, the preponderating element in Indian co-operation is still credit. This appears to be natural not only because credit is the simplest example of co-operative endeavour that can be introduced among a rural population which is largely illiterate, but also because as pointed out in the opening paragraph credit continues to be the most pressing need of the Indian cultivator who is weighed down by the burden of usury and chronic debt which crush the life and thought of "rural India."

The progress and development of the co-operative movement since 1912 made it necessary to widen the functions of the societies and to revise the law under which co-operative societies worked. With the publication of the classic report of the MacLagan Committee on co-operation in 1915 the movement may be said to have entered on its third stage of development. That Committee examined the movement in all its aspects and made many constructive proposals of a far-reaching character for the further development of co-operation. In the meanwhile several points for amendment had been brought to the notice by various co-operative conferences, the central co-operative institute and co-operative bodies and non-official gentlemen interested in the movement. Until the Reforms, co-operative movement was an all-India movement and the Act, was therefore, an all-India Act; but since co-operation became a transferred subject it fell within the scope of the provincial legislature. It may be said that on the passing of the Government of India Act of 1919 the movement entered on the fourth stage of its development since it began to be administered by the ministers under the reformed constitution of the provincial Governments. An important step taken in connection with encouraging co-operation, after it became a provincial subject has been the institution of Committees of Enquiry by various provinces. The Oakden Committee of the United Provinces of Agra and Oudh, the King Committee of the Central

Provinces, the Townsend Committee of Madras and the Calvert Committee of Burma have already published their reports. The appointment of similar Committees in other provinces is under consideration. The Royal Commission on Agriculture in India, the Provincial Banking Inquiry Committees and the Indian Central Banking Inquiry Committee which has recently published its report (1931) have given considerable attention to this subject and have stimulated the interest of the public in the movement. It may also be mentioned that in Madras a bill to replace the all-India Act has been introduced in the Legislative Council.

**The Bombay Co-operative Societies Act (VII of 1925)** was passed by the Bombay Legislative Council and came into force from 4th December 1925, and it is this Act which governs co-operative societies in the Bombay Presidency including Sind. While the all-India Act of 1912 is for the promotion of thrift and self-help amongst agriculturists, artisans and persons of limited means the Bombay Act is for promoting these qualities amongst all people with common economic needs whether their needs be limited or otherwise. Under it not only can a society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles be registered but also a society established with the object of facilitating the operations of such a society. Sir Fredrick Nicholson in his report on agricultural banks in India had drawn pointed attention to the necessity to couple credit with the promotion of—almost enforcement of thrift, providence and heedfulness in borrowing. Experience in Europe showed that the correct practice of co-operation depended on three factors:—(1) effective elimination of waste and inculcation of the habit of thrift, (2) education in co-operation, and (3) general education of co-operators. The Irish co-operators (headed by Sir Horace Plunkett) also laid considerable emphasis on the fact that the producer cannot be dissociated from the man and that in order to bring about a change in his standard of living and in his out-look on life, the agriculturist should be tackled as a whole. Their well-known formula of rural economy “better farming, (practice) better business, (co-operation) and better living” (education) has been adopted in the preamble to this Act with certain changes. The Act is thus intended to facilitate the formation and working of co-operative societies for the

promotion of thrift and self-help amongst agriculturists and persons with common economic needs so as to bring about better living, better business and better methods of production. As given in the statement of objects and reasons ( Bill No. XIV of 1924 ) the Bombay Co-operative Societies Act made provision for three important matters namely :—

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

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

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

**Rules.**—Bombay Government had issued rules under s. 43 of Act II of 1912. They were amended from time to time. In the new Bombay Act VII of 1925 a major portion of them has been embodied in the Act itself. S. 71 of the Bombay Co-operative Act, 1925 enabled the Government to make rules to carry out the purpose of the Act. The Government of Bombay has accordingly made certain rules which are called the Bombay Co-operative Societies rules, 1927 (see Appendix A.)

**The present position.**—Started in 1904 with no antecedent record the movement has to-day assumed large proportions particularly in regard to the aggregate number of societies, their membership and working capital. The number of societies in British India and the Indian States is now nearly 100,000 of which about 15,000 are in nine or ten Indian States. The credit societies alone in British India number over 78000 on the 30th June 1930 and count more than three million members with a working capital of over Rs. 40 crores. Their average membership is somewhat between 30 and 40. The number of non-credit societies on the same date is about 16000 with a membership of 650,000 and working capital of about Rs. 6 crores. The central financing institutions like the central banks and the banking unions are nearly 600 in number of which about 500 are in British India. The entire working capital in the movement is about 50 crores (excluding loans made by secondary bodies to primary societies

and deposits made by the latter with the former.) Of this amount, about Rs. 14 crores consist of share-capital and reserve fund, the rest of deposits and loans from members and non-members. On the familiar assumption that a rural family consists of 5 members on the average, the membership of three million means that 15 million people have been touched by the co-operative credit movement.

So far as this Presidency is concerned the number of societies on 31st March 1931 was 5896. The total membership on the same date was 585,869 giving an average of 98 members per society. Taking an average of five members per family three million people have been touched by the co-operative movement in this Presidency. The working capital was Rs. 13,90,99,530 and the reserve fund amounted to Rs. 1,04,91,393. The huge figure of working capital amounting to nearly Rs. 14 crores illustrates the large part which the co-operative movement is playing in the economic life of this province. The owned capital consisting of share-capital, members' deposits and the reserve fund, now amounts to nearly 62 per cent. of the total working capital in the movement and is distributed as follows :—

	Share Capital Rs. Lakhs	Members' deposits Rs. Lakhs	Reserve fund Rs. Lakhs	Total. Rs. Lakhs
Central Banks ...	45	287	13	345
Agricultural Societies ...	31	75	66	172
Non. Agl. Socys. ...	101	217	26	344
Total	<u>177</u>	<u>579</u>	<u>105</u>	<u>861</u>

The number of agricultural non-credit societies was 239 with a membership of 70,918 and a working capital of Rs. 23½ lakhs. Of these, societies for the sale of agricultural produce, especially cotton, constitute the most important ones in the presidency. The number of non-agricultural credit societies, on 31st March 1931 was 615. Of these the number of full fledged Urban Banks with a working capital of over Rs. 50,000 was 82 while the total working capital of such Urban Banks was Rs. 3½ Crores,

**Conclusion.**—The Royal Commission on Agriculture 1928 have summarised the results of the working of the movement thus:—  
“The main results achieved may be said to be the provision of a large amount of capital at reasonable rates of interest and the organisation of a system of rural credit which, carefully fostered, may yet relieve the cultivator of that burden of usury which he has borne so patiently throughout the ages. Knowledge of the co-operative system is now widespread; thrift is being encouraged; training in the handling of money and in elementary banking principles is being given. Where the co-operative movement is strongly established there has been a general lowering of the rate of interest charged by money-lenders; the hold of the money-lender has been loosened, with the result that a marked change has been brought about in the outlook of the people.” Our faith in the potentialities of the movement may be expressed in these words of the commission:—“The greatest hope of the salvation of the rural classes from their crushing burden of debt rests in the growth and spread of a healthy and well-organised co-operative movement based on the careful education and systematic training of the villagers themselves.” The importance of the subject is so great that we cannot conclude without referring to the following remarks of the Commission: “if co-operation fails the hope of the agriculturist (who form the majority of the population) also fails.”

THE  
**Bombay Co-operative  
Societies Act.**

BEING

**Bombay Act No. VII of 1925**



( *First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 4th December 1925.* )

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

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

**Commentary**

The preamble forms no part of an Act, and it is only when the Act is read clause by clause and is finally passed that the preamble is brought up for discussion before the legislature and passed. It, however, indicates in general terms the objects of the legislature in passing it. Generally speaking the preamble of a statute is a very good guide for the better understanding of the Statute itself and is as it were "a key to it." See the



remarks in *Janki Singh v. Jagannath*, 3 Pat. L. J. 1: 44 Indian Cases, Page 94 (F. B.) It may be consulted as an aid in determining the reason of the law and thus arriving at the true construction of the terms employed where the language of the body of the Act is obscure or ambiguous.—*Gopi Krishna v. Raja Krishna*, 12 Cr. L. J. p. 8. It cannot either restrict or extend the enacting part when the language, object and the scope of the Act are not open to doubt. It is not unusual to find that the enacted part is not exactly co-extensive with the preamble. More often the preamble is not thus but a recital of some of the inconveniences, to be met and does not, therefore, exclude others for which a specific remedy is provided by the Statute.—*R. v. Athos*, 8. Mod. 144.

**The previous sanction of the Governor-General required by S. 80-A (3) of the Government of India Act—** The local legislature of any province has power to repeal or alter as to that province any law made by any authority in British India. This power is subject to sub section (3) of s. 80-A of the Government of India Act. This sub-section among other things lays down that 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.

**Marginal Notes** to the sections of an Act may not be referred to for the purpose of construing an Act.—*Thakurain Balraj v. Jagatpal*, 8 C. W. N. 699; 33 I.A. 132.

**The headings prefixed to sections or sets of sections** may be used for the purpose of interpreting the meaning, scope, and intention of Statutes; and in *Dwarkanath v. Tafazal Rahman*, 44 Cal. 267, it was held, that the Court could look at the heading of the Chapter of an Act for the purpose of construing the section. But they ought not to be allowed to pass into constructive limitation upon the exercise of the powers given by the express words of the Act.—*Naraina v. Bombay Municipal*

*Commissioner*, 42, Bom. 462. In other words, the headings should not be allowed to affect the construction of the sections. It is only when words are of doubtful meaning that Courts should look to probable intention — *Janki Singh v. Jagannath Das*, 3 Pat. L. J. p. 1.

**Previous state of the law** may be resorted to for the purpose of aiding in the construction of the provisions of the Act only when the meaning is doubtful.—*Bank of England v. Vagliano* (1891) I. C 107, 144, 145; *Krishna Ayyangar v. Nallaperumal Pillai*, 47 I. A. 33, 42; 43 Mad. 550.

**Co-operation** in the sense of working together for a common result is as old as human nature. When primitive men hunted and their women folk prepared the food there was elementary co-operation. In this sense Dr. Johnson wrote, of the larger and infinitely more varied economic order of his time that "the business of life is carried on by a general co-operation." Despite an obvious lack of intention different activities did, in fact, work to one end. It is, in fact, unthinkable how the world could get on, if there were no co-operation, direct or indirect, conscious or unconscious between different types and groups of people. In co-operation lies strength; in co-operation lies the key to success. All people have recognised the virtues of co-operation and the moral stories and fables, current among them, illustrate very well the importance of co-operation. The blind man, the story goes, could not go on in his journey, from one village to another, because he could not see; the lame man could not similarly proceed, because his legs were unequal to the task; but the blind man with the lame man perched on his shoulder could easily accomplish the distance, the legs of the one co-operating with the eyes of the other. But that, at best, is unconscious co operation; even in its general sense the word usually is reserved for a designed common effort. Wishes are expressed that political parties should co-operate for some national object, or that there should be co-operation of labour and capital. These bodies or interests are conceived as equal, and free each to take its own course. They are then asked to proceed together to a mutual end—to co-operate.

The same implication of agents equal and free underlies the particular sense of the word in co-operation and the co-operative movement. Galley slaves pulled together, but they did not

co-operate. In the guilds amongst the freemen of the English villages of the 15th Century, as in the *mujins* or mutual aid societies of Japan, and in the *fruitieres* of Switzerland, it was different. In these countries as elsewhere such bodies were voluntary, and they arose amongst groups of people roughly on an equality. Of the two principles the voluntary element is even more necessary. In the Russia of 1920 when co-operative membership was compulsory and state control complete the name co-operative lost all meaning. *Free association* is essential.

**What is Co-operation.**—‘Co-operation’ is a form of organization, wherein persons voluntarily associate together as human beings, on a basis of equality and work together for a common end. In this sense it has been found absolutely necessary for the progress and civilization of mankind. Co-operation is the voluntary association of persons for doing business, the basis of association being equality and the object, the satisfaction of a common need, *viz.*, the economic improvement of themselves. In all its manifestations co-operation is the application to economic life of the principle that unity is strength. The essence of co-operation is the co-operative spirit embodied in the motto of the Co-operative Union of Manchester—“*Each for all and all for each*” *i.e.* each shall work for all and all shall work for each in the attainment of their common need. The application of this principle has made it possible for a society composed of comparatively poor and weak men to give its members some of the advantages ordinarily obtainable only by the rich and the strong. Co-operation thus repudiates the principle of the *survival of the fittest*, and stands rather for the protection of the poor and the weak, inculcating the principle of the Brotherhood of Man. That does not mean that it allows the people to remain weak but in fact enables them to get the necessary strength. Co-operation, however, does not stay the progress of those who are sure of their own ability to push on; it does not seek to detain the strong in the march through life. It is a movement for the weak; mutual help is its key-note; desire to serve is its animating spirit.

**Distributive justice.**—Ordinarily people do co-operate, that is, work towards a common end. But it happens that all those who thus work together do not receive equal reward, nor even returns proportionate to their share of joint work. The mill labourer who

is as indispensable as the manager or the share-holder for the successful working of the mill gets but a small wage while the others get far more than could be justified even where the higher efficiency of the manager or the supply of capital for a risky venture by the share-holder, is taken into account. It is a revolt against the exploitation of the poor by the rich and thus endeavours to minimise the conflict between labour and capital. While it is inclined to give a due share of profit by way of interest on the capital employed and by way of compensation for the risk involved in engaging the capital in business, it insists on an equitable distribution of wealth between the capitalist and the worker. It stands for justice between all who help in the production of wealth. It fights against exploitation all round. It is a reaction against capitalism and is a protest against exploitation. Therefore, it tries to *eliminate the middleman* as far as possible in all stages of production and distribution, and promote co-operative institutions both amongst producers and consumers. □

Take another instance. The contractor undertakes the construction of a road. A large army of labourers is employed to do the work, and yet it is the contractor who reaps the harvest of profits while the labourer gets a small wage. It is evident that in production it is not merely capital that is necessary. Labour of all kinds is equally necessary. But as is shown above, the profits to a very large extent go to capital and the labour is left out in the cold. □ The surplus profits according to the co-operative organisation of a society would be distributed among the parties concerned in the execution of the common work, that is, it would be shared by capital and labour both. The co-operative movement has often been described as the half way house to Socialism. But the truth is that it is an assertion of the principle of equity in the distribution of profits and an emphatic denunciation of either group seeking to swallow the whole. It recognises that it is not capital only that is the source of value, nor on the other hand labour only, but both, and as such admits the claims of both. □

**In Trade Unionism** persons economically weak bind themselves together to improve their condition. Trade Unionism accepts the existing organisation of society and merely seeks to improve as far as may be, the condition of labour, while remaining

under the banner of capitalism. Co-operation, on the other hand, is that where a group of persons, economically weak, being actuated by a desire to strengthen their position and improve their economic condition, act together in some economic process, be it production, distribution, exchange or consumption and divide the profits arising from their joint efforts, in an equitable manner.

**Elimination of the middleman and protest against exploitation.**—Under the present order of things it is the producer only who counts, and it is he who only is held justly entitled to profits, and the consumer as the person, whose wants, tastes and desires have to be consulted, but who in the matter of price is one who could be exploited, the co-operative system in a spirit of justice and fairness considers the claim not only of the producer but also of the consumer. Co-operation thinks not only of how to secure maximum profits for all those concerned in production, but also of how to secure the commodities at the cheapest rates so as to lighten the burden of the consumer. Between the producer and the consumer, however, at present there is quite an army of middlemen, the *dalals*, the wholesale merchants, the retail shop-keepers, the carriers by land and by sea, the exporters and the importers. The result is while the consumer pays a heavy price for the articles, he needs, the producer of those articles receives very little for all his trouble and skill. The difference goes to the middleman, the *dalal* the whole-sale merchant and so on. Thus the producer languishes while the middleman progresses and waxes fat at the expense of the others. With its belief in the doctrine of the protection of the weak, with its firm desire for distributive justice, co-operation naturally hates exploitation by one group of another and the co-operative movement is an emphatic protest against exploitation. Elimination of middleman is one of the great objects of the co-operative movement. This elimination, it proposes to bring about by the consumers or the producers themselves performing the necessary services. ( See notes under the head 'The elimination of middle man's profits' in s. 5 *infra*.)

**Moral movement.**—The co-operative movement is an economic movement essentially, but with a moral background, and high ideals. The movement represents really a new spirit, the spirit of association, self-reliance and harmony animating the impulse

towards economic betterment, upward striving and better living. The new spirit helping to make better men and a better society. It is a creed, a faith that elevates, that rules out angularities, that promotes a feeling of brotherhood, that inculcates the desire for service to one's fellow-beings, and the desire for mutual help, self-reliance and justice, and that demands suppression of class feuds and international wars and breathes international peace and harmony. The co-operative movement claims to place within the reach of the small man the facilities which at present are available to the big man.

Co-operation is an alternative form of organization to capitalism. It is especially suitable for people who have not sufficient capital for the full satisfaction of their needs on the joint stock basis; it is essential to the best progress of agriculture, so much so that it is practically impossible for a country of small holdings to achieve prosperity without it.\* In India the main direction in which co-operation has worked has been towards securing for the ryots in the villages and the poorer people in the towns reasonable terms of credit. The extortions and malpractices of the Indian Sowkar (money-lender) are proverbial and the provision of cheap credit for these classes is an incalculable blessing the importance of which cannot be too strongly emphasized.

**A Co-operative Society** is not defined in the Act. A credit society is a bank, which raises capital by shares, deposits, debentures or loans and gives financial accommodation with this capital. It is co-operative, if financial accommodation is given only to the persons composing the society. It is important to remember that a co-operative society is a business organisation with a special mode of doing business. It is not a charitable institution. A big society which gives loans to persons other than its members is not co-operative and cannot get the benefit of this Act. The law does not permit a co-operative credit society to give loans to non-members without the sanction of the Registrar (s. 34) which is rarely given.

**Thrift**—frugality, economical management, economy (*Century Dictionary*). The question of thrift lies at the very foundation of the problem of Indian poverty. Thrift depends upon foresight, abstinence or self-control, and security of life and property; and so can only be found in a settled, educated

community. No panacea for the troubles of India will be of any lasting value unless there be thrift. The great wealth of England is said largely to be due to centuries of thrift. Thrift supplies the capital for all enterprise. The capital for agricultural needs and agricultural improvements must, in the main, come from the savings of rural communities. But in this country the greater portion of the funds required by the cultivators for general agricultural purposes is provided by local money-lenders who also supply credit for domestic wants and ceremonial expenses which are often extravagant. In the present state of this country it is the money-lender who is in a position to provide the bulk of the capital required for current agricultural needs and, in a recurrence of severe distress, the money-lender will continue, as in the past, to support the people by timely loans. Now, in India the cultivator is poor, and his habit of saving is not too pronounced. He has to wait for six months before he receives the return of his labour, and in far too large an area, where there is only one crop a year, the interval between successive receipts may be quite twelve months. Circumstances such as these make it very difficult for him to avoid borrowing. The village money-lender readily comes to his assistance to provide him with money.

No one denies the services rendered by the money-lender; the charge against him is that these services are rendered at too great a price and are accompanied by practices which result in great evils. The system is usurious; the ready lending for unproductive purposes leads to poverty and economic servitude; the steady absorption of rights in land places the money-lender in a position of uncontrolled power, and uncontrolled power, is almost invariably abused. To a very great extent, the cultivator in India labours not for profit, nor for a net return, but for subsistence. If the money-lender is ever driven from the land, it will not be by legislation but by the growth of the co-operative movement and more especially, by the habit of thrift, inculcated by that movement. Where thrift is absent, the vagaries of the monsoon drive the people to borrow and, unless the co-operative movement spreads into every village and draws every inhabitant in its fold, borrowing will continue. The Royal Commission on Agriculture in India in their Report in 1928 stated:

"The greatest hope for the salvation of the rural masses from their crushing burden of debt rests in the growth and spread of a healthy and

well-organised co-operative movement based upon the careful education and systematic training of the villagers themselves. Apart altogether from the question of debt, co-operative credit provides the only satisfactory means of financing agriculture on sound lines. Thrift must be encouraged by every legitimate means, for the savings resulting from the thrift of cultivating classes form the best basis of the capital they require. If the rural community is to be contented, happy and prosperous local governments must regard the co-operative movement as deserving all the encouragement which it lies within their powers to give."

**Promotion of thrift.**—A member can claim a right to deposit his savings in the society which must necessarily give priority to deposits from members over those from non-members.

**Self-help.**—The essence of the co-operative movement is that the people should take the management of their affairs into their own hands. It has been the experience in Europe that rural credit is on the strongest basis in those countries where it has been developed most completely without Government aid and that in the long run the farmers succeed best when they help themselves.

There is no question that there should be supervision and guidance in the early stages but the aim of the staff of the co-operative department should be to train the members of societies to manage them without outside interference or assistance. It is necessary that the official guidance and control should be gradually relaxed and eventually withdrawn when it is found that the members of co-operative bodies have been sufficiently trained to assume the responsibilities thrown upon them and that they are in a position to supply, from within their own ranks the leadership and technical knowledge required for the proper control of the movement.

Self-improvement and self-help which are so essential to the co-operative movement cannot be effectively achieved unless there is proper education. The educational work of the co-operative movement may be divided into three branches: education in the principles and methods of co-operation, provision for the acquisition of knowledge of general subjects and arrangements for recreation and pleasure. It is rather in such moral aims than in any specialisation of method that the idea of true co-operation consists. It is for this reason that from the very first the educa-



tion of the citizen has been the chief aim of co-operators.  
*N. B.*—See notes under the head “Village guidance” in s. 5  
*infra*.

✓ The Act of 1912 said that the object of the co-operative societies was to promote self-help, thrift and mutual aid. The Select Committee appointed to consider the Bombay Co-operative Societies Bill with a view to make the meaning clear, added words to show that the promotion of thrift will lead to better living, the promotion of self-help will lead to better business and the promotion of mutual aid will lead to better methods of production. The underlying idea of the addition of the words in the preamble is that the object of the Act is the same as that of the old Act, namely, to promote certain qualities so that it may result in better living, etc.—*Bombay Legislative Council Debates, 25th July, 1925.*

‘Persons with common economic needs.’—Originally the co-operative movement owed its origin to poverty and to the desire for some way out of all the distress and hardships that poverty entails. The common bond that held the members together, or that induced them to combine was poverty or economic distress. First among factory workers and later amongst farmers it was thought, therefore, desirable to restrict the operation of the Co-operative Societies Act of 1912, to persons of limited means only. Undoubtedly the feeling of economic distress has up to the present been one of the invariable conditions of the co-operative movement, but as attention is turned from credit to other applications of co-operative principles it becomes clear that the one essential requisite is the marked consciousness of a common interest in the accomplishment of some definite purpose. This may be improved credit, cheaper supplies or better prices for produce, or any other common economic need; the point is that while co-operation is almost the only avenue of escape from poverty, its benefits are equally open to others who are willing to work for the common good of all.

✓ In the present Act of 1925 the words “persons of common economic needs” are substituted for the words “persons of limited means.” The Honourable Mr. Dehelvi while introducing the Bill, said:

"The main reason for changing the present wording is that the expression 'limited means' is very vague, and, secondly, because with the formation of societies of new types it is difficult to include within the term "persons with limited means" men whom there is only no reason to keep out, but is advantageous to include within the movement. To illustrate the point there are proposals for forming co-operative banks for some of the big zamindars in Sind. These people are as much in need of co-operation to extricate themselves from their present position as the smaller landlords. There is no reason why they should not be helped by the co-operative movement. Then we have the consumers' societies which any member rich or poor could join. Similar is the case of housing societies. There is a proposal from Ahmednagar for a co-operative society for electric supply in which all classes of people could join. It is in order that members of such societies should come in, that the wording of the preamble is proposed to be changed."

*N.B.*—See notes under the head "economic interests" in s. 5 *infra*.

**Notes.**—The fact that persons of limited means deserve most consideration involves as practical result that small loans to small people must be given preference over large loans to those more well-to-do and that the savings of poorer members must be accepted even if it necessitates returning the large deposits of the prosperous. At the same time it must be remembered that heavy debt may reasonably be considered by a society as justifying a refusal to admit a candidate into credit society.

### *Preliminary*

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

### **Commentary**

The title of an Act may be resorted to to explain an enacting part when doubtful. See the remarks in *Herroochunder Roy v. Shooro Dhonee*, 9 W. R. 402 (F. B.)

A Co-operative Society is not defined in this Act. It was decided that in view of the present state of experience regarding such societies in India, it would be advisable to follow the principle adopted in the previous Acts by which the provisions of the law were, till further experience was obtained, left as elastic and as simple as possible. Government of India, Circular No. 13-C, dated 9th March, 1912, with reference to the Co-operative Societies Act of 1912 said:—

✓ "While avoiding any precise definition, the Act is not without indication of the class of societies for which the provisions are primarily intended. The preamble, for instance, and the restrictions imposed by s. 5 (s. 6 of the Bombay Co-operative Societies Act, 1925) on the extent of share-holding permissible to an individual member will show the class of persons whom it is intended to benefit and Registrars (whose first duty is to make themselves acquainted with the principles of co-operation) will also receive some guidance from the wording of s. 4 (s. 5 of this Act) which requires societies to be based on co-operative principles."

The Maclagan Committee on Co-operation (1915) have recommended a rule under the Act defining the objects of societies from a positive stand-point. S. 71 (p) enables the Government to fix a maximum rate of dividend. Section 38 of the Bombay Act restricts the rate to 10%. (cf. section 18 which enunciates the principle of one man one note.) S. 71 (o) enables the Government to make rules preventing societies from becoming close corporations.

Registrars may also insist on all societies observing the requirements regarding proximity of residence or community of race or occupation prescribed in s. 7 for Credit Societies. See also s. 36 enabling the Government to prohibit transactions with outsiders.

*N. B.*—See notes to s. 5 under the head "Conditions necessary to make a society co-operative."

**Agriculturists.**—See notes under the head "Agriculturist" to ss. 5 and 8 *infra*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Commentary.

**Old law.**—This section corresponds to s. 2 of the Co-operative Societies Act of 1912. (See Appendix B.)

**Scope.**—This section defines certain terms which are referred to frequently in the Act. The definitions have got to be carefully studied because the words defined in this section must be taken to have been used in the sense given to them in the definition-clauses throughout the Act, unless the context in which a word is used imperatively demands that that particular word should be understood in a different sense.

**Definitions** are of two kinds.—Sometimes they define the word and give the exact meaning of the word; in other cases, they are merely inclusive. Sometimes, however, definitions are both definitive and inclusive, that is, they give meanings of the words used and also include others which though they do not strictly fall within the meaning assigned to the word defined are within the ambit of the intent. For instance, a Producers' society in the Act is defined as meaning a society formed with the object of producing and disposing of goods as the collective property of its members and as including a society formed with the object of the collective disposal of the labour of the members of such society. The latter society is included in the Producers' society as its object is similar.

**"Anything repugnant in the subject or context"**—For instance, s. 7 refers to societies which should not be registered. Again s. 5 proceeds to describe societies which may be registered. Evidently in these cases it is not meant that the definition of the

term society as given in this section, namely, that, a society means a society registered or deemed to be registered under the Act should be applied.

**A "By-law"** is a standing rule of a corporation or society, made for the regulation of its internal organization and conduct; it is distinguished from a provision of its constitution in being more particular and more readily altered.—*Century Dictionary*. In the case of Companies and Associations governed by the Indian Companies Act, 1913, the Memorandum of Association states the object of the Company, that is, the purpose for which the company is established and the nature of the trade or business it is to undertake while the articles of association state the arrangements between the members and regulate amongst other things, the transfer of shares, forfeiture of shares, general meetings, the appointment, powers and duties of directors, accounts, notices, etc.

**By-laws of societies.**—By-laws are to a Co-operative Society what Articles of Association are to a Joint Stock Company or what rules and regulations are to a Society registered under the Registration of Societies Act of 1860. By-laws include the objects of the society and completely define and restrict the society's activity. In other words, they embody the provisions by which the promoters of a society agree to regulate its proceedings and their conduct in relation to it. They should not be too elaborate or long. The policy should be to exclude from them all that is not really necessary to the binding agreement between members. It is important that every member should be able to understand the by-laws, which define his relations to his fellow-members, and to make this easier the by-laws require to be couched up in as simple language as possible. [See the Report of the Committee on Co-operation in Burma, p. 17, (1928-29)]. All these by-laws are not entirely discretionary. Some of them are compulsory as provided by s. 71 (c) and Rule 4 (1), and have to be framed by every society before it is entitled to be registered as laid down in Rule 4, sub-rule (1), clauses (a) to (g). As to other matters incidental to management of the society, Rule 4 (2) permits every society to make by-laws suitable to its own requirements. As is stated above the society is to draft its bye-laws and must have them prior to registration (*cf.* s. 9). In fact, the application for registration must be accompanied by a copy of the proposed by-laws

(*cf.* s. 9). The Registrar if satisfied that the proposed by-laws are not contrary to the Act may register the Society and its by-laws (s. 10). He is to endorse them in token of registration. As the Registrar must approve the by-laws before registration he is practically given the power to impose model by-laws in addition to those prescribed by rules issued [s. 71 (c)]. The by-laws submitted under s. 9 (3) to the Registrar subject to any modifications approved by him are to be submitted to and have got to be adopted at the general meeting under Rule 5. Then they become the by-laws of the society binding on all present and future members thereof. With the previous approval of the Registrar the Society may amend the by-laws (s. 16 and Rule 6). For further discussion, *see* notes under s. 71 (2) (c) *infra*.

**Committee.**—Certain persons elected or appointed to whom any matter or business is referred, either by a Legislative body or by any corporation or society.—*Wharton's Law Lexicon*.

It may be called a Managing Committee or a Directors' Board or any other name may be given to it. But if it exercises the functions of management or of giving directions as opposed to mere advice, the body so constituted will be Committee as used under the Act.

**Notes.**—The Committee must consist of not less than two members. Where a registered society is a member it may elect a member to the committee of the larger society. (In the general matters of a society's business it is necessary that there should be a committee of management with a President and a Secretary, appointed by the members. The Act does not provide for a Managing Committee but the existence of one is presumed. A Committee is provided for in the by-laws by Rule 4 (d) which prescribes that a society shall make by-laws regarding the mode of appointment and removal of members of the committee and of the officers, if any, and the duties and powers of the committee and officers. For further discussion, *see* notes under s. 71 (2) (g) *infra*.

**A member** is defined in s. 30 of the Indian Companies Act, 1913, as one (1) who subscribes to the memorandum, and (2) who agrees to become a member of the company and whose name is entered in its register of members. A member may become a member of a company in the following ways:—

(1) By subscribing (*i.e.* signing) the Company's Memorandum of Association before its registration.

(2) By agreeing to take a share or shares in the company and being entered in the register of members in respect thereof.

(3) By taking a transfer of a share or shares and being entered in the register of members in respect thereof.

(4) By being entered in the register of members in succession to a deceased or insolvent member.

(5) By allowing his name to be on the register of members.

**A person.**—According to s. 3, cl. 35 of the Bombay General Clauses Act, 1904, 'person' includes a company, or association, or body of individuals whether incorporated or not.

**Notes.**—A registered society may be a member of another society. In some cases Joint-Stock Companies have been admitted as members of co-operative societies. But the principles of Joint Stock concerns and associations of capitalists are different from those of co-operative societies. If they are allowed to be admitted as members of co-operative societies considerable risks are involved. It is, therefore, necessary to place some restrictions, and cl. (e) of s. 3 may, therefore, be so amended as not to allow companies, firms or associations of individuals to be members of co-operative societies without the sanction of the Registrar.

**Unlimited membership.**—The society should be steadily kept open to new-comers to prevent its degenerating into a ring like the French *lunetires* is an important rule of co-operation.—*See Co-operation in Agriculture by Wolff*, but membership of two societies with unlimited liability is prohibited.—*See Rule No. 45 given in Appendix A* and notes thereunder.

**Officer.**—Generally speaking, the word 'officer' will include all persons in a society who are authorised to give orders as opposed to those who are to receive and execute those orders.

Officer here refers to those dealt with by rules under s. 71 (g) of the Act. It does not include an Auditor.

**A Society** for the purposes of this Act means a society registered or deemed to be registered under this Act. It may appear that this definition leads to somewhat curious results in view of s. 5 of the



Act which proceeds to describe societies which may be registered, and s. 7 which refers to societies which should be registered. This apparent anomaly may be explained by reference to the opening clause of this section which states that the terms used in this Act should be understood to bear the meaning attached to them as defined in this section, 'unless there is anything repugnant in the subject or context'. (*cf.* notes under "Anything repugnant in the subject or context" *supra* at p. 7).

**Registered.**—On account of the definition of society in this Act which means a society registered under this Act the word 'registered' occurring in the Act of 1912 was found redundant, and, therefore, it is deleted in this Bombay Act.—*Bombay Legislative Council Debates, July 23, 1925.*

**Deemed to be registered.**—Existing Societies registered under Act X of 1904 and Act II of 1912 shall be deemed to be registered under this Act.—*See* s. 72 of this Act. Under the Act of 1912, the registration of by-laws was not necessary.

**Rules** made by the Government of Bombay are called the Bombay Co-operative Societies Rules, 1927. The Rules as amended up to date are given in appendix A. Short notes are added to them by way of explanation.

**Registrar.**—*See* notes under the head 'Registrar' to s. 4 *infra*.

(H) (1) **Resource Society.**—Of such societies the most important type is that of credit societies. Owing to the importance which credit societies gained in Germany and other countries the general classification (see below) has been frequently obscured by confining the whole class to credit societies, but, as a matter of fact, resource societies include many other types, *e.g.*, Seed Societies, Manure Societies, Implement Societies and even Cotton Sale Societies. In all these cases the object is to assist the member individually without touching his proprietary or individual rights in the exercise of his trade or business or profession by procuring for him the resources that he needs in money or in professional instruments. Societies composed of mill-hands and salary-earners are apt illustrations of this type.—(*Report of the Select Committee.*) It should be remembered that in this form of co-operation the existing idea of

individual property, individual rights to labour and the individualistic conception of society are left untouched. Industrial and resource societies of credit or non-credit type may exist as well as agricultural non-credit societies.

**H. (2) Producers' Society.**—In this class of societies members combine together in order to exercise a trade in common for their common advantage. This type of societies originated in France and is most developed there and in Italy. These societies depend on a conception of the State more advanced than that which underlies the idea of resource societies. They accept the ideal of profit and they are not actively antagonistic to the individualistic conception of the State. However, they seek their profit not as individuals but collectively for the society as a whole. To this class belong the Italian Societies of *Branchianti* type. *Branchianti* means “possessors of arms (*Brancha* in Italian means an arm). Artisans or labourers combine with the object of purchasing materials, tools, machinery and sale of their finished product and thus secure highest return for their labour (arm). Labourers' Societies undertaking contracts for erecting buildings or constructing roads, is an instance of such type.

**H. (3) Consumers' Society.**—The object of such a society or of the movement as a whole is the gradual collective appropriation of all means of exchange or production by all consumers in common and the substitution of a collective method for the existing competitive and capitalist regime. The conception is due not only to the dislike entertained to individualism and capitalism in principle, but also to the fact that members realise that all competition is wasteful and that the community has to pay for the waste. The idea is to organise industry from the consumption end and to place it from the start on the basis of production for use instead of production for exchange under the control and directions not of themselves as producers, but of themselves as consumers (*Webb, pp. 2 and 3*). In this class is found a genuine and demonstrably successful alternative to the organisation based on the diametrically opposite idea of production for production and distribution for private profit which may be termed as the capitalist system.

In this type may be included housing societies. Because a house is an article of consumption as much as a piece of bread or cloth though its consumption is slower.

**Distinction between Producers' and Consumers' Societies** can be easily found. Producers' society is concerned with production while the Consumers' society is with distribution. The former is industrial while the latter is distributive. The one aims at producing articles cheaply and at getting them to the best advantage. So that the producers might get the most for their trouble and skill; the other aims at buying things that are needed by members at the cheapest rate and selling them to members also at the cheapest possible rates; the one seeks to increase profits, the other seeks to eliminate profits; the one increases the earnings, the other expenditure; the one seeks to approach the ultimate users of the articles produced, the other seeks to approach the ultimate source of supply, the producer of the articles wanted.

**H. (4) Housing Society.**—This type, really speaking, comes under the group of "Consumers' societies." Housing is, however, a very special type of commodity; the organisation of Housing societies has naturally to be on special lines; their management is intricate and difficult; these societies are, therefore, classed separately in the Act. Among these may be included societies formed with the object of building houses for habitation of members (consumers) and not building societies formed by masons or artisans for construction of houses for sale or hire to public. These will go under producers' type. The housing societies formed in the Bombay Presidency are either on the basis of co-partnership tenancy or tenant ownership.

The only difference between the two is that in the first type, *i.e.*, co-partnership tenancy, the member has only a share in the property as a whole and no claim to a particular house or tenement, while in the other though technically a tenant of the society, he is for all practical purposes the owner of his house or tenement.

**H. (5) General Society.**—The classification of societies has been made more comprehensive by the addition of a fifth class which is meant to include societies formed for propaganda, education and such other purposes (*Report of the Select Committee*). The

Provincial Co-operative Institute, is an instance of the types of such societies.

It is different from what is known as the general purpose society. A general society means a society not falling under any of the four classes mentioned before it while a general purpose society means a society the objects of which are a combination of the objects of two or more of the four principal types—resource, producers', consumers' or housing society. A general society is thus peculiar in this that it is outside the scope of any of the four principal types.

**A Society formed with the object of facilitating operations** of any one of the above classes of societies is classed as a society of that class. Among these will be included Central Banks, Supervising Unions and similar societies.

### Classification of Societies.

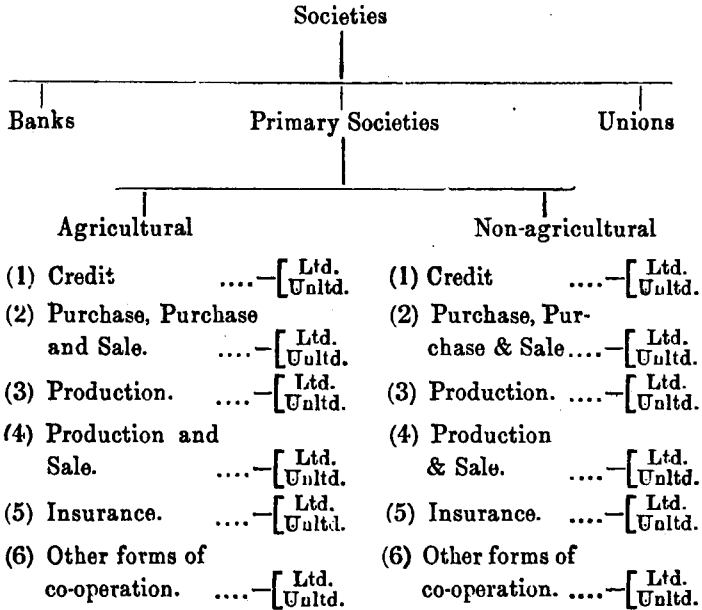
**Classification of Societies** as generally understood may refer to (1) audit classification, or (2) scientific classification according to the functions, needs and objects of the different branches of co-operation.

**Audit Classification.**—Under s. 22 of this Act, it is one of the statutory functions of the Registrar to see that the accounts of the societies are audited once at least every year. At the time of the audit the societies are classed by the auditors as (a) very good, (b) fair, (c) poor, and (d) bad. The qualities which place a society in (a) class are:—(1) punctual and *bona fide* repayments; (2) well-written accounts; (3) adequate local deposits; (4) regular meetings of committee and general meeting; (5) members' knowledge of principles and practice of co-operation; (6) fixing of normal credits; (7) inquiry into the purpose, object and utilisation of loans and proper fixing of dates of repayment and general good management. Societies which fulfil most of these conditions will be classed as (a) and they will have the first claim to enjoy all the financial and other benefits which higher co-operative financing and other agencies and the co-operative department provide. Societies are classed (b), (c) or (d) according to the degrees to which they achieve the ideal.

**Scientific classification.**—The necessity of scientific classification of co-operative societies and the difference between the

functions, needs and objects of the different branches of co-operation have in fact been more clearly recognised in France than elsewhere.

✓ **Classification according to the Government of India Annual Returns:—**



**Notes.**—According to the orders of the Government of India for purposes of Annual Returns, the societies are classified into three groups: (X) Banks, (Y) Primary Societies, and (Z) Unions.

(X) **Banks** include the Provincial Bank, District Banks, Central Banks, Banking Unions and all other societies constituted with the object of lending to individual societies and receiving deposits from larger areas than those of the primary agricultural or non-agricultural societies. All Central Banks are considered to be credit banks with limited liability and no further interior classification is recognised.

(Y) **Primary societies** are divided into two classes, namely:—  
(A) Agricultural, and (B) Non-agricultural societies.

(A) **Agricultural societies** are those in which the majority of members are agriculturists, *i.e.*, persons whose main occupation is the cultivation of the land or the rearing or management of live stock or in which the object is mainly agricultural. (For further discussion on this subject, *see* notes to ss. 5 and 8 of this Act.)

(B) **Non-agricultural societies** are those which do not fall under the head Agricultural Societies.

Under each of these classes, namely (A) agricultural and (B) Non-agricultural societies there are six sub-divisions:—(1) Credit, (2) Purchase, Purchase and Sale, (3) Production, (4) Production and Sale, (5) Insurance, (6) other forms of co-operation.

Each of these sub-divisions is further sub-divided into two groups, (1) limited, and (2) unlimited, according to liability.

(1) **Credit societies** are those individual societies which lend grain for seed or maintenance, as well as those which lend cash; thus grain banks are credit societies.

(2) **Purchase, Purchase and sale.**—These are societies intended to facilitate the purchase of agricultural requisites for members, such as societies which purchase seed, manure, implements, etc., for sale to their members. Societies which also collect for joint sale the produce of members without making this their main object are included in this class.

(3) **Production.**—These are societies which have for their object an act of production without proposing to themselves sale as a direct object. These also would include societies for joint irrigation, for collective use of machinery, for assistance in horse or cattle breeding.

(4) **Production and sale.**—This class includes societies in which these two functions are united, in which one or the other predominates without it being possible to make a clear distinction between them. It will cover all societies whose main object is the joint sale of any commodity whether such commodity is produced or worked up or prepared for sale by the society itself or by the members individually. It comprises all co-operative creameries, butcheries and distilleries as well as societies whose main object is the sale of grain, cattle, ghee, eggs, etc., produced by their members.

(5) **Insurance.**—These societies include cattle insurance, hail storm insurance and other forms of insurance societies.

(6) **Other forms of societies.**—These include all other types of societies which are not included in any of the above five classes, such as Institutes, Housing societies, etc.

(Z) **Unions.**—The Guaranteeing and Supervising Unions are included in this class.

Professor Caines in his Course of Political Economy divides the societies into three classes:—(1) **Societies for consumption** whose general interest is to eliminate the profit of the middleman (undertaker) for consumers and distribute surplus profits among consumers in proportion to business done. (2) **Producing Societies** whose object is to preserve or increase advantage of the middleman at the expense of the general public. According to Prof. Gide this also tends to suppress profit. Consumption must win in the end as production is for consumption and consumption is not for production. (3) **Societies which exist for the purpose of securing individual facilities** or advantages to their members.

✓ **Classification according to the Bombay Co-operative Societies Act, VII of 1925:**—(1) Resource, (2) Producers', (3) Consumers', (4) Housing, (5) General Society.

Since 1921, in this Presidency the more scientific classification of societies based upon the illuminating analysis by Prof. Nash of France in his book upon Co-operative Jurisprudence is being followed. By this classification all societies are divided into three groups or types (1) Resource Societies, (2) Consumers' Societies (including Building Societies which erect buildings for the habitation of members-consumers), (3) Producers' Societies including societies of masons for constructing houses for sale or hire to public.) The three groups differ not only in methods but also in objects. All co-operative societies can be brought under this triplicate classification (tripartites). This classification is the more scientific and has the merit of clearness over the one followed hitherto. The classification corresponds to the three aspects from which man as an economic being can be regarded, that is, (1) man by his labour in a social aggregate is a producer of commodities, (2) as a living being, he is and must be in his human group a

consumer of food, clothing and other articles, and (3) as an individual looking to his own interest he requires and obtains resources for his own use and advantage.

#### *Registration*

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

#### **Commentary**

(Cf. s. 3 of the Co-operative Societies Act, 1912, given in Appendix B)

**Government**—This word is not explained in the Bombay General Clauses Act, 1904, but in s. 3 (21) of the General Clauses Act (X of 1897) which is an all India enactment it is stated: "Government" or the Government shall include the Local Government as well as the Government of India.

**The Registrar**—The Registrar means the person appointed to perform the duties of a Registrar of the co-operative societies under the Act [ s. 3 (f) ] and yet strangely enough his duties as such are nowhere enumerated in the Act. The Act deals with the various powers which he is called upon to exercise and the extent of these powers also is the measure of his duties. The office of the Registrar of the Bombay Presidency is in Poona. There are six Assistant Registrars and one Deputy Registrar who has charge of the whole of Sind.

**Object of appointing a Registrar**—In European countries we find that such officers are appointed in some cases but that their duties are mainly of formal character. In other cases the movement is in the charge of no individual representative. Officers of Government in several departments are expected to give their support and countenance to it. In the creation of a Registrar not only to fulfil the formal requirements of the Act but also to guide and control the whole movement, the Indian Government occupies a unique position and one as experience has shown, which has been of great utility to the movement.



When the appointment was first created in 1905, the retention of a Government officer as Registrar was looked on as a more or less temporary measure. It was left to the local Government to appoint a Registrar, who was to guard and control the societies especially in the early days of the movement. The Government of India in their Resolution (R. and A. Dept. No. 1-63-3 of 29-4-1904) said :

“ He should be selected for his special qualifications and he should for the first year at least be constantly visiting the societies and watching their progress, rather as a friendly adviser than as an inspecting officer. By studying developements under various conditions he will gain experience which will render him an invaluable adviser ; he will know what has succeeded here and what has failed there ; he will be in a position to avoid the repetition of mistakes, to point out defects and their remedies and to extend to one part of the country methods which have proved successful in another. Gradually, as experience is gained and the societies are able to stand alone, the fostering care of the Registrar will be less required, until his duties will become purely official. ”

The Government in their Resolution further said :—

“ While State help and support will be needed to begin with, the object to be kept in view is to teach the people to help themselves, and we shall not have succeeded unless we are eventually able to withdraw that support. The Government of India desire to lay stress on the necessity of reducing restrictions to a minimum, so that the people may be encouraged (subject to certain safeguards) to work out the problem on their own lines with such guidance and advice as can be given them. ” ( *G. R. R. & A. Dept. No. 1-63-3 of 29-4-1904* ).

### **Importance of the post of Registrar.**

The Registrar is the main spring of the Co-operative movement. It should be remembered that the Co-operative movement was not the outcome of any popular demand and the legislation designed to further its objects was essentially the act of Government anxious to ameliorate the conditions of the people. In other words it was an endeavour by the State to teach the people the advantages of organised thrift, self-help and mutual help. With no Co-operative experience in India to guide it, Government had to depend on the agency of an official staff to carry its policy into effect.

In circumstances such as these it was inevitable that the Registrar should be the foundation of the movement. The importance of the Registrar's post to the success of co-operation can hardly

be exaggerated. It was for him to study the experience of other countries, etc., bring his knowledge to the examination of the economic problems of the "agriculturists, artisans and persons of limited means" for whose relief legislation was undertaken in 1904 and subsequently in 1912. It was never intended that he should be merely a registering officer. He was expected to provide supervision, assistance, counsel and control and though he was warned that he must not allow co-operation to become an official concern managed by State establishments, he was held primarily responsible for seeing that societies were formed on a sound basis and was given wide powers to ensure this. The Committee on Co-operation, after a careful enquiry into the movement throughout India, expressed their considered view of the qualifications required and the duties to be performed in no ambiguous terms. They wrote:

"He must be continually studying co-operative literature which is now most extensive. He must make himself acquainted with economic conditions and practices both throughout India and in his province; he must know the principles and methods of joint stock banking and must examine the systems of developing thrift and inculcating co-operation which have been tried in other countries. He is also the head of a teaching establishment and must devise effective means for impressing a real knowledge of co-operation on the bulk of the population. He has further to control large staff and draft model by-laws and rules, to collect statistics and write reports, to advise Government on various subjects, and to keep in close touch with the higher finance of the movement as managed by Provincial Banks and Central Banks."

"As Mr. Wolf has put it, the Registrars should not be set down as officials, but as guides, philosophers, and friends to the societies, appointed and paid by the State. It must further be remembered that there is no finality in the Registrar's work and he can never feel that it has been cleared off and brought up-to-date. He will always feel the need of wide reading and of giving more and more supervision and teaching to his societies. New means and methods to attain fresh ends must constantly be discussed and devised. His work is, moreover, highly responsible involving a watch over large sums of money deposited by the public and a share in the responsibility for the economic fate of a province. It can be well realised that few officers are entrusted with work more serious or more exacting."—p. 109 of the Report of Committee on co-operation (1915). When the Committee on co-operation toured India in 1914-15, the co-operative movement was still almost entirely confined to credit, and development even in that direction was still far from the stage which it has now reached. The Royal Commission on Agriculture in 1928 wrote:—

"To the list of qualifications laid down by the Committee it is necessary now to add others, for the modern Registrar must be fully abreast of the activities of all departments working for the improvement of rural condition ; he must see that there is sound foundation of better business to support the superstructure of Better Farming and Better Living ; the more efficient the movement the more will other departments make use of it to promote their own special activities."—**Abstract Report of the Committee on co-operation (1915) p. XVIII. states:** It is not that the Registrar should assume the detailed direction of societies. These must be left to manage their own affairs, but the Registrar must be in a position to know how they are managing these affairs, and to take action in case of need. In addition to being able to acquaint himself with the working of the societies under his charge, the Registrar must be able to give and supervise that teaching, of co-operative principles without which proper co-operation cannot be expected to grow.

As has been pointed out it was in the absence of any demand from the public that Government of the day decided to embark on an attempt to educate the people in the principles and practice of co-operative credit. In the special circumstances of rural India such education could only be conveyed through the spoken work of touring officers, supported, supplemented and replaced by non-officials as these became available for work. The effect of their efforts has been considerable and some elementary knowledge of the meaning and potentialities of co-operation has spread over a very wide area. It is evident from the statistics that the movement has made remarkably rapid progress. It cannot, therefore, be reasonably disputed that the control of the movement by official Registrar has been a success. If the time has not yet come when the official guidance and control which are so essential at this stage to the healthy growth of the movement can be removed the personality of the Registrar is a matter of the greatest importance. Administrative experience, knowledge of the people and their economic conditions and ability to enlist the co-operation of honorary workers will be the essential qualifications. The Oakden Committee appointed to inquire into the co-operative movement in the United Provinces of Agra and Oudh in 1925 wrote:—

"Enthusiasm and the power of inspiring it in others, drive, initiative and a wide education fortified by special training are the essential qualifications of the Registrar."

The powers that the Registrar exercises may be summarised under the following heads, namely, (1) the power of registration, (2) audit, (3) arbitration, and (4) cancellation.

(1) **The power of registration**—It is necessary to have some officer to see whether a society proposed to be registered is organised in accordance with the Act and the general principles of co-operation and if it is organised whether there are any reasonable chances of its success. It is well known that a society has very little prospect of success unless it is started on sound lines and the Registrar is the officer who is primarily responsible for seeing to this. ¶ In other words, with the power of registration is imposed on the Registrar the responsibility of seeing that a society starts under conditions as favourable as he could make them. It is impossible to lay down in an enactment all the principles and all the circumstances under which a society is to be registered. Even if a society proposed to be organised is within the general principles and provisions of the Act, it may be undesirable to register it if from the beginning it is clear that it has no chances of success. Suppose for instance, ten members who are quite illiterate and backward and having no means of their own, combine and send up a proposal for registration accepting the by-laws as they are framed, the Registrar will be compelled to register the society, though such a society may never start work, if there will be no discretion left to the Registrar. Even if it starts work it may soon be cancelled. Absence of discretion to the Registrar would mean the growth of a number of mushroom societies which is bound to affect the whole movement. It is, therefore, provided by s. 5 of the Act that the Registrar, 'may' register a society. S. 10 also states that the Registrar may register the society and the by-laws. In order that the by-laws may not conflict with the provisions of the Act, and the Rules or with co-operative principles it is laid down in s. 16 that they should be sent to the Registrar for his approval. However, if the Registrar refuses to register a society or refuses approval to the making, alteration or abrogation of any by-law an appeal may be made to the Government within two months of the date of the communication of the order (s. C4).

**Audit** is rather a statutory duty (s. 22) imposed on a Registrar than power. Government through the Registrar are under a legal responsibility to ensure that all societies of every description are audited each year either directly by their own

officers or by independent competent auditors. (See also p. 33 of the *Report of the Townsend Committee on co-operation in Madras, 1927-28.*)

The Co-operative Societies Act of 1925 insists upon regular audit by the Registrar or "some person authorised by him" and provides for inquiry into and inspection of the affairs of societies either at the request of creditors or when the Registrar considers this necessary. The Committee on Co-operation in 1915 said:

"The audit was intended to assure Government through whose agency at the beginning of the movement the societies were formed that they were developing on sound lines. The audit in fact is a State controlled audit and that appeared to be the view implied in the clause of the Act which imposed the duty of making an audit on the Registrar and his nominees."

To ensure successful working it is necessary to secure the confidence of the members in their organisation. Many persons invest their money in the movement relying on the Government audit.—*Townsend Committee, p. 135.* It is also necessary to safeguard the interests of outside investors in co-operative societies. These can only be effected by supervision to such a degree as will afford some guarantee against serious loss. It has to be remembered that members of the co-operative bodies are not yet sufficiently trained to assume responsibility thrown on them. The Royal Commission on Agriculture, 1928, expressed their view regarding the importance of supervision and guidance as follows:

"The main cause of the failures of a large number of societies throughout India was the lack of adequate supervision and guidance which they thought, were necessary at that stage to the healthy growth of the movement. The essence of the co-operative movement is that the people should take the management of their affairs into their own hands, and, therefore, whenever co-operation will be found in a position to supply from within their ranks the leadership and technical knowledge required for proper control of the movement, this external control will actually be removed."

At the present stage practical considerations such as those described above render necessary some degree of audit, inspection and supervision. (See notes to s. 22 under the head "Audit" *infra*.)

**Arbitration** — A dispute is referred to the Registrar. He can appoint an arbitrator to decide or he can decide it himself (s. 54). In the latter case his decision is subject to appeal to Government (s. 64).

**Winding up and Cancellation**—The Registrar has discretion subject to a right of appeal to Government (s. 64) to order the winding up of a society and to appoint a liquidator (s. 47). The liquidator is to exercise the powers mentioned in s. 50 of the Act with the sanction of the Registrar (s. 50). As regards cancellation, s. 50A gives some power to the Registrar. Under that section on the application of a liquidator the Registrar can take action when there is misfeasance on the part of the promoters, or the committee members of a co-operative society which has gone into liquidation. This s. 50 is, however, an adaptation of a similar section (s. 235) in the Indian Companies Act, 1913. This is, however, subject to appeal to Government. See notes to s. 64.

**Other powers of the Registrar**—The Registrar has power to classify societies when formed [s. 3 (d)]. He decides questions arising under ss. 5 and 7. He approves of the change of name of a society (s. 14), and is empowered to allow amalgamations of them (s. 15). He sanctions the amendments of by-laws (s. 16) and holds an inquiry into the constitution, working and financial condition of a society (s. 43) and orders inspection of books of account of a society (s. 44). He directs payment of costs of an enquiry and recovery thereof (ss. 45, 46). He has power to hear appeals against arbitrator's award (s. 56). The Registrar controls the power of a society to make loans to, and receive deposits from non-member: *cf.* ss. 34 and 35 of the Act of 1925. He has a voice in the investment of funds: *cf.* s. 37 (d) of the Bombay Co-operative Societies Act of 1925.

**Inspection** involves an inquiry into the financial status of a society. This is obviously within the rights of the financing central banks. In fact, it must be placed amongst the banks' responsibilities.

**Supervision** involves constant administration, assistance in routine work, advice on financial matters, and general guidance, both from the business and the co-operative aspects. Unions formed and controlled by the societies themselves provide the ideal organisations for this purpose. The Townsend Committee of Madras (1927-28) recommended that normal supervision should be left to the unions assisted by federations and supplemental and residuary supervisory control to the Registrar's administrative inspectorate.

The Royal Commission on Agriculture in India in their Report in 1928 said:—

“Such supervision is only called for until societies are able to dispense with it and the fact that, where societies are classified, the highest class is reserved for them which require no supervision, serves as an effective reminder of this. But it must be remembered that supervision by an authority outside the society is equally detrimental to the growth of a proper spirit of self-help whether it is performed by a paid official or an honorary worker. The ideal aimed at in some provinces has been to organise a supervising agency from within by federating primary societies into special unions. In some provinces supervision is largely undertaken by provincial unions which maintain paid staffs for whose education, training and efficiency they are responsible. ... Attempt to devolve the work of supervision on central banks has proved a failure and we consider it desirable that finance and supervision should be under separate control. Financial perfection is not the main object of co-operative effort and the work of village societies cannot be judged solely by their relations with their financing agencies. In certain areas, inspectors are sent out by the provincial or central banks to examine the working of primary societies and it is not intended to discredit this practice. The duties of these inspectors should be clearly defined and they should be strictly confined to them; their training and education should be such as to fit them for the efficient discharge of those duties and should not be of a lower standard than is demanded from officials.” *See pp. 456-57 of the Report.*

**The Supervising Unions** in the Bombay Presidency serve as a connecting link between the Agricultural Primary Societies on the one hand and the District or Provincial Central Bank, (as the case may be) and the Bombay Central Co-operative Institute on the other. The objects of these are to control and assist the agricultural resource societies within their area; secondly, to conduct an educative propaganda; thirdly, to organise wherever necessary seed, manure and similar societies and to purchase such resources for societies on indent and for cash payment when required; fourthly, to develop the agricultural co-operative movement generally within their area.

The Co-operative Societies Act of 1912 and the Bombay and Burma Acts all agree that a creditor has the right to insist upon an inspection but that it shall be carried out by some one “authorised by the Registrar.” This provision should be strictly observed through the selection and authorisation of a person qualified to carry out the duty.

**The powers of superintendence, guidance and control should be given to the Registrar.**—The Registrar is not merely a registering officer. Generally speaking, the Registrar exercises

over societies the power of a Court over Companies under the Indian Companies Act, 1913. As has been stated elsewhere he is expected to provide supervision, assistance, counsel and control. It is this control, etc., which has enabled the movement to create the outside confidence which is necessary to give it stability. S. 4, therefore, may be amended with advantage so as definitely to empower the Registrar to exercise general powers of superintendence, guidance and control in respect of the co-operative movement within his jurisdiction.

### **Assistant Registrars and the Deputy Registrar.**

**Assistant Registrars.**—The Fourth Conference of Registrars in 1909 brought to the notice of Government the necessity of Assistants to the Registrar which has since been recognised in almost every province. It was urged that it would afford great relief to the Registrar if part of his duties could be delegated to these officers. The particular powers of the Registrar with which they are to be invested should be left to the discretion of local Government. The Committee on Co-operation (1915) expressed the following views on the requirements of the controlling staff including the Assistant Registrars:

"It is very advisable that all officers on the controlling staff should be capable of thoroughly mastering and digesting the standard books and periodicals on co-operation without relying on second hand information with regard to European conditions and we would lay stress on the necessity of a more thorough study by the controlling staff of the theory and practice of co-operation in all parts of the world than has been common heretofore. There are so many cases in which the controlling staff have to decide on the course most consistent with co-operative principles that it is most desirable that they should all be steeped in the literature of the subject, and should even if possible have gained some personal experience of it in Europe."

**Powers of Assistant Registrars.**—The Government of Bombay has conferred on Assistant Registrars of co-operative societies all the powers of a Registrar under the said Act with the exception of powers conferred by the following provisions of the said Act, namely, sections 10, 14, 15, 16, 47, 48, 49, 50, 50-A, 51, 52, 53, 63 (3), 70—See *Resolution No. 522/28 dated 28-11-28*. The Assistant Registrars are responsible for the control of all staff within their charge and are answerable for their industry and good conduct. There are six Assistant Registrars and one Deputy Registrar who has charge of the whole of Sind. The charges held



by Assistant Registrars are as per G. R. R. D. No. 6768/24, dated 9th July 1928 as follows :

- (1) Bombay Division ... .. Bombay City, Thana and Nasik.
- (2) Belgaum Division ... .. Belgaum, Satara, Ratnagiri and Kolaba.
- (3) Central Division ... .. Poona, Sholapur and Nagar.
- (4) Khandesh Division... .. East and West Khandesh Districts
- (5) Northern Division ... .. The whole of Gujarat.
- (6) Southern Division ... .. Dharwar, Bijapur and Kanara.

The Deputy Registrar in Sind is granted the following powers in addition to those delegated to Assistant Registrars : Section 10.—Power to register agricultural credit societies with the model set of by-laws without any changes. The borrowing limits under model by-laws 3 and 41 should not exceed Rs. 5000 and 500 respectively.

The extensive powers given to the Registrar are objected to by some on the ground that in the new Act of 1925 the intention of Government, as expressed in the beginning in 1903, has not been carried out. It was then asserted as follows:—

“ The people must be in the main left to work out their own salvation on their own lines, the function of the Government being confined to hearty sympathy, assistance and advice and that the regulative interference of the Government should be limited strictly upon the spontaneous growth of societies unhampered.” Further on in 1912 in moving the adoption of the second Act Government observed that it was of the utmost importance to the healthy and successful development of the movement that Government interference and help should be reduced to a minimum and that mere mechanical inspection and control would destroy and not build up the co-operative spirit.

The Townsend Committee of Madras (1927-28) however said: “ We agree that the ideal to be aimed at is for Government, subject to the due execution of their statutory duties (of which they cannot divest themselves) to permit the control of the co-operative movement to devolve on non-officials. But the time for putting the ideal completely into practice has not yet come. A withdrawal from supervision on the part of Government took place in 1925-26, before adequate provision has been made for non-official agencies to take over the work. This has, we consider, been responsible for much of the confusion which exists at present in the movement.” - P. 69, *Report of the Townsend Committee of Madras.*

5. Subject to the provisions hereinafter contained,  
 Societies which may be registered. a society which has as its object the promotion of the economic interests of its members, in accordance with co-operative principles, or a society established with the object of facilitating

the operations of such a society, may be registered under this Act with or without limited liability:

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

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

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

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

### Commentary.

**Old law.**—S. 4 of the Co-operative Societies Act, 1912, is reproduced with some additions (see appendix B).

**Note.**—The word 'registered' occurring in "and of which no member is a registered society" in cl. (2) of the proviso to this section appears to be redundant in view of the fact that a 'society' is defined as 'a society registered under the Act' in s. 3 (e) of this Act.

**The objects** correspond to the Memorandum of Association of a Company. Rule 4 states that every society must make by-laws regarding the object of the society. A society is bound by its objects and it cannot legally incur any obligations not directly connected with the furtherance of these objects. It is, therefore, of importance that the objects for which a society is being formed should be clearly, definitely and exhaustively set forth in the by-laws because these have to be approved by the Registrar before registration can be effected (s. 10). Any act which is beyond the objects specified in the by-laws is *ultra vires* and void and if performed by the committee or any other members and if thereby any loss is incurred the official responsible is personally liable. Among the

objects aimed at, the following are the most important:—(1) The supply of capital for productive purposes; (2) Education in the true uses of credit; (3) Combination to secure the fullest advantages in a world of competition; (4) The elimination of middle-man's profits. These may be explained thus:—

(1) **Supply of capital for productive purposes.**—Model by-laws of credit societies (unlimited) lay down the objects of the society to be the creation of funds by means specified in the by-laws, to be lent out to its members at the lowest rate consistent with a fair profit. In the case of credit societies with limited liability the model by-laws state the objects of the society to be (1) to encourage thrift and co-operation among its members; (2) to create funds by means specified in the by-laws to be lent out to members of the society at a moderate rate of interest; and (3) to do general banking business.

(2) **Education in the true uses of credit.**—“The initial evil that co-operation has to meet in India is not so much debt as credit” says Mr. Darling in ‘The Punjab Peasant in Prosperity and Debt.’ He goes on to say: “The acquisition of proprietary rights, the inflated value of land, and the general prosperity of the country made credit dangerously easy. Now, as a servant, credit can turn sand into gold, but as a master, it will turn gold into sand. The magic of co-operation lies in the fact that it substitutes for the money-lender's demoralizing system an organization under which credit is controlled and debt restricted. The money-lender, provided credit is good, rarely enquires the purpose of a loan, and as he is dealing with a careless, improvident class is obliged to guard against loss by a high rate of interest. On the other hand, the village credit society will only advance money if it is satisfied that it is either for a necessary or for a productive purpose; and it can afford to charge a much lower rate of interest, as the risk of loss is much less when loans are not indiscriminately given; a defaulter, too, can be subjected to the pressure of neighbours who will be losers if he does not repay. Another and the most important difference between the two systems is that the money-lender considering his own advantage alone, is far from straight in his dealings and invariably charges compound interest. This imposes a heavy burden on the debtor. It is not surprising, therefore, that as soon as a man joins a society he finds himself able to start reducing his debt. In this connection, however, it must be remembered that it is not the object of co-operation to reduce debt so much as to replace unproductive debt by productive, and to provide the cultivator with a sound, well-controlled system of credit which will be as inimical to waste as it should be favourable to development.”—See pp. 272-73 of *the Punjab Peasant in Prosperity and Debt* (1928 Ed.).

(3) **Combination to secure the fullest advantages in a world of competition.**—Co-operation is a method of doing business by poor people voluntarily united to secure fair dealing, fair opportunity; freedom to choose their own lives and emancipation from the capitalist. “The importance of organisation in relation to development cannot be too strongly emphasized” said

Mr. Darling. He continued, "In India the forces of nature, religion and custom are too strong for the individual to combat alone. With her three scourges of drought, disease and flood nature in the East is more like an avenging deity than the kindly if fickle goddess familiar to the West. Religion and custom are only less powerful, and their dictates have the sanction of too many centuries of practice for the illiterate cultivator to think of challenging them unaided."

(4) **The elimination of middleman's profits.**—The agriculturist is not a trader. He sinks his entire capital in his cultivation and waits for his crop to recoup his capital so that he may pay his rent and his *Sahukar* and meet the costs of all the necessaries of his life. He is, therefore, anxious to sell his crop as soon as it is ready. In fact he often takes an advance even when his crop is still standing, contracting to give the produce at ridiculously low rates to his creditor. Even a substantial cultivator who can afford to hold up the bulk of his produce must sell part of the new crop to enable him to meet his ordinary expenses. The result is that the middleman who forms the link between the grower and consumer absorbs a large amount of profits at the cost of both. The grower gets the least and the consumer pays the most. Again a cultivator has to pay the most when he is a consumer of these very articles later on in addition to what he must pay on such articles as he does not produce, e.g., salt cloth, sugar, kerosene oil, etc. He gets them retailed through a number of middlemen and they naturally charge for the service done. It is here that co-operation can come in to relieve him from this two-fold loss and the best form of co-operative organisation that is suited for this purpose is the Purchase and Sale society. The methods and profits of middlemen and brokers are well-known, and have been often described; it is probably in these transactions that the *ryot* is most seriously fleeced, and that he can be most profitably aided; village banks or associations may advance money or grain and thus obviate the need for advances from the broker, or they may receive the produce of their members and place it at advantageous terms upon the market. The provision of numerous weekly markets is also a most important means of assistance, for the *ryot* very soon learns both the true market rates and the value to him of the competition of the market for his produce.—*Report regarding the possibility of introducing Land and Agricultural Banks in Madras Presidency by Mr. Nicholson (1895)*. The aim of societies for production and for production combined with sale is primarily to get rid of the middleman whose interference in the transaction, accounts for the small price often realised by the villager for his produce. A common distinction which occurs in tables of prices in India is that between the *bazar* price and the village price. By the *bazar* price is meant the rate at which the professional grain dealer is prepared to sell to exporters or large dealers. By the village price is meant the price which the cultivator actually gets for his produce. There is a large difference between the two, sometimes amounting to twenty-five per cent. and over. The difference is supposed to represent the middleman's charge for storage, finding a purchaser for the commodity, and for transport. Such charges are legitimate in themselves, but in transaction between a producer

of small means and a middleman to whom he is often deeply in debt these legitimate charges can be easily employed to exact as much from the producer as possible. It is impossible for the wholesale dealer to deal directly with the cultivator, because in the first place the wholesale dealer cannot afford to buy in small quantities, and in the second place what he requires generally is not a commodity, say wheat, as such, but a particular class of that commodity for which it is more convenient to deal with a professional trader. The problem, therefore, is not to remove the middleman but to replace him by an organisation of the cultivators themselves who will carry out the duties of middlemen on more reasonable terms. ( See also notes under the head: 'Elimination of the middleman and protest against exploitation.' at p. 6 ).

**Economic interests** include thrift and self-help as stated in the preamble. The object of a society must be the promotion of the economic interest of the people who form themselves into a society. Now, economic interests are not defined in the Act, but the preamble suggests the idea of bringing about better living, better business and better methods of production by means of thrift and self-help. 'Economics,' says Professor Marshall in the opening words of his 'Principles' 'is a study of mankind in the ordinary business of life and co-operation is one way of conducting certain parts of this business.' Being not only concerned with business but actually one way of conducting business, co-operation has a range of potential activity that is as wide as the business of life itself. "*Co-operation at Home and Abroad by C. R. Fay (1925) 3rd Edition.* Co-operation is a means whereby the prosperity of the mass of the people can be improved. But before the general prosperity can be raised, causes of the present low standard must be discovered and for every cause there must be found a remedy.

(a) **How to increase the wealth of the people**—To increase production and to decrease consumption; these are the two ways by which the wealth of the people can be increased; in other words, if wealth is to increase production must exceed consumption. This can be achieved by one or more of the following methods:

(a) **Production can be increased by** (1) Scientific methods (2) improved implements (3) better seed (4) new crops, etc.

(1) **Scientific methods** in the case of Indian agriculture would be rotation of crops, the more efficient and economical way of carrying out the method of tillage, economical methods of transplanting paddy seedlings,

drill-sowing of cotton and other crops and intercultivation with bullock power and so on.

(2) **Improved implements.**—The adoption of an improved plough suitable for the local conditions, cane crushing mills, implements of waterlifts and buckets, seed drills which will enable the cultivators to take the fullest advantage of the first fall of rain, strong and cheap threshing and winnowing machines. To this may be added the improved type of the indispensable country cart.

(3) **Better seed.**—Pure seed of high germinating power and of proved value can be distributed through the agency of co-operative associations. Selection and the use of improved varieties of cotton, tobacco and the millet is very important. The cultivator is only too ready to take to an improved variety of crops of the extra-financial return of which he has been convinced.

(4) **New crops.**—Scientific agriculture has made it possible the successful introduction of crops which are entirely new to India or new to any particular part of it. That the introduction of new crops offers abundant possibilities has been amply demonstrated not only by experience in the United States of America and Australia, in which country there is no paying crop which is indigenous to the soil, but also by experience in India itself. Cambodia cotton now grown in Madras, the cultivation of dates in Punjab, the spread of ground-nuts to parts of Bombay, to Bundelkhand, Orissa, Sind, the Central Provinces and the dry zone of Burma is perhaps the best example in recent years of the extension to new parts of India of a crop already grown in other parts of the country, but other examples are to be found in the cultivation of potatoes in the Punjab and Assam and of oil-seeds in Sind.

(b) **Teaching the producers to produce wealth in the hours during which they are at present idle.**—The most striking feature about typical Indian agriculture is the amount of leisure it allows. Owing to climatic conditions and the prevailing system of tillage, agriculture does not offer employment for the whole of the year except in tracts where irrigation is available. For a very large number of cultivators there is no work on the fields for at least two to four months, the duration of enforced idleness varying according to local conditions and the size of the holdings. "In no agricultural country that I know of are so many people to be seen strolling idly about during the hours of labour as in India. The streets and court houses and yards are full of idlers. The roads are never empty and the railway stations and the railway carriages are crammed with people. Entering the village at any hour of the day you are surrounded by idlers" said Mr. James Caird in his Report on Condition of India, in 1880. Mr. Caird has, however, attributed this to an absence of other occupation than agriculture and to an uncertain character of land tenure in some parts of the country. In the existing conditions of agriculture in this country one of the ways to improve the economic condition of the rural population is to open new industrial avenues and to provide supplementary occupations. India cannot continue to depend on agriculture alone for maintaining the bulk of the people on a decent standard of living. She must build up industries which may give

employment to the surplus and partly employed population. This does not necessarily imply the removal of a large section of the agricultural population from the land. The problem, however, is two-fold. (1) There should be secondary suitable occupations which the agriculturist can take up during the spare time at his disposal without having to give up cultivation, and (2) there should be industries in which a portion of the population that cannot be supported by agriculture may find employment. So far as the cultivator is concerned, if he requires more money the best occupation for his spare time is more intensive cultivation and the next best is the suitable spare time occupation. The methods of bringing within the cultivator's reach industrial opportunity to fill up his spare time must vary according to local circumstances. Apart from employment in factories situated in its neighbourhood the rural population can employ its spare time in certain village and domestic industries.

**Cotton spinning** by hand is a suitable part time occupation for members of cultivators' families especially women. This is particularly true of tracts where conditions are favourable with regard to the supply of cotton and the disposal of yarn.

**The Handloom Industry** of India is still of great importance in the national economy and has upto the present shown remarkable vitality in the face of competition with factory products. Handloom weaving is the most important cottage industry of the Bombay Presidency.

**Dairying** is essentially an occupation allied to agriculture and increases the agriculturists' annual income. The demand for milk and milk products is always large and grows larger with increase in population and rise in the standard of life.

**The pottery** industry meets the local demand for common utensils at moderate prices.

**Rope making** was quite universal in the past and it may be revived with the introduction of rope-making machinery of simple type.

**Sericulture** affords a valuable industry quite suitable as a spare time occupation. To the cultivator it affords additional income with comparatively small expenditure of time and labour on the crop which feeds the worm.

**Poultry farming**—Poultry is quicker in yield and less costly in maintenance than cattle. It also yields rich manure very valuable for fruit trees. It is said that America produces by poultry more wealth than by even wheat. In 1922 the poultry products amounted to over 400 million pounds sterling, exceeding the value of her wheat. The wealth of the farmers of Denmark is built as much by poultry as by dairy. England alone purchases eggs worth six million pounds sterling and butter worth 24 million sterling annually from foreign countries, much of which comes from Denmark. Among Eastern countries, China leads the way in this industry. Her export trade to Great Britain in 1924 amounted to two and half millions of eggs, dried and liquid, and she is exporting to many other countries besides. Those villages in China which are not in a position to export fresh eggs, dry them into powder for export. In view of these facts

it is worth giving attention as a subsidiary industry to the people of the villages. One special advantage of this industry is that it is capable of yielding income at small intervals. (*Rao Bahadur S. S. Talmaki's note on Secondary occupations for agriculturists.*)

The cultivation of lac is a village industry affording additional income to the poorer classes.

Fruit Farming is another industry to be considered as a subsidiary occupation. Extension of fruit cultivation may also afford scope, in course of time for many side industries, such as canning, curing or drying fruit, preserves, jams, pickles, powders, etc. Though cultivation of certain varieties of fruit depends upon a good supply of water and marketing facilities there are other varieties not much dependent on rain and, are, therefore, fitted to famine areas; their growth deserves encouragement, so that if rain crops fail, the farmer may yet have some crop of fruits.

Vegetable growing.—Market gardening is bound up with the question of an ample supply of water and manure and the facility for sale. Apart from this, every farmer should be encouraged to grow vegetables, not so much for marketing, unless there are special facilities thereof, as for consumption in his own home. The small quantity required for this purpose could be easily grown by him even with the help of kitchen water and bath water in a small bit of garden attached to his cottage.

Apiculture or bee-farming is another important industry which, though hardly known in our country, is very extensively practised by farmers in other countries. In the United States bee-keeping aided by scientific appliances is carried on on a very extensive scale. The demand for honey as an article of food has increased so enormously in that country in recent years that it is found that the country, consumes every year honey worth about 8 to 10 million dollars. In Germany also, the industry is very extensively and systematically practised and it is estimated that the annual earnings of the German farmers from apiculture are not less than 35 million gold marks, which is greater than the total earnings of the country from deep sea and coastal fishing put together.

Its chief advantages are that, it requires little labour and very little space and entails a very small initial expenditure. Bees help the fertilisation of fruit increasing thereby its quality and quantity. With the aid of bees fruit trees in America are made to yield nearly fourfold the usual crop. Efforts must, therefore, be made to introduce this industry in localities where bee-forage is ample.

Among the other small industries carried on on a small organised factory basis or by individual artisans may be mentioned the manufacture of gold and silver thread and the brass and copper vessel industry. There are, besides, many occupations to which the agriculturists' surplus time can be profitably devoted in the different districts of the Bombay Presidency and Sind. The Director of Industries mentions the following as some of the spare-time occupations according to different districts in this Presidency.



Wool-spinning, wool-weaving, knitting, dyeing, carpentry, wood-turning, smithy, preparing wire cages for trapping rats, making cooking utensils, soap-making, preparing paper pulp for toys, snuff-making, preparing toys of wood and clay, cane work, bamboo matting, bamboo basket-making, making *bidis*, manufacture of *dal*, flour grinding, preparing dry ginger and dry turmeric, making umbrellas and fans from reeds, coal burning, etc.

**Increasing the number of producers by reducing the number of those who at present add nothing to the wealth of country, e. g., reducing the number of unnecessary middlemen, distributors, etc.**

**Marketing** is the sole business of the distributor whereas, from the point of view of the cultivator, whose day to day concern is with production it is apt to be regarded as subsidiary to production.

There are various services of marketing and distribution performed each by a separate intermediary which under a proper system might well be rendered by a single intermediary. Further on organisations of producers for the sale of goods are the most effective means of eliminating middlemen. By the elimination of unnecessary middlemen the profits which previously went to them, become available for division between the agriculturist, the merchant and the ultimate consumer. The removal of such agents as are merely parasitic means more rapid business, a quicker turn-over and a better understanding between the whole purchaser and the producer of the crop.

**Conditions prevailing at present in India.**—Trade is no longer merely local; it has become inter-provincial, and international. Improvements in the methods of transport and the means of communication by the introduction of the railways, steam ships and the telegraphs have revolutionised trade so much that the self-sufficiency of the village has given place to a world-wide economy and food crops to money crops. The agriculturist in India, though very conservative, has not escaped the transformation thus wrought in agriculture and has begun in an increasing measure to grow crops not merely for subsistence but for market abroad. Prices of agricultural produce are now affected by wider factors and the agriculturist in this country is ill fitted by his ignorance to sell in the dearest market and to make a reasonable amount of profit from his occupation. He is thus very adversely affected by this change in the character of crops and the world-wide fluctuations in prices. The organised and educated middlemen who control today the marketing of agricultural produce are much better fitted by their knowledge of markets and their control of capital, so that in spite of competition they thrive very well indeed.

As stated above, under this wasteful system of distribution the full advantage of growing money crops is denied to the agriculturist. While the consumers might usefully try to bridge the gulf by building up co-operative organisations from their end of the chain, it is essential for the success of agriculture that the agriculturist too should build up his organisation

from his end for the more attractive marketing of his produce. The unnecessary multiplicity of middlemen is as obnoxious to agriculturist as to the consumer and it is the co-operative system only that will enable him to fight his battle with some chance of success. It is true that the middlemen are better organised and educated and may not easily surrender to the co-operative organisations trying to eliminate them. Instances are not wanting even in this Presidency where difficulties are thrown in the way of co-operative Sale Societies by the organisations of middlemen; but experience has shown that co-operation in this as in other directions succeeds and when properly developed defies all attempts to snub or strangle it. Countries like United States of America and Denmark have made notable progress in co-operative marketing and there is no reason why attempts on similar lines should not be made in this country. (See also notes under the head "Elimination of the middleman and protest against exploitation," at p. 6).

A frequent misapprehension concerning the objects of co-operation is that they consist in the elimination of the middleman, a view which is fairly held by many people. It would be nearer the truth to say that co-operation aims at carrying out the middleman's functions more efficiently either by reducing the number of agents if redundant, and preventing undue profits or by taking over the middleman's work and performing it through employed agents of the farmers in the latter's interest. In the present state of marketing, middlemen are indispensable, and even under an improved system, it may not be possible or desirable to do away with them altogether. In the economic organisation of the modern world the middleman fulfils certain functions. They are useful inasmuch as they render quick disposal of produce in small or big lots possible, take risks, arrange for manufacturing processes necessary for marketing, such as ginning of cotton, curing of tobacco, decortication of ground-nut, and hulling of paddy, and supply or secure finance as and when necessary.

There are, however, two principal defects of the system, namely, that their number is often larger than necessary and that they are not controlled by anything but their own interests. When the number of middlemen between the producer and the consumer is large, the interests of either or both must suffer, as such intervening agency has to be paid its price. There is also another drawback. In most of the marketing centres, the number of middlemen has increased to such an extent that as a result, some of the unscrupulous amongst them have been forced to resort to certain malpractices in order to make out a livelihood. When the same middleman acts for both the purchaser and the seller, he is apt to look more to the interests of the former than to that of the latter, as it is from the buyer that he gets much larger business than from an individual agriculturist. Even when a direct or indirect check is exercised on the operations of the middleman, it proceeds from the big distributors, exporters or consumers. Being unorganised and, therefore, the weakest link in the chain, the producers cannot bring any restraining influence to bear on them. Malpractices are not confined only to the small middlemen lower down in the scale. The bigger

middlemen are also not free from blame. Producers' organisations will check such malpractices and will benefit not only the growers but also the exporters as they will be able to arrange for the supply of produce in sufficient quantity, of definite quality and at the stated time. Such organisations will also be useful in counteracting the attempt on the part of speculators artificially to depress prices or at least in setting a limit to their desire for unduly large profits. Pooling together of the produce of agriculture for the purpose of offering only lots of a given quantity and quality, and for spreading sales over the whole season with a view to obtaining the best average prices, can be well arranged through Co-operative Societies.

**Decreasing general source of waste,** such as needlessly high prices of commodities, excessive cattle mortality, preventible sickness and inefficiency of the workers, low standard of labour, etc. The importance of well-organised markets lies not only in the function they fulfil, but in their reaction upon production. Well regulated markets create in the mind of the cultivator a feeling of confidence and of receiving fair play and this is the mood in which he is most ready to accept new ideas and to strive to improve his agricultural practice.

**Cattle problem.**—In none of the noted stock rearing countries like the Argentine, Australia or the United States of America are cattle of more importance to the home population than they are in India. In most parts of the world they are valued for food and milk; in India their primary purpose is draught for the plough or the cart. To more than half of the population of India, the slaughter of the cow is prohibited and this outstanding fact governs the whole problem of the importance of cattle in the country. It is necessary to recognise the obligation under which the country stands to the cow and to her offspring, the trusty ox. Without the ox, no cultivation would be possible; without the ox no produce could be transported. Now epidemic diseases cause great direct injury to the cultivator through the death of his cattle and also entail extensive indirect losses through the illness of his working or milking stock. There are also often indirect losses from the imperfect cultivation of crops when working animals are stricken by disease. It has been found that there is extensive borrowing for cattle purchase which in its turn is mainly due to losses caused by disease. Co-operative societies provide a relatively small amount of finance required by the cultivators. The more usual source is still the money-lender and there can be little doubt that cattle disease often compels resort to him. The loss of a pair of bullocks at a critical stage of cultivation and the partial failure of a single crop in consequence, may place a cultivator wholly in the power of the money-lender and ultimately involve him in ruin. Co-operative cattle insurance societies may afford a solution to the problem but at the same time it should be remembered that such societies proved a failure in other provinces. In the absence of scientific investigation it is advisable to proceed rather cautiously in the matter of embarking upon fresh schemes in that direction.

**Public Health.**—The close relationship between agriculture and public health is obvious and the two react upon each other to a remarkable degree.

Economic wastage due to disease cannot be over exaggerated. Malaria slays thousands and lowers the economic efficiency of hundreds of thousands; plague and cholera sweep the country from time to time; hookworm disease, and diseases arising from diet deficiency insidiously reduce the labour power of the working classes. The All India Conference of Medical Research Workers in 1926 was of opinion that the greatest cause of poverty and financial stringency in India is loss of efficiency resulting from preventable diseases. The conference was absolutely sure that the wastage of life and efficiency which results from preventable diseases costs India several hundreds of crores of rupees each year. The conference held that the average number of deaths resulting every year from preventable diseases is about five to six millions, that the average number of days lost to labour by each person in India from preventable diseases, is not less than a fortnight to three weeks in each year, that the percentage loss of efficiency for an average person in India from preventable malnutrition disease and is not less than twenty per cent. and that the percentage of infants born in India who reach a wage-earning age is about 50, whereas it is quite possible to raise this percentage to 80 or 90.

**Primary education for peasants and workers.**—If no profession is the fortune of the individual worker, however, humble his lot, more dependant upon his own skill and judgment, and in none is the possession of a sound elementary education, and of the balanced and progressive outlook that it imparts more likely to prove of commercial advantage than in agriculture. Primary education to be a vital factor in rural development must be efficient and wide-spread. The rural communities must be made to realise that nothing hinders their moral and material well-being so much as delay or reluctance in bringing primary education within the borders of their villages. The moral improvement which flows from an intelligent application of the co-operative principles cannot too strongly be emphasised. But at the same time it has to be remembered that the development and strengthening of character, which is one of the most valuable results of that movement, cannot proceed far unless it is based on the secure foundation provided by an efficient system of primary education. An educational programme for India so far as the worker is concerned, should have the definite object of improving his efficiency so that he may turn out more and better work and get a better return for his labour. To carry out the programme it will be necessary to know very clearly what are the defects of the workman, what is the knowledge that he must needs, and how much of this most important knowledge can be imparted to him, and assimilated during the time available for his instruction.

**Decreasing special sources of waste, such as litigation, scattered fields, damage by insects, etc.**—In the matter of rural indebtedness, litigation finds mention as one of the chief causes of borrowing. Most litigation in India is of a very trivial nature and a larger proportion of the cases are not really disputed. The Civil Justice Committee in 1925 recommended the develop-

ment of village *panchayat* system. Among the other advantages of village courts is the fact that they are close to the residence of the parties. The expense of litigation in them is negligible as pleaders are not allowed and witnesses have not to be brought from a long distance. There is not the same difficulty in seeing that the processes are duly executed and the fact that the parties are speaking before their fellow villagers in their own village makes for a more easy determination of the truth.

An attempt was made in 1879 to meet the problem of unnecessary litigation so far as agriculturists in the Deccan were concerned by providing for conciliation in the Dekkhan Agriculturists' Relief Act. This was made on the lines adopted by the courts of *judges de paix* in France where the system had attained great success. The idea of conciliation was that the agriculturist should have a friend living in the neighbourhood who would be ready to mediate between him and his creditor, to get him as favourable terms as he would get if he went to court, while saving him the time, trouble and expense involved in legal proceedings and to effect a settlement satisfactory to both the parties who would thus part as friends. However, that system was abolished in 1913 as right stamp of men were not willing to come forward to undertake the duties of conciliators while the post was sought by men of lower calibre whose motive was self-aggrandisement or self-interest ( For further information, see notes to Ch. VI of the D. A. R. Act by the writer. )

**Village Munsif.**—With a view to supply a cheap and accessible means of obtaining ready justice in petty cases. Village Munsifs are appointed in some places in the Deccan to try suits upto the value of Rs. 25 under the provisions of Ch. V of the D. A. R. Act of 1879. The qualification of this office is not based on literary attainment but on social status and local influence. ( See notes to chapter V of the D. A. R. Act by the writer ).

It is admitted by all that litigation has become an abscension and is a social evil of first order. It is a curse to this province and a source of great economic loss as well as the frequent origin of serious crime. It does not require a very lively imagination to visualize what the 19000 civil suits, in 1929 must have cost East Khandesh in hard cash, in neglected farms and in distracted minds. ( *Report of the Department of Agriculture in the Bombay Presidency, 1929-30* ). Any measure, therefore, such as the establishment of arbitration societies which promises to bring about a reduction of litigation deserves support. Any way something must be done to facilitate the settlement of village disputes by local arbitration at an early date.

**Fragmentation of holdings and sub-division.**—Fragmentation refers to the manner in which the land held by an individual ( or undivided family ) is scattered throughout the village area in plots separated by land in the possession of others. Fragmentation of holdings is in this province one of the most important of the factors tending to prevent agricultural improvement. There is a common agreement that its evil effects are so great that Government should not rest until a remedy has been found. The initiative should not be left to the spontaneous action of the right holders but that the State should undertake propaganda work, should explore the whole situation and

should also bear the costs in the early stages. Progress may be slow where tenures are more complex or qualities of soil more varied but difficulties should not be allowed to become an excuse for inactivity.

**By Sub-division** is meant the distribution of the land of a common ancestor amongst his successors in interest, usually in accordance with the laws of inheritance, but sometimes effected by voluntary transfer amongst the living by sale, gift or otherwise.

In the Punjab canal colony, sub-division has been checked by restrictions on alienation, and, in the case of certain grants, by the limitation of succession to a single heir. Mr. Keatinge proposed to deal with the evil of sub-division of holding by giving to right holders of economic holding, power to register it as such in the name of the right holder only. The Collector was to decide in each particular case what was an economic holding. On registration as an economic holding the holding became impartible and not liable to further subdivision, and was to be held absolutely and in severalty by the one person entitled for the time being. On a small scale, prohibition of partition and of succession by more than a single heir has been successful in the case of large land-owners whose estates have been declared by special Acts "to be subject to the law of primogeniture;" but such landlords are usually prominent people, members of well-known families, and evasion by them would at once be brought to light, moreover, in such rich families, provision for younger sons is a practicable proposition, a fact which entirely distinguishes their case from that of the majority. It would thus appear that interference with sub-division by restrictions on alienation has been practicable and successful; interference with the ordinary laws of inheritance has not been tried, except in new colonies where special conditions can be attached to new grants or in the case of large owners rich enough to provide for the younger branches; interference with such laws in other cases has been suggested but rejected. Other suggestions for dealing with sub-divisions are the prohibition of partition of a holding below a certain size, the compulsory acquisition of petty and uneconomic holdings and their distribution to those whose holdings would thereby be made "economic," and so on. It has been suggested that Muhammadans might find relief in the Egyptian custom whereby, although the land is nominally divided amongst the heirs, it is actually left in the hands of one to cultivate on behalf of the whole number, or may be handed to trustees to manage for all. Joint farming of the inheritance without partition has been advocated for Hindus. The Belgian custom, whereby one heir, usually the eldest son, buys out the rest through the agency of mortgage bonds would, if adopted, check both sub-division and fragmentation, but it is not likely to meet with favour until more occupations alternative to the cultivation of land become available. —Report of the R. C. on Agriculture in India.

**Protection against pests, insects and diseases.**—Closely bound up with the subject of crop improvement is that of crop protection. The Indian agriculturist is protected against the importation of pests and diseases from outside the country by an All India Act, the Destructive Insects and Pests Act,

II of 1914. The problem of internal protection falls under three main heads. These are protection against pests and diseases, protection against deterioration of a superior variety which results from the mixing of seed and protection against wild animals, and vermin. There are two methods of dealing with the problem of protection against pests and diseases. The first is purely agricultural measures such as taking the help of entomologists and mycologists, the evolution of varieties which are resistant to disease and the general improvement of the surrounding conditions under which crops are grown. In respect of cotton, for example, the deterioration resulting from the mixing of seed has been so marked as to necessitate special measures for dealing with. The more flagrant forms of abuse can be checked by legislation such as Cotton Transport Act of 1925. Damage done to crops by wild animals can be checked by fencing. But it is in most cases beyond the means of the small cultivator. Co-operative societies for fencing can do useful work in this direction. The extent to which pests and diseases can be controlled by attention to the last two of these factors has been very strikingly illustrated in Java where the Research Station Association of the Java Sugar Industry has found that proper methods of cultivation and the introduction of immune or highly resistant varieties of sugar-cane are the most important factors in the control and elimination of pests and diseases. The second method of dealing with destructive pests and diseases is by legislation on the lines of the Madras Agricultural Pests and Diseases Act of 1919.

**Substituting a productive for a wasteful use of the factors of wealth, e.g. turning into productive channels the trained intelligence now devoted to law etc. or the money now hidden away in hoards.**

The supply of educated men for law courts, for ordinary routine work under Government and in business houses far exceeds the demand. So far as Bombay is concerned the saturation point was reached some years ago. The seriousness of the problem presented by unoccupied middle class youth in this province is shown by the fact that it has been found necessary to appoint a committee to examine it and to suggest remedies. In so far as it is accentuated by the drift of educated boys from the villages to the towns, there to swell the ranks of the educated unemployed, it can only be remedied by the spread of education in rural areas in combination with an improvement in the amenities of village life. From the point of view of agricultural development the importance of educational institutions which must play in educating those who will become the administrators, the technologists and the research workers of the future cannot too strongly be emphasised. There is an urgent need of installing in rural communities the ideals of leadership and service. It is upon the homes and fields of the cultivators that the strength of the country and the foundations of its prosperity must ultimately rest. The claims of the rural areas upon the time and interest of the best of India's youth cannot too strongly be pressed. They must now apply themselves to the social and economical problems of country side, and so to fit

themselves to take the lead in the movement for the rural masses. To the factors such as the want of training as to how to save and put by the hereditary instincts and customs of extravagance at weddings and other ceremonials which contribute to the absence of thrift among the poor may be added the want of a safe place where to keep the savings. When a man is able by hard work to save a small sum he knows not where to keep it safe. He generally buries it under the ground where it lies unproductive for years, and he is too often robbed by thieves if not by his relatives or dies without being able to tell any one where the hoard is concealed. This capital, however small it may be, can be made available for productive purposes if a safe place is provided for its custody such as a Co-operative Society.

**Better living.**—Increase in yield by better seed and better cultivation ; security of the harvest gained by the expansion of irrigation, immunity from losses due to pest or pestilence ; higher prices from improved communications of marketing ; everything in short which can be advocated for the material advancement of the people may not bring lasting benefit to the agricultural population. "Only prudence, knowledge and the practice of thrift could relieve the people" in these words the Indian Famine Commission of 1901 concluded their Report. Now so far as the present economic condition of the rural population in this presidency, the Report of the Department of Agriculture in the Bombay Presidency for the year 1929-30 states : "The net earnings of the agriculturist especially in the cotton and ground-nut tracts have greatly increased during the last decade and a half ; but unfortunately much of this wealth, has not gone back into agriculture, in the form of land improvements such as embanking, well-making and fencing or in better-fed cattle..... There are too many agriculturists who have spent their increased incomes on unproductive objects such as litigation, expensive tastes and amenities."

"Expensive tastes are not quite synonymous with a high standard of living. Rice has largely replaced *bajri* ; it costs more but is a less nourishing food. Recent investigations revealed the fact that more sugar than *gul* is being consumed. Even in very rural villages 50 per cent. of the agriculturists have taken to drinking tea. These same people are depriving themselves of milk products which they turn into cash for expenditure on these purposes. The net result would seem to be that the people are less well-fed at greater cost. In Nasik district the dress of the village people in the course of a generation has materially improved both in quality and quantity. The average cultivator, 30 years ago, did not possess a coat ; now it is exceptional to find a man without one. This may sound a humble wardrobe, but I am comparing yesterday with today."

"As regards amenities the ryot has become a motorist, through patronising on a big scale the public buses which incidentally enable him to attend the cinemas in the country-towns. No one will grudge the ryot the infusion of a little relaxation into his rather drab life, but he seems in many cases to be losing the virtue of thrift and to be living above his income...The need



for a more enlightened form of rural education is now generally recognised, but the necessary stimulus seems to be lacking.\* "

The ideal to be aimed at, should be that every individual born in India should have a reasonable chance of developing his capacities to the utmost in the interests of the country as a whole. Now the importance of education in the economics of daily life has already been dealt with. There are other means calculated to stimulate the desire for better living.

**Village guidance.**—Guidance is far more called for in this respect than in anything else. It cannot be reasonably expected of a cultivator that he should unaided take to corporate action and utilise it for the improvement of the village and its surroundings. He lacks leadership. The village teacher and the village headman if trained in general citizenship would be admirably qualified to fill this role. Importance must be attached to linking the village with the social life of the towns.

The problem of eradicating causes of poverty and encouraging everything that makes for rural welfare may be tackled by the formation of Better Living Societies on co-operative lines.

The depressed classes and the aboriginal tribes form a large part of the total population as in the Presidency proper, they number about 14,76,000 out of about 1,60,12,342 persons. A mere touch of the depressed classes is held to cause pollution, which the orthodox Hindus are taught in the name of religion to avoid as sin. The depressed classes are, therefore, obliged to live in a state of isolation from the rest of the community. In the social field the result of this has been most deplorable. Servility is a note-worthy characteristic, the effects of which are worse than those following from isolation. The overwhelming characteristic which includes both the isolation and the servility is that of untouchability. That one-sixth of the population are in a varying degree denied the common intercourse of life, refused permission to obtain water from the village well, refused even the meagre facilities available for the education of their children are facts which every impartial student of social life cannot but admit and admitting must deplore. In no field of work in the villages, therefore, have social workers greater opportunity for usefulness than in raising of the depressed element of the community into full citizenship of common life.

**Aboriginal and Hill Tribes.**—To a certain extent the problem of the Aboriginal and Hill Tribes is not essentially different from that of the Depressed classes. In both cases the difficulty arises from the fact of isolation from the main body of the community. In the case of the Aboriginal Tribes the problem, however, is due not to the denial of opportunities but to geographical difficulties combined with the lack of desire to avail themselves of such opportunities. The sense of servility which has been noted above as one aspect of the problem of the depressed classes is absent in the Aboriginal Tribes. Rather they are characterised by a pride of race despising the culture of the other communities. Both the depressed classes and the aboriginal tribes are heavily indebted. This indebtedness can only be slowly

\* **Note.**—This extract is adopted with some changes.

removed by an increase in the earning capacity of these classes, and by an improvement in their social habits. Education may be expected to give much assistance in the reduction of importance, of costly death ceremonies, and caste dinners for marriages and of other evil habits among them. It was, therefore, suggested at the Tenth Conference of Registrars, 1923, that some special grant should be made to the depressed classes and concession from Government should be asked for, to uplift these people who are without education, without land, in deep poverty, superstition and ignorance. A resolution to the effect that societies for special purposes not included in the functions of the ordinary village society with, if necessary, special assistance from Government should be formed, was adopted. The Starter Committee appointed to enquire into the problems of the Depressed Classes and Aboriginal Tribes (1930) have the following to add: "Co-operation is of great value in freeing these classes from the grip of the money-lender, but at present it is only touching the fringe of the population which seems to be in great need of it."

**'Society established with the object of facilitating the operations'.**—“(a) In the first place it (*i. e.* Act of 1912) recognizes the societies known as unions or central banking unions which are entirely composed of other societies. Joint societies of this character must, under the first proviso to section 4, be ordinarily of limited liability, but they are not subject to the restrictions laid down in section 5 as regards the limit of shares to be held by each member nor to the requirements in the way of numbers or residence, etc., which are prescribed in section 6 (b). The Act further recognizes the existence of such central societies as are composed partly of other societies and partly of individuals, and although the shares of individual members are in such societies restricted by section 5, they stand in respect of sections 4 and 6 on the same footing as the unions described under (a) above. (As the requirements of section 6 regarding the minimum number of members do not apply in either case, there is nothing in the wording of the Act to prevent two societies or one society and one individual from applying for registration, but although no definite number of applicants has been prescribed in such cases it may be presumed that Registrars will exercise their discretion by refusing to register applications which do not represent a reasonable degree of real co-operation.) (c) A further class of society now definitely recognised is a 'Central Bank' or other central society the members of which are individuals, but the main object of which is to benefit not its own members but other societies of co-operative character, (s. 4).

and it is considered reasonable that such a society though formed mainly on joint stock lines should obtain as far as possible, the privileges conferred by the Act on co-operative concerns."—*Government of India Circular No. 13-C dated the 9th March, 1912.*

**'Of the members'**.—As the object must be the promotion of the economic interests of the members it is clear that the society should have no transactions with non-members (s. 34). However, exceptions are made when such transactions are for the benefit of members (s. 35). The Committee on Co-operation (1915) was of opinion that dealings with non-members should as far as practicable, be avoided, but at the same time, the Committee did not think it advisable to press the rule in cases where the operations of a society if confined to its own members would be so restricted that it could not be managed with any prospect of profit or economy. (para, 14, *ibid*).

**'In accordance with co-operative principles'**.—See s. 71 (b) which empowers the Local Government to fix by rule a maximum rate of dividend and thus check profit seeking. In fact, s. 38 lays down a statutory limit of 10 per cent. It is highly necessary to prevent societies from becoming close corporations for the benefit of a few individuals. Many of the non-credit societies will be with limited liability, and the Act has given considerable latitude in the management of such limited societies. The restrictions placed by the old law of 1904 on the transfer of shares, for instance, has, in cases of limited societies, been removed by s. 14 of the Act II of 1912, and under s. 22 (of that Act) a duly qualified successor of a deceased member may, in the case of a limited society, claim the transfer to himself of the share of the deceased. In these and other respects the bulk of the non-credit co-operative societies recognised by the new law are placed on a footing similar to that of the joint stock companies and it will be necessary in practice to see that the Act is not utilised for the benefit of societies which are not really of a co-operative character.—(*Government of India Circular No. 13-C, dated 9-3-1912*).

✓ **Conditions necessary to make a society co-operative.**  
—“The society to be fully co-operative must fulfil many conditions. The theory underlying co-operation is that weak individuals are enabled to improve their individual productive capacity and consequently their material and moral position, by combining among

themselves and bringing into this combination a moral effort and a progressively developing realisation of moral obligation. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. Hence the first condition obviously is that every member should have a knowledge of the principles of co-operation, if this co-operation is to be real and not a sham. In the formation of a society the first essential is the careful selection as members of honest men, or at any rate of men who have given satisfactory guarantee of their intention to lead an honest life in future. As regards the dealings of the societies they should lend to their members only and the loans must in no circumstances be for speculative purposes, which so far from encouraging thrift and honesty, have exactly the opposite effect. Loans should be given only for productive purposes or for necessities which, as essentials of daily life can fairly be classed as productive. The borrowers should be required to satisfy their fellows that they are in a position to repay the loans from the income that they will derive from their increased productive capacity, or that by the exercise of thrift they can effect a margin of income over expenditure which will suffice to meet the instalment of their loans as they fall due. When a loan has been given it is essential that the committee of the society and the other members should exercise a vigilant watch that the money is expended on the purpose for which the loan was granted. It is further advisable to add to the general supervision of the society the special supervision of individual members, by taking personal sureties in the case of each loan. In the event of any default by the borrower an instant demand should be made on these sureties. In the more general matters of the society's business there should, of course, be a committee of management with a president and a secretary, all of whom except those who perform purely clerical duties and have no voice in the management should be members of the society and give their services to it gratuitously. At the same time the ultimate authority should never be delegated to the office-bearers, but should be retained in the hands of the members, who must continue to take a practical interest in the business of the society. With this object the constitution should be purely re-

publican; each member should have one vote and no more in the general meeting and all business should be transacted with the maximum of publicity within the society. For example, there should be kept in some place open to inspection of every member, the names of his sureties and the amounts of the loan still unpaid, and each member should be required to know generally how his account stands; general meetings should be frequently held at which the accounts and affairs of the society should be fully discussed and explained. The express object of the society should be the development of thrift to be spread in the neighbourhood. To effect this object loans must be given only when they are really necessary and desirable. Further the development of thrift and of a proprietary interest in the society should be aided by efforts to build up as soon as possible a strong reserve fund from profits. The society must also be encouraged to obtain as much as possible of its capital from the savings which its teaching and example have brought about among its members and their neighbours. With all these must go the elementary business principles of honesty, punctuality, proper accounts, diligence and payment when due. To ensure all this there must be adequate control from within, increasing vigilance and supervision by the office-bearers and continuous effort by members in learning the principles of co-operation in meeting frequently, in watching others, in working hard and observing thrift, and in punctual repayment of their own loans as they fall due."—(*Pura. 3, Abstract Report of the Committee on Co-operation in India, 1915*).

**Agriculturist** is one occupied in cultivating ground. The term 'Agriculturist' is defined for the purposes of the Dekkhan Agriculturists' Relief Act, 1879, as follows:—

'Agriculturist' shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture, or who ordinarily engages personally in agricultural labour. Agricultural labourers are considered as agriculturists. Note—For further discussion, see notes under the head 'Agriculturist' in s. 8 *infra*.

'The majority of the members are agriculturists'—This is the only remnant of the old distinction between rural and urban in the Act. Act X of 1904 required at least four fifths of the members to be agriculturists for a rural society.

#### Unlimited Liability.

**Unlimited liability.**—The agriculturists and artisans in the

villages want money the former to buy seed, cattle, manure and implements and for other purposes and the latter to buy tools, wood, iron, yarn, etc. They would get all these articles much cheaper if they pay for them in cash. In order to produce his crops a cultivator must incur expenditure 5 or 6 months and even upto a year, before the crop is harvested and sold. If he could borrow money for necessary expenditure at harvest time and hold over his grain for two or three months he would get much larger price for his grain. An agriculturist, ordinarily borrows money required for his various wants on the security of his land either from Government as *tagai* or from a money-lender. Sometimes he borrows from both Government and the money-lender. An agriculturist is never certain that he will be able to get a Government advance and when an advance is sanctioned there is much delay in getting the money. There are other inconveniences; often the advance is not enough for all the agriculturists in need of money. Moreover, Government does not give *Tagai* for all necessary purposes. The money-lender usually charges a high rate of interest. The agriculturist is seldom able to know if the money-lender keeps a correct account. The question is how to raise loans at a moderate rate of interest. At the outset it may be mentioned that without security there can be no credit. The ordinary agriculturist has two sorts of securities to offer, firstly, his property consisting of houses, cattle, farm implements, etc., and secondly his good name for honesty and industry. If he combines with several other agriculturists, the amount of security gained becomes considerable. This idea is carried out in an agricultural co-operative society, which is formed in its first stage by a number of individuals not less than ten who, because they are unable individually to obtain the credit which is necessary for their small agricultural operations either in adequate quantity or at rates or on terms of honest dealing which enable them to work at a profit, combine together to obtain this necessary credit on reasonable conditions. To effect this each becomes liable for the debts of the society to the extent of the whole of his assets. In other words the liability must be joint with that of all members and unlimited. ) But it has to be remembered that if all the members are of the same class, too poor individually to be trusted with any loan at a rate of interest which does not include a very large

proportion of insurance to guard against the risk of non-payment it is obvious that the risk on the loans is in no way diminished from a purely material point of view by the combination. Even Mr. Wolff had to admit that the unlimited liability of a borrowing member who has borrowed to the full extent of his credit is not worth much. It is, therefore, suggested that if a number of well-to-do persons join, not to obtain credit facilities they already possess, but to assist their poorer friends they will provide a substantial security to a creditor for any money lent to the society and used by the poorer members. This, however, is open to the objection that it will be pure charity and not co-operation for common needs. In an unregistered society unlimited liability would cause great hardship because the creditors may sue any single member for their debts. A registered society is a corporate body and it is the society and not the members who enter into contracts, therefore, where the safe-guards against loss are properly understood the adoption of unlimited form of liability for agricultural credit societies of India has not been found to have the effect of keeping out the richer peasants. Because unlimited liability which is enforced by law in these cases takes the form of *contributory unlimited liability* that is to say that where there is deficit in the engagements of a society to its creditors, this deficit shall, after the full payment of shares (if any) be recoverable by a series of *per capita* levies upon the members upto the full extent of their property, direct proceeding by a creditor against individual members being forbidden; this is made clear by the addition of the expression to s. 5 (2): "and the members of such a society shall on its liquidation, be jointly and severally liable for and in respect of all obligations of such society" (see notes under the head "On its liquidation" *infra*.) The law did not specify definitely the character of the liability nor was there any data to show the interpretation put upon it by the courts. It was, therefore, thought that the unlimited liability of a society was intended to imply the liability of the whole of the property of the members of a society for the debts due by the society. The impression was that it entailed the liability of the whole of the property of each member of a society for the debts due by the other members to the society. But it should be understood that the practical difference between the two aspects of the liability is perhaps less than might at first sight

appear. Unlimited form of liability was recognised by Sir Edward Law's Committee of 1901 to have come first in the historical development of credit. It was held by them to be the form of liability best suited to agricultural societies. It is the cheapest form of the security that can be developed in a poor community. Cl. (2) of the proviso insists on unlimited form of liability in the case of societies the object of which is the creation of funds to be lent to its members. It was considered advisable to limit the clause to 'credit' societies since the liability of productive societies will ordinarily be limited.—*Fourth Conference of Registrars, 1909.*

As the liability is joint with that of all the other members of a co-operative society members must be careful to see that only respectable persons of industrious and straight-forward character are admitted to membership. Otherwise they may themselves be called upon to make good some default. Membership should be restricted to a small area preferably a single village. This will enable members to be thoroughly well-acquainted with each other and to exercise an effective mutual control. For the same reason the size of the society should be subject to a limit. Many societies in this presidency have lost their unity and become inefficient from the fact that they have allowed their membership to become unwieldy. All the members of a village community are of course eligible, but co-operation being a union of efforts among more or less similarly situated persons for the attainment of a common end, a mixture of membership with too great a diversity in occupation is not quite desirable. It does not ordinarily work well owing to lack of common interests. An important point in the cardinal doctrines underlying the co-operative idea is that all loans must be used for the purposes for which they are advanced. The reason for laying down this rule is this: each loan should mean so much earning capacity, so much producing power for the individual borrower. The creditors' real security consists not in the material asset of the members but in the desire of the members to put the borrowed money to productive uses and to repay the loan out of the profits made thereby. The guarantee consists in the expectation that each member of the society knowing that he stands to lose all by the default of the others, will exert moral pressure on his co-members to ensure that they use for a proper productive purpose the money which they have borrowed



and duly repay it at the appointed time. The security in fact lies in the use of each loan for genuine productive purposes, the honesty, thrift of the members, the watchfulness they exercise over each other, the moral influence which they bring to bear upon dishonest or unthrifty co-members and the feeling of solidarity which is usually awakened by association for a common purpose. One of the conditions constituting businesslike management in a co-operative society is that it should be made a fundamental and indispensable rule that no risk whatever should be incurred, no speculation entered upon, but that all business taken up should be perfectly safe. That follows from the principle that co-operation studies not selfish gain but common service. Co-operation and risk or speculation absolutely exclude one another. There should be absolutely nothing undertaken that involves risk. The most effective safeguard to ensure this will be the enforcement as reality, of strict responsibility coupled with maximum of publicity. Every member must have an equal say, if he chooses, and have at all times means open to him for ascertaining what has been or is being done, and for taking the opinion of his fellow-members upon it. Involving the possibility of greater loss, unlimited liability effectively sharpens vigilance and disposition to be critical. All profits are carried to the reserve fund the object of which is to improve the credit of the society as a whole and to protect members from the enforcement of unlimited liability ( s. 40 ). All members are jointly and unlimitedly liable for the debts; therefore, it is necessary to see that those who become members by the possession of shares are men of the right type. The members must realise that the society's interest is their interest; its gain is their gain; its loss their loss. In fact, they must be loyal to it. This is also necessary to secure financial stability. Rapid changes are apt to create distrust in the minds of depositors. It is, therefore, necessary to place restrictions on transfer of shares ( s. 14 ). A member is responsible for the debts along with others. He should not, therefore, be allowed to shirk the responsibility by withdrawing from membership. He must be held liable for the debts, etc., but for the sake of certainty and convenience the period of two years is fixed ( s. 28 )

**Note.**— For an explanation of unlimited liability, cf. the model by-laws of societies with unlimited liability.

**Limit to borrowing.**— A society which borrows with undue freedom is likely to find itself in difficulties. It is, therefore, necessary to fix in some way the limit upto which a society may be allowed to borrow.) Rule 7 makes it necessary for a society with unlimited liability to fix in a general meeting the maximum liability which it may incur in loans and in deposits from non-members with the approval of the Registrar. Model by-laws of credit societies with unlimited liability state that it is the duty of the annual general meeting to fix the amount of capital to be raised by accepting deposits and raising loans. Model by-laws further lay down that the maximum normal credit of every member must be fixed every year. In share societies with unlimited liability an accumulation of owned capital is arrived at by the route of a share system rather than by that of the reserve fund. The more shares the members subscribe the more firmly established will the society be and the better will be its credit with the outside capital. The advantage of share capital is that if in case of liquidation by the full payment of shares the spare capital is sufficient to meet any deficit that may be found to exist, there is no need of any further levy to meet the liabilities of the society. In case there be any deficit it will be recoverable by a series of *per capita* levies upon the members upto the full extent of their property. Unlimited liability is adopted to offer substantial security to outside depositors. It is, therefore, necessary to see that the security is real; each member belongs to that society only. If it be otherwise, if he is a member also elsewhere the measure of the value of the member's liability must at the very least become seriously reduced. Rule 45 of the rules prohibits the membership of two societies with unlimited liability. For the same reason it is suggested that it should be made a condition of membership and resolved in a general meeting that no member should borrow any loan after admission except with the permission or at any rate the knowledge of the Managing Committee. The Committee on Co-operation, (1915) however, did not think that unlimited liability involved any obligation against the alienation of property by members and although the material basis for the liability was thus rendered somewhat fluctuating and indefinite, the Committee did not consider that an arrangement which would in effect impose a definite charge on all their existing property would be either practicable or desirable.

**'Of which no member is a registered society'**.—Without this condition some of the Central Banks, of which a majority of the members may be agriculturists, will have unlimited liability. The Central Banks cannot possibly assume unlimited liability. Similarly, there are other kinds of societies which would also necessarily have to be of unlimited liability. That would be undesirable.—*Bombay Legislative Council Debates, July 23rd, 1925.*

**'On its liquidation'**.—These words were introduced by the Select Committee, because it was thought desirable that the unlimited liability to which every member of a society organised on that basis is exposed, should be enforced only when the society goes into liquidation. The unlimited liability should be construed to mean "unlimited contributory liability." That is to say, the members are liable to make contributions to make up any deficiency in the assets of the society when it is wound up. It would be very undesirable if the creditors were allowed to enforce unlimited liability for the society's debt even against individual members of a society before the liquidation, for the procedure will prevent many good members who now join a society merely to help it, for they will be afraid of running the risk of having their property attached for debts incurred not by themselves but by the society even before the society goes into liquidation. If the society makes default there is s. 44, under which if any society is unable to meet its liability, the creditor can ask the Registrar to inspect the books of the society and if the Registrar finds that the society is not able to pay its debts, it can be liquidated. Thus the position of the creditor is not in any way in danger.—*Bombay Legislative Council Debates, July 23rd, 1925.*

Co-operation in the sense in which it is generally used implies a bond of union over and above the casual relations of the money tie. It implies, that is to say, a co-operative society in which the associated members join together for the attainment in common of some business purpose. It may take any of the following forms: (1) credit; (2) purchase or purchase and sale; (3) production; (4) production and sale; (5) housing; (6) insurance and a society established with the object of facilitating the operations of abovenamed types. Central Banks and unions may be included in this class as they facilitate the operations of primary societies.

**Central Banks.**—The backbone of the co-operative movement in India lies in the central bank. This statement may appear to be a little too sweep-

ing one but it is sufficient to give us an idea of the importance of this institution. Experience has shown that primary societies if they are to finance the needs of their members regularly and promptly, have to look to some other institution such as a central bank for loans. These are based on share capital and limited liability and in constitution are not very unlike joint stock banks. (S.254 of the Indian Companies Act which defines a joint stock company). A central bank should use its funds exclusively in loans to other co-operative societies. Theoretically, therefore, in the interests of pure co-operation, its share-holders should consist only of co-operative societies. But the representatives of such societies are not usually trained business men, and this type of organisation would exclude leading local gentlemen from taking part in the movement. If, on the other hand, the share-holders of the central bank were simply individual financiers, there would be no identity of interest between the borrowing and lending parties and the spirit of co-operation would be lost. Hence nearly all co-operative central banks have developed a mixed constitution. The societies which borrow from them are required to take up shares in proportion to their borrowings, and in this way gradually secure a dominating voice at the annual general meeting. Central Banks are thereby brought to realise that they are servants and not masters of the societies which they finance. The individual shareholders are generally local men of influence, who are willing to take part in public work. Any profit-seeking tendency is checked by the limitation imposed by s. 38 which states that no society shall pay a dividend to its members at a rate exceeding 10 per cent. (See also notes under s. 38 *infra*).

**The objects of a District Central Bank are:**—(1) To find finance for co-operative societies in the district in which they are situated and generally to carry on banking business with such societies; (2) to act as a balancing centre for the surplus funds of such societies; (3) to supervise and estimate the credit of affiliated societies; (4) to develop co-operative societies within the district.

**Unions.**—It is a maxim of co-operation that supervision should be decentralised and should, as far as possible, be done by the men on the spot, who will know local conditions and suffer by local failures. Primary societies are often remote and are composed of illiterate members and require far more guidance and supervision than the Registrar's staff is able to give. Societies are, therefore, induced to form themselves into unions with a small central committee which is charged with the duty of supervising all societies which have become members and of seeing that they are honestly managed and fit to be entrusted with loan. The idea underlying the various kinds of unions is to make each union the centre of all co-operative activity in the area it serves, or for the kind of primary societies it affiliates, to become an active agent in the development of economic life in the area, to influence, foster and create a band of local workers in each centre, who should, in course of time, be able and willing to manage the affairs of their locality and be as little dependent on outside help for the management of their internal affairs as practicable.

The objects of a union as stated in model by-laws are:— (1) To develop co-operative societies within the area of the union. Model by-laws for supervising unions add: to organise and guide co-operative resource societies within the area of the union formed to provide agriculturists with the resources required by them individually either in credit or in seed, manure, implements and the like or increase their resources by securing the ready and honest sale of their agricultural produce. (2) To provide means of assessing and guaranteeing the credit of each co-operative society admitted into it. (3) To control its constituent societies by careful and regular supervision, and issue warnings and instructions with regard to faults. (4) To settle matters of common interest, to advise and assist its members, to further their interest in every way and when desired to provide a meeting place, club or library; and model by-laws of supervising unions add: to promote the spread of co-operation and to provide for training in co-operation and education of members of co-operative societies and to represent the views of members of co-operative societies on any question affecting them or the co-operative movement in general. (5) To purchase on indent for members of constituent societies such resources in seed, manure and implements as they may require pending the organization of separate societies for the purpose, or to purchase such articles on indents for constituent societies when required or to arrange for sale of the agricultural produce of members without incurring any financial responsibility.

**May be registered.**—The Registrar has a discretion in the matter of registration of a society under the Act. An appeal is provided for under s. 64 against the order of the Registrar refusing to register a society. ( *Note*: for a full discussion of the question, see notes under the head “ The power of Registration ” in s. 4 at p. 29 *ante*.)

**The main object of registration** under the Co-operative Societies Act or the Indian Companies Act is to facilitate business. On registration the society becomes a corporate body distinct from the persons composing it and the person doing business with it can sue it in its name. It is not necessary for him to know the name and address of the partners; this obviates the necessity of joining them as plaintiffs or defendants in any suit or proceeding ( See also notes to s. 23 *intra* ).

**Company law.**—S. 4, Indian Companies Act, 1913, states that if more than ten persons desire to carry on in partnership the business of *banking* or more than twenty persons desire to carry on in partnership any other business (that is, other than banking) for the *acquisition of gain* by the partnership or by the individual members thereof, they must either register as a company

under the Companies Act, etc., otherwise the partnership would be illegal. Now the provisions of the Indian Companies Act, 1913 do not apply to societies registered under the Co-operative Societies Act, 1925 (s. 68). Therefore, a society must be registered under the Co-operative Societies Act or under the Indian Companies Act, otherwise the association will have no existence in law.

**An association which is illegal for want of registration** has no corporate life. It cannot sue for debts due to it, or for breach of contract or a mortgage executed in its favour, nor can it be sued. The members of such an association are in the position of being individually liable for any orders given or contracts made by them personally while neither personally, nor as members, nor collectively as a society can they enforce any claims in a court of law. Illegal associations (*e.g.*, associations contravening provisions of s. 4 of Companies Act) cannot be wound up under the provisions of part IX of the Companies Act. No *unregistered company* can be wound up voluntarily or subject to supervision (s. 271, *Indian Companies Act*) but the Court can order it to be wound up under part IX of the Companies Act provided it is illegal under s. 4 of the said Act. It can have no legal rights over property and every individual member would be liable to be sued by any or all of the creditors for the debts of the society. Unregistered societies will not enjoy the privileges such as exemption from income tax, stamp duty, registration fees, etc., conceded to societies registered under the Co-operative Societies Act, 1925 ( See also notes to s. 23 *infra* . )

#### Limited liability.

**Limited liability.**—In a limited liability society the liability of a member does not exceed the amount, (if any) unpaid on shares for which he or his estate is liable. ( *Cf.* Model by-laws of credit societies with limited liability ).

**Object.**—Limited liability societies are intended to meet conditions for which rural or unlimited societies are unsuitable. In a town members of different classes or professions cannot all be acquainted with each other; they are usually artisans or traders who own very little land or other real property and, therefore, have no very substantial securities to offer. The interest on loans paid by these industrial classes in towns is not lower than that charged to agriculturists. With rising prices,

insufficient and insanitary house accommodation, wages often held in arrears, and a desire for high standard of living consequent on the spread of education, industrial difficulties are bound to arise. These cannot be alleviated without money. Funds are also required by the petty industrial classes for their business, but they do not want to be troubled with their neighbours' affairs. It would be unreasonable to expect such persons to submit to joint and unlimited liability. The urban societies have, therefore, to start with limited liability. The Committee on Co-operation (1915) in para. 16 of their report, however, state that "as a general principle when the clientele is fairly well-to-do, and owing to local conditions full mutual knowledge cannot so easily be secured among the members, and when the share capital is adequate to the business undertaken, liability should be limited, but otherwise it should be unlimited." The Committee also thought that such caution as is required in dealing with non-agricultural societies should be exercised while dealing with such societies. The circumstances of many societies compel them to follow purely business methods and to over-look to some extent the moral sanction that should govern their work. By limiting their liability the security to depositors is reduced. In order to raise working capital, therefore, the societies have to provide some sort of guarantee in place of unlimited liability. This is done by the issue of share capital. Every member is required to take up and subscribe to at least one share and the total fund raised by shares affords a reserve security to depositors and lenders.

Mr. Wolff writes in his *Co-operation in India* :

"Where there is a less security given in the shape of capital, the measure has to be made up by caution in action and vigilance in supervision. There is no limit to operating districts necessary in societies of limited liability type, none except such as consideration for the convenience of the society management may prescribe. Limitation of liability does away with the necessity to state local limitations. And there is no occasion whatever for making members leaving the district to resign or else forego the services, of the society which services ought as things develop to become equal in variety to those of any commercial bank."

N. B.—For an explanation of limited liability, cf. the model by-laws of societies with limited liability.

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

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

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

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

### Commentary

[*Cf.* s. 5 of the Co-operative Societies Act, 1912, Appendix B.]

**Limitation to number of shares to be taken by individuals.**—In the case of individual share-holders the ordinary object of a society is to raise the amount of share capital which it requires without allowing any individual to obtain a prepondering voice in the management. It is also the object to check the tendency to be a capitalist and profit hunting. In a Co-operative Society capital cannot be allowed to predominate and no single individual can be permitted as in joint stock concerns to subscribe to as many shares as he likes, shares being an invitation for membership rather than for the getting together of capital required for business.

This section should not be taken to mean that the liability of a society with a share capital must always be limited. Agricultural Credit Societies with unlimited liability may be organised on share basis and distribution of profits may be made in the case of such societies as provided in s. 40 (b). The restriction on the amount of shares which an individual may hold is placed with the object of excluding as far as possible mere seekers after profit. [See also ss. 39 and 40 and notes under s. 19. and s. 71 (2)(p).] But in accordance with the recommendations from the Central Co-operative Institute and the needs of housing societies and in view of the altered value of money it was thought desirable to raise the limit of interest in the present enactment. (*Statement of Objects and Reasons*). Moreover, the Bombay Provincial Co-operative Conference of 1919 had recommended that permission be given to Central Banks, Urban Credit Societies and Stores to allot shares of value not exceeding Rs. 3000 to a single member.

**Capital** here means the funds contributed or guaranteed by shareholders or members.—*Findlay Shirras on Indian Finance and Banking, p. 406.*



**Share.**—A society or company is sometimes formed with a certain capital proposed to be raised and then it is determined that the capital shall be divided into a fixed number of shares of a fixed face value. The number of divisions into which the capital of a company is divided is called a *share* and is given the appropriate number.

**Share Capital.**—The word share has been introduced before the word capital to make it clear that debentures and deposits are not included in capital.—*Fourth Conference of Registrars, 1909.*

**Share Capital** may be classed as (1) *Authorised capital*, i.e. the capital which a society is authorised by its by-laws to raise (2) *Subscribed Capital* i.e. the total value of the shares taken up by members, (3) *Paid up Capital* i.e. the amount of share capital actually paid up out of the sum (subscribed capital) which they have undertaken to pay. The difference between the authorised capital and the paid up capital represents the reserve liability of the members. The idea of reserve liability is based on English practice and the Committee on Co-operation did not consider it well adapted to the circumstances of banks in this country. In the case of a society with a limited liability this represents the maximum amount which a liquidator can call up by way of contributions under s. 50 (d).

**Interest** is the right or claim of a member in the funds of the society or in some of the uses or benefits pertaining to the society. It is a right of ownership over the assets of the society. It is this right of ownership as a co-owner or partner in the concern is the member's interest in the society. Cl. (c) of this section apparently limits the acquisition of rights by mortgage in the shares of a society by an individual member to Rs. 3000. S. 19 makes the transfer or charge of shares or interest of a member in the capital of a society subject to the maximum laid down in this section. This restriction on transfer or charge is in accordance with the co-operative principle, namely, the control of the society should not pass in the hands of a few individuals. The idea is that the society should not be a union of capitals but of persons.

**Difference in shares and interest.**—The following are the criteria which should distinguish shares from other sorts: (1) Shares must have a certain fixed value, the face value which may be fully or partly paid up. (2) All shares entitle their holders to a dividend which is not paid at a fixed rate,

but is a fraction of the annual profit, and, therefore, varies with the prosperity of the society. (3) Liability should be limited to the face value of a share or some multiple of it. This feature, namely the right to participate in the annual profits is also essential to the idea of a share. If like deposit, a share carries a fixed guaranteed rate of interest its special character is entirely altered and it should properly be called a debenture. Unless a share-holder undertakes to share both the losses and the profits of a society, he is merely a depositor or a debenture holder and cannot be said to have share in the society, in any real sense. He has no stake in the success and it would be extremely difficult to indicate in what way he differs from the ordinary long term depositor. The Fourth Conference of Registrars, 1909, passed the following resolution : " For the present all that is required is that deposits and debentures should not be included in shares. "

**Three thousand and ten thousand rupees.**—These figures mostly concern the central co-operative banks because, generally capital does not come out from the rural areas. It is on the security of share capital that members as well as non-members make deposits in and advance loans to the society. People living in the rural as well as in mofussil urban areas are poor and they cannot afford to purchase many of the shares floated by the society. The share capital mainly comes from individual member who may be induced to join the central co-operative banks and to invest funds therein. Therefore, unless the figures are so raised the people will be investing only small sums in spite of the fact that they are ready to help their brethren by investing large amounts. The Committee on Co-operation in dealing with this question stated that they came to the conclusion that so far as central banks were concerned, greater liberty should be left to them. Calvert says : " This restriction may be removed by general or special order of Local Government passed under s. 46." ( This corresponds to s. 67 of the Bombay Act of 1925 ) The Committee on Co-operation (1915) considered that the statutory limit should be raised to Rs. 5000 or 7000 where difficulty is experienced in raising sufficient share capital for central banks, but added that in such cases precaution should be taken to ensure that each share-holder should not be allowed more than one vote. " If the figure is not changed people of larger means may not come in and the societies will thus suffer.—*Bombay Legislative Council Debates. July 23, 1925.* The Committee on Co-operation, 1915, has, however, sounded a note of warning that the object of a bank being to extend a share-holding interest to as

many suitable members of the public as are willing to come forward and take up co-operative work, it is advisable so long as enough share capital can be obtained in the ordinary way to adhere to the limit fixed by the Act. (Cf. Notes to s. 18 also).

**Model by-laws of share societies** generally provide that an elected applicant does not become a member until he subscribes to at least one share and pays the first instalment thereon. This obviously prevents the joint-holding of a share. The Committee on Co-operation (1915) adds. "In cases where difficulty is experienced in raising sufficient share capital the shares are sometimes subscribed by a few large holders, and when necessary for these purposes the statutory limit may be raised by a special order of the Local Government to some higher figure such as Rs. 5000 or Rs. 7000. But in such cases precaution should be taken to ensure that each share-holder should not be allowed more than one vote. This system is likely to keep alive much interest in any ordinary member without deterring those who can afford it from subscribing to more than one share."

**In the case of Housing Societies** the maximum limit is raised to Rs. 10,000 obviously, because the cost of buildings erected by the housing society for its members would demand larger capital than societies of other types.

**7. (1)** No society, other than a society of which a member is a society, shall be registered under this Act, which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

Conditions of registration.

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

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

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

#### Commentary.

**History.**—This is s. 6 of the Co-operative Societies Act, 1912, (See Appendix B).

**Company Law.**—Any seven or more persons (two or more in the case of a private company) associated for any lawful purpose may form an incorporated company.—See s. 5, *Indian Companies Act, 1913*.

**Persons residing in the same town or village or in the same group of villages.**—The principal object of all co-operative credit societies is the encouragement of thrift, the accumulation of loanable capital and the reduction of interest on borrowed money by a system of mutual credit. But proper development of mutual credit can only be attained under a system of membership which will enable all members of a society to exercise by means of personal acquaintanceship and moral pressure, a mutual control over one another in their transactions with the society. Hence it is essential that in both urban and village societies membership should be by election, and further that membership should be limited to residents in the same town or village or group of villages.—*Report of the Committee on the establishment of Co-operative Credit Societies in India, 1903*. The Maclagan Committee on Co-operation in 1915 thought it to be a good general rule that there should be one society to one village and one village to one society. However, there are exceptional circumstances which justify departure from this rule. They have been described as follows in the Resolution of 1914:—“Where for instance, a group of villages can conveniently form a co-operative unit they may without objection be served by one co-operative society. Where persons scattered over large areas are for any special reason so thoroughly in touch with one another that they are able and willing to be jointly responsible, the condition of propinquity is not absolute, and the law accordingly allows that members of the same tribe, class, caste or occupation, even if not resident in the same village or group of villages, may become members of the same society. Similarly, it is permissible to have more societies than one in a single village in cases where a village is so large that all the residents are not mutually acquainted, or where a village is so divided from any cause that one set of residents could not be expected to be jointly responsible for another. But the essential principle remains that societies should ordinarily consist of members so closely in touch with one another that they are willing to be, and can be both in name and in fact, jointly responsible.” No limit is laid down for a group of villages. But the smaller

the distance, the better for the working of the society, for the members can know of one another's affairs and control one another's actions. In a small society the sense of joint responsibility is keenly felt. Under Rule 4, by-laws must show the area of operations. ( See Appendix A. )

**Ten persons** —The application for registration must be submitted by at least ten persons. Even after registration the minimum number of ten persons has to be maintained otherwise it is liable to be cancelled ( s. 48 ).

Three conditions are necessary for a Credit Society. They are: (1) There must be ten members. Failure to retain ten members may lead to cancellation of registration [s. 48) (2)]. (2) They must be majors. Otherwise it is liable to cancellation [s. 48) (3)]. (3) The said members must reside in the same town or village, etc., or should be members of the same tribe, class, etc. Breach of condition (3) providing for the members to reside in the same village, etc., does not lead to cancellation unless this is provided for in the by-laws. It is rendered necessary under the rules for a society to make by-laws defining the area or the tribe. Repeated failures to observe its own by-laws in this respect might entail cancellation; for, the conditions in this section as to residence of members in a fixed area and their similarity in tribe, class or occupation, must be adhered to. The Government of India have remarked that it is intended that the Registrar should, in sanctioning the proposed by-laws of a credit society satisfy himself that proper residential and class qualifications are rendered obligatory for future members and the qualification should not be altered save by an amendment of the by-laws sanctioned by the Registrar. It is to be noted that under Rule 45 a person cannot be a member of more than one society with unlimited liability. (See Appendix A.)

No doubt a 'person' includes any company or association or body of individuals, whether incorporated or not [ s. 3 (35) of the *Bombay General Clauses Act, 1904* ], but here in view of the words 'above the age of eighteen years' it is clearly used in the sense of individual human beings. Women can be members of co-operative societies. ( See notes under the head "Above the age of eighteen years." *infra.* )

**Note** :—Clause (1) does not apply to Unions or to Central Banks. There is nothing in the wording of the Act to prevent two societies or one society and one individual to apply for registration of a Central Society.

**' Other than a society of which a member is a society '**—This is introduced to provide for the registration of unions of societies.—*Fourth conference of Registrars, 1909.* The old Act of 1904 was defective in making no provision for a co-operative society the members of which were themselves co-operative societies. In France and Germany the shares in Provincial and Central Banks were held principally by the small societies which dealt with them and this is thought to be undoubtedly the best system for then the profits go to the societies and the management is in the hands of their representatives.—*Third conference of Registrars, 1908.* (N. B. —In their case the limit of numbers does not apply.)

S. 66 empowers Government to exempt societies from conditions as to registration. See notes to s. 66.

**Size of societies** :—The number of members will usually depend on the nature of the bond which holds the community together. In village societies where liability is unlimited the number of members will, as a rule, be small; where the bond is religious, tribal or industrial, the number of members will often be much larger. Where the liability is limited, and the society is situated in a town, it is but natural that the number should be much larger for the society will appeal to a larger community.—*Second Conference of Registrars, 1907.*

Societies to be truly co-operative ought to be open to all fully qualified. On the other hand it is necessary that they should not be allowed to be unwieldy. This can only be achieved by sufficiently restricting the area of their operations. The Committee on Co-operation in 1915 wrote in their Report :

“The members of a society should be few to start with, and increases should be gradual and the ultimate total moderate. Small societies are more easily supervised and trained in co-operative principles, just as small classes are more easily taught in schools. If a society is small, it affords a better opening for local talent. It brings more men to the front, trains them to undertake responsibilities, and by carrying on a business not exceeding the capacity of the committee prevents the domination of one man.”

Many societies in this Presidency have lost their unity and become inefficient from the fact that they have allowed their membership to become unwieldy. Mr. Wolff says:

"Education by co-operation, wonderfully effective as it is when allowed free play, is quite necessarily limited to small local organisations. In a large society, possibly very ably officered, the very fact of its being so officered, destroys its educational potency. There are no pupils there. There are the fully trained teachers who manage but do not teach. The member is there not called upon to think for himself. He has the thinking done for him. It is in the small society, where simple minds are taught and compelled in a simple way to do the thinking for themselves, to tackle the daily problems and form their own ambitions and aims, that co-operation becomes educative"—*Wolff on Co-operation in India*. But he sounds a note of warning in the following terms:

"In India there seems to be at present a disposition to overdo such restriction in respect of size and district which may become a hindrance to progress. Raiffeisen prescribed smallness, not as an advantage in itself but as an indispensable condition for the attainment of a well-understood end: close touch and intimate mutual knowledge. Otherwise smallness is not a benefit but rather a hindrance. A small society necessarily means small power for work, and proportionately greater expense for necessary outgoings, and a heavier toll upon each member, if any loss by default should occur. It also means greater risk in the event of resignations or deaths. All that is really required in the matter of smallness is that there should be sufficient opportunity for supervision and trustworthy knowledge".—*Wolff on Co-operation in India*.

**Notes**—Where the object of the society is the creation of funds to be lent to its members unless the majority of members of such a society are not agriculturists the liability must be unlimited (s. 5). The area of its operations must be limited as directed in cls. (a) and (b) of s. 7 of this Act. The reasons for such a provision are obvious. If the liability is unlimited the members have to select only those whom they see every day, and in whose character they have the utmost confidence. Such members will, as a rule, reside within a very small area.—*Second Conference of Registrars, 1907*.

**Above the age of eighteen years:**—Under s. 3 of the co-operative Credit Societies Act 1904, this condition was prescribed for the purposes of registration. The same condition was retained for membership after registration [s. 4 (b) *ibid*], because it was then thought that full effect could not be given to the co-operative principles on which societies were based unless every member had a voice in the management.—(*Third Conference of Registrars*

1908.) Even after registration the same condition regarding age has to be maintained in the case of at least ten members, otherwise the society is liable to be cancelled (s. 48). The Act of 1904 was, however, found to be defective in making no provision for the safeguarding of a minor's interest. On the death of a member the society could pay to or transfer to the credit of the person nominated as heir or in absence of such nomination, to his heir or legal representative all moneys due to deceased. Whatever the wish of the deceased or the advantage of the minor, a minor could not be a member under s. 3 of that Act. To pay money to a minor was absurd as it was likely to be appropriated by some one else. A legal guardian could be appointed, of course, but such appointments were rare among agricultural classes and could not be encouraged as they generally were followed by dishonesty. When, therefore, a member left a minor as heir with no guardian a society could only pay the money to a child who could not give a legal receipt or transfer the money to his credit which was not legal under the Act. The matter of safeguarding the interest of minors on the death of members was thought to deserve careful consideration. As an instance of its practical importance the case of a village consisting of 24 members, 23 of whom had been carried off suddenly by an epidemic was cited (*Third Conference of Registrars, 1908*). Therefore, in the Co-operative Societies Act, 1912, the old section was amended so as to retain the condition that members at the time of registration must be over eighteen years of age and to remove the necessity of debarring minors from becoming members when they were heirs of deceased members (*Sixth Conference of Registrars, 1912*). However, there are certain disabilities to which a minor is subject, for example, a minor member cannot make a nomination. The question of the relation of a society to the minor heirs of deceased members is, subject to s. 27, left to the operations of the ordinary law (See notes to s. 27).

**Minors:**— In limited liability societies, the admission of minors depends on whether the shares are fully paid up or not. In the latter case the minors cannot be called to pay the reserve liability.—(*Culvert*). In unlimited liability societies, there is no object in admitting minors as (1) they cannot incur liability, and (2) they cannot obtain loans except perhaps for necessities.



The societies should rather abstain from admitting minors.—  
*The Law and Principles of Co-operation by Calvert (1926 Ed.)*

**Notes:**—Under the old Act of 1904 no minor could be a member of a society. The Act of 1912 laid down that at registration none of the applicants should be a minor. There was apparently no reason why a minor should not be made a member after registration. However, it was thought undesirable that any minors except heirs of deceased members should be made members. The Sixth Conference of Registrars, 1912, considered that minors should not necessarily be debarred from becoming members of societies when they were heirs of deceased members.

**Class Societies:**—Soldiers of one regiment can legitimately be held to be a class for the purposes of this section. ( *See the proceedings of the First Conference of Registrars, 1906.* ) There are, for example, societies composed entirely of weavers or leather workers, tanners, brass workers and others where the professional tie among members is strong. The Starte Committee (1930) thought that separate societies for the Depressed classes were needed in the case where they were producers and they ought to be encouraged, for instance, the “Dharwar Machigar Co-operative Credit Society” is not only valuable in improving the finances of its members, but also in the sense of self-respect, and confidence which it gave to the community by the training in self-government and the opportunities afforded through the society of mixing with other communities in co-operative conferences. [ *p. 40 (ibid.)* ]

**Caste Societies** are societies confined to the members of one caste within a certain area. Several interesting institutions of this type, among the native Christians of Bengal, the Saraswat Brahmins of Bombay, the Rajputs of the Punjab and the Jats and Tharus of the United Provinces can be mentioned. The general opinion is that, though the tribal organisation should, as far as possible, be utilised, it would be a mistake to foster tribal societies at the expense of institutions admitting the members of more than one caste. ( *The First Conference of Registrars of Co-operative Societies, 1906.* ) While no objection need necessarily be taken to communal or caste societies, it is very desirable that such societies should not be encouraged in ordinary villages. ( *Eighth Bombay Provincial Co-operative Conference, 1919.* ) The Starte Committee appointed to enquire into the problems of the Depres-

sed classes and Aboriginal Tribes in the Presidency proper in their Report (1930) considered that as far as possible the Depressed classes should be encouraged to join the common village co-operative credit societies as they will learn thereby to work with other communities. Mr. Wolff also was of opinion that such societies besides not being truly co-operative, could hardly succeed, because they were too homogeneous and the demand for money would all come at the same time. But on the other hand he had found it impossible to get these classes such as weavers, for example, who are both conservative and suspicious to co-operate with any others but those of their own caste and occupation.—*First Conference of Registrars, 1906.*

**Tribal Societies** are societies dealing with the members of a tribe scattered over a fairly large area, whose one bond is the fact that they are a more or less backward or depressed class. The Bhil societies in Dohad are an instance of such societies. The Tenth Conference of Registrars, 1928, recommended special societies for depressed classes for special purposes with if necessary assistance from Government. The Starte Committee (1930) considered that where the aboriginal tribes lived in villages occupied also by other classes they should be encouraged to join the general societies. This may not be possible in mill areas where special societies must be organised on their behalf. It is a matter of great satisfaction that Government (this is at the cost of Government and the Provincial Bank jointly) have appointed a special Mamlatdar for furthering the establishment and supervision of societies amongst the aboriginal tribes of the Dohad and Jhalod talukas of the Panch Mahal district. The Committee recommended that the principle should be extended in Khandesh, Surat and Thana districts where there is a large aboriginal tribes population.—*P. 40, Report of Starte Committee, 1930.*

**Occupation.**—Too great a diversity in occupations is not desirable. All the members of a village community are of course eligible for a village society, but a mixture of the membership that would include (say) pleaders and mahars in a single society does not ordinarily work well owing to lack of common interest.

The question whether it is desirable to start separate societies for big ✓ landholders or to include them in the ordinary village credit societies was considered by the Bombay Provincial Banking Enquiry Committee (1929-30).

The Committee state: "On the one hand, the inclusion of such holders in the village society enhances its credit and the society is also able to secure the services of men of good status and education to look after its management. On the other hand, such landholders are likely to have too powerful a voice on the management of the society, which might then lose its democratic character, and unless the landholders are imbued with the spirit of public service, they may feel inclined to take advantage of their position and appropriate a large part of the society's funds to themselves. If they default, the whole society suffers, the amount borrowed by them being large. In some tracts as in Gujarat, the terms and conditions on which loans are advanced by village co-operative societies may not be suitable for big landholders, or they may themselves hesitate to assume unlimited liability and pledge their large assets for a number of persons with small means and poor assets." The Committee suggested that separate societies should be organised in tracts where there is a fairly large number of big landholders. Where their number is small the Committee thought that they should, if properly qualified, be enrolled as members of the village credit societies.

**"The word 'limited' shall be the last word in case of limited liability societies."**

**Company law.**—Ss. 6, 73 and 74 of the Indian Companies Act make it compulsory for a limited company under penalty of fine the putting of the word 'limited' as the last word in its name. If an officer of a limited company fails to mention its name correctly, *i.e.*, omits the word 'limited' he is liable to a fine upto Rs. 500 and an officer signing a valuable security without properly mentioning the name of the company exposes himself to the risk of being held personally liable for the amount.

**Object.**—The policy of the Act is that where the society is with limited liability that fact must be announced in every possible way, so that all persons dealing with the society may have clear notice that liability of the society is limited.

**Limited liability.**—With the numerical increase in credit societies a knowledge of the main principles underlying co-operative work has gradually spread among the people, and in areas where these have been best understood a desire has arisen for applying them to other branches of business besides the borrowing and lending of money. The result is that a considerable variety of societies for purposes other than credit is to be found. This development is not only inevitable but essential to the balanced development of the economic condition of the country as a whole, and that the demand for non-credit form of co-operation

is in itself a healthy sign. The fact that rural credit societies must retain unlimited liability is not disputed. But for non-credit activity of the movement limited liability is found more suitable. Sometimes a large amount of capital is required for an enterprise and it becomes impossible to confine the contributors to members of a small circle sufficiently intimately acquainted with each other's affairs to ensure that mutual trust which is essential when liability is unlimited. Besides, where the shares in any enterprise are drawn from such a wide circle that mutual acquaintance of an intimate nature cannot be guaranteed unlimited liability is dangerous. In other words where liability is limited, there is less need of mutual knowledge of each others' affairs, the area can be larger, the number of members can be greater. Therefore, it is provided that a non-credit society should not be subjected to unlimited liability or limited area. ( See also notes to s. 5 under the heads "Unlimited liability" and "Limited liability" at pp. 54 and 63 respectively).

**Under the Co-operative Societies Act** societies with limited liability include societies limited by guarantee and unions. It appears that no sanction is prescribed as in the case of Joint Stock Companies.

**Note.**—A society would not be registered under this Act by the name of a Company.

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

Power of Registrar to decide certain questions.

#### Commentary.

**Old law.**—For s. 7 of Act II of 1912, see Appendix B.

**'Whether a person is an agriculturist or non-agriculturist'.**— It is most difficult to ascertain the

precise meaning of the term 'agriculturist'. It would probably be impossible to frame a definition which would not go too far one way or the other. The term 'agriculturist' is not defined in the Co-operative Societies Act and it must, therefore, be construed in the ordinary sense of the term.—*See Maxwell on Interpretation of Statutes; pp. 5, 526.* Ordinarily an agriculturist is one who is occupied in cultivating the ground.—*Century Dictionary.* Murry's Oxford Dictionary defines the term 'agriculturist' as 'a professed cultivator of the land; farmer.' The term 'agriculturist' as used in s. 60 of the Civil Procedure Code, 1908, is not only confined to persons who cultivate land in which they have an interest either as proprietors or tenants but it can be extended to all persons engaged in the cultivation of land. "If the policy of the Legislature" said Scott C. J. "is to provide for the efficient cultivation of the soil of the country, there seems no reason why the word "agriculturist" should not include persons engaged in cultivating the soil for remuneration, although they may have no proprietary interest in such soil."—*Devara, Vaikunt Subaya, 19 Bom. L. R. 283.* For the purposes of Punjab Alienation of Land Act, 1900, an agriculturist is defined as—

"A person holding agricultural land who either in his own name or in the name of his ancestor in the male line was recorded as the owner of the land or as a hereditary tenant or, if the first regular settlement was made in or since the year 1870, then at the first regular settlement or at such previous settlement as the Local Government may, by order in writing, determine."

So far as this presidency is concerned, s. 2 of the Dekkhan Agriculturists' Relief Act states that an Agriculturist shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture or who ordinary engages personally in agricultural labour.

**The provisions of D. A. R. Act except ss. 2 and 21 do not apply.**—All transactions between the societies and their members are exempt from all the provisions of the D. A. R. Act except the beneficent provisions of s. 21 which prevent agriculturists from being arrested and imprisoned in the execution of money decrees against them.—*Proceedings of the Bombay Legislative Council, 1911, Vol. XLIX pp. 500-501.* Therefore, s. 74A of D. A. R. Act states that except ss. 2 and 21 the D. A. R. Act, 1879, does not apply to societies registered under the Co-operative Societies Act, 1925. (For further discussion, see the

Commentary on the Dekkhan Agriculturists' Relief Act, 1879, by the writer. )

**Query.**—Can an agriculturist be arrested and imprisoned in execution of an order passed by a Liquidator, or Registrar or Arbitrators,—an order which according to s. 59 may be executed as an order for recovery of arrears of land revenue ?

A “resident” for this purpose may be defined in general terms as a person who owns a house in the area of operations of a society to which he can go at any time as a matter of right and not as a visitor and who, in actual fact, does go and reside there fairly frequently.— *The Madras Co-operative Manual*, p. 17 (1930 Ed.).

**The Registrar's decision shall be final.**—The Registrar's findings in these matters generally concern more or less all the promoters as a whole to find out whether a society consists of a majority of agriculturists or not except in very rare cases such as when there is only a difference of one member. To make such small questions appealable would be tantamount to delaying registration of societies. In the interest of the movement any such delay should not be permissible. The Registrar can be trusted to do the right thing in each particular case.—*Bombay Legislative Council Debates*, 23rd July 1925.

9. (1) For purposes of registration an application  
Application for to register shall be made to the Re-  
registration. gistrar.

(2) The application shall be signed

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

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

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

#### Commentary.

**History.**—This is s. 8 of the Co-operative Societies Act, 1912, (See Appendix B).

**Company Law** requires the memorandum to be signed by each subscriber in the presence of at least one witness.—See s. 9, *Indian Companies Act, 1913*.

“**Sign**”, with its grammatical variations and cognate expressions shall, with reference to a person who is unable to write his name, include “**mark**” with its grammatical variations and cognate expressions.—S. 3 (44), *The Bombay General Clauses Act, 1904*.

**The application** is to be made in writing and it should be accompanied by three copies of the proposed by-laws (which correspond to the Articles of Association). One of them is preserved in the office of the Registrar another is filed in the office of the Assistant Registrar and the third is returned to the society duly signed and certified (ss. 10 and 11). As provided by s. 71 (2) (b) the Government has made a Rule (Rule 2) with regard to the application for registration. The form of such an application is given in schedule A which is annexed to the Rules. (See Appendix A for the Rules.)

**Organisation of Societies.**—There is in this Presidency practically no official staff for the work of propaganda and organisation except the small number of Agricultural Organisers who do non-credit work, and are now working under the control of the Co-operative Department. In the early days of the movement the Department relied mainly and in some cases almost entirely on the Honorary Organisers for propaganda and organisation. In recent years, partly for financial reasons, the number of this helpful band of dis-interested workers in the cause of co-operation who are doing most useful work, in the consolidation and improvement of societies has decreased. With the growth of non-official organisations like the Institute for propaganda and supervision and when credit societies began to spring up of their own accord, it was inevitable that the number and importance of individual workers acting independently would

diminish. In the first place it is not easy to find new men or when they are found, to see that they keep up their enthusiasm over a number of years, therefore the policy has got to be adopted to strengthen non-official organisations like the Institute and the Supervising Unions and gradually to absorb in them the individual workers. In accordance with this the number of Honorary Organisers was gradually being reduced in places where the Supervising Unions were working efficiently. It was also contemplated that as the Co-operative Institute was able to appoint more and more propaganda officers, the employment of Honorary Organisers would further become unnecessary. But the Institute for lack of funds and other reasons is not able to appoint propaganda officers to an adequate extent. Failing the appointment of an additional official staff, the addition of Honorary Organisers is the most economic method of securing additional workers for the good of the movement as a whole. Under present conditions by a careful system of regulating and co-ordinating their work, it is possible to do much good to the movement at a small cost. All that is required is to parcel out the areas to the various Honorary Organisers in a very systematic manner and to carefully regulate their travelling by requesting the Organisers to visit particular areas in a particular season for specific purposes. A sum of about Rs. 36000 is spent annually for the travelling allowance given to Honorary Organisers. At present there is one Divisional Organiser, 63 District Honorary Organisers and 83 Taluka Honorary Organisers in this Presidency.

However, the Registrar in his Annual Report on the working of societies (1930) states that from the very nature of the case the assistance of Honorary Organisers is likely to be of somewhat fitful character and it becomes extremely difficult for the Assistant Registrars to coordinate their work and fit it in with that of the official staff, unless the gentlemen concerned have genuine love for the movement and are prepared to devote a large part of their time and energy to the cause. The Registrar, further, remarks "In some districts unfortunately the position of an Honorary Organiser is looked upon more as a personal distinction than an opportunity for doing useful work for the masses. In parts there is also a tendency to use the position of an Organiser for consolidating personal and party advantages. This honorary agency is not giving the expected results and it is becoming increasingly difficult to secure men of the right type for disinterested work." (For further discussion see notes to s. 22)

**The formation of a Credit Society.**—When the promoters are satisfied that the rate of interest usually paid by the agriculturists in the neighbourhood is higher than 8 per cent and that they will be able to raise some capital among themselves they should invite the organiser to the village and call a small meeting of persons whom they think are likely to be interested. They should go through the model by-laws and draft their by-laws on those lines.

The organiser should explain the intentions of Government and the general principles of co-operation. The principle of unlimited liability should be fully explained. At the same time the organiser should point out the several safe-guards against loss contained in the model by-laws imposed by the cou-



stitution. The Organiser should next proceed to explain the model by-laws and the valuable concessions given by Government. No attempt should be made to persuade an unwilling audience. If they are not prepared to take the risk of unlimited liability the whole matter should be dropped. Three copies of the by-laws should be signed by at least 12 persons, and the form of application (Schedule A prescribed in the Rules, see appendix A) should be filled up and signed by the same persons who have signed the by-laws. The organisation paper (see Leaflet R and the Handbook of Co-operation for Societies in Bombay and Sind by the writer) should be filled up. These papers should then be posted either to the Honorary Organiser or to the Registrar, Co-operative Societies, Poona.

The ten cardinal doctrines underlying the co-operative idea summed up in the Ten Main Points of Co-operation should be drummed into the heads of members. They are :

### **The Ten Main Points of Co-operation**

1. The object of co-operation is to encourage people to lay by savings, to grant loans at reasonable terms of interest, and to get rid of debt.
2. Members must know each other thoroughly and should admit nobody who is a bad character or is unacquainted with the rest.
3. All members are jointly and unlimitedly liable for all sums borrowed by the society either from depositors or from outside sources. They are, therefore, all interested in seeing that loans are granted prudently and that no member is allowed to default.
4. It is the business of the Managing Committee to raise capital, to sanction loans to Members, to watch over their recovery and to see that accounts are properly kept.
5. All loans must be used only for the purpose for which they are advanced. They may be granted for one year for current agricultural expenses, for two or three years for the purchase of cattle or implements, or for domestic expenses, and five years for the payment of old debt or for land improvement.
6. All repayments must be made on the date fixed by the Managing Committee, and in cash not by book-adjustment.
7. The duties of the General Meeting of the society are to appoint a Managing Committee and a Secretary, annually, to consider the balance sheet and the audit notes, to ask the Committee questions about its work and to pass orders on any faults that come to light.
8. All profits are carried to the reserve fund, the object of which is to improve the credit of the society as a whole and to protect members from the enforcement of unlimited liability. It is the property of all the members jointly.
9. Capital is obtained either as deposits from members or other persons in the neighbourhood, or from some Central Bank. The Central Bank is

controlled by its shareholders, and if societies buy shares in it, they will have a voice in its control.

10. Always remember that though the Registrar audits and warns, the Members are themselves responsible for the working of their societies. Government is not going to manage the societies for them. If they want them to succeed they must see to things themselves.

**By-laws.**—The Act itself does not prescribe any by-laws but the Government of Bombay has issued a rule for compulsory by-laws on certain points [see Rule 4 in Appendix A]. The By-laws must be drafted before a society is registered. The proposed by-laws must be sent along with the application for registration. The Registrar will not register the by-laws until he is satisfied that the proposed by-laws are not contrary to the Co-operative Societies Act or to the Rules made by Government thereunder. By-laws may be made, altered or abrogated as provided in Rule 6 but the approval of the Registrar is necessary (s. 16). The Society is to be registered with the by-laws (s. 10) *i.e.*, both these are to be registered together. But amendments of by-laws made in accordance with Rule 6 may be registered subsequently by the Registrar when approved. Every society is to keep with it (open for inspection) a copy of the by-laws and presumably of the amendments as certified by the Registrar. The by-laws bind the Society and the members thereof and they constitute a contract between the society and the members. They can only be altered in the mode prescribed in s. 16 and Rule 6 framed under s. 71 (2) (c). The business of a society is regulated by the by-laws and any action contrary to the provisions of the by-laws might be held *ultra vires*. [See also notes under the head "By-laws of societies" to s. 3 at pp. 15, 16 *supra* and the discussion under s. 71 (2) (c).]

**Note**—The Co-operative Societies Act does not provide for the attestation of the signatures of the applicants. The ten signatories to the application for registration become members of the society on registration [s. 3 (c)] just as the subscribers of the memorandum of a company become members *ipso facto* on the registration of a company (s. 30 of the Indian Companies Act, 1913). The question of election does not arise in their case. Under the Company Law the register of members is *prima facie* evidence of the fact that the person whose name is entered as a member is a member (*ss. 30, 31 and 40 of the Indian Companies Act, 1913*). Under this Act a member is not necessarily entered as such in the register of members,

nor is the appearance of the name of a person as member a *prima facie* evidence that he is a member.

**In the case of societies of which a member is a society** all that is required is to get the representatives of two or three societies to sign. Others can join afterwards.

**Duly authorised.**—Under No. 2 (3) of the Rules made by Government it is now laid down that the person so authorised shall be a member of the managing committee of the society. (See Appendix A). This provision is made in view of the words duly authorised in cl. (2) (b) of this section.

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

#### **Commentary.**

**Changes.**—The words “if he thinks fit” in s. 9 of the Co-operative Societies Act, 1912, which corresponds to this section are omitted. (See Appendix B.)

**Company Law.**—Under s. 22 of the Indian Companies Act, 1913 the Registrar examines the documents lodged for registration with a view to see that the requirements of the Act are complied with and that the association applying for registration is a company authorised to be registered under the Act. If the requirements of the Act are complied with, the Registrar has no power to refuse registration.

**‘The Registrar may register’.**—The Registrar of companies will not register a company by name identical with that of another registered company or so nearly resembling the name as may be calculated to deceive (s. 11, Indian Companies Act). The same principle applies in the case of societies under this Act and the Registrar may not register a society whose name so nearly resembles that of a society already existing, as to be likely in his opinion to deceive the members of the public as to its nature or identity. It is not obligatory on him to register the society and its by-laws. He is given discretion in the matter (see notes under the head “Power of registration” in s. 4 at p. 29 *ante*.) The Registrar

will after making such inquiries and alterations in the by-laws as may seem necessary, will register the society and its by-laws. The by-laws submitted under sub-s. (3) of s. 9 have got to be approved by the Registrar, and adopted at a general meeting. Then they become valid and binding.—See *Rule 5, (Appendix A.)* See also discussion under the head. 'By-laws of societies' at p. 15.

**Notes.**—Along with the registration certificate, the rules issued by the Government of Bombay, the approved by-laws and a set of circular orders issued by the Department which are supplied free, the Registrar should send by V.P.P. a copy of Bombay Act VII of 1925, a set of account forms, and other forms needed by the society. The Registrar shall keep a copy of the registered by-laws and subsequent amendments to the by-laws (Rule 47, see Appendix A).

**Decision of Registrar is to be communicated in case of refusal to register** the Society or its by-laws to the applicant with his reasons for so doing (Rule, 3 see Appendix A) but an appeal may be made to Government from an order refusing to register a society within two months of the date of the communication of the same (s. 64).

**Effect of registration.**—The registration of a society under this Act takes it out of the operation of all sections of the Dekkhan Agriculturists' Relief Act, 1879, except ss. 2 and 21 (s. 74A, Dekkhan Agriculturists' Relief Act, 1879). Similarly, it takes it out of the operation of the Indian Companies Act, 1913 (s. 68) and thereby exempts it from any fees levied on corporations under the Indian Companies Act. Again, the registration of a society confers on it the privileges of exemption from income tax, stamp duty on documents and registration fees (s. 33).

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

Evidence of registration.

#### Commentary.

**History.**—This section corresponds to s. 10 of the Co-operative Societies Act, 1912. (See Appendix B.)

**S. 24(1) of the Indian Companies Act, 1913, makes the certificate of incorporation** given by the Registrar, conclusive evidence that there is a company and that it is duly incorporated, and precludes all persons from going behind the certificate and from alleging that the company is not a corporate body with the status and capacity conferred by the Act.

“**Duly registered**” means that all the requirements of the Act have been complied with.

**The certificate of the incorporation of a society given by the Registrar shall be conclusive evidence** that all the requirements of the Act in respect of registration have been complied with. There is a similar provision in the Indian Companies Act. [*cf. s. 24 (1) of I. C. Act, 1913.*]- *Fourth Conference of Registrars, 1909.*

**A certificate of registration** is a conclusive evidence that the society is a corporate body (s. 23) distinct from the persons composing it. It is sufficient to confer all the privileges under s. 33 of the Act and to deprive civil courts of jurisdiction in matters of awards of arbitrators under s. 57 and in matters of orders of winding up and dissolution under s. 51.

The certificate is issued in the following form:—

### Certificate of Registration

No.....of 193

The Registrar hereby notifies that the.....  
 ....., Co-operative.....Society, Limited,  
~~Unlimited,~~  
 Taluka.. Palan....., District..... Solapur....., has been registered  
 under Section 10 of Bombay Act VII of 1925.

Dated.....17.5.1934.....1934 .

Registrar,  
 Co-operative Societies,  
 Bombay Presidency.

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

Annual general meeting.

### Commentary.

**History.**—Sections 12 to 16 make the necessary provisions in regard to amendment of by-laws, meetings and resolutions which are lacking in Act II of 1912.—*See Statement of Objects and Reasons.* (Bom. Act VII of 1925)

**The Indian Companies Act, 1913, s. 76** states that a general meeting of every Company shall be held once at least in every year and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company and every officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding five hundred rupees.

**Penalty.**—It may amount to an offence punishable with a fine not exceeding Rs. 50 if a society with a working capital of Rs. 50,000 or more fails without any reasonable excuse to call a general meeting as required by this section (ss. 60 and 61). But it seems that no penalty attaches to an infringement of this section by societies with working capital below Rs. 50,000.

### Procedure followed at general meeting.

By-laws generally provide that annual meetings should be convened by the Secretary with the consent of the Managing Committee by giving 10 days notice, stating the time and place of the meeting and the business to be transacted. The business of a general meeting is confined to matters specified in the by-laws [ see notes under s. 71 (d) ]

The procedure is regulated by the by-laws. They also provide as to what number should constitute the quorum, what is to be done when a quorum is not present at the time appointed for the meeting, who is to be the President of the meeting, adjournment of the meeting and so on. It is a statutory provision that a member shall have one vote only (s. 18). At the time appointed for the meeting the President who is generally elected by the members present should take the chair and ascertain that a quorum is present. No business can be done at a meeting unless a quorum is present. The names of all the members present are recorded by the Secretary. If the proper quorum is present the president should announce the fact and then call on the secretary to read the notice convening the meeting. This having been done the Managing Committee through its chairman should lay before the meeting the balance sheet, profit and loss account, the report of the Committee on the Society's affairs. The auditor's report on the balance sheet together with any comments made by the Registrar are to be read before the general meeting. It shall be open to inspection by the members. Accordingly at an annual meeting the president begins by referring to the accounts and the Managing Committee's report which are generally read in the meeting and concludes his speech in

relation thereto by moving "that the report and accounts be received and adopted." This is the stage for discussion and enquiries. Every member has a right to be heard for a reasonable time on any motion before the meeting. After the matter has been fairly debated the president may with the sanction of a vote of the meeting apply closure to the discussion. But the President has no power to stop the meeting at his own will and pleasure, and if he does so the meeting can resolve to go on by itself with the business for which it was convened and elect another president. The motion for closure is put in the form—"that the question be now put." The president should not allow the closure to be moved unless the view of the minority has been fully expressed and every one who wishes has had an opportunity of speaking on the original motion. Every name proposed for election should be duly proposed by one member and seconded by another.

**Every resolution is decided in the first instance by a show of hands;** that is the common law rule. On a show of hands every member present in person has one vote and no more. Before or on the declaration of the result of the show of hands a poll may be demanded. In that case the show of hands goes for nothing and the poll must be taken. In a small society it is taken by the President. The result of the poll decides the fate of the motion. In case of equality of votes the by-laws give the president a second or casting vote. The secretary should note in the minutes, the proposer and seconder the substance of the discussion, the final resolution and the number voting pro. and con.

**Amendments.**—The time for moving an amendment is after the motion has been moved and seconded and put by the president of the meeting. No amendment can be moved which goes beyond the scope of the notice convening the meeting or in the case of the ordinary annual meeting which according to the by-laws may be transacted thereat without special notice. When an amendment is duly moved and seconded the debate on the original motion and amendment proceeds concurrently and the president then puts the amendment to the meeting. If the amendment is negatived the original motion stands unless a further amendment be proposed which then is put by the President to the meeting. But this is not necessary when the amendment carried is framed as an alternative motion. If several amendments are moved the president should put the amendments to the meeting in the order in which they affect the main question and ultimately the main question as finally amended should be put to the meeting. An amendment may be moved to an amendment in which case the subamendment should be put, and if it is affirmed the president should then put the original amendment as amended and if that is affirmed he will put original motion as amended. The president is bound to put all regular amendments but should not allow any irregular amendment or one which in substance merely amounts to a negation of the original motion.

**Adjournment.**—A motion for the adjournment of a meeting can be brought forward at any time and takes precedence over any other business then under consideration. The President cannot adjourn a general meeting with-

out their consent. The President, however, has inherent power to adjourn a meeting for persistent disorder. Notice of an adjourned meeting is not necessary except as provided by the by-laws. An adjourned meeting is a continuation of the original meeting. By-laws generally provide that no quorum is necessary for an adjourned meeting.

**The President.**—The by-laws generally provide that the President of the annual meeting should be elected by the members present. It is the duty of the president to preserve order, conduct proceedings regularly, and take care that the sense of the meeting is properly ascertained on any question before it, but he has no power to stop or adjourn a meeting at his own will. He has power to decide all incidental questions arising at the meeting and to stop debate after reasonable discussion. It is a principle of the common law that the president's declaration that a resolution has been carried or lost and an entry to that effect in the minute book should be conclusive, until contrary is proved. (For further discussion and the details, see the Hand-book of Co-operation for Societies in Bombay and Sind by the writer.)

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

Special general meetings.

- (1) on the requisition in writing of one-fifth of the members of the society, or
- (2) at the instance of the Registrar.

#### Commentary.

**History.**—This section is new.

**Note.**—There was no such provision either in the Act of 1912 or in the Rules. The matter was left to the by-laws. But the model by-laws did not make it compulsory for a society to call a special general meeting on the requisition of one-fifth of the members or the Registrar. The matter was left to its discretion.

**Company law.**—Share-holders holding not less than one-tenth of the issued share capital are entitled to make a requisition for the calling of an extraordinary general meeting within twenty one days from the date of the requisition.—*S. 78, Indian Companies Act, 1913.*

**One-fifth of the members of the Society.**—This proportion of members is considered necessary for calling a special general meeting. There are some urban societies with a large membership and some of which are divided by factions, and if one



faction wants to get an advantage over the other, it can compel the management to call a special general meeting by sending a requisition signed by those few members if the proportion is fixed at a low figure. Thus there will be caused a great deal of inconvenience to the other members of the society and it will be a nuisance to the society. There is also this thing to be considered that even if one member thinks that a special general meeting ought to be called, and he applies to the Registrar and convinces him of the necessity of calling such a meeting, the Registrar can do so.—*Bombay Legislative Council Debates, July 23, 1925.*

**Notes**—It is necessary to make the meaning of the clause (2) of s. 13 clear and definite. The Registrar may be empowered to fix the date of the meeting which is to be called at his instance. Now a special general meeting must be called at the instance of the Registrar but can he ( or his nominee ) as of right attend the meeting and take part in the discussions ? Rule 38 (9) (see Appendix A ) empowers the liquidator to call a general meeting of the members of the dissolved society and to take part in the discussions. But there is no specific provision in any other case. As is stated above, sometimes party feelings run high in a society and the members may object to an officer of the Co-operative Department attending the meeting. Statutory provision must be made to avoid the difficulty and the Registrar or any person authorised by him must have a right to attend a general meeting or a meeting of the managing Committee and to take part in the discussion or the consideration of any question before such meeting or the Committee and to give his advice in the matter. There is a similar provision ( s. 40 ) in the Bombay Local Boards Act, 1923. The material portion of it is as follows:

The Assistant Registrar of Co-operative Societies, charged with any duties of his office in the district, if not a member of the District Local Board, has a right of being present at any meeting of the said board or of any committee thereof, and with the consent of the board or committee may take part at such meeting in the discussion or consideration of any question on which in virtue of the duties of his office he considers his opinion or the information which he can supply will be useful to such board or committee, but he shall not unless he is a member of the board be entitled to vote upon any such question.—*See s. 40 (1), Bom. Local Boards Act, 1923.*

**The Procedure** is much the same as at an ordinary meeting. After the chair has been taken, the notice read, and the minutes of the last meeting signed (if such is the practice) the president explains the circumstances which have led the Managing Committee to convene the meeting and concludes with moving the resolution of which notice has been given. When the meeting has been called pursuant a requisition of the members one of the requisitionists

usually moves the resolution. After the motion has been seconded the president will put it to the meeting and subsequent proceedings will be similar to those detailed in s. 12 under the head: 'Procedure followed at general meeting' at p. 87 *ante*.

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

#### Commentary.

**History**—This section is new.

**Company Law**.—Any company may by special resolution and subject to the approval of the Local Government signified in writing change its name [Indian Companies Act, s. 4, cl. (6)]. The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.—S. 11, *Indian Companies Act, 1913*.

**Note**.—Rule 4 states that every society must make by-laws in respect of the name, etc., of the society. A change in the name must, therefore, be made by an amendment of the by-laws made in respect of the name of the society. Now s. 16 and Rule 6 give the procedure to be followed in amending by-laws of Societies (See Appendix A for Rules). The Registrar is to issue a certificate (see the form of certificate in s. 16) in token of his approval.

In case the Registrar approves and registers the change in the name he will notify the correction in Bombay Government Gazette. The change in the name will not affect any right, etc., of the society, etc., nor will it affect any legal proceedings, etc., for obvious reasons.

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

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

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

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

**Commentary.**

**History.**—This section is new.

**Company law.**—S. 153 of the Indian Companies, Act, 1913, enables the Court without forcing the Company into liquidation to sanction an arrangement arrived at by a majority in number representing three-fourths in value of those present at a meeting of the members, etc., whereby the company's assets and undertakings are transferred to a new company. Amalgamations between two companies without going into liquidation can also be effected under this section (*i. e.*, s. 153) of the Company Law.

**Object.**—In several cases societies had to be dissolved not because there was any laxity in the management or speculation on the part of the members, but owing to the necessity of allowing its construction to be altered so as to admit of its being split up into several societies, or combined with others into a new society.—*Report of the Committee on Co-operation, 1915.*

**Three months' notice to the creditors of both or all such societies.**—Under the law the liabilities of one person cannot be transferred to another without the consent of the creditor. If after notice no objection is raised nothing further will be required except registration but if an objection is raised there can be no amalgamation.—*Bombay Legislative Council Debates, July 23, 1925.*

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

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

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

### Commentary.

**Changes.**—This is s. 11 of the Co-operative Societies Act, 1912, with some changes. (See Appendix B).

*N. B.*—See notes to s. 71 (2) (c) *infra*.

**Under the Company Law** an alteration in the memorandum of association is to be carried by a special resolution (s. 12, Indian Companies Act, 1913, ) and it takes effect only after it has received the confirmation of the Court (s. 13, Indian Companies Act, 1913).

**Amendment** ordinarily means the act of making better, correction, improvement, but in this sense it means any alteration or change either by way of correction or addition.—*Century Dictionary*.

**Amendment of by-laws** cannot take effect until and except in so far as they are approved and registered by the Registrar. The original by-laws hold good till the amendments are registered. Any action taken in accordance with unregistered amendments might be held to be illegal. Rule 6 lays down the procedure to be followed in making, altering or abrogating by-laws (See Appendix A). The approval of Registrar is necessary. In amending its by-laws a society must strictly observe its existing by-laws as to general meeting, majority required, previous notice, etc. It has been ruled that if any defect in the procedure renders the amended by-laws invalid, then the former by-laws must be considered to be in force. This might give rise to trouble if the amendment concerns the disposition of funds. (*Calvert*). The provision in s. 10 that 'the proposed by-laws of a society ought not be contrary to the Act or to the rules' applies to the proposed amendments of by-laws also. The object of a society must be the promotion of the economic interests of its members in accordance with co-operative principles. Any alteration or amendment in by-laws which does not confirm to this, will not be valid as they will not be approved by the Registrar. The resolution passing an amendment must be sent within three months (Rule 6). As amendments cannot be acted upon unless they are registered it is obviously to the advantage of the society to forward them to the Registrar for his approval at an early date. No amendment can take effect until a certificate of

approval is received from the Registrar under s. 16 (3) of the Act in the following form :—

No. \_\_\_\_\_ of 193 .

Office of the  
Registrar, Co-operative Societies,  
Bombay Presidency :

Camp, Poona, \_\_\_\_\_ 193 .

MEMO.

In accordance with a Resolution of the General Meeting of the .....Co-operative.....Society held on \_\_\_\_\_ 193 , the Registrar of Co-operative Societies is pleased to approve, under section 16 of Act VII of 1925, the following amendments of the Society's By-laws :—

By-law No.	Revised text.

This certificate should be attached to the copy of the By-laws in the possession of the Society.

Registrar,  
Co-operative Societies.  
Bombay Presidency.

Through \_\_\_\_\_  
To \_\_\_\_\_ The Assistant Registrar,  
Co-operative Societies,  
.....Division.

In forwarding an amendment to the Registrar for sanction, a society should report whether due notice of the general meeting was given, the number of members attending the meeting, and the number who voted for the adoption of the amendment, and should attach an accurate copy of the resolutions of the general meeting, relating to each by-law amended or rescinded. ( See also notes to s. 3 under the head. 'By-laws of Societies' at p. 15 *ante.* )

**The Registrar may register the amendment.**—The Registrar is given the discretion to register the by-laws under s. 10. Therefore, it is necessary to allow him discretion in the matter of the amendment of by-laws also. Otherwise the discretion given under s. 10 will be nullified. Suppose, a society wants to get itself registered; it puts up certain by-laws which the Regis-

trar disapproves and does not register the society on that account. The society then alters the by-laws in such a way that the same are acceptable to the Registrar and the society is registered. But, at the next general meeting it may change all the by-laws, and if they are not contrary to the Act, no discretion will be left to the Registrar; he will be bound to register them; the discretion given to the Registrar under s. 10 will be thus entirely nullified.—*Bombay Legislative Council Debates, July 23, 1925, ( See also notes to s. 4 under the head 'The power of Registration' at p. 29 and also notes to s. 5 under the head 'May be registered' at p. 62. )*

**An Appeal** may be made to Government within two months against an order of the Registrar registering an amendment and also against his decision refusing to register an amendment of by-laws (s. 64).

#### *Rights and liabilities of members.*

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

No rights of membership to be exercised till due payments are made.

#### **Commentary.**

**History.**—This is s. 12 of the Co-operative Societies Act, 1912, except for the fact that the word 'person' is used in the place of the word 'member' occurring in the old Act. (See Appendix B).

**Model Articles of the Indian Companies Act** provide: "No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid".—*Regulation 63 in Table A in the First Schedule annexed to the Indian Companies Act, 1913.* (See also notes under the head 'A member' at page 16 ante.)

**The payment** required to be made before a person can exercise the rights of membership is that of the admission fee. The acquisition of interest referred to in the Act is that of a share or the minimum number of shares prescribed by the by-laws if the capital is raised by shares.

A member is a person admitted to membership [s. 3 (c)] on his application and election by the Committee. All persons joining in the application for the registration of societies become original members (*ibid*). The importance of a careful selection of the original members cannot be over-estimated. It is they who choose future members and set the standard of the society. The society is empowered by Rule 6 to make by-laws in respect of the maximum number of members that may be admitted and the terms of admission, *i.e.*, to prescribe the fees, share or instalment, etc., as the case may be to be paid by a person before he is entitled to exercise the rights of a member or to enjoy the benefits of the society. The rights and liabilities of members are dealt with in various sections of the Act, in rules under s. 71 of the Act (for Rules see Appendix A) and in the by-laws made under the rules. )

**Some of the rights of a member are the following :**

(1) He is entitled to attend general meetings [s. 71 (2) (f)] annual (s. 12) as well as special general meetings (s. 13). (2) He has a right to vote at the meetings (s. 18). (3) Neither the Act nor the rules framed by local Government provide for a managing committee but the existence of one is presumed. Though it is left to the society to make by-laws [ Rule 4 (d) ] in respect of the mode of appointment and removal of members of the committee a member has a right to vote for the committee. (4) In the case of credit societies he is entitled to obtain a loan on conditions laid down in by-laws of a society ( Rule 4 (b) ). A society is prohibited from making any loan to a member on a bond secured by the suretyship of a non-member ( Rule 11 ). (5) He has a right to deposit his surplus money at interest with the society if the society can employ the money usefully as provided by the by-laws prescribing the manner in which capital should be raised ( rule 4 (e) ) with the limitation regarding agricultural credit societies as stated in Rule 10. (6) His share or interest in the capital of a society or in the provident fund of the society shall not be liable to attachment or sale (s. 26). (7) He may transfer his share or interest but he remains liable for two years (s. 28) subject to restrictions laid down in s. 19. (8) The society is to pay to the person nominated by him, the value of his share or interest on his death (s. 27). (9) He is entitled to a share in the profits when these are distributed in accordance with the by-laws [s. 40, Rule 4 (g) and Rule 25]. (10) He is exempt from income tax in respect of dividends or other payments received by him on account of profits (s. 33). (11) He is entitled to a copy of the Rules and by-laws and also to a copy of the annual return and balance sheet on payment (Rule 16) and also of audit memo. (*ibid*). (12) He may inspect the books at all reasonable hours at the society's office except the deposit and loan account of any other member. (Rule 19). (13) He may appeal against an order directing a society to be wound up (ss. 47 and 64). (14) He may



appeal against the award of an Arbitrator (ss. 54, 56 and 64). (15) On the death of a member the society has to pay back within one year to the heir or nominee the balance of his share or interest in the society (s. 27). (16) The liability of the estate of the deceased member is limited to one year (s. 29). (17) He may institute proceedings against officers of the society for offences committed (s. 60) with the sanction of the Registrar. (18) He has a right to withdraw if he disagrees with the decision of the majority. In unlimited liability societies this is an important right because it enables a member to withdraw before a liability is incurred to which he objects (s. 28). (19) He may in collaboration with other members insist on an inquiry by the Registrar (s. 43) and to have the society wound up (s. 47). (20) He may combine with other members to insist on a special general meeting being called (s. 13). (21) He has a right to obtain all the necessary information concerning the solvency and good management of the society.

**Some of the disabilities of members are :**

(1) He has only one vote. (s. 18). (2) A member is not entitled to a share of the reserve fund (s. 39). (3) He cannot sell his share to any one not approved by the society (s. 19). (4) He cannot get a loan on the surety-ship of a non-member (Rule 11). (5) He cannot be represented by a legal practitioner in arbitration proceedings (s. 54 and rule 36). (6) He cannot be a member of another unlimited liability society (Rule 45). (7) He cannot pledge his shares with the same society for loan (Rule 9). (8) Immediately he signs the application for registration (s. 9) he incurs all liabilities for two years (s. 28) even if he withdraws at once or withholds payment prescribed. (9) He must assume joint liability when prescribed and becomes unconditionally (s. 71 (d)) bound by all the rules and by-laws. (10) He may be expelled for reasons stated in by-laws from the society at a general meeting. The most common is if he intentionally does any act likely to injure the credit of the society. (11) He may be called upon to contribute to the assets of the society in case the Registrar orders it to be wound up (s. 47) even though debts were incurred prior to his admission.

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

Votes of members.

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

#### **Commentary.**

**Old law.**—*Cf.* s. 13 of Act II of 1912 (see Appendix B).

**Principle.**—A prescription not so much of intrinsic necessity to co-operation as a condition forced upon it by extrinsic con-

sideration is the rule of 'one man one vote' which in most countries has been made part of the law applying to co-operative societies. In a co-operative society capital is a mere instrument, and control must be exercised by the members as such and not as in a joint stock company according to the capital that they happen to have contributed. Moreover, the principle of brotherhood and equality which is at the bottom of co-operation, equally leads to the inference that voting power should be equal and should be by head and not be based on any other standard. Co-operation regards shareholders as members and not as lenders of capital and it is this creed that makes co-operation treat all shareholders alike be they holders of only one share or of a hundred shares. The rule of one man one vote is, therefore, that which has been applied in practice to a co-operative society. It is of course arguable that it would be even more in conformity with co-operative principle that control and, therefore, voting power should be in proportion to the custom brought by each member to his society, by the labour done by him if it be a Producers' Society or by the business done with him if it be a society of a different type. This, however, would entail hardship even if the assumption would be reasonably made. The principle actually followed is, therefore, in practice more advantageous and more practicable. It is of course a necessary consequence that in a co-operative society the quorum is based upon the members present and not upon the shares held by them as in a joint stock company. The Fourth Conference of Registrars, 1909, thought that to allow mere votes than one to members would lead to intrigue and undue influence on the part of wealthy members and, therefore, recommended that the principle of one man one vote should be applied to all societies. The Committee on Co-operation in India, 1915, said: "The ultimate authority must be retained in the hands of the members who must continue to take a practical interest in the business of the society. The constitution should be purely republican and to attain this object it is inevitable that each member should have one vote and no more in a general meeting." The Committee on Co-operation, 1915, at page 73 of the Report observed:—

"In new Banks we would recommend one vote per head as the fairest system and likely to keep alive most interest among ordinary members without deterring those who can afford it from subscribing to more than one share. The precaution of giving each member one vote only is no doubt

loss necessary in cases where the number of shareholders is large, but even here it can do no harm. Apart from this, we think that, the object of a bank being to extend a share-holding interest to as many suitable members of the public as are willing to come forward and take up co-operative work, it is advisable, so long as enough share capital can be obtained in the ordinary way to adhere to the limits fixed by the Act."

**No member shall have more than one vote.**—A society is an association of individuals with equitable participation and control; it is not a union of capitals, but of persons, hence an essential element in any true co-operation is that one man should have one vote only, and this is regarded by nearly all authorities as a fundamental principle. It is this rule of equal votes which distinguishes co-operation from co-partnership. S. 13 of the Co-operative Societies Act, 1912, restricted the one man one vote principle to unlimited liability societies. But the principle which in all countries has been accepted as the basis of co-operation has been extended in this section to all classes of societies.—*See Statement of Objects and Reasons to the Bombay Co-operative Societies Bill—now Act VII of 1925.*

**Voting by Proxy.**—The Fourth Conference of Registrars, 1909, thought that if a member of a Co-operative Society did not take sufficient interest in its affairs to attend its meetings he should not have a vote. S. 13 of the Co-operative Societies Act of 1912 provided for voting by proxy in the case of corporations and societies which were members. The Select Committee which considered the Bombay Co-operative Societies Bill was of opinion that voting by proxy was objectionable even in the case of delegates from societies. It was urged that it is the presence, the arguments and views of a member that count more than his vote and, therefore, an absent member cannot be allowed to vote by proxy. A member cannot be allowed to vote in support of his own views and also to vote for absent members in support of their views, which because of their absence others had not the opportunity to modify by arguments. The admission of proxies is discouraged with a view to bring the members themselves to the meetings and to make them take lively and personal interest in the society, and its conduct and to prevent a few persons from carrying their personal views by means of lightly and ignorantly given proxies. Proxies have not been expressly excluded by the Act but it is only in rare cases, for instance, when the membership is scattered over a

very large area such as a co-operative society for railway employees that permission is given by the Registrar to the members to vote by proxies. Mr. Cahil thinks that in adopting this course the law aims at securing the actual presence of members and maintaining in this way an essential characteristic of a co-operative society as a combination of persons as distinct from a mere union of capitals. (*Report to the Board of Agriculture and Fisheries of an enquiry into Agricultural Credit and Agricultural Co-operation in Germany.*)

**'A society may appoint one of its members.'**—A society may choose to delegate its powers to the Managing Committee or it might reserve it to the general body. These matters of detail are left to the by-laws. Therefore, it is thought proper to give discretion so that the member to be appointed to represent the society may be chosen by the general meeting or the selection may be made either by the managing committee or by the chairman.

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

Restrictions  
on transfer of  
share or inter-  
est.

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

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

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

#### Commentary.

**History.**—S. 14 of the Co-operative Societies Act, 1912, has been reproduced with some additions and changes. (See Appendix B).

**The respective rights of a company and its shareholders** in relation to the rights of transferring the company's shares are stated in ss. 28, 34 and 35 of the Company's Act. S. 28 confers on the shareholders the right to transfer their shares. It

also confers on the company the powers to restrict that right and prescribe the mode of transfer by its articles, which usually provide that no share (or no share not fully paid up) shall be transferred to any person of whom the Directors do not approve. The object of this provision is to prevent the introduction of insolvent or otherwise objectionable shareholders. The Directors have to pay regard to the reserve liability which might become valueless if the shares passed into the hands of minors and paupers and where the Directors are acting *bona fide*, they may refuse to register a transfer without giving reasons or objecting to the transferee. The Company's Articles must, therefore, be looked at to ascertain the mode of transfers and the restrictions placed upon it. If the Company's Articles of Association contained no restrictions the shareholder has an absolute right by virtue of s. 28 of that Act to transfer his shares. By s. 34 the transferee of a share has the same right to apply for the registration of the transfer as the transferor has. S. 35 confers the right of transferring the share of a deceased shareholder on his legal representative.

#### Transfer or charge of the shares

The term "transfer" implies the making over of possession or control to another.

**Charge.**—In this country this corresponds to the term "lien" in English Law. In England the lien is defined to be an obligation which by implication of law and not by express contract binds real or personal estate for the discharge of a debt or engagement. But it does not pass any property in the subject of the lien. A charge results as soon as the property of one person is made security for the payment of money to another. It is not necessary to constitute a charge that the property should be specific. A charge is only a security for the payment of money to another, which may be due either as a debt or a claim. There is no transfer of interest in charge. It is only pledged as a collateral security.

**Interest** means personal possession or right of control or participation in ownership; the legal concern of a person in the society or the right of enjoyment of advantage. (*cf. Century Dictionary.*)

**Capital** does not mean here the funds of the society or the working capital. It refers to the capital owned by the members in their corporate capacity, *i.e.*, society's owned capital.

**Transfer to minors.**—In an unlimited liability of the society it is desirable that a member should be over 18 years of age because, minors cannot incur unlimited liability and liability cannot be enforced against them, even on winding up whether the society is limited or unlimited. In a limited liability society transfer to a minor is to be restricted by rules under s. 71 (d). But the Government of Bombay have not prescribed any conditions relating to shareholders, *i.e.*, that they must be over 18 years and so on. Neither have the Government of Bombay restricted the transfer of shares by framing any rules regarding admission of members, *i.e.*, they must be over 18 years of age. The question of the admission of minors is left to by-laws of societies. This, however, requires the approval of the Registrar.

**Conditions as to maximum holding** of shares are not laid down in rules but s. 6 states that in a society with limited liability and a share capital no member should hold more than one-fifth of the share capital of the society, or have or claim any interest in the share of that society exceeding three thousand rupees. In the case of Housing Society it is increased to Rs. 10,000 [see notes to s. 6 and also the remarks under s. 71 (2) (p)].

**Restrictions on transfer of shares or interest under Co-operative Societies Act.**—As has been pointed out elsewhere the essence of co-operation is that each shall work for all and all shall work for each in the attainment of their common need; this object cannot be achieved unless the members have freedom to choose with whom they will associate, and freedom to correct the choice or to withdraw. Each member must be able to express his opinion on the advisability of admitting others. Thus, admission must depend on popular elections. Restriction on transfer of shares is placed to maintain the co-operative character of a society. The Committee on the Establishment of Co-operative Societies in India, 1901, stated, that stringent conditions must be imposed on the transfer of shares in order to preclude the possibilities of societies falling under the control of speculators. Government of India resolution dated 29-4-1904 explained that “the object of this provision is to render impossible the acquisition by individuals of a predominant interest in such societies, to prevent speculation in connection with them, and to discourage those who might desire for reasons of personal profit to avail

themselves of the facilities given by the Act, to start banks for other ends than those for which these societies are intended." For these reasons and also with the object of avoiding the danger of passing the control of co-operative societies into the hands of business rivals a statutory restriction is placed on the transfer of shares. It is also necessary to restrain frequent changes among those who are liable. Otherwise it will be difficult to raise capital by inviting deposits from the public. The public will be prepared to deposit their money only when they know that the members are honest, industrious and such as have the adequate security to offer. This will be difficult if shares and for that matter the members are changing frequently. S. 19 (b) of this Act which corresponds to s. 14 of Act II of 1912 restricts the transfer of share to the Society or to a member of a Society or to a person whose application for membership has been accepted. Such a provision is not found in the Company Law. One cannot seek to free himself from the responsibility by transferring the shares to another. Even after withdrawing a past member continues liable for contributions upto a period of two years. (See notes to s. 28). In an unlimited liability society the members being jointly and severally liable for the debts of a society the transfer of shares do not count much.

**Restrictions on frequent changes of shares.**—As a check upon fraud and to prevent the subscription for shares merely with the object of avoiding attachment it is provided that the shares must have been placed with the society for a period of not less than 12 months.

In the case of credit societies with unlimited liability there are other considerations also, namely:—

(1) Members must see that only respectable persons well-known to them are admitted to membership or otherwise they themselves will be called upon to make good the loss. (2) Every member must make it sure that a new member will be able to bear his share of the common burden. (3) A member must not be allowed to transfer his share or interest to any one he pleases but must transfer it to or through the society, for the survivors must be sure that the transferee is fit for the liability. (4) Every new member must be formally admitted by accepting his application for membership. This is necessary as it will be some proof that

he has accepted legal liability for the debts of the society as they stood on the date of admission.

**Notes**—In a share society the possession of a share is a condition of membership. The transfer of shares is disclosed in the Register of Members which has to be maintained up-to-date as provided by ss. 21 and 30 of the Act and also from the two books namely the Share Transfer Register and the Register of Shares and Debentures which have to be kept by every credit society as laid down in Rule 14 (b), and (c) ( see Appendix A for the Rules. ) The Register of Members is not *prima facie* evidence of the actual transfer but only of its date.

### *Duties of societies*

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

Address of societies.

### **Commentary.**

**Old law.** This is s. 15 of the Co-operative Societies Act, 1912, with some additions ( See Appendix B for the old Act. )

**Company Law.**—Every company must have a registered office, and is liable to penalties in default (s. 72, Indian Companies Act, 1913). All communications and notices may be addressed to a company at its registered office (*ibid*). A document (summonses, notices, orders, etc.) may be served on a company by leaving it at, or sending it by post to, its registered office [ s. 148, (*ibid*) ]. The jurisdiction of courts in respect of proceedings under the Companies Act is determined by the situation of the registered office. Notice in writing of the situation of the registered office, *i. e.*, the name or number of the premises, the name of the road or street and town and district and every change therein must be filed with the Registrar [ s. 72 (2) of *Indian Companies Act, 1913* ].

**The object of the address** under the Co-operative Societies Act is that all communications may be addressed to it. It



is not that a meeting of the members should be held at the address registered nor is it necessary that notice of change of place of any meeting should be sent to the Registrar. This is a matter for the convenience of the members who have to attend the meeting. It should, therefore, be left to their discretion.

**Change in address to be notified to the Registrar.—**

The application for registration under s. 9 requires the address of the society to be given (Rule 2, see Appendix A) thus, in every case original address is with the Registrar. It is, therefore, necessary to notify to the Registrar only the change in the address.

✓ **21.** Every society shall keep open to inspection at all reasonable times at the registered address of the society—

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

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

**Commentary.**

**History :—**This is s. 16 of the Co-operative Societies Act, 1912, with some changes and additions (see Appendix B.)

**Company Law.—**A company is bound under penalty of fine to furnish copies of its Memorandum and Articles (if any) with alterations if there be any to a member on payment of fees (s. 25, *Indian Companies Act, 1913*). The documents with the Registrar are open to inspection on payment of fees. Any person is entitled to a certificate of registration of a company and to a copy or extract of any other document kept with the Registrar on payment of fees [s. 248 (5) *ibid*]. Every company must prepare a balance sheet at least once a year [s. 131 (1) *ibid*]. It shall be open to inspection by the members [s. 131 (e) *ibid*] for at least seven days before the general meeting [s. 131 (3) *ibid*]. Every member is entitled to a copy of the balance sheet and the auditor's report on payment of fees (s. 135, *ibid*.).

**Inspection of books of account of a company.—**The right of the shareholders to inspect the account is strictly limited, for, if every shareholder were at liberty to examine the accounts when-

ever he desired to do so, it would be impracticable even for the accounts ever to be kept or made in a proper manner. The Indian Companies Act gives no right to the shareholder to inspect the Company's books of account and practically the shareholder has no right of inspection except such as is given by the Articles of Association. But where such right is given the shareholder may inspect the books and accounts of the company and may get them examined and reported upon by competent persons. It may be observed generally that a right to inspect includes a right to copy so that the inspection may be effective. Where a member has the right to inspect the accounts he may inspect them by a skilled agent, *i. e.*, an accountant or a solicitor or other agent against whom the Company has no reasonable grounds of objection.

**"Maximum of publicity"** in the dealings of the society is prescribed because in a well-constituted credit society some control and supervision, in truth, very rigid checking is expected to be exercised by the great body of members themselves. Like the admission of oxygen in material things, it serves to keep the atmosphere pure and sweet. The periodical balance sheets and statements of accounts which are seen in the office of a credit society are not hung there for nothing. Members are to be kept advised of what is going on, what money is lent out, to whom it is lent and so on, in order that they may, as neighbours check current dealings, and, in the event of their scenting mischief, sound a note of warning. There is only one thing connected with the management of a society which must not on any account be disclosed; and that is the names of depositors with the amounts standing to their credit in the savings department. That information is kept sacredly secret. Otherwise there is nothing which is not made public within the society to whoever chooses to enquire into it.—*Co-operation in India by Wolff.*

**The Act, rules, by-laws and the register of members** are open for inspection even to non-members under the Co-operative Societies Act. The main object of co-operation is to lead the people to better life, by the development of thrift, self-help and mutual aid among its members, with the hope too that the idea of thrift, etc., may spread in the neighbourhood. This cannot be effected unless a large number of people join the movement. The

above-mentioned provision has, therefore, been made to enhance the credit of the society, to inspire confidence among depositors and others and thereby to attract the people to this movement.

*N. B.*—Copies of the Act and Rules in the vernacular are supplied to all rural primary societies.

**Register of members.**—It is incumbent on a society to maintain a register of members (rule 14). It is open to inspection even to non-members. (s. 21). It is *prima facie* evidence of the date at which the name of a person was entered as a member in the register, and also of the date at which he ceased to be a member (s. 30).

**For inspection of documents and fees to be paid for obtaining certified copies,** see rule 16 (Appendix A.)

**Registrar may require, statements and periodical returns to be furnished.**— See rule 17 (Appendix A.)

**Property Register** must be submitted by every Housing Society to the Registrar on such dates and in such form as he may prescribe.—See rule 17 (*ibid*).

**Quarterly financial statements to be furnished by Central Banks and Urban Banks with working capital of more than Rs. 50,000**—See Rule 18 (*ibid*).

**Annual balance sheet** must be published and kept open for inspection and a copy must be submitted to the auditor in charge of the society. [See Rule 19 (*ibid*)].

**Note.**—For a full discussion, see notes under s. 71 (h) *infra*.

**Failure to comply with this section is an offence** in the case of a Society with a working capital of Rs. 50,000 or more. See s. 60 and notes thereunder.

**The resolutions and proceedings** should not be kept open to inspection by the public. Resolutions are passed in the case of deposits and they form the proceedings. The deposit register of members as well as of non-members is kept confidential. But if resolutions and proceedings are kept open to the public then the public will get the names of persons who have made deposits in the society and thereby the purpose of keeping the deposit register confidential will not be served.—*Bombay Legislative Council Debates, July 23, 1925.*

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

Audit.

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

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

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

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

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

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

#### Commentary.

**History.**—This is s. 17 of the Co-operative Societies Act, 1912, with some additions and changes (see Appendix B).

**N. B.**—See notes to s. 3 under the head 'Audit classification at p. 21 and 'Audit' at p. 29 *ante*. (See also the chapter on 'Audit, Inspection and Supervision' in the Handbook of Co-operation for Societies in Bombay and Sind by the writer)

**Every Company shall at its General Meeting appoint an auditor** or auditors to hold office until the next annual general meeting. If no such appointment is made the Local Government may, on the application of a member appoint an Auditor for that year and fix his remuneration.—*S. 144, Indian Companies Act, 1913.*

**The auditors are agents of the shareholders** and their duty is to act as a check upon the Directors, and to give an assurance to the shareholders that the balance sheet and the report are a *bona fide* and correct statement of the affairs of the Company.—*S. 145, Indian Companies Act, 1913.*

**“Every Auditor of a Company shall have a right** of access to the books, accounts and vouchers and shall be entitled to require the necessary information and explanation (s. 145, *ibid*).

**It is the duty of the auditor** to make a report on the accounts examined by him and on the balance sheet, stating whether it exhibits a true and correct view of the state of affairs according to them as shown by the books and the information supplied to them.—*S. 145 (ibid).*

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

**The two principal reasons for which an Audit** is instituted are: (a) The detection of fraud and (b) the detection of errors.

**Frauds** may be divided broadly into two classes: (1) defalcations, involving either misappropriation of money or goods and (2) the fraudulent manipulation of accounts not involving defalcation.

**Misappropriation** may be concealed by the inclusion of fictitious payments and by the omission of the receipts.

**In regard to the detection of the errors**, it must be remembered that what at first sight appears to be merely clerical errors are often ultimately found to be due to fraudulent manipulation, and it is, therefore, important for the Auditor to carefully examine the cause of any error however slight it may appear to be. Errors may be classified under the heads: (1) Errors of Omission and (2) Errors of Commission and these may again be classified as (3) Clerical errors and (4) Errors of principle. While there is a further type known as (5) Compensating Errors.

**Errors of omission** arise when any transaction is left either wholly or partially unrecorded in the books. They are very difficult to detect, and may not be discovered until the accounts of previous years are compared.

**An error of commission** arises when a transaction is incorrectly recorded, either wholly or partially. The error may not be discovered until the transaction is vouched or otherwise checked.

**Clerical errors** are due to posting an item to a wrong account or to an incorrect posting, but one of the same class to which it should have been posted.

**Errors of principle** arise by reason of a transaction being recorded in a fundamentally incorrect manner.

**Compensating errors** are those which are counter-balanced by other errors so that they are not disclosed by the Trial Balance Sheet.

**Auditor.**—It is impossible for individual shareholders to be familiar with the details of all the various businesses in which they may be interested as shareholders; moreover the Articles of Companies do not, as a rule, permit individual shareholders to have access to the books and accounts; and consequently, the shareholders as a body are entirely dependent on the Auditor appointed by them. In addition, the audit acts as a check upon the Directors and as a precaution against fraud on the part of employees; whilst the Auditor is often able to render valuable assistance by reason of his expert knowledge in matters of account and finance generally. (This is specially the case with regard to auditors appointed to audit Co-operative Societies.) The Auditor is in a position to make valuable suggestions with regard to the improvement of the system of accounts in use and the expert knowledge of accounts at his command should prove of advantage to the business.

**The qualities required of an Auditor.**—The Auditor should have a wide knowledge of the theory and practice of Book-keeping and Accounts

and should be so familiar with the underlying principles thereof, that he can apply them without difficulty to transactions of which he has no previous experience. It is impossible for a man to audit an account properly unless he is capable of preparing that account himself. It is a safe rule for the auditor to adopt that no transaction should be passed the precise meaning of which is not understood. There is no use of items being passed blindly as such a mistake will land the auditor in trouble sooner or later. It is not possible that the auditor has experience of all kinds of business and before auditing a concern with the nature of whose business he is not sufficiently well-acquainted he would do well to put intelligent questions and elicit sufficient information to criticise the transactions.

An auditor must possess in some considerable degree that characteristic of genius—an infinite capacity for taking pains; he should possess tact and patience; he must be conscientious, and must not be hurried into signing a certificate or report until he has received the whole of the evidence which he requires or sign under a promise that evidence required will be forthcoming the next day. He must exercise constant vigilance; he must not allow his work to become automatic, or to lapse into a mechanical routine. He must be accurate, since his function is to detect the mistakes of others; he must be methodical in order that no detail of his work may be omitted; he must be cautious, but he need not be suspicious.

**A Co-operative Auditor** has often to deal with honorary workers, he should, therefore, be a man of good temper and tact. He should possess a thorough knowledge of the Act, rules and by-laws of the various institutions and departmental instructions. (These are contained in Circulars issued by the Registrar from time to time; See Hand-book of Co-operation for Societies in Bombay and Sind by the writer.) He should have a general knowledge of the rudiments of the law of limitation, the Hindu and other laws, the Code of Civil Procedure, the Dekkhan Agriculturists' Relief Act, the Laws of Banking, etc. He must be a man of high ideals and good character possessing the strength of conviction being as fearless in exposing and pursuing errors as polite in his movements with the co-operators.

**The audit of a Company and a Co-operative Society.**—In companies the burden of securing an auditor for the proper audit of accounts is cast on the shareholders themselves. They appoint an auditor to carry out an independent investigation into the affairs of the company and report the result to them. In co-operative societies the responsibility for audit is fixed by law on the Registrar and the audit is as much for the Government to satisfy itself whether the societies are developing on sound lines to the satisfaction of creditors as well to the benefit and safety of the members.

Joint-stock companies are essentially profit seeking concerns. The most important result of an audit in this case is to disclose profit available for dividend. In a co-operative society profits play a less important part. For any profit made should ultimately come from the members themselves.

How far the society has been able to carry on business on co-operative lines securing ultimate material and moral improvement of the members is what is important in a society. In other words, a Joint-Stock Bank may be considered sound so far as it makes profits and is able to pay a decent dividend, but in a co-operative society the mere fact of working at a profit is no proof of the society's successful working.

**Nature of Co-operative Audit.**—The ordinary purpose of an audit of any company or society is to see that the accounts are properly kept and to present to those interested a correct statement of the society's or concern's financial position. This is as necessary in the case of a co-operative society (which is a business organisation with a special mode of doing business) as in the case of any other business organisation. The essence in the principle of audit is that the agency employed should be independent of the persons who are directly concerned in the conduct of the affairs of the business; for, there can be no useful purpose served at any rate in the matter of rousing public confidence, by one auditing one's own accounts and certifying to their correctness. On the other hand, one stands to gain by having them certified by other competent persons. The essential requisite of audit, i. e., independence of the agency conducting the audit is best provided for in Government audit of co-operative societies. The Government auditor does not depend upon the shareholders or members for his appointment and, therefore, he can be under no obligations to the societies in his charge. While even in the case of a company there is nothing to prevent it from appointing one of its shareholders as auditor, provided he possesses the required qualifications, the Co-operative Auditor is prohibited, from becoming a member in any co-operative society (except a Consumers' Society including a Housing Society on a co-partnership tenancy basis—G.R.R.D. No. 5977 of 6-2-1923) which is not organised specially for the benefit of the Staff of Co-operative Department (G. R. R. D. No. 5977 of 6-2-1923). He cannot even make deposits, lend or invest funds or take any loans either for himself or his family or stand surety for any person borrowing from a society or otherwise acquire any sort of interest in the societies (*ibid*). (For further information, see the Hand-book of Co-operation for Societies in Bombay and Sind by the writer.) Even the audit of big societies such as Central Banks and Urban banks is carried through Special Auditors appointed by Government and for whose maintenance special audit fee is levied. All this is done because there are special features about the audit of a co-operative society. The Registrar (who is responsible for accepting the audit and who must prescribe its conditions) is bound by his duty to the public to see not only that the audit is mathematically correct but also that the affairs of the society are being conducted in a truly co-operative spirit, or in the words of the Act (*cf.* s. 5) "in accordance with Co-operative principles." This needs a more detailed scrutiny into the policy of the acts of the society than would be required of an ordinary auditor.

Audit under the Co-operative Societies Act, therefore, is not only an annual official inspection by the Registrar or some one authorised by him into the financial position of a society, embracing all the books



and every transaction of a society, but it extends to a detailed examination of the method of work and of the society's knowledge of and conformity to co-operative principles, ( *Fifth Conference of Registrars, 1911* ). The Registrar is concerned not only to discover and expose what is wrong about the working of societies, but also and even more so to assist societies to correct the mistakes and do their work rightly in future. This makes it necessary that the audit of a Co-operative Society should go much beyond the scrutiny of what has been done in the past. Indeed the auditor is as much the guide, councillor and friend of the society as an inquisitor of mistakes ( *The Madras Co-operative Manual, 1930 Ed.* ).

It has been pointed out that in a Joint-stock Company the auditor is mainly an agent of the shareholders and an officer of the Company appointed and paid by it. The main object of its audit is to enable the shareholders to be assured that the accounts presented by the Board of Directors are correct and that the Directors have not utilised their position for their own private gain and to the detriment of the Company's interest. Under the Co-operative Societies Act the auditor is an agent of the Government, the audit is in fact a state-controlled audit the main object of which is to enable Government to be assured that the societies are progressing on sound lines. It appears that that view is implied in the clause of the Act which imposes the duty of making an audit on the Registrar and his nominees ( *Committee on Co-operation in India, 1915* ).

The Company auditor while conducting the audit examines the over-due debts and verifies the assets and liabilities. In the case of loans on personal security or mortgage of property, the Company auditor examines the bonds and the deeds and inquires of the Directors about the probable value of the properties and the personal securities, and when there be no suspicious circumstances, he accepts their certificates and on their strength reports that the assets are properly valued. The liabilities are similarly verified by vouching the receipts of the share capital, issue of debentures, creditors' statements, Profit and Loss account and appropriations. As regards technical audit, the duties of a Co-operative Auditor include an examination of overdue debts, etc. But it is not merely a preparation of balance sheet but is also an adequate check of the list of the material assets of the members. The work also includes an inquiry into all the circumstances which determine the general position and characterise the working of the society. The auditor has, therefore, in addition to verifying to the truth and correctness of accounts

(1) to ascertain that loans are made for the purposes authorised and on adequate security and are paid to the proper parties, and the time for repayment is fixed with reference to the ability and convenience of the borrower ;

(2) to see that extensions are given only in the cases where they are really called for ;

(3) to examine the repayments in order to see whether mere book adjustments are taking place ;

- (4) to verify the Property Register;
- (5) to submit a detailed report on all overdue debts, stating what steps are being taken to recover them and how far the auditor considers the steps adequate;
- (6) to verify the genuineness and regularity of all personal security and mortgage bonds and also verify the loans by personal inquiry, wherever possible ; and
- (7) to see that the Act, Rules, the By-laws and the Registrar's instructions are strictly followed.

The Joint-stock Companies' Auditor has nothing to do with the prudence or imprudence of making loans with or without security. His duty is merely to ascertain and state the true financial position of the Company at the time of the audit. It is no part of his duties to give advice as to the administration of the Company. As has been aptly put, a Joint-stock Auditor may be a watch-dog but is not a blood-hound while a co-operative Auditor on the other hand is nothing, if not a blood-hound.

Urban and District Central Banks, for instance, are the most important institutions in the co-operative structure and if any serious break-down occurs in their working, the Government on account of its position behind the movement is looked up to for the necessary help. (In other provinces, recently, such occasions for promise of Government help have actually arisen and in Burma, the Government has already agreed to bear a loss of 20 lakhs.)

To summarise the whole position, "Co-operative Audit" is something much more than Audit in the technical sense. It includes the general examination of the working of the society and giving proper advice with regard to its administration which is not ordinarily a part of the mere statutory auditor's duties. The officers, though designated "Auditors" are really Inspectors and Supervisors and constitute the chief agency through which the Government which is behind the movement enforces its will and directs the whole policy.

**The object** of auditing of a society's accounts is to protect the members against the misconduct or incompetence of the officers.

**(1) State-controlled audit assures Government** that societies are developing on sound lines. The Government of India in their Resolution (Dept of Rev. & Ag.) No. 1-633, dated 29-4-1904 pointed out that since the societies were to enjoy exemption from the general law and facilities of a special nature, it was necessary to take such precautions as might be needed in order to prevent speculators and capitalists from availing themselves, under colourable pretexts of privileges, which were not intended for them. The Government of India again by

their Resolution No. 12-287-1 dated 17-6-1914 said "Without some degree of Government supervision, Registrars would lose touch with societies and the outside public, who depend largely on the information possessed by Registrars, and who value the scrutiny, carried out by those on whom they rely, would lose that confidence in the financial position of the societies which it is so essential to maintain..... It is necessary, therefore, that societies should be controlled and audited by a reliable staff which can keep the Registrar informed of the financial position of the societies, and it is also necessary that the agency employed should be such as will ensure the confidence of the money-lending public....." The Committee on Co-operation, 1915, at p. 57 of their Report said: "In the case of primary co-operative societies in India at the present stage the audit is intended primarily to assure Government through whose agencies the societies were formed, that they are developing on sound lines. The audit is in fact a state-controlled audit and it appears that that view is implied in the clause of the Act which imposes the duty of making an audit on the Registrar and his nominees. It is through audit alone that an effective control can be exercised."

**(2) It is necessary to safeguard the interests of outside investors.**—This can only be done when there is supervision to such a degree as will afford some guarantee against serious loss. The Act insists upon regular audit and provides for inspection of the affairs of societies either at the request of creditors or when the Registrar considers this necessary. If the supervision and control is weakened or withdrawn, then it appears certain that deposits in co-operative banks will be taken out and that fresh deposits will not be made. If the average depositor holds this view, then it is certain that no commercial bank will entertain very seriously any proposals to finance co-operative credits unless it is satisfied that Government has made proper arrangements for the control or audit of Central Banks and Societies. The term "Audit" must in so far as Co-operative Institutions are concerned, include an inspection of their affairs and especially an investigation into the methods of working. A Society or Bank which is not observing its by-laws and the provisions of the Act and of the Rules made thereunder is a menace to the stability and reputation of the co-

operative movement generally.—*Report of the Committee on Co-operative Societies in the Central Provinces, 1922.* It need not be mentioned that the average depositor in the Co-operative Bank attaches great importance to the fact that Government undertakes the responsibility if not for the direct audit at any rate for supervision and control of the audit of Co-operative Institutions. In other words audit gives the outside public and the members more confidence in the management, and even when no financial assistance is received from Government the society will obtain valuable privileges under the Act and it is reasonable that they should at the same time be obliged to submit their accounts to some check such as that of an official audit.—*G. R., R. D. No. I 63-3 dated 29-4-1904.* The Royal Commission on Agriculture in India (1928) was of opinion that one of the main causes of the failures of societies was the lack of requisite education and of adequate supervision and guidance. Members of co-operative societies were not sufficiently trained to assume the responsibilities thrown upon them.

**(3). To ensure successful management** nothing is more important than constant and vigilant scrutiny of the accounts and examination of the general management, through the agency both of the Registrar's staff and of the co-operative institutions themselves. S. 22 of the Act prescribes that every society shall be audited at least once a year by the Registrar or some person authorised by him. An 'inquiry' or 'inspection' under certain special circumstances is provided for in ss. 43 and 44 of the Act. Both audit and inspection are carried on under the ultimate control of the Registrar, and it rests with him not to confine himself merely to the obligatory duties imposed by the Act but also to watch and regulate the whole efficiency of the movement.

**(4) Audit is necessary to prevent misappropriation and fraud.**—It is necessary to prevent fraud on unintelligent ryots which, apart from the immediate hardship which it would cause, could not fail to have a most fatal effect in discrediting the system of co-operation. It is necessary to sound a note of warning that there is no greater danger to co-operative societies than that of misappropriation owing to lack of supervision and insufficient audit.

(5) **Audit also helps to instil a sense of responsibility** in the employees thus stimulating efficiency of work including account keeping.

(6) **The managing Committee requires a sheltering authority.**—Auditing has regard to actuarial account keeping. Inspection applies to the use which the Panchayat (Committee) has made of its discretionary powers. Situated as it is, with claimants coming to it with requests from all sides, the Panchayat wants such a sheltering authority to shield it against improper demands. Neighbourly overkindness is not, however, the only failing that Panchayats are liable to. Indeed the catalogue of shortcomings and abuses, such as actually occurred in India—Panchas abusing their authority or granting *benami* loans, allowing “reloans” too freely and “paper transactions” and all the rest of it is a long one.—*Co-operation in India by Wolff.*

(7) **Audit as form of economic education.**—Mr. Wolff was of opinion that Government were as entitled to spend money on audit as a form of economic education as on any other form of education and considered it more practical and quite as useful as literary education. The ultimate aim of society should be that they should do their own audit at their expense and that Government should do a certain amount of super-audit to ensure public confidence—*Eighth Conference of Registrars, 1918.* To conclude in the words of Mr. Wolff, it is for the benefit of the societies themselves not only momentarily as keeping business straight but permanently, as creating a settled rule of action, ensuring continuity of policy, capturing public confidence and so strengthening credit that the policy of auditing societies through Government agency should be continued.—*Co-operation in India by Wolff.*

**Liability of auditor.**—The absence of penal provisions in the co-operative law is noteworthy as against the express provisions in the Indian Companies Act making the auditor responsible as an officer of the company under circumstances contemplated in ss 235, 236 and 239 read with s. 145. All the same the personal liability of auditors under the Co-operative Act is similar to that attaching to the auditors of commercial concerns under the ordinary law. The auditor is liable for any damage sustained by means of falsification which might have been discovered by the exercise of reasonable care and skill in the performance of audit. He is similarly responsible

for negligence, misfeasance (which term implies a breach of duty) or breach of trust in the conduct of audit. Ordinarily, an auditor has not merely to detect errors but also fraud and failure to do so will make him liable for any damages sustained thereby. He has to acquaint himself with his duties according to the law, the rules and the by-laws governing the particular concern and if by failure to do so, transactions that are *ultra vires* are passed as in order, without pointing out the circumstances in his report, the auditor will be held liable for any damages caused by such breach of duty. The Courts have held the company auditors liable for not verifying the cash balance, for failure to detect fraudulent suppression of invoices for purchases, etc. In the case of *Leeds Estate Building and Investment Co. v. Shepherd*, 36 Ch. D.787 (1887) responsibility was fixed on the auditors for dividends paid out of capital. In *London and General Bank*, 2 Ch. 682 (1895) it was held that an Auditor, who does not report to the shareholders the facts of the case (being aware of the critical position of the Bank) when the balance sheet is not properly drawn up is guilty of misfeasance. In *the Irish Workers Co Ltd., v. Tyson and others*, Acct. L. R 13 (1900) it was held that an auditor is liable for any damage sustained by a company by reason of falsifications which might have been discovered by the exercise of reasonable care and skill in the performance of the audit. In *the London Oil Storage Co. Ltd. v. Seear Hasluck & Co.*, Acct. L. R. 31.1 (1904) it was held that an Auditor is liable for any damage sustained by a company by reason of his omission to verify the existence of Assets stated in the Balance Sheet. In conclusion, it may be said that the measure of an Auditor's liability in any particular case will depend upon the skill and diligence with which he has performed his duties.

**Examination of overdue debts** — In any system of banking, the existence of arrears under loans is almost always a symptom of weakness ; more so with regard to co-operative societies. In view of the far-reaching consequences of such arrears, this section specially enjoins on the Auditor the duty of the examination of overdue debts. From the theoretical point of view there ought to be little room for overdues in a co-operative society. Loans are restricted to members and the selection of members is based upon character. For productive or provident purposes alone are loans granted. An outside limit to the borrowings of a member is fixed in the by-laws in addition to the borrowing limit in the case of each by virtue of the number of shares he holds. Again the necessity for the loan and the repaying capacity of the member are the chief factors determining the amount of loans. The Managing Committee bring to bear their influence and intimate local knowledge on their duties in connection with the disposal of loan applications. The society is expected to watch the application of the loan with powers of foreclosure in case of misapplication. Repayments in easy instalment are allowed and the due dates are fixed according to the convenience of the borrower so as to synchronise with the time when he would be in possession of funds by the sale of his produce or otherwise. Above all, the Managing Committee has been vested with absolute discretion

in the matter of grant of loans. Quite independent of any of the duties and responsibilities of the Committee, there is the pressure of mutual watch by the members pledged to unlimited liability. But in actual practice the overdues from members of primary societies are seen to mount up year by year. In 1930 unauthorised arrears in this Presidency were reported by the Registrar to be Rs. 98, 98, 582 or 31 per cent. of the amount due for repayment. (*Annual Report on the Working of Co-operative Societies, 1930*). This is causing disquiet and in some cases giving room for real anxiety. On a careful analysis of the overdues, it will be found that each case of arrears may be traced to the neglect of one or more of the precautions set forth above. Over-due debts might be classified under the following headings : (1) Good, (2) Doubtful, (3) Time-barred, (4) The subject of pending suit in Court, (5) Decreed. Over-dues might be for the principal or for the interest or both. Over-due loans may be certified good by the Managing Committee and yet the Auditor has to submit a detailed report about them stating what steps have been taken to recover them. After studying each case of arrears and noting in brief against each item the reasons for pendency with a view to bring out the action taken in each case, the auditor should proceed to grade the over-dues cases as required in the audit notes, namely, (a) overdue loans on which no action is taken ; (b) those in which suits or references have been filed and decrees not yet obtained ; (c) those in which decrees have been obtained but not executed, showing time-barred cases prominently in red ink ; and (d) those in which decrees are in course of execution. The Auditor has to examine and explain why even debts considered good have become overdue, whether it be due to bad harvest, or unexpected misfortunes of the borrower, etc., why he considers certain debts to be doubtful ; report about circumstances leading to over-looking debts till they are time-barred and who is responsible for the same and give advice to the members of the Managing Committee to avoid such delay, to explain why no proceedings are taken upon decrees.

As for arrears of loans when they are due to causes beyond the control of the members concerned, extension of time might be freely granted by the Managing Committees under the by-laws which empower them so to do. Sometime ago it was necessary to advise societies to take advantage of the powers and to grant more extensions in deserving cases. But the Registrar remarks in his Annual Report (1927) : "I am afraid that now-a-days the powers are often abused. In many cases there is a tendency for managing Committees to grant wholesale extensions if the season has been bad or below average, whereas of course each individual case should be inquired into separately. Theoretically, members of societies are financed for the whole of their agricultural requirements. They should, therefore, repay the whole of their dues as long as there is sufficient margin when the crop has been realised and if the margin is insufficient, they should repay as much as possible according to the extent of the crop." Similar remarks apply in the case of items resulting from the initial mistakes on the part of the Members of the Committee in the grant of loans. There may be certain cases in which the dues may not be easily recoverable unless resort to the

Court is had. Cases are also met with where the property mortgaged has been alienated or the transaction has been in the first instance a *benami* one or action has to be taken against non-members having interest in the property. In the circumstances the Managing Committee cannot but go to Court for the realisation of its dues. It is only by a close scrutiny of each individual case of arrears that the auditor can separate good from bad cases and help in bringing down the arrears.

The wisdom of the legislature in having made the examination of the overdue debts a matter of special responsibility of the auditor is thus clearly seen at the present stage of the movement. The auditor can help to a very great extent in the reduction of over-dues by carrying out his duties in a thorough and methodical way. He can by a close examination of overdue cases bring to light frauds and irregularities such as *benami* loans transactions, misappropriation of collections, non-disbursements of loans, subsequent alienations of pledged property and so on. Sometimes even the death of a member is detected by the auditors only at the examination of overdues as owing to his death there has been no repayment. Supervision is intimately connected with that of the overdues. The Registrar in his Annual Report (1930) points out that it does not take long for a society to become bad, if supervision is slackened or if the services of a good Managing Committee cease to be available. The moral is that supervision has to be tightened every where, the principal aim being to prevent deterioration setting in by taking very prompt early steps about recovery—forcible recovery—if necessary. Prompt arbitration and prompt recovery go hand in hand and necessary machinery for the execution of the awards must be given most urgent attention.

**The verification of cash balance and securities**—One of the commonest forms of fraud is the misappropriation of cash or other assets of an easily negotiable character. The first duty of an auditor is, therefore, as soon as he takes up the audit of a society, to verify the cash balance with the society. But this is, however, more easily said than done. The difficulties in the way have been in the past so great that legal provision had to be made authorising the auditor to call for the production of cash balance for purposes of verification. It is impossible for the auditor to verify cash balance on the date of the balance sheet in all the societies of whose audit he is in charge. He has to verify it on the date of his visit for audit and vouch the receipt and payment items back to the date of balance sheet and thus satisfy himself as to the correctness of the amount taken credit for in the balance sheet. In verifying such assets the auditor should take every precaution in order that he may not be deceived by any substitution of assets, e. g., where there are general cash balances, the Auditor should call for the production of all these at the same time. Since if he examines them on different days, a portion of one balance may be utilised to make good a deficiency in another. In a similar manner where there is a large number of investments, care must be taken to see that they are all produced at the same time. If the cash balance is not immediately forthcoming the



auditor should make a note to that effect and record any reasons given for the delay. He should also state where and how it is kept. He should verify the genuineness and regularity of all personal security and mortgage bond and see they are not time-barred.

The Auditor should also ascertain from the property statement and otherwise, if necessary, whether the personal sureties are good for their undertakings and whether the mortgage securities are sufficient; any defects should be pointed out and commented upon. If the security be goods say cotton, *guls*, oil-seeds and so on, the documents, if any, should be examined and the market value of the goods should be ascertained to see if there be sufficient margin. What the auditor has to see is whether a proper margin is kept between the amount of loan and the value of the securities. Accumulation of arrears of interest might indicate that the account is doubtful and when it is added to the amount of the debt it should be seen that a further security is lodged, if necessary. He should also see that proper reserves are made to cover any possible loss. It must be remembered that it is possible for negotiable assets to be fraudulently pledged. Unless, therefore, proper precautions are taken, the assets that have already been verified by the Auditor may be utilised to free those that have been pledged, which, being thus released for the Auditor's inspection, could be returned to the pledgee immediately afterwards. For this reason the Auditor must take such precautions as will enable him to satisfy himself that all the assets he examines are free from any charge upon them which is not in order, and recorded in the books of the business (*Spicer and Peglar's Practical Auditing*).

**A valuation of the assets and liabilities.**—The general principles which should be applied to the valuation of Assets in the Balance Sheet are the following :—

(a) *Fixed Assets* are those of a permanent nature, by means of which the business is carried on and which are held for the purpose of earning income, and not for the purpose of sale, *e. g.*, Land, Buildings, Plant and Machinery, etc. Such assets should be shown into the Balance Sheet at cost price, less any depreciation that may have taken place. The net figure will represent the present value of the assets to the business as a going concern.

(b) *Floating or Circulating Assets* are those in which the business deals, and which are acquired for the purpose of sale, and the subsequent stages of the conversion of the same into cash, *e. g.*, Stock, Book-Debts, Cash. The valuation of Floating Assets should be at cost or market price whichever is the lower at the date of the Balance Sheet.

(c) *Wasting Assets* are in effect a sub-division of Fixed Assets, but include any such as decrease in value through the operation of being worked and are, therefore, not subject to depreciation through wear and tear. Wasting assets are those of a fixed nature which are gradually consumed or exhausted in the process of earning income. In order to replace the exhausted capital out of revenue it is necessary to reduce the value of the Wasting Asset in

the Balance Sheets to the extent of the estimated amounts by which it has diminished in value. Sometimes provision is made by way of General Reserve, the Assets remaining in the Balance Sheet at its original value.

In this connection it has to be remembered that Assets are subject to depreciation and sufficient provision for the same must be made at the time of estimating the value of assets. Depreciation has been defined as waste, loss or permanent shrinkage in value of an asset for some reason or other; on account of wear and tear, obsolescence or efflux of time. The main object of providing for depreciation is to keep the capital in tact.

In ascertaining the liabilities of a society the auditor should be careful to note the following :—

(1) Deposit from members and non-members whether fixed, current, savings or recurring should not merely be vouched by reference to the cash-book and deposit receipts issued by the society to the members are to be obtained and the entries checked therein. (2) Borrowings from Central Banks, Government, etc., are to be verified with reference to statements obtained from them. (3) Their capital should be vouched by checking the totals of the Register of Members and the Cash-Book. (4) Out-standing interest, establishment and contingent charges if due are to be similarly calculated and vouched. (5) Supervision charges to be paid to the Unions and other items held in suspense accounts for want of full particulars of credit or share amounts of members removed from the Society for some cause appear under this head. (6) The appropriation of profits to the Reserve fund and dividends has to be made according to the by-laws, the Rules and the provisions of the Act, and the balances of these accounts have to be vouched by reference to the books and their investments.

### Audit Charges.

**History.**—Free annual audit for all societies registered under the Co-operative Societies Act by the staff of the Registrar was one of the special privileges conceded to societies in early days of the movement. Subsequently, Government issued rules dealing with the subject of Audit. Rule 29 made it necessary for the Societies with a capital exceeding Rs. 50,000 to bear the charges of the audit of their accounts. Similarly, an audit fee according to a sliding scale was levied from all Urban Credit Societies (Urban Banks), District Central Banks and the Provincial Co-operative Bank when their working capital exceeded Rs. 50,000 and their accounts were audited by the Special Auditor. (For scale of fees, see Hand-book of Co-operation for Societies in Bombay and Sind by the writer.) Audit fees were charged for Housing Societies under *G.R. No. 3818/24 of 28-7-1926 R.D.* The amount of the charges when fixed are recoverable under s. 65 of the Act as

money due to Government. Consumers' Societies with a working capital exceeding Rs. 50,000 are allowed to arrange for their annual audit independently. If they are able to make their own arrangements, they are to report the fact to the Registrar before the 1st of May every year. If such a report is not received, the Registrar arranges for the compulsory audit of such society by an official auditor. For such an audit, a fee of Rs. 10 per day is charged. If the audit arranged independently by such societies is found defective, the Registrar has power to order fresh audit by the official auditor. (Rule 31). It is, however, clear that departmental auditors may not possibly be able to examine the valuation of the assets and liabilities of a rural primary society as no complete list of assets is kept by such society and there is no official record of the liabilities of its members with private Sawkars. The audit of a society to be impartial and of value should be carried on by an outside authority. The audit is a statutory duty of Government. It is incumbent on Government to provide for the audit, and that is partly for the information of the Government and partly also for the information of the general public as some sort of guarantee to the people who invest their money in co-operative banks, that the societies are in a sound condition. It appeared, therefore, that the audit should be paid for by the Government. The tax payee is interested in the general economic prosperity of the ryot and audit is the statutory duty under the Act of Government. The people have confidence because of the Government audit. The Indian peasant is very poor. The rural society will have a small share capital and if the subscribing for audit is insisted upon even societies of 5 or 10 years' standing would come to grief. After a good deal of compromise and discussion in 1928, the Registrars' Conference agreed that the same practice might continue provided that sufficient provision was made for efficient supervision. Thereon the Sixteenth Bombay Provincial Co-operative Conference (1929) recommended that free audit should continue to be provided by Government and that societies enjoying the privilege should contribute for supervision so long as that privilege continued.

On the other hand, the Royal Commission on Agriculture in India (1928) did not consider the audit of a healthy society a proper charge on public funds. Opinion supporting this view was

also expressed in the Tenth Conference of Registrars (1928). It was argued that if Government bore the whole cost, the societies would find the control go entirely out of their hands. If federations or provincial unions have some control over Auditors, they would take a sympathetic attitude towards the societies.

The Government of Bombay have now by a *G.R. No. 3818/24 of 29-12-30* ordered under Rule 30 the levy of audit fees with effect from 1st April 1931 from all agricultural non-credit Societies of at least 3 years' standing, non-Agricultural Societies of the same standing and Agricultural Credit Societies on the scale mentioned below:—

(a) **Agricultural non-credit societies of at least three years' standing.**

- |     |   |                 |
|-----|---|-----------------|
| (1) | For the first Rs. 1,00,000 of the turnover            | 1/16 per cent.  |
| (2) | For a turnover between Rs. 1,00,000 and Rs. 3,00,000. |                 |
|     | for the first Rs. 1,00,000                            | 1/16 per cent.  |
|     | for the rest  | 1/32 per cent.  |
| (3) | For a turnover above Rs. 3,00,000                     |                 |
|     | for the first Rs. 1,00,000                            | 1/16 per cent.  |
|     | for the next Rs. 2,00,000                             | 1/32 per cent.  |
|     | for the next Rs. 47,00,000                            | 1/64 per cent.  |
| (4) | For every lakh over Rs. 50,00,000                     | 1/128 per cent. |

The minimum fee shall, however, be Rs. 50 and the maximum fee Rs. 1,500, subject to the proviso that in no case shall the fee exceed  $\frac{1}{2}$  per cent. calculated on the working capital as it stood at the close of the last preceding co-operative year.

(b) **Non-agricultural societies of at least three years' standing**

- |   |               |
|---|---------------|
| For the first Rs. 20,000 of the working capital | 1/4 per cent. |
| For working capital exceeding Rs. 20,000        | 1/8 per cent. |

(c) **Agricultural Societies.**

An audit fee at the rate of  $\frac{1}{4}$  per cent. calculated on the working capital, as it stood at the close of the last co-operative year, of all agricultural credit societies except those which pay supervision charges to Supervising Unions or Taluka Development

Association of not less than  $\frac{1}{2}$  per cent. in which cases the audit fee will be levied at the rate of  $\frac{1}{8}$  per cent. only.

2 These orders should not affect the levy of any fees now being recovered by the Registrar under rule 29.

3 A sum of Rs. 25,000 out of the amount collected by the Registrar from the fees recovered from the primary agricultural credit societies which are not already paying audit charges under rule 29 should be annually credited to Government to meet part of the cost of audit, and a grant equal to the remaining amount should be provided on the expenditure side of the budget as a subsidy to the supervising agencies in lieu of the present subsidy.

**Note** :—So far as the Agricultural Credit Societies are concerned, this new scheme is most anomalous and unsatisfactory with regard to supervision and the supervision charges levied by the Unions. Societies which are affiliated to supervising Unions and pay for this purpose at the rate of 8 annas per cent. of working capital, will pay an additional fee of two annas per cent. But these societies which are not affiliated to the Unions at all will pay audit fees only at the rate of 4 annas per cent. The new orders, therefore, practically invite the Societies to denounce their Supervising Unions and thus undo some of the useful work which was done during the last few years. As regards strengthening and systematising the supervision of primary Societies, in the policy hitherto recommended, the cardinal principle was practically to compel every society to join a supervising Union and, since the rate of the supervision fees or in the alternative the audit fees was to be one and the same, there was then no inducement for a society to seek to break away from the supervising Union. Now, however, the difference in rates has already produced the expected results and several Societies are threatening not to pay the supervision charges and thus bring the work of the Unions to a stand still.

**Special auditors** are appointed to audit Central and Urban Banks, Housing societies and other societies with a working capital of Rs. 50,000. Under rule 29 (see Appendix A) these societies pay for their own audit. The audit memos. of these societies are sent by the special auditors through the Assistant Registrar in charge of the division in which such societies are situated. In other respects, the special auditors are directly responsible to the Registrar. There are at present three special auditors.

**Sub-auditors**.—In some districts the auditors are assisted by sub-auditors with power to audit accounts of certain classes of small societies. There are at present 23 sub-auditors in this presidency.

**Honorary Organisers**.—For the purpose of remedying the defects brought to light by auditor, training and helping weak societies, etc., a large body of unofficial honorary organisers are employed. They are a most helpful band of workers in the cause of co-operation who give their services free and merely receive their travelling expenses from Government. These Honorary

organisers are authorised under this section by the Registrar to inspect the societies. Their names are published every year in the Bombay Government Gazette. It is impossible to estimate the services of these workers too highly. "At the same time" wrote the Royal Commission on Agriculture in India (1928) in their Report "it must be recognised that honorary workers cannot be expected to exercise that regular supervision which is essential to the success of co operative movement. They are frequently professional men with urgent calls on their time and with other duties, both public and private, which demand their attention. They are not, therefore, in a position to devote their whole time to co-operative work as officials. They are, moreover, not always expected to possess the technical knowledge, experience and leisure necessary for undertaking responsibility for supervision when this has been added. In the same way and for the same reasons (honorary workers, who undertake the work of education, suffer from difficulties from which it is not always easy to escape. This is the work for which special training is required, but honorary workers cannot spare time for this training to the extent that is possible for the official and they do not always feel bound by the policy of the Department, even on such important subjects as the degree of financial strictness which it is so desirable to enforce.") The Commission, therefore, advocated the maintenance of highly educated and well-trained staff of officials. Its chief duty would be to educate members upto the point at which they will be competent themselves to undertake its duties and so to dispense with its services; to strengthen the hands of the temporary workers by furnishing them with skilled advice and guidance in the more difficult problems; to supervise the work of unions and federations engaged in the management and control of the movement, and to work out new schemes to facilitate the work of other departments to prepare the ground for their special propoganda and to organise the people to receive and adopt expert advice. However, we have to recognise the weakening influence of too frequent visits from an outside agency. There is no doubt that closer attention in areas in which the movement is lacking in vitality is needed. It appears to be generally recognised that such supervision is only called for until societies are able to dispense with it and the fact that, where societies are classified, the highest class is reserved for those which require no supervision, serves as an effective reminder of this. But it must be remembered that supervision by an authority outside the society is equally detrimental to the growth of a proper spirit of self-help whether it is performed by a paid official or an honorary worker. The ideal aimed has been to organise a supervising agency from within by federating primary societies into special unions. ( See also discission under the head 'Organisation of Societies' at p. 80 )

Supervision to a large extent embraces the other terms, namely inspection, audit, control and so on. It expresses the general presiding function of a superior authority. It can be used of a unit society, of a union or a Central Bank (and, in the absence of a local organiser) of the Registrar. A local Panchayat supervises the actions of members, so far as these affect the Society, to ensure that they act according to their interests and those

of the society in conformity with rules and by-laws and co-operative principles. In a similar sense, though in less detail a Union or Central Bank supervises its affiliated societies. And in a more general sense the Registrar exercises this function for all kinds of societies. The word "Supervision" implies an attitude on the part of these different authorities, of continuous watchfulness over the interest of members and societies and of continual vigilance to secure the due observance of co-operative principles and practice.—*Fifth Conference of Registrars of Co-operative Societies*, (1911).

The object of supervision is to ascertain the general scope of a society with a view to suggesting improvements and extensions, to examine the accounts in order to see that they are properly written and do not reveal any undesirable transactions and generally to stimulate the working of a society by well-grounded encouragement or censure. To carry out these objects supervising unions are formed. These unions do not undertake any financial responsibility, but confine themselves to supervision and guidance. The very useful work of consolidation and development of primary agricultural societies is being done through these unions. It is universally agreed that the proper agency for the supervision of the primary credit societies is the supervising union, and if rural co-operative credit is to be developed on sound lines it is clearly essential that every credit society should be affiliated to and be under the control of some supervising union. Each one of the Supervising Unions maintains one or more paid supervisors according to its requirements and they go about inspecting societies, helping them in their recoveries and generally assisting and advising the secretaries in their day to day work. Many of the supervisors employed are trained and qualified men. Special classes for the training of supervisors are organised by the branches of the Institute and many Unions send in their supervisors for training. The Managing Committee members of the Union also are expected to visit societies themselves from time to time and offer advice and guidance. It is obvious that the success of the Union depends on the efficiency of the supervisors and upon the interest taken by the members of the Managing Committee in their work. The appointment and control of a trained and well-paid supervisor is a matter of great importance. The responsibility for the appointment and control of the supervisor rests at present with the Board of Management. However, in order to ensure that the supervisor is not unduly harassed and interfered within his ordinary work provision is made for the appointment of a District Supervising Board to review and examine the work of the supervisor. This Board consists of the Assistant Registrar of the Division, the Representative of the Co-operative Institute and a Representative of the financing institution. Steps are also being taken to provide representation of Unions on the District Boards. These Boards are expected to scrutinize the Supervisors' Diaries, examine the work of the Union from time to time and give the necessary advice and assistance both to the Supervisor and Union. The Supervising Unions frame by-laws giving control of the supervisors to the District Supervising Union Boards. The problem of supervision cannot satisfactorily be dealt

with unless provision is made for a compulsory levy for this purpose from the constituent society. The Bombay Provincial Co-operative Conference passed a resolution in 1929 approving of the principle of a compulsory levy and the pooling of the supervising fees district by district. Ordinarily, the jurisdiction of a Union is one Taluka but in less developed tracts two or even more talukas are for the time being grouped together to form a Union. At present as stated above the limit of jurisdiction is taken to be a taluka, but later on when the number of societies increases it may be necessary to have more than one Union in each taluka with a scale of about 25 to 30 societies affiliated to each Union. ( See also notes under the head "Unions" at p. 61 ).

**Unions for the supervision of Urban Banks.**—One union for each linguistic division for the supervision of Urban Banks is being formed to inspect the work of affiliated Banks. Such Unions have to engage qualified paid supervisors who have to be in constant touch with the affiliated Banks and give them the necessary guidance in the right direction.

**Agricultural Organisers.**—These are engaged in supervising Dairies, Manure Societies, Cotton Sale Societies, Cattle Breeding Societies, and so forth. These Officers inspect but do not audit. They have now been placed under the Divisional Board and are responsible for the organisation and guidance of agricultural non-credit societies. They are men of special technical knowledge. These officers work in a District or part of a District and are usually agricultural graduates. They are the counterpart of the Agricultural Overseers in the Agricultural Department. They are intended to develop the organisation of non-credit agricultural co-operative societies but they do agricultural propaganda work as well. In fact they mark one of the lines on which the agricultural department and the co-operative department are working in conjunction. The ideal is that the charges of Agricultural Overseers and Agricultural organisers shall not overlap, and that they shall cover between them every district, both doing both agricultural and co-operative non-credit propaganda work. They originally worked under the supervision of the Assistant Registrars and subsequently they were placed under the Deputy Director of Agriculture. Since 1923 they have again been placed under the Assistant Registrar. ( See also p. 80. )

**Industrial Organisers.**—The idea in appointing Special Industrial Organisers is to provide an official of special technical and commercial knowledge to guide Industrial Co-operative Societies such as Co-operative Soap Factories, Co-operative Printing Works, etc., in their methods of work.

**Weaving Inspectors and Assistants.**—These experts are appointed especially to help weavers who are considered as a backward and illiterate class.

**Special Mamlatdar.**—This officer is appointed by an arrangement with the Provincial Bank and in view of its request to assess the assets of societies, guide them and help recoveries in Bhil areas in Panch-Mahals District for reclamation of the Bhils. Half the cost of the officer and his establishment is recovered from the Bombay Provincial Co-operative Bank and the other



half met by Government. The Bhils are as is well-known very backward and absolutely dependent on others and everything has got to be done for them by outside agency.

**Bank Inspectors.**—In certain areas, Inspectors are sent out by the Provincial or Central Banks to examine the working of the primary societies. But this does not obviate the necessity of supervision by the Registrar or by some one authorised by him. Financial perfection is not the main object of co-operative effort and the work of village societies cannot be judged solely by their relations with their financing agencies. But at the same time it should be remembered that the surest guarantee which a financing agency can have, that its investments are safe, and that its money is repaid with interest and principal on the due date, is that the primary societies affiliated to it, should be in the highest sense of the word, efficient. The more the members understand the principles of co-operation, the greater the interest they take in the working of their societies, the better their education, the better their agriculture, the better their living and business, the better the security the financing agency has for its advances. (see also notes to s. 9 under the head 'Organisation of Societies' at pp. 80-81 *Supra*)

**Co-operative Unions and Institutes.**—In European countries, where co-operation is more or less independent of Government, there are one or more strong central federations, which link together individual societies that would, otherwise, be isolated, serve as a bureau of information, undertake the work of organisation and inspection, and in many ways strengthen and stimulate the movement. This example has been followed in India and most provinces have now a provincial union or federation. In the Bombay Presidency it is known as Co-operative Institute. These federations differ not only in constitution but also in the functions they undertake. Some of them are constituted entirely of representatives of all classes of societies, others of representatives of central institutions, others, again, include individual members. Some of them have as their main duty the work of auditing co-operative societies, while others devote themselves to propaganda and training. To the latter category belongs the Bombay Provincial Co-operative Institute. Generally it may be said that the object of these institutions is to promote the co-operative movement in all possible ways, by serving as a centre of co-operative activity, by carrying on propaganda and publicity work by organising and developing diverse types of societies, by organising training classes, by acting as an information bureau and by ascertaining and representing the views of co-operators on questions of general and public importance relating to the movement.—*Report of the Royal Commission on Agriculture in India.* (1928) See also notes to ss. 52 and 53 *infra*.

**Inspection** is the principal means by which a superior authority, Union, Central Bank, Local Organizer or where none of these exist the Registrar and his staff exercises its function of supervision. It signifies a careful local examination of a society's accounts and methods of work and is intended to provide the superior authority with material for controlling the society.—*5th Conference of Registrars, 1911.*

**S. 22 should be amended.**—The Select Committee appointed to consider the Bombay Co-operative Societies' Bill thought it undesirable to extend the power of summoning witnesses and other persons to Inspecting Officers, and, therefore, all reference to inspection which was inserted in the original draft was omitted. Now under s. 17 of the Co-operative Societies Act of 1912 the Registrar and any person authorised by him had power at all times to have access to all the books, accounts, etc., of a society and it was obligatory on the officers of the society to furnish information in regard to the transactions at the time of such inspection. According to the present wording of s. 22 of the Bom. Act this can only be obtained at the time of audit by the auditor. It seems, therefore, necessary to amend s. 22 (1) so as to empower the Registrar to inspect a society or cause it to be inspected by some person authorised by him at least once a year. Under cl. (3) of s. 22 of this Act the Registrar or other person appointed to audit the accounts is allowed to have free access to books of accounts, vouchers, cash balances and securities only. Under cl. (4) the Registrar and the person appointed by him to audit the accounts can require the production of any book or document relating to affairs of any cash or security of the society, but the Registrar has no power to have free access with regard to properties other than those mentioned in cl. (2). Similarly, he cannot require the production of other properties belonging to the society than those mentioned in cl. (4). It is, therefore, necessary to empower the Registrar to have free access, etc., at the time of inspection not only to books, accounts and vouchers but should be allowed to verify the cash balance, the securities and other property if there be any. Cl. (4) also requires to be amended on the lines suggested above.

**Note.**—The auditors of a company do not seem to have powers to summon the officers of the company at the time of their audit. The Registrar or the person authorised by him in this behalf to inspect a society should be empowered to inspect not only the books, accounts, etc., but must have free access to enable them to verify the property of the society other than the cash balance, and securities and the Directors, managers, etc., should be compelled to furnish such information, etc., as the Registrar or the person authorised by him in this behalf may require.

**(4) To summon at the time of audit any officer, etc.**—If the audit is to be of any real value, the auditor should be empowered to summon officers of the society. If for the purposes of audit a society's records are not made available to the auditor the business of the society is likely to go from bad to worse. The success of the credit societies which are the back-bone of the whole movement of co-operation depends on their popularity and the popularity depends on the honesty and the good accounts of the society. Therefore, auditing is absolutely necessary. Now if auditing is absolutely necessary it should be efficient auditing. Now the auditor

is responsible for the auditing; he is responsible for the loss and damage. He has to summon in many cases men in villages. Those people will not put in an appearance on being asked to come if these provisions did not exist, particularly the defaulters; and those are the people who are to be got at. Therefore, the power that is to be invested in the auditor is absolutely necessary, on the analogy of the power given to the auditors of companies. The Bombay Provincial Co-operative Conference held in 1916 had passed a resolution: "That rules should be introduced empowering the auditors to require the attendance of particular members of any society at the time of auditing and empowering liquidators to require the presence of the defaulters at the time of their proceedings." The same view was expressed by the Provincial Bank later on.—*Bombay Legislative Council Debates, July 23, 1925.*

**Compelling production of books or documents.**—It was found that some bad men who had not been doing their work properly and tried to avoid the auditors and such other officers, they would not show the books, cash, etc. It was thought that auditors who have got to do their statutory duty should not be hampered in their work by the recalcitrant nature of an evil-minded secretary or chairman. The Bombay Provincial Co-operative Conference, 1919, therefore, recommended that power should be given to the Registrar or any other person authorised by him in writing to audit, inspect or enquire into the working of a society to issue a summons, requiring the production of any books or documents, relating to the affairs of the society or cash by the person in whose possession they are.

**The summons** may be sent by registered post or through the Mamlatdar or Mahalkari in charge of the Taluka or Mahal in which such person resides (rule 42). The mode of serving summons is given in rule 44. ( See Appendix A )

**Wilful disobedience to the summons** may make the person liable to a penalty not exceeding Rs. 50. The fine may be recovered as arrears of land revenue.—See ss. 60 and 61. *So also neglect to furnish information*, etc. is an offence similarly punishable under s. 61 of the Act.

**(1) The Registrar by himself or by some person authorised by him to audit every society.**—S. 21 (1) of Act X

of 1904 prescribed that the Registrar should audit the accounts of each society once at least every year. Co-operative societies are increasing so rapidly that personal audit by Registrar is no longer possible. It is, therefore, provided that the audit should be conducted by the Registrar or any one authorised by him.—*Fourth Conference of Registrars, 1909.* All audit must be done by actual visit to the villages concerned. This also allows some of the larger societies to employ at their own expense chartered or professional accountants to audit their accounts. The Registrar may accept such audit in lieu of official audit.—*Fourth Conference of Registrars, 1909.*

### *Privileges of societies.*

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

Societies to be bodies corporate.

### **Commentary.**

**History.**—This is s. 18 of the Co-operative Societies Act, 1912; (See Appendix B).

**Company Law.**—S. 23, cl. (2) of the Company's Act states:—  
“From the date of incorporation the subscribers of the memorandum and others who have joined as members later on constitute a body corporate and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the events of its being wound up as is mentioned in this Act.” (Note.—Indian Companies Act, 1913, does not apply to societies registered under the Co-operative Societies Act.—S. 68.)

**Effect of registration.**—On registration the society becomes a corporate body distinct from the persons composing it. A society when registered becomes in law a ‘person’ [for definition of ‘person’ see s. 3 (35), Bombay General Clauses Act, 1904] under the name contained in the by-laws and is an entity quite

distinct from the members who compose the same. A member is not as such an agent of the society nor is he personally liable for its debts and liabilities. The property of the society belongs to the society and not to its members, and the creditors of the society can proceed only against its assets for the satisfaction of their claims. They have no right to levy execution against individual members. In the case of default it is the society and not the individual members which go into liquidation. A member of a society limited by shares is liable to the society only and his liability is limited to the amount for the time being unpaid on the shares held by him; when he has paid the full nominal amount of his shares he is exempt from any further liability thereon. In the case of unlimited liability societies the assets are realised and where there is deficit in the engagements of a society to its creditors, this deficit should, after the full payment of shares (if any), be recovered by a series of *per capita* levies upon the members and past members, etc., upto the full extent of their property, direct proceedings by a creditor against individual members being forbidden. This is called unlimited contributory liability.—See *Report of Committee on Co-operation, (1915)*. See also notes to s. 5 under the head ‘The main object of Registration’ at page 62.

**The cancellation of registration** terminates the existence of the corporate body (see s. 49) and, therefore, the power to institute and defend suits (s. 23) under this section passes to the liquidator. S. 50 (e) empowers the liquidator to institute and defend suits and other legal proceedings on behalf of the society in the name of his office.

**In an unregistered society** a creditor may sue any member he pleases for his whole debt and leave him to recoup himself out of the assets or from his fellow members, thus the benefits of registration appear in winding up proceedings. In the case of registered society, the assets are realised and only the deficiency has to be made up by contributions from members, past members etc.—*Calvert p. 160 (1926 Ed.)*.

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

Prior claim of society.

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

Provided that nothing contained in this clause shall affect the claims of any *bona fide* purchaser or transferee for value without notice of any such crops or other agricultural produce, cattle, fodder for cattle or raw materials for manufacture or workshops or agricultural or industrial implements; and

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

#### Commentary.

**Old law.**—For s. 19 of the Co-operative Societies Act, 1912, see Appendix B.

**The meaning of the term land revenue** is not restricted to assessment which is one particular kind of land revenue.—See the remarks of *Macleod C. J.* in *Jinbahai v. The Collector and T. S. Officer*, 28 *Bom. L. R.* at p. 418.

**The term land revenue** is not defined in the Bombay Land Revenue Code, 1876. It is explained in s. 3 of the Bombay City Land Revenue Act, 1876, as 'signifying any sum of money legally claimable by Government from any person on account of any

land, or interest in or right exercisable over, land held by or vested in him, under whatever designation such sum may be payable.' It is also defined in the Bombay Revenue Jurisdiction Act, 1876, as meaning "all sums and payments in money or in kind received or claimable by or on behalf of Government from any person on account of any land held by or vested in him, and any cess or rate authorised by Government under the provisions of any law for the time being in force."

**Prior claim of landlord in respect of rent, etc.**—Cases sometimes arise in this Presidency where there is a conflict of interest between the landlords and the co-operative societies, the latter trying to realise their respective dues in priority to the former from tenants of the landlords who are also debtors of the societies. In fact, the section clearly gives priority to the claim of landlord in respect of land revenue, etc., but doubts are likely to arise owing to the provision in s. 50 (f) empowering the liquidator to issue requisitions under s. 59 upon the Collector for the recovery as arrears of land revenue of any sum ordered by him to be recovered as dues from members or as contributions to the assets of the society or to the cost of liquidation. The result of this enactment is that on a requisition being made to the Collector by the Registrar or the liquidator for realisation of any sum ordered to be recovered as contribution to the assets of the society or as costs of liquidation the Collector shall recover it in the same manner as the arrears of land revenue. This provision however cannot be interpreted to authorise the Collector to ignore this section or other laws directly dealing with the question of priority. It simply empowers the Collector to take advantage of procedure laid down in s. 150 of the Bombay Land Revenue Code, 1876, which provides for processes for recovery of land revenue. It is as follows:—

"An arrear of land revenue may be recovered by the following processes:— (a) by serving a written notice of demand on the defaulter; (b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due; (c) by distraint and sale of the defaulter's moveable property; (d) by sale of the defaulter's immoveable property; (e) by arrest and imprisonment of the defaulter."

This is only an adjective law and not a substantive law. Some difficulty is felt by the provisions of s. 53 of the Land Revenue

Code which provides that the land forfeited under s. 150 of the Code may be sold free of all encumbrances, etc. But this can never be meant to apply to co-operative societies in view of s. 24 of the Act. The dues of the co-operative society which have no priority even over the rents due to the landlord when the society is working cannot be invested with a higher status when the society is brought under liquidation. It merely provides a speedy mode of recovery.

**Note.**—On the same analogy it may be said that in view of the fact that ss. 2 and 21 of the Dekkhan Agriculturists' Relief Act, 1879, apply to co-operative societies registered under this Act, an agriculturist cannot be arrested and imprisoned in execution of money decrees even by the Revenue Authorities to whom such dues are transferred for execution by adopting the process which they apply for the recovery of arrears of land revenue.

**Priority and Charge.**—The difference is this: Priority necessarily means that a society has to obtain a decree and thereafter the question of priority comes in. Charge is a step forward in affording facility to a society and avoiding the lengthy procedure of going to Court. Government has a prior charge and as seen in the first part of the clause of this section the landlord next and the societies are placed in the same position as they.—*Bombay Legislative Council Debates, July 23, 1925.*

#### Charge.

**Charge.**—In this country this term corresponds to the term lien in English Law. In England lien is defined to be an obligation which by implication of law, and not by express contract, binds real or personal estate for the discharge of a debt or engagement. But it does not pass any property in the subject of the lien.

**Charge** is defined for the purposes of immovable property in s. 100 of the Transfer of Property Act, but apparently here the term is used in the sense of an equitable charge which gives a right to the payment of money out of the property. It entitles the society to have the property comprised therein sold to raise the money charged thereon.—*See Halsbury's Laws of England, Vol. XXI, p. 83.* A charge results as soon as the property of one person is made security for the payment of money to another. It is not



necessary to constitute a charge that the property should be specific. A charge is only a security for the payment of money to another, which may be due either as a debt or a claim. There is no transfer of interest in charge. It is only pledged as a collateral security.

**First Charge.**—The provisions of s. 19 of the Co-operative Societies Act, 1912, which give a society prior claim on crops grown by the aid of loans from it, are largely inoperative, partly owing to difficulties in proving that a particular crop has been grown by means of a particular loan, and partly owing to a ruling of the Calcutta High Court (*Abdur Kadir v. Shahbazpur Co-operative Bank*, 42 Calcutta, 377), which allows an outside decree-holder to attach a crop in priority to a society unless the society also obtains a decree in its favour. In this connection the Committee on Co-operation in India, 1915, thought that the proposal to the effect that the lien, as granted by the Act of 1912, should operate against outside attachment or sale, even in the absence of decree in favour of the society has much to commend it and recommended that in the amended Act the prior claim of the society should be definitely described as a "charge" on the property in respect of which the loan was granted.—P. 43, *Report of the Committee on Co-operation in India, 1915*. The All India Act of 1912 constitutes the debt or outstanding demand to be merely a prior claim and as such to give effect to it, it was necessary for the society to get a decree prior to any creditor. In view of this it is enacted in s. 24 of this Act, that the claims of a society should be a first charge on the property in respect of which the loan was granted. But it should be noted that this section gives no prior claim to land purchased or redeemed from money lent by the society. The section does not confer any summary power of realization on a society, and, therefore, difficulties might arise in the case of artizans and agriculturists, because under s. 60 of the Code of Civil Procedure, 1908, tools of an artizan and where a judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of s. 61 of the Code, are not liable to attachment or sale in execution of a decree.

**Note.**—For a definition of the term “agriculturist” see notes under the head ‘whether a person is an agriculturist or not’ in s. 8 *ante* at p. 71.

**Musical instruments** are not industrial implements or machinery and do not come within any other part of the class of articles referred to in s. 19 of the Co-operative Societies Act, 1912. —*Maung Then v. Maung Hla*, (1916) 2 U.B.L. 133.

**Fat is not raw material.**—Fat intended to be purchased and sold at a profit and not for the purpose of manufacturing some other commodity is not raw material within cl. (b) of s. 19 of the Co-operative Societies Act, 1912. 3 P. W. R. 1917.

**Bona fide purchaser or transferee for value without notice.**—A charge upon movable property has not been defined in law. The only definition of “charge” is given in the Transfer of Property Act which relates to immovable property. In some cases a charge upon movable property can be created but that will be a bailment or pledge and the creditor has the possession of the property pledged. It is a recognised principle of law that whoever is in possession of movable property can give a valid title to the purchaser of it without notice unless the vendor has got the possession of the property by means of an offence such as theft. In this particular case it cannot be pretended that the debtor is in possession of property by means of any fraud or theft. It is in the possession of the bailor. If the bailor takes it to the market and if a third person *bona fide* purchases it for value without knowing that the particular property has been pledged to another person, then why should (he) the third person lose his money? If there be no such clause the result would have been that no person would have dared to buy anything from any person who had borrowed anything from any co-operative society and then would have no credit for that borrower in the market. Again there would have arisen other contingencies. One would not purchase any property from any person because one would be absolutely ignorant whether that person had borrowed any money from a co-operative society or whether there was a charge on that property in favour of a co-operative society. In the case of immovable properties there is registration and registration is

a notice to other persons and a purchaser can easily find out whether the property is burdened. In the case of a field there is the record of rights maintained by the Government and the purchaser will be met by the question whether he has examined the record of rights before purchasing.—*Bombay Legislative Council Debates, July 24, 1925.*

**Notes.**—It is suggested in some quarters that in order to enable societies to enjoy the protection given by s. 24, cl. (a), s. 24 should be so amended as to throw the burden of proving that the purchaser or the transferee of crops or other agricultural produce or cattle, etc., had made enquiry previously at the office of the society if there be any in the village whether there was any such claim or charge as mentioned in the section. Otherwise he should be deemed to have had notice of such a charge

**The jurisdiction of Insolvency Court is not barred.**—The admission to membership depends more upon the character of the person than his real property. A society should, therefore, be careful to examine the character of the member before it admits them and the Central Banks should be cautious in advancing money to the societies. They should make proper enquiries and should keep proper control over societies. If societies are started without taking proper precautions in admitting members and if no sufficient caution is exercised at the time of advancing money the society should be made to pay for its faults. The second reason is that co-operative societies should not have special privileges in this respect. If other creditors lose their money on account of any man taking advantage of the Insolvency Court, there is no reason why the co-operative societies should not bear the proportionate loss. They should share the assets of insolvent along with other creditors if they are worth anything. As it is the co-operative movement has got certain concessions from the Government and it is not considered fair that they should have further concessions of this sort. Any way it would not be fair to other creditors that any more preference should be shown to societies.

Another reason is that co-operative movement is more humane than the ordinary money-lender. There may be cases where a man takes advantage of the Insolvency Act because he cannot help it, (*Ninth Conference of Registrars, 1926.*) See also notes to s. 59 under the head "Insolvency Courts should not refuse to grant interim protection to insolvent debtor against detention in prison merely because a co-operative society chose to enforce its claim through Collector." (*infra*).

**25.** A society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect

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

of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

### Commentary.

**History.**—S. 20 of the Co-operative Societies Act, II of 1912, is reproduced here (See Appendix B).

**Company's lien on its shares.**—The Articles usually give the company a lien on the shares of its members. See cls. 9 to 11 of Table A in first Schedule of the Indian Companies Act, 1913. The Table contains regulations for the management of a company limited by shares. Articles of Association of a company may adopt Table A wholly or in part and so far as the Table is not excluded or modified it will apply. Cl. 9 of Table A runs thus :—

“ The Company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company ; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon. ”

The company may sell the share to enforce its lien without resort to Court-Cl. 10 of Table A in the first Schedule states :—

“ The company may sell, in such manner as the director thinks fit, any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share. ”

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

**Bonus.**—A sum given or paid over and above what is required to be paid or is regularly payable. (*Century Dictionary.*) An allowance beyond the ordinary dividend of a company either in the form of extra money-payment or by way of allowance in reduction of premium or otherwise.

**Set off.**—When A has a claim for a sum of money against B and B has a cross claim for a sum of money against A, such that B is by law to the extent of his cross claim entitled to be absolved from payment of A's claim, and to plead his cross-claim as a defence to an action by A for the enforcement of his claim, then B is said to have to the extent of his cross claim a right of set off against A.—*Halsbury's Laws of England, vol. 25, p. 482.* It seems that the word set off is used in this section in its ordinary sense to indicate that the society may write off or deduct the amount of debt due from a member from any sum credited or payable to him on account of his share. So long as the society is carrying on business, it may *bona fide* avail itself of this provision. A member may set off a present debt due to him by the company while the company is a going concern, against a sum due by him for calls or against future calls. But a member cannot set off his share in a society against the society's claim against him for any debt due from him to the society. The reason is obvious. The shares form capital of the society and being security for the creditors cannot be allowed to be reduced in this way.

**Charge.**—See notes to s. 24 under the head 'charge' at pp. 137-138 *ante*.

**Notes.**—It is necessary to amend the section so that the society may have a charge upon the share or interest in the capital, on deposits of members or past members and upon any dividend, bonus or profit payable not only to members or past members, but also in the case of employees or past employees. This is necessary for the protection of provident funds which are being formed for the employees of co-operative societies.

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

Shares or interest  
not liable to  
attachment.

### Commentary.

**Changes.**—This is s. 22 of the Co-operative Societies Act, 1912, except for the fact that the words “ or in any Provident Fund established under s. 41 of this Act ” are new ( see Appendix B for Act II of 1912 ).

**Notes.**—The section appears to be somewhat defective inasmuch as it makes no provision of an employee for whose benefit recently provident funds are being formed.

**Ordinary Law.**—All compulsory deposits and other taxes in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachments.—*Clause (k) of s. 60, Code of Civil Procedure, 1908.*

With regard to Co operative Societies the only concession which s. 60 of the Code of Civil Procedure, 1908, makes is contained in the proviso to that section. It is as follows :—

“ Provided that where the decree-holder is a society registered or deemed to be registered under the Co-operative Societies Act, 1912, and the judgment-debtor is a member of the Society, the provisions of sub-clauses (i) and (ii) shall be construed as if the word ‘twenty’ was substituted for the word ‘forty’ wherever it occurs and the word ‘forty’ for the word ‘eighty’.

In other words, in such a case (1) the salary or allowances equal to salary of a public servant, or a servant of a Railway Company or local authority while on duty to the extent of (i) the whole of the salary where the salary does not exceed twenty rupees monthly and (ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly shall not be liable to attachment or sale.

Under ordinary Civil Law shares in a corporation are considered property liable to attachment and sale in execution of a decree.—*See s. 60 of the Code of Civil Procedure, 1908.* The attachment in the case of shares is made by a written order by the Court prohibiting the person in whose name the shares may be standing from transferring the same or receiving any dividend thereon.—*O. 21, rule 49 of the Code of Civil Procedure, 1908.*

When the shares are to be sold the Civil Court may, instead of directing the sale to be made by public auction, authorise the sale of such share through a broker.—*O. 21 rule 76 (ibid).* When a share is sold the delivery is made by a written order of the Court prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon and the manager, secretary or other proper officer of the Corporation from permitting any such transfer or making any such payment

to any person except the purchaser.—O. 21, rule 79 (*ibid*). If the execution of a document or the endorsement of the party in whose name a share in a corporation is standing is required to transfer such share the judge or such officer as he may appoint in this behalf may execute such document or make such endorsements as may be necessary, and such endorsement for execution shall have the same effect as an execution or endorsement by the party. Until the transfer of such share, the court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.—Rule 80, O. 21 (*ibid*).

**One of the main objects** of the societies is the encouragement of thrift. In furtherance of this object savings in the form of shares must be protected from attachment or sale of any description by a court of justice. It was proposed by the Committee on the establishment of Co-operative Credit Societies (1901) in para. 12 of their Report that even deposits of members upto a certain small amount (say Rs. 100) should be exempted from attachment of any description whether by a Court of law or by a Revenue Officer. But the Government of India turned down the proposal on the ground that thrift ought not to be encouraged wholesale at the expense of the legitimate creditor.

**Liability to attachment.**—Deposits and loans are not part of the capital of a society as understood in this section of the Act and are, therefore, not exempt from attachment by Civil Courts. (*G. R. No. 8989 of Sept. 20, 1906, R. D.*)

**Note.**—The exemption only applies to shares of a registered society, so that on dissolution as soon as the registration is cancelled (s. 49) the shares would become liable to attachment if no liquidator were appointed to take charge of the assets. S. 47 is for winding up and cancellation will be under s. 49. A society continues its corporate existence during the process of winding up.

The word 'capital' here means the society's owned capital or in other words it means the capital owned by the members in their corporate capacity.

**Interest.**—For the meaning of this word, see s. 6 of the Act. It is the right of ownership as a co-owner or partner in the capital of the society. (See notes to s. 6 at p. 66 *supra*.)

**Share.**—For the meaning of this word, see notes to s. 6 *ante*.

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

Transfer of interest on death of member.

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

(2) A society shall subject to the provisions of section 25 and unless prevented by an order of a competent court pay to such nominee, heir or legal representative, as the case may be, all other moneys due to the deceased member from the society.

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

#### Commentary.

The Friendly Societies Act, 1896, s. 56 provides for the nomination of a person and also for its revocation and variation by a member who is not below sixteen years of age. Section 57



of that Act states that on receiving satisfactory proof of the death of the nominator the amounts due to the deceased member may be paid to the nominee. S. 58 lays down the procedure for the payment of money due to member where he dies intestate and without making any nomination. S. 60 renders such payment valid and effectual against any demand by any other person but allows the legal representative to have his remedy in the ordinary Courts against the recipient.

**Old Law.**—*Cf.* s. 22 of the Co-operative Societies Act, 1912, given in Appendix B.

**History.**—The Government of India in their Circular No. 13-C dated 9th March 1912, said :

“The restriction placed by the old law (of 1904) on the transfer of shares has in the case of ‘limited societies’ been removed by s. 14 of Act II of 1912 (this corresponds to s. 19 of Bombay Act VII of 1925) and under s. 22 (*i.e.* s. 27 of the Bombay Act) a duly qualified successor of a deceased member may in the case of a limited society claim the transfer to himself of the share of the deceased. In these respects the bulk of the non-credit co-operative societies recognised by the new law are placed on the footing similar to that of joint-stock companies, and it will be necessary in practice to see that the Act is not utilised for the benefit of societies which are not really of a co-operative character. Precautions in this direction can be taken in dealing with proposed by-laws, and it will, for example, be possible to require a society with share capital to provide in its by-laws that shares shall not be transferable, or shall be transferable to such persons only as fulfil certain requirements, such as that the persons shall be duly elected as members.”

**Scope.**—This section does not profess to give any testamentary powers to persons who under their personal law, may not have such power. For instance, a Hindu or Mohamedan is limited in his power to will away his property. If by means of a nomination made under this section he tries to exceed the limit, the law does not prevent his legal heir from suing the nominees. The law only absolves the society from all responsibility in making the payment according to the nomination. The object of the Act is really to simplify succession but the provisions are somewhat complicated. Take for instance, the case of unlimited liability societies. The section provides that the successor may either (1) claim repayment if he does not want to join the society, or (2) apply for admission to the society and for the transfer to him of the rights and interests of the deceased. In case (2)

the society may admit him and transfer the share to him or may refuse to admit him and pay him off.

**Company Law.**—The Articles of a Company usually provide that on the death of a member, his executors or administrators shall be the only persons recognised by the Company and also state their rights and powers: (see cls. 21 to 23 of Table A.) Under such clauses the executor or administrator of a deceased member may have himself registered, subject to the approval of the directors, as the holder of the deceased's shares, or may transfer the same to some other person, and until then is entitled to receive dividends, etc., on behalf of the estate but not to attend and vote at meetings or to receive notices from the company unless the Articles so provide; (*see cl. 115 of Table A in the First Schedule of the Indian Companies Act, 1913*).

**Interest** means the whole stake of the deceased member in the funds of the society. (See also discussion in p. 66 for 'interest.')

**Person or persons nominated.**—It should be noted that more persons than one may be nominated under this Act.

**Minor member cannot make a nomination** and a *minor son of a deceased member may not* necessarily be refused as a member but the society is not bound to accept the heir even though he is a major as a member. (*cf. s. 56 of the Friendly Societies Act, 1896*, which lays down that a member not being under the age of sixteen years may nominate a person to whom any sum due to a member may be paid on his death.) Similarly, a society may not accept even a nominee as a member. Ordinarily the Committee is to ascertain the heir or the legal representative of the deceased member and then to accept him as a member. In case the Committee refuse to admit him as a member the society must pay him back the value of the deceased member's share or interest where the society is unlimited. S. 29 enables the society to hold the estate of the deceased member liable for debts of the society to third parties. (See notes under s. 29). Therefore, no loss would result if the value of the share is returned which may amount to only a fraction of the total assets of the estate available in case of need. But the case of a limited liability society is different. As laid down in s. 156 (iv) of the Indian Companies Act "in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect to which he is liable as a present or past member." Thus, if the value of the share (which may have been either fully or partly paid up) is returned in case of need

there will be nothing for the society to fall back upon except whatever amount remained unpaid if any on the shares in respect of which the deceased member was liable. The Government of India in their circular No. 13-C dated 9th March 1912 have observed that 'though applicants for registration must be over the age of 18 years, the maintenance of this qualification among members after registration is not expressly provided for, and the question of the relations of a society to the minor heirs of deceased members is, subject to the provisions of s. 22 ( which corresponds to s. 27 of the Bombay Act of 1925 ) left to the operation of the ordinary law.'

**Remedies against a minor under ordinary law.**—If there is a liability on the share held by a minor, the company may take action against legal representatives, executors or administrators. The company may apply to the court for the appointment of a guardian. In case the company is not able to recover the amount due it may force the estate of the minor into bankruptcy and so obtain a due proportion of the assets. It may apply to have the estate administered by the court. If a shareholder dies insolvent the company may prove for the value of the uncalled portion of the shares. If the deceased member's estate is insolvent the estimated value of his liability to future calls as well as calls already made may be proved by the company in the administration of his estate.—*Re : Mc, Mahon Fuller v. Mc Mahon* (1900) 1 Ch. 173; see also O. XX Rule 13, (2) of the Code of Civil Procedure, 1908; Calls which are unpaid at the date of the insolvency of a share-holder and the value of his liability in respect of any future calls are provable in insolvency.—S. 46 (3), of *Presidency Towns Insolvency Act*, 1909: see also s. 34 (2) of the *Provincial Insolvency Act*, 1920.

**Value of share** means the actual value of the share and not the nominal value of it. It can be ascertained from the last annual balance sheet. In case of societies in loss it may even be less than its nominal value. The Government is authorised by s. 71 (e) to make rules providing for ascertaining the value of a deceased member's share or interest. But no such rules have yet been made by the Government of Bombay. S. 27 states that it may be ascertained in accordance with by-laws also. It does not include anything on account of the reserve fund which is usually treated as indivisible. In accordance with s. 71 (z) which empowers the Government to make rules providing for the nomination of a person to whom the interest of a deceased member may be paid or transferred rules are made by the Government of Bombay. ( See below )

**Nomination of persons** is provided for in rule 20, (see Appendix A). As provided by s. 71 (h) the Government of Bombay has made a rule which requires the name and address of every person nominated under s. 27 and any revocation or variation of such nomination to be entered in the register kept under rule 14, sub-rule (1) clause (a).—See rule 21 (Appendix A). Rule 14, sub-rule (1), cl. (a), states that every credit society shall keep a register of members including persons nominated under s. 27 (see Appendix A). It was suggested at the Third Conference of Registrars, 1908, that the vast majority of shareholders and depositors in a co-operative society will always be agriculturists with ancestral holdings. Money paid by them will generally be savings or profits from these holdings: that by Hindu or Mahommedan law the testamentary power in respect of ancestral property or savings therefrom for practical purposes does not exist. The same conference observed that s. 27 (2) did not refer to the nomination of an heir but of a person to whom the interest of a deceased member may be paid or transferred. A rule framed under s. 27 and s. 16 of Credit Societies Act of 1904 absolved the society from liability in respect of the interest of the deceased member. If the member nominates some one who is not his heir, the heir can sue the nominee but the society is covered by the Act. ✓

**Cl. 3 protects the society from litigation.**—Claimants must sue the nominee without joining the society as a party. The legal representative of the deceased member shall have remedy for recovery of the money, so paid against the person who has received that money from the society. If the nominee dies, the committee can take action as if there were no person nominated. Where there is no nominee a person holding a succession certificate under the new Indian Succession Act, 1925, will be accepted as a legal representative of the deceased member. Where there is a nominee the committee should pay to the nominee and not to the succession certificate holder.

**'A society shall pay'**—The section makes the payment of the sum due to the deceased member obligatory on a society, in order that the society should not withhold it when the nominee, heir or legal representative of the deceased member is fixed upon. *Bombay Legislative Council Debates, July 24, 1925.*

**'To such person as may appear to the committee to be the legal heir or representative'**—The clause is permissive and the society has the discretion to withhold its hand from transferring the interests to any person, and can ask him to go and get proper credentials. This discretion is given to the society to avoid technicalities and do away with the necessity of going to Civil Courts and rotting there for days and months to get their disputes decided. In the meanwhile the business of the society will be hampered.—*Bombay Legislative Council Debates, July 24, 1925.*

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

Liability of past member.

#### Commentary.

**History.**—S. 17 of Act X of 1904 limited the period of liability of past members to one year. S. 23 of Act II of 1912 to which this present section corresponds extended it to two years (See Appendix B). The select committee in their report explained that there are considerations in the case of resignation by a member which may be left out of account in dealing with the case of a deceased member.

**Scope.**—This section deals with the liability of a member who has ceased to be a member. The next section (s. 29) deals with the liability of the estate of a deceased member. A 'past member', therefore, means a living person and excludes a deceased member. He is not supposed to be a sleeping shareholder as in a joint stock concern, but an active participant in its affairs and is made to remain liable for a reasonable period.

(N.B.—**Deceased member.** See notes under ss. 27 and 29).

**A past member under the company law** is a person who has ceased to be a member by:—(1) Forfeiture; (2) Cancellation; (3) Surrender; (4) Transfer of his shares.

**Under the Co-operative Societies Act a past member** is one who was a member as defined in s. 3 (c) and who ceased to be such [The case of persons ceasing to be members on death is sepa-

rately dealt with in s. 29. (*infra*) ] because (1) he was expelled; (2) he withdrew from the society; or (3) he was removed from society on his joining another body of unlimited liability.—[*See model by-laws of credit societies with unlimited liability and Rule 45* (Appendix A)]. Model by-laws for share societies with unlimited liability add: A person ceases to be a member on (a) ceasing to hold one share; (b) ceasing to reside regularly in the particular village or town, etc.; (c) permanent insanity. In the case of credit societies with limited liability model by-laws state: a person ceases to be a member (1) where his resignation is accepted by the managing committee; (2) on the transfer or forfeiture of all the shares held by him.

**Company Law.**—The principle embodied in this section is adopted from s. 156 of the Indian Companies Act, 1913. That section of the Companies Act states that every past member who has ceased to be a member within one year of the commencement of the winding up is liable to contribute to the assets of the company in the event of its being wound up. A past member is not liable to contribute (1) in respect of any debt of the company contracted after he ceased to be a member, and (2) unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them. In the case of a company limited by shares, the liability of a present or past member is limited to the amount (if any) unpaid on his shares. [Indian Companies Act, 1913 s. 156 (iv).]

**Note.**—Under the Company Law, a past member is liable for debts contracted before he joined the company. In view of the words "as they existed at the time" it may be held that the same principle applies in the case of past members under the Bombay Co-operative Societies Act.

**'The debts of a society.'**—This section refers to the debt of a society to third parties or in other words to all the claims of the creditors of the society against it and the costs of liquidation (s 47). The period of two years applies to these only and not to the debts of a member to the society. The borrowing member and his surety though he be a member will be liable subject to the law of limitation and there is nothing to prevent the society from proceeding against the member or his surety even if he has left and in spite of the time with due regard to the Limitation Act, 1908, which may have elapsed between the date of his leaving the society and the society proceeding against him.—*See proceedings of the Bombay Legislative Council, Vol. XV of 1925.* It is an ordinary principle that one who received benefits must assume responsibilities, if any, in respect thereof. It is, therefore, proper that the outgoing member should be made liable in respect

of liability incurred during his membership. The absence of such a provision would induce reckless action on the chance of profits and then wholesale withdrawal. The right of free withdrawal connotes liability continuing for a definite period. Moreover in the case of co-operative societies where free and absolute withdrawal is allowed, and not mere transfer of shares to another as in the case of joint-stock companies, past members should be liable equally with present members; otherwise as soon as a society loses its reputation members however responsible for such bad reputation, would retire wholesale—a matter of comparative impossibility in the case of joint-stock company, where no one would buy doubtful shares. In an ordinary joint-stock society a past member is only responsible after present members, because a member practically cannot retire from a falling society, but in a co-operative society with free withdrawal a man may retire when he pleases, whether the society is falling or not. Hence in every law in the world free withdrawal is accompanied by co-equal liability upto a certain period.—*P. 28, Report regarding the possibility of introducing Land and Agricultural Banks into the Madras Presidency, by Nicholson, Vol. I, (1895.)* But it is not intended that the estate of a past member should be made liable for the debts of the society for all time to come. A member may join a society to-day and leave it to-morrow. It will be a great hardship on him if his estate is made liable for an indefinite length of time. It is, therefore, enacted that the period within which an outgoing member should be called upon to contribute should be fixed at two years. In the case of limited liability societies the contribution is limited to the sum uncalled on the shares and perhaps to dividends received in the cases where it is held that dividends have been paid without being earned.

**‘As they existed at the time.’**—Apparently a past member is liable for the debts contracted before he joined. He is bound by any alteration of the rules carried out subsequent to his withdrawal which may enhance his liability, but in view of the proviso ‘as they existed at the time when he ceased to be a member’ it appears he is not liable to contribute in respect of any liability or debt contracted after he ceased to be a member. Similarly, the liability of a past member for the debt of a member for whom he stood surety is not curtailed by this section. It

appears that past members are made to contribute only on the requisition of the liquidator under s. 50 (d). The Registrar may issue an order directing the winding up of a society only when (1) he is satisfied on an enquiry instituted under section 43 or (2) he is satisfied on an application made by three-fourths of the members of a society present at a special general meeting, etc., that the society ought to be wound up (s. 47).

Thus it is clear that the winding up of a society is to be directed on the motion of present members [s. 2 (c)] only. Past members cannot seek to liquidate their liability by promoting the winding up of a society.

**“The time when he ceased to be a member.”**—The register or list of members (rule 14) which is to be considered as *prima facie* evidence of the date at which a person ceased to be a member (s. 30) should supply such date. Where the date of the decease is not as entered in the register it should be proved by giving independent evidence.

**A member standing surety** to a borrowing member stands on a different footing and the period of two years does not apply to his case. (See notes under the head “Scope” to s. 29 at p. 154 *infra*.)

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

Liability of the  
estates of deceased  
members

#### Commentary.

**History.**—This is s. 18 of the Co-operative Credit Societies Act, 1904. which corresponds to s. 24 of the Co-operative Societies Act, 1912. (See Appendix B).

**Under the company law** the membership ceases on the death of a shareholder, but his estate remains entitled to the benefits and subject to the burdens arising from the shares until some other person is entered in the register in respect of his shares.

**Operation.**—This section refers to certain dues which are to be recovered by a society from a deceased member while s. 27 provides for a case when something is due to the deceased member from the society.



**Scope.**—The debts referred to are debts to third parties and the costs of liquidation and the period of one year applies to these only and not to the debts of the deceased member to the society. It does not curtail limitation in respect to sums owed by deceased members to existing societies. (See notes to s. 28 under the head "Scope"). They may be recovered from the heirs, executors or administrators by referring the matter to arbitration (s. 54). The order of the arbitrator may be carried out through Civil Court as if it were a decree or through the Collector who is empowered to execute it as provided by the law for recovery of arrears of land revenue (s. 59). This section comes in operation in liquidation proceedings and refers to contributions fixed by the estate of deceased members [s. 50 (b)] or to a levy by the society to cover bad debts. Rule 38 (4) of the Bombay Co-operative Societies Rules states. "If the sum assessed against any member is not recovered, the liquidator may frame a subsidiary order or orders against any other member or members to the extent of the liability of each for the debts of the society, until the whole amount due from members is recovered." As for the recovery of the contributions it is provided by s. 59 (a) and (b) that the order of the liquidator may be executed by the civil court treating it as a decree or by the Collector by putting in force the summary procedure laid down for the recovery of arrears of land revenue. see notes to s. 59 (*intra.*)

**Note.**—The heir or representative of a deceased member cannot seek to liquidate their liability by promoting the winding up of the society; s. 47 refers only to members. A judgment-debtor cannot, therefore, call in aid the provisions of s. 50 as an answer to the claim of the decree-holder to execute the decree. (See *Kudrutulla v. Upendra*, 40 C.L.J. 254). The limitation of one year runs from the date of the death of a member. Under the rules framed by the Government of Bombay a society is to maintain a register of members (rule 14). This register is to be considered as a *prima facie* evidenc of the date at which a person ceased to be a member. Under the by-laws membership ceases at death in the case of societies with unlimited liability. Therefore, it is proper that the register should supply evidence of the date of decease. If the date of decease were not entered in the register of members, it would have to be independently proved.

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

Register of members.

- (a) the date at which the name of any person was entered in such register or list as a member ;
- (b) the date at which any such person ceased to be a member.

#### Commentary.

**History.**—This is s. 25 of the Co-operative Societies Act, 1912 (See Appendix B).

Under the Company Law the register of members is a *prima facie* evidence of all such matters as are directed or authorised by the Company Law to be inserted therein.—S. 40, *Indian Companies Act, 1913.*

**Scope.**—This section makes it obligatory on the Committee to maintain the register of members and the register of shares and keep them up-to-date. The date on which the name of any person is entered as a member and the date on which any such person ceases to be a member must be correctly stated. The Latin expression '*prima facie*' means 'at first view or consideration.' Therefore, it is clear that the register of members is not conclusive evidence and other evidence may be received to show that the entries in the register are untrue. Again under this section, the register of members is *prima facie* evidence of the specified dates only. It is not *prima facie* evidence of such matters, for instance, as the names, addresses, occupations of members and the number of shares held. The fact appearing in the register that a person is a member will have to be supported by independent evidence. Every co-operative society is compulsorily required to keep a register of members (rule 14) which is kept open to inspection (s. 21). As the transfer of shares is disclosed in this register it must be maintained up-to-date. The date on which a person ceased to be a member is to be proved from the register of members. It being a document which is kept in the usual course of business is a very important one especially as it discloses the names of persons who are liable as members of the society. It is to be preserved for ever. The names and addresses of persons

nominated under s. 27 and all revocations or variations of such nominations are to be entered in this register (rule 20). As the estate of a deceased member is liable for one year the date of his decease must be entered in the register promptly. The liquidator has to determine the contribution to be made by members or past members or the heirs or legal representatives of deceased members on dissolution of a society and hence the importance of this section. Under the by-laws the Secretary controlled by the Managing Committee is charged with the duty of maintaining the register of members up-to-date.

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

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

#### Commentary.

**Old Law.**—*Cf.* s. 26 of the Co-operative Societies Act of 1912 (see Appendix B).

**History.**—This section follows s. 4 of the Bankers' Books Evidence Act, 1891. It will be noted that the provision protects

the account of societies from being called into Court. It is undesirable that deposit and loan accounts should be kept open to public inspection. A copy alone is not conclusive proof, and the transactions have to be substantiated by other evidence, verbal or documentary. Co-operative societies have been placed in this respect (Bankers' Books Evidence Act) on the same footing as joint-stock companies.

**Mode of proof of entries in Bankers' Books.**—S. 4 of Bankers' Books Evidence Act, 1891, runs thus: "Subject to the provisions of the Act, a certified copy of an entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by the law admissible, but not further or otherwise." 'Bankers' books' include ledgers, day books, cash books, account books and all other books used in the ordinary business of bank. [S. (3) of the *Bankers' Books Evidence Act*, (XVIII of 1891).]

**Note.**—To be a book used 'in the course of business' of a society it need not be in use every day, it is sufficient if it be a book kept by the society for their reference if necessary.

**Object of sub-section (2).** This has been added by the select committee on the lines of s. 5 of the Bankers' Books Evidence Act, 1891. It was thought necessary to do this in order to safeguard the interests of large urban and central banks, the business of which might be considerably dislocated if their officers were summoned or their books were called for in all legal proceedings to which they might be parties. Bankers' Books Evidence Act, (XVIII of 1891), s. 5 runs thus :

"No officer of a Bank shall in any legal proceeding to which the bank is not a party be compelled to produce any bankers' book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause."

**'To the same extent to which the original entry would have been admissible'**—In this connection s. 34 of the Indian Evidence Act, 1872, is important. It states :

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

**Deposit accounts not to be kept open for inspection :**  
 "While advocating the 'maximum of publicity' Mr. Wolff in his Co-operation in India states: "there is only one thing connected with the management of a society which must not on any account be disclosed, and that is the names of the depositors with the amounts standing to their credit." That information must be kept sacredly secret. The following provisions in the Indian Evidence Act are important in this connection as they protect the above accounts of a society being called into court at the request of a malcontent. ( See Maximum publicity at p. 107. )

**Note—The Friendly Societies Act, 1896** prohibits the inspection of the loan account of any member by another member without his consent unless he is an officer of the society or is specially so authorised by resolution—S. 40. *Friendly Societies Act, 1896.*

**Production of title-deeds of witness not a party.**—No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.—S. 130, *Indian Evidence Act, 1872.* Secondary Evidence may be given of the existence, condition or contents of a document in the following cases among others :—when the original is a document of which a certified copy is permitted by this Act or by any other law in force in British India, to be given in evidence. In this case a certified copy of the document, but no other kind of secondary evidence is admissible.

**S. 71(j) of this Act** enables Government to make rules providing for the persons by whom and the form in which copies of documents or entries in books of societies may be certified and for charges for such copies. [see notes under s. 71 (j) *infra.*] For the purposes of this section copies of documents or entries in the books of a society may be certified by any officer of the society.—*See Rule 15 (Appendix A).*

**For books, registers and lists to be maintained by every society** see rule 14 in Appendix A.

**For books to be kept open for inspection by every society,** see s. 21 of the Act. pp. 107-8 (*ante.*)

**Inspection of certain documents in the Registrar's Office** free of charge may be made by members of co-operative societies or the public and they may obtain certified copies thereof on payment of fee.— *See rule 16 (Appendix A).*

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

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

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

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

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

#### Commentary.

**Old law.**—This corresponds to s. 27 of the Co-operative Societies Act of 1912. Exemption from compulsory registration of shares and debentures etc. was granted for the first time when Act II of 1912 was passed. (See Appendix B for Act II of 1912)

**'Share'** means share in the share capital of the Company, and includes stock except when a distinction between stock and shares is expressed or implied.—S. 2 (16), *Indian Companies Act, 1913*.

**'Debenture'** is a writing acknowledging a debt and specifically, an instrument for the repayment of money lent, e.g. an obligation of a corporation issued in a form convenient to be bought and sold as investment.—*Century Dictionary*.

**A Debenture under the Company Law** is a document given by a company as evidence of a charge created by the company usually in return for a loan. The word 'Debenture' generally means one of a series of documents described as debentures, all ranking *pari passu*, by each of which a company

promises to pay a fixed sum and interest, and charges all its property present and future.

**Object.**—S. 17 (1) of the Indian Registration Act, 1908 enacted that:

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

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title or interest. But sub-clauses (ii) and (iii) of clause (2) of s. 17 of the same make an exception in the case of instruments relating to shares of joint-stock companies whose assets consist of immoveable property and also in the case of debentures etc. issued by such company.

**The Transfer of Property Act.** Ss. 54 and 59 require registration of:—

(a) Instruments of sale or mortgage of immoveable property, the value of which is one hundred rupees and upwards.

(b) Similar instruments of a value less than one hundred rupees where the sale or mortgage is not accompanied by delivery of possession.

The effect of s. 17 of the Registration Act (if there were nothing like an exception: vide s. 17, sub-rule 2) and the Transfer of Property Act would be to make the following compulsorily registrable.

(a) Any instrument relating to shares in (1) a Joint-Stock Company or, since the Co-operative Societies Act (2) shares in a co-operative society.

(b) Debentures issued by any such (1) Company or (2) Society.

(c) Any endorsement or transfer of any such debenture (1) of companies and (2) co-operative societies.

But the exception in sub-rule 2 of s. 17 of the Indian Registration Act, 1908 excluded these documents from the operation of the Registration Act, in the case of Joint-Stock Companies, which are governed by the Indian Companies Act, 1913. But Indian Companies Act does not apply to societies registered under the Co-operative Societies Act. The result was that in the case of co-operative societies dealing with immoveable property, the shares as well as debentures issued by them and their transfers required registration. It was suggested at the Third Bombay Provincial Co-operative Conference, 1911 that: To register the above named documents, viz., the shares and debentures of co-operative societies, and their transfers will

entail a good deal of unnecessary trouble to the societies and many times more so to the Registration Department. Since no fees are charged for registration of documents executed by or in favour of co-operative societies, there is no very serious objection for registration of shares and debentures except the inconvenience of getting them registered from time to time as they are issued; but the cumbrous and troublesome procedure it will entail on the Registration Department, can well be imagined. The Sub-Registrars will have to write out the endorsements over and over again and to fill up folios after folios with copies of hundreds of these documents of the same type, all to be registered separately. The principal objection however is to the registration of the transfers of shares and debentures. Although the inconvenience can be minimised by various legal expedients still it might be sufficiently great to seriously interfere with their easy negotiability. Again it is difficult to know what is to be gained by all this trouble. The shares and their transfers as well as debentures and their transfers to co-operative societies are all entered in separate registers kept for the purpose as in the case of Companies, with this difference that the co-operative societies are under the far more effective control of the Registrar of co-operative societies than that exercised by the Registrar of Companies over the Joint-Stock Companies. Hence no second registration is necessary under the Registration Act. Government of India accepted the suggestion made at the Bombay Provincial Conference that exemption be made from registration in the case of shares, certificates or debentures issued by co-operative societies with rights over immoveable property, and their transfers, in every case in which their face value was or exceeded Rs. 100, and provided for it in the Bill to amend the law relating to Co-operative Societies Act.—*See No. 442, Revenue Department, dated 16-1-1912.*

**33. (1)** The Governor General in Council, by noti- ✓

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

fication in the *Gazette of India*, may, in case of any society or class of societies, remit the income-tax or super-tax payable in respect of

the profits of the society, or of the dividends or other payments received by the members of the society on account of profits or in respect of interest on securities held by the society.

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

(a) the stamp-duty with which, under any law for the time being in force, instruments executed by or on



behalf of a society, or by an officer or member and relating to the business of the society, or any class of of such instruments or awards of the Registrar or arbitrators under this Act are respectively chargeable; and

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

#### Commentary.

**Changes in the law.**—This is, s. 28 of the Co-operative Societies Act, 1912, with some additions. ( See Appendix B for the old Act. )

**History.**—The Committee on the establishment of Co-operative Credit Societies in India in 1901 said: “In order to encourage the establishment and working of these societies we consider it desirable that Government should accord special privileges to *bona fide* Co-operative Credit Societies. In England all Co-operative Provident and Friendly Societies are exempt from stamp-duty and income tax. (Cf. s. 33, Friendly Societies Act, 1896) There is a danger that a general exemption of such societies from Government duties might lead to the establishment of money-lending business under the guise of co-operative societies. This danger can be avoided by limiting the acquirement of these privileges to societies which subject themselves to registration and by giving the Registrar full power to cancel or suspend these privileges in cases where he has reason to doubt the *bona fides* of any society. Documents connected with loan transactions between the members and the society, and documents connected with the initial formation and registration of the society should be exempt from stamp-duty.”

**Note.**—It should be noted that the Government may at any time withdraw these privileges from any society.—(*vide* s. 67.)

**Exemption from Income-tax.**—The Co-operative movement as a whole stands for the uplift of the poorer classes and is a moral movement. The object of the movement is not profit-sharing as in the case of joint-stock concerns. Again the principles which govern the profit-making concerns are fundamentally different from the principles that govern co-operative institutions. The one is distinctly for profits while the other is

for economy and thrift. The co-operative societies do not in the commercial sense of the word have any profits at all. The so-called profits of a co-operative society are simply surcharges imposed on themselves by the members of the society for the sake of quickly building up further funds, for the needs of their business. In other words they are surplus earnings intended partly for grant of a reasonable remuneration to capital, and partly for refund of such charges levied on custom, whether credit or goods supplied to members. Any co-operative society can at any moment show no so-called profits at all by the simple process of supplying what the members need, whether it be credit or goods, at cost-price instead of surcharging themselves for the sake of building up a reserve fund and working capital. The question has been sufficiently argued in England where the co-operative point of view has been accepted by Government. For the most part the members of the societies are of 'limited means' and many are very poor and the income accruing to the State cannot be considerable. The exemption of a few societies, the profits of which exceed the taxable income, can be justified on the ground that they too represent the savings on profits made by a number of individual members none of whom would himself be liable to income-tax.

**Super-tax.**—The very definition of this tax (s. 55, Indian Income-tax Act, 1922) shows that it is not a tax distinct from the income-tax but "an additional duty of income-tax" charged in addition to income-tax on income beyond a certain minimum. It was acknowledged by Government while granting exemption from payment of income tax that the so called profits of a co-operative society stand in a different category from business profits. It is an extension or rather an application of the same principle to the additional duty of income tax. Because in volume the profits are above the minimum sum prescribed in Act XI of 1922, it does not necessarily follow that societies have huge surplus earnings. Those profits will be found on examination to be merely a natural consequence of the growth of share capital on which additional remuneration has to be paid. The distribution of surplus earnings if any in the case of co-operative societies is hedged in by various restrictions as to the maximum amount that can be paid to individual members and the amount

which has to be kept aside for reserve fund which is indivisible for distribution to co-operative or charitable bodies and for payment of rebate to members either to reduce the interest charges on loans borrowed or the cost of goods purchased. This portion of profits represents surcharges on which no tax should be claimed. The Government for some time maintained that the terms 'super-tax' and 'income-tax' were not synonymous inasmuch as income-tax was a tax on income while super-tax was a tax on profit. But in 1927 the Government issued a notification under which the exemption granted to co-operative societies in regard to the tax payable under the Income-tax Act, 1922 was extended not only to income-tax but also to super-tax. The notification is to the following effect:

**Income-tax or super-tax.**—In exercise of the powers conferred by s. 60 of the Indian Income-tax Act, 1922 (XI of 1922) the Governor General in Council is pleased to direct that the following class of income shall be exempt from the tax payable under the said Act, namely:—“The profits of any co-operative societies other than the Sanikatta Salt Owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act, 1912 (II of 1912) or the Bombay Co-operative Societies Act, 1925, (Bom. Act VII of 1925) or the dividends or other payments received by the members of any such society on account of profits.” *Notification R. Dis. No. 291-I. T.—25 dated 25-8-25 and No. 26, dated 25-6-1927.*

✓ **No exemption from Income-tax in respect of interest on securities held by the society.**—The Government of India have refused to grant exemption in this respect on the ground that the term 'profits' used in the Income Tax Act refers exclusively to the income derived from business (whether earned by an individual, a firm or a company) or from a profession or vocation. It is said that interest on securities is 'income' but cannot correctly be termed profits. The Government of India held the view that the securities in respect of which exemptions are claimed have been purchased out of accumulated profits and that exemption of profits did not imply the exemption of income derived from interest on securities. The Civil Account Code, s. 32-C lays down that "this exemption applies only to 'profits' in the strict sense of the word as used in the Co-operative Societies Act and does not include 'income' derived by co-operative societies from interest on securities or dividends." Thus the portion of the society's income which is liable to the Income-tax and the Super-tax is that derived from securities and investments outside the Co-operative Movement, i. e. in Government Securities, etc. held by them. The Ninth Conference of Registrars, 1926, recommended

that the exemption from income tax be extended to income from securities and investments and that exemption should be granted in a manner which would ensure its effectiveness. ( See also p. 176 of the Report of the Bombay Provincial Banking Inquiry Committee, 1929-30. )

**Deposits.**—It appears that the exemption from income tax does not extend to interest on deposits.

**Profits of any society are exempt** under the above notification (Notification R. D.'s No. 26 dated 25-6-27) and, therefore, it is necessary that the society should be prepared to admit as members all who deal with it so that they may join in the proportionate return of any surplus made by the society. Rules to that effect may be made by Government under s. 71 (0) of this Act. *Dividends or other payments received by the members on account of profits are exempted* under the latter part of the above notification (Notn. R. Dis. No. 26 dated 25-6-27). Inspired by a desire to show public appreciation of a movement for the well-being of persons most of whom are of limited means, the Government of India has made this concession. However, the Government has reserved to itself under s. 67 the power to withdraw the exemptions if they found the societies abusing the privileges granted.

**Note.**—In effect the societies are paying income tax on their income from securities whether their income is taxable or not. For such a tax is deducted at the source when interest is paid and the society is left to apply for refund. Agricultural societies and some of the societies in rural and also in urban areas are a little backward. Naturally few societies do so apply with the result that the State is obtaining an income to which it is not entitled. The societies whose income liable to income tax is not taxable at the maximum rate or who have no income liable to tax, should apply to the Income Tax Officers concerned for the issue of exemption certificate authorizing persons paying interest on securities not to deduct any tax at source or to deduct tax at lower rate than the maximum, as case may be. ( See *Income-tax Manual*, p. 113. )

**Stamp duty.**—The Governor General in Council is pleased to remit the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of any co-operative society for the time being registered or deemed to be registered under this Act, or instruments executed by an officer or member of any such society and relating to the business of the society are respectively chargeable.—*Govt. of India notification No. 683-F of 28-12-1912. Notn. No. 2781 F. dated 23rd October*

1919 (*Finance Department—Separate Revenue-Stamp*) Exemption from stamp duty is really a concession to the movement. This exemption applies to all stamps on receipts, cheques, ( see also s. 5, Indian Finance Act, 1927 ) bonds and promissory notes.

**The awards of arbitrators** in all disputes to which co-operative societies in the Bombay Presidency are parties. are exempted from the duty leviable under the India Stamp Act and may be written on plain unstamped paper. (*G.N. No. 6401 of 27-6-1916 published on p. 1372 of the B. G. G. dated. 29-6-1916 pt. I.*)

**Note.**—This exemption does not extend to receipts by non-members for interest, etc., paid on deposits in the society or bonds for loans illegally given to non-members. Nor does it extend to a security bond given to a society by a non-member on behalf of an employee of the society.

**Court fees.**—*Cl. (b)* of this section authorises the Government to extend the privilege to any Court-fees payable under the Court Fees Act. The Government of Bombay have not so far issued any notification in the matter of court-fees and therefore, the exemption does not apply to Court-fee Stamps.

**Registration fees.**—Co-operative Societies registered under the Act have been exempted from payment of all fees payable by or on behalf of any registered Society and all fees in respect of any instrument executed by any officer or member of such a society and relating to the business thereof.—*G. R. No. 5818 of June 24th, 1914, R. D.* This exemption from Registration fees is a concession to societies for the service they render to the public.

**Share certificates and debenture bonds** of societies are exempted from compulsory registration ( s. 32 ).

**Directions.**—In order that the time of the parties may not be wasted in waiting while the Sub-Registrar makes a manuscript copy [ or a copy by photo copying process—*Indian Registration (Bombay Amendment) Act, 1930* ] of the registered document the Inspector General of Registration has in his Circular dated 30-1-1912 ordered Sub-Registrars to accept printed duplicates of all documents exempted by or in favour of co-operative Societies, to complete registration immediately and to return the original document on the day of presentation. The printed duplicate forms should be presented blank and will be filled up by the Sub- Registrar at the time of registration. If such a deed is to be returned by post, postage is to be recovered.—See *Bom. Registration Manual, 1925.* Bom. Act I of 1912 exempts co-operative societies from the operation of the D. A. R. Act (except ss. 2 and 21). Therefore, the sub-registrars, need not draw up the documents or execute them in their presence.

**Co-operative Societies exempted from the restriction imposed upon creditors of agriculturists by the Dekkhan Agriculturists' Relief Act, 1879.**—

The second Bom. Provincial Co-operative Conference of 1910 was of opinion that the whole procedure of the D. A. R. Act went on the assumption that agriculturists were on unequal terms with unscrupulous money-lenders who took undue advantage of their necessities. It was considered that the Act involved a reflection on the co-operative societies which was unfair. It was said that agriculturists did not require to be protected from the societies. If exemption was not given, the result, it was thought, would be that societies would be discouraged and hampered in their legitimate proceedings in courts by obstacles which ought never to be put in their way. At the Third Bom. Provincial Co-operative Conference of 1911 the question was further discussed. It was argued that the agriculturist by becoming a member of a society put himself on a different footing to that which existed between ordinary Savkars and their clients as he bound himself to abide by the by-laws adopted by the society. The question of exemption of co-operative societies from the operation of the D. A. R. Act except ss. 2 and 22 was submitted to the Government of India for sanction and as a result the following section was inserted by Bom. Act I of 1912. "Except section 2 and section 21, the provisions of this Act shall not apply to any matter to or in which any society registered under the Co-operative Societies Act, 1925, is a party".—S. 71A, D.A.R. Act, 1879.

**Object.**—The credit societies have been started and one of the principle objects aimed at is to free cultivators from their old debts with usurious interests. They are thus bodies working in the best interests of the cultivating classes themselves. In the main object, therefore, the institution of these societies and the Agriculturists' Relief Act, aim at the same end and the two measures ought to work without friction. The societies were started not as rival bodies competing with ordinary money-lenders but in the hope that they might be induced to invest their capital or part of it with these societies. It must be clear to every responsible person that transactions which are entered into by these societies with their members under by-laws which have to be approved by a responsible Government Officer (Registrar) need not be subjected to all the jealous scrutiny of the D. A. R. Act. There is always a guarantee that the interest charged by them on their transactions with their members will not be unreasonable or exorbitant. While, therefore, on the one hand agriculturists did not require to be protected from the societies, on the other hand the societies were fairly entitled to every assistance in the recovery of their just dues from fraudulent defaulters. It is intended by this section to exempt all transactions between the societies and their members from all the provisions of the D. A. R. Act except the beneficent provisions of s. 22 which prevent agriculturists from being arrested and imprisoned in the executions of money decrees against them. The by-laws framed show that there cannot be any scope for the suggestion of any grasping or inequitable features in the transactions and the removal of disabilities and restrictions at present imposed by the D.A.R. Act will it is expected only conduce to the healthy and vigorous development of rural societies, at the same time it will serve to assist the

process of building up a free and independent peasantry.—*Proceedings of the Legislative Council of the Governor of Bombay, Vol. XLIX p. 500-501. (1911.)*

**Note.**—S. 2 of the D. A. R. Act defines the terms 'agriculturist' and provides for the construction of certain terms such as 'money' 'lease' 'standing crops' etc. and lays down : "An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or personally engages in agricultural labour." ( For further discussion see commentary on the Dekkhan Agriculturists' Relief Act by the writer.)

**Other privileges.**— In addition to these, there are other special privileges conceded to the co-operative societies. (i) A co-operative society when registered is to be considered as a body corporate (s. 23). The effect of incorporation is to protect the individual members from suits by creditors etc. [See notes under s.23.] (2) They are exempted from the provision of the Indian Companies Act, 1913. This carries with it exemption from payment of fees for registering various documents, balance sheet, etc. (s. 68).

**Remittance Transfer Receipts.**—Beyond these concessions conferred by the legislature, further privileges have been granted departmentally to co-operative societies. The most important of these is the use of Remittance Transfer Receipts at par through Government Treasuries. (*Civil Account Code S. 143 B 9 and G. R. No 4197 of October 9th, 1914, R. D. and 5588 of June 10th. 1911, R. D. )*

**The Record of Rights and all other Revenue Records** in charge of the village accountant are open to inspection at reasonable hours by the members of co-operative societies ( s. 213, Bom. Land Revenue Code, 1879 ) and the members are entitled to take copies of entries in the Record of Rights without the payment of any fee. Rule 135 of the Bom. Land Revenue Rules, 1921 allows an officer or a member of a society to inspect the village records without the payment of any fees if such inspection is with regard to the business of a society.

**Money Order Commission.**—Ordinarily a commission of 1 per cent. on the sum remitted is charged. It is feared that this charge of 1 per cent. would either seriously affect the society's income, or would render necessary an increase in the rate of interest on loans to members. The Government of Bombay had provided for the refund to societies three-fourths of the commission on postal money orders when they were employed for remittances between societies and their financing agents or wholesale purveyors. ( G. R. No. 5099 dated May 16, 1916, R.D. ) Under G.R. No. 11674, dated December 23rd, 1912 it has been ruled that money order commissions paid on remittances between a society which has opened a store and the broker or *dhalal* who supplied its stock are eligible for this rebate. This was a valuable and a necessary concession used chiefly for the benefit of village societies which could ill-afford to pay the heavy money order charge for remittances of small amounts to their financing agencies. The Royal Commission on

Agriculture in India, 1928, at page 458 of their Report stated that the refund to societies of three-fourths of the commission on postal money-orders is justified on several grounds. The Commissioners write. "The rate of commission is a flat rate for all India and there is no reduction for remittances within the limits of a Province or even of a District. Most co-operative remittances are between societies and their financing agencies within the same district and a charge of one per cent. on a loan and on its repayment would either eliminate any profit from the transaction or involve an increase, in the rate of interest on the loan in order to cover the money order commission." The concession was to remain in force only upto the end of March 31st, 1931. (G. O. No. 355-A, dated 25-9-1925.) But Government have now by G. R. R. D. 355-A dated 22-5-1931 ordered that the concession should be continued for a further period of five years in the case of agricultural societies only i. e. till 31st March 1936.

**Special facilities are granted for the opening of public accounts by societies in the Post office savings** under s. 42 (b) of the Savings Bank Rules—(*Post master General's No. 449 of May 4th, 1907, based upon the Director General of Posts and Telegraph Circular No. 6/5, dated 11-4-1907; also see Post-master's General's standing order No. 57 and the Post master General Circular letter No. 15 of 1-8-1913.*)

**Strong box.**—Another facility is the permission to allow deposits of strong boxes containing cash and securities at State Treasury (G. R. No. 7135 dated September 4th, 1905 R. D.)

**Duties of Co-operative Societies.**—All these are substantial privileges. But they involve duties. The sole aim of co-operation is public good, therefore, the public should not be excluded from participation. The whole idea of co-operative movement is service for mutual benefit without profit and it is because profit making is not an object of societies that Government can remit various duties without unduly favouring them against companies and private traders. Co-operation stands for fair play all round and for a specially privileged society to compete with a private trader, paying all legal taxes, for the profits derived from custom of non-members would not be fair play at all. As these privileges are actual endowments by the State, it has a right to exercise proper control over the disposal of profits and dividends. In order to ensure that a privileged society did not compete with private traders for the custom of non-members Government is authorised to make rules under s. 71 (m), (n), (o), (p) prescribing prohibitions and restrictions on trade with non-members, providing for reserve fund and the object to which it may be applied prescribing limit of the number of members and also the conditions for distributing profits etc. It becomes very important then that societies should not compete with these latter for the custom of non-members. It is therefore, provided in various sections that co-operative societies should be allowed to enter into transactions with non-



members only under certain conditions. S. 34 restricts the lending of money to members only. The Registrar may sanction a loan to a person other than a member. Under s. 35 a society cannot receive deposits from non-members unless this is specially provided for. S. 36 states that except as specially provided no business should be entered into with non-members by resource societies. ( See notes under s. 36 *infra* ).

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

Government may give loans or guarantee interest.

### Commentary.

**History.**—This section is new.

**Object.**—It should be the declared policy of Government not to fight shy of the co-operative movement but to whole-heartedly take it up so as not to leave any loophole for any Government officer to say that the co-operative movement is a peoples' movement and Government should have nothing to do with it as regards funds. No doubt the co-operative movement is peoples' movement but in all countries it is backed up by Government. Every country has accepted the principle of State aid but in this country for some reason or other many of the Government members thought that it should be allowed to stand on its own legs so far as financial position is concerned. The clause is permissive. While not compelling Government to give loans to societies, the law empowers it to do so and may be said to be suggestive of a desire on the part of Government to extend their help to societies in special cases.—*Bombay Legislative Council Debates, 24th July 1925.* [ See notes under s. 71 (2) (ee) *infra*. ]

“ **A Debenture** ” is a written acknowledgment of a debt by a company under seal containing provisions as to payment of interest and repayment of principal. (*Spicer and Peglar's Practical Auditing*).

**Difference between a debenture holder and a shareholder.**—A debenture holder is a lender to the company or an outside creditor whereas a shareholder is a member of the company, an inside person. Money raised by the issue of debentures is borrowed capital for the company whereas share capital is owned capital. A debenture-holder receives interest on the money

lent by him, charged as working expenses in the profit and gross account of the company, whether it makes a profit or not, whereas a shareholder shares in the profit and draws a dividend on the money he has invested only when the company makes a profit.

**Takavi Loans under the Agriculturists' Loans Act, 1884.**—The Government of Bombay has made rules under s. 4 of Act XII of 1884 which govern the grant of loans (Takavi Loans) to members of co-operative societies with unlimited liability registered under the Bombay Co-operative Societies Act, called the Co-operative Societies' Agricultural Loans Rules, 1922 No. A. 57 of 4-7-1922 R.D.—(*For rules see the Handbook of Co-operation for Societies in Bombay and Sind by the writer.*)

**Takavi Loans under the Land Improvement Loans Act, 1883.**—The Government of Bombay has made rules which govern the grant of loans under Act XIX of 1883 to co-operative societies registered under the Bombay Co-operative Societies Act, 1925 and members thereof.—No. A. 57 (a) of 4-7-1922, R. D. (*For rules see the Hand-book of Co-operation for Societies in Bombay and Sind by the writer.*)

**The Rules applying in general** to the grant of Government loans to co-operative societies (except Housing Societies) are made under G. R. 3025 of 15-3-1911, R. D.—(*For Rules see the Handbook of Co-operation by the writer.*)

**Grants to Co-operative Dairy Societies, Weavers' Societies and to societies among peculiarly backward Communities.**—Government are prepared to grant loans to Co-operative Dairy Societies under G. O. No. 5204 of 30-4-1918, R.D. and to Weavers' Societies under G.R. No. 1505 of 12-5-1917, R. D. and to societies among peculiarly backward communities under G.R. 10409 of 27-8-1917, R. D. (See also notes under "Aboriginal and Hill Tribes" at p. 50 *supra*.)

**Loans to Co-operative Power Pump Societies** may be granted by the Registrar under certain conditions.—(*G. R. No. 2427/24 of 23-5-1925, R.D.*)

**Loans are also made to Housing Societies** by Government—(*For rules see Hand-book of Co-operation for Societies in Bombay and Sind by the writer.*)

*Property and funds of societies*

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

Restrictions on loans.

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

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

**Commentary.**

**Old law.**—For s. 29 of Act II of 1912, see Appendix B.

**Object.**—The object of a co-operative society is the promotion of the interests of its members. In fact a co-operative society exists primarily for the benefit of its members and not for the benefit of others. It is the service-performing institution and not a profit-making one, and, therefore, as a general rule lending must be confined to members. In order that a business may be truly co-operative, it has to be limited to its members. It is clear that those who associate together to do so secure some advantage for themselves and not for others. The credit society particularly one of unlimited liability, must have carefully chosen membership, being meant for those who have no other security but personal, to offer for obtaining credit; the members must know one another intimately. Under such circumstances it is natural, nay essential, that societies should not under co-operative law make loans to non-members. The whole structure of a loan-granting society, *i.e.*, a credit society, demands the positive exclusion of non-members in respect of money-lending. As regards other types of societies, the question of sanctioning loans does not arise usually and societies in general are, therefore, prohibited from making loans to non-members under s. 34 of the Act. It is, however, conceivable that there might arise occasion when a loan to a non-member might become necessary and might be in the best

interests of the society itself, particularly in case of Housing, Consumer's and Producers' societies. The law, therefore, is content with enumerating the general rule leaving it to the Registrar to make exceptions thereto in special cases.

**A person** shall include any company or association or body of individuals, whether incorporated or not.—*S. 4, Bombay General Clauses Act, 1904.*

**'Immoveable property'** shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.—*The Bombay General Clauses Act, 1904, s. 3 (21).*

**'Moveable property'** shall mean property of every description except immoveable property.—*S. 3 (31), the Bombay General Clauses Act, 1904.*

**A deposit** might be defined as funds received by a society at the standard deposit rate fixed by the Committee or the general meeting of the society. A society may have several standard rates according as the deposits are long term or short; but deposit funds are only those received on the terms prescribed by the terms prescribed by the society itself. It carries special rate of interest.—*Seventh Conference of Registrars, 1913.* ( See also notes to s. 35. )

**A loan** is a sum borrowed on special terms dictated by the lender and accepted by the borrower in default of obtaining money on its own terms. A loan is held on special terms regarding interest.—*Seventh Conference of Registrars, 1913.* ( See also notes to s. 35. )

**Sanction of the Registrar.**—Sanction of the Registrar is required for a loan to another society which is not a member. A loan also means and includes a deposit made by one society with another society (Rule 13).

**Member.**—See definition, s. 3 (c) and notes thereunder.

**Restrictions on loans on security of moveable and immoveable property.**—A restriction on the money-lending powers of a rural credit society is found necessary because such a society contemplates granting loans on personal security only and not on the security of moveable or immoveable property. It is the character of the members that forms the basis of credit and

not any particular property, moveable or immoveable. But it might become, and it does become, necessary to accept as collateral security lands or buildings and even ornaments and other moveable property. For prompt repayment, experience has shown that the best security apart from character is that of immoveable property. Co-operative law, therefore, enunciates this view by prohibiting loans on the security of moveable property in the case of unlimited liability society and by permitting loans on the security of immoveable property, reserving to the Registrar power in both these cases to make exceptions.

**Lending money on the security of moveable property.**—Jewels and ornaments represent a large amount of locked-up capital which it is desirable to mobilise for temporary purposes but the Committee on Co-operation in India (1901) thought that there might be difficulties in appraisal which would furnish an opening for fraud and that there was the danger of loss to the societies by the fluctuations in the value of the jewels pledged. It was proposed to prohibit rural societies from advancing money against jewels on the ground that such loans would complicate the affairs of village societies; that great difficulties would arise if the articles pledged were not redeemed and that the basis upon which the societies should work was not material security, but the credit which arose from the individual character and substance of their members. It was pointed out in reply, that while personal credit was undoubtedly the basis of their transactions, such things as jewels might properly be received as collateral security; that the custom of the country is to regard jewellery as available for this purpose and that if a member is debarred from utilising his material credit to the full in borrowing from his society, there will be a danger of his using it to borrow from the money-lender. Government of India in *G. R. No. 1—63-3 of 29-4-1904* (*Dept. Rev. & Agr*) in 1904 stated:—“ After full consideration of the question it was decided that while there are practical difficulties in connection with the custody and valuation of jewellery which might be formidable in the case of some village societies, it would be well to make distinctions, when a rural society is located in a town or large village with silversmiths available, with a ready market at hand, and with members and officers of intelligence, it may safely be trusted to conduct transactions which might be dangerous in the case of a more strictly rustic association. Power has, therefore, been given to the Registrar to allow any society which he thinks can safely be trusted, to advance money upon jewellery. ”

**Shares**—With regard to the hypothecation of shares the Committee on Co operation (1915) remarked that it was undesirable that any society should permit its members to hypothecate their shares in the society as security for loans, because in such cases the society could only enforce the security by diminishing its “ owned ” capital and thereby reducing its general credit and the security of creditors. A society has already a charge upon the shares of a member (s. 25) and an additional one will not be of much use.

It is, therefore, now laid down in rule No. 7 that the shares of a society should not be hypothecated to that society by its members as a security for a loan ( Appendix A ).

**A society may lend money against stock or gilt-edged Securities** deposited with it accompanied by an authorization to sell in event of default. Insurance policies may be accepted and loans granted upto about 3/4 of their surrender value. But in such cases the assignation of the policy to the society should be registered in the books of the Insurance Company which can generally be done on the payment a fee of Rs. 2-8-0.

**Loans and deposits to be received by a society with unlimited liability** from a non member are dealt with in rule 7 ( see Appendix A for Rules ).

**Loan on suretyship of non-members** is not to be made, but the Registrar is empowered to exempt any society by name from the operation of this rule.—See rule No. 11 ( *ibid* ).

**Restrictions on the lending of money on mortgage of immoveable property.**—“Real security” says Mr. Wolff in his *Co-operation in India* “in other words, mortgage, is to a credit society the most insecure security conceivable and should if taken at all as it may have to be in exceptional cases be taken by preference as collateral security. There is the question of title that is of the real pledgeability of the pledge given to consider. Next there may be depreciation as well as appreciation. Considerable foreclosure in the event of default, is for a society a most inconvenient process and may lead to the acquisition of a white elephant”, and it is above all things desirable that societies should keep out of law courts. There is difficulty in redeeming on the security of immoveable property and there is a tendency for loans so secured to be long. It is exceedingly inadvisable that the societies should be allowed to lock up their limited capital in a form in which it is not readily available.

The most useful form of business of ordinary co-operative credit societies will probably be small loans for short periods with prompt recoveries, because, such societies rely for their funds upon withdrawable deposits and bankers' advances. It is a central principle of co-operation that security should be personal; that is that it should depend primarily on the man and his sureties and not on his property.

The idea of personal security however implies the power of an incumber to repay and this in its turn depends on his capacity as a worker, his honesty of character, and the amount of his

property. A co-operative society differs from an ordinary money-lender in that it takes cognisance of all the three factors, while the latter looks to the last only. There is nothing unco-operative in the hypothecation of immoveable property, so long as it is recognised that personal security must be given and that the borrower's property is only a secondary or collectral protection. It follows from this that when tangible property is accepted as security for a loan, it should be taken in addition to the instruments executed by the borrower and his sureties, and not in place of them. (*Para 60, Committee on Co-operation in India, 1915.*) Again one of the methods in which an involved cultivator can most effectively be assisted is by enabling him to substitute a mortgage upon reasonable for one upon exorbitant terms, and a member who is refused the credit, to which his property in land fairly entitles him, merely because he is not allowed to hypothecate it to the society may be driven to the money-lender for a loan which, had it not been for the prohibition, he might have taken from the society with advantage to both parties. The final conclusion was that loans upon mortgage should be allowed in the first instance, but that the Local Government should have power to prohibit or restrict them either generally or in any particular case, if it was found that interference was necessary. (*G. R. No. 1-63 & R. and A. Depts. 29-4-1904.*) Government have to give orders only in special cases and generally only with respect to such societies whose business demands such orders should be issued. This is more or less a safeguard against any wrong investment.—(*Bom. Leg. Council Debates, 24th July 1925.*)

**Directions.**—Loans for larger amounts or small loans for longer periods than two years or so require a firmer security than personal sureties can offer. A member may borrow a loan for building a well. As the profits of his enterprise will come in gradually, recoveries must be spread out over at least five years. In such a case it is advisable to take a mortgage on the property of the borrower, of which the estimated value is at least twice the value of the loan. A mortgage without possession affords an excellent security. But there will always remain a class of cases involving very large sums or very long periods in which a society will require the best security available. A society cannot undertake to pay off a member's old debts and to substitute for them a debt to itself at a lower rate of interest unless it is fully safeguarded against loss. A special by-law has been inserted in the model by-laws for unlimited societies which prescribes that

when old debts are liquidated, the consent of the Registrar is required for amounts exceeding Rs. 750, that the loan shall be repayable by instalment within 10 years; and that the debtor shall be required to mortgage with possession to the society land worth three times the amount of the loan advanced. The owner has first to mortgage the land to the society and then has to take it on lease again from the society on an annual tenure, agreeing to pay the land revenue assessment and local fund cess to Government and a sum equal to the interest and annual instalment of repayment of principal on the loan advanced to him as rent to the society. In cases where a society redeems the old debts of a member it will be a wise precaution if the committee pays the money direct to the creditor and obtains a stamped receipt in full satisfaction of his claim. Any security bond held by him should be recovered at the same time. If he has obtained a decree from the Civil Court payment should be notified to the Court under Rule 2 of Order XXI of the Code of Civil Procedure, 1908.

Before taking the land on mortgage, as security for a loan, the society should satisfy itself that the land has not been previously sold or mortgaged to another person for this purpose. The applicant for a loan should be asked to produce a copy of the entry in the Record of Rights relating to the land offered as security. The Committee may also with advantage enquire in the Sub-Registrar's office. The secretary should also make a search and satisfy himself. Members of societies are entitled under s. 213 of the Bombay L. R. Code, 1879, to inspect the Record of Rights and all other Revenue Records in charge of the village Accountant at reasonable hours and under Rule 3 of the Rules under that section may take copies of entries in the Record of Rights without the payment of any fee.

Similarly no fee is charged for the inspection of village records by an officer or a member of any co-operative society for the business of the society.—Proviso to Rule 135 of the Land Revenue Rules, 1921 (added by G. Notn. 248/28 of 3-10-1928, R. D.)

But the society has to observe the conditions laid down in s. 135C of the L. R. Code, 1879, as regards furnishing information of the acquisition of rights, etc., over lands to the village accountant of the members.

**Proposals.**—It is thought that the establishment of well conceived and well-administered mortgage associations or banks at the instance of the landed gentry of the country with the help of the Government would be a measure of great value not only to the proprietors themselves, but also to the Government. Such co-operative land mortgage banks are now being organised the chief object of these institutions being to advance money for redemption of existing mortgages. The establishment of such well-managed long term mortgage banks would help the small village society to confine its activities to short terms loans. (See notes under the head 'Land Mortgage Banks' *infra*.)

**Land mortgage Banks** do not work just on the same lines as societies in which the personal element and the human element very largely preponderate. They must insist upon the security being sound and the management



being efficient. Nevertheless there are many elements of co-operation in such a bank which make it desirable that it should also be on a co-operative basis. One such element is that the object of the loan is scrutinised by the society. Loans are given for productive purposes and are restricted to the needs of agriculturist. Secondly, the dividends are restricted just as in the case of co-operative societies and the element of profit is eliminated. This Act distinctly contemplates land mortgage credit. The present section only places one restriction on it, namely that the Local Government may in any special case direct that a particular society may deal in land mortgage credit. Ordinary a society can deal in personal credit only. Therefore, the enactment is sufficiently comprehensive to include land mortgage banks in its operation. Though the work done by credit societies in connection with medium term or rather the so-called long-term loans are appreciated, it has been realised more and more that societies cannot hope to meet the needs of all particularly of persons requiring large loans and also to make the money available at a rate of interest much lower than what they charge at present. From a business point of view also, mixing up real long-term finance with current agricultural finance to any great extent, is neither desirable nor possible. The desirability of starting land mortgage institutions began seriously to be considered in 1924. The subject was discussed at the Ninth Conference of Registrars (1926) which recommended that Land Mortgage Banks based on co-operative principles are desirable in many parts of India. It further stated that no transaction should be undertaken which is not economically profitable to the borrower. The Royal Commission on Agriculture also distinctly pointed out that they can be so started and worked under existing Act. The Commissioners said: "The system of short term credit on co-operative lines has been working long enough in India to provide valuable information on the subject of rural finance; it has enlisted a large number of honorary workers who are now familiar with the character of the problems that come up for daily decision, and it has called into existence staff trained in the management and direction of rural organisation. All these will be at the disposal of the land mortgage banks if they are registered under the same Act and placed under the same Registrar as the ordinary co-operative societies." For these reasons the Tenth Conference of Registrars (1928) expressed an opinion that land mortgage banks should be established under the provisions of the Co-operative Act already existing here. The following are the purposes for which it is the object of the societies (as stated in the model by-laws) to raise funds and lend them to members on the security of mortgage of immovable property:—(1) The improvement of land and methods of cultivation. (2) The installation or purchase of costly agricultural plant and machinery. (3) The redemption of mortgaged lands and houses and the liquidation of old debts. (4) The purchase of land for the purpose of land improvement or for making better cultivation possible in the general interests of the community or for bringing under cultivation, cultivable waste, forest, or fallow lands. The area of operations varies with the requirements of each case. In one society it is restricted to only a taluka—a sub-division of a revenue district. In others a whole revenue district or even more may be allowed.

The liability of a member is limited. He must pay an entrance fee of Rs. 5 and must have a minimum share-holding to the extent of  $\frac{1}{20}$ th of the loan he borrows from the society. The society on the other hand, can borrow upto 20 times its share capital. All the loans of the society can be made only on the mortgage of immoveable property in no case of a value less than twice the amount of the loan. The maximum as mentioned in the model by-laws for a loan to one member is Rs. 1000. Debentures are to be raised by the Bombay Provincial Co-operative Bank and Government has agreed to purchase some.

A central reserve fund is to be created and kept in the Provincial Bank separately for land mortgage business and it is to be transferred to the central land mortgage bank when one will be organised.

**Notes.**—In Germany the Land Mortgage Banks (*Landschaft*) are some of the typical institutions that are working at present in Europe which enjoy the privilege of selling the mortgaged property without the intervention of Civil Courts. The Land Mortgage Banks in Germany so to say work as a self-regulating body something like a State within the State. Both the borrower and the lender know exactly where they stand and the arrangement is calculated to stimulate a proper sense of responsibility in both parties to the transaction. It is proposed to empower the Registrar with similar powers. But one has to remember that conditions in India are entirely different. There is the joint family system and title to land is not always clear. It is feared that it will give cause to great dissatisfaction if the Registrar is empowered to sell by public auction without the intervention of the Civil Court, etc., any property mortgaged with the Land Mortgage Bank or a society for loans advanced by such bank or society.

**Redemption of old debt.**—The average agriculturist has as is well-known to pass through life, often with a heavy debt hanging over his head. This is specially the case in tracts liable to scarcity. It is not, however, so much the amount of the debt, as the unproductive nature of the use of the loan and the heavy rates of interest it carries that seriously affect the agriculturist's financial position.

It will be clear from the observations made on the subject "how to increase the wealth of the people." (See pp. 38-51 *ante*) that great importance is to be attached to the need for increased production but the influence of better farming and intensive cultivation on reduction of debt will be slow and gradual. In the meanwhile it would be unwise to allow this burden on the land to grow heavier, and some method of direct attack is necessary to reduce the incidence of heavy interest charges which are in effect, a tax on production. Hence it is desirable to give to agriculturists who possess sufficient credit an opportunity of redeeming their property or freeing themselves from unsecured debt within a reasonable period of time through some form of credit organisation on co-operative basis.

Attempt at wholesale redemption of debt by co-operative societies have not always proved successful, and it has been found that some of the persons relieved have again fallen into debt. Improvements in the general

economic position of the cultivator and change in his out-look are necessary if attempts at redemption of debts are to be made with reasonable chances of success. If these conditions are fulfilled co-operation would be of great use in saving people from debt. As the Royal Commission on Agriculture says "The greatest hope of the salvation of the rural classes from their crushing burden of debt rests in the growth and spread of a healthy and well-organised co-operative movement based on the careful, educative and systematic training of the villagers themselves." It would of course, be better for the agriculturist debtor, in many cases, to dispose of part of his land and free himself at once from debt, rather than to make fresh debt to repay an old debt.

The position of the agriculturist in connection with old debts is not so simple as often it is thought to be. Old debts are not always the result merely of exorbitant rates of interest charged by Sawkars. (for the causes leading to the indebtedness of agriculturists see 'Agricultural Indebtedness' by the writer). In brief it may be said that it is not money that is so important in debt redemption as the agriculturists' attitude towards debt. So long as he takes debt as a matter of course nothing can free him from debt. Formerly, it was all a tussle between the sawkar and the debtor the sawkar trying to take as much as possible, and the agriculturist having lost all hope of paying full interest and repaying the principal trying to spend as much as possible out of his income. Whatever was not spent went to the sawkar. On account of the wholesome legislation namely the Dekkhan Agriculturists' Relief Act, 1879 which is passed with a view to protect the interests of agriculturist the sawkar has not much to gain now by going to a Court of law. He can be very exacting only if the agriculturist has to go to him every now and then for current needs. If the agriculturist is made independent of the sawkar for current needs, the latter must as a rule come to terms with the former. Therefore, any scheme of debt redemption to be successful, arrangements must be made for providing sufficient current finance both in good and in bad years so that the borrower may not again be driven to take loans from sawkar for this purpose.

There is another important aspect from which his position ought to be judged. Which is the greater immediate need of the agriculturist whose standard of living is below what is required for meeting the bare necessities of life? Should the agriculturist use the savings he might effect by joining a co-operative society for raising his standard of life or should he prefer to live as miserably as before for another decade during which his savings may enable him, to clear off his old debt? It is found that the agriculturist often raises his standard of life and leaves the debt to take care of itself. (See notes under the head 'better living' at pp. 49-50 *ante*). Attempts are recently being made to solve the problem of providing credit for the liquidation of old debts by the establishment of land mortgage banks and three societies are upto now registered. Though these have started their preliminary work, no loan business has actually been done yet. (See 'Land Mortgage Banks', at pp. 177-79 *supra*).

In the meanwhile reference to the agency through which debt redemption is being carried on at present seems necessary. Agricultural credit societies have given loans for debt redemption in the past and action in the same direction is recommended for the future. The Ninth Conference of Registrars (1926) was of opinion that (1) it was desirable that well-conducted village societies should undertake liquidation of old debts, but no such society should take up the work until it was in a position to lend money for a sufficiently long period to enable members to repay their loans to it from their income. (2) It was recognised that Provincial Banks and Central Banks may lend a portion of such funds as they are in a position to invest money for a long term in assisting village societies to take up the work of liquidation of old debts. (3) A society undertaking liquidation of debt on a large scale should prepare definite schemes after ascertaining carefully the debt both secured and unsecured of the members and the lands they hold and that in this work it should be assisted by the Union staff, the staff of the Central Bank or officers of the Co-operative Department. Such schemes might follow the general lines given below :—

**Instructions by the Registrar.**—For the first year or two societies are advised to advance loans for 1 or 2 years only for the current expenses of their members. And then as instalments are recovered should proceed to liquidate other debts. Societies must be cautious not to use loans or deposits fixed with them for one year in advances for 5 years to their members.

**When debt redemption is taken up it should be taken up for the village as a whole.**—All the debts of all the members of the society should be scheduled and a regular scheme of redemption worked out. Only in this way can the productiveness of the village be really increased and only in this way, it is desirable to give loans for the purpose. (See Registrars' Circular No. 133 of 20th April, 1920). Every old debt of every member must be shown in the statement, and the statement should clearly mark which of the debtors are to be excluded from redemption with the cause of exclusion, namely, whether he does not require help or whether his condition is hopeless. The scheme must show exactly when each of the debts recommended for redemption is to be paid off and how, and when repayments are to be made. In general the society selected should be in the 'A' class; but for special reasons 'B' class societies may also be considered if there is a spontaneous demand from such a society and it appears to be *prima facie* reliable. The liquidation scheme should provide for the debts of all the members included being redeemed within three years, or at the utmost within five years. When any member has been selected for redemption, his debts must be totally redeemed. As far as possible, the scheme should show not only creditors' claims but also for what smaller sum the creditors will compound in consideration of prompt payment. *It is most important in debt redemption schemes to ensure that the sawkar does not get paid too much.*

The debts redeemed should be unavoidable, and as far as possible, productive debts. A debt incurred for land purchase may be redeemed if (a) a reasonable portion of the price of the land, say at least 40 per cent had been

paid off by the debtor from his own resources, and (b) if it is clear that the average margin of profit derived from the land so brought is sufficient to enable him to pay off the debt within ten years or in other words, if the margin of profit in a normal year represents 15 per cent. or more of the purchase price. The debtor whose debt is to be redeemed should possess the following qualities.—(a) He should be of good character and proven punctuality in repaying obligations. (b) His holding must be economic, i.e. in a normal year he must be able to derive a clear profit. (c) He must have proved his thrift and industry by either increasing his deposits in the society year by year by voluntary deposits or by year by year repaying part of his private debts, or by both. (d) He must have sufficient assets to be full security for the loan, the assets being worth at least three times as much as the loan; Provided that if the debt was incurred for the purchase of new remunerative land under conditions such as have been stated in para 4, the loan may be given upto half the assets. (e) He must give a written agreement that after the liquidation of the debt he will not, till the loan has been fully repaid, borrow outside of the society, the sanction being that if he does, the whole outstanding demand shall at once be summarily recovered whatever the instalments fixed may have been, and that he will be expelled from the society. The financing agency on the other hand should grant extensions and postponements of instalments freely in case of a proven famine or scarcity year. It has to be remembered that thrift, savings, careful management and rapid increase of voluntary deposits and reserve funds are the first conditions of success, without which nothing fruitful can be hoped for—(See Registrars' Circular No. A. D. M. 98 of 14th February 1924). A scheme should be drawn up in which the amount of debt incurred by each and every member of the society should be mentioned. In the case of members who are unwilling to receive loans from the society for debt redemption or who are unfit for it, proper remarks should be made in the remarks column. The remaining case will be of members for whom the society should consider the question of providing the necessary finance, for debt redemption. The main object of preparing the debt, redemption scheme is, first that the society might know exactly what the economic position of its members is and secondly that it should be enabled to utilise its funds to the best advantage in relieving the most needy first, and less needy afterwards. Complete redemption of all members, all at once is in most cases, impracticable, but relief in batches should be quite possible.—Registrars Circular No. A. D. M.-98 of 14th December 1924.

In dealing with applications for debt redemption schemes the main considerations should be:—

(1) The repaying capacity of the individual, i.e. the net saving available for repayment of annual instalments of principal and interest of the loan advanced. The annual instalments should not exceed 25% of the annual income ordinarily. (2) The valuation of the property offered as security should be carefully made.—See Registrars' Circular No. A. D. M.-98 dated 25th June 1928.

In accordance with the opinion expressed at the conference of Registrars the Registrar has issued a Circular No. A.D.M.-98 dated 18th January 1930 to the following effect. "The two limits (1) for the current needs and (2) for long term loans, should be kept separate. It should further be noted that in the case of long term loan, all borrowing should be from "Central Bank or Provincial Bank only, and no part of non-members' deposits or society's other funds should be used for the purpose. The loan is to be advanced to the member on his individual responsibility on the security of his material assets and as such the Bank will recover its dues in the first instance, from the individual members financed from the material security offered by each of them. The collateral liability on the society will only be enforced as a last resort in exceptional cases."

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

Restrictions in borrowing.

#### Commentary.

**Old law.**—S. 9 of the Co-operative Credit Societies Act, 1904, had in addition the following:— "A Society may receive deposit from members without restriction." For s. 30 of the Co-operative Societies Act, 1912, see Appendix B.

**History.**—The friendly Societies Act, 1896, as amended by the Societies' Borrowing Powers Act, 1898, provides that money in pursuance of rules be borrowed from members or from other persons by any registered Society specially authorised having for its object the creation of funds to be lent to members or for their benefit, and having in its rules provisions that (1) no part of its funds shall be divided among the members, and (2) all money lent to members shall be applied to such purpose as the society or its committee may approve.

**The Burma Co-operative Societies Act, 1927,** adds:— A Co-operative Society "shall in respect of such deposits or loans make such provision for the maintenance of fluid resources as the Registrar may, by general or special order in this behalf, prescribe."—(s.37).

**Object.**—Mr. Wolff says: "The first duty of the Panchayat (Committee) will be to steady promotion of thrift and that on two

distinct grounds. One, of course, is the desirability of accustoming members to habits of thrift and to keep them to such, and so to train them eventually to a capacity for acquiring property of their own by provident action. Their comparative wealth to be got, is to be of their own making or it will be fleeting and uncertain. The second ground is this, that the society must need be able to do the work proposed for it, acquire funds of its own to operate with. Now this can only be done by collection of sums to be entrusted to it for keeping on behalf of their owners. All credit business, when traced to its root, consists of collective money in order to be able to lend it out again. But our specific business also is to help the poor man, by means of his deposits, safely kept for him, and beneficently employed to raise himself to the status of a capitalist."

On the question of outside help Mr. Wolff says:—"The possibility of help from outside there will have to be. We could not do without it. Indeed, one distinct object in our organisation is to provide for it within legitimate limits and in a legitimate way. It gives strength. It is often enough of material assistance at starting. It is an invaluable resource in times of trouble to fall back upon. However, it is really intended only as an emergency help—a crutch, so to put it, not a natural pair of legs." Again he says: "There is a danger in habitual borrowing from outside, and prolonged dependence on outside support." Mr. Durand has gone so far as to speak of money borrowed from outside whether it be from a Central Bank or from any other source, as a state of being "in hospital" being on the sick list, in a condition under par, in a state of debility from which it must be the first aim of the society to escape by rousing itself to new vigour and throwing off the yoke of dependence. Now this is obviously going too far. For avowedly it behoves societies, through their Central Bank, so to organise themselves that they may be able to assist one another in case of need, balancing the emptiness of the one by supplies from the over-abundance of the other, and drawing upon treasure even beyond their own pale. And even in the local society itself, it is "other people's money" that is wanted. However, "such other people's money," and, on a large scale, Central Bank or Joint Stock or Debenture holders' money, is not to be given but honestly "earned", "bought" by a return

value of recognised liability, purchased as a matter of free bargain and exchange.

**Deposits** are sums obtained by a society from other members or non-members on the ordinary terms prescribed by its by-laws or general meeting. It is ordinary money lodged in a bank for safety or convenience. In this section it is understood to consist of money offered to a society at its fixed rates.

**Loans** are sums raised from a Central Bank or other financing agency on such terms as may be laid down by the lender. They are generally obtained because a society is not able to get enough deposits. (See also rule 13 in Appendix A )

**Loans and deposits from non-members in the case of unlimited liability societies** are subject to the restrictions laid in rule 7 ( See Appendix A ), Non-members' deposits show the confidence that outsiders feel in societies and non-members do not hesitate to extend periods year after year. But when societies become negligent and accumulate arrears, they raise a hue and cry suddenly. Not only is the credit of the societies affected, but practical difficulties in regard to the future finance of the societies by central banks, arise. Non-members' deposits are, therefore, being discouraged of late in primary agricultural societies.

**Restrictions on borrowing by societies with limited liability** are placed by Government and are described in rule 8 ( See Appendix A for Rules. )

**Importance of Local deposits.**—The success of a society will largely depend on the amount of deposits and loans which it is able to collect. Ordinarily a society should prefer deposits since they are a proof of its own credit and generally cheaper than loans. A society should always prefer local deposits to those drawn from a distance. Local deposits imply thrift in the village, form good lying money, and they tend to interest in the management of the society a useful body of men who stand as sentries over their own deposits. The Committee on Co-operation (1915) considered that it should be the aim of primary societies to get as much in the way of local deposits as they could. The Committee went on to state: " When a society is fully established on sound lines it may very rightly do all that it can ( subject to any limits that may be placed on its total borrowing power ) to obtain such local money as is available, and unless as the movement progresses there is a substantial increase in this class of deposits it will have to be inferred that Co-operation has failed in one of its main objects." Such deposits are generally made from money which otherwise would be idle and often form the hoards of the peasants."



**Notes.**—Interest should be paid regularly, either yearly or half yearly at the rates fixed in the by-laws or by the general meeting of the society. Different rates should ordinarily be allowed on deposits which are:—(a) Current or savings, (b) fixed for six months, (c) fixed for one year, (d) fixed for three, five or ten years. If deposits are not taken away when the fixed period expires, interest at current rates, should be allowed on the date of expiry until the owner either withdraws the money or gives notice that he deposits it for a further fixed term.

**Receipt of deposits by Banks and Societies with limited liability.**—Societies of this type may accept current, savings, or fixed deposits from any quarter without restriction, provided that they are efficiently managed and have made adequate provision for maintaining fluid resources. Efficient management means (a) that they are classed A or B at the annual audit, (b) that a fall due register is maintained and that notices are sent to all fixed depositors one month before maturity enquiring whether their deposits will be renewed or withdrawn, (c) strict observance of the by-laws and Rule of No. 8 (see Appendix A.) No fixed standard of fluid resource can be laid down. In the case of central banks and societies with working capital exceeding Rs. 50000 this point is watched by means of the Quarterly Finance Statements submitted to Government under Rule No. 18 (see Appendix A.) In the case of limited societies with a capital of less than Rs. 50000 Auditors should always add to their audit memorandum a paragraph stating the exact amount of fluid resource and their opinion as to whether it is adequate. The following standard of fluid resources will be adequate.

(1) Savings Bank Balance	50%
(2) Current Accounts	60%
(3) Fixed Deposits falling due within the next 3 months.	33%
(4) Undrawn balance of cash credits to societies and members.	50%

Total Fluid Resources required, \_\_\_\_\_

*Provision of the fluid resource.*

- |   | Rs. | As. | P. |
|---|-----|-----|----|
| (1) Cash in hand.   |     |     |    |
| (2) On Current Account.   |     |     |    |
| (3) On Savings Account.   |     |     |    |
| (4) Investments in securities at 90% of market value.           |     |     |    |
| (5) Deposits in other banks 90%                                 |     |     |    |
| (6) Undrawn balance of cash credit from other Banks or Bankers. |     |     |    |

Total Fluid Resources provided, \_\_\_\_\_

Repayments from loans due in the next quarter may also be considered. but it will not be quite safe to depend solely on these incomings for purpose of fluid resources. (Registrar's Circular No.109).

The loans received by societies can be classed according to the following main heads :—(1) Loans from central and provincial banks, (2) Loans from other societies, (3) Loans from individuals or institutions (4) Loans from Government. In the first place central banks have enough funds, a credit society, therefore, is hardly required to take a loan from another credit society. Secondly, the loan of money by one society to another requires the special sanction of the Registrar under the Act and the Committee on Co-operation (1915) thought it important that such loans should rarely if ever, be given except through the medium of a central bank or union. Unless the societies are in that way tied to particular financing centres, there is a risk of confusion of liabilities and central bank will find it impossible to forecast the calls likely to be made upon it.

### Loans from Government fall under three different heads.

(1) Loans to Dairy Societies, Credit Societies among Depressed Classes or Criminal Tribes. Industrial Productive Societies and Power Pump Societies.

(2) Loans under Agriculturists' Loans Act, 1884, and

(3) Loans under Land Improvement Loans Act, 1883.

**N. B.**—For loans to Housing Societies by Government and the details regarding loans from Government see notes under s. 33 and the Handbook of Co-operation for Societies in Bombay and Sind by the writer.

A rural society may raise funds by means of (1) deposits and (2) loans from co-operative credit societies or from central financing institutions. A maximum limit for non-member's deposits and loans is fixed in the by-laws.

There is no limit for member's deposits or shares. Deposits for periods shorter than two months are forbidden by rule 10 (see Appendix A).

Provisions for savings deposits is made in model by-laws (No. 42A) for agricultural credit societies.

**Normal Credit Statements.**—The co-operative system cannot be made as elastic as the Sawakar's who has the absolute discretion as regards the disposal of his funds. In the case of co-operative societies certain formalities have to be observed. This system of working should not, however, be rigid and should be such as can be understood and followed without difficulty by a population not very conversant with business practice. To remedy this defect systematic and regular preparation of maximum credit statements approved by general meetings of societies and duly checked by supervisors or Bank Inspectors and sanction of special limits for members who require loans in excess of the general limits mentioned in the by-law is necessary.

**Loans from Central or Provincial Banks.**—For the present the main source of outside capital consists not in deposit but in loans from central co-operative financing agencies such as District Central Banks and the Bombay

Provincial Co-operative Bank. To such agencies applications by societies for loans are generally made, and such an agency on receiving a request for a loan has to consider its treatment. In some cases the request is received through the office of the Registrar who has already, after receiving the reports of his subordinates, satisfied himself as to whether the loan may safely be given and has endorsed his sanction for that amount on the application. In some cases the orders on the loan are passed by the Central Financing Institution itself. In other cases but not generally a society before obtaining a loan has to be admitted to membership of a Union called the Guaranteeing Union. A Guaranteeing Union is a body of which the only members are agricultural credit societies within a circle of radius of averaging generally about 5 miles. One of the main objects of the union is to provide a means of assessing and guaranteeing the credit of each co-operative society admitted into it. In applying for loan the borrowing society has to convince the Central Bank that its credit is good and that it can be trusted with the amount. Credit depends on the good management of the society by the managing committee, absence of overdues, active belief and support of the society by its members as shown by their savings and fixed deposits and the property of the members.

**Applications to Bombay Provincial Bank.**—A society in a district in which no central bank has been established should send its application direct to the Assistant Registrar who if the society has not been previously valued will cause the statement of assets and the general management to be varified by the Bank Inspector. The Registrar on the Assistant Registrar's report after examining the society's record, will recommend such loan as may seem to him proper and will forward the papers to the Bombay Provincial Bank for final decision and disposal. The bank, however, does not bind itself to lend upto any settled proportion of the total valuation but will be guided by the management of the society and the support given to it by its own members and its past record.

**Central Banks.**—Being based as they are on limited liability, central banks are required to raise initial capital in the shape of shares of the denomination of Ra. 50 and usually fully paid upon allotment which thus provides the guarantee fund on the security of which additional resources are secured by way of deposits and loans. As a co-operative society cannot make advances except to its members, it follows that societies have to become members of the central banks in whose area of operations they are located. In Germany, with its system of central banks of the pure federal type, each of the primary societies is called upon to contribute to the share capital in proportion to the extent of the business transacted by it with its central bank; and as all societies have not to borrow throughout the year from their banks no inconvenience is felt in giving effect to this policy. In the Bombay Presidency, as in other parts of India the same practice is followed in order to enable the central banks to increase their guarantee fund and enhance their borrowing capacity, although a majority of the constituent societies can only put in the amount of their share subscription by resorting to fur-

ther borrowing. This compulsory contribution to the share capital at present is fixed at one-twentieth of the borrowings. Under rule 8 (see Appendix A) restriction is placed upon the borrowing capacity of a limited liability society.

**Deposits.**—The outside capital of central banks is raised usually in the shape of deposits, fixed, savings and current. Prominent among the depositors in almost all central banks are the local bodies, municipalities, district boards, school boards and village punchayats which are all authorised to deposit funds in their local co-operative banks within prescribed limits. The bulk of these deposits are for fixed periods of one year and over. Deposits for shorter periods are not very common as they cannot be suitably employed in loans to societies. Central Banks now open current accounts both for societies and individuals and offer and extend facilities for the operation of these by means of cheques for the collection of dividends and drafts and for the provision of other banking services.

**Loans.**—To supplement the resources obtained by means of deposits, central banks can raise loans; and in view of the existence of a provincial bank in the Presidency such loans are arranged with that bank only. Only two central banks have now occasion to borrow regularly from the apex bank, others having developed local resources sufficiently enough to be independent of such assistance. But a good many of the banks still continue their credit arrangements with the apex bank to fall back upon on emergent occasions; while almost all of them have overdraft arrangements with the provincial bank against their holdings in Government Securities or their deposits in the bank itself. The system of financing central banks at present introduced is that of short-dated bills, the rate of discount varying from season to season and being sometimes as low as 6 per cent. The security for these borrowings is the demand promissory note of a bank itself backed by the bonds or promissory notes of primary societies financed by it. The credits are renewable every year and interest is payable half-yearly on the cash credits. In addition to all these some banks arrange, by special permission for credits against Government securities with local branches of the Imperial Bank of India, and this provision is considered useful as a fluid resource against demand liabilities in current accounts. To avoid any unwholesome interlocking of liabilities interlending, even in the shape of deposits, by one central bank with another is prohibited, and the apex bank truly becomes the reservoir of all the surplus funds of the central banking system. The provincial bank offers long term loans to central banks for being advanced to primary societies for liquidation of old debts. However, the central banks have availed themselves only of the loans for land improvement granted by Government through the provincial bank.

The sole reason for the existence of central co operative banks is to balance the surplus or deficiency in the resources of affiliated primary societies and as hardly any agricultural credit societies have surplus resources throughout the year, their business comes to be limited to the financing of all constituent societies. The financing of individuals by central banks

is looked upon with disfavour, and the only departure permitted is the grant of over-drafts or fixed advances by a bank on the security of an individual's deposits in the bank itself, and under very special circumstances on the security of Government paper or the pledge of agricultural produce. The bulk of the transactions of central banks are with agricultural credit societies. Special types of societies such as producers' and artisans' societies or housing societies or lands improvement societies have special arrangements for obtaining loans from Government and rarely seek financial assistance from central banks.

If at all, they are financed by them, the accommodation allowed on the security of their general assets is small; and for larger advances additional security is called for in the form of pledge or hypothecation of goods or other property. The same holds good of non credit agricultural societies which are sometimes allowed large credits on the security of agricultural produce such as cotton, while the practice of obtaining the personal security of members of managing committees is not unknown. **Non-agricultural credit societies classed as urban banks** usually work on their own capital raised by means of shares and deposits, but if these or smaller societies of this type seek finance, it is provided within limits, on their general assets, and for further amounts on specific security such as assignment of bonds or other documents and the pledge of goods or Government securities.

**Credit Statements.**—In all efficiently conducted banks, agricultural credit societies are now financed, more or less, on the basis of the detailed statements of normal credits of members prepared by them, but with an absolute maximum of one-third of the total unencumbered landed assets of the members. It is one of the important duties of the supervising and inspecting authorities to see that these credits are paid by the societies at the proper time and sanctioned by the banks without delay. (The statements contain information member by member, on their previous record of dealings with the society, the deposits, the value of lands held, the acreage and class of crops to be cultivated whether on owned or leased lands, the requirements for various purposes and the approximate time when these would be needed; the credits proposed by the committee and those sanctioned by the general body. The members are thereby enabled to exercise a check on one another with regard to borrowing. After making allowance for owned capital and recoveries and adding a small provision for contingencies, some banks, sanction maximum credits for the year instead of fixed loans, making these credits drawable at short notice in accordance with the demands noted in the normal credit statements. Such credits come up every year for revision, when an opportunity is offered to review the position of a society thoroughly. Cash credits are scarcely ever allowed to agricultural credit societies, but are granted occasionally for societies whose transactions are of a commercial nature. Although credits may be allowed the drawings made are for specific purposes to be noted on the applications and the periods of repayment are fixed according to such purposes. Extensions are granted when crops suffer

for want of sufficient or timely rains, and they are also granted for special reasons after consideration of each application on its merits.

The staff of inspectors maintained by the bank examine the statement of assets and normal credits, and watch over the use of loans and the progress in recoveries and keep the banks in touch with the working of their affiliated societies.

**Long term loans.**—Separate applications have to be submitted for long term loans for land improvement or debt redemption and the maximum period for such advances is ten years. However, in advancing such loans collateral security of the mortgage bonds created by members in favour of their societies and re-endorsed by the latter with central banks are obtained. (*Adopted from a note on the Financial Structure of the Co-operative Movement by V. L. Metha, Esq. B. A.*)

**Urban banks.**—Besides share capital and Reserve Fund, these banks also attract deposits. These will be of three types :—Fixed, Savings' and current deposits. Current Account deposits are the cheapest form of deposits but they are the most difficult to handle. Large amounts may be deposited in single accounts and heavy withdrawals from a few such accounts may be ordinarily expected and provision for good fluid resources must always be made. Besides these the banks can count upon the assistance of the central co-operative bank of the district, the Bombay provincial co-operative bank as well as the Imperial Bank of India and other Joint-stock banks. Such assistance may be received by rediscounting of *handies* purchased from their members ; or by getting loans and overdrafts either on the security of Government papers and such other securities by endorsing in favour of the bank the bonds received from their members. Precaution should, however, be taken that the bank does not rely too much on such assistance. Such assistance, if resorted to temporarily or under a crisis, is quite wholesome and useful for the bank and makes it all the stronger for it, but if such assistance is often resorted to, it will be a source of weakness rather than of strength. The wholesome check placed upon the borrowing of money by rule 8 (see Appendix A) is not such as to put unnecessary restraint on the safe acceptance of deposits. Even in the case of Joint-stock banks a perusal of the Balance Sheets will show that these banks do not consider it prudent and safe to go beyond ten times the share capital and reserve fund, though no statutory restriction is placed on their accepting deposits.

**The Bombay Provincial Bank.**—This bank has decided that the societies borrowing from this bank should become its members by subscribing at least one share. The bank has obtained the required long term capital by the issue of debentures and shares and owing to the special conditions in Bombay mainly relies on short term deposits for the requirements of its societies. Overdrafts against fixed deposits are allowed to co-operative societies and banks but not to individuals. The grant of this facility induces societies and banks to deposit funds for fixed periods and obtain over-drafts when necessary.

The bank is at liberty to receive deposits from members or other individuals or from co-operative societies to the extent of eight times its paid up share capital and reserve fund as its Board may think fit provided that the Bank maintains in cash and Government and Trust Securities an amount equal to 40 per cent. of the deposits payable on demand. Co-operative societies are allowed preference in regard to deposits, and preferential terms are invariably quoted to them. The fluctuations in rates are communicated by the Bank from time to time to lending societies and Banks in touch with the money markets, in accordance with the movements of which the Bank's rates are regulated. The deposits held by the bank now are mostly from persons and institutions connected directly or indirectly with the Movement. The Bank receives deposits from Local Boards and Municipalities.

**Savings Bank accounts** are allowed to be opened by individuals as well as co-operative societies.

**Current accounts** are opened for individuals and co-operative societies at the head office. Cheques, dividend warrants and hundies are accepted for collection and credit of the accounts and only actual charges are recovered from the constituents. The current accounts are to be operated by cheques, the printed forms for which are supplied by the bank free of charge. To morfossil customers the additional facility is granted of drawings on their accounts by hundies. The branches of the bank are also permitted to open current accounts of societies. As the societies are generally indebted to the bank they cannot be expected to have large balances in their current accounts. However, the volume of business in these accounts is growing and more accounts being operated upon and these too more frequently. Transfers from loans to current accounts for a week's requirements to be drawn by means of cheques favouring members are getting more and more popular. Current account business is being popularised by the issue of vernacular cheque forms, the drawing, signing and endorsing of cheques in vernaculars.

**Sinking Fund** is maintained for the repayments of debentures on maturity. This is required to be done in view of the agreement with the Secretary of State for India in Council. This has made it necessary to exempt the bank from the operation of s. 33 of the Act relating to the allocation of one-fourth of the profits to the reserve fund. However, reserve fund is built up from profits and with additions made from the premium received on shares.

**Restrictions on loans.**—The agreement with the Secretary of State for India provides that the funds of the bank shall be utilised for the purpose of granting loans to co-operative credit societies when such loans are approved or recommended by the Registrar. The maximum interest to be charged on advances to societies is restricted to 8 per cent. per annum by the agreement and the maximum period of each loan is restricted to 10 years from the date of the loan with the provision that the term of the loan can be extended for a further period of 10 years as the bank may think proper.

**Overdrafts** are granted within certain limits to all classes of societies on the security of their fixed deposits with the bank at a rate of one per cent above the rate paid on the deposits.

**Trade Bills and Bankers' Bills.**—Within such limits as may be recommended by the Registrar of co-operative societies and sanctioned by the Board, bills of urban and central banks are discounted by the bank at a rate of discount not exceeding 8 per cent. Once the limits are sanctioned and the parties approved, bills are discounted upto the limit without further reference to the Registrar.

**Cash credits** are granted to well-managed co-operative societies and banks on their general assets on Government Securities, or on the pro-notes of individual members of Urban Banks and of affiliated societies in central banks. Interest on the accounts is payable half yearly and may be payable by certain classes of societies on half the amount of the credits even if undrawn. Such credits if not renewed are repayable on the expiry of the period sanctioned, which in no case exceeds 12 months.

**Maximum credits to central banks.**—Maximum credits are granted to central banks at a rate about  $\frac{1}{2}$  to 1 per cent. lower than that charged to primary societies. The limits are fixed once a year by the Board on the recommendation of the Registrar for 12 months on the expiry of which period, the credits have either to be renewed or repaid. Drawings are allowed, in accordance with forecasts of monthly requirements to be submitted half-yearly in advance, on seven days notice. Interest is charged half-yearly on actual drawings only on the cash credits. As collateral security, the demand pro-notes of primary societies in favour of central banks as re-endorsed by the latter in favour of the bank are obtained.

**Maximum credits to primary societies.**—To all agricultural credit societies in which the normal credits of individual members are fixed at a general meeting, maximum credits are sanctioned on the Registrar's recommendation after a proper scrutiny of the statements of credits and such other inquiry as the bank may desire to institute. The credits are to be operated upon according to forecasts and after notice and are liable to suspension for mismanagement. Societies under the branches or lying in compact groups can secure this facility with greater promptitude than isolated societies, because they can be supervised and their affairs watched more easily. Once the credits are sanctioned no further references to the Registrar are necessary.

**All Resource societies,** urban and rural and such classes of consumers' or producers' societies as the Board may wish to finance, can obtain fixed loans from the bank on their general assets or such other security as the Board may prescribe. The amount of loans to be granted to an agricultural credit society is determined by the assets of its members in land, its management and financing position, its owned capital as represented by its reserve fund and members' deposits, and the needs of its members for various agricultural purposes. In regard to other classes of societies the basis of assessment is the owned capital, the management, the class of business transacted and the nature of special security offered. Loans are granted for schemes of agricultural improvement, such as the sinking or repair of wells, the construction of embankments and dams, and the digging of canals for taking water from streams. Advances are also made for the purchase of



machinery such as crushers, tractors, pumping plants, oil engines. Such schemes, however, are prepared in consultation with officers of the bank, the local Agricultural Organisers, officers of the Agricultural Department and the opinion of the Divisional Boards of Co-operation and Agriculture is obtained wherever possible on their financial aspects.

**Loans for redemption of old debts** secured on mortgage or otherwise to well-managed societies are granted. Such societies prepare complete schemes of debt liquidation in regard to all their members and furnish information on the nature of indebtedness, rates of interest, earning capacity, security and other matters.

**Recoveries and extensions.**—Societies which take loans are expected to repay the loans on the dates fixed for repayment. In default, such action is taken by the Board as they deem fit, through the Registrar. Compound interest is charged on all overdue amounts. If owing to failure of rains, scarcity, floods or such other natural calamity, agricultural societies have been able to obtain repayments from their members, they may apply for extension which is granted on such terms and after such enquiries as the Board prescribes. In the application for extensions, societies are required to communicate information, on the following points :—names of members, amount outstanding, amount repayable in current season, amount likely to be realised, balance, amount for which extension is granted, grounds for extension, period of extension and action proposed for amount not recovered by extension. Along with the applications, societies are required to forward a general summary of their financial position and state of crops in the village. For other classes of societies extension is granted only after enquiry in each individual case.—(*Extracts from a note on the Provincial Co-operative Bank, Bombay, by V. M. Thakore, Esq. B. Com.*)

**Deposits by Municipalities** in co-operative societies can only be made with the sanction of Government under s. 53 of the District Municipal Act ( III of 1901 ). Sanction has now been given to the deposit of such surplus funds of Municipalities and local bodies in such co-operative banks of limited liability as are certified by the Registrar of co-operative societies under G. R. R. D. No. 2909 of 12-10-1920 and No. 3355 of 4-12-1920. ( But deposits by Municipalities in co-operative societies for municipal servants are not allowed.—G.O. 3829 of 19-2-1923. G.D. )

**Deposits of Local Funds.**—Under s. 74 (2) of the Bombay Local Boards Act ( VI of 1923 ) the local fund shall be kept in the Government Treasury or in the Bank to which the Government Treasury business has been made over or in other bank or co-operative society registered or deemed to be registered under the Co-operative Societies Act of 1925, as may be approved by the Government. Under G.R. 140/A, R. D. of 19-6-1923, and G. R. 6990/24 of 7-8-1926, R. D. and subsequent G. Rs, Government has approved investment of Local and Primary Educational Funds in some District, Central and Urban Co-operative Banks. ( See "Handbook of Co-operation for Societies in Bombay and Sind" by the writer. )

**Local contributions** collected by villagers towards the cost of school buildings may be deposited in <sup>a</sup> co-operative credit society registered in

the same village provided the Registrar certifies that the society is safe and well-managed and that arrangements have been made whereby the sum can be withdrawn at three months' notice —(G. O. 5378 of 17-11-1919. *Ed. Dept.*)

**Deposits by Court of Wards.**—Court of Wards is not precluded from making an investment other than in the securities authorised by or under s. 20 of the Indian Trusts Act. But it is ordinarily expected to follow that provision of the law and departure from it may be made only in special circumstances, *i. e.*, where there are, circumstances which are special to the estate. —G. O. 2508 of 13-3-1918 *R.D.*

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

#### Commentary.

**History.**—For s. 31 of the Act of 1912, see Appendix B.

**Object.**—This clause introduces principles which are accepted in the co-operative movement in general and are necessary for practical purposes, but had been dealt with by rules framed by Government.—*Objects and Reasons.* Co-operation is a junction of forces among a number of persons more or less similarly situated and having a common object in view for attaining that object. Co-operation professes very lofty aims. It is to extend education, raise moral tone, create a band of identical interests, uniting men with men. It is not business, but common work. It aims not at profit but at rendering a common service. But co-operation with all its higher aspirations can never be expected to appeal for active support unless it offers some distinct and direct material benefit to its members.—*Wolff on Co-operation in Agriculture.* Therefore, the object of a co-operative society must be the promotion of the economic interests of its members. It is needless to state that a society comes into existence to secure some material benefit to its members and not to others. It follows from this that a society may enter into transactions with non-

members if they are likely to advance the interests of the members. The first principle of co-operative credit societies with which the movement has been for some time mainly concerned is that non-members should be rigidly excluded from the benefits of the society, or in other words the essence of a co-operative society should be that its dealings should be only with members. If this principle is departed from it would be impossible to exclude undesirables.

**Resource societies**, *i.e.* agricultural credit and urban credit. But even agricultural non-credit societies and other societies of resource type such as Taluka Development Associations cannot enter into any transactions with non-members except as provided under ss. 34 and 35 of this Act. So far the Government of Bombay has not imposed any restrictions on transactions with non-members. On the question whether non-credit societies should be allowed to deal with non-members the Committee on Co-operation (1915) did not think it possible to lay down any general rule. The Committee held that it would be well to shun competition with such local outside agencies as were efficient but the Committee, however, expressed an opinion that as far as practicable such dealings should be avoided and did not like to press the rule in cases where the operations of a society if confined to its own members would be so restricted that it could not be managed with any prospect of profit or economy. Relating to societies for co-operative supply of goods, Mr. Wolff wrote in his *Co-operation in Agriculture*, that the selection of members would, in supply, occasion no difficulty, because unless credit was allowed to members in respect of their purchases there would be no risk incurred. With regard to transactions with non-members he said that the observance of the wholesome canon that no business is to be entered into with non-members unless it was under special arrangement with a view to enlisting such as recruits, to draw into the ranks as time went on was likely soon to serve as a magnet to attract more members. According to him a legal prohibition of dealing with non-members in Germany in agricultural co-operation had the most salutary effect in Germany in enlisting recruits for this movement. The logical consequence of the above principle is that membership should not be limited but should be variable as and when required. A co-operative society must always be open to all who have

the same need and who are ready to subscribe to the common contract. It is legitimate to limit the membership of the society to those whose needs are based upon the same conditions. In the case of store societies with cash transactions there is less danger. The store deals with anyone who wishes to buy at current market price. If non-members are excluded, the operation of the store will inevitably remain on a very limited scale, and members will not be attracted. The dealings will be in cash and, therefore, the moral character of the purchaser does not matter much.—*Fourth Conference of Registrars, 1909.*

**Consumers' societies.**—In order to get the full profit the society must sell to any customer whether he is a member or not. In order to tempt other customers to become members in addition to the temptation of sharing in the management, some distinction may be made in regard to the bonus, either by giving non-members half the bonus or preferably by crediting the bonus towards shares. In a trading business, the bigger the number of customers and the quicker the turn-over the cheaper and more profitable the business is. Therefore, a consumers' society must in general have no restrictions on membership. Everyone must be free to join and should remain a member, unless of course he does something injurious to the society. In that case he may be expelled. Open membership and bonus to all customers are conditions without which a consumers' society cannot be registered.

**Producers' societies.**—The idea underlying all co-operative production is that the workers and actual producers ought under healthy social conditions to control the manner and method of production and to share in the profits. Now the profit can only be obtained by selling the goods produced by the workers to customers who evidently form a different body altogether. Thus the producers' societies have to deal with non-members to a certain extent. They have also to deal with non-members who are employed at the time of pressure. It is but only fair that membership is to be kept open to these persons and that they be allowed to share in the profits.

**Note.**—S. 40 allows the balance of profits in the case of Consumers' and Producers' societies to be distributed even among non-members to such extent and under such conditions as the rules or the by-laws of such societies may prescribe.

**The Housing society.**—The object of such a society as stated in the model by-laws is to carry on the trade of building and buying, selling, hiring, letting and developing land, etc. It is evident that a housing society can deal with non-members to that extent. It is also stated in the model by-law (No. 66) that a building may be offered on lease to a non-member provided no member is willing to take it.

**No rules** appear to have been framed by the Government under s. 71 (2) (m) prescribing the prohibitions and restrictions subject to which societies may trade with non-members.

**Notes.**—S. 36 allows only consumers' producers' and housing societies to trade with persons who are not members but there are other societies such as the land improvement and some general societies who are required to trade with persons who are not members. It is, therefore, necessary to add to the list "general societies" along with consumers', producers' and housing societies.

### 37. A society may invest or deposit its funds

**Investment of funds.** (a) in the Government Savings Bank; or

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

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

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

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

#### Commentary.

**Old law.**—This is s. 32 of Act II of 1912 with some omissions and changes ( See Appendix B ).

**Object.**—An important limitation of the powers of a co-operative society arises from the fear that it might not be managed with perfect efficiency as it is generally composed of persons of very limited means who have not had any experience of work of management. The small farmer or the small producer, the weaver

or the shoe-maker, is generally so inexperienced in the work of the management of the society that serious doubts might well be entertained about the success of the society unless some safeguards were prescribed. The investment of the funds of societies has been, therefore, regulated by s. 37 and the creation of a strong reserve fund has been prescribed by s. 39 and towards that end the minimum that must be carried to the reserve fund has been specifically ordained under cl. (2) of s. 39 of this Act.

**This section applies to reserve fund also.**—The Committee on Co-operation (1915) in para. 83 of their report stated that the object should be to free primary societies as far as possible from recourse to central banks and the Committee thought that that could only be done by enabling them to build up their capital sufficient for their needs and that it could best be achieved by allowing primary societies to use their reserve fund in their own business. Rule 28, therefore, is framed which provides that reserve fund may be utilised in the business of the society or be invested or deposited in any of the ways mentioned in Cls. (a), (b), (c) and (d). The Registrar may, for reasons to be communicated in writing by him to the society, by general or special order, direct that the latter course be adopted. In the case of a society constituted with the object of co-operative housing on a co-partnership basis the reserve fund may be utilised for expenditure on the maintenance, repair and renewal of the buildings of the societies (rule 28.) (See Appendix A.)

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

**Funds** mean the stock or accumulation of money or other form of wealth available for the purpose.

**Utilization of cash balances.**—A society ought never to keep a large cash balance on hand idle. If the money is not required by members it may be used under this section in any of the following ways :—(a) Deposited in the central bank to which it is affiliated. (b) Deposited in the Post Office Savings Bank. (c) Invested in any of the securities specified in s. 20 of the Indian Trusts Act, 1882. (d) Invested in the shares or on the security of any other society provided that no such investment shall be made in the shares of any society other than one with limited liability. (e) Deposited in any bank or with a person carrying on business, of banking approved by the Registrar.

**Savings Bank accounts how opened.**—Co operative Societies, Secretaries, Treasurers, Managers or other responsible office-bearers and liquidators duly appointed are authorised under s. 42 (b) of the Savings Bank Rules to open public accounts in the Post Office Saving Bank. (See *Post and Telegraph Guide, Feb. 1931, p. 138.*)

**Under s. 20 of the Trusts Act (II of 1882), Co-operative societies may invest their funds:**—(1) in promissory notes, debentures or stock of the

Government of India or Great Britain ; (2) in bonds or debentures secured on Indian Revenues; (3) in shares of Railway Companies guaranteed by the Secretary of State ; (4) in debentures or bonds issued by any Municipality in British India ; (5) in first mortgage on immoveable property in British India, of which the value exceeds the mortgage-money by at least one-third; (6) the debentures of the Bombay Central ( now Provincial ) Co-operative Bank (India Act XXI of 1917); (7) any other security approved by the High Court.

**For the procedure to be adopted in the matter of recovery of interest on war bonds when they are to be sold or when they are to be offered as security for loan see " Handbook of Co-operation for Societies in Bombay and Sind " by the writer.**

**Strong Box.**—When a society is unable except at unreasonable cost to deposit its funds and papers in a Government Savings Bank or with an approved banker or in some other safe manner, under G. R. No. 7135 of September 4th, 1905, it may be allowed by a special order of the Local Government to keep its strong box in the local treasury provided that there is room for it. ( See also ' Strong box ' at p. 169 *ante* . )

**Notes.**—A society must make by-laws regarding the mode of custody and of investment of funds (*Rule* (4) (*f*)). Model by-laws of Co-operative Better Living Societies:—Funds of the society shall be invested in a co-operative bank or lent at interest to a registered society by the Managing Committee with the consent of the Registrar. The balance of funds not so laid out should be kept in district co-operative bank. A sum upto Rs. 10 may be kept with the Secretary for petty expenses. Model by-laws of Land Mortgage Societies:—All funds should be invested in Government securities which should be deposited with Bombay Provincial Co-operative Bank or should be kept in fixed deposit with Bombay Provincial Co-operative Bank until such time as an apex land mortgage bank is started to take the place of Provincial Bank in which case the share capital shall be invested in shares of the apex bank. The funds until so invested should be deposited with central bank of the district or with Bombay Provincial Co-operative Bank or of its branches.

**Proviso to clause (c)** has been added to provide against investment in the so-called shares of unlimited liability societies such as exist in Sind.—*See Objects and Reasons for Act VII 1925.*

**(e) In any other mode permitted by the rules.**—For instance a society may invest funds in the purchase or leasing of land or buildings or in the construction of buildings for the society under conditions laid down in rule 27 (Appendix A).

**The following instructions may be found useful.** A co-operative society is at liberty to purchase shares or debentures in any other co-operative society. If it advances money to any society on special terms dictated by itself as lender, then the advance would be as a loan and the sanction of the

Registrar should be obtained under s. 34 of the Act. Joint-stock banks often allow attractive rates of interest on deposits and societies in the larger towns will usually find them very convenient. As the financial position of these banks in India is occasionally not all that could be desired no society may open accounts with them without the Registrar's previous approval. Besides this the Registrar is prepared to allow the deposit of a society's funds with old established and trustworthy village shroffs on current account, when no other convenient means of investment is available, but his consent will not be given without full enquiry.

**38.** No society shall pay a dividend  
 Restrictions on dividend. to its members at a rate exceeding 10 per cent.

#### Commentary.

**History.**—This section is new. It introduces a limitation on dividend which is generally accepted by co-operators and makes formal provision for a reserve fund which has been implied but not expressed in the Co-operative Societies Act, 1912.—*See Statement of Objects and Reasons* ( Bom. Act VII of 1925 ).

**Object.**—In a Joint-stock company people come together to obtain the maximum return in the capital they invest in it. A co-operative society sets about its work to secure the maximum benefit to its members, and not to the capital they have brought with them to society. Co-operation welcomes capital as an agent of production, but the right of the other agents of production is always to the fore, and as such it does not permit unjustifiably high dividends being declared but sets a limit to the return on capital. Ten per cent per annum is a fair maximum, particularly as the members gets a share of the surplus profits in other ways. Thus borrowers in a co-operative credit society would get a rebate on the amount of their borrowings, members of a retail store would get a bonus on purchases, the members of a co-operative workshop would get a bonus on labour. The capitalist instinct is, however, hard to control, and, in practice successful societies are tempted to circumvent this salutary provision in some round about way. Naturally, the question is asked that the ten per cent being in the nature of interest why should not there be a dividend on capital, as there can be dividend on purchases, bonus to wage earners and rebates to borrowers? On strictly co-operative principles the question is really unanswerable. If fair wages,



fair prices, fair rates of interest on loans could be supplemented by dividends, bonus and rebates, call these what you will, there is no reason whatever, why capital should not get a dividend to supplement the interest. The fairer course, and co-operation is nothing if not fair to all alike, would seem to be to do away with this restriction on dividends altogether and provide in the by-laws of every society for the payment of interest at the rate of  $6\frac{1}{4}$  per cent. to capital as a legitimate item of working expenses as if the share capital were in the nature of a loan, the interest on which has to be paid like rent and wages whether the society makes a profit or not. The surplus, remaining after all these items have been met should be allowed to be distributed among all the parties helping to make the profits, in proportion to their respective contributions towards the making of the profits. A successful society will in this way pay higher wages, sell at lower prices, lend at lower rates of interest and give a greater return on capital also, thus helping in the improvement of the economic condition of all its members which is the primary object of all co-operative institutions. But the practice in Bombay is to enforce the ten per cent. restriction, by prescribing in the rules under the Act that the limit should not be exceeded by any subterfuges and to be inclusive of all bonuses and so forth.

The co-operative societies should not be allowed to fritter away the profits earned to a certain extent on account of the valuable concessions from Government. The whole movement is based on the principle that co-operative societies must have their own funds. If the societies are allowed to give away their profits in dividends then they will not be able to build up reserve fund and they may have to go to provincial banks or to Government, for more money when they need it. Co-operative societies are not intended for the purpose of making any individual profits. It is right that members of these societies should get some dividends; but in the interest of the movement it is not desirable that the rate of dividend to be paid to them should be excessive. If there is one principle which distinguishes the co-operative movement from the capitalist movement, it is that the amount of dividend or interest on capital must be limited, and all the surplus must go to the persons who contribute towards the making of that profit; in the case of consumers' societies, for instance, for the

benefit of the people who buy from that society, and in the case of credit societies to the members who borrow. Mr. Wolff says "The co-operative principle is that capital should receive exactly the interest which is usual for it in the market and no more so that a maximum is fixed. There must be only one interest in the bank and that of the Consumers' ..... Co-operative institutions belie their own character and object, in allowing profit beyond the current rate of interest to capital." The Committee on Co-operation in 1915 recommended that in all ordinary cases "a maximum limit should be fixed so as to prevent the neglect of co-operation in favour of individual profit." The limit was fixed in the rule in the old Act and it being a cardinal principle it has been embodied in this Act. This limit exists in other countries and in other provinces in India. If Government are going to lend money to the co-operative movement at a lower rate of interest, it is not for the benefit of capitalists or shareholders. It is not for the purpose of enabling them to get higher dividends. It is for the purpose of enabling them to reduce their interest on loans, or enabling them to carry out works of land improvement at a favourable rate of interest. Government is very often asked and is pressed to give loans to the societies at a low rate of interest. If a maximum is not fixed for the dividend, and if any dividend is to be given to any limit, then there will be hardly any justification to ask Government to give loans at a low rate of interest. Government have actually reduced their rates of interest and that has had effect on societies' attempt to induce people to join them.—*Bombay Legislative Council Debates, July 24, 1925.*

The Sixth Conference of Registrars (1912) was of opinion that dividends should be limited by rules of local Government. Where dividends are not limited there is another danger which is to be guarded against that the share-holder out of a desire for enhanced profits may invest a larger sum in loans than is necessary. Such a course is detrimental to the true interests of the borrowers. With regard to central societies the problem is little more difficult. In central societies (which lend only to societies) there are in many cases some individual members besides the component societies. It sometimes happens that some of the component societies where badly managed fail. In such cases it is very necessary that the central society should be able to meet losses from the accumulat-

ed reserve fund. Where there is a fairly large number of individual members a spirit of commercialism sooner or later makes its appearance and it becomes difficult to check unco-operative practices like the transfer of shares at a premium. If the maximum rate be fixed only by a by-law of society there is always a tendency to raise it, especially if the reserve fund is declared indivisible either by rules or by by-laws. It is desirable that the Registrar should interfere as little as possible with established central societies where the directors are men of position and education. The opinion of the conference was as above stated namely, that dividends should be limited by rule of the Local Government, as the hands of the Registrar are thereby strengthened.

Rules have been framed under s. 71 (2) (p) prescribing the maximum rate of dividend in the case of Consumers', Producers' and Housing Societies (*See rule 24 in Appendix A*). The mode of calculating the profits is described in rule 22. Restriction on the distribution of bonus is placed by rule 23. The distribution of the balance of profits is to be made in accordance with by-laws to be framed under rule 4 (g). In the case of Producers', Consumers' and Housing Societies the principle laid down in rule 25 is to be followed.

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

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

**Commentary.**

**Old law.**—Cf. s. 33 of the Co-operative Societies Act, 1912, (Appendix B).

**Company law.**—It is a sound business policy to create reserve funds and provide for depreciation out of profits and generally to underrate than overrate profits, since it is impossible to foresee in what difficulties or losses the company may be involved in future. Articles, therefore, invariably contain provisions empowering directors to create reserve funds. But in their absence a company is not bound by law to create a reserve fund out of its profits. Reserve funds being undivided profits may be treated as profit at the disposal of the company subject to the provisions of the Articles and sums may be taken therefrom to make up losses or to pay dividends. Any part of the reserve fund (undrawn profits) remaining after payment of the debts and costs of the liquidation is treated in the winding up as profits and not as capital. When undivided profits are carried to reserve they may be employed in the business or may be appropriated to any other use of the company or may be invested in securities.

**Reserve Fund** in its widest sense may be defined as the surplus of assets over liabilities. In this sense it came into play only on liquidation and was the ultimate security to which shareholders and depositors might look for protection of their interest. It is the amount of money which co-operative institutions thought they could put aside from their profits. The term Reserve Fund was employed by the Committee on Co-operation (1915) to designate in central banks that portion of the profit which has been definitely carried to reserve whether it be the legal minimum of 25 per cent. under Act of 1912 or a larger amount and in primary societies all indistributable surplus profits after payment of expenses, including as expenses in societies on the share system the portion of the profits to which shareholders are entitled. In short by Reserve Fund the Committee on Co-operation meant the difference between liabilities and assets.

**Reserve Fund.**—The Committee on the Establishment of Co-operative Credit Societies in 1901 recommended: "The formation of a reserve is necessary both to enable the society to obtain better terms in borrowing and to secure them from the loss which the

default of any member might bring upon them, and its existence will be one of the chief sources of strength to the society.

Mr. Henry Wolff in his Co operation in India stated that the reserve fund imparts additional value to the liability upon which the society proposes to borrow; that it invigorates the credit and at the same time serves to keep the members in the society. The claims which the reserve fund is designed to meet are not those of the share capital but of the existing liabilities. The reserve fund is intended to reduce the danger to the members arising from the unlimited liability of the society. It would not be pleasant for a member to have to pay a portion of the debt of a society when no money was due from him. The existence of a large reserve fund provides an additional security to creditors. In short the larger the reserve fund the smaller is the danger of unlimited liability and the greater is the security for the creditor. Sir Frederick Nicholson pointed out the necessity for a strong reserve in all societies on the ground that in case of failure of a society it is solely the non-borrowing members who pay all losses. They are liable to pay up the whole value of their shares as contributories in bankruptcy, while though the borrowing members do the same, it is in their case a mere repaying of what they have obtained as a loan. In other words the purposes for which the Reserve Fund is created in co-operative societies is as Mr. Wolff puts it, to meet deficiencies or losses for which only with hardship could individual members be made responsible. Its next object of course is to supply the place of borrowed capital, and so make borrowing cheaper to members. No sharing out is allowed out of this reserve. So says Mr. Wolff in his People's Banks :—" In Raiffeisen Village Banks, all through, it is one of the essential features of organization that individuals are not to derive any benefit from the banks except the privilege of borrowing and that every farthing which is left over out of transactions is rigorously carried to the Reserve Fund."

The object in prohibiting the division of this fund is to prevent its growth from arousing the cupidity of the members, and tempting them to break up their society for a temporary profit. The Committee said that the first object to which any surplus profits may be applied should be the reduction in the rate of interest on loans made to members.

Then again, limiting the reserve fund by the standard of share capital is likely to lead you to follow the practice of Joint-stock companies which are based upon capital whereas a co-operative society is based upon business. Thus co-operative credit societies find themselves in a distinctly different position from Joint-stock companies. In the case of Joint-stock companies the reserve fund is intended to meet occasional deficiencies of various kinds, as they occur. The reserve fund in the case of co-operative societies is intended to the same need and to do more besides.

**Uses to which reserve fund may be put.**—The First Conference of Registrars in 1906 were of opinion that the purposes for which the reserve fund may be used should be: (1) Meeting bad debts for which provision cannot be made out of profits. (2) Repayment of loan instalments which cannot be met from other sources. (3) As an asset of security for loans raised from outsiders. At the Second Conference of Registrars, 1907, opinion was expressed that so long as the reserve fund was small it should preferably be employed in the business of the society with unlimited liability, in order that capital may be accumulated more quickly, but that when it bears an appreciable ratio to the capital it may be advisable to invest it apart from the society in order to provide security for borrowed capital but where a central bank exists the reserves may be deposited with it.

At the Fifth Conference of Registrars (1911) an opinion was expressed that until the financial position of the societies was such that they could afford to invest their reserve funds in other societies it would be better to invest them in their own loaning business. It would not be businesslike to invest the reserve funds in Government or such other securities fetching low interest and to borrow money at the same time from elsewhere at a very much higher rate of interest.

The Fifth Conference of Registrars, 1911, agreed as to the principle that any fund termed a reserve fund should be separately invested as otherwise it was not a reserve upon which the society could fall back in time of need, and that in societies with unlimited liability the reserve fund should remain indivisible and should be used only for some public benefit but in societies with limited liability circumstances might arise in which it was desirable to divide the reserve amongst the shareholders. At the Bom-

bay Provincial Co-operative Conference (1912) it was pointed out that outside investments of Reserve Fund created confidence and attracted deposits at a lower rate of interest than would otherwise be paid. In some societies the Reserve Fund simply represented a sediment of bad and irrecoverable debts a fact which would be brought to light if outside investments were insisted on.

The Committee on Co-operation, 1915, in their report said that the Co-operative Societies Act of 1912 has clearly in view a Reserve Fund consisting of surplus assets. Although these surplus assets are primarily intended to come into play in event of liquidation they constitute a most important element in the working capital since they are the permanent and indivisible property of the society of which it has the free use of interest. So long as proper provision is made for the necessary fluid resource the surplus assets may be employed in the business of the society. The object of the society should be to accumulate a Reserve Fund of this character until it obtains a capital of its own sufficient to meet all its needs, and thus become independent of outside assistance. Until this stage is reached, the margin on which it works should be as large as is compatible with the successful maintenance of the society, and it is only when this stage is reached that any reductions (other than those essential to meet outside competition) should be effected in the rates of interest charged by the society on its loans to its members.

By the term fluid resource they designated those assets which are held in a liquid form, whether in cash or easily realisable outside investments, in order to meet the claims of depositors or to provide for financial needs in times of special scarcity.

At the Eighth Conference of Registrars (1918) the question of Reserve Fund was discussed at some length. It was suggested that there was no necessary relation between the extent of the reserve fund and the proper amount of fluid resources. A new society might have a small reserve fund and need large fluid resources. On the other hand, when the reserve fund was very large the need of fluid resource would diminish. It was pointed out that if there was an ample reserve or fluid resource maintained to meet a possible run on deposits or other unforeseen contingency there was no reason why the reserve fund in the sense of undistributed or surplus profits should not be invested in the

co-operative business. If societies were found to deposit their reserve fund in central banks they would be deprived of their right of using their money for their own purposes. It was argued that the Committee on Co-operation (1915) made a great point of societies building up their own owned capital quickly and that if the reserve fund had to be invested outside, that time would never come. Instead of getting a smaller percentage as interest from outside investment such as the central banks the society would get a larger percentage if the amount is invested in its own business. In the end the society would work entirely with its owned capital or reserve fund, and would then need no fluid resources at all. It has to be admitted that separate reserve fund invested outside the movement has great advantages but in the initial stages of societies it was considered desirable to create capital owned by co-operative institutions for the utilization in their business. The Conference (Eighth) was of opinion that provided a safe standard of cash reserve or fluid resources is maintained there was no objection to the employment of the surplus assets or undistributed profits of co-operative institutions in their own business. The Thirteenth Bombay Provincial Co-operative Conference (1924) passed a resolution that in the case of Resource or Producers' society the one-fourth of the net profits which is carried to the reserve fund might be allowed to be used in the business of the society.

**Reserve fund may be used in part to public purpose or to purposes of provincial or local interest.**—Co-operative societies are not intended to make profits for their members, and generally a large portion of such profits as are earned goes to an indivisible reserve. Mr. Henry Wolff pointed out that if the reserves out-grow the measure of their employment they may at the discretion of the society be applied to some public work of common utility benefiting the village or town in which the society is situated. The idea is that it should assist in promoting in the end the general prosperity. In the case of a dissolution as stated by the same authority, the money must be handed over to some public institution to be kept on trust until required for the endowment of a new association formed in the same village or town and under the same rules or that failing within a reason-



able time the reserve may be employed for some useful local public work ( See also notes under s. 52 *post* ).

**Some public purpose likely to promote the objects of the Act.**—If there is any public purpose for which the reserve fund of a society may well be spent it is some public purpose which will or is likely to promote the objects for which the Act is enacted. The choice is not restricted to local or communal interest but the society is allowed to use the fund for some purpose of provincial interest as well.—*Select Committee's Minute of Dissent, by Mr. R. G. Pradhan.*

**The term 'net profits'** has not been defined in the Act. It can be interpreted as meaning the excess of total receipts over the total losses in any particular year. The general rule is that dividends are not to be paid out of capital but out of profits. So before the net profits are calculated, the entire expenditure incurred by the society during the year and reasonably chargeable to the revenue account and any loss on account of bad debts written off must be debited in the annual profit and loss account. Unless this is done the safeguards against bankruptcy will not be greatly diminished.

**Proportion of net profit to be carried to the reserve.**—A society has to lend at a higher rate than it borrows since it has expenses to meet and it also has to create a reserve fund upon which it can fall back if there are unexpected losses. It is upon the difference between the borrowing rate and lending rate that the profit is secured; and there are also other miscellaneous receipts such as entrance fees. After deducting the expenses from the gross receipts, the net profit is arrived at. The proportion to be set aside for reserve varies according to the nature of the business done. The proportion of twenty-five per cent. seemed too high for Consumers' societies, and, therefore, it is reduced to ten per cent. in this section. S. 39 provides for  $\frac{1}{4}$ th of the net profits being taken to the reserve fund in the case of Resource and Producers' societies and  $\frac{1}{10}$ th in the case of other societies including the Consumers' societies as stated above.

S. 40 provides for the distribution of the balance of profits after setting apart the reserve fund under certain restrictions laid down in rules and by-laws ( See rules 22 and 25 ). The by-laws are to be framed under rule 4 (g) ( See Appendix A for rules ).

S. 42: 20 per cent. of the amount of net profits after setting apart the prescribed amount as reserve fund may be devoted to charitable purposes.

S. 71: (n): rules can be made providing for the formation and maintenance of reserve funds; the objects towards which they may be applied and the investment of such funds. Rule 28 made under this section allows the reserve fund to be utilised in the business of the society or invested or deposited in any of the ways mentioned in clauses (a), (b), (c) and (d) of s. 37. For the utilisation of reserve fund in the case of a society constituted with the object of co-operative housing on a co-partnership tenancy basis, see rule 28 ( See Appendix A for rules ).

**Restrictions on distribution of funds by way of bonus, dividend or otherwise** are placed by rule 26 ( See Appendix A ).

**For investment of funds** by a society in the purchase or leasing of land or buildings and in the construction of buildings, see rule 27 (*ibid*)

S. 71 (x) states that rules may be framed regulating the manner in which funds may be raised. Rule 4 (e) allows a society to make by-laws as to the manner in which funds may be raised. Rule 4 (f) provides for the mode of custody and investment of funds and subject to rules 14, 17, 18, and 19 the mode of keeping of accounts of the society.

**Rule 8:—Restriction on borrowing by societies with limited liability** are placed by rule 8 (*ibid*).

**Miscellaneous directions:—**(a) The profits of a rural bank should go to the reserve. The formation of sinking funds or any other similar funds appears illegal.

(b) The reserve fund is for ever indivisible among the members. The society is at liberty to make any by-laws for the disposal of the reserve in case of its dissolution (s. 52) provided that it is not divided among the members. It can be employed on any public purpose that the members approve of. (*ibid*)

(c) The reserve fund should be invested safely. It may be employed in the business of the society ( rule 28, see above ).

(d) The reserve fund may be used in paying off any loss of capital which is not due to any dishonesty or neglect of the Committee or any member. If the profits of the year exceed the loss, the loss will be met from the profits. If, however, the loss exceeds the profits, the excess will be met from the reserve ( See Rule 12, Appendix A ).

(e) The reserve may be employed temporarily for meeting the instalments of debt. It may also be pledged as security for a loan taken by the society.

**40.** Subject to the provisions of section 38 the balance of the profits of a society after making the prescribed provision for the reserve fund may, together with any available profits of past years be distributed among its

Restrictions on distribution of profits.

members, and in the case of Consumers' and Producers' Societies, also among persons who are not members, to the extent and under the conditions prescribed by the rules or by the by-laws of such societies, provided that:—

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

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

### Commentary.

**Old law.**—*Cf.* s. 33 of Act II of 1912 (Appendix B).

**History.**—S. 8 of the old Act of 1904 provided that no dividend or payment on account of profits should be made to a member of a rural society, but that all such profits should be carried to a reserve. A proviso, however, was added to the section to the effect that when the reserve had attained such proportion to the total of the liability of the society, and that when the interest on loans had been reduced to such rates, as might be determined by the by-laws of the society, any further profits not exceeding three-fourths the total annual profits might be distributed to members by way of bonus. This section was framed in accordance with distinct policy that profit sharing should not be allowed or at any rate encouraged. In the beginning the idea was to create a fund from the annual surplus sufficient for working capital by prohibiting any distribution of profits. It is true that unlimited liability should be the almost invariable rule in rural societies but it is not that this condition is incompatible with the constitution of these societies on a share basis. S. 8 (1) of the old Act of 1904 rendered the formation of rural societies on a share basis extremely difficult if not impossible, owing to the fact that no dividend could be paid for a considerable period and people were not likely to consent to lock up their capital for indefinite period without return. Again it was possible to interpret s. 8 (1) of the old Act of 1904 so as to render its provisions practically inoperative. It was, therefore, proposed that a proviso be added to the effect that dividends might be paid to members of unlimited liability societies with share capital

to such extent and under such conditions as might be provided by rules or by laws made under the Act. The object of the proposal was to legalise what was already being done in many provinces such as in the Punjab and the United Provinces and to permit the distribution of profits after a fixed number of years. The Fourth Conference of Registrars held that unlimited liability societies with share capital should be permitted to declare dividends after a stated number of years.

**Distribution of profits.**—The Fourth Conference of Registrars also decided that as a matter of principle a division of profits among members of unlimited liability societies on a non-share basis was objectionable. The original credit societies were based upon the Raiffeisen model, but more recently this has been discarded in favour of the Luzzatti model. In the Raiffeisen type, the profits go to an indivisible reserve and are not distributed even on dissolution, while in the Luzzatti after the profits of the first ten years have been placed to reserve (divisible on dissolution) in succeeding years three-fourths of the annual profits are distributed as dividends on fully paid up shares. The indivisible reserve is in the long preferable to one divisible under the Luzzatti rules, but if Luzzatti model is insisted upon care should be taken to avoid the resultant weaknesses. Where three-fourths of the profits are distributed annually, there is danger that profit-seeking may prove stronger than caution. There is also the danger that loans for unsuitable periods or unsuitable purposes may be sanctioned in order to gain higher interest. Where no dividend is permitted this danger does not exist and members can more easily be persuaded to deposit in central banks the surplus over the real normal requirements of their business. A further danger where profits are divisible is that paper credit may be taken for profit not actually realized in cash but which can be secured by the type of book adjustment which has been found so general. The danger of dividends being distributed from capital instead of from realised profits is absent where profits are indivisible.—*See the Report of the Committee on Co-operation in Burma, 1928-1929, p. 17.* With regard to the distribution of profits Mr. Calvert writes.—“It must be remembered that profit seeking is the curse of co-operation. High profits can only accrue from neglect of co-operative principles—the rendering to members of the best possible service at the lowest possible cost—and profits are equally abnoxious when labelled reserve fund.”

**The main principle** upon which all co-operative groups are formed is that the members associate themselves for a common economic object through the most advantageous use of commodities or of labour and not obtained in the shape of profit as the word is used in commercial companies or similar bodies. The only equitable means of securing that, the advantage obtained by combination should be shared by the members according to their own contributions to this advantage is by a rule that whatever

surplus remains to the society after the payments of its necessary expenses should be divided among the members in proportion to the business they have done with the society. ( See rule 25, Appendix A )

**In consumers' co-operation** for example, the society purchases the commodities required in common at the lowest price obtainable which for the purposes of the society is taken as the cost price. In order to provide for necessary expenses the society then surcharges all the commodities and sells them at this augmented price. At the end of a fixed period be it six months or a year, the account is balanced and whatever surplus remains after defraying expenses (including dividends on share capital at a fixed and definite market rate and including also necessary deductions for a reserve fund) is then divided among the members and customers in their capacity as the customers at a pro-rata of the custom brought by each to the society. The intention of the society is to benefit consumers whether members or not by giving them all the profits which in ordinary private trade go to the tradesmen or middlemen. For this reason profits made are distributed not only among members but also among non-member customers at a pro-rata of the consumption of each [ See rule 25 which allows profits to be distributed in proportion to the amount of goods purchased by each member, or if so provided in the by-laws by each customer in the case of a consumers' society ( Appendix A ) ].

The custom brought in the shape of purchase of commodities from the society is in fact the contribution made by the customers to the successful attainment of the objects of the society and the amount of his purchases is the only equitable criterion on which his right to the surplus advantages of the society can be measured. The surplus advantages are as a matter of fact not profits in the commercial sense for (a) they are surcharges voluntarily accepted by the customers (members) for a practical purpose, and (b) they are at no stage intended to be attributed to the share capital as such.

**Housing societies** come under the consumers' group and rule 25 states that distribution of balance of profits in the case of a Housing Society should be in proportion to the amount of rent paid by each member.

**Producers' societies.**—The idea is that the worker who has created the business of the society by the amount of labour that he has put into joint production should receive a share of the joint profits measured in proportion to the labour he has done. If the ideal in a co-operative producers' society is that the workers should work in common and share profits in common it is evident that workers who have contributed their labour towards the production of goods but who are not members of the society should be allowed to share in the profits. Otherwise the society will be a small close body which may in turn exploit non-members who will be in most cases the employees as the members had formerly been exploited by capitalist employers. (Rule 25 allows profit to be distributed in proportion to the wages earned by each member. (See Appendix A for rules.)

**In the case of Resource societies,** rule 25 allows profits to be distributed in proportion to the goods obtained or sold through the society by each member, or with loans borrowed from, and the deposits made with, the society by each member (See Appendix A for rules).

**In the case of Resource societies with unlimited liability where members do not hold shares** what has been done in practice is to accept the principle that the surplus profits belong to the members as a whole and not to the capital which has built up the society. But at the same time in order to ensure the stability and security of the society and to be able to build up a reserve fund large enough to enable rates of interest to be reduced all round, the surplus profits are entirely credited to an indivisible reserve fund. In the beginning the idea was to create capital where none existed before. The drawings which can be made against this reserve fund are for purposes of works of public or co-operative utility. It is nothing but an additional act of self-sacrifice by which a member gives up his personal share in the profits for the sake of an advantage which is at once permanent and common to all including himself. The call for such a sacrifice is justified by the fact that in a village credit society most of the members for a considerable period will all be borrowers and will, therefore, all in turn be benefited by the existence of the large indivisible reserve fund.

**In Resource societies with unlimited liability where members hold shares.**—The share capital in a society of unlimited liability is not to be confused with the joint-stock idea; it represents, not the stake of the member in the society, but such portion of his unlimited liability paid up as should give cover for any deficit in assets.—*Committee on Co-operation in Burma, 1928-29, p. 16.* The share capital is really reserve in itself whether any portion of it is formally credited to a reserve fund or not, and, therefore, there is no objection to allow dividend on share capital after such a long period as ten years when the reserve fund will have further increased sufficiently to minimise the risk involved. Another argument is that if interest is allowed on deposits by members there is no reason why a dividend should not be allowed on share capital.

**Profits** of a co-operative society are not profits in the commercial sense, but are surplus earnings intended partly for grant of a reasonable remuneration and partly for refund of surcharges levied on custom, whether credit or goods supplied to members. As such the profits stand in a different category from business profits.

**'Profit of past years'**.—This provision permits the distribution of profits not only from the profits of a single year but also from the accumulation of profits which might have been distributed in previous years but were not so distributed. By this means it will be open to societies to provide for the equalization of dividends.

**"Conditions prescribed in the rules"**.—Distribution of bonus on shares beyond any dividend declared under s. 38 cannot be made (rule 23). Payment of dividend by Consumers', Producers' or Housing Societies is governed by rule 24. Rule 25 provides for the distribution of balance of profits. Restrictions are placed on the distribution of funds by way of bonus, dividend or otherwise by rule 26.

**Suggestion.**—The adoption of the share system with unlimited liability in the Presidency proper has made it necessary to allow payment of a small dividend on the shares from the beginning. S. 40 (b) as worded at present does not allow any distribution of profits for ten years from the date of registration. It is necessary, therefore, to amend the section accordingly.

**41.** Any society may establish a provident fund for its members out of contributions from **Provident Fund.** such members in accordance with by-laws made by the society in this behalf and may contribute to such provident fund from its net profits, after the prescribed payments have been made to the reserve fund, provided that such provident fund shall not be used in the business of the society but shall be invested under the provisions of section 37; and provided further, that no part of such provident fund shall be considered as an asset of the society.

#### Commentary.

This section is new.

**History.**—Sir Frederick Nicholson in his Report on Agricultural Banks in Madras Presidency (1896) had suggested at page 388 of Vol. I the formation of a provident fund for the benefit of the employees out of surplus profits where village banks were developed in size. This suggestion, however, was not accepted by the Committee on the Establishment of Co-operative Societies in India (1901–1903). In 1921 the formation of a fund on the lines of an Emergency Fund or Distress Fund established in many co-operative societies in England was suggested. (See the Report of the Bom. Provincial Co-operative Conference for the year 1921, p. 108) Advantage of this new Act of 1925 was taken to give the suggestion legislative sanction.

**Scope.**—The section as at present worded applies to provident funds for members of the society and not its employees who are not members. It may, however, be suggested that this section should be so amended as to cover the case of employees of co-operative societies for whose benefit provident funds are being formed at present. The notes given below have particular reference to employees only.

**The object** of the provident fund is to provide the employees on their retirement or, on their death, their dependents with a fairly large sum of money. The system by which such a sum is accumulated is as follows: Each employee has to set aside a cer-



tain fixed percentage from his monthly pay. These compulsory savings are accumulated and at the close of the year the employers generally contribute an amount which bears a certain fixed proportion to the employees' contribution during the year. The whole sum together with the interest thereon is payable to the employee on his retirement or to his dependents, if he happens to die earlier. Provident funds started by Government and Railway Administrations are governed by the Provident Funds Act of 1925, one important feature of which is that the compulsory deposit of a member of such a fund cannot be assigned or charged and is not liable to attachment under the order of any court. A similar privilege is given by this section to the provident funds started by co-operative societies.

**"Provident Fund"** means a fund in which subscriptions or deposits of any class or classes of employees are received and held on their individual accounts, and includes any contribution credited in respect of such subscription or deposits and any interest or increment accruing on such subscriptions, deposits or contributions under the rules of the fund. [ S. 2 (e) of the *Provident Funds Act, 1925.* ]

**"Contribution"** means any amount credited in a provident fund by any authority administering the fund by way of addition to, or otherwise in respect of a subscription to or deposit in, the fund.—S. 2 (b) of the *Provident Funds Act, 1925*

The object of the provident fund as stated in the model by-laws for a Producers' Society is to provide all working members and employees who have been employed for not less than 5 years with a pension or gratuity proportionate to their wages and period of service. A proportionate pension or gratuity may be taken from the age of fifty-five onwards. For every employee or member ceasing to do work for the society after 5 years' continuous work, the amount due to him from the provident fund is at once calculated, but the payment is made to him when he has reached the age of 55. In case of death of any member or employee before that age, any sums standing in the provident fund to the credit of the deceased are paid to his widow or children on the recommendation of the Managing Committee.

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

Contribution to charitable purpose.

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

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

### Commentary.

**Old law.**—*Cf.* s. 34 of the Co-operative Societies Act, 1912, (Appendix B.)

**History.**—Sir Frederick Nicholson in his *Land and Agricultural Banks*, Vol. I at p. 388, said that there should be a permissive provision in the articles of a co-operative bank, for the devotion of any surplus profits to such work of general utility whether for the benefit of the society or a corporation or of the village, or of any public body, as might be decided by the general meeting, *e.g.*, the building of an office, the digging of a well, a donation to a hospital and so forth. He thought that such utilization of the funds would be a valuable education in public spirit; the mere provision in the Articles would be suggestive. The Committee on the Establishment of Co-operative Societies in India (1904) had no objection to the utilization to public utility works any surplus money when the reserve fund had reached a certain amount. At the Fourth Conference of Registrars (1909) the one advantage of devoting a certain amount out of profits to local charities or to local objects of public utility which was pointed out was that it would remove the difficulty of inducing Mahomedans to join co-operative societies. The Committee on Co-operation (1915) went to the length of saying that "even in cases where it might be financially sounder to place the surplus amount of net profits to the reserve there are sometimes advantages in applying them to objects of a philanthropic character, as apart from the objects directly attained, action of this kind serves to stimulate public interest in the movement." The twenty per cent. limit was recommended by the Bombay Provincial Co-operative Conference (1919) for a society with limited liability.

The co-operative movement enjoys certain concessions in the matter of registration fees, stamp duties, income-tax, etc., because the object of the movement is not profit-sharing as in the case of Joint-stock concerns. It stands for the uplift of the poor, for the economic amelioration of the agricultural classes and is a moral movement. The abovenamed special considerations are made because co-operative societies have to work under certain restrictions, namely, the maximum return on capital is fixed and cannot be exceeded. Out of the net profits again provision has to be made, in the majority of societies, for grant to educational and charitable objects from sums which are carried to reserve which according to co-operative practice

are indivisible for promotion of common good, for use in educational and charitable activities.—See *Proceedings of Ninth Conference of Registrars*, (1926).

“With the approval of the Bombay Central Co-operative Institute”—The legitimate duties of the Bombay Central Co-operative Institute are to carry on propaganda and to help the co-operative societies. The societies in the rural and urban areas are members of the Institute. It was argued that the co-operative movement is controlled by Government and that all the powers are centered in one person only, namely the Registrar. Many of the societies sometimes try and use this money for some other purpose and it is very necessary there should be some sort of a check to see that the money is being utilised in the way which is laid down in the Act. For that purpose it is necessary that some authority should see that this money is properly used.

The Registrar has got to see that not more than 20 per cent. is being used for the purposes for which authority is given under this section to the societies. If money is being used in this manner somebody has got to see that it is being used for a public purpose and not for anything else.—*Bombay Legislative Council Debates*, 24th July 1925.

**Interpretation.**—Under this section a society is required to obtain the permission of the Institute for contributing to any charitable purpose but the question that arises is whether previous approval is necessary for merely setting aside a sum or is it necessary to obtain it for payment also made out of the sum so set aside. From the wording which is somewhat ambiguous and the comma after net profits in sub-clause (a) it appears that approval is only necessary to set aside the sum.

**Amendment suggested.**—In order to make the meaning clear, therefore, the section may be recast as under :—

“After the payments prescribed by sub-section (2) of section 39 have been made to the reserve fund, any society may, with the approval of the Provincial Co-operative Institute, Bombay

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

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

**Charitable purpose** for the purposes of the Charitable Endowments Act, 1890 (s. 2) includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

**Note.**—The Burma Co-operative Societies Act, 1927, allows only 10 per cent. of the net profits (after carrying one-fourth to the reserve) to be utilised for charitable purposes. The Madras Co-operative Societies Bill (No. 4 of 1931) makes similar provision. In both cases the previous sanction of the Registrar is provided for.

**The Provincial Co-operative Institute, Bombay.**—The co-operative movement in European countries is entirely a peoples' movement, inasmuch as it was started by the people and is being conducted by the people. The law came to its help at a later stage only to see that the movement was conducted on proper lines by giving a legal status to the societies. The movement in India, on the other hand was started by Government and is also being conducted by it. But the democratic principles of the movement which form its essential features, cannot be expected to be developed and to have full play, unless the people themselves assume control over it. This object in our country cannot be achieved in a day. But work towards that end must be directed at as early a stage as possible and must be supported by the effort of the people and also by the encouragement of Government in the interest of the movement itself. Organisations with this object are established in the different provinces of the country under the name of Federation, Union, Institute or the like, for taking over certain non-statutory work and also for voicing popular opinion on questions relating to the movement. (See also notes under the head 'Co-operative Unions and Institutes' at p. 130 *supra*. And also see notes to ss. 52 and 53 *infra*) The Provincial Co-operative Institute of Bombay is an organisation of this type.

**The Provincial Co-operative Institute, Bombay,** was under the Co-operative Societies Act, 1912, organised in the year 1918 and was registered under the name of the Bombay Central Co operative Institute. Under the present Act of 1925 it obtained a definite legal recognition and this section (s. 42) of that Act gave it the power of making allocation of funds for charitable purposes. S. 53 of this Act empowers the Institute to nominate one of the three persons in whom the moveable and immoveable assets of a housing society are to be vested when such society goes into liquidation. In the year 1926 the Institute adopted a new constitution based on a policy of decentralisation. The Institution is a member of the International Co-operative Alliance. The area of operation of the Institute is comprised of geographical limits of the Bombay Presidency including the Indian States. The Institute has got a building of its own in Bombay known as the Sir Vitaldas Thackersey Memorial Building, built at a cost of nearly Rs.2,10,000. Its registered address is 9, Bakehouse Lane, Fort, Bombay. Government used to give an annual grant to the Institute equal to the contributions which it raises from the public. From the year 1927-28, however, Government gives a grant of Rs. 30,000 only though the income of the Institute from other sources is much larger. Last year *i. e.* in 1930 the Institute had 5,755 members consisting of 4,855 societies and 900 individuals. The Institute in 1930 realised Rs. 33985 by way of subscriptions from the societies and individuals.

**Object.**—The objects of the Institute are :

1. to further the spread of the co-operative movement,
2. to promote the study of problems connected with co-operation,

3. to strengthen and improve co-operative societies by supervision and other means and to bring them together for common endeavour and to create a community of interest among them,
4. to ascertain and represent the views of co-operative institutions on questions of general or public importance affecting the movement and,
5. to bring about a moral and material improvement of members of the Institute and of co-operative societies.

In view of these objects the following activities are undertaken :—(1) Co-operative Housing propaganda (2) Co-operative library, (3) Co-operative journals, (4) Co-operative Training of secretaries, (5) General Propaganda, (6) Organisation and Supervision of societies, among the mill-hands of the City of Bombay, (7) Study and advice on non-credit co-operation

In short, the Institute undertakes co-operative propaganda and instruction and holds conferences and training classes. The Institute and its different branches publish co-operative magazines in English and in the four vernaculars of the Presidency. Owing to the changes in the constitution and by-laws of the Institute the centre of activity of the Institute has been largely shifted from Bombay City to the districts. Divisional and district branches have been opened and there is now a branch of the Institute in every district in the Presidency proper. Sind has the divisional branch at Hyderabad and a District Branch at Karachi. The Institute has adopted the policy of enabling each district branch to appoint a propaganda officer of its own. Last year i. e. in 1930 there were 8 propaganda officers employed, 2 Divisional officers for Bombay and Sind and 5 district officers for Poona, Ahmednagar, Satara, Sholapur and Ratnagiri. As regards intensive co-operative education the Institute took an important step in 1928 by starting regular co-operative schools to impart practical training to supervisors and others. At present there are 3 schools one in each of the three linguistic divisions of the Presidency proper. The schools have organised courses of training for (1) rural secretaries, (2) Urban secretaries, (3) Supervisors and (4) Bank Inspectors, the medium of instruction being the local vernacular. It will thus be seen that the Institute and its branches are trying to do the best with their limited resources. If more workers and more money are forthcoming there is practically no limit to the good work which can be done under the auspices of the Institute.

### *Inspection of affairs.*

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

Inquiry by  
Registrar.

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

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

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

(c) on the application of  $\frac{1}{3}$ rd of the members of the society.

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

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

#### Commentary.

**Changes.**—This section extends the powers given under s. 35 of the old Act of 1912 (see Appendix B for the old Act) in the case of an inquiry but omits the intervention of the Collector which is no longer necessary.—*Notes on Clauses.*

**Analogous Law.**—Ss. 137, 138 and 140 of the Indian Companies Act, 1913 empower the Registrar of Joint-stock companies to call for such information or explanation as he may consider necessary in order that documents submitted to him may afford full particulars of matters to which they relate. The company is bound to supply the information under a penalty, [s. 140 (3)] and the information is open to public inspection. If the information discloses an unsatisfactory state of affairs, the Registrar may report to the Local Government, which is empowered to appoint a competent inspector to make an investigation. Such an investigation may also be ordered on the application of the

holders of one-fifth (in the case of a banking company) or of one-tenth (any other company) of the shares.

**Under the Industrial and Provident Societies Act of 1898, s. 18,** it is only the members each of whom has been a member of the society for not less than twelve months immediately preceding the date of the application can apply.

**The Friendly Societies Act, 1896** lays down that one-fifth of the members who may be required to give security for costs [s. 76 (2)] may apply [s. 76 (1) (a)]; that the application must be supported by good evidence and that it must be shown that the applicants are not actuated by malice [s. 76 (2)].

**Object**—It is very important that there should be ensured to the members some method of ascertaining what are the contracts into which their society has entered, how their committee are carrying on the business and what is the financial condition of the concern. This right to an inquiry is important for the maintenance of the principle of equitable association. It gives a minority of the members the right to learn what is being done by the Committee elected by the majority. It is on the proper and careful use of this section that the fate of several societies depends. (*Calvert.*)

**The inquiry into the "constitution, working and financial condition" of the society** provided in this section is a most comprehensive one so that the Registrar can see whether the members of the society have continued to be the same homogeneous body which they formed at the time of the registration of the society or whether the body has suffered by admission of heterodox or other undesirable persons in the society. He can inquire with a view to find out if the society has been worked on right lines of prudent management, whether its borrowings and lendings have been proper, and also whether it has been conducted on right co-operative principles. He can thus find out whether the condition of the society is such as to permit the mending of the society by putting it on the right track or whether it should be cancelled, its financial bottom having gone, and it being impossible to keep it floating.

Under the Friendly Societies Act, 1896, s. 76 (5) the Inspector is empowered to examine on oath the officers, members,

agents and servants, of the society in relation to its business. Similar provision is now contemplated by the Madras Co-operative Societies Bill of 1931.

**Wilfully neglecting or refusing to furnish any information** required by an inspecting officer is an offence under s. 60 (b) of this Act. It is liable to a fine not exceeding Rs. 50 under s. 61.

**Instructions.**—The statutory powers and duties of inspecting a society to be used under certain special circumstances are prescribed in ss. 43 and 44. Those are rarely to be used since societies always gladly welcome the advice and assistance of co-operative officers. The Committee on Co-operation (1915) recommended that the expressions 'inspection' and 'enquiry' should be utilised exclusively for the special and occasional operations contemplated by these sections. It is noticed that the scope and object of inquiry under s. 43 of Act VII of 1925 is not clearly understood by some Auditors who are appointed to hold the inquiry. Inquiry in the affairs of a society is ordered for various reasons. Inquiry is sometimes held to gather information on certain fixed points. It is also held as a preliminary step before cancellation. When the inquiry is ordered to find out if the society deserves to be wound up, it is the duty of the Inquiry Officer to go through the past history of the society, the defects in the constitution, financial condition, and management of the society which might have led to its decline and to submit a comprehensive report. At the conclusion of the inquiry, the Inquiry Officer should ask the Managing Committee to show cause why the society should not be wound up if he thinks that the society is fit to be wound up. For, one of the principal objects of the inquiry is to give an opportunity to the Committee to explain the circumstances under which the society has deteriorated and to give an indication of the efforts they are going to make to stop the society from going into liquidation. If the Inquiry Officer is inclined to recommend that the Committee should be given time to improve the affairs of the society he should ask the Committee to give an undertaking to that effect and should suggest the things they are expected to carry out if they are to save the society from liquidation. At any rate the Inquiry Officer should take their statements in writing as to whether they wish the society to continue or not. Wherever possible he should arrange to hold the general meeting of the members before whom he should place all the facts about the society and see if the general body is prepared to take prompt and effective steps for the improvement of the society.

### **Supervision, Audit and Inspection.**

**Supervision.**—An 'inquiry' or 'inspection' under certain special circumstances is provided for in ss. 43 and 44 of the Act, but on the subject of continuous supervision no legislative provision is requisite nor has any been made. The efficiency of the co-operative institutions depends very largely on the arrangements made with respect to the important safeguard provided by continuous supervision. The object of this inspection (or supervision as



it is termed by the Committee on Co-operation) is to ascertain the general scope of a society with a view to suggest improvements and extensions, to examine the accounts in order to see that they are properly written and do not reveal any undesirable transactions and generally to stimulate the working of a society by well-grounded encouragement or censure. Supervision implies the duty of instructing the members in co-operative principles and the propagation of the movement by the organisation of new societies. It differs from audit in that it aims not merely at testing the efficiency of a society but at helping it to be efficient and it comprehends the further task of seeing that the defects noted at audit have been remedied.

Inspection is closely related to audit. As is stated above audit is intended to ascertain the exact financial position of a society while the object of inspection is to find whether that the work of the society is efficiently and properly carried out. For instance, in the case of a credit society the inspector must see that the credit of a borrower is properly assessed, that loans are covered by sufficient assets, that no undue preference is given to any of the borrowers, that instalments are properly fixed, that receipts and payments are properly forecasted, that timely recoveries are made and that the creditors and depositors are timely paid. An inspector has also to examine the members. Audit is done on behalf of the Registrar while inspection is resorted to by the financing banks to safeguard their interest. It is now provided for in their by-laws.

The supervisor is concerned to see that the work of the society is not only businesslike and up-to date but genuinely co-operative. He has to see that the provisions of the Act, rules and by-laws are complied with, that meetings are held in time, that their business is transacted with a quorum, that the books are properly written and from time to time and papers are properly filed. While satisfying himself that the accounts are in good order and that business is being conducted regularly and prudently, he would refrain from verifying the figures in detail, and would set himself to test the knowledge of the Committee and members, to advise them with regard to difficulties and disputes, to explain and remedy mistakes, and to impress upon them the principles which societies should always have before them. A Supervisor's work is more onerous than that of an inspector, for he has not only to inspect but also to rectify mistakes and also to prevent them from recurring and occurring. He has to advise, guide and teach and has, therefore, to remain in close touch with the society. The Committee on Co-operation thought that these functions should devolve on the co-operative institutions themselves. The question about arranging for supervision was considered by a committee appointed by the Twelfth Bombay Provincial Co-operative Conference of 1923 and later on in 1928 the Conference of Registrars recommended the formation of supervising unions by the federation of primary societies as they considered organisations of that kind to be one of the best promising ways to increase co-operative knowledge among members of societies and to give the leading members of societies a wider outlook and acting on their recommendation steps were taken for the organisation of supervising unions

which are expected to appoint well-paid and well-trained supervisors under the guidance of the Union Committees to inspect societies periodically. Great importance is attached to these measures because it is believed that unless proper and regular supervision has been provided for it will not be safe to go on increasing the number of societies, nor can great progress be expected in many of the existing ones. As is the declared policy of Government the functions of the Co-operative Department are restricted to registration, inspection, and enquiry, arbitration, liquidation and audit. The official staff is, therefore, limited to the bare minimum required to carry out the duties under the Act and the best way which could be suggested for the supervision is to organise the societies themselves into unions for the purpose so that supervision will be internal, that is by the societies themselves and not from outside.

The Supervising Union is responsible to see that the accounts and working of affiliated societies are inspected at least once every three months. Such inspection is to include not only an examination of accounts but an inquiry into all overdue arrears, scrutiny and verification of loan bonds taken from members, the action taken to remedy faults previously pointed out and any other points that affect the general credit and good working of the society.— (*Model by-laws of Supervising Unions.*) [See also notes to s, 22 under the head "Supervision" at pp. 127-128 *ante.*] The co-operative societies affiliated to the Supervising Union have to abide by a by-law passed by the Union to the effect that their accounts and general management should be supervised and assisted by the Union Supervisor.

**Suspension of a society.**—Previously if it was brought to the notice of the Registrar that a society was being mismanaged the only step that could be taken besides giving advice or warning was to order an enquiry and to get the costs of the enquiry recovered from the persons responsible for the mismanagement. If matters did not improve a liquidator was appointed to wind up the affairs of the society and it was eventually cancelled. Good members suffered with the bad, and the former lost the benefit which might have derived from the movement and had again to fall back on the sowskar. This difficulty is attempted to be removed by making a provision in the by-laws of the Supervising Union. It is thought that the Supervising Union as the local controlling authority should have the power, with the consent of the Registrar, to report to the District or Provincial Bank to suspend a society (Managing Committee) when it was found not working properly, to authorise District or Provincial bank to entrust the management to a suitable person or persons for a period not exceeding six months. If the desired improvement took place during that period the society was to be ordered to be reinstated otherwise the winding up order of the society was to be given by the Registrar.

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

Inspection of books of indebted society.

Provided that—

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

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

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

#### Commentary.

**Changes.**—This section is the same as s. 36 of the Co-operative Societies Act, 1912 except that the word 'may' is substituted for 'shall' occurring in Clause (1) of s. 36 of old Act. ( See Appendix B for the old Act ). This has made the section permissive inasmuch as it is left to the discretion of the Registrar to direct the inspection of books of a society on the application of the creditor. The inspection may be made either by the Registrar or by some one who enjoys the confidence of the creditor.

**Analogous Law.**—Ss. 162 and 163 of the Indian Companies Act, 1913 lay down that a Company " shall be deemed to be unable to pay its debts " and may be wound up by the Court if a creditor, to whom the Company is indebted to more than Rs. 500 serves a demand for it and the Company for three weeks neglects to pay it.

**Reasonable time.**—It appears that on the analogy of the above sections of the Indian Companies Act, three weeks would be a reasonable period.

**Scope.**—S. 44 is much narrower in its scope than s. 43. It gives a creditor who is not paid on the due date, or who has not received satisfaction otherwise, to apply to the Registrar under certain terms for inspection of the society's accounts in order that he may know the result of such inspection of accounts and may shape his conduct accordingly so far as his relationship with the society is concerned.

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

Provided that—

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

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

#### Commentary.

**Old law.**—This is s. 37 of the Co-operative Societies Act, 1912 with some additions (See Appendix B).

**Scope.**—The unsatisfactory state of affairs of an indebted society necessitating an inquiry or inspection may be due to the neglect or fault of the existing or former officers of the society. The section gives power to the Registrar to make them also liable for the costs of the enquiry or inspection. Such costs can be recovered summarily by distress and sale of the moveable property on application to the Magistrate as provided in the following section. If any costs or any part of the costs be awarded to Government the same may be recovered also as arrears of land Revenue (s. 65).

**'Officers or former officers, and the members or past members.'**—Power is given to a responsible officer like the Registrar to apportion costs among persons who have been taking part in the mismanagement of the society. On an inquiry sometimes it is found that the affairs of the society have been mismanaged for some years at all events. The mismanagement of a society does not take place in one or two years, but the mismanagement begins and the affairs of the society go from bad to worse, and then ultimately the time

comes when an inquiry is demanded. When it is held it is generally found, and many times it is a fact that the responsibility does not lie on the present officers but that it lies on the members who had already left the society two or three years before, and, therefore, if the officers who have ceased connection with the society a year or two before, are not held responsible then it will be almost a premium upon mismanagement. Sometimes there are persons who are neither office-bearers nor are members of the managing committee yet they have a hand in misappropriating the funds of the society. They sometimes make other innocent members to execute documents and so on. In this matter they lead the officers to mismanage the affairs and if such mischievous members are found to be at fault it is perfectly justified to saddle the responsibility upon them and to apportion the costs on them. It may be argued that the accounts of the society are audited at least once every year and if the auditor found the affairs of the society mismanaged it is the duty of the auditor to report the fact to the Registrar and if the auditor does not report it is the slackness of the auditor and former members or officers should not be taken to task and saddled with the cost for the slackness of auditors. Now many a good bank has had efficient audit and yet there have been defalcations. Some ordinary member or past member may be found in the inquiry to have been responsible for the bad condition of the society, and why should he escape the responsibility simply because he has been a past member? All that is laid down is that the person who is responsible for the condition discovered will be liable for the costs, (s. 45) and such a provision is very necessary.—*Bombay Legislative Council Debates, 24 July, 1925.*

**‘Members or past members’.**—These words are added as there may be cases of such persons having been responsible for the working or the financial condition of a society.—*Report of the Select Committee.*

**The proviso** is added for the reason that as an appeal has been allowed from the order of the Registrar under this section (s. 64) it is necessary that all material should be before the authority who hears the appeal to enable him to judge and therefore, it is required that the Registrar should state the grounds in support of his own orders. Secondly it is the ordinary principle of law that no order should be made against a person without hearing him.—*Bombay Legislative Council Debates, July 24, 1925.*

**46.** Any sum awarded by way of costs under section 45 may be recovered, on application by the Registrar to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides, or carries on business, by the distress and sale

Recovery of costs.

of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person, and such Magistrate shall proceed to recover the same in the same manner as if it were a fine imposed by himself.

### Commentary.

**Old law.**—*Cf.* s. 38 of the Co-operative Societies Act, 1912. ( Appendix B ).

**The power to make a reference** to a Magistrate for the recovery of the sum awarded by way of costs has now been allowed to the Registrar only.—*See the Report of the Select Committee.*

**Power to exempt societies from provisions of the Act.**—The policy of the Government all along is to make the Act as elastic as possible. It is proposed that wider powers should be given to Local Government to enable it to deal with special cases. *Fourth Conference of Registrars, 1909.*

**Moveable property** means property of every description except immoveable property [s. 3 (31)] which in its turn is stated in s. 3 (24) of the Bombay General Clauses Act, 1904, to include, land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

### *Liquidation and Arbitration.*

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

Winding up.

appoint a liquidator for the purpose and fix his remuneration.

### Commentary.

**Old Law.**—*Cf.* S. 39 of the Co-operative Societies Act, 1912 (See Appendix B).

**Past and deceased members.**—It has to be remembered that the liability of a past member and that of the estate of the deceased member for the debts of the society continues as provided by ss. 28 and 29 respectively.

**An appeal against the order of the Registrar under s. 47 is provided for in s. 64 of this Act.**

**The Registrar may fix the remuneration of the liquidator.**—Rule 38 (8) empowers the Registrar to fix the amount of fees to be paid to the liquidator. The usual remuneration is 3 per cent and 2 per cent respectively according to whether the recovery is done by himself or through the Revenue authorities (L. Q. D. Misc. of 1928 dated 10-5-1928.)

**Distinction between a winding up order and the cancellation of registration.**—A society continues as a corporate body during the process of winding up. It enjoys all the privileges such as the exemption from stamp duty etc. (*No. 40/24 of 1926 dated 13-9-26*). A winding up order has not the effect of vesting the society's property in the liquidator. The property remains in the society until dissolution (s. 49) unless disposed of in the course of winding up. (Calvert.) All societies in the process of liquidation are audited every year ordinarily by the auditors in charge of the division but when the said auditors are themselves the liquidators then by the other auditors appointed for the purpose. Cancellation under s. 49 takes place after all liabilities are met either fully or proportionately.

**Sanction to prosecute not necessary.**—In *Gulabmiya Dagadumia v. Emperor* 129 I C. (1931) the High Court of Bombay held : A liquidator who misappropriates money which has come into his custody as liquidator cannot be said to be acting or purporting to act in the discharge of his official duty and assuming that a liquidator appointed under the Bombay Co-operative Societies Act is a judge within the meaning of s. 19 Indian Penal Code no sanction under s. 197, Cr. Pro. Code is necessary to prosecute him for misappropriation of money received by him as liquidator. When an organiser of co-operative credit societies who was appointed as a liquidator by the Registrar of co-operative societies committed misappropriation of money received by him as liquidator their Lordships of the High Court :

*Held*, that no sanction under s. 197 Criminal Procedure Code was necessary for his prosecution on the ground that he was an organiser of co-operative credit societies.

**Notes.**—In many village societies it is not that the majority of the members are dishonest. What happens is that a few designing persons manage to become members of Managing Committee and become office-bearers of the societies. It is in fact these persons or some of them who are mainly responsible for the mismanagement of the society. To be plain, they run the society simply for their own advantage. What at present happens is that the Registrar when he finds that a society is mismanaged orders the dissolution of the whole of the society. This is not quite fair, as all the members most of whom are quite innocent have to suffer for the misdeeds of a few. It is therefore, necessary to invest the Registrar with powers to supercede the Managing Committee and office-bearers of the society for some time. (Cf. the model by-laws of Supervising Unions) The powers and duties of the society are of course during the period of supercession to be exercised, and performed by such persons as will be appointed by the Registrar from time to time. This will give the society a chance to improve its working and run it satisfactorily. The innocent members in this case will not be inconvenienced and will continue to have the advantage of the society. There is such a provision so far as the management during the period of supercession is concerned in s. 179 of the Bombay District Municipal Act, 1901. *Note*.—For procedure see s. 50 and notes. thereunder *infra*.

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

Society may be wound up if membership is reduced.

#### Commentary.

**History.**—This is s. 40 of the Co-operative Societies Act, 1912, with some additions (see Appendix B).

**Object**—The principle is that minor members must never be allowed to become an appreciable proportion of the whole. Otherwise one of the effects will be that three-fourths majority required for sending a petition to the Registrar for winding up a society might consist of a few major members who have managed to secure representation of the minors. For conditions of registration see s. 7 and notes thereunder at pp. 68-77 *ante*.

**A company may be wound up** by the Court if the number of members is reduced, in the case of a private company below two or in the case of any other company, below seven.—S. 162 (*iv*), *Indian Companies Act*, 1913. If



the company carries on business for more than six months while the number of its members is less than the legal minimum namely two in the case of a private company and seven in the case of any other company every member cognisant of the fact becomes severally liable (the limited liability ceases) for the debts contracted after the expiry of the six months and may be sued without joinder of any other member.—S. 147 *Indian Companies Act 1913*. It applies even in the case when a Company is ordered to be wound up under s. 162 (iv) of the Companies Act, 1913 (*ante*).

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

Effect of cancellation of registration.

### Commentary.

**Old Law.**—See s. 41 of Co-operative Societies Act 1912 (Appendix B).

**Company Law.**—A company may be wound up by the Court:—(i) if the Company has by special resolution resolved that the company be wound up by the court; (ii) if default is made in filing the statutory report or in holding the statutory meeting; (iii) if the company does not commence its business within a year from its incorporation or suspends its business for a whole year; (iv) if the number of members is reduced, in the case of a private company, below two or, in the case of any other company below seven; (v) if the company is unable to pay its debts; (vi) if the court is of opinion that it is just and equitable that the company should be wound up.—S. 162, *Indian Companies Act, 1913*.

“Three fourths of the members of a society” present at a special general meeting can apply for winding up. It is thus clear that neither past members, nor persons claiming through deceased member can seek for the winding up and for that matter for the cancellation of a society.

**Notes.**—A society registered under this Act is a body corporate. One of its characteristics is that, it is constituted a distinct and independent person in law and is endowed with special rights and privileges. Evidently these privileges are con-

ferred on condition that the societies adhere to their principles. If they depart from these principles, the Registrar has power to cancel registration which has the effect of withdrawing all the privileges.

**There are two processes namely winding up under s. 47 and cancellation under s. 49.**—In winding up all privileges continue. Cancellation takes place after all liabilities are met either fully or proportionately. (See also notes to s.47 under the head “distinction between a winding up order and the cancellation of registration” at p. 232 *ante*.)

**Under the Co-operative Societies Act the Registrar exercises the powers of a Court.**—An order cancelling a society may be made if the Registrar is of opinion to that effect, (i) after holding an inquiry of his own motion; (ii) after holding an inquiry on the requisition of a society in respect of a society which is a member of such society; (iii) on holding an inquiry on the application of the majority of the committee; (iv) on holding an inquiry on the application of 1/3 of the members; (v) after the inspection of books of an indebted society on application of a creditor (s. 44); (vi) if the membership is reduced to less than ten members who are majors (s. 48).

Mr. Calvert suggests that the Registrar may exercise his power of cancellation; (a) on proof that a certificate of registration has been obtained by fraud or mistake; (b) or that a society exists for an illegal purpose for instance, if a Central Bank forsook its sole object of facilitating the operations of co-operative societies and took to general banking business or if a supply or store society took to credit business, or again if a store society undertook general business with non-members it may be dissolved at the instance of rival traders; (c) or that it has violated any of the provisions of the Act (e.g. the persistent lending to non-members.) Similarly repeated failure to observe its own by-laws may entail cancellation. (s. 34.); (d) or it has ceased to exist, *i.e.*, it does not commence business within a reasonable time or suspend business for an unduly long period. [*Cf.* s. 162 (iii) of Indian Companies Act, 1913.]; (e) or if there is no hope of eventual solvency or progress.

The order of cancellation is made in the following form:—

**ORDER.**

The registration of the \_\_\_\_\_  
 \_\_\_\_\_, Taluka \_\_\_\_\_, District \_\_\_\_\_  
 the affairs of which were ordered to be wound up under this office No. \_\_\_\_\_  
 C/\_\_\_\_\_ dated the \_\_\_\_\_ 193\_\_\_\_\_ is hereby cancelled under Section 49 of the Co-operative Societies Act VII of 1925 and the society shall be deemed to be dissolved from the date of this order.

Sd.

Registrar, C. S.

The causes leading to the failure of societies are various and include a want of due supervision, indiscreet loans, contrivancy of borrower, unpunctuality in repayments, the restriction of loans to a few individuals, dishonesty or incompetence of society officials, bad selection of members, the extension of a society over too large an area, concealment of old debts, faulty constitution, internal dissensions, insufficient funds or membership, the preponderating influence of one member, and general lack of interest by members in the affairs of the society.—*Report of the Committee on Co-operation in India, 1915.*

**50.** A liquidator appointed under section 47 shall

Powers of a liquidator. have power with the sanction of the Registrar to do all or any of the following things:—

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

discharge of any such call, liability, debt, or claim and give a complete discharge in respect thereof;

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

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

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

(g) to get disputes referred to arbitration;

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

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

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

(k) to fix the time or times within which creditors shall prove their debts and claims or be included

for the benefit of any distribution made before those debts or claims are proved;

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

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

#### Commentary.

**Old Law**—See s. 42 of the *Co-operative Societies Act, 1912*. (Appendix B).

**“If it is excellent to have a giant’s strength, it is certainly “tyrannous” to use it like a giant,** and it is a matter of great public concern that so autocratic a personage as the liquidator of a co-operative society should exercise the powers with which he is invested reasonably and fairly ” said Page C. J. in *BaLat Maung v. the Liquidator, Kemmendine Thathanahita Co-operative Society*, A. I. R. 1931 Rangoon 202 where the facts were briefly the following:—M (the appellant) had in July 1921 signed a promissory note in favour of the society. On 30-11-1928 after the society had gone into liquidation, the liquidator passed an order under s. 47 demanding payment of the amount due on the promissory note and on 9th August 1929 he applied to the Rangoon Small Cause Court under s.47 (5) for leave to execute the order amounting with costs to the sum of Rs. 766-13-0 as a decree. M thereupon on 30th September, 1929 filed a civil suit in the High Court claiming that inasmuch as the promissory note was statute barred, the order of the liquidator demanding payment thereof on 30th November, 1928 should be declared null and void. The suit was dismissed as the High Court held that it had no jurisdiction to entertain the proceedings. The costs were taxed at Rs. 70 and the debt and the costs were paid by M (the appellant). After this the liquidator made a demand on the appellant for a further sum of Rs. 591 which according to the liquidator

actually represented the expenditure incurred by him in defending the suit in the High Court. M (the appellant) then filed an application complaining that the liquidator in thus enhancing the costs awarded was usurping the jurisdiction of the Court. It was dismissed. In an appeal the High Court thought that the application was an irregular one and though it was of opinion that the order of the liquidator was neither fair nor reasonable it held that it cannot be contended that the costs of litigation incurred to recover contribution ordered are not part of the costs of liquidation and that the liquidator was entitled to recover them and that it cannot be said that the liquidator exceeded his jurisdiction. Their Lordships further observed:

“As a matter of policy it may be necessary to provide that subjects should be precluded from resorting to the Courts of Law for the redress of their grievances. Undoubtedly the exigencies of situation may justify such a curtailment of the ordinary rights of citizenship in the interest of the public at large. But it will generally be conceded that so drastic a course should be taken only in exceptional cases and when the particular occasion clearly demands it. The present case (to incur costs amounting to Rs. 66, in a suit involving a sum of only Rs. 766.) is not the first occasion upon which the High Court has felt itself bound to protest against the unreasonableness of an order passed by the liquidator of a society. Verily there is substance in the observation of Farewell L. J. that “the legislature cannot make wrong right, but it can make wrong not actionable.” However unfair and ruinous an order of the liquidator may be to the member against whom it is passed he is helpless and without redress.” **Note:**—This state of affairs is not at all satisfactory and an immediate provision is absolutely necessary.

**The liquidator exercises his powers with the sanction of the Registrar:**—Under the Company law, whenever a company is taken into liquidation ordinarily the liquidator has to take the sanction of the Court. In the case of societies there is the Registrar whose consent or sanction has to be obtained. The duties which the liquidator has to discharge are very important for example if the liquidator incurs some expenses which he ought not to have incurred and as a matter of fact the money is paid off, the money cannot subsequently be recovered when the Registrar discovers that those expenses ought not to have been incurred.—*Bombay Legislative Council Debates, July 24, 1925.*

**Advantages of incorporation.** The effect of incorporation is to protect individual members from suits by creditors. Legal proceedings can lie only against the society in respect of an obli-

gation of the society. In case of default it is the society which goes into liquidation and not the individual members. They are only liable to contribute towards any deficiency in the assets in the course of liquidation. If the society is not a corporate body ( not being duly registered ) the liability of each member is really unlimited and any one may be sued by a creditor for his whole debt leaving him to recoup himself out of the assets or from his fellow members. A registered society becomes a corporate body and the members, past members and the legal representatives of deceased members are only liable to contribute towards any deficiency in the assets in the course of liquidation. ( See below )

**The decree-holder ( a Central Bank ) cannot issue execution against individual members of a society even of unlimited liability for its dues against the society.—** Where some members of a co-operative society of unlimited liability registered under the Act borrowed money from Central Co-operative Bank also incorporated under the same Act, through their society and ultimately the society became indebted to the Central Bank for the amount and the Central Bank obtained an award from the Registrar having the effect of a decree. The Central Bank having applied to the Civil Court for the execution under the Civil Procedure Code against those members the High Court held: The effect of incorporating a number of persons into a body corporate is to make that body corporate a separate legal entity or *persona* and in the words of Cave J. in the case in *Re Sheffield and South Yorkshire Permanent Building Society*. 22 Q.B.D. 470 (1889) at p. 476 “a corporation is a legal *persona* just as much as an individual, and if a man trusts a corporation he trusts that legal *persona* and must look to its assets for payments.” The question whether the liability of a society is limited or unlimited can only affect the members when they come to contribute to the liabilities of the society in the winding up. Not until there is a winding up can the creditor come face to face with the individual member. Lord Lindley at p. 363 of his work on Companies in dealing with Companies with unlimited liabilities states “if the Company is not registered with limited liability the members are liable to the full amount of the company’s debts and engagements, whatever that may be. The liability however is a liability to contribute with others and such liability can only be en-

forced upon the winding up and no execution can proceed against a member. Finally it is commonsense and a rule of common law that a judgment against one person (and a co-operative society is a legal persona) cannot be executed against another. See Lindley p. 390. The judgment-debtor is a society and there is no method under the Civil Procedure Code by which the judgment can be executed against any other person.—*Harihar Prasad v. Bansi Missir and others*, A. I. R. 1931 Patna 321.

**Rules describing the procedure**—The rules framed under s. 71 (2) (t) describe the procedure to be followed by a liquidator [ see notes under s. 71 (2) (t) also ]. Rule 38 states that the appointment of liquidator should be notified in the Bombay Government Gazette. It also prescribes the details of the procedure which the liquidator should follow in the matter of publishing a notice requiring all claims to be submitted to him after taking charge of the property and the books of the society. Cl. (3) of rule 38 provides for making orders against members and past members including the contributions required from each of them. Cls. (4), (5), (6), (7), (8) and (9) refer to subsidiary orders to be framed by the liquidator, the submission of a quarterly report to the Registrar, depositing the funds in charge of the liquidator in the Post Office Savings Bank, etc., the remuneration to village officers for the recovery if made by them, the fees to be paid to the liquidator and the final general meeting to be called by the liquidator. Rule 39 states that execution of the orders of the liquidator should be made in accordance with s. 59. Rule 40 deals with the disposal of the records of a cancelled society. Rule 41 fixes the rate of interest to be allowed to the creditors of a society ordered to be wound up. Rules 42, 43 and 44 refer to the issue and service of summonses by the liquidator and the disposal of fees levied for the expenses of such service through revenue officers. ( See Appendix A for Rules and notes thereunder ).

(a) **The liquidator may pay any class or classes of creditors in full**:—The first step of the liquidator is to ascertain the assets and liabilities of the society as a whole and to prepare a statement showing the same. (L. Q. D. 15-1929). The liquidator should next ascertain what liability the society has to meet in the form of shares, deposits, etc., and record a general finding on this point adding in what order each class of liability is to be met from the recoveries. In doing this he should, as far as possible, extinguish without further discussion such liabilities as are possible by setting off shares and deposits held by members against their outstanding loans and by paying



off deposits, which ordinarily rank first among the liabilities from the cash balance on hand or from any recovery that he is able to make on the spot. Entrance fees are part of the reserve fund and under no circumstances to be treated as liabilities to be refunded.

(d) The liquidator has to determine the contributions to be made by members, etc. A contributory under the Company Law is a person liable to contribute to the assets of a company in the event of its being wound up (s. 156, I.C. Act, 1913). Every existing or present member of a company at the commencement of its winding up and every past member who has ceased to be a member within one year of the commencement of the winding up is a contributory. Thus in a winding up every present and past member is liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs of the winding up and for the adjustment of the rights of the contributories among themselves subject to the provisions and qualifications of s. 156 of the I. C. Act, 1913. A present member who is holder of fully paid up shares is not liable to any calls in respect of them but he is a contributory within the meaning of s. 156 for the purpose of distribution of surplus assets and adjustment of rights of contributories among themselves. In the case of a company limited by shares the liability of a present and past member in relation to his shares is limited to the amount (if any) unpaid on his shares. The existing or present members are primarily liable for all the debts of the company and the costs of winding up. A past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made (s. 156 of the Indian Companies Act, 1913).

**Contribution.**—When the assets of the society are insufficient to meet the liabilities or when some of the assets are irrecoverable, the members and the past members (s. 28) and the estates or nominees, heirs or legal representatives of deceased members (s. 29) can be made to contribute to the assets of the society. Contribution as provided in s. 50 (d) does not mean only the amount payable by a member as such but it also includes debts due from such members or persons.

**Non-member sureties.**—In some cases the sureties are not members of the society. Under clause (f) and (d) of s. 50 the liquidator can pass orders only against the members of the society and that non-members cannot be included in the orders since under cl. (e) of s. 50 the liquidator can deal with non-members in a Civil Court.

**Directions.**—The first step of a liquidator should be to ascertain the assets and liabilities of the society as a whole and to prepare a statement showing the same (L.Q.D. 15-1929). After ascertaining the total outstanding liabilities of the society including the accumulated reserve fund the liquidator should proceed to decide how they are to be met by the members. He should prepare a separate statement showing for each member the liabilities which he owes to the society and the amount to his credit as deposits etc.

in the society and the net balance due by him to the society or to him by the society. He should then proceed to decide how the outstanding liabilities of the society, if there be any, to be met by the members. The liquidator should make separate orders against the various members and past members of the society, noting the amount to be realised from each as a contribution under cl. (d) and as the costs of liquidation under cl. (i) of this section [ rule 38 (c) ]. It shall include also the interest and shall state the rate of interest at which interest shall continue to run until the date of recovery. The liquidator should also record separately the reasons and findings on which these orders are based (*i.e.* usually ledger account and number and date of bond) and should submit the same to the Assistant Registrar or the Registrar for approval who may modify them or refer them back to the liquidator for further inquiry or other action or may forward them for recovery.

The distinction between limited and unlimited societies has reference to the liabilities of members for payment of the debts of the society when the society is wound up. (See notes to s. 5 under the head 'on its liquidation' at p. 60 *ante*.) In the case of an unlimited society each member is jointly and severally liable without limit (but this does not mean that it should exceed the limit of the capacity of the member.) It is, however, suggested that the liquidator should ordinarily endeavour to settle the contributions as far as possible on a basis of equal payments and should raise the amount of calls in case where it is improbable that one or more particular members were likely to be able to pay.

**Contributions, debts or dues from past members, etc. not to be determined without hearing them.**—The proviso to s. 50 is added because it is thought that the past member or the representative of a deceased member who has left management of the society some years before liquidation to be saddled with the amount of contribution, debt or dues should be given an opportunity to be heard before any final order is passed by the liquidator.—*Bombay Legislative Council Debates, 24th July 1925.*

(e). **Liquidator has power to institute and defend suits, etc., in the name of his office.**—Registration invests a society with power to institute and defend suits etc. in its own name (s. 23). The power to act for the society passes to liquidator as soon as the winding up order is made and a liquidator is appointed. In order to make it clear that a suit should be in the name of the liquidator and not in that of the society the words "in the name of his office" are inserted. [S. 179 (a) of the Indian Companies Act, 1913 gives power to the official liquidator to institute or defend any suit or prosecution, or other legal proceeding civil or criminal in the name and on behalf of the Company.]

(f) **Sums ordered by a liquidator may be recovered as arrears of land revenue**—The relationship between a society and its members is not the same as that between a money-lender and his debtor. Most of the societies go into liquidation because a good many members default for a considerable number of years and do not pay their dues at the proper time. If these people are not made to pay their dues at once, that would mean that other people in the surrounding villages would not mind committing default and will not be paying their dues knowing that if the societies go into liquidation, they will not be called upon to pay their dues all at once. Besides this the interests of the banks and other creditors who advance money to these societies will suffer. They do not receive their instalments in time, while the society is in existence and after liquidation if they are told that they would not get their dues for some years owing to the fixing of instalments by the liquidator and his not recovering the money at once, they will learn a lesson and, the result will be that societies not working well will not get money from banks and other large creditors. Although there might be room for the society's improvement the banks would not give advance. They might say: the society is not doing well at present, it might go worse, and it may be cancelled. In that case recovery by instalments will be allowed and the liquidation proceedings will drag on for years. Banks and creditors would, therefore, not be prepared to advance the money and if they do they will charge higher interest for the extra risk involved. Liquidation is the last resource available in cases where members do not pay up even after repeated reminders which may extend over some years. Even after this last stage is reached if time is given to the member to pay instalments one would not know when the liquidation may end. A society goes into liquidation because members are defaulting for years. It will not be right nor would it be fair if these members, who have been working against the interests of their own society and through mismanagement have sent it into liquidation, should get any concession. Again, the effect on the surrounding societies would be very bad, and the interests of banks and creditors and indirectly of societies that have advanced the money will suffer. Most of the societies are unlimited liability societies. If liquidation proceedings go on for years, members

may transfer their property to others. In such a case where is the money to be recovered from ? If money is not recovered from them, then it will have to be paid by the other members of the society.—*Bombay Legislative Council Debates, July 24th 1925.*

**Can the nominees, heirs or legal representatives of a deceased member be arrested etc. for the recovery of contributions levied by a liquidator.**—The ordinary Civil Law limits the liabilities of the legal representatives to the extent of the assets which have gone into their hands as such from the deceased (s. 52, Civil Procedure Code, 1908.). S. 50 (d) and proviso to s. 50 of the Co-operative Societies Act, allows a liquidator to determine the contributions to be made by the nominees, heirs or legal representatives, of deceased members after giving them opportunity to answer the claim. The contributions so determined can be recovered on a requisition being made to the Collector, in the same manner as arrears of land revenue. S. 150 (c) of the Bombay Land Revenue Code, 1879 states that arrears of land revenue may be recovered by the arrest and imprisonment of the defaulter. However, the rules framed under s. 71 (2) (t) prescribing the procedure to be followed by a liquidator do not refer either to nominees, heirs or legal representatives. Clauses (3) and (4) of rule 38 mention only members and past members against whom orders and subsidiary orders for contribution may be made. It appears, therefore, that under the rules no provision is made for passing any orders against legal representative etc. and therefore, no question of arrest of such representatives etc. arises.

(g) **The liquidator may get disputes referred to arbitration.**—For arbitration see s. 54 and notes thereunder, *infra*. The idea of arbitration implies the fundamental fact that the cause between the parties in controversy should be heard and determined by persons chosen by the parties. It may be said that the members of societies when they accept the membership and the by-laws bind themselves to accept the decision of any dispute by a compulsory reference to arbitration. But when outsiders are involved it can never be reasonably argued that they must submit to arbitration. This will be allowing the societies to override the very principles of common law of the land. If the non-member does not wish to submit his case to arbitration the only remedy against him would be action in the Civil Court. For this reason the Registrar has issued instructions to the effect that when sureties are themselves not members of societies they cannot be dealt with under arbitration rules. Unless therefore, it is confident that the whole sum can be recovered from the

property of the principal it would be well advised in cases where sureties are non-members, to file a suit in the Civil Court instead of proceeding by way of arbitration. In this connection the managing committee of the society should note that under s. 43 of the Indian Contract Act (IX of 1872) as interpreted by the Bombay High Court in *Laxmidas v. Purshottamdas*, 6 Bom. 700 that if a claim were made against the principal only under the arbitration rule and consequent award were forwarded to a court for execution and thereby converted into a decree, any subsequent action against sureties who were non-members would be barred. Persons whether members or non-members who are subsequent mortgagees or vendees of property already mortgaged to a society can be made parties from the commencement of the proceedings. (Remembrancer of Legal Affairs No. 2197 of 5-12-1923.) See also 'Liquidation' in the Hand-book of Co-operation for Societies in Bombay and Sind by the writer.

(h) **The liquidator may decide questions of priority of claims and pay ratably.**—In the case of persons who are only creditors they are to be ratably paid (L. Q. D. 15 of 1924 dated 28-4-1924). The banks should be treated on the same footing as other creditors and in the matter of repayment of the dues no preference should be given to either. The Banks along with other creditors should be paid proportionately (L. Q. D. 4 of 1927 dated 26-2-27.)

**Not exceeding the contract rate.**—So long as there are assets the creditors ought to be paid from those assets with interest at the rate at which the creditors contracted to lend the money. Otherwise the creditors will be disinclined to advance money to the societies if they know that they will not get their principal back and interest at the rate at which they had lent the money.—*Bombay Legislative Council Debates, 24th July 1925.*

(i) **Costs of liquidation** include the remuneration of the liquidator (s. 47) which has priority over all claims. The liquidator should add 5 per cent to meet the costs of liquidation. For the remuneration of a liquidator see notes to s. 47 *ante* and the Hand-book of Co-operation for Societies in Bombay and Sind by the writer.

(k) **The Liquidator may fix time within which creditors shall prove their debts etc.**—The liquidator by a public notice should require all claims against the societies ordered to be wound up to be notified to him within two months [rule 38(2)]. It should be remembered that all liabilities recorded in the account books are to be deemed to have been duly notified to the liquidator (*ibid*).

**Can a liquidator recover a time-barred debt.**—In a Burma case under the Burma Co-operative Societies Act, 1927 A had borrowed some years back Rs. 3,000 from a Co-operative Bank while B and C stood sureties to A. A

died subsequently without paying principal or interest. The Co-operative Bank was ordered to be wound up and a liquidator was appointed. He ordered the legal representative of A, and B and C to pay the amount with interest and liquidation fees, Compliance not having been made with that order the liquidator applied for execution by the arrest of the surety. The debt became time-barred by limitation two years back no legal steps having ever been taken to recover the amount either from the principal or the sureties. The High Court passed the following remarks. "The liquidator was seeking to recover a debt which at the date of the winding up was already time-barred and therefore, not legally recoverable by following the ordinary Civil Procedure. It was only by making an order behind which the Court would not go that the liquidator was able to compel the Court to enforce payment of a debt which was not due. Now there is no provision for appeals from an order passed by a liquidator or indeed of any sort of control over him. Consequently every liquidator of society is a law unto himself and every member thereof is subject to his uncovenanted mercies. I cannot think that such a state of affairs has arisen from an oversight and am of opinion that the attention of the Local Government ought to be directed to it, with the view of providing an appeal from such an order of a liquidator as I have before me. With reference to the case before me it is obvious that he has suffered a very substantial injustice and I venture to express a hope that the Local Government will take such steps as possible to remedy it."—*U. Po Nayan v. Maung Kayan*, A. I. R. 1929, Rangoon 113.

**50A. (1)** Where, in the course of the winding up of a society it appears that any person who has taken part in the organization or management of the society or any past or present chairman, secretary, member of the managing committee or officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the

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

misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just.

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

### Commentary.

**History:**—This section is new.

**Object:**—This provision is preventive as well as curative. Preventive in the sense that officers as well as members are constantly reminded that if they go astray there is a provision in the Act under which their actions can be called into question by the Registrar. It will, therefore, serve as a check on the dishonesty of members as well as officers of the society.

It has also got a curative effect. It will expedite the winding up of the society. In the absence of such a provision the matter will have to be referred to the Civil Court and the delay of months, perhaps of years, will be caused. This provision is, therefore, made with a view to avoid the necessity of going to Civil Court. It is laid down in this section that if during, liquidation proceedings the liquidator comes to know that a certain member or officer has misappropriated funds of the society he is to bring it to the notice of the Registrar who is to assess the damages and to order the defaulter to make good the loss. The object of the Co-operative Act is that there should be no reference to Civil Courts and so far as possible the parties ought not to be asked, to go to the Civil Court. If that is so there is no reason why the liquidator, the Registrar or for that matter the creditors should be asked to file a civil suit to recover sums which have been misappropriated. The Registrar's decision is not final. An appeal has been provided for in case the party is dissatisfied with the decision of the Registrar ( s. 62).

Under s. 50 (2) disputes may be referred to arbitration. But in this section there is no dispute contemplated which can be referred to arbitration. If the conduct of the member is such as would fall in the definition of criminal law no doubt an action can be taken against the culprit under the Indian Penal Code also. But by merely proceeding against him criminally the money retained by him cannot be got back and his punishment under that law does not

do any good to the society. Of course in serious cases it would always be advisable to take action under the Criminal Law also, as it is in the interest of co-operative movement that dishonesty on the part of the officers as well as members should be discouraged.

**' May refer '**— If the Registrar thinks that a case is a complicated one he may not take action himself and may refer the society to a Civil Court. The Registrar being a responsible officer can be trusted to make thorough enquiries after giving notice to the officer or member concerned to show cause.— *Bombay Legislative Council Debates, 25th July 1925.*

**Misapplication** means using the money of the society in a manner not warranted by the law or rules made under the Act or by the by-laws by which the society is governed. It means using the money contrary to the Act, the rules and by-laws of the society.

**Misfeasance** means all kinds of misconduct and delinquency and breach of duty on the part of the directors or members of the Managing Committee.

**Breach of trust**—This term is used in a more restricted sense in a case where following the breach of duty there has been a misapplication of the funds of the society.

It was objected that this clause will keep back the progress of the movement in the country. It was urged that in the first place co-operative organisers do not come forward in such numbers as appeared in other organisations and the co-operative movement does require honorary workers. This section would frighten many of the voluntary workers that take part in the co-operative movement. In reply it was pointed out that the section empowers the Registrar to assess damage and order the defaulter to make good the deficiency or order such sum to be contributed to the assets of the society by way of compensation and thereby compensate the loss which has resulted to the society owing to the bad conduct of the member or officer of the society. It is certainly not desirable that the general body of members should suffer for the delinquency of one of their office-bearers. It may be said that the members of the committee are elected by the general body of members and that they are expected to select the best possible men as their office-bearers. But that is not always the case. The 9th Conference of Registrars, 1926, passed a resolution recommending the extension of the principle embodied in this section to other provinces. The Madras Co-operative Societies Bill (No. 4 of 1931) makes provision for a surcharge in similar cases.

The arrangement for the execution of the decrees of arbitrators, etc. unfortunately throws a very large amount of work on the Collectors and



**District Revenue Establishment.**—The Registrar in his annual report for the year 1930 states: "From every district there are complaints that this work is taking up an enormous amount of the time of the Mamltdars and it is quite natural that in the midst of other strenuous and urgent duties, the Taluka Revenue establishment finds this work extremely burdensome and unpleasant. The present system is certainly anomalous; the rural and other credit societies are autonomous in their management and are naturally very jealous of their powers of granting loans. They must at the same time remember that if defaults occur, the burden of recovery is thrown on the revenue establishment which has had no voice in granting the loans. In some districts it is undoubtedly becoming the practice for societies to give loans recklessly and then throw the responsibility for recovery on the Collector and the Mamltdar. Because the decrees have not always been promptly executed, I have seen in Conferences an air of injured innocence being assumed by people who are themselves responsible for making reckless loans. I must, therefore, enter here a strong protest against reckless lending and if Managing Committees are unable to recover the loans which they themselves grant, the only result in the course of time will be that the special privileges of recovery granted to co-operative societies will be withdrawn or seriously curtailed."

**51.** Save in so far as is expressly provided in this

Bar of suit in winding up and dissolution matters.

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

**Commentary.**

**Old law.**—For s. 42 clauses 4, 5 and 6 of Act II of 1912, see Appendix B.

**Object.**—The Co-operative Law has been more or less placed *pari passu* with the provisions of the Indian Companies Act, and under the Company Law it is always understood that all further proceedings have to be stayed. After liquidation it is the liquidator who can deal with the matter. It is the policy of the Act that litigation in a Court should be discouraged right through. This section is, therefore, enacted to make it clear that no civil court is left any jurisdiction to try any matter connected

with the winding up of a society. The idea is to avoid endless delay and litigation and to discourage the taking of affairs of co-operative societies to Civil Courts.—*Bombay Legislative Council Debates, 24th July 1925.*

**Jurisdiction of Civil Courts ousted.**—In *Mathura Prasad v. Sheolalal Ram*, 40 All. 89 the question arose whether an appeal lay against an order of the liquidator under the Co-operative Societies Act. The High Court said: "It seems to us clear that no appeal lies save appeals expressly given by the Act and that no second appeal lies to this Court. It is quite clear that the policy of the law was that matters arising under the Act should be settled without litigation in the Courts. If litigation were permitted the whole object of the co-operative societies would be defeated. In *Zamindari Bank Sherpur Kalyan v. Suba, A. I. R. 1925, 418* the High Court said: "The principle of law as enunciated in various authorities is that the statutes imposing restrictions upon the subjects' right should be strictly construed and such restrictions should not be extended beyond what the words used actually cover. In the present case it appears to us that the words do clearly contain a necessary implication depriving the subject of his common law right of action and provides a special and prompt procedure for cases in which having regard to the class of people affected speedy decision as to their disputes is effected. We accordingly hold that by the substantial remedy provided under the rules in the shape of a reference to the Registrar the common law remedy by an action in a Civil Court has by a necessary implication been taken away."

Thrift, self-help and co-operation among all classes, the three chief objects of co-operation, can never be obtained if time, energy and money of the members of co-operative societies are to be spent in an expensive and protracted litigation. This view also gains support in *B. Bistappa v. M. P. Shiri, A.L.R. 1926, Bom. 352.*

**There is no appeal** against the various acts which a liquidator does under s. 50. It is provided in s. 51 that no Civil Court should take cognizance of any matter connected with the winding up or dissolution of a society. Not being satisfied with this it is further laid down that no suit or other legal proceeding can lie against the society (as represented by the liquidator) except by leave of the Registrar, etc. (s. 51). This permission is rarely given. Under these circumstances all that an aggrieved party could do is to apply to the Registrar to call for and examine the record of the liquidation proceedings. (s. 64A) This must be admitted to be an anomalous position. A liquidator is a nominee of the Registrar and acts under his directions (s. 50). It is the order of the Registrar which he practically carries out. In the words of the High Court of Burma, therefore, every liquidator

of a society is a law into himself and every member thereof (nay in many cases even non-members) is subject to his uncovenanted mercies. I am of opinion that the attention of the Local Government ought to be directed to it, with the view of providing an appeal from an order of the liquidator" (*Upo Nayan v. Maung Kayan*, A. I. R. 1929, Rangoon 113.) Note—The words in brackets are our own.

**If liquidator's act or order is ultra vires, Civil Court can interfere.**—One M was a member of a certain co-operative society. An award was obtained from the Registrar against the society in favour of the Central Bank, and subsequently to the award the said co-operative society passed a resolution to the effect that the Registrar should be moved to include the names of B and D, the two plaintiffs, in the award on the ground that they were joint with M who had taken the loan from the society for the benefit of the joint family. The Registrar accordingly included the names of the plaintiffs in the award. In due course action by way of execution was taken and in second appeal certain property was attached. The Judicial Commissioner in second appeal said:—

"The plaintiffs were utter strangers to the society and the provisions of the Act make it clear that stringent safeguards are provided to prevent the society from having dealings with strangers. The money involved, therefore, could not be lent to a stranger and, if a joint family as such had not been mentioned explicitly with its various members having been brought on the list of the membership of the society, it seems that no order of contribution could be passed against the plaintiff."

The Judicial Commissioner further said:—

"The argument that as the matter was one connected with the dissolution of the society the jurisdiction of the Civil Court is entirely excluded cannot be entertained even though reliance is placed on the decision in *Garpat Ramrao v. Krishnadas Padmanabh*, 44 Bom. 582 (1920). In the first place the decision in that case is no authority for the proposition urged on behalf of the society. Heaton, J. in his judgment in that case clearly admitted that if a liquidator's act or order is shown to be *ultra vires*, that is outside the powers conferred on him by law as a liquidator, the Civil Court can then intervene."

The Judicial Commissioner relied on *Balaji Rao v. Anand Prasad*, A. I. R. 1927, Nag. 217 and said that the liquidator had assumed jurisdiction over the plaintiffs who were not and have never been members of the society and their liability to

account for the debts incurred by their brother M has not been established in any way. It is a fundamental rule of construction that any statute, which establishes a special jurisdiction and excludes the jurisdiction of the ordinary Civil Courts must be construed strictly. If a different construction is put an extraordinary state of affairs would arise. The liquidator could proceed against any body and everybody irrespective of the fact that he had ever been a member of the society and yet the Civil Courts would have no jurisdiction to give relief.—*M. A. Koyal v. Bhondal and another*, A. I. R. 1931, Nag. 48.

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

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

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

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

#### Commentary.

**History.**—This section is new. S. 43 (3) of Act II of 1912 empowered Government to make rules prescribing the procedure to be followed by a liquidator appointed under s. 42. of that Act.

The Government of Bombay had accordingly issued a rule that the surplus in possession of the liquidator should be utilised towards some object of public utility, etc. This rule with certain modifications has been incorporated in this section.

The provision is made for the disposal of surplus assets of liquidated society in accordance with the objects mentioned in the by-laws of the society and where no object is specified in the by-laws, for the application of such assets to some object of public utility determined by the society.

**Object:**—As has been stated elsewhere in order to ensure the stability and security of the society and to be able to build up a reserve fund large enough to enable rates of interest to be reduced all round, the surplus profits are credited to an indivisible reserve fund. The only drawings which can be made against the reserve fund are for business purposes of the society, and for purposes of works of public utility or co-operative utility. In practice, therefore, the unlimited liability of the society accepts the principle that the surplus profits belong to the members as a whole and not to the capital which has built up the society and goes a step further in insisting upon an additional act of self-sacrifice by which a member gives up his personal share in the profits for the sake of an advantage which is at once permanent and common to all including himself. On dissolution, moreover, the surplus assets and reserve go to a similar society. The call for such sacrifice is justified by the fact that in a rural credit society most of the members for a considerable number of years will all be borrowers and will, therefore, all in turn be benefited by the existence of the large indivisible reserve fund. It is a logical consequence of the principle mentioned above that when a society ceases to exist, then whatever surplus capital remains cannot equitably be distributed among the existing members. Qua-shareholders they are not entitled to it. Qua-contributors it would in practice be impossible to disentangle the contribution made by existing members from those made by members in the past. It would entail unending labour to go through accounts of past years, which to some extent may possibly be imperfect in their bearing on the subject, to discover exactly what proportions of the contributions by way of business or custom had been made by each one of the members of the society. The only equitable means of disposing of surplus assets,

therefore, is for them to be donated for a similar object, whether that be to another society or to some other co-operative institution. The most that can be allowed in the way of divergence from this principle is a donation to some other body not necessarily co-operative but of public utility. This consequential principle has been embodied in this section.

The Thirteenth Bombay Provincial Co-operative Conference of 1924, suggested that the surplus assets of a society which is wound up should be devoted to such object or in such manner as may have been prescribed by the by-laws of the society or when no such object is specified to any object of public utility as may be determined by a general meeting of the society with the approval of the Registrar.

Mr. Henry Wolff, the great authority, stated that in case of dissolution the money should be handed over to some public institution to be kept in trust until required for the endowment of a new association formed in the same village or town and under the same rules or that failing within a reasonable time the reserve may be employed for some useful local public work.

**Procedure.**—The final general meeting would be necessary in every case to decide upon the disposal of surplus assets. The liquidator should, in the first instance, try to persuade the members to dispose of the assets in accordance with the Registrar's Circular (see below). In case they do not agree to such disposal the matter should be referred to the Registrars for orders. But the members must be given to understand that unless a very strong case is made out their wishes will stand little chance of being met with.—*L.Q.D. of 1929 dated 1st August 1929.*

**Disposal of surplus assets of a cancelled society:**—In this respect the Registrar has issued the following Circular: Except in very special cases the surplus assets of a cancelled society in future will not be immediately used or donated to any object of public utility, but the surplus assets of all cancelled societies in a district shall be pooled together and invested in fixed deposits and managed by the District Boards of the Supervising Union with the Registrar's sanction from time to time as under:—

(1) That a separate fund should be created in each district of the surplus assets of the cancelled societies. (2) That the fund should be invested in fixed deposits in the District Central Bank or the Provincial Co-operative Bank financing the societies in the district. (3) That the interest earned on such investment will, on the recommendation of the Supervising Union and with the previous sanction of the Registrar, be spent as laid down in section 52 of the Act. (4) That the corpus of the fund will not be used except for being credited with the Registrar's sanction to the Reserve Fund

of a new society with similar conditions registered in the area.—See *L. Q. D. of 1929, dated Poona, 4th April, 1929.*

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

#### Commentary.

**History.**—This section is new. Advantage of this new Act has been taken to remove the difficulties experienced in working the Co-operative Societies Act, 1912.

**Assets of a housing society directed to be wound up to vest jointly in persons nominated by the Registrar, the society and the Bombay Central Co-operative Institute**—If a Housing Society went into liquidation or was cancelled it should automatically be managed as a trust. The Registrar is to be the official representative. This is to show confidence in Government. The Institute will be the democratic side, keeping the balance against the official side and the representative

of the members of the society who have made sacrifices for the formation of the society. It is necessary to keep alive the interest of those members who have made some sacrifices even in the defunct society.—*Thirteenth Bombay Provincial Co-operative Conference, 1924.*

**“To the best advantage of all interests concerned”**—This is specially introduced with a view to safeguard the interests of creditors.—*Bombay Legislative Council Debates, 25 July, 1925.*

**Bombay Central Co-operative Institute**—See notes to s. 42 under the head “The Provincial Co-operative Institute, Bombay.” at p. 221 *supra*.

**Notes.**—When this section was drafted the Legislature had only the housing societies in view. But there are other societies such as the Land Improvement Societies and so on which are coming into prominence and provision in their case has to be made. Therefore, advantage of this section should be given to other societies by adding the words ‘or a general society’ after ‘housing society’ and adding ‘and other assets’ after ‘premises’.

In large societies it may be necessary to have three liquidators but in the case of a small society of the types suggested above it may not be necessary to have more than one. The Registrar, therefore, should be allowed to have discretion to appoint one liquidator only in other types of societies.

**54.** If any dispute touching the business of a society arises between members or past members of the society or persons claiming through a member or past member or between members or past members or persons so claiming and any officer, agent, or servant of the society or between the society or its committee, and any officer, agent, member or servant of the society, it shall be referred to the Registrar for decision by himself or his nominee, or if either of the parties so desire, to arbitration of three arbitrators who shall be the Registrar or his nominee and two persons of whom one shall be nominated by each of the parties concerned.

A dispute shall include claims by a society for debts or demands due to it from a member or past member



or the heirs or assets of a past member whether such debts or demands be admitted or not.

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

#### Commentary.

**Previous Law.**—Under the old Act of 1912, s. 43 (1) empowered the local Government to make rules regarding reference to arbitration (see Appendix B for the old Act).

**The Friendly Societies Act, 1896** states that disputes shall be decided in the manner directed by the rules of the society and the decision so given shall be binding and conclusive on all parties without appeal and shall not be removeable into any Court of law or restrainable by injunction. The parties may in the alternative refer dispute to the Registrar.

**Under s. 152 of the Indian Companies Act, 1913**, power is given to Companies to refer existing or future differences between the Company and any other Company or person to arbitration in accordance with the Indian Arbitration Act, 1899.

**Indian Arbitration Act, 1899** provides that the parties to a submission [ written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not (s. 4) ] may agree that the reference may be made to an arbitrator to be appointed by a third person who may be mentioned by name or designated as the holder for the time being of any office or appointment (s. 7 of the Indian Arbitration Act, 1899).

**Ordinary law should be followed unless suits are expressly or impliedly barred.**—S. 2 of the Code of Civil Procedure, 1908 provides that suits though of a civil nature are not triable by Civil Courts, if the cognizance of such suits is expressly or impliedly barred. By "expressly" barred is meant

barred by any enactment for the time being in force. The cognizance of a suit by a Civil Court may also be impliedly barred. The mere fact, however, that an enactment provides a summary remedy in certain cases does not constitute a bar to a regular suit. Further the jurisdiction of a Civil Court is not excluded unless the cognizance of the entire suit as brought is barred (*Antu v. Jhulam*, 6 All. 110 (1884)). The general rule is that statutes affecting the jurisdiction of Courts are to be construed so far as possible to avoid the effect of transferring the determination of rights and liabilities from the ordinary Courts to executive officers. (See *Winter v. Attorney General*, L. R. P. C. 380. (1875)) The bar is generally in matters affecting the Government revenue but even there instances to the contrary may be found. It has been held by the High Court of Bombay that s. 4 (c) of the Bom. Revenue Jurisdiction Act is not a bar to a suit in which there is a claim arising out of the alleged illegality of proceedings taken for the realization of land revenue (*Gangaram v. Dinkar*, 37 Bom. 542 (1913)). Some Municipal Acts expressly bar suits relating to the assessment and levy of municipal rates and taxes, but the Civil Courts have nevertheless, jurisdiction to entertain such suits if it is shown that the assessment is *mala fide*, *perverse* (*Kasandas v. Ankleshwar*, 26 Bom. 294 (1902)) or made on a wrong basis and *ultra vires*. (*Chairman, Giridit Municipality v. Srish Chandra*, 35 Cal. 859 (1910)); *Deb Narain v. Chairman Banuipur*, 41 Cal. 168 (1914); *Chairman, Municipality Chapra v. Basdeo*, 37 Cal. 168 (1912); *Secretary of State v. Hughes*, 38 Bom. 293 (1914)). The Civil Courts have jurisdiction also in cases where it is alleged that the procedure enjoined by the Act has not been followed (*Municipal Council of Tanjore v. Umanala*, 23 Mad. 523 (1900)). *Joshi v. Dakor*, 7 Bom. 399 (1883). S. 89 of the Code of Civil Procedure, 1908, states that the provisions in the second schedule to that Code (unless governed by the Indian Arbitration Act or any other law) shall apply to all references to arbitration and all proceedings taken thereunder. Under paras 20 and 21 of that schedule where an agreement of reference is made and the arbitration itself takes place without the intervention of the Court, the assistance of the Court is only sought in order to give effect to the award. In that case any person interested may apply to the Court under para. 20 of that schedule to have the award filed in Court.

**Agreement to refer to arbitration ousts the Jurisdiction of Civil Courts.—** S. 28 of the Indian Contract Act declares that 'agreements in restraint of legal proceedings are void. But an exception (1) to the section provides that a contract by which two or more persons agree that any dispute which may arise (in future) between them in respect of any subject or class of subjects shall be referred to arbitration is not illegal and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred. Exception (2) to that section renders legal all contracts to refer to arbitration questions that have already arisen. S. 21 of the Specific Relief Act states that a suit by a person who has made a contract to refer present or future differences to arbitration and has refused to perform it will be barred, so far as the subject matter which they have agreed to refer. The effect of s. 28 of the Contract Act read with the relevant sections

of the Indian Arbitration Act, 1899, and s. 89 of the Code of Civil Procedure which deals with arbitration is that a person may not contract himself out his right to have recourse to Courts of law, but that in the event of any party having made a lawful agreement to refer a matter of difference to arbitration as a condition precedent to going to law Court the Courts will recognise the agreement and give effect to it by staying proceedings in the Courts. (*Mulji v. Bansi*, 34 Bom. 13 (1910)). But this does not mean that the parties can enter into an agreement that in no case they or any of them are to go to a Civil Court but must abide by the award of the arbitrators alone (whatever be its nature or irregularity). If they do enter into such an agreement it would be void.—*Burla Ranga Reddi v. Kalapalli*, 6 Mad. 368 (1883); *Mulji v. Bansi*, 34 Bom. 13 (1910); *Czarnikom v. Roth*, 2 K B. 478.

Query.—Now the question remains whether it would not be possible to call the Specific Relief Act in aid by the aggrieved party if the liquidator or the arbitrator exceeds his authority or passes an order which is *ultra vires*? S. 51 states that no suit or other proceeding will lie or be proceeded with against the society except by the leave of the Registrar when a winding up order has been made. It has already been pointed out elsewhere (under s. 59) that the Revenue Jurisdiction Act does not seem to afford protection to revenue authority in the matter of the recovery of dues of a co-operative society by following the procedure laid down in the Bombay Land Revenue Code. *Note*.—See notes under the head “If liquidator’s act or order is *ultra vires* Civil Court can interfere.” at p. 252 *supra*.

Amendments suggested.—The present section as worded makes no provision for reference to arbitration in case of claims in respect of damages for gross mismanagement of the society against office-bearers either past or present.

The word ‘dispute’ should be made to include claims in respect of damages for gross mismanagement of the society against the present or past office-bearers of the society whether such demands, debts or claims for damages be admitted or not. The societies are financed by the Central Banks and supervised by the Supervising Unions. In a society where the arrears are heavy and the number of recalcitrant defaulters is large it is sometimes found that cases are not referred to arbitration and the claims are allowed to be timebarred. The Financing and Supervising agencies have obviously substantial stakes in such cases. It is, therefore, necessary to authorise them and the auditors auditing the accounts to refer such cases to arbitration. The departmental control and the audit is rendered futile if the officers responsible for seeing that the defects brought to notice in the audit notes are remedied and the persons responsible for causing loss to the society by their deliberate gross mismanagement are not forced to make good the same. If the interest of the large body of ordinary members are to be protected, it is absolutely necessary to allow societies to claim damages from officers responsible for the same.

*Note*.—These are certainly wide powers and are likely to be abused and reference in such cases should not be allowed except with the sanction of

the Registrar. Any way certain safeguards for the protection of honorary workers should be provided. The idea of arbitration under the Act is that a resort should be had to it in the case of very simple matters where the claim is almost admitted and where there are not complicated issues to be decided.

The object of the Act is to encourage thrift, self-help and co-operation among agriculturists, artisans, etc., and it would be impossible to attain these objects if these people for the settlement of their disputes have necessarily to undergo all the troubles and worries of an expensive and protracted litigation. It should be noted that the English Law on the subject is very much the same,—*Zamindari Bank Shirpur Kalan v. Suba*, 711.C. 722 The provision is intended to save the co-operative society from the trouble and expenses involved in litigation against recalcitrant members for recovery of over-due debts. It is very undesirable that members of societies who are at variance with one another should be forced under the jurisdiction of the ordinary courts of civil law which act upon other maxims and are shaped by other conceptions. The sections by which disputes are referred to the Registrar and through him to selected arbitrators and by which the jurisdiction of the ordinary civil courts is excluded from such internal disputes are a most valuable charter to the movement.

The Assistant Registrar exercises all the powers of the Registrar (*G. R. 522-28-20383; B.G.G. pt. I, dt. 6-12-23 p. 2560*) for the purposes of the several sections of this Act and the rules made thereunder which provide for the settlement of disputes through arbitration. They are: ss. 54, 55, 56; 57, 58, 59, and 64 and Rules 32 to 37, 39 and 42 made under s. 71 (2) (4). [ See Appendix A for Rules. ] But note the discussion under s. 56.

**Arbitration** means an arrangement for investigation and determination of a matter or matters of difference between contending parties by one or more unofficial persons chosen by the parties. It is the settlement of disputes, by decision, not of a regularly constituted tribunal, or ordinary Court of law, but one or more persons voluntarily chosen by the parties, who by reason of the confidence reposed in them find favour in the eye of the litigants. [*The Law of Arbitration in British India by D. C. Banerjee* (1928 Ed.) ] What gives jurisdiction to the person or persons so

selected to decide is the agreement by which the parties refer the disputes. The person to whom the reference is made is called the arbitrator. The decision of the arbitrator or arbitrators is called an award [ *The Law of Arbitration in British India by Banerjee, (1928 Ed.)* ]. It is thus clear that any person in whom the parties may have confidence and to whose decision they may choose to refer their disputes or differences may be selected to act as an arbitrator, provided he is not prohibited from so acting by an express provision of a statute or by reasons of public policy. Every person is free to choose his own judge for the settlement of any matter in controversy between himself and another, and the judge so chosen if accepted by the opposite party is clothed with the authority to arbitrate upon the controversy referred to him. If the parties choose an incompetent or unfit person that is their own affair. [ *Law of Arbitration in British India by Banerjee (1928 Ed.)* ]

**Arbitrators authorised to administer oaths**—An arbitrator is authorised to administer oath to witnesses examined by him. Under the Indian Oaths Act (X of 1873) s. 4 gives the authority to administer oaths and affirmation to persons having by law or consent of parties authority to receive evidence. And since an arbitrator is a person authorised by law to take evidence, he is competent to put witnesses upon oath or affirmation according to the provisions of the law for the examination of witnesses. However, an arbitrator is not empowered to administer special oath under s. 8 of the Oaths Act. An arbitrator in coming to a decision should endeavour to arrive at his conclusions upon the same rules and principles which would have guided the tribunal for which he is substituted. He is the final judge not only of all matters of fact; but also of all questions of law which arise in the course of the proceedings before them or which are involved in the decision of the subject matter of the reference. [ *Banerjee's Law of Arbitration, p. 196, (1928 Ed.)* ]

The Indian Evidence Act (1 of 1872) in s. 1 enacts that it shall not apply to proceedings before an arbitrator and under s. 3 of the Act "Court" does not include an arbitrator. As a rule an arbitrator is not required to comply strictly with the rules laid down in the Indian Evidence Act. But it is expected that he should observe in his proceedings the ordinary rules laid down

for the administration of justice. An arbitrator is not bound by the technical rules of evidence or pleadings, nor is he bound to act strictly according to legal principles. So long as he acts within the limits of his authority conferred by the reference of the award and with fairness to both parties, without doing violence to the ordinary rules of justice, equity and good conscience, the parties to the submission will be bound by his award. As a rule, an arbitrator must not make his award without hearing all the evidence or allowing the parties reasonable opportunity of proving their case. Except where the arbitrator is justified in proceeding *ex parte* or where taking evidence is not at all necessary as in the case of an expert who is selected by reason of some special knowledge or skill possessed by him with reference to the matter in controversy both sides must be heard and each in presence of the other. However immaterial the arbitrator may deem a point to be, he should be very careful not to examine a party or a witness upon it except in the presence of the opposite party. It is not necessary to the validity of an award that it should be drawn up in any particular form. No precise form of words is necessary to constitute an award. It is enough if it clearly shows that the arbitrator has finally decided all matters referred to him. An award need not be a reasoned decision or need it give reasons for the arbitrator's conclusions. An intelligent decision which determines the rights of the parties in relation to the subject matter of the reference is all that is required. The Registrar has for the guidance of arbitrators directed that the award should be in the following form :—

**AWARD.**

*Arbitration Case No.....of 193...*

Plaintiff.....

*against*

Defendant.....

**Claim Rs.**

Where in pursuance of an order of reference, dated..... made by the Registrar of Co-operative Societies, Bombay Presidency, under section 54 of Act No. VII of 1925 (the Bombay Co-operative Societies Act), a dispute between the above parties touching the above claim has been referred to  $\frac{me}{us}$  for determination.

Now  $\frac{I}{we}$  having summoned the parties and duly considered the matter

referred to <sup>me</sup>/<sub>na</sub> do hereby order, for reasons separately recorded, that

.....  
 .....and that interest on the amount so awarded shall  
 run at the rate of.....per cent. per annum until the debt is satisfied.

Dated.....day of.....193

Sd.....

Registrar's Nominee.  
 Arbitrators.

Contents of the award have been communicated to the parties concerned.

Sd.....

Registrar's Nominee.  
 Arbitrators.

**Finality of an award.**—If a reference has been made according to law, if the arbitrators have upon such reference after a fair trial made a valid award, it is not liable to be called in question by any court.

**Exemption from Stamp duty.**—Under No. 6401, dated 29-6-1916, Part I, the awards of arbitrators in all disputes to which co-operative societies in the Bombay Presidency are parties, are exempted from the duty leviable under the Indian Stamp Act and they may therefore, be written on plain unstamped paper.

**The word 'dispute'** ordinarily includes all matters which could form the subject of civil litigation and so it would presumably include a debt due to a society, payment of which is not made on demand, whether the fact of the sum being due is questioned or not. A dispute relating to a debt is none the less a dispute whether the amount is or is not disputed by the borrower when a demand of payment is made and is either refused or not complied with.

**A dispute includes debts or demands due to a society by a member, etc.**—This obviously includes calls on shares. Under this clause heirs of deceased members can be brought on record by the arbitrator or the nominee of the Registrar. Obviously the reference to dispute in this section mainly relates to money due. If there be disputes other than those relating to money due, they should be referred to the general meeting whose decision should be final as provided by the by-laws of the society. However, it was decided in *Buban Mohini Dasi v. Kumud Bala*

*Dasi*, 28 C. W. N 131; A. I. R. 1924 Cal. 467, that the words 'disputes touching the business of the society' occurring in s. 43 (1) of Act II of 1912 are not confined to 'disputes in connection with the internal management of the affairs of the society or disputes in regard to principles which would regulate the conduct of the business thereof. And again, in A. I. R. 1923, Madras 481 in *P. Dasaratha Rao v. Sabha Rao, Secy, Co-operative Stores Vizianagaram* it was held that the business includes all disputes besides those disputes regarding the internal management of the affairs of a society or disputes in regard to the principles which would regulate the conduct of affairs. In *Gopi Nath v. Ram Nath*, A. I. R. 1925 All. 356; 47 All. 374 it was decided that no suit will lie in a civil court for purpose of determining the validity of the election of directors of a co-operative society governed by the Co-operative Societies Act. On page 376 of 47 All. it was held, that the election of office-bearers was certainly a part of the business of the society and any dispute regarding it should be referred to the Registrar for decision.

**Shall be referred :** These words exclude the jurisdiction of the Civil Courts. *Zemindari Bank in Sherpur Kalan v. Suba*, 71, I.C. 722 it is observed : "The words used clearly show that it is intended to provide a special and prompt procedure for cases in which having regard to the class of people affected a speedy decision as to their dispute is essential. It will be entirely repugnant to the scope and object of the Act if such disputes were allowed to be decided in a Civil Court.

**Legal representative :—**The question is whether the Registrar or arbitrator has powers to decide who are the legal representatives. Strictly speaking, the question of legal representative is not one that touches the business of a society or a dispute between a member or a past member. In fact it is a dispute between claimants *inter se*. It is doubtful if the Registrar or for that matter the arbitrator has jurisdiction to decide the question who is the proper legal representative of the deceased. However, in 28 Bom. L. R. p. 599; A. I. R. 1926 Bom. 252 (*Dharmakka Bistappa v. Mallappa Fakirappa*) it was held that once it was conceded that where a dispute lies between a co-operative society and a member who is dead proceedings can be continued or entertained between the society and the legal representatives of the deceased debtor.



“the arbitrators would be competent to decide who were the legal representatives of the deceased debtor and would have jurisdiction to decide that question.”

**Persons claiming through a member** include the heirs, executors or administrators and assigns of a member and also his nominee where nomination is allowed.

**Or his nominee.**—This clause is inserted to avoid delay in the disposal of arbitration cases and also to save unnecessary expenses to the parties who would have otherwise to go to a place where the Registrar or the Assistant Registrar camps. Unless the Registrar or the Assistant Registrar and the two arbitrators appointed by the parties meet together, the arbitration is not likely to be disposed of. The insertion of this clause avoids the difficulty.—*Bom. Leg. Council Debates, 25th July 1925.*

**Civil Court.**—In cases where a defaulting member has non-member sureties, the member can be proceeded against by way of arbitration and the non-member through the Civil Court. In such cases the Registrar may waive the privilege of arbitration and refer the whole matter to Civil Court.—*See Proceedings of the Bom. Pro. Co-operative Conference, 1919.* (See also notes to a. 50 under the head “Non-member sureties” at p.242.

**Whether the provisions of the Indian Limitation Act apply to proceedings before the Arbitrator.**—The preamble of the Indian Limitation Act, 1908, declares that the law is intended for suits, appeals and applications in a Court of Law. S. 3 of the Act applies only to such suits, appeals and applications. In several cases the High Court of Bombay has held that an arbitrator is not a Court of Law. It has been laid down in rules (Appendix A) that an arbitrator has to decide cases according to justice, equity and good conscience. It may further be argued that the framers of rule 35 have very advisedly not used the word “Law” with “the justice, equity and good conscience” in rule 35. It may also be urged that the Registrar in 1924 gave his opinion that strict rules of limitation were not applicable to the proceedings before the arbitrator. In view of this and also for the fact that an arbitrator is expressly excluded from the definition of ‘Court’ in the Indian Evidence Act, 1872 the conclusion may appear to be that if a claim is just the defendants are bound to pay the same irrespective of the question of time; it is their moral obligation and they must discharge it, and that there is no injustice in denying to a debtor the dishonest defence of limitation if he makes one.

This view of the law seems open to doubt and appears to be unsound looking to the judgment of the Privy Council in *Ramdulla Ramkrishnaiah v. E. D. Sassoon and Co.*, reported in 31 Bom. L.R. 141. The Privy Council has by its judgment now held that although the Limitation Act of 1908 does not in

terms apply to arbitrators, the provisions of s.3 (which has in view primarily suits, appeals and applications made in a Court of Law) extend by analogy to arbitration proceedings and *a fortiori* "Civil Proceedings before the arbitrators whom the parties have substituted for the courts of law to be the judges of disputes between them." They further say:—"In a Mercantile arbitration, it is an implied term of submission that the arbitrator must decide the dispute according to the existing law of contract and that every defence including the defence under any Statute of Limitation which would have been open in a Court of Law can be equally proposed for the arbitrator's decision unless the parties have agreed to exclude that defence. Were it otherwise, a claim for a breach of contract containing a reference clause could be brought at any time, it might be twenty or thirty years after the cause of action had arisen although the Legislature has prescribed a limit of three years for the enforcement of such a claim in any application that might be made in any Court."

The English law on the point is the same. In "*Re Astley Tydelalay Coal and Salt Company and Tydelalay Coal Company*," (68 L.J. 2 B.P. 252) it was held that the submission to arbitration does not *per se* exclude the right of either party to raise the defence of the Statute of Limitation, but if it be intended to exclude such a defence, an express term to that effect must be imported into the agreement of submission. In *Ambert v. Maise*, (1801-2 BOS. 371.) Chambers J. stated that there is no doubt that the arbitrator is bound by Rules of Law like every other judge. In *Cayzer Irwins and Co. v. The Board of Trade*, 1927 1 K. B. P. House Ltd., (1916) 1 K. B. P. 939, it was held that in absence of fuller and wider powers expressly given, the arbitrators are to decide according to the legal rights of the parties. In *Cayzer Irwins and Co. v. The Board of Trade* 1927 1 K.B.P. 269 Rowlatt J. doubted the correctness of the judgment in *Re Tydelalay Coal Case* and said "The Statute of Limitation does not affect the debt, it only limits the remedy and, therefore, it seems to me that in an arbitration, it is a question of construction whether the submission to arbitration requires the arbitrator to follow the analogy of the Statute" was not necessary to decide this point in the case Viscount J. however in appeal clearly expressed himself in favour of the view taken in *Tydelalay's* case. It is no doubt true that the arbitration referred to in the Privy Council judgment was under the Indian Arbitration Act which relates only to arbitrations, in the Presidency towns by arbitrators appointed by the consent of the parties without any reference to Court. The awards have to be filed in Courts and decrees obtained in accordance and an order for execution has to be obtained. But does it make any difference? Under the Co-operative Societies Act the matter in dispute has to be referred to the Registrar in every case under s. 54 of the Act. He either tries the case himself or appoints a nominee and asks the parties to appoint their own arbitrators if they choose. If they do, the case is heard by the Registrar, or his nominee and the two arbitrators and decided. If they do not, then the Registrar or his nominee alone hears and decides it. His or their award

is a decree by itself and the executing Court has only to execute it. It cannot go behind it. In the case of a dispute being decided by a nominee or the nominees and the arbitrators, the aggrieved party is given the right of appeal to the Registrar under s. 56 of the Act. It will, therefore, be seen that the Co-operative Societies Act only changes the forum for the disputes and substitutes the Registrar or his nominee and the arbitrators appointed by the consent of the parties for the Civil Courts, just as under the Indian Arbitration Act arbitrators are appointed by the consent of the parties. Only the Registrar or his nominee is added to them in deciding the dispute. Besides it is nowhere stated in the Co-operative Societies Act that the Limitation Act does not apply to them. Now the arbitrator had to decide according to justice, equity and good conscience (rule 35). But justice cannot be said not to include the observance of the legal rights of the parties by the arbitrator. It cannot be said that it is not just and equitable to deny a claim on the ground that the period of filing the suit in a Court of Law has expired. "Limitation is not an unjust or a discreditable defence and must be upheld even against the apparent merits of the case.", (2B. O. M. H. C. 162 12 A. 4 tp. 137, MDS I. A 53 and 234.) "Statute of limitation is law of peace and justice" says Govdeve at p. 407. The object of statute of limitation is to quiet long possession and to supply a deficiency of proof. Law of limitation is not only a Law of procedure but as has been very aptly said is a statute of repose.

The Law of Limitation is founded on public policy its aim being to secure the quiet of community, to suppress fraud and perjury, to quicken diligence and to prevent oppression (*Brown on Limitation*). Useful in Europe and America it is still more needed in India where, from climatic and other causes documentary evidence of title perishes with unusual rapidity (*Stokes Anglo-Indian Codes*, Vol. II p. 940). The Statute of Limitation is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community (*Lightwood*, p 2). It has with great propriety, been termed a statute of repose, peace and justice (8All. 475; 1886, 13 All. at p. 277 F. B. 1890, ). These statutes are among the most beneficial to be found in our books. They rest upon sound policy and tend to the peace and welfare of the society and are essential to the security of all men (*Wood 4th Ed.*, p. 9). The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have now from lapse of time become inexplicable (*Story's Conflict of Laws p. 794 8th Ed.* ). It has been said by John Voet, with singular felicity that controversies are limited to a fixed period of time, lest, they should be immortal while men are mortal. (*Ibid*). Suppose you had no statute of limitations so that any man amongst us might be liable to be sued on a bill of exchange accepted by his grand-father in 1760; or, suppose you imagine the case of a man, in possession of an estate occupying a manor-house which has been held by his grand-father and his great grand-father before him, being turned out of that possession because some old will or deed, made in the time of Charles the First had been discovered in some forgotten chest or cranny should we not exclaim that it would be better to live under the rule

of a Turkish *pacha*, and should we not all feel that the enforcement of an obsolete right was nothing less than an infliction of the foulest of wrongs? Should we not all feel that this extreme rigour of the law, without a limit of time, would be nothing less than a grave, systematic and methodical robbery? (Mr. afterwards Lord Macaulay, in debate in the House of Commons on the Dissenters' Chapel Bill). In short, take from time his charters, his customary rights, his sweet benefit, and chaos, social and political follows. Circumstances such as these make it difficult for us to believe that the Law of Limitation does not apply to proceedings before the arbitrators under the Co-operative Societies Act. (Note.—This is partly based on articles published in the Bombay Co-operative Quarterly issued by the Provincial Co-operative Institute, Bombay.)

The procedure to be followed in arbitration matters is laid down in rules 32, 33, 34, 35, 36, 37, 37A, 39, 42 and 44. (See Appendix A for rules). The Registrar or his nominee has at the outset to issue notice to parties when a matter is referred to him. The parties may, if they so desire, nominate an arbitrator, one by each. In that case the Registrar or his nominee acts as a Chairman of the committee of the arbitrators. If the arbitrators fail to decide within specified time, the Registrar decides the dispute. (rule 32). The Registrar has power to appoint his nominees for a specified area (rule 33). Expenses of arbitration are to be determined by the nominee or the Registrar who has the power to fix the fees of arbitrators also. (rule 34). Rule 35 lays down that evidence should be recorded in the presence of parties (pleaders are not allowed to represent them, rule 36) and decision or award should be given in accordance with justice, equity and good conscience. Special Mamlatdars and Auditors may be authorised to call for and send for execution the awards obtained by a society (rule 37). Expenses of village officers responsible for recovery of awards may be ordered to be paid from the funds of society or by a party or parties to the award (rule 37A). The order of the Registrar to assess damage against delinquent promoters, etc., under s. 50A and also of attachment before award under s. 55 may be executed in accordance with s. 59 (rule 39). The summonses issued by the Registrar, etc., if sent to the Mamlatdar or Mahalkari are to be served by them. (rule 42). The mode of service of summonses is laid down in Rule 44.

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

Attachment  
before award.

obstruct the execution of any award that may be made,—

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

(b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar,

may unless adequate security is furnished direct the conditional attachment of the said property; and such attachment shall have the same effect as if made by a competent Civil Court.

#### Commentary.

**History.**—This section is new.

**Attachment before Award.**—The order of the conditional attachment of the property is to be executed as provided in s. 59 ( See rule 39, Appendix A ). It was suggested that in any case where the party was an agriculturist the matter will go to the Collector. Instead of going second hand it is provided that the arbitrator should go first hand to the Collector.—*See the Proceedings of the 12th Bom. Pro. Co-operative Conference, 1923.*

**For the order of attachment before award** see the Handbook of Co-operation for Societies in Bombay and Sind by the writer.

**Directions** - Copies of such orders should be immediately forwarded to the parties concerned and to the Mamlatdar or the Mahalkari of the Taluka, Peta or Mahal concerned and to the Assistant Registrar of the Division when the order is issued by the Registrar's nominee or arbitrators. No order of attachment before award should ordinarily be issued unless the party whose property is to be so attached has been heard or has had a reasonable opportunity of being heard. In case of attachment before award, except when the matter is very urgent or for special reasons the party whose property is to be so attached should be given an opportunity to show cause why such an order should not be issued. The Assistant Registrar or his nominee or the arbitrators should direct the party within a time to be fixed by him or them either to furnish security in such sum as specified in the order or to show cause why he should not furnish security or order of attachment should not be issued.

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

Appeal against  
award of arbi-  
trator.

#### Commentary.

**History.**—S. 43 (s) of Act II of 1912 empowered Local Governments to make rules determining the cases in which an appeal should lie from the order of the Registrar. S. 43 (1) of the said Act provided for rules prescribing the procedure to be followed in proceedings before Arbitrator but it did not expressly provide for an appeal against the award of an arbitrator. Doubts were expressed if such a rule could be legally framed under the Act as it stood (*Tenth Conference of Registrars, 1928*). However, the Government of Bombay had framed a rule (see rule 33 framed under Act II of 1912) allowing appeals against the award of the Arbitrator.

**Object.**—It is necessary to have some power to alter the award passed by the arbitrators. The arbitrators are in many places people of the village with comparatively scanty knowledge of law. Their decisions are not in many cases either correct or just. Instances can be cited where people who have not been members of a society have had an award passed against them and their property sold up on the assumption that they were members of the society because somebody else forged their names in the membership list. It is, therefore, thought necessary that there should be some power altering the award by the arbitrators. **Note.**—Tenth Conference of Registrars, 1920, was of opinion that instead of power of appeal the Registrar should have power to revise arbitrator's decision or award *suo motu* or otherwise.

**Decision of Registrar's nominee under s. 54 or order passed under s. 55 by Registrar's nominee or arbitrators.**—There is no appeal against the award of arbitrators but an appeal is allowed against the decision of the Registrar's nominee appointed under s. 54. There is also an appeal allowed against

an order of attachment made under s. 55 either by the Registrar's nominee or the arbitrator.—*Bombay Legislative Council Debates, 25th July 1925.*

**The Registrar shall decide the dispute himself.**—It seems that the Legislature has purposely used the word 'himself' in this section. It cannot be denied that there is difference in saying that 'the Registrar shall decide the dispute' and that 'the Registrar shall decide the dispute himself.' Obviously it is intended that nobody else should exercise this power—not even an Assistant Registrar. It appears therefore doubtful if in view of the word "himself" it is legal for Government to authorise the Assistant Registrar to decide an appeal under this section as they have done by G. R. 522/28-20383; B. G. G. pt. I dt. 6-12-28 p. 2560. (See also p. 33 *ante*).

**Amendment suggested.**—Under this section an appeal against the award of arbitrator must be decided by the Registrar himself but as the number of societies has increased enormously it is not possible for the Registrar to hear and decide all such appeals himself. The word 'himself' at the end of the section may, therefore, conveniently be dropped for the reason that the Registrar cannot personally hear appeals against the decision of all arbitrators, throughout the Presidency and Sind. Of course he has to hear the appeal when the dispute is decided by the Assistant Registrar.

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

Finality of order.

### Commentary.

**History.**—This section is new.

**Court's jurisdiction to nullify or modify an award.**—In *Bharmikka Bistappa v. Mallappa Fkairappa*, A I R. 1926 Bom. 352 it was held that there is a remedy of appeal under the Acts. It is expressly provided that all proceedings between the society and the members of the society arising from disputes between them should be decided under the Act and that the civil courts have no jurisdiction to interfere. The same view was taken in *Zamindari Bank Sherpur Kalan v. Suba*, A. I. R. 1925 Lah. 418 In

*Danbarsingh v. Munawar Alikhan*, 40 All. 86 the Allahabad High Court held that no appeal lies save appeals expressly given by the Act. Though they were convinced that the order of the liquidator in the case was far from satisfactory they refused to interfere.

But in *Mahabir Prasad v. Basudeo Narayan*, A. I. R. 1925 Pat. 575 it was laid down that in cases where the terms of these award exceed the jurisdiction of the arbitrator, the civil court has complete jurisdiction to set aside the award.

'Or his nominee'—It means the nominee working for the Registrar.—*Bom. Leg. Council Debates, 25th July 1925.*

**Final and conclusive.**—In Stroud's Judicial Dictionary, 2nd Edition the word final is defined thus :—"Where a statute provides that a specified determination shall be final *e.g.*, the decision of a Poor Law Auditor *qua* an untaxed Solicitor's Bill, s. 39, 7 & 8 Vic. C. 10/— it is not open to review even though the court does not see the reasonableness of the provision."

To understand the way in which the word 'final' is used by the legislature it is permissible though with caution, to look at other instances in which the legislature has used the word. In s. 629 of the Civil Procedure Code of 1882 an order made under that section was described as 'final', *i. e.* non-appealable. The new Code of Civil Procedure of 1908, Or. XLVII, rule 7 substituted the words "shall not be appealable" for the word 'final'. This was merely a verbal alteration and shows that the Legislature meant to exclude any appeal from the order. See also the use of the word in the Court Fees Act (VII of 1870) s. 5 and the case of *Balkrishna Rai v. Govind Nath Tiwari*, 12 All. 129-155. and in the Public Demands Recovery Act (Bengal Act I of 1895) s. 19, sub-section (4) and the case of *Matangini Devi v. Girish Chunder Chougdar*, 30 Cal. 619. A similar meaning is given to the use of the word 'final' in s. 13 of the Bom. Revenue Jurisdiction Act of 1879 and to the word 'determinative' in s. 121 of the Bom. Land Revenue Code, 1879.—*Bai Ujam v. Valiji*, 10 Bom. 456. (In *Kanhailal v. Ismail Bhai*, 28 Bom. L. R. 1498, however, the High Court was inclined to take the view that an occupancy tenant could not perhaps sue Government in the Civil Courts for a declaration that the survey boundaries of a certain number were wrong and the area was actually less. In this sense the Collector's boundaries



may be determinative.)—*Bhagghand v. Secretary of State*, 26 Bom. L. R. 1.

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

### Commentary.

**History.**—As s. 24 (3) of Act (X of 1904) stood the terms were very vague. As to whether a liquidator could in case of non-compliance proceed to punish the delinquent under Rules 12 and 17 of Order 16 of the Code of Civil Procedure, 1908, was doubtful. The Fourth Conference of Registrars recommended that liquidators should be recognised as public servants, within the meaning of the law, so that failure to comply with the summons will be made punishable under ss. 174 and 175 of the Indian Penal Code. It was suggested that it was conceivable that officers or members of the society guilty of misappropriation or neglect of duty may try to avoid appearance when summoned. Rule 38 (2) framed by the Government of Bombay under the Act of 1912, had provided for a penalty upto Rs. 50, if a person failed to comply with the requirement of the summons issued by the Registrar, arbitrator or a liquidator. In this section (s. 58) are embodied similar provisions. Disobedience of the summons, requisition, or order is to be treated as an offence [s. 60 (d)] and is made punishable under s. 61 of this Act to a fine upto Rs. 50. However,

this process is a dilatory one. Because for a prosecution under this Act the previous sanction of the Registrar is necessary (s. 63). And again the offence must be tried by no Court inferior to that of a Magistrate of the First Class, etc. (*ibid*). To avoid all these difficulties it will be reasonable to make some such additions to this section as the following:—

"If the summons is duly served and the person concerned fails to appear or otherwise comply with the requirements of the summons, he shall be liable, on the order of the person issuing the summons to a penalty not exceeding Rs. 50. An appeal should of course be provided for against an order levying such penalty."

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

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

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

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

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

#### Commentary.

**Old Law.**—S. 42 of Act II of 1912 provided that orders made by liquidators should be enforced by Civil Courts having local jurisdiction in the same manner as a decree of such Court.

S. 43 (1) of the same Act laid down that a dispute (which includes a debt due to a society) should be referred to the Registrar or if he so directed to arbitrator and the decision should be enforced as provided in rules framed by the Local Government. The Government of Bombay had prescribed ( See rule 35 of the Bombay Co-operative Societies Rules, 1918 ) that these decisions and awards should be enforced in the same manner as a decree of a Civil Court. ( See Appendix B for Act II of 1912. )

**Summary Procedure for the recovery of debts.**—The idea of obviating recourse to the Civil Court is not new. The Committee on the Establishment of Co-operative Credit Societies in India in 1901 said, "It is generally recognised that one of the main reasons for the high rate of interest on loans which prevails in India is the difficulty and expense in recovering money from defaulters by the ordinary process of law. If the co-operative societies are to be successfully worked, it is very advisable that they should be provided with special facilities for the recovery of loans due by defaulting members. Societies in framing their rules of procedure should be permitted to provide that claims against members should be recoverable by summary procedure on production of a certified copy of the entries in the books of the society. The same thing was again suggested by the Hon. Mr. Gokhale in 1903 when the Act creating the Co-operative Credit Societies was introduced. The Government then declined to countenance any special procedure for the recovery of money due to a society. Sir Denzil Ibbetson said:— It is true that recovery of debt by civil suit is a tedious process and that a society of the sort we are considering is perhaps the least fitted of all agencies to conduct such suit. But it a serious matter to place our executive machinery at the disposal of a private creditor. And above all such artificial assistance would discourage the exercise of that vigilance and caution upon which these societies should depend

for their security. With the local knowledge which will be at their command, they should, if they conduct their affairs prudently, hardly ever had to have recourse to a court. Their strength should be in their knowledge and not in any special process of recovery. Since then the same question was again and again raised at different conferences and the proposed change in the procedure allowing the societies to recover their arrears similarly to arrears of land revenue was found to have a considerable body of opinion behind it ( see Proceedings of the First Conference, 1906, Second Conference of Registrars, 1907, the Third Conference of Registrars, 1908, the First Bombay Provincial Co-operative Conference, 1908, Fifth Conference of Registrars, 1911, Sixth Conference of Registrars, 1912 ). The Act of 1912, however, repeated the provisions of the old Act of 1904. The Committee on Co-operation in 1915 after carefully considering the arguments endorsed the view held by the Government of India that any special privilege of the kind was not called for. It would, it was thought, be mistaken kindness to confer upon societies arbitrary powers of recovery. It would lead to laxity in the selection of members and carelessness in the grant of loans. The Government interference would tend to officialise the movement and make societies depend rather on Government as a collecting agency than on their own efforts. The existence of a special procedure for co-operative societies would intensify any feeling of opposition to the movement which may already exist in the outside money market, and the real remedy for the difficulties complained of was in the Committee's opinion to avoid litigation by due care in selecting members, by a proper discretion in granting loans, by pressing the sureties of a defaulter and by consistent good management. The Committee on Co-operation at the same time reported that "there was a large body of public opinion who urged that the delays and evasions inevitable from the then prevailing system of civil procedure was such as would often render a decision or award so obtained entirely ineffective. The officers presiding in the lower civil courts belong frequently to the same class as the money-lenders and are in consequence biassed against co-operative societies. They often insist on unnecessary formalities of evidence. The bailiffs of civil courts connive at a removal of property from attachment by judgment-debtors." It was urged, therefore, that

decisions and awards of the class under consideration should be made enforceable by the procedure allowed for the recovery of land revenue. It was also suggested that the procedure, once sanctioned, would seldom be used but that the mere possibility of its use would add immensely to punctuality of repayments. Summary power of recovery of loans would ensure local capital as there would be greater security for depositors. It was also pointed out that such summary recovery by the Collector is to be made only on a certificate to be issued by a responsible officer like the Registrar who will issue such a certificate only after proper inquiry. Some went further and argued that the Collector was the proper person to assist the Registrar in the speedy collection of outstandings and winding up of a proclaimed failure as every district officer was expected to take keen interest in the co-operative movement. For these reasons it was thought proper to provide in the new Act that the orders of a liquidator and those of the Registrar or his nominee or arbitrators should be executed either through the civil court as its own decree or through the Collector who is to adopt the same procedure as he does in matters of the recovery of the arrears of land revenue.

**Orders of liquidator to be executed as provided by law for the recovery of arrears of land revenue.**—It was suggested at the Bombay Provincial Co-operative Conference 1919, that this concession which might kill the sense of responsibility and self-help if given to a living society, could do no harm to a dead society. It was argued that if the burying up of dead societies was not to be a long and dilatory affair, as it was then, this concession was needed. There was no reason why the societies should be under the necessity of an unnecessary show over their dead. “*Prolonged and indiscriminate State aid*” says Mr. Henry Wolff ‘*is destructive to self-help.*’ For similar reasons no special powers of recovery of debt had been given to the societies. The object was to foster a spirit of responsibility and self-reliance; and it was because the societies must be dependent for their success on their own care and caution, in the disbursement of their funds that it had been possible for Government to dispense with restriction on their powers in the new Act for Co-operative Societies of 1912, that would have been necessary.—*See Co-operation in India by Henry Wolff.*

**Arrears of land revenue can be recovered by the following processes.**—The Bombay Land Revenue Code, s. 150 states that an arrear of land revenue may be recovered by (a) serving a written notice of demand; (b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due; (c) by distraint and sale of the defaulter's moveable property [except such property as is by the Code of Civil Procedure exempted from attachment or sale in execution of a decree (s. 156 of L. R. Code)]; (d) by sale of the defaulter's immoveable property, *i. e.* the right, title and interest of the defaulter in the property (s. 155, *ibid.*) even in this case the houses and other buildings (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him are exempt from attachment or sale. (s. 156, *ibid.*) (e) by arrest and imprisonment of the defaulter in civil jail (s. 157 *ibid.*).

**Notes.**—So far as co-operative societies are concerned, s. 21 of D. A. R. Act applies to them and it seems doubtful if an agriculturist can be arrested and imprisoned for a money decree and cl. (e) of s. 150 of L. R. Code is probably ineffective with regard to agriculturists as defined by the D. A. R. Act, 1879. Cl. (b) of s. 150 of L. R. Code is inoperative because it specifically lays down that it will come in operation only when actual land revenue is in arrears. So far as cl. (e) is concerned, one has to take into consideration the exemptions laid down in s. 60 (1) of the Code of Civil Procedure, 1908.

**A word of caution.**—There is too much belief as it is, that, because the Government is the moving factor and urges people to join societies, the whole thing is in fact a Government "machine" financed, endowed and worked by the Government, that it is Government money that is being dealt out. The ex-officio presence of Government officers, is sure to intensify the vicious misapprehension. Besides it means steering the craft in the wrong direction altogether, for co-operation is self-government, self-help, self-determination.—*Co-operation in India by Wolff.*

**Order of arbitrator to be executed as decree of such Court.**—An award was made at Poona against certain parties under the rules framed under the Co-operative Societies Act of 1912. As one of the opponents against whom it was to be executed had gone to Bombay the Judge at Poona was moved under s. 39, Civil Procedure Code, 1908 to transfer the decree to the court at Bombay. He declined to make the order of transfer. The High Court held that inasmuch as the Poona Court could execute the decree as if it had passed it could also transfer the decree under s. 39 of the Civil Procedure Code, 1908.—*Krishnaji v. Mahadeo*, 23 Bom. L. R. 909 (1921).

**Note.**—Though the above case was decided under the old Act of 1912 and the rules framed under s 43 of that Act, the principle involved therein applies to cases under this Act and the rules framed thereunder.

**Insolvency Court should not refuse to grant interim protection to insolvent debtor against detention in prison merely because a co-operative society chose to enforce its claim through Collector.**—A co-operative society obtained an award against the debtor for Rs. 1515 and adopted the course of recovering it under s. 59 (b) of the Act through the Collector who ordered the detention of the debtor in prison. As a counter move the debtor filed a petition for insolvency and obtained an order for interim protection. The society opposed the confirmation of the protection order. Overruling the objection Rupchand A.J.C. (Sind) *held*:—

“S.31 of the Provincial Insolvency Act, 1920, empowers the Court to grant protection against arrest or detention of the debtor simpliciter and there are no qualifying words to show that such arrest or detention should necessarily be in execution of the decree of a Court for payment of money as in s. 23 of the Provincial Insolvency Act, 1920. In the Provincial Insolvency Act the legislature has drawn a distinction between crown debts and debt due to local bodies. Not only have crown debt priority over other debts, but an order of discharge does not operate to release the debtor from his liability to pay such debts. But with reference to debt due to local bodies, although the Act provides for priority being given to them over certain ordinary debts it does not preserve the rights of local bodies to enforce payment of their debts after discharge. Debt due to a co-operative society is not a crown debt. Such a debt stands on no better footing than ordinary debts and can only be paid *pro rata* with other unsecured debts. Under the circumstances it would, on the contrary, be an improper exercise of discretion to refuse to grant interim protection to a debtor against arrest or detention for a debt due to the society and to permit his being detained in prison, and at the same time to take possession of his property for rateable distribution amongst his creditors merely and solely because the society has chosen the alternative remedy of enforcing the claim by approaching the Collector.”—*In the matter of Jan Mahomed Ibrahim*, A.I.R. 1930 Sind 263.

**Notes** —An order of discharge does not release the insolvent from any debt due to the crown (s. 44 Provincial Insolvency Act, 1920). It seems from the remarks made in the above case that the debts due to the co-operative societies not being crown debts an order of discharge has the effect of releasing the insolvent from all debts including even the debts due to a co-operative society. An order of discharge, however, does not release the person who stood surety to the Insolvent [S. 44 (3) Provincial Insolvency Act, 1920]. Therefore, the amount may be recovered from the surety, (if he has not become an insolvent himself) though it cannot be recovered from the principal who has become insolvent.

**Land of defaulters to co-operative societies cannot be transferred under s. 59 (2) of this Act but should be purchased by offering an adequate bid**

by the societies.—S. 59 (2) applies to property which is first attached and then put out to sale without evoking any bids. In places where the Bombay L. R. Code, 1879, applies, the only property liable to attachment in execution under s. 150 of that Code is the moveable property distrained under s. 154 of the L. R. Code. S. 155 of the L. R. Code contemplates no attachment of the property but only the sale of right, title and interest of the defaulter in a given property and not of the property itself, *i.e.*, the sum total of the proprietary rights in property as in the case of land forfeited and turned into Government waste land and then sold. In other words the immoveable property which is liable to be sold under s. 155 of the L. R. Code is not liable to previous attachments and cannot therefore, be dealt with under s. 59 (b) of the Co-operative Societies Act, 1925. S. 153 of the Code applies to land in respect of which the land revenue is due and, therefore, the method of forfeiture prescribed in that section cannot be followed. It appears, therefore, that s. 59 of the Co-operative Societies Act does not apply to defaulters' immoveable property dealt with under s. 155 of the Code and hence such property cannot be handed over to a society under the circumstances described in s. 59 (2) of the Societies Act. The proper course for societies in such cases to follow would be to offer a nominal bid and to purchase the right, title and interest of the defaulter in the property for themselves.—*G.R.R.D. 4373/28 dated 23-4-1930.*

It was subsequently pointed out that the intention underlying the above Resolution was misunderstood by the use of the words 'nominal bid' and in view of the fact that there was no reason why a society should be treated differently from an ordinary individual and that it was reasonable to expect that the debtor should get credit for reasonable value of his land Government in *G.R. 4373/28 (R.D.)* of 8th December 1930 explained that the intention was that where there are no outside bidders, the society should offer an adequate bid. Government are, therefore, pleased to direct that when a case of the nature referred to above arises, a co-operative society should always offer an adequate bid for the purchase of the right, title and interest of its defaulter. The Collector is not bound to accept any bid unless he considers that it is adequate and should be accepted.

**Can protection under the Revenue Jurisdiction Act can be claimed by Revenue Officers executing orders of the Registrar under s. 59 if unauthorised *i.e.* not made according to law.**—The Revenue Jurisdiction Act of 1876 states that no Civil Court shall exercise jurisdiction as to any claims connected with or arising out of any proceeding for the realization of land revenue etc. and claims to set aside on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue [s. 4 (b) and (c), Bombay Revenue Jurisdiction Act, 1876]. Now the word 'Land Revenue' is defined in section 3 of that Act to mean sums and payment, in money or in kind received or claimable by or on behalf of Government from any person on account of any land held by or vested in him etc." Thus, it is clear that the jurisdiction of the Civil Court would be ousted only when the money to be recovered is Government money in its true sense. The



money due to a co-operative society is not money due to Government, in other words, it is not sum claimable by or on behalf of Government. If such amount is unauthorised or if the order passed by the liquidator, arbitrator or even the Registrar himself is *ultra vires* and if such an order is executed under the Co-operative Societies Act by following the procedure laid down in s. 59 for the recovery of arrears of land revenue etc by the Revenue Officer then it is doubtful if he cannot claim the privilege accorded by the Revenue Jurisdiction Act, 1876, if the aggrieved party files a suit in a Civil Court after giving proper notice to the Secretary of State for India where necessary.

**Amendment Suggested.**—At present under cl. (2) of s.59 unless the property is first attached it cannot be handed over to the society for want of buyer etc. To avoid the difficulty therefore, this section should be so amended as to allow the property against which execution of an order referred to in sub-section (1) has been commenced to be handed over to a society when the same cannot be sold for want of buyers etc.

**For form of the certificate** see the Handbook of Co-operation for Societies in Bombay and Sind by the writer.

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

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

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

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

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

Disobedience  
of summons, re-  
quisition or order.

### Commentary.

**History.**—These clauses are taken from the Friendly Societies Act of 1896 of England.

**Object.**—The rule framed under the old Act of 1912 allowed the Registrar, or even an arbitrator, a liquidator or auditor to levy a penalty not exceeding Rs. 50 on any person who disobeyed certain orders passed by him. ( See rule 38 of the Bombay Co-operative Societies Rules, 1918 ). The provision such as is made in this section did not find a place in the old Act of 1912 probably because the movement was then in infancy and the societies were small and few and it was possible for the Registrar to be in direct touch with most of them. Now that the number of societies has grown there is much less control and sometimes it is found that the rules and by-laws are disregarded with impunity. There are several provisions in the rules and in the by-laws enjoining on the office-bearers the doing of certain things. If these officers do the things which they are not allowed to do under the Act or do not do the things which they are bound to do, they have got to be brought to account. Under the old Act of 1912 if the Chairman or the Managing Committee members did anything objectionable nothing could be done against them unless they had committed some offence which brought them under the Penal Code. This had a demoralising effect on the societies because other societies tried to imitate them. It is provided in s. 22 that the auditor will exercise certain powers. These powers will be absolutely useless if he could not enforce them under a penalty. As has been stated elsewhere there was no provision in the Co-operative Societies Act of 1912 to deal with offences of certain nature. The Indian Penal Code had to be resorted to under the circumstances. It was considered but fair to provide in the Co-operative Act some measures

against the offences as is done in the case of the Indian Companies Act or the Friendly Societies Act of England.—*See the Proceedings of Bombay Provincial Co-operative Conference, 1919.*

**Safeguards.**—It will be noted that good care is taken to provide the necessary safe-guards. In sub-section (a) the words “without any reasonable excuse” are introduced. In sub-clauses (b) and (c) the word “wilfully” is introduced. In sub-clause (d) the words “wilfully or without any reasonable excuse” are introduced. For a prosecution sanction of the Registrar is required. He is to give his sanction after hearing the parties (s. 63). The power to try an offence is given to only a First Class Magistrate or a Presidency Magistrate (s. 63). The offence is to be considered as a non-cognizable one (s. 63).—*Bombay Legislative Council Debates, 25th July 1925.*

**(a) Default by Society, Officer or Member.**—If we compare societies in this country with societies in Europe, the one main defect is that the members of Managing Committee are very often not under the control of their members. In France, Belgium and everywhere in Europe, Managing Committees have always got to be afraid of public opinion, and of opinion of their members. Here very often the society goes bad, not because the generality of its members are bad, but because its Chairman or Secretary is bad. If Chairman is allowed to take a certain amount as loan very often he takes more. He is not allowed to advance to a non-member. He cannot advance to his own wife or or his son but he advances to them. In such cases the only remedy under the old Act of 1912 was to punish the whole body of the society and not the Chairman or the Secretary or the members of the Managing Committee who are at fault. Clause (a) of s. 60 was considered to be too sweeping a punishment considering the slow growth of the movement and the very large number of poor uneducated and illiterate people that were coming in. Therefore, such strict punishment was thought not only a warning but a threat which should be held against those who were really intelligent and capable people. The objection is that poor illiterate people who really run away at the sight of the officers of the co-operative department will be hauled up into courts as defaulting office-bearers.—*Thirteenth Bombay Provincial Co-operative Conference, 1924.*

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

Penalty for offences not otherwise provided for.

#### Commentary.

**History.**—This section is new.

**Object.**—Law cannot be respected unless the breach thereof can be adequately punished. Law, therefore, always provides what are known as sanctions and this section provides for five different offences and prescribes fine upto Rs. 50/- for the commission of any of them.

**Scope.**—It should be read along with s. 63 which states that an offence under this Act should be tried only by a Presidency Magistrate (in Presidency Towns) or by a Magistrate of the First Class (in places outside the Presidency Town, *i. e.* Bombay) and that the previous sanction of the Registrar (who is to grant such sanction after hearing the parties), for launching a prosecution is necessary (See notes to s. 63 at pp. 237-88 *infra*).

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

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

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

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

**Commentary.**

**History.**—This section corresponds s. 47 of the Co-operative Societies Act, 1912 (See Appendix B for Act II of 1912).

**Object.**—The Co-operative movement in the Bombay Presidency commands the support of nearly 585000 members, and makes use of Rs. 100000000 of savings, provided in the main by the cultivating and the working people of moderate means. The business turn-over by the various societies comes to a very large amount and it is their wish to acknowledge that the co-operative movement has a right to that title. In recent years there had been a variety of spurious co-operative organisations which had exploited the word “co-operative” because of the good reputation which the real co-operative movement had gained and the object of this section is to provide protection for the *bona fide* movement and the public. The proviso to cl. (1) allows the society which already used the word “co-operative” to retain it. A list of such societies is published (see Handbook of Co-operation for Societies in Bombay and Sind by the writer). The prohibition was confined to societies which had not come into existence at the time of the passing of the Act. In this form this section is not so much an advantage to the co-operative movement as a protection to the public. The section puts a clog on dishonest practices. Co-operative societies are regarded as a great incentive to thrift and as a healthy element in the national life. It was here that the section might be used as a tyrannical measure and would set up a monopoly and a privilege. It has to be guarded that private traders, and shop keepers were not injured by monopolistic Acts of Legislature and placed at a disadvantage. The section provides that no society should after the commencement of the Act be registered with a name or adopt a name which contained the word “co-operative” or its vernacular equivalent. Co-operative societies paid no taxation on their profits as provided by s. 33 and in this respect they are in a privileged position as compared with limited liability companies and private traders, though an individual member of a society has to pay income-tax if he is liable for it. This section is intended to put an end to the use of the word “co-operative” by bogus concerns, whose task it is to mislead the public. Its effect is to lead to an extension of co-

operative movement—[See also the discussion in the House of Commons on the *Industrial and Provident Societies (Amendment) Bill, 6th December 1929*]. The interests of private traders have also to be guarded. It was felt that the more influential and powerful co-operative societies became, the larger was the sum that fell to be borne by their competitors for income-tax, because the societies were not bearing therein full the charges which fell on other creditors. This section does not alter the character or privileges of co-operative societies but merely endeavours to carry out the original intention of the Legislature. Experience had shown that there was a fraudulent type of business that the legislature obviously did not desire to protect. The only purpose of the co-operative movement and of this section is to avoid that fraudulent type of society.

**Notes.**—If any member of any society notices any shop or bank carrying on business under a name of which the word "co-operative" forms part without the sanction of Government or which is not registered under the Co-operative Societies Act, it is his duty in the interests of the co-operative movement to report it to the Registrar for such action as the Registrar may deem fit. The provision does not apply to some societies, which were using the term "co-operative" as part of their trade name before March 1st 1912. (See the Handbook of Co operation for Societies in Bombay and Sind by the writer).

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

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

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

#### Commentary.

**History.**—This section is new.

**Object.**—Lest village feuds and factions lead to frivolous or vexatious prosecutions this section forbids a prosecution under

this Act without the sanction of the Registrar, which shall not be given except after hearing the parties concerned.

**Procedure.**—A Police Officer cannot arrest a person for an offence ( which is deemed non-cognizable ) under this Act without a warrant. No court inferior to that of the Presidency Magistrate in a Presidency Town ( i. e. Bombay ) shall try an offence under this Act. Outside the Bombay town it is only a Magistrate of the First Class who can try such an offence. The Magistrate should issue a summons in the first instance. If he is empowered to try cases summarily, he may try an offence under this Act ( i. e. an offence falling under s. 61 of this Act ) in a summary way. ( s. 260, Criminal Procedure Code, 1898 ). The offence is bailable and non-compoundable. An offence under s. 61 of this Act is punishable with fine only, but a Magistrate while sentencing the offender to a fine may direct, that in default of payment of the fine the offender should suffer simple imprisonment ( s. 54, Indian Penal Code, 1860 ) to a term not exceeding two months ( ss. 40, 67, Indian Penal Code, 1860 ). If the offender is sentenced to pay a fine the Magistrate passing the sentence may issue a warrant for its recovery by attachment and sale of the moveable property of the offender or he may issue a warrant through the Collector to realise the amount through civil Court by starting execution proceedings against the moveable or immoveable property of the offender ( s. 386 Criminal Procedure Code, 1898 ).

#### *Appeals and Revision.*

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

#### **Commentary.**

**History.**—This section was added at the instance of the Select Committee. It was thought desirable to provide for appeals against the orders of the Registrar in the Act itself.—*See Report of the Select Committee.*

**64A.** The Government and the Registrar may call for and examine the record of any inquiry or the proceedings of any officer subordinate to them for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings

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

of such officer. If in any case, it shall appear to the Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed the Government or the Registrar, as the case may be, may pass such order thereon as to it or him may seem fit.

#### Commentary.

**History.**—This section is new.

**Object.**—In the case of the Land Revenue Code, the Collectors have power to examine the record of inquiries and proceedings of Assistant Collectors, or Deputy Collectors and Mamlatdars. It was thought necessary that the Registrar and the Government should have this power of calling for records and revising the orders of a subordinate officer if the orders are unfair. This power is necessary if the superior officers are to be held responsible for the work done by their subordinates.—*Bombay Legislative Council Debates, 25th July 1925.*

**Officer subordinate to Registrar or Government.**—The chairman of a bank or a secretary is not an officer subordinate to Government or to the Registrar. Officers of societies are not subordinate to Registrar.

**As regards liquidators** their orders are subject to the sanction of the Registrar.

**As regards arbitrators** their decisions are subject to appeals and, therefore, they come in as subordinate officers.—*Bombay Legislative Council Debates, 25th July 1925.*

#### Miscellaneous

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

(2) Sums due from a society to Government and recoverable under sub-section (1) may be recovered,



firstly, from the property of the society; secondly in the case of a society of which the liability of the members is limited, from the members or past members subject to the limit of their liability; and, thirdly in the case of other societies, from the members or past members.

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

### Commentary.

**History.**—(Cf. s. 26 of Credit Societies Act, 1904 and s. 44 of the Co-operative Societies Act of 1912, see Appendix B).

**History.**—The Government of India by their resolution No. I—63.3 dated the 29th April 1904 had decided to grant financial assistance to new societies with a view to encourage the movement. The loans were to be made free of interest for the first three years and were made recoverable afterwards by annual instalments. It appears that originally s. 26 of the Co-operative Credit Societies Act of 1904 which corresponds to this section referred to these loans. The Agriculturists' Loans Act was passed in 1884 and the rules governing the recovery of *Tagavi* loans seem to have been made applicable to the loans granted to societies by Government. Though loans to credit societies in the Bombay Presidency and Sind have now been stopped, yet exceptions are made in some cases and loans are still being granted to credit societies among depressed classes and criminal tribes recently settled. Loans by Government are also advanced to Industrial Productive Societies (including Dairy Societies) and also to Weavers' Societies and Co-operative Pump Societies and Co-operative Housing Societies. Evidently this section applies to the recovery of all such loans advanced by Government. The costs of audit by Government auditor can be recovered under this section. Rules Nos. 29, 30 and 31 (2) make provision for such recovery.

**The arrears of land revenue.**—See notes to s. 59 *ante*.

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

Power to exempt societies from conditions as to registration.

**Commentary.**

**History.**—This section corresponds to s. 45 of the Co-operative Societies Act, 1912. (See Appendix B).

This section enables Government to allow a society to be registered with such modifications in the conditions of registration imposed by this Act as it may deem proper. After the registration the society becomes a corporate body and enjoys all the concessions and privileges bestowed upon co-operative societies registered under the Act.

A provision enabling Government to modify any of the requirements of the Act as to registration are explained in the Government of India Resolution No. 1-63-3 dated 29th April 1904, paragraph 25 thus:—

“It was impossible to frame any set of general provisions which should cover all conceivable forms in which the principle of co-operation might usefully be applied for the benefit of small folk in India. For instance, the institution called Dharamgola that has been started in several villages of the Dinajpur District is one which is entirely deserving of encouragement, its objects being precisely the objects which it is desired to promote, and yet it would be difficult or impossible to bring it under the provisions of the Act. Another consideration presented itself. It was recognised that, in dealing with many disputed points of great difficulty and regarding which there was little or no experience to guide the Legislature, it was impossible to provide for all eventualities; and that, however, generally suitable the specific provisions of the Act might be there might well be special circumstances and conditions to which they were unsuited. A general section has, therefore, been added which provides that the Local Government may, by special order in each case, permit any association whatever to be registered as a society under the Act, and may exempt any society thus specially registered from any of its provisions, or may modify any of those provisions in their application to any such society. The position, therefore, stands as follows. In the body of the Act have been included those provisions which it is believed will be suitable to the type of co-operative societies that is most likely to come into existence in this country, and these provisions will constitute the normal law, which will apply of its own force to these societies in general. But a Local Government will have an absolutely free hand to depart from or vary them, on condition only that it does so by special order in each case, and after full consideration of the circumstances which justify the departure. Of course it is intended that this power should be exercised only on behalf of societies the aims of which are consonant with the objects which the Act is intended to promote.”

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

Power to exempt societies from provisions of Act.

**Commentary.**

**History.**—This section corresponds to s. 49 of the Co-operative Societies Act, 1912. (See Appendix B).

**Object.**—Since the co-operative movement is still in its infancy and unexpected problems sometimes still present themselves for settlement and decision, this provision is essential though hardly ever resorted to.

**Scope.**—This section applies to societies which have been explained in the Government of India Resolution para. 25 of 1904. (See the extract of the Resolution quoted in s. 66 *supra* at p. 291) Under this section central banks may be allowed to raise sufficient share capital where difficulty is experienced under the ordinary provisions of the Act. (*The Committee on Co-operation in India, 1915.*) The power under this section may be used in exempting any registered society from the exemption as to Income-tax (s. 33). In case for instance, where a central bank puts profit-making before its real object of facilitating the working of co-operative societies or if a society deals with non-members, or limits unduly the number of its members. The Sanikatta salt workers' society is an instance in point.

**Notes.**—The Government is empowered under this section to modify the restriction as to residence in section 7.

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

Indian Companies Act not to apply.

**Commentary.**

**Old law.**—This is s. 48 of the Act II of 1912 (See Appendix B).

It has to be remembered that co-operative societies are companies which would ordinarily come under the ordinary company law of the land and in fact prior to 1904 co-operative societies would not be organised under any legal form except under the Indian Companies Act. They could not obtain the same legal status and privileges as commercial companies without submitting to the restrictions generally considered necessary for their proper control. The societies based their claim to exemption from the Companies Act on the ground that their object is not the acquisition of gain by way of profit for themselves or their members. The Government of India in their introductory resolution no. 1-63-3 dated 29-4-1904 explained that "the elaborate provisions of the Companies Act however necessary in the case of combinations of capital on a large scale are wholly unsuited to societies of the kind it is desired to encourage. The first thing to be done, therefore, is to take such society out of the operation of the general law ( Company Law ) on the subject and to substitute provisions specially adopted to their constitution and objects. The resolution went on: "it was desirable to confer upon them special privileges and facilities, in order to encourage their formation and assist their operation." Since the societies were to enjoy exemption from the general law ( Company Law ) and facilities of a special nature, it was necessary to take such precautions as might be needed in order to prevent speculators and capitalists from availing themselves under colourable pretences of privileges which were not intended for them. The object of the measure as stated by Government of India in 1904 was to provide the requisite legal basis for the establishment in India of co-operative credit societies. Legislation was called for not only in order to lay down the fundamental conditions which must be observed but also with a view to giving such society a corporate existence without resort to the elaborate provisions of the Companies Act. The Government of India in their Circular No. 13-C dated 9-3-1912 stated that the bulk of the non-credit societies recognised by the law of 1912 were placed on a footing similar to that of joint-stock companies and it would be necessary in practice to see that the Act

was not utilised for the benefit of societies which were not really of a co-operative character.

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

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

### Commentary.

**Object.**—Since societies or members thereof are compelled to have their disputes touching the business of the societies settled by arbitration (s. 54) provision is also made against a non-member recklessly driving a society or its officers into unnecessary civil litigation, by making it compulsory to give two months' previous notice. The object of the notice required by this section is

to give the Registrar an opportunity of making amends or settling the claim, if so advised, without litigation.

**Analogous law.**—S. 80 of the Code of Civil Procedure, 1908, provides for a two months' previous notice to the Secretary of State (may be given to the Collector) and the public officer against whom a suit is contemplated for an act done by them in their official capacity.

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

Rules.

#### Commentary.

**Object.**—As the co-operative movement is in its infancy the Act is necessarily required to be made as suitable as possible and, therefore, much is to be left to the usual rule-making power of Government for the purpose of supplementing the detailed rules of the administration of the department. There is another good reason why, in the case of a statute dealing with a movement in its infancy all these matters of administrative details should be left to be regulated by rules made under the Act instead of trying to incorporate all of them into the Act. It is not quite easy to amend, alter or add to any piece of legislation once enacted within a short time after the date of its enactment. Legislation is necessarily a tardy process and a number of formalities have to be rigidly observed before existing legislation may be abrogated, altered or amended.

Under s 71, therefore, Government are empowered to make rules which they may consider necessary to carry out the purposes of the Act. The rules, however, should always be *intra vires* of the Act, *i.e.*, within the purposes of the Act and they can have the force of law only after previous publication in the *Bombay Government Gazette* and after they are laid on the table of the Bombay Legislative Council for one month previous to the next session of the said council. They are liable to be rescinded or modified by a resolution of the said Council. If no such resolution is brought at the said session, the rules shall have the force of law after the prescribed period is over.

**'In order to carry out the purposes of the Act.'**—The Act indicates that co-operative societies are intended for the promotion of the economic interests of their members, (s. 5) the government have, therefore, issued a rule (46) prohibiting societies from taking part in controversial matters of a religious character because it is thought that Government should exercise its power to prevent any misuse of the co-operative organisation to further religious or political aims.

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

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

**Commentary.**

[*Cf.* s. 43 (2) (a) of the Co-operative Societies Act, 1912, Appendix B]. The Government of Bombay have not made any rules prescribing the maximum number of shares or portion of the capital of the society which may be held by a member. But see notes under s. 6 of the Act which places certain restrictions on share capital etc.

Rules in the case of unlimited liability society may be necessary to preserve the benefits of the society for persons of limited means and to deter persons of ample means from securing any undue share of influence. But no such contingency, is likely to occur as s. 18 of the Bombay Act provides for the rule of one man one vote.

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

**Commentary.**

[*Cf.* s. 43 (2) (b) of the Co-operative Societies Act, 1912].

The Government of Bombay have prescribed a form to be used in making an application for registration ( see Schedule A to Appendix A ) the main requirements of which are :—

(1) The name of the proposed society. [See note to s. 71 (2) (c) *infra*.] (2) Address to be registered (see notes to s. 20). (3) Kind

of liability whether limited or unlimited. (see notes to s. 5 pp. 54-64). (4) Area of operations. (see notes to s. 7). (5) Objects of the society. [See notes to s. 71 (2) (c)]. (6) In the case of societies with share capital the number and value of shares which it is proposed to issue. (7) The amount of the capital which it is proposed to raise by loan or deposit in cases of societies without share capital. (8) Language in which the books and accounts will be kept.

Other details that are required in this Presidency are contained in the by-laws which accompany the application. The application is required to be signed by the applicants who must not be less than ten in number. (see notes to s. 9). S. 9 (3) requires a copy of the proposed by-laws to be submitted, but rule 2 (2) requires 2 more copies of the proposed by-laws to be sent, one of which is returned certified as duly registered (see notes to s. 10). The Registrar issues a certificate of registration (*cf.* s. 11) to the society. Rule 3 prescribes that in case of refusal to register the Registrar should communicate his reasons to the applicants.

The Committee on Co-operation, 1915, thought that the existence of faulty societies was generally due to hasty registration and insisted on making full enquiry into all applications. The Committee insisted on getting a full report from the organiser of societies specially with regard to the following particulars, *viz.*, (1) whether the proposed members have really assimilated the principles of co-operation; (2) whether they appear to be too involved in debt to make a society successful (and for this purpose a statement showing, though not in great detail, the assets and liabilities of intending members should be submitted); (3) whether adequate working capital is available in the movement; (4) whether the applicants are men of good character, and the village as a whole free from the taint of litigiousness; (5) whether means are at hand to provide for the necessary supervision of the society when formed. Enquiry should also be made as to the suitability of the proposed secretary and committee.—*Para 29 (ibid).*

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



298 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (c)

by-laws and the conditions to be satisfied prior to such making, alteration or abrogation ;

**Commentary.**

[Note.—S. 43 (c) of Act II of 1912 is reproduced in this clause]. N.B.—See notes to s. 8 under the head ‘by-laws’ at p. 15 *supra*.

**For the definition of by-laws** see s. 3 (a) at p. 13 *ante*. They correspond to the articles of association of companies [*cf.* definition of articles in s. 2 (1) *Indian Companies Act, 1913*.] The by-laws which include the objects (s. 5) completely define and restrict the society’s activities. The Act itself does not empower a society to make by-laws. It must have them before it is registered (s. 9) and it may amend them (s. 16). The Government of Bombay has by rules under this section empowered the societies to make by-laws.

**The conditions to be satisfied prior to the making of by-laws.**—The Registrar will not register the by-laws if they are contrary to the Act or to the rules (s. 10) or if the name is identical with that of an existing society. A society does not acquire privileges until it is registered (*i.e.* in *re.* stamp duty, income-tax, etc.) The Registrar should issue a certificate of registration when he registers the society and its by-laws (s. 11).

**If the Registrar refuses to register the by-laws** under s. 10 he shall communicate to the applicants his reasons for so doing. (Rule 3, Appendix A). S. 64 allows an appeal to Government within two months of the date of the communication of the order under s. 10 of this Act.

**For copies of by-laws to be sent along with application for registration** see Rule 2 (2) Appendix A and s. 9 (3) of this Act.

**Abrogate.**—Repeal, cancel.—*Oxford English Dictionary.*

**In order that by-laws of the society** should be legal and binding the procedure laid down in rules should be adopted.

**By-laws.**—In the Act itself no by-laws are prescribed. However it is presumed that the by-laws must prescribe (1) the area (2) tribe, class, caste or occupation (s. 7), the address (s. 20) and also that the object must be specified (s. 5). The Act itself does not confer upon a society power to make by-laws, it must

draft its by-laws, prior to registration [s. 9 (3)] and may amend these (s. 16). As the Registrar must approve them before registration he is practically given power to impose model by-laws, in addition to any prescribed by s. 71 (2) (c). Both the society and the by-laws require registration but while there may be re-registration of by-laws apart from the registry of the society the registry of the society must be of the society with by-laws. The Registrar ought to endorse the by-laws in token of registration. Every society should have a copy of its by-laws so endorsed. The by-laws are binding on a society as well as on the members. They form the contract between the society and its members and that contract can only be altered in the mode prescribed by the Act or rules. As between the society and its members a course of dealing at variance with the rules, for whatever length of time it may be pursued, acquiesced in, is of no validity whatever. Rule 4 insists on by-laws on matters dealing with certain important points such as the terms of admission, withdrawal and expulsion of members etc. while it leaves it to societies to make by-laws in respect of matters incidental to the management of its business. (See Appendix A for rules.)

**The name** must not be identical with that under which any other existing society is registered; or so nearly resembling that name as to be likely, in the opinion of the Registrar, to deceive the members of the public as to its nature or identity. The power of deciding as to the name lies with the Registrar subject to an appeal against his refusal to register to Government (s. 64). The name proposed should not be such as is likely to disguise its real character e.g. a society whose chief object is the creation of funds to be lent out to its members should not be allowed to bear a name resembling that of a store society. A society may by a resolution of a general meeting and with the approval of the Registrar, change its name but such change shall not affect any right or obligation of the society, or of any of its members, or past members, and any legal proceedings pending may be continued by or against the society under its new name. It being an amendment of a by-law the procedure laid down in rule 6 will have to be followed. This alteration moreover will have to be approved and registered by the Registrar. See also sub-rule (3) of rule 6 in Appendix A.

300 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (c)

**Address and the branches of the society.**—See notes to s. 20 at pp. 105–106 (*ante*).

**Tribe, class, caste or occupation of members.**—See notes to s. 7 (*ante*). By-laws in these respects must be made only if the membership is proposed to be so restricted. In case of dispute the Registrar's decision is final (s. 8).

**Area.**—See notes to s. 7. In case of dispute whether a person is a resident of a particular village etc. the Registrar's decision is final (s. 8).

**Object of the society** must be clearly and fully set forth. It has to be remembered that a society will be registered under this Act only when it has its object 'the promotion of the economic interests of its members in accordance with co-operative principles.'—(See notes to s. 5 at pp. 38–54 for a full discussion.)

**The purposes to which its funds are applicable.**—They must be in conformity with what is required to carry out the objects.

**The terms of admission of members.**—See notes to s. 71 (2) (d) and s. 17 at pp. 96–8 *supra*.

**Rights and liabilities of members.**—See notes to ss. 5 and 17.

**Consequences of default in payment of any sum due by a member.**—Unless there is a specific provision in by-laws no penalty can be levied against a member. The model by-laws of credit societies provide that in case the member who has taken a loan from a society and has passed a mortgage deed makes a default the borrower may be ejected from the property which is left in his possession. So also if a borrower does not pay the instalment on a due date he shall pay usual interest. The model by-laws of Co-operative Housing Societies provide that if a member fails to pay the amount of any call on a share within thirty days after notice thereof the committee may forfeit the share. The model by-laws of Land Mortgage Societies provide that if the member who had borrowed an amount from the society is in arrears in respect of any instalment, the whole outstanding loan becomes recoverable. Also that on an overdue instalment of principle usual interest should be levied at a certain rate.

**In the case of credit societies by-laws provide** (a) the conditions on which loans may be granted, and (b) the rate of

interest and (c) the system of calculation of interest and (d) the maximum number of members that may be admitted. [N.B.—See notes to s. 71 (2) (1) *infra*.]

(a) **The conditions on which loans may be granted** are some such as:—[N.B.—See notes under s. 71 (2) (1) ] Loan granted for a specific purpose is to be applied for that purpose. If misapplied the loan will be recalled with interest; that loans for current agricultural expenses are to be returned within one year; those granted for the purchase of cattle or implements, or for domestic expenses are to be returned within two or three years; that those for the payment of old debt or for land improvement are to be returned within five years. That two good sureties from amongst members or a mortgage of immoveable property must be given and that a bond is to be passed by the borrower. The loan to a member is not to exceed a certain amount. The loan is to be repayable in certain instalments. In the case of credit societies for salary earners: When a member takes a loan from the society he shall undertake not to resign service until his liability is discharged.

(b) **The rate of interest** has to be fixed because the object of a credit society (*unlimited*) is to lend out its funds to members at lowest rate consistent with a fair profit and at a moderate rate of interest in societies (*limited*); on reasonable terms (*salary earners limited society*). The general meeting has power to alter the rate (*salary earners*). It remains in force till another is fixed at an annual general meeting (*credit societies unlimited*). The sanction of Registrar is necessary for changing the rate (*model by-laws of unlimited liability societies for canal areas*).

(c) **The system of calculation of interest.**—Interest shall be calculated from the date of advance to the date of receipt, fractions of a month if less than 16 days being counted as half a month and if 16 days or over as a complete month (*model by-laws of credit societies unlimited*). In case of long term loans or for longer terms the rate may be more than the ordinary rate but in no case it shall be less than the ordinary rate. Lower rates are also allowed and Managing Committee with Registrar's approval are authorised to fix these rates. There is no provision for prohibiting compound interest. [ See notes under the head "interest" in s. 71 (2) (1) *infra*. ]

## 302 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (c)

(d) **The maximum number of members that may be admitted.**—[See notes under the head in s. 71 (2) (o) *infra*] Model by-laws of Unlimited Credit Societies, and Unlimited credit share societies for canal areas, state that the total number of members admitted to the society shall not exceed the number fixed without the permission of the Registrar. By-laws fixing the maximum number of members to be admitted must be made in case of credit societies. [See notes to s. 7 under the head 'size of societies' at p. 71 *supra*.]

Co-operation must be open to all but at the same time it has to be remembered that it is necessary to place some limit to the members in credit societies where mutual personal knowledge is essential. The rules prescribe that a credit society shall make a by-law in respect of the maximum number of members that may be admitted.

**The mode of conducting business, purchase, sale, stock-taking and like matters (non-credit societies).**—

The model by-laws of seed societies provide that the managing committee should purchase seed from the selected growers and from other approved sources and that the committee should make arrangements for cleaning, storage, and insurance of seed and for the transport of the same. Model by-laws of Store Societies provide that the committee should acquire a shop for the goods of the society; that it should examine the stock register and fix the selling price of all articles; that it should increase or reduce the selling price and that it should approve orders for fresh stock that may be required. Model by-laws of dairy societies state that the committee should arrange for the joint purchase on commission of feeding stuffs for animals; that they should arrange for the proper sale of milk and its products or for manufacturing cream, etc. and making them at profitable prices and that they should see that all bills are recovered punctually.

**The mode of holding meetings.**—See notes under cl. (f) of s. 71 (2) *infra*.

**The manner of making, altering and abrogating by-laws.**—Model by-laws generally provide: None of the by-laws herein contained shall be altered or rescinded and no by-law shall be added except by a vote of the majority, consisting of at least two-thirds of the members present at a general meeting,

convened for the purpose. The notice convening the meeting shall specify the proposed alteration, addition or rescission and shall be issued not less than 10 (some societies such as better living societies have 15 days) days prior to the meeting. The amendment shall not take effect until it has been approved by the Registrar." See notes to s. 16 at p. 94 *supra* also.

**The mode of appointment and removal of members of the committee and of the officers, if any, and the duties and powers of the committee and officers.**—See notes to s. 71 (2) (g) *infra*.

**The manner in which capital may be raised.**—See notes under s. 71 (2) (x) *infra*.

**The mode of custody and investment of funds.**—See notes to s. 37 at p. 198-201 (*ante*).

**The mode of keeping of accounts.**—See notes to s. 71 (2) (h) below.

**The mode of distribution of its profits.**—See notes to s. 71 (2) (p) below.

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

#### Commentary.

**History.**—This clause is the same as s. 43 (2) (d) of Act II of 1912. ( see Appendix B ).

**Condition of admission.**—The principle of free admission to a co-operative society for all willing to join is characteristic; therefore, it is necessary that a society should state clearly the terms of admission of members, entrance fees minimum age, and other qualifications. The Government of Bombay has not framed any rules in this matter but rule 4 makes it compulsory for a society to make by-laws regarding the terms of admission of members and their rights and liabilities, the consequences of default in payment of any sum due by a member. [See notes to s. 71 (2) (o) (*infra*). See also ss. 3, 7, 17, 19 and notes thereunder.]

### 304 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (d)

As only members can hold shares, the Government can prescribe conditions relating to share-holders, *e.g.* that they must be over 18 years of age. But no rule has been framed by the Government of Bombay in this matter. So also no rules are framed regarding the admission of members so as to restrict the transfer of shares has been made as yet.

**Minors.**—The Act does not confine membership to persons above the age of 18 years. This matter is left to the by-laws. The sixth Conférence of Registrars considered that minors should not necessarily be debarred from becoming members of societies when they were heirs of deceased members (s. 27). The admission of minors is not illegal but is considered objectionable on obvious grounds. They cannot be held bound by any rule of unconditional adherence and generally they are a source of weakness to the society. They cannot infer unlimited liability and liability cannot be enforced upon them even on winding up whether the society be limited or unlimited.

**Women** are not excluded by any rules or by-laws but the unlimited liability of a woman especially a married woman or widow under the customary law is considered to be of doubtful value and it is suggested that societies should be cautious in admitting them. In the limited liability society with fully paid up shares no difficulty is likely to arise and women may be admitted as members.

The Registrar emphasized the desirability of getting women in as members and also to some extent on the managing committees of Bhil Societies on the ground that among the Bhis a healthy equality on the whole existed among the sexes and that women hold the purse strings and control the household affairs.

**Persons mentally disabled** cannot enter into a contract and they ought, therefore, be excluded. The model by-laws generally provide that a member may be expelled from a society on the ground that he is bankrupt or legally disabled or is criminally convicted.

**Exclusion, etc.**—A society has power to frame by-laws imposing any stipulations that do not involve a direct illegality. It may impose, for example, the profession of a particular religion. Model by-laws generally state that a certain number of adverse votes may be sufficient to exclude an applicant from membership.

No reasons need be assigned for the rejection of a candidate in this manner. Power in this direction is necessary to provide for a case where a candidate may have all the statutory qualifications and yet may have certain feelings of temperament or intellect which it would be difficult and always undesirable to formulate. It need not be stated that the members of a co-operative society registered under the Act are bound by the Act, the rules and the by-laws framed under the rules and Act. Rule 45 provides for the prohibition of membership of a person of two societies with unlimited liability.

**Indebtedness.**—Full disclosure of existing debt should be regarded as necessary preliminary to admission. The Government of India remarked that until a member has been freed from outside debts, a society is not performing its full functions but it is a counsel of perfection to expect that no one shall be admitted as a member unless and until his outside debts have been paid off. There are, of course, extreme cases in which a man is so indebted that there is no hope of his debts ever being cleared off and in such a case the proper course is to refuse him admission to the society. The unlimited liability of a man whose financial position is so embarrassed as to make his extrication hopeless is of no value. The Registrar has suggested that wherever possible it should be made a condition of membership and resolved in a general meeting that no member should borrow any loan from outside after admission except with the permission or at any rate of the knowledge of the managing committee.

**A Joint-stock company should be prohibited** from being a member of a society without the permission of the Registrar. It cannot have a proxy and cannot attend a general meeting.

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

**Commentary.**

**Old law.**—This corresponds to s. 43 (n) of the Co-operative Societies Act, 1912. ( see Appendix B for the Act ).

See notes to s. 27 (*supra*). No rules have been framed by the Government providing for calculating the value of a deceased member's share or interest in a society. It is always safe to



### 306 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (e)

calculate such value or interest after the examination of the annual balance sheet.

**Share or interest** will not necessarily mean the face value of the share but its intrinsic worth and value at the time. In some types of societies to avoid disputes provision is made giving the society option to take back the share at the face value or the market value. If this is not done in the case of loss it may not be possible to pay the full value to the heirs.

Model by-laws for share society with unlimited liability provide that on the death of a member the amount standing to his credit shall, subject to deduction on account of all sums due from him to the society be paid to his heir nominated by him, etc.

Model by-laws further state that on the death of a member the amount standing to his credit by way of shares or dividends, shall subject to deductions on account of his liability, be paid to his heir nominated by him, etc. (*Consumers' Society and Credit Societies with limited liability.*) Model by-laws of Credit societies for salary earners provide that on death of a member the amount standing to his credit by way of shares or dividends or subscriptions shall subject to deductions on account of his liabilities be paid to his heir nominated by him. Model by-laws of Housing societies provide as follows:—"On receiving a satisfactory proof of death of a nominator the society may transfer the share or interest of the nominator to the person duly nominated or if there is no person so nominated to such person as may appear to the Committee to be the heir or legal representative of the nominator or pay to such nominee, heir or legal representative a sum representing the value of such nominator's share or interest as ascertained in accordance with the rules or by-laws after deducting all sums due to the society from the nominator. Provided that the society shall transfer the share or interest of the nominator to such nominee, heir or legal representative as the case may be being qualified in accordance with the rules and the by-laws for membership of the society or on his application within one month of the death of the nominator to any person specified in the application who is so qualified. (2) The society may pay all other moneys due to the nominator from the society to such nominee, heir or legal representative as the case may be. (3) All transfers and payments made by the society in accordance with this by-law shall be valid and effectual against any demand made upon the society by any other person. Model by-laws of Land Mortgage society provide that any member of the society may by writing under his hand deposited with the society nominate any person (other than a servant or officer of the society) to whom the whole or any part of his interest in the society should be transferred in the event of his death, provided that such person is the legal heir to the land on the security of which a loan has been made to the member. A fee of four annas will be charged for recording such nomina-

tions and any subsequent revocation or variation. In the event of no such nomination having been made, payment shall be made to such person as may appear to the Board to be the heir or representative of the deceased, provided that such person is also the legal heir to the estate on the security of which a loan was made by the society to the deceased member. Model by-laws of Producers' societies provide that on the death of a member the amount standing to his credit shall be paid to his heir nominated by him, or in the absence of such a nominee to such person as may appear to the Committee to be entitled to receive the amount as heir or legal representative of the deceased member on his executing a deed of indemnity to the society.

**Note**—In view of cl. (3) to s. 27 which protects the society from litigation a deed of indemnity to the society seems unnecessary.

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

**Commentary.**

**History.**—This is same as s. 43 (2) (f) of Act II of 1912. (Appendix B). Act II of 1912 did not make any provision for general meetings or special meetings. The matter was left to rules and by-laws. S. 12 of this Act makes provision for the general meeting of its members. S. 13 provides for a special general meeting. A general meeting shall be called at the conclusion of the liquidation probably by the liquidator. [Rule 38 (9).] For the procedure to be followed, see notes to ss. 12 and 13 at pp. 87-91 *ante*.

**Powers of general or special meeting.**—(1) By a resolution of a general meeting a society may change its name (s. 14). Any two or more societies may amalgamate as a single society by a resolution at a special general meeting (s. 15). (3) Amendment of by-laws shall be valid only when approved by a general meeting (s. 16). This is to be decided not by a simple majority but by two-thirds of the members present (rule 6). (4) The surplus assets of a cancelled society may be devoted to some object of public utility determined by the general meeting of the society (s. 52). (5) Bad debts may be written off against the reserve fund with the sanction of a general meeting (Rule 12). (6) The assets of a Housing society shall vest for the purposes of winding up or dissolution, in three persons, one of whom is to be nominated by the general meeting of the society (s. 53). (7) The maximum liability which a society with unlimited liability may incur in,

### 308 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (f)

loans and deposits from non-members shall be fixed in a general meeting (Rule 7). (8) A member may be expelled from the society by the general meeting (this can be done by a vote of not less than two thirds of the members present at such meeting in unlimited credit societies). A society must make by-laws providing for the mode of holding meetings. [Rule 4 (c)].

**Model by-laws** provide for the following:—(1) *Supreme authority* shall be vested in the general meeting which is probably held in April every year. (2) *Notice* of all general meetings must be issued by the Secretary. In most of the model by-laws it is provided that in the case of annual general meeting ten days notice and in the case of a special general meeting five days' notice should be given. (3) *The date, hour and place* fixed for the holding of the meeting should be specified and also the *nature of the business to be transacted* in the meeting should be stated. (4) *The President* shall be elected by the members present at all general meetings. He is responsible for seeing that the business is conducted in an orderly manner. (5) *Quorum*.—Model by-laws generally provide that three-fifths of the total number of members or 25 members, whichever be less, shall form a quorum at any general meeting. (6) *Adjournments*.—If on the day of the meeting there is no quorum or if all business is not completed, the consideration of the remainder of the business may be abandoned or adjourned to another day. If on the day to which the meeting is adjourned no quorum is obtained the business shall be disposed of without one. (7) *Voting*.—Each member present shall be entitled to attend and exercise one vote. The President shall have a casting vote in addition to his ordinary vote. For voting by proxy, see notes under the head "Voting by proxy" at p. 100 *ante*. (8) *Record of proceedings*.—The proceedings of general meetings shall be recorded in a minute book. All business discussed or decided at a general meeting shall be recorded in a proceedings book which shall be signed by the Chairman of the meeting (*Better living societies*). (for details see Handbook of Co-operation for Societies in Bombay and Sind by the writer.)

**The duties of Annual general meeting:**—(a) To elect a President of the meeting. (b) To elect a Managing Committee, to appoint a Secretary and any other officers, required for the ensuing year and to fix their remuneration. (c) To fix the limit upto which capital may be raised by the committee. (d) To receive the balance sheet of the last year from the managing committee. (e) To consider any communications or audit memorandum received from the Registrar or his staff. (f) To consider any other business placed before it by the committee. (*Notes*.—The business transacted should be only such as directly and immediately relates to its objects as declared in the registered rules). (g) To consider any matter brought before it after due notice by a private member.

**Procedure.**—The President is responsible for seeing that the business is conducted in an orderly manner. Every name proposed for election should be duly proposed by one member and seconded by another. Votes may be taken

either by show of hands or by ballot and it is the business of the President to announce the result. Subjects such as placing the balance sheet, any communication or audit memorandum received from the Registrar or the auditor and other matters prepared by the managing committee should be laid before the meeting by the Secretary. They should then be open to discussion and if any member wishes to propose a resolution or alteration on any point he may do so and the President must put it to the vote. The Secretary should note the name of the proposer and seconder in the minutes, the substance of the discussion, the final resolution and the number voting *pro* and *con*. ( see also notes to pp. 87-91 *ante*. )

(g) provide for the appointment, suspension and removal of the members of the committee and other officers and for the procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the Committee and other officers ;

**Commentary.**

**Note.**—S.43(g) of Act II of 1912 is reproduced here. (Appendix B)(N.B. See notes to s.3 under the head 'Committee' at p.16 *supra*.)

**A Committee or the Managing Committee** is not prescribed in the Act. However, the Act assumes the existence of a managing committee. Otherwise there would not have been the reference to it in s. 27 and there would have been no necessity of defining a Committee in s. 3 (b). Rule 4 (d) made under s. 71 (g) directs that every society shall make by-laws providing for the mode of appointment and removal of members of the Committee and of the officers, if any, and the duties and powers of the Committee and officers. (See p. 3 of Appendix A, *infra*.)

**Election of a Committee.**—The committee is to be chosen from amongst the members who must continue to take practical interest in the business of the society, and who are expected to have an equal opportunity to serve. It may be, therefore, necessary to change the personnel frequently. It is the duty of the general meeting to elect a committee and to appoint a secretary. The committee is to be elected in general meetings. The committee must consist of not less than two members (*cf.* the remarks of the Committee on Co-operation under the head 'Management'.) where a registered society is a member it may elect a member to the committee of the larger body. Every name proposed for election should be duly proposed by one member and seconded by another. Votes may be taken either by show of hands or by ballot. The constitution being purely republican each man should have one vote and no more in the general meeting. The committee should elect its own Chairman unless

### 310 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (g)

otherwise provided for in by-laws (*Credit societies with limited liability.*) When present he should preside at all committee meetings. When he is absent the members present may elect a Chairman from among themselves. The Chairman is entitled to a casting vote in addition to his ordinary vote.

Illiteracy in itself is not a disqualification but the committeemen should as far as possible be literate people. It should be noted that in the case of agricultural co-operative credit societies which form the bulk of the societies, the accounts cannot be maintained without an educated secretary. Moreover, the Chairman and at least one member of the Committee should also be able to read and write in order to keep an effective control on the Secretary. But it should always be remembered that in the committee character and unity of purpose is of more importance than educational acquirements.

**Management.**—The committee on the establishment of co-operative credit societies in India in 1901 wrote:—"Experience in England, Italy and Germany has shown that the success or failure of any co-operative society must depend in great measure on the manner in which the members to whom the management and supervision are immediately entrusted, carry out their duties. The question of management is, therefore, one of vital importance."

"Management should be in the hands of a committee, of not less than three members of the association, who should be elected by a majority of the members, and it is desirable that a certain proportion of the committee members should retire in rotation each year. Persons who come under certain disqualifications such as bankruptcy, should cease to be members of the committee. The officers of the society should be appointed by the committee and should, if possible, be members of the association. The services of the committee should in all cases be gratuitous. Officers of the association, who are not members of the committee might if the state of the funds permitted, be granted honoraria out of profits by a resolution of a general meeting of the association." The Managing Committee should work as a committee. It should do its work regularly and as a whole and that it should not hand over its responsibilities to one or two active men. At the same time it should be remembered that the ultimate authority should never be delegated to the office-bearers but should be retained in the hands of the members or in other words the committee should not be placed beyond the control of the general meeting ( *See the Report of the Committee on Co-operation 1915* ). The Managing Committee may dispose of its business more informally than the general meeting; but here again a quorum is necessary and a Chairman should be elected who is responsible for seeing that all questions are properly discussed and voted upon. The decisions of the Committee should be fully recorded by the Secretary in a separate minute book and he should see that no important point on which a decision is required is overlooked. For instance, in sanctioning a loan the committee must decide (a) amount of loan, (b) purpose of loan, (c) nature of security or names of sureties, (d) the period of repayment. The Chairman and the Secretary should sign the minute book which should contain the names of all committeemen present.

**The Committee exercises powers of the society with certain limitations:**  
 —The Committee derives its power from the society and along with the society it is bound by the Act and the rules framed thereunder. The Committee exercises all the powers of the society except those reserved for a general meeting subject to any regulations or restrictions duly laid down by the society in general meeting or in the by-laws. The by-laws provide for this. ( *cf.* model by laws of credit societies with unlimited as well as limited liability and of other societies also ).

**Committee to exercise prudence and diligence of ordinary men of business:**—Model by-laws generally provide that in the conduct of the affairs of the society the Committee has to exercise the prudence and diligence of ordinary men of business. The Committee is responsible for any loss sustained through acts contrary to the law, the notified rules and the by-laws (model by-laws for credit societies for salary earners provide that the Committee shall be liable jointly and severally for any loss befalling the society on account of any loan or instalment which has been over-due for more than six months without its permission, unless in that period a suit has been filed or the case referred to arbitration) and the society can take action against the Committee in arbitration under s. 54 and the money may be recovered through Civil Court on a certificate from the Registrar or as provided by the law and the rules in force for the recovery of arrears of land revenue (s. 59). see notes to pp. 275-81 *ante*.

**Responsibility of the Committee:**—Any act which is beyond the objects specified in the by-laws is *ultra vires* and void and if performed by the Committee or any office-bearer is not binding on the members. If thereby any loss is incurred the official responsible is personally liable. As between the society and its members a course of dealings at variance with the rules, for whatever length of time it may be pursued and acquiesced in, is of no validity whatever.

**Acts of the Committee are valid:**—As regards third parties the society seems to be bound by the acts of the Committee and model by-laws generally provide: " All acts done by the Committee or by any person acting as a member of the Committee shall notwithstanding that it is afterwards discovered that there was some defect in the appointment of such committee or person, be valid, as if, the Committee or every such person, had been duly appointed."

**Powers and duties:**—As laid down in model by-laws in the Bombay Presidency the Managing Committee have the following powers and duties:-

(1) To observe in all their transactions the Act, the notified rules, and the by-laws; (2) to maintain true and accurate accounts of all money received and expended; (3) to keep a true account of the assets and liabilities of the society; (4) to keep a register of members corrected upto date; (5) to prepare and lay before the Annual General Meeting a profit and loss account and a balance sheet; (6) to examine the accounts and see that they are properly kept up, sanction contingent expenditure and supervise the maintenance of the prescribed registers. In the case of credit societies:—

### 312 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (g)

(a) to raise capital, (b) to sanction loans to members, (c) to watch over their recovery, and (d) to see that loans are applied to the purpose approved, (7) to consider the inspection notes of the Registrar and the Auditor and take necessary action, (8) to summon general meetings in accordance with by-laws; (9) to assist in the inspection of the books by any person authorised to see them, (10) to appoint, suspend or dismiss employees when authorised to do, (11) through any member or officer or employee of the society or any other person specially authorised to institute, conduct, defend, compromise, refer to arbitration or abandon legal proceedings by or against the society or committee or the officers or employees, (12) generally to carry on the business of the society. The committee cannot delegate powers to any one unless specially authorised to do so by general meeting or by-laws. For instance, model by-laws of Irrigation societies provide that the committee may delegate any of its powers to a sub-committee of its own members.

**Removal of a member of the Managing Committee :—**As has been stated elsewhere a committee is to be elected from amongst its members. It is therefore, needless to state that a committeeman may be removed for any of those reasons which are sufficient to expel a member from the society [See notes under s. 71 (y)]. A committeeman may be removed for any of the following reasons.—(1) If he acts contrary to the interests of co-operation. (2) If he carries on any business similar to that of the society. For instance, the object of credit society is to lend out funds to its members at a very moderate rate of interest. If a man does money-lending for his own benefit he is disqualified from being a member of the committee. (3) As laid down in the model by-laws of Irrigation societies :—(a) If he becomes bankrupt or compounds with his creditors, or (b) becomes of unsound mind or (c) is convicted of an offence, or (d) ceases to hold the necessary qualifications, or (e) absents himself from sufficient number of meetings of the committee without special leave or cause, or (f) is concerned in the profits of any contract made by the society. (4) Model by-laws of Better Living societies add :—(x) If he is sued in arbitration, or (y) absented himself from two-thirds of the committee meetings or more without showing adequate cause. (5) As laid down in model by-laws of Land Mortgage societies : If he commits default in respect of a loan taken by him through the society.

**A person is disqualified to act as a committeeman in the following cases :—**(1) Minors cannot incur unlimited liability. Moreover, liability cannot be enforced against them. They should, therefore, be excluded from a committee. But at the same time it should be remembered that except for the provision that at the time of registration of a society it must consist of at least ten persons above the age of eighteen years (s. 7). There is nothing in the Act or rules to show that their election is illegal. By-laws may be made to provide for the exclusion of minors, (2) persons who are legally or mentally disabled and lunatics cannot enter into a contract and, therefore, they should be held to be disqualified for election on the committee. (3)

Persons who are bankrupt are on the same grounds held to be unfit to serve on the committee. (4) Persons who are criminally convicted should not be elected as members. Character is the basis of everything. Therefore, no body who is of a bad character should be admitted. (5) Persons who do not hold the specified minimum number of shares as required by the by-laws are disqualified. Model by-laws of Labourers' and Artisans' societies (limited) provide that a member of the managing committee must own at least ten fully paid up shares. A committeeman must hold at least five fully paid up shares. (*Model by-laws of Housing Societies*) So also those who are members for a shorter period than is specified in by-laws are disqualified under by-laws. (6) It is an ordinary principle of law that a person who holds an office or place of profit under the society or one who carries on business cannot be a member of that committee. (7) The same principle as stated in clause (6) above applies in the case of near relatives, and, therefore, it is clear that one who has his near relatives such as the son or father employed by the society should not be allowed to be a member of the committee.

The Secretary should be chosen from amongst the members. He should be energetic, reliable and if possible experienced. It is very important that he should be literate. Otherwise he would not be able to keep the accounts (see notes under the head "Illiteracy at p. 310 *Supra*).

The duties of the Secretary vary according to the various types of societies. But the following are the most common :—(1) To summon and attend all meetings of the society and of the committee; (2) to record the proceedings of such meetings in a minute book; (3) to make disbursements and to receive payments under orders of the Managing Committee; (4) to have charge of the documents and other papers and to keep all accounts and registers required by the by-laws, to prepare all receipts (and to sign them along with a member of the managing committee—*Model by-laws of share societies with unlimited liability for canal areas etc.*) vouchers, balance sheets and other documents required for the transaction of the business of the society, to conduct correspondence, and to supply all needful information to the members. (5) In the case of Taluka Development Association in addition to the above he is to guide and supervise the work of the Association fieldman, etc. who is to work under the orders of the Secretary.

(h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance sheet showing the assets and liabilities of a society;

#### Commentary.

Old law.—This corresponds to s. 43 (2) (h) of Act II of 1912.



### 314 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (i)

It is essential that accounts should be well-written in order that a society may be placed in A class (very good). Societies which have reached A class have the first claim to enjoy all the financial and other facilities which the co-operative Department can provide.

**Accounts and books which every credit society is required to keep** are given in rule 14 (see Appendix A for rules.)

**Accounts and Returns.**—The submission of accounts and returns by societies is governed by rules (see rule 14 in Appendix A) under this section. The form of the returns to be prepared by societies depends mainly on the manner in which statistical information has, under the orders of the Government of India, to be supplied by Registrars to the public in their Annual Administration Reports. Orders on this point were issued by the Government of India on the recommendations of the first Conference of Registrars in 1906 when they prescribed the publication of information by districts showing the total figures for societies in the form of (a) a Receipt and Disbursement statement (b) a Profit and Loss statement and (c) a Balance sheet. The form of the returns was after consultation with conference of Registrars held in 1912, amended in 1913 in order to meet the conditions of the new Act, and to supply certain information needed by the International Institute of Agriculture in Rome.—*See Report of the Committee on Co-operation in India (1915).*

**Model forms** of registers, accounts and books with instructions as to how to fill them are given in the Handbook of Co-operation for Societies in Bombay and Sind by the writer.

**Periodical publication of a balance sheet** is provided for in rule 19 while rule 18 requires a financial statement from Central and Urban Banks.

**For Audit charges** see notes to s. 23 under the head "Audit Charges" at pp. 123-26 *supra*.

**Scale of Audit fees** is given in the Hand book of Co-operation for Societies in Bombay and Sind by the writer.

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

**Commentary.**

**Old law.**—This corresponds to s. 43 (i) of the Co-operative Societies Act, 1912. ( see Appendix B )

**For an annual balance sheet to be published** see rule 19 in Appendix A. So far as Central and Urban Banks are concerned see rule 18. Statements of periodical returns of receipts and disbursements to be submitted see rule 16 (*ibid*). For a property register to be submitted by Housing Societies see rule 17 (*ibid*).

**Notes.**—The returns should as far as possible be submitted by the societies themselves. The auditor should bear in mind the necessity of teaching secretaries how to fill up the annual returns. This will give the officers of the society some training in preparing and keeping accounts in a business manner. The returns are audited annually by the auditor. In case where they are allowed to be audited by the auditors other than those appointed by the Registrar the names of such auditors should be given.

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

**Commentary.**

This is s. 43 (j) of Act II of 1912 with a few additions. [ see Appendix B for the old Act. See also notes to s. 31 (*ante*). ]

“**Certified Copy**” means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.—S. 2(8). *Bankers Books Evidence Act, 1891*.

**Notes.**—Any officer of the society may certify copies of documents or entries in the books of a society (rule 15). They will be considered as admissible in evidence (s. 31). No rules have been made for the charges to be levied for the supply of certified copies of documents or entries in books of societies except an application for (1) registration (2) by-laws (3) amendment of by-laws (4)

### 316 The Bombay Co-operative Societies Act [ Sec. 71 (2) (k-1)

certification of registration (5) orders for cancellation of registration (6) audit memorandum (7) annual balance sheet. (*Rule 16 Appendix A*)

If a society is ordered to produce books by a Court or Judge for special cause, the society may apply for costs for such production.

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

#### Commentary.

**Old law.**—This clause corresponds to s. 43 (2) (k) of the Co-operative Societies Act, 1912. (See Appendix B for the old Act.)

Rule 14 provides that every credit society shall keep (a) a register of members including persons nominated under s. 27 and (b) a register of shares and debentures (where capital is raised by shares or debentures). The same rule provides that societies other than credit societies shall keep a register of members including persons nominated under s. 27. (See rule 14 in Appendix A.)

#### Commentary.

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

**Old law.**—This clause corresponds to s. 43 (2) (o) of Act II of 1912. (See Appendix B for the old Act).

[ See notes to s. 71 (2) (c) *supra* ].

**Loans by members of Managing Committee**—The natural tendency of the members of the Committee of Management is to appropriate the major portion of loans for themselves. An attempt has been made to repress this by fixing the proportion of the amount of loan to the members of the Managing Committee to the total amount lent to members. In order that an influential member of the committee may not get excessive credit which may cause serious loss to the society as suggested by the Committee on Co-operation (1915) by-laws are framed fixing the maximum loan for each

member. A member of the Managing Committee may not vote on his own application for a loan (*Model by-laws of credit societies with unlimited liability.*) Not more than one-tenth of the total capital of the society may be on loan at any time with the members of the managing committee. (*Model by-laws of credit societies with limited liability.*) The chairman and the vice-chairman are ineligible to receive loans from the society (*Model by-laws of credit societies for salary earners, limited.*)

Not more than one-fourth of the total amount lent by the society shall be on loan at any time with the members of the managing committee (*model by-laws for Dairy Societies.*) Any member of Board of Directors who commits default in respect of a loan taken by him through the society shall *ipso facto* be considered disqualified to continue as a member of the Board. In no circumstances, shall a defaulter continue to hold office as a member of the Board of Directors if his default continues for more than three months. (*Model by-laws of Land Mortgage Societies, Limited.*)

**Payments to be made and conditions to be complied with by members.**—Loans are not to be made to any person other than a member [s. 34 (1)] and no rights of membership are to be exercised till due payments are made or such interest as is prescribed by rules or the by-laws is acquired (s.17). The committee on the establishment of co-operative credit societies in India (1901) considered that in the case of societies founded on a share basis, no loans should be made to any member who has not paid at least Rs. 5 towards the value of his share and undertaken the obligation to pay up the remainder of the share within a fixed period, which should not exceed five years.

**Order of preference.**—Credit societies were originally meant to assist those who wanted loans of small sums for short periods for example, agriculturists needed money to buy seed, cattle, manure and implements and such other purposes. Carpenters, black-smiths, weavers, and others living in villages wanted money to buy tools, wood, iron, yarn, etc. In order to produce crops cultivators had to incur expenditure 5 or 6 months or sometimes for a longer period before the crops were harvested and sold. In considering applications for loans the committee of ordinary credit societies should give preference to short term loans. It is suggested that the greater part of the business of the society should be in short term loans which in the case of village societies should usually be for a few months only. It is difficult for ordinary village credit societies to take upon them to clear off old debts without an amount of capital. It is best to prefer to restrict members' demands to their bare requirements for the current expenses of agriculture and industries. In short, the object is to see that the capital is not locked up in long term loans: that the amount available is used by as many members as possible to meet their urgent current demands. In case of short term loans the money remains in circulation and a large number of members can take advantage of the capital at the disposal of the society. (See also notes to s. 34 at pp. 176-82 *ante.*)

**The amount which may be lent.**—It is laid down for the guidance of the committee that in considering applications for loan it should form its own

### 318 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (1)

opinion about the amount needed and should cut down all requests that seem unreasonable or excessive. But this does not mean that they should sanction loans of lesser amounts than are really necessary. Insufficient amount will compel the members to borrow from money-lenders on harder terms and the real object of the society will be frustrated. The general principle is that capital should not be locked up in big loans by ordinary village credit societies. Land Mortgage Societies and others of that type are started to handle the problems of big loans for long periods. Government of India in their Resolution No. 1-63.3, dated the 29th April 1904 said. "It is exceedingly inadvisable that the societies should be allowed to lock up their capital (which is bound to be limited) in a form in which it is not readily available; their most useful form of business will probably be small loans for short periods with prompt recoveries" (para 21).

*The model by-laws of credit societies of limited liability* prescribe that no member should be given a loan which together with any money owing by the member to the society shall exceed Rs. 500 without the special sanction of general meeting; that not more than one half of the total capital of the society shall be on loan for periods exceeding one year and not more than one-fourth for periods exceeding two years. A loan may be granted on personal surety who are members of the society at the discretion of the committee; that a bond from the borrower shall be taken but if the loan does not exceed Rs. 100 a promissory note may be accepted at the discretion of the committee. The amount of loan to be advanced depends upon the purpose in view. For example, loans are required for the liquidation of old debts or land improvements. This class of cases involves large sums of money. The maximum amount of loan for the liquidation of old debts or land improvements is fixed at Rs. 750.—(*Model by-laws of credit societies with unlimited liability and share societies with unlimited liability*). The maximum amount is fixed at Rs. 1,000 in case of loan to a single member for purposes such as installation or purchase of costly agricultural plants, purchase of land or bringing under cultivation forest or fallow lands.—(*Model by-laws for land mortgage societies, limited*). A loan may be granted to a member upto ten times the value of his paid up share capital subject to a maximum limit of Rs. 1,000. (*Model by-laws for share societies for salary earners, limited*.) Every member must hold one share for every Rs. 100 or fraction of Rs. 100 which he borrows through society (*model by-laws of land mortgage share societies, limited*). Loans to meet the current agricultural expenses will not involve large sums. (*N.B.*—The Seventh Conference of Registrars (1913) had expressed a contrary view.) By-laws provide that the annual general meeting should fix the maximum normal credit of every member (*credit societies, unlimited*). The normal credit should be the amount believed by the general meeting to be sufficient to meet a member's current agricultural expenses (Sixth Conference of Registrars, 1912). Loans within this limit may be granted on the demand of the member for one year on the authority of the Committee. When additional sums are required (i. e. for discharge of old debts, redemption of mortgages, etc.) the sanction of the general meeting is required.

**Purposes or objects of the loan.**—The Act itself is silent on the objects for which loans may be granted. But by-laws are to be made to define the purposes for which advances may be made. It has to be remembered that loans must not be made for speculative purposes which so far from encouraging thrift and honesty have exactly the opposite effect. Loans should be given only for productive purposes or for necessities which as essentials of daily life, can fairly be classed as productive. The committee should make itself sure that the borrowers are in a position to repay the loans from the income that they will derive from their increased productive capacity, or that by the exercise of thrift they can effect a margin of income over expenditure which will suffice to meet the instalments of their loans as they fall due. A co-operative society is bound by its objects to promote the interests of its members. It is not the idea that a credit society is formed to lend money for the sake of business only. Its object is to provide credit for certain approved transactions which promise to repay the outlay with interest and which will improve the position of the borrower.—*The creditors' and for that matter the society's real security* consists not in the material assets of the members but in the ability and desire of the members to put the borrowed money to productive purposes and to repay the loan out of the profits made thereby. In brief each loan should mean so much earning capacity, so much producing power for the individual borrower. The primary object of co-operation in India is to free the cultivator from the vicious system of credit under which money, more money and still more money was continually pressed upon the peasant proprietor until he became bound hand and foot to his creditor—a system under which the creditor is in danger of being turned into a tyrant and the debtor into a serf. Economic freedom is a condition precedent to progress, and to the Indian cultivator no freedom is possible till the power of money-lender is broken. Money-lenders do not necessarily make special enquiry into the object of the loans. An ordinary money-lender is such a curse to the society because he does not care to keep himself conversant with circumstances of his client and to satisfy himself that the money is required for some legitimate business purpose. The credit society no doubt represents a form of money-lending but it is totally different from that of an ordinary money-lender. The latter in strict conformity with business thinks of nothing but his own advantage but a society has to think only of the advantage of its members. Provided that a man's credit is good, the money-lender cares nothing that his object in taking a loan is bad. Nor will he try to recover his principal as long as he believes it to be safe; on the contrary as likely as not he will tempt his client to borrow more. In contrast with this the society will not lend unless both credit and objects are good, and it insists moreover upon punctual repayment. In this way cultivator is taught the rudiments of sound finance, and while he is learning, his borrowing is carefully controlled. It is the experience in Europe that without control even an educated peasant will borrow not as he must but as he can. The magic of co-operation lies in the fact that it substitutes for the money-lender's demoralizing system, an organisation under which

### 320 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (1)

credit is controlled and debt restricted. The money-lender, provided credit is good, rarely enquires the purpose of a loan, and as he is dealing with a careless improvident class is obliged to guard against loss by a higher rate of interest. On the other hand the society will (or should) only advance money if it is satisfied that it is either for a necessity or for a productive purpose; and it can afford to charge a much lower rate of interest as the risk of loss is much less when loans are not indiscriminately given; a defaulter too, can be subjected to the pressure of neighbours who will be losers if he does not repay; and also for the fact that with greater control, it can afford to charge a moderate rate of interest and forego compound interest altogether. Loans no longer double themselves in three or four years and so much is saved in lower interest charges that old debt can be reduced and be finally repaid in full. Another and most important difference between the two systems is that the money-lender, considering his own advantage alone, is far from straight in his dealing and invariably charges compound interest. It should however be remembered that it is not the object of co-operation to reduce debt so much as to replace unproductive debt by productive and to provide the cultivator with a sound, well-controlled system of credit which will be as inimical to waste as it should be favourable to development. Credit societies are primarily meant for supplying the cultivator with working capital; ordinarily they should grant loans for none but productive purposes. The grant of loans for such strives to promote the economic interests of their members and they seek to do this by providing money for purposes which will enable the members to repay principal and earn a profit. In India it is not found possible to confine loans to productive purposes. There are necessary expenses which the members must incur and it is better that they should borrow from their society rather than from the village money-lender. However it has to be remembered that expenditure on unproductive objects weakens the economic position of the members. The society has to guard against granting such loans too easily and so leading the members into increased indebtedness. It is presumed that members will generally be men of limited means whose position has to be improved by the provision of capital. It is obvious that their economic position cannot be improved by providing them with money for unproductive purposes unless the expenditure is so inevitable that if the members cannot get loan from the society they will be driven to borrow on harder terms elsewhere. The Poona Conference (1916) adopted the useful suggestion that the credit of individual members should be assessed under two heads: current agricultural expenses and other purposes. For the former individual cash credits might be opened. The Committee on Co-operation (1915) in para. 73 considered that when societies are firmly established on correct principles there is no better way of meeting the needs of members. It is, therefore, very important that the committee should inquire into the object of the loan. This does not mean that the committee should not give loan for unproductive purposes in any case. The committee on the establishment of co-operative credit societies in India (1901) considered that there was no objection to loans being made for expenses connected with marriages and other domestic occurrences

provided that the borrower had had a deposit account with the society for the past three years, and that the amount so lent did not exceed 50 per cent. of the annual average of his deposit account during the three years. Custom and sentiment demand expenditure for unproductive purposes such as marriages and other domestic occurrences and it is most improper to refuse loans for them. There are certain ceremonial expenses which public opinion demands and it is necessary that the society should advance money for them. If the society will refuse to satisfy the needs of the members they will be compelled to borrow from the money-lenders on harder terms. This will result in ultimate loss to them. The committee has to see that expenditure was inevitable and that it was not excessive (*Committee on Co-operation in India, 1915, para. 62*).

The Government of India after full consideration of the question decided to refrain from placing any restrictions on the objects for which loans are granted. (*Sir D. Ibbetson referred to by Ray, p. 271.*) The committee on the establishment of co-operative credit societies (1901) wrote:—As regards the purposes for which loans should be made we consider that in the case of associations on a share basis with limited liability no restrictions need be insisted on. In the case of associations without share capital, loans and advances should only be granted (1) for purposes industrially or agriculturally productive, such as the purchase of cattle, seed, agricultural or industrial implements, purchase of raw material for manufactures, farm improvements including buildings and the like; (2) for the liquidation of debts due by a member prior to his election, if an arrangement can be made whereby the borrower's total indebtedness is brought within his powers of repayment within a reasonable period; (3) for payment of rent or revenue.

**Notes.**—The purpose or the object of the loan should be stated by the applicant. The committee may sanction if it approves it. The committee should see that all loans are used only for the purpose for which they are advanced. When a loan granted for a specific purpose is misapplied the committee has power to recall it with interest (*model by-laws of credit societies*.) It is no argument in favour of unproductive loans to say that they are fully secured. Sureties may be quite good but they do not expect to be called upon to repay and would resent any effort to recover from them.

The success of co-operative societies and the confidence they can attract from outside depend upon the ability and desire of the members to put the borrowed money to productive uses and to repay the loan out of the profits made thereby. Each loan should mean so much earning capacity, so much producing power for the individual borrower (*Committee on Co-operation 1915, para. 2*). The auditor and the inspecting officers are required strictly to inspect and report to the Registrar if the loans are used for the purposes for which they are granted. They have to test some cases. This is being done in accordance with the Report of the Committee on Co-operation, 1915.

**Periods.**—The agriculturist needs money to buy seed, cattle, manure and implements and for other purposes. In order to produce his crops a cultivator must incur expenditure 5 or 6 months and even upto a year before the



## §22 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (1)

crop is harvested and sold. Also if he could borrow money for necessary expenditure at harvest time and hold over his grain for two or three months he would get a much larger price for his grain. He also requires money for marriages and other ceremonial occasions which sentiment and social customs impose on him. An agriculturist requires funds for two purposes. He requires money for long period for the purposes of carrying on improvements in his land or to purchase heavy machinery or to buy land. He also requires funds for short terms for purchasing manure and seeds and for harvesting crops, etc. But for an agriculturist to have any return at least six months are required. A banker does not find it profitable to wait so long and he is, therefore, unwilling to advance money to an agriculturist. The credit societies provide the best medium for the purpose of short term loans and Land Mortgage Societies are best fitted to satisfy the needs of agriculturists requiring long term loans. (See notes to s. 34 under the head "Land Mortgage Banks" at pp. 177-79 *ante*.) A member applying for loan has to state the period for which it is required.

In fixing periods for repayment the committee should always be guided by the principle that a loan should be repaid out of the outturn of that loan. If it is given for seed, it should be recovered from the produce of that seed. When a loan is made repayable in 2 years or more, it is understood that the payments will be made by equal annual instalments. Should the committee be of opinion that a loan granted by the society has been applied for a purpose other than that for which it was granted it has power to recall the loan with interest (*model by-laws of credit societies; land mortgage societies, limited.*) The period for which loans may be granted depends firstly upon the period for which a society has deposits or other funds to finance the loans and secondly, on the time required for the accomplishment of the object of the loan so that it may have repaid from the proceeds. The object of the co-operative society is the promotion of the economic interest of its members. It is, therefore, of no use advancing him money which he cannot repay from the income. The economic position of a member will certainly weaken if he is made to pay from his capital. His position will improve only when he pays from his income. Therefore, the period must be long enough for him to produce additional wealth. In considering the applications for loans the committee should have regard to the time to be allowed for repayments. Borrowers nearly always ask for longer periods for repayment than are absolutely necessary. It is the business of the committee to see that the periods for repayment are kept as short as possible. In the case of loans for productive purposes the loans should be repaid from the profits obtained by its utilization, e.g., loans for seed or manure should be repaid from the outturn of the crop grown, *i.e.*, within one year, loans for bullocks should generally be repayable in 2 years, and loans for land improvements or wells in from 3 to 5 years. In the case of loans for non-productive purposes, e.g., redemption of old debt, weddings, doctors, funerals, education, the income and earning capacity of the borrower should be compared with his necessary expenditure and the difference between the two should determine the amount which he is able to pay. In general the

greater part of the business should be in short term loans, which in the case of urban societies should usually be for a few months only. When a loan is made repayable in two years or more it is understood that the payments will be made by equal annual instalments. This long period characteristic of agriculturists' loans necessitates special care in the taking of deposits. It is, therefore, provided by rule 10 (Appendix A) that agricultural credit societies shall not accept deposits which are not fixed for a period of at least two months, except savings deposits in such societies as have made in their by-laws provision for the encouragement of thrift among their members by the opening of savings accounts. It is the duty of societies to raise sufficient funds to meet all reasonable needs of their members locally by securing fixed deposits from their own members or from other people living in the neighbourhood. It is, therefore, the duty of the committee when it is advancing money lent to it on deposit to so arrange the dates for the recovery of loans that money will be available for repaying the depositors on the due dates. Societies dealing with the urban population should be particularly careful on this point, as unpunctuality will damage their credit with the public and prevent fresh deposits coming in.

It appears from s. 28 which limits the liability of a past member to two years, that the legislators contemplated that the loan transactions should be completed within this period. Liability for loans for longer periods might fall solely on the staunch members if others withdraw.

The Committee on Co-operation advocated by-laws fixing standard maximum periods as follows.—(1) Loans for unproductive purposes,—short periods and as a rule not exceeding two years. (2) Loans for trade or to enable cultivators to secure reasonable prices for their produce should be strictly limited to three months. (3) Loans for seed, food, cultivation expenses, or cattle fodder—to be repaid after the next ensuing harvest. (4) Loans for purchase of carts or cattle, for liquidation of small debts, and for house building—to be repaid in two or three years. (5) Loans for liquidation of large debts, purchase or redemption of land or expensive improvements of land—to be repaid in three or four years. Considerations such as these have led the Registrar to propose in *model by-laws of Weavers' Societies (unlimited)* that:—Loans shall not exceed Rs. 50 at a time, nor be given for a longer period than 6 months, except when they are made for the liquidation of old debts. *Model by-laws of dairy societies* provide: Cash loans for purchasing food stuffs repayable in not more than nine months and for liquidating old debts and for purchasing milch cattle repayable in not more than two years may be granted. *Credit societies for salary earners (limited)* require the loans to be paid back ordinarily within 6 or 12 months. *By-laws of land mortgage societies (limited)* do not prescribe any period for loans but state that the period of each loan shall be such as may be prescribed by the Provincial Bank in each case.

The *model by-laws of credit societies with unlimited liability* provide that loans shall be granted for the following maximum periods:—

## 324 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (1)

Nature of loan.	Maximum period.
(1) Seed, manure, weeding and current agricultural and domestic expenses. ... ..	1 Year.
(2) Purchase of bullocks, carts, iron implements, etc.	2 years.
(3) Ceremonial expenses.... ..	3 years.
(4) Payments of old debts and large works of land improvements. ... ..	5 years

**Notes.**—In villages where sugarcane or such other crops are grown which take more than one year before they can be harvested, the period for loan for current agricultural expenses may be extended so as to make the loans recoverable out of the outturn of the crop. *Share societies with unlimited liability* allow ten years in case of long term loans for payment of old debts and large works of land improvements. The managing committee has to abide by the terms laid down in the by-laws. But the committee have power to extend loans for one year only where they are satisfied that the borrower is unable to make payment for some good reason not due to any fault of his own. Extensions beyond one year may only be granted by the general meeting (*model by-laws of credit societies, unlimited liability*). See notes below under the head 'renewals at p. 327.'

**Interest on loans.**—Ordinarily by interest is meant that sum which will induce an owner of money to part with it temporarily under conditions which include a practical certainty of its return. The rate of interest is easily ascertainable with sufficient accuracy from the return offered on government paper at the current price. This rate evidently is the minimum rate at which money can be borrowed. In ordinary transactions to this sum is something added in consideration of the fact that the security offered is not so good as that offered by Government. This addition is really of the nature of insurance against loss, and over a long series of transactions it should be sufficient to make good all losses due to defective security. A further addition has to be made for the costs of collecting the loan, especially if the borrowers do not repay punctually and willingly. A further addition has to be made for the costs incurred in such things as office rent, clerk's pay, stationary, etc. Another thing which has to be taken into account is the fact that if during part of the year some of the available money lies idle, earning no interest, then all the income required under the above heads must be obtained from the gross interest charged for the period during which it is being earned. In the transactions of a credit society these items have to be considered and the rate of interest has to be fixed so that over a series of years the society will suffer no loss. In so far as the interest charged just fulfills this requirement, the society is carrying out the co-operative principle of rendering services at cost. But prudence suggests that the rate of interest should be pitched a little higher than this so that there will always be something in reserve. Practical expediency suggests even more; the borrower, it is urged, should be made to pay a little more than the cost of lending so that there will in time grow up from

the surplus a common fund which may be regarded as the result of compulsory thrift. The committee of 1901 was of opinion that compound interest should in no case be allowed and that the rate of interest should not exceed 2 pies per rupee per mensem or 12½ per cent per annum, but the Government of India rejected the suggestion to prohibit compound interest because when fairly used, it is just ; prompt recovery of debt is essential to the working of societies. There is a danger that they may be too slack in dealing with their friends and neighbours and compound interest will provide a useful stimulus to the debtors.—(*Agricultural indebtedness in India and its remedies by Ray, p. 272.*) The main point to bear in mind is that, in co-operation capital is only entitled to a fair interest and nothing more. The committee on co-operation thought the rate should be entered in the by-laws and made unalterable without the sanction of the Registrar. The rate should be fixed in conformity with the general object of all co-operative associations, namely, the rendering of the best possible service at the lowest possible rate. Co-operative credit seeks to remove the objections to interest by reducing it to the bare minimum required to attract the money needed ; and when there has been accumulated a sum sufficient for the needs of any community, there no longer remains even this need for the payment of any interest at all. In several societies already a stage has been reached when it is no longer necessary to charge any interest on loans.

A society must make by-laws fixing the rate of interest and in regard to the system of calculation of interest on loans granted to members. (rule 4 Appendix A.) Model by laws of unlimited credit societies state that the rate of interest shall be fixed but it could be altered at an annual general meeting of the society ; that the interest shall be calculated from the date of advance to the date of receipt, fractions of a month if less than 16 days being counted as half a month and if 16 days or over as a complete month. They further provide that in case of loans for larger amounts for longer periods the rate of interest shall never be less than the ordinary rate but may be more. The very object of a *credit society (unlimited)* is to lend out its funds to members at lowest rate consistent with a fair profit ; at a moderate rate of interest in *credit societies (limited)* and ; on reasonable terms in the case of societies for *salary earners (limited)*.

**Punctuality in repayment.**—Whether it was the land or the produce or money he wanted, there was nothing the money-lender in India desired less than repayment in full, for that meant the loss of a customer as well as a client, and the difficulty perhaps in finding a fresh outlet for his money. Happily for him the rates of interest in India have always been so high that it may almost be said, 'Once in debt, always in debt.' It was only human nature for the money-lender to entice the peasant proprietor to borrow for every want. There was no opening for his capital, the financing of agriculture was a necessity and the cultivator was ignorant, improvident and evasive. A society's object being to free a person from economic bondage it cannot follow the demoralising system of a money-lender (see notes under the head " purposes or object of loan " at p. 319) Mr. Wolff says " rigorous

## 326 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (1)

insistence upon prompt payment is another characteristic feature. Harsh as it may appear to people new to such banking, it is necessary and represents sound policy." The Committee on Co-operation (1915) write :— There is no defect more prominent or more dangerous in the management of co-operative societies in India than the exceeding laxity and unpunctuality in the repayment of loans.....Unless loans are repaid punctually, co-operation is both financially and educationally an illusion, and no exertions are wasted which aim at ensuring promptitude in this respect.....There is nothing more important to the success of the movement than the provision of clear information as to the punctuality or unpunctuality with which loans are repaid (*para. 74 ibid.*) Punctuality should be secured by the application of personal pressure rather than by the levy of penal interest (*para. 76 ibid.*) Co-operation is a business organisation and the business principles demand that there should be a business like adherence to the rules. " Anyone who has experience of co-operative work in India knows only too well how ready the defaulter is with his ' words of grief ' and how readily, to avoid payment, he will complain of the time. How great a tendency a cultivator in India shows to postpone if not to evade payment of his debt. The energetic money-lender meets the difficulty by dogging the foot-steps of his clients as soon as the harvest is cut " says Mr. Darling in his *Punjab Peasant in Prosperity and Debt*.

One of the ten cardinal doctrines underlying the co-operative idea lays down that all repayments must be made on the date fixed by the managing committee, and in cash and not by book adjustment. The chief test of the good management of a co-operative society is the punctuality with which loans are received from its members. No society can succeed if defaults are common. If there is no good reason for granting an extension, the money must be recovered punctually on the due date. The managing committee should see that the secretary warns members either orally or in writing about a month in advance of the date of repayment. If a member does not pay up punctually the chairman or the secretary should visit his house personally and try to collect the money by his own influence without resort to coercive measures. If a member deliberately defaults in spite of warning the managing committee is advised to take the following actions against him :— (a) A list of defaulters to the society should be hung up publicly in the society's office or the chora as a disgrace. (b) The member should be warned that he will be charged penal interest and this should be done. (c) All further loans to him should be stopped. (d) Written notices should be served on his sureties. (e) The general meeting may pass a resolution that he shall be disqualified to serve on the managing committee. (f) A resolution may be passed by the managing committee referring his case to arbitration. (g) After recovering the sum awarded by the Arbitrator the member should be publicly expelled from the society. The longer are the periods for which the loans are granted the indispensable is it that the debt should be steadily reduced as time goes on. This kind of strictness forms new kind of security- *Model by-laws of credit societies, unlimited*, provide that whenever loan is advanced on the security of possessory

mortgage of immoveable property which has been let to the borrower during the term of the mortgage the borrower may be ejected from the property, in the event of default. *Model by-laws of limited societies* provide for penal interest on overdue loans upto the limit of 50 per cent. more than that at which the loan was given from the date of default on instalments not repaid within 14 days of the due date. *Model by-laws of land mortgage societies with limited liability* state that if a borrower is in arrears in respect of any instalment, the whole outstanding loan becomes recoverable. They further provide for penal interest on overdue instalments at a rate higher than the usual rate.

*Repayment of loans in advance* of the instalments due is rarely made but the society is bound to accept such repayment if made provided it does not involve the society in loss. In advancing money lent to it on deposit or drawn by a society from the central bank the society has so to arrange the dates for the recovery of the loans that money may be available for repaying the depositors on the due dates. If loans are taken from the central banks they have got to be informed of the recoveries to be expected on certain dates so that they might know how much fresh capital they have to find.

If therefore, an unexcepted repayment in advance of the due date is made there will be a balance in the hands of the society of which it will have no immediate use and for which it will have been paying interest to the central bank. The society will have to suffer some loss as it may require to pay interest to the central bank for the sum. *Model by-laws of land mortgage societies* state that the borrower may repay at any time before the due date the whole or any portion of the loan outstanding against him provided he gives notice to the society three months in advance of the date for the falling in of any of the instalments for repayment of the loan.

**Renewals.**—However carefully loans are sanctioned, accidents will occur which make it difficult for borrowers to repay. Crops may fail or may not be ready on the fixed date, cattle may die, the borrower's house may be burnt down, his family may die of plague, floods or famine may upset his arrangements. In short in cases where the committee is satisfied that the borrower is unable to make payment for some good reason not due to any fault of his own, the committee may extend loans. The sixth Conference of Registrars (1912) considered that they might be given but only sparingly and when good excuse exists and the security remains sufficient. In such cases the loan should not be treated as an arrear. The managing committee should call the borrower before them and, after considering his situation, should decide what portion of the loan, if any should be recovered on the due date and should extend the remaining by a formal resolution for a suitable period (upto one year.—*model by-laws of most of the societies*). Interest should usually be recovered before an extension is sanctioned. If the society was relying on the recovery of the loan for the repayment of some loan due to a central bank or some deposit due to the outside public, it should apply to the central bank or the depositor for an extension before sanctioning the extension to its own members. Second extensions will, however, require

### 328 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (1)

the sanction of the general body. Similarly, extensions beyond the period laid down by the by-laws may only be granted by the general meeting with the previous sanction of the union or central bank to which the society belongs. In the case of *land mortgage societies* the model by-laws provide that the Board of Directors may with the permission of the Provincial Bank grant extensions of instalments not exceeding one year when necessary. Requests for extensions for more than one year beyond the date fixed shall be subject to the approval of the Provincial Bank and the Registrar's confirmation. When the managing committee is satisfied that an extension is desirable, it should remember in sanctioning it that under s. 135 of the Indian Contract Act (IX of 1872) the sureties will thereby be discharged from further liability unless their consent is recorded on the bond and attested by their signatures. It may be that owing to the uncertainty of the farmer's return an arrangement for frequent renewals is necessary but at the same time it has to be borne in mind as Mr. Wolff puts it ( in his Co-operation in India ) that there is a distinct danger in uncalled for renewals. The concession made is very apt to be abused, and from such abuse may spring a bad habit, absolutely fatal to any society..... The point is to make sure that the case is genuine. It need not be mentioned that frequent renewals is the favourite method of the money-lender to keep the borrower in his power. But a society on the other hand stands for the improvement of their economic conditions. (See also notes under the head "examination of overdue debts" at pp. 119-21 *ante*.)

**Security.**—In the world of finance the corner stone is ever the same—security. No bank would make an advance to anyone except on security of approved quality and adequate value. It is safe to follow the rule of never making any advance without security. It is true that the quality and honesty of character of the borrower is the best security but it is also true that no amount of honesty will save a man from misfortune. The Committee on Co-operation (1915) insists on sureties for every loan. They write: "The primary security for all loans is personal. By the provision of securities recovery is facilitated and a further safeguard is obtained against the grant of excessive loans or the misapplication of money borrowed." They consider that the provision of securities should be the rule in India (*Para. 65 ibid.*)

The strongest argument in favour of personal credit in co-operation is the educative value of co-operation. This educative value is enhanced by the system of personal sureties. But it is unwise to overburden friends and the *model by-laws of unlimited societies* provide that persons taking big loans should execute registered mortgage bonds in favour of the society. The conditions relating to loan transactions merely embody the most elementary principles of sound banking and those who advocate elasticity take upon themselves a heavy responsibility. Any relaxation must result in a marked rise in the rate of interest to cover the extra risk involved. Cheap credit must be secured credit. The interests of depositors alone demand the adoption of the precautions referred to. The only basis for cheap credit is the security that cannot be questioned. It has to be remembered that promptness is the quickest way to establish a reputation for security. All obliga-

tions must be met at due date. In the case of moderate loans (upto Rs. 500) required for periods of one or two years only by respectable members, personal sureties will usually be sufficient. Two sureties should generally be required. (With one surety provided that the loan is less than Rs. 50 or one month's pay whichever may be greater.—*credit societies for salary earners.*) The Committee shall require two good sureties from among the members before sanctioning the loan (*model by-laws of unlimited credit societies.*). *Model by-laws of credit societies with limited liability* state that a loan may be granted on personal surety who are members of the society or on the security of immoveable property at the discretion of the committee. They must be honest people known to the Committee. The same people should not be accepted as sureties for several loans, nor should two borrowers from the society be allowed to stand as sureties for each other unless they are both known to be in good circumstances. [ For accepting moveable property as security see notes to s. 34 under the head "Lending money on the security of moveable property " at p. 174 *ante.* ] Loans shall be made on the assignment of an insurance policy the surrender value of which covers the loans. (*model by-laws of credit societies, for salary earners.*) But in such cases the assignation of the policy to the society should be registered in the books of the Insurance Company, which can generally be done for a fee of Rs. 2-8-0. The shares of a society shall not be hypothecated to that society by its members as a security for a loan (rule 9, Appendix A.) *Loan of money on mortgage of immoveable property* by a society may be prohibited or restricted by Government by a general or special order [s. 34 (3)].

For the necessity of taking mortgage of immoveable property of the borrower see notes to s. 34 under the head "Restrictions on the lending of money on mortgage of immoveable property" at pp. 175-83, *ante.* It is necessary to take mortgage of property of borrower in some cases of twice the value of the loan (unincumbered immoveable property—*model by-laws of credit societies for salary earners*) except according to Mr. Calvert where the period is short and repayment is by frequent (*e.g.* monthly) instalments.

Loans shall be secured by a first mortgage on the land to be redeemed or improved by means of the loan and shall be for such sum as the Provincial Bank considers safe in view of all the circumstances of each case, but shall not at any rate exceed 50 per cent of the estimated market value of the land. (*model by laws of land mortgage Societies.*) For instructions issued by the Registrar see notes to s. 34 under the head "directions" at pp. 176-77 *ante.*

**Qualifications of sureties.**—The sureties must not merely be solvent, they must be known from their means to be good for the amount. (*Raiffeisen rules.*) Even this is not enough, for if security is to be taken it must be adequate. The point to be kept in view is whether at any time he would pay the amount without much inconvenience. Mr. Calvert thinks it to be a safe rule to accept a man as surety for a sum equal to one-tenth part of his property for, the payment of one-tenth will be quite a sufficient loss for him to bear.



## 330 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (m-n) ]

**Non-members.**—The real idea of sureties is that they should watch over the utilisation of the loan and it is therefore, necessary that they should be members. [ For other reasons see the discussion under rule 11 in Appendix A at p. 8 *infra*. ]

**Note.**—See discussion under rule 11 in Appendix A at pp. 8 and 9.

**Death or insolvency of surety.**—When a person who has stood as surety for a loan dies or becomes in the opinion of the committee unfit, the committee may require the borrower to find another surety within fifteen days. If the borrower fails to find another surety when so required the loan shall be repayable immediately with interest upto date of repayment.

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

### Commentary.

**History** :—This clause is new.

No rules appear to have been framed by the Government under this clause. See notes under ss. 34, 35 and 36 (*ante*). S. 35 allows Consumers', Producers' and Housing societies to trade with persons who are not members to the extent permitted by their by-laws. A resource society may enter into transaction with non-members only to the extent allowed by ss. 34 and 35. No rules have been framed by the Government in this respect. Rule 11 prohibits a society from making a loan to a member on a bond of suretyship of a non-member except with the special permission of the Registrar (See Appendix A for rules).

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

### Commentary

**Old-law** :—This clause corresponds to cl. (p) of s. 43 of Act II of 1912 (Appendix B).

Mr. Calvert says : " Reserve funds may be of two classes :—A general reserve is an amount set aside out of profits to provide additional working capital, or to strengthen the liquid resources and to be available for contingencies. A specific reserve is an amount set aside out of the profits to provide for some probable or estimated loss on the realisation of certain assets ( e. g. invest-

ment depreciation) or in respect of pending transactions (e. g. bad debts)". For the utilisation of the reserve fund in the business of the society, see rule 28 in Appendix A.

See notes to s. 37 under the head "This section applies to reserve fund also" at p. 199. See also notes to s. 38 under the head 'object' at pp. 201-204 *ante*. For 'the object', 'the definition', 'the investment', and 'the purposes for which reserve fund is created' see notes to s. 39 at pp. 205-11 and to s. 71 (2) (x) under the head: "Reserve fund" *infra*.

One of the distinctive points in the Raiffeisen scheme was that all profits were to be carried to the reserve which was indivisible and which on the dissolution of the society was to be invested in a central bank at compound interest and which was to be credited to the fund of a new society formed on the same basis or to be given to some communal fund and the interest to be applied to some objects of public utility. The disposal of the surplus assets (including the reserve fund) is to be made in this Presidency as laid down in s. 52 (see notes to s. 52 under the head: "Disposal of surplus assets of a cancelled society" at pp. 255-56.

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

#### Commentary

**History:**—This is same as s. 43 (q) of Act II of 1912. See notes to s. 3 under the head "unlimited membership at p. 17; s. 33 under the head "duties of co-operative societies" at pp. 169-70; s. 7 "size of societies" at p. 71 and to s. 71 (2) (c) under the head 'the maximum number of members that may be admitted.' at p. 302; see also notes under s. 71 (2) (d) *supra* and notes s. 71 (2) (s) *infra*.

**Principle:**—Co-operation is open to all; there can be no arbitrary limit to the number of members. This is an obvious corollary from the fact that the common bond is the common need, the object is the common good, therefore, those who join, must do so in no selfish spirit. The characteristic feature of co-operative societies is the absence of any limit to the number of members. It is one of the points distinguishing a co-operative society from a joint-stock company which is defined (s. 254, I. C. Act, 1913) as a "Company having a permanent paid up or

### 332 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (c)

nominal share capital of fixed amount divided into shares, also of fixed amount, ..... and formed on the principle of having for its members the holders of those shares ..... and no other persons." A co-operative society which does not care to receive new members, but prefers to make profit at the expense of outsiders, is a co-operative society in name only. It would be considered directly contrary to the idea of co-operation if a society were to fix in its statutes the number of members so that it would be impossible to increase them. Mr. Calvert emphatically states: "There should be one general rule: No society shall fix any limit to the number of its members, with the single exception of permitting central banks to limit the number of individual members." He adds: "The number of members may be restricted: (1) by the conditions imposed in s. 7 of this Act *i. e.* by the exclusion of certain classes or descriptions of people; (2) by careful selection of applicants for election, but a mere desire for exclusiveness must be no ground for rejection; (3) by fixing a minimum number of shares to be taken up or (in a trading society) a minimum amount of purchases to be made; (4) by restricting the area from which members may be drawn."

**Limitation of number of members:**—The main principle on which all co-operative groups are formed is that the members associate themselves for a common economic object obtained through the most advantageous use of commodities or of labour and not obtained in the shape of profit as the word is used in commercial companies or similar bodies. It is very important that Government should have the power to make rules to prevent societies from becoming close corporations for the benefit of a few individuals who may develop into pure dividend hunters. It is a condition of the enjoyment of concession from the State that they be open to all. (See notes to s. 33 under the head "duties of co-operative societies" at p. 169 *supra*.) The Government of Bombay has not framed any rules prescribing the extent to which a society may limit the number of members with the exception in the case of credit societies, in which case the rule prescribes that it shall make a by-law in respect of the maximum number of members that may be admitted [ see rule 4 (b) in Appendix A. ]

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

#### Commentary

**History** :—This is s. 43 (2) (r) of the Co-operative Societies Act, 1912, except that the word “unlimited liability” occurring in the old Act is omitted. (See Appendix B). The first principle as has been stated elsewhere on which all co-operative groups are formed is that the members associate themselves for a common economic object obtained through the most advantageous use of commodities or of labour and not obtained in the shape of profit as the word is used in commercial companies or similar bodies. The only equitable means of securing that the advantage obtained by combination should be shared by the members according to their own contributions to this advantage is by a rule that whatever surplus remains to the society after the payments of its necessary expenses should be divided among the members in proportion to the business they have done with the society. The rule is so distinctive a feature of a co-operative society that it has by leading authorities and by legislatures in many countries been made the actual criterion or supreme test of co-operation. The principle has two sides. On the one side the capital used in the society should be remunerated only at the ordinary market rate of interest. Secondly provision should be made that the surplus advantages gained are to be divided among the members in their capacity as customers of the society or in other words to the extent to which they have brought business to it. (See notes to s. 40 under the head “The main principle” at p. 213). This is found embodied in rule 25, (see Appendix A, p. 13.)

*So far as restrictions placed on distribution of profits* the legislature has enacted that resource societies with unlimited liability not having share capital should not distribute profits among its members [s. 40 (a)] and those of the same type but having share capital should not distribute profits for the first ten years [s. 40 (b)]. This is done in accordance with the intention expressed by the Government of India in their Resolution. The idea is to prevent the distribution of profits till the reserve fund

### 334 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (q-r)

has attained a certain proportion and to reduce the rate of interest. Under this clause Government can issue rules preventing share-holders from dividing among themselves the surplus which should be employed in cheapening the service performed by the society. Rule 24 prohibits the distribution of more than 6 per cent. of dividend on the paid-up share capital of a member (see Appendix A) in the case of Consumers', Producers' and Housing societies.

*The maximum rate of dividend is fixed by s. 38 at 10 per cent. The object is to prevent neglect of co-operation in favour of individual profit [See discussion under s. 38 (ante) et pp. 201-204].*

*Notes :—*The distribution of profits requires care. A dividend should only be declared by a society in general meeting and no dividend should exceed the amount recommended by the directors or managing committee. No dividend should be paid otherwise than out of profits (but there may be a special reserve set apart for equalising dividends). Rule 26 places restrictions on the distribution of funds by way of bonus, dividend or otherwise (see p. 13, Appendix A).

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

#### Commentary

**History :—**This clause corresponds to the latter part of s. 43 (2) (s) of the Co-operative Societies Act, 1912. (See Appendix B).

S. 64 (at p. 288) of the Act provides for appeals against the orders of the Registrar under ss. 10, 16, 45, 47, 50 50-A, and 54. No rules have been framed by the Government prescribing the procedure to be followed in presenting and disposing of appeals under this clause.

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

#### Commentary.

**History :—**This clause is new.

**Principle** :—The members in a co-operative society join to secure something they all need; therefore, it follows that the advantage to be gained is the satisfaction of this need; if the need of one is greater than that of another, he will derive the greater advantage. That other must not seek to balance the account by seeking some gain that is not in the contract. More especially is it necessary that he does not seek to gain advantage at the expense of his fellow with the greater need. The chief danger and almost the universal one, to be avoided is that he, with more capital should gain from the need of him with less. Co-operation recognises that capital is entitled to a fair interest; but it refused to admit any other right attaching to its possession or claimed by its owner. An important principle applied to co-operative societies, which is essential if their true nature is to be made obligatory, is that their capital and their membership should not be limited but should be variable as and when required. There must be no limit upon the capital brought into the society. The share capital is not intended to be source of profit and is to be remunerated only according to the market rate of interest. Hence with the limits inherent in the nature of the business and size of turn-over the bigger it grows, the better as a rule it must be for the society, the better at least it is for the co-operative movement as a whole. Members should be encouraged to invest as far as they can in their own society and artificial restrictions must not be placed upon their holdings, except in so far as may be necessary to prevent the rich from having too large a voice by their mere weight in the affairs of the society. These conditions have not been embodied in all co-operative laws without modifications. In France, for example, to suit the common law of the country a society has at its inception to state a certain limit of working capital. In this Presidency a society states at least what limit it imposes upon its borrowings and in some cases states also the limit to its share capital. These limits whether in France or in India are not intended to work as restrictions but only as guides to the amount of capital which should be raised within a comparatively definite and at least a measurable period. It is understood that each society as it reaches the first limit will at once take steps to register an amendment enlarging the limits again within a definite and measurable attainment. Under the Act now

### 336 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (s)

in force in the Bombay Presidency, variability of capital has not been made compulsory in the sections of the Act themselves but power has been taken to allow Government to frame rules to ensure that this co-operative principle is well and truly observed. However, no rules have been framed under this clause by Government as yet.

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

#### Commentary.

**History** :—This clause is new.

[*N. B.*—*Cf.* notes to s. 3 under the head “unlimited membership” at p. 17 ; see notes to s. 7 under the head “size of societies” at pp. 71-72 ; *cf.* discussion under s. 33 “duties of co-operative societies” at pp. 169-70 and notes to s. 71 (2) (d) (o) and (r) *supra.*]

**Principle**:—The essence of co-operation is that each shall work for all and all shall work for each in the attainment of their common need. It is thus the realisation of a common need that brings people into the association ; they enter to get something for themselves and it is the object of the society to secure this for the members joining the association. It is, therefore, clear that those who associate together, do so for the advantage of themselves and not for that of others. To reconcile this with the principle of unselfishness, there has come to be recognised another principle; co-operation is open to all, there can be no arbitrary limit to the number of members. This is an obvious corollary from the fact that the common bond is the common need ; the object is the common good, therefore those who join must do so in no selfish spirit ; they must be prepared to admit all who have the same need and who are ready to subscribe to the common contract ( *Cf.* The Law and Principles of Co-operation by Calvert ).

The principle of free admission to a co operative society willing to join is characteristic. The true co operative society is open to all who have the qualifications—no one is to be excluded because he is a big farmer or a little farmer or a tenant farmer or for any other reason. The membership must not be exclusive: it must be democratic. It cannot take in certain group and leave another

group out, provided they all have the same needs to be met. No *bona fide* applicant of good character resident within the area of its operations should be refused admission. As mentioned above a co-operative society must always be open to all who have the same need and who are ready to subscribe to the common contract. The only restrictions which are tolerable are those which define more strictly exactly what is meant by the same need. For instance, although cultivators in different villages or different parts of the country may both need credit, yet the credit which they require is not the same as is distinguished by different conditions of contiguity, intimacy and so on. It is, therefore, legitimate to limit the membership of the society to those whose needs are based upon the same conditions, including among the conditions area of habitations. But upon those who fulfil the conditions laid down in the by-laws there should be no restrictions except those of choice and selection by existing members, which choice must be based upon character and upon character only. The members are entitled to refuse to admit any one whom they know to be of a character likely to injure their common credit or their common business, but they are not entitled to reject him upon other grounds if he is willing to observe the common contract and if he has needs of a similar kind. Under the Bombay Co-operative Societies Act, variability of membership has not been made compulsory in the sections of the Act themselves but this clause allows Government to frame rules to provide that persons qualified under the by-laws of the society shall not be excluded from membership without due cause.

No rules have been framed as yet under this clause by Government. However rule 45 prohibits a person from being a member of two societies with unlimited liability without the special permission of the Registrar. (See Appendix A). In the case of credit societies by-laws must be framed stating the maximum number of members that may be admitted [rule (4) (b)]; see also notes to s. 71 (2) (o) and (r) under the head "Principle" *supra*.

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

**Commentary.**

**History.**—This clause corresponds to the previous part of s. 43 (2) (t) of the old Act of 1912. (See Appendix B). See notes 43



### 338 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (t)

to s. 47 pp. 232-33; s. 49 pp. 234-36; s. 50 pp. 238-47; s. 51 pp. 250-53 and s. 59 pp. 276-82.

Rules have been framed by the Government prescribing the procedure to be followed by a liquidator appointed under s. 47. They provide for the following details:—When the Registrar orders a society to be wound up he shall notify the appointment of a liquidator in the Bombay Government Gazette, [ rule 38 (i) ] The liquidator shall at once take charge of the books of the society and all the property and assets of the society (*cf.* s. 138 of the Indian Companies Act, 1913.) [rule 38 (2)]. The liquidator shall immediately publish in such manner as he may think proper a notice requiring all claims against the dissolved society to be notified to him within two months of the publication of the notice. Liabilities recorded in the account books of the society shall be deemed *ipso facto* to have been duly notified [Rule 38 (2)]. If necessary the liquidator may institute suits for the recovery of sums due to the society. [s. 50 (e)]. The liquidator shall then proceed to determine the assets and liabilities of the society as they stood on the date of the order directing the society to be wound up; he shall next determine the contributions to be made by the members and past members of the society respecting to the assets of the society [rule (38) (3)]. He shall also determine by what persons and in what proportion the costs of liquidation are to be borne [rule 38 (3)]. Should, however, a necessity arise, he may frame also subsidiary order or orders regarding such contributions which are enforceable in the manner as the original orders themselves [rule 38 (4)]. The costs of liquidation [s. 50 (f) and (i)] include the remuneration of the liquidator which has priority over all other claims [see rule 38 (4)]. He shall draw up a formal order noting the amount to be realised from each member or past member or the estates etc. of a deceased member [s. 20 (d)] as a contribution and as cost of liquidation [rule 38 (3)]. The interest may be proved by the creditor on his dues upto the date of the winding up order as fixed by the Registrar (except in the cases of the Bombay provincial co-operative bank or the district central bank or such other co-operative banks permitted to finance societies) (rule 41). Further interest may be allowed in case there are surplus assets (rule 41). For the above purposes the liquidator may issue summons to persons whose attendance

is required either to give evidence or to produce documents (s. 58) by the same means and as far as possible by the same manner as is laid down in the Code of Civil Procedure, 1908. The Mamlatdar or Mahalkari or such other serving officer shall cause the summonses to be served and return the same with the record (if any) of the proceedings taken with regard to them [(rule 44 (2) (3).] The liquidator should submit the orders passed by him against the various members, past members etc., to the Registrar for approval who may refer a copy of the order passed by the liquidator as finally approved by him to the Collector of the district and make a requisition to that officer to recover the amounts noted in it in the same manner as arrears of land revenue [(s. 59 and rule 38 (3)]. The liquidator should keep a record of his proceedings [rule 40 (2)] with short notes of the depositions of the persons summoned to give evidence. The liquidator shall then make an order noting the names of members and past members and the amount to be realised from each as contributions under s. 50 (d) and as costs of liquidation under clause (i) of the same section. [ *Note*.—For instructions issued by the Registrar laying down the principles on which and the manner in which the contributions shall be determined by the liquidator, see the “*Hand book of Co-operation for Societies in Bombay and Sind by the writer.*”] This order together with all papers connected with the liquidation shall be submitted to the Registrar for his approval, and he may, if he thinks fit modify the order or refer it again to the liquidator for further enquiry or other action [rule 38 (3)].

**Note.**—The liquidator of a company is subject to the control of the Court while as provided in rule 38 (3) and (5) and rule 40 (2) he is subject to the control of the Registrar, who performs many of the functions of the Court.

No appeal lies from any order of the liquidator under s. 50 (see notes under s. 71 (2) (aa) *infra*). A copy of the order as finally approved by the Registrar, accompanied, if necessary by a list of the property of each member or past member against whom the decree will have to be enforced, shall be filed in the Civil Court, having local jurisdiction. The Court on a certificate signed by the Registrar or a liquidator shall execute the order in the same manner as a decree of such Court [s. 59 (a)]. It should be stamped as an application for execution. If the Civil Court or the

**340 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (u)**

Collector [ either of whom may be approached for recovery under s. 59] is unable under the above order to recover the sums assessed against any members, the liquidator may frame a subsidiary order or orders against any other member or members to the extent of the liability of each for the debts of the society, [rule 38 (4)]. This subsidiary order or these subsidiary orders, as finally approved by the Registrar shall be filed in the Civil Court having local jurisdiction for enforcement until the whole amount due from the members is realised. As an alternative to Civil Courts s. 59(b) permits resort to the Collector. The liquidator shall submit to the Registrar a quarterly report in such form as the Registrar may prescribe, showing the progress made in the liquidation of the societies placed under his charge [rule 38 (5)]. It follows from the above that the liquidator has to maintain books recording his actions so as to be able to comply with the rule. All funds in charge of the liquidator should be kept and deposited either in the post office savings bank or in a central co-operative bank and shall stand in his name [rule 38 (6)]. After the recovery of the dues of the society and the realisation of the contribution and costs of liquidation from the members, past members, etc. the liquidator shall after meeting the liabilities of the society, wind up the affairs of the society and submit a final report to the Registrar [rule 40 (2)]. At the conclusion of the liquidation a general meeting of the dissolved society shall be called at which the liquidator shall summarise the results of his proceedings, point out the causes of the failure of the society, and report what sums if any, remain in his possession after meeting all the liabilities of the society [rule 38 (9)] and shall take a vote as to the disposal of any cash balance that may remain with him (s. 52). A liquidator may at any time be removed by the Registrar, and he shall, on such removal be bound to hand over all the property and documents relating to the liquidation to such person as the Registrar may direct.

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

**Commentary.**

**Old law.**—*Cf.* s. 43 (2) (1) of Act II of 1912 (see appendix B.)

See notes to ss. 54, 55, 56, 57, 58, 59 and 64 of the Act and rules 32 to 37-A, 39, 42 and 44 (Appendix A). S. 71 (2) (u) of the Act provides for the settlement of disputes through arbitration. Assistant Registrars exercise all the powers of the Registrar for the purposes of the provisions of the Act and the rules given above. For further discussion see the Chapter on 'Arbitration' in the *Hand-book of Co-operation for Societies, in Bombay and Sind*" by the Author.

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

**Commentary.**

**Notes.**—This clause is new. Rules 42, 43 and 44 provide for the issue and service of processes and for proof of service thereof. (See Appendix A for rules).

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

**Commentary.**

**Notes.**—This clause is new. Rule 12 provides for the writing off of bad debts (See Appendix A for rules).

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

**Commentary.**

**Old law.**—This is same as s. 43 (e) of Act II of 1912.

**Funds** may be raised by the following ways:—(a) by entrance fees; (b) by receiving deposits; (c) by raising loans from other co-operative credit societies or from financing institutions. (d) by donations.—*model by-laws of credit societies (unlimited)*. *Share societies (credit with unlimited liability)* in addition to the above: (e) by the issue of shares. *Credit societies for salary earners (limited liability)* in addition to the above: (f) by subscriptions. *In housing societies* in addition to (a), (b), (c), (d), (e), (g) by contributions towards the cost of houses and land; (h) by issuing debentures and loan stock. *Cattle breeding societies*: (i) Covering fees. *Taluka Development Associations*: (j) by taking rate-

## 342 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (x)

able fees or subscriptions from members, whether individuals or co-operative societies; (k) grants from Government. *Irrigation societies*; (l) by contributions. Better living societies: (m) by addition of fines. *Model by-laws of District central banks*: (a) Shares (b) Deposits (c) Loans (d) Reserve fund. *Bombay Provincial Co-operative Bank*: (a) Shares, (b) Debentures, (c) Deposits, (d) Outside loans, cash credits, etc.

**For capital to be obtained and the reserve fund, see the ten main points of co-operation at p. 82 ante.**

**Share** is an interest in the society measured by a sum of money; in unlimited liability societies, the shares do not represent the member's portion of capital nor do they determine his liability. It is a moveable property belonging to a shareholder and transferable by him subject in the case of limited liability to a maximum of one-fifth or upto a value of three thousand to be held by one individual member (s. 6 and notes at p. 66). Another condition is that he must have held the shares for not less than one year and that the transfer is made to a member or the society (s. 19 and notes at pp. 101-6 *ante*). Shares denote both rights and liabilities. They entitle the holder to a dividend which in no case should exceed ten per cent on the capital (s. 38) and in the case of credit societies with unlimited liability with shares it is not to be paid for the first ten years [s. 40 (b)]. The money value of the share or the sum paid up forms the capital of the society and is not liable to attachment or sale under a decree of the court (s. 29). At the same time they cannot be hypothecated to that society by its members as a security for a loan (rule 9) as they form the capital of the society and are security for the creditors and not for the debtors. For the same reason where shares represent the sole liability (as in limited liability societies) they must not be withdrawable. No member has any right to reduce the security offered to the creditors.

One of the chief objects is to encourage thrift. This special privilege is accorded to protect savings in the form of shares. It forms a guarantee for depositors as it is the immediate security for debts. The value of the share being either the whole (fully paid up) or a small fraction (partly paid up) of the liability it cannot be parted with without notice to creditors. Similarly, the value of the share cannot be reduced unless adequate provision is made for all existing debts (as in liquidation). Sums paid up on shares should not be repaid while membership lasts except from a special share transfer fund built up from undistributed profits. But in the case of death of a member the heirs are entitled to repayment of the value of the share (s. 27).

Shares are not quite necessary but often they are useful inasmuch as where the population is too poor to take up a full share the payment is spread over a period of years. Where they are paid in instalments they encourage thrift. No society is allowed to acquire a share in a society with unlimited liability (s. 5).

For the liability which an unlimited liability society may incur by way of deposits and loans from non-members see rule 7. Restrictions on borrowing by societies with limited liability is placed by rule 8.

**Advantages of shares** are that (a) they provide the guarantee of the member which in an unlimited liability society, extends to the whole of his property and thus obtains credit. It is not intended, except secondarily as a means of furnishing funds directly, still less as an investment by the members as is the case in an ordinary joint-stock company. Whether a member holds one share or more than one he is responsible in all his property. In other words in an unlimited liability society the shares do not influence the liability, (b) Share system encourages thrift by insisting on members taking up and gradually subscribing shares and by paying dividends on such savings. The member has a more direct interest in his own share with its dividend and transfer value than in the indivisible capital of unlimited liability society. In place of unlimited liability the exact value of which is difficult to estimate depositors have as a guarantee a definite share capital. Share societies with limited liability besides enforcing thrift tend to stimulate associated action, give the members some business education, banish debt and usury, and instil punctuality and mutual confidence.

In certain places such as Sind the agricultural population consists mainly of Mussalmans who have a strong aversion to receiving interest and are, therefore, unwilling to make deposits on the ordinary system. After ten years there is distribution of half the accumulated profits among the shareholders by way of *bonus* due to thrift and careful management. Sometimes it so happens that huge amounts are required by the members and arrears are often very considerable. The security provided by deposits and by the reserve fund is not sufficient to cover the large loans advanced by banks. Deposits are withdrawable after the fixed period has elapsed and where the arrears are considerable the reserve fund does not increase. The lands are taken in mortgage but the procedure involved in their forced sales is difficult and one that is adopted in extreme cases. The best form of security is therefore, share capital.

**Credit societies with limited liability.**—In order to raise working capital urban societies have to provide some sort of guarantee in place of unlimited liability. This is done by the issue of share capital. Every member is required to take up and subscribe to a certain number of shares and the total fund raised by shares affords a reserved security to depositors and lenders. The working capital of the district central banks is raised from shares generally of a face value of Rs. 50 or 100 and fully paid up as it is often found difficult to realise later calls

The shares issued to individual members may bear a slightly preferential rate of dividend, when it is necessary in order to attract local capital. The share capital is the guarantee fund on the security of which deposit and loan capital is obtained. Liability is generally limited to the actual face value of the shares and the total working capital raised should never exceed 8 times the share capital plus the reserve fund.

### 344 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (x) ]

The Bombay Provincial Co-operative Bank derives its funds from shares, etc. The shares are of the face value of Rs. 50 each fully paid up. The general meeting has power to increase the share capital to any amount not exceeding Rs 50 lakhs. (See notes under the head " limited liability " at pp. 63-4). The Bombay Provincial Bank has however been exempted under G. R. No. 4149 of 1-5-19 3 from the purview of s. 6 (s. 5 of Act II of 1912) which limits the individual share-holding of a member to Rs. 3000 ( Rs. 1000 under the old Act of 1912) and of s 19 (s. 14 of Act II of 1912) which restricts the transfer of shares. But the result of the removal of these restrictions is that the members of the bank are excluded from the privileges under s. 26 (s. 21 of the old Act) which makes shares not liable to attachment and those under s. 27 (s. 22 of the old Act) which allows a member to transfer his interest in the bank to a nominee.

**Reserve Fund**—One of the ten main points of co-operation ( see p. 82) is that all profits are to be carried to the Reserve Fund, the object of which is to improve the credit of the society as a whole and to protect members from the enforcement of unlimited liability. It is the property of all the members jointly. Provision is made for the maintenance of a reserve fund in s. 39. (See notes to s. 39 pp. 205-11 *supra*).

Such Reserve Fund may be used in the business of the society (rule 28). The principle in case of rural societies of unlimited liability is explained at p. 215 under s. 40. The Committee on Co-operation (1915) thought that the primary object of every society should be to acquire a permanent capital of its own as speedily as possible. The best method is to arrange for a wide margin between the rates of interest at which societies borrow and lend, thus securing a substantial annual profit (surplus) to be carried to the reserve. Owned capital may be accumulated by means of share system provided that they do not lead to a desire for high dividends. Shares exceeding Rs. 50 are not recommended as they deter the poorer people from joining.

Model by-laws of credit societies with limited liability provide : In addition to the sum prescribed under s. 39 of the Act, all admission fees and receipts on account of forfeited shares, fines and donations shall be carried to reserve.

**Reserve fund in the case of district central banks** is their own property and since it adds greatly to the credit of the bank every effort should be made to build it up as rapidly as possible. Provided that the bank has assured for itself sufficient liquid resources to meet the probable withdrawals of depositors the reserve fund need not be invested outside the usual business of the bank. In the case of central banks the model by-laws provide that the reserve fund shall consist of (a) 25 per cent at least of the profits annually placed to the fund in accordance with by-laws, (b) any other sum allotted to it out of the profits or otherwise ; (c) the value of all shares forfeited to the bank and lapsed dividends. In the case of the Provincial Bank the agreement between the bank and the Secretary of State provided that : Subject to the formation of the sinking fund a

reserve fund may be created by the society (bank) and may be added to out of the profits of the society (bank). All it means is that in view of the sinking fund to be built up by the bank for its debentures, it is exempted from the operation of s. 39 ( s. 33 of Act II of 1912 ) requiring one-fourth of the profit to be carried to reserve.

**Deposits**—This is another way of raising funds. Members have a right to deposit their surplus money at interest with the society in so far as the means for the employment of the same exist that is if the society can employ the money usefully. One of the objects of co operative societies is promotion of thrift and this object necessitates the right of a member to deposit his savings in a society. This right is the very essence of a credit society. As the society may not be able to find useful employment for all the savings offered, it must give priority to deposits from members over those from non-members. Similarly as central banks, as a condition of registration, must be established with the object of facilitating the operations of primary societies, they also must give preference to deposits from such societies over those from outside, even though this entails a diminution of income. A society shall receive deposits and loans from non-members only to the extent and under such conditions as are prescribed by rules (s. 35) and by-laws. The Fourteenth Bombay Provincial Co-operative Conference (1925) was of opinion that agricultural credit societies should function as savings banks for all the members. It was also suggested that whenever the societies were obliged to approach the Registrar for loans exceeding the limits prescribed by the by-laws the deposits made by the members with the societies as savings might be cited as adequate guarantee. The accepted mission of a co-operative bank is, by means of thrift, to raise the comparatively poor not only to greater competency but also to independence. It is thrift by which self-help for the masses dependent upon labour is principally made effective. In them thrift is the symbol and the instrument of independence and liberty, both of which are indispensable conditions of permanent good. It is as compulsory savings banks that Schulze Delitzsch's co-operative banks first become known. Mr. M. Luzzatti's are, by his own dubbing: "perfect savings banks"; the majority of German village banks are not "Loans" only, but "Thrift and Loan Banks" and working on similar lines, nothing could be done better, in the interest of people of ordinary means, than to induce them to save and lay by small sums, ultimately to amount to sufficiently large amounts (*Report of Fourteenth Bombay Provincial Conference, p. 30*). Unlimited liability has the advantage of increasing the security offered to outside depositors and has also the responsibility of adopting certain measures to protect the members against the risk involved. The important one to fix from time to time in a general meeting with the sanction of the Registrar is the maximum liability which it may incur in loans and deposits from non-members (rule 7). In order that the society may not come to grief it is considered necessary to lay down some relation between share capital and reserve and the amount of loans and deposits. Limited liability societies should not incur total liabilities exceeding eight times the total of its paid up share capital and its accumu-



### 346 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (x)

lated reserve fund (rule 8). (See notes to rules 7 and 8 in Appendix A). Committee on Co-operation (1915) write : As the bank's declared object is quite as much to promote thrift as to facilitate credit, the main source of cash should be savings deposits (of members); these make the bank independent and also attract the interest of the depositors to the employment of their deposits. It should be the aim of primary societies to get as much in the way of local deposits as they can. (There is a moral element, The members of a credit society are more likely to understand the binding nature of a loan, when it is to their neighbours than to an impersonal institution). Deposits should be strictly confined to men with local interests. In order to tempt members to deposit it is justifiable to offer slightly higher rates on their deposits than on those of non-members ; the maximum being the rate charged by the society on its loans. ( paras 48 and 49 ). Calvert says at p.71: The promotion of thrift also renders desirable a saving deposit system. The committee considered that when once well-started the co-operative societies will be used by agriculturists for their savings far more freely than any Government institution can ever hope to be ever used and that their use will be attended by far greater economic advantages to the country than any likely extension of Post Office Savings Banks (para 51). Deposits imply thrift in the village, form good lying money, and they tend to interest in the management of the society a useful body of men who stand as sentries over their own deposits. The rates that can be earned by commerce or private money-lending are often high in India, another system of depositing is still a novel idea among the agricultural classes. Unless as the movement progresses there is a substantial increase in deposits drawn from men with local interests it will have to be confessed that co-operation has failed in one of its main objects (para 48). The co-operative societies furnish to agriculturists a safe method of investing small savings in an institution at their own doors which is managed publicly by persons whom they know and for objects which they can see and test, such savings have proved in other countries to constitute good lying money (para 51). If deposits exceed the requirements of members and are within the borrowing power of the society they should be accepted and the surplus which is not required for meeting loans to members should be forwarded to central bank for deposit. In view of the great importance of attracting local money from a class of depositors which understands agricultural finance and is little subject to panic, the central bank ought to be prepared to give to societies a slight privilege in terms for such deposits, accepting them as far as possible in priority to others and grant for them a slightly higher rate of interest than to outside depositors (para. 52).

Deposits with agricultural credit societies are to be made in accordance with rule 10 (see Appendix A for rules.)—*Model by-laws of credit societies (unlimited)* lay down that deposits shall always be fixed for at least six months. The committee may refuse or accept deposits of either sort and shall fix the rate of interest which shall be payable on deposits that are (a) for six months, (b) for one year, and (c) for two years or longer. They further provide that savings deposits from members may be accepted upto

the extent of Rs. 500. *Model by-laws of credit societies for salary earners* allow deposits in current account or for a fixed period. *The system of requiring compulsory deposits* in agricultural societies has not been adopted generally in this presidency. But in cases where the people wish to try the system and local conditions seem favourable the following model by-law is suggested for adoption:—Every member shall deposit in the society at least Rs. 5 per year, for each plough owned by him. If the member himself fails to pay the amount at harvest time, it may be deducted by the managing committee from the next loan sanctioned to him. Such compulsory deposits shall not be withdrawable except after 10 years or on death or with the special approval of the managing committee to meet domestic difficulties or on resignation. The rate of interest shall be 6½ per cent.

**Notes.**—As is pointed out elsewhere the success of a society will largely depend on the amount of deposits and loans which it is able to collect. Interest should be paid regularly, either yearly or half yearly at the rates fixed in the by-laws or by general meeting of the society. Different rates should ordinarily be allowed on deposits which are (a) current or savings, (b) fixed for six months, (c) fixed for one year, (d) fixed for three, to five years. If deposits are not taken away when the fixed period expires, interest at current rates should be allowed on them from the date of expiry until the owner either withdraws the money or gives notice that he deposits it for a further fixed term.

**For deposits and Loans** see notes to ss 34 and 35 and also see rule 13 in Appendix A.

**Deposits and loans are liable to attachment:**—(See G. R. No. 8989 of 20-9-1906, R. D. quoted under s. 26 at p. 144.)

**For debentures** see notes to s. 33A.

**Maximum liability.**—The Committee on Co-operation (1915) writes:—A society which borrows with undue freedom, whether in the form of deposits from the public or in that of loans from the central banks is likely to find itself in difficulties and for this reason it is incumbent on the central bank subject to the Registrar's control, to assess a definite sum as the limit of the borrowing power of the society. (See rules 7 and 8 and notes there under Appendix A). *Model by-laws of credit societies (unlimited)* requires the annual general meeting to fix the maximum normal credit of every member which amount shall be believed by the general meeting to be sufficient to meet his current agricultural expenses. A borrowing society is asked to meet once every six months and is required to prepare a forecast of the amount which it may require in the course of the next six months. It is required further to state (1) the amount which will be required for current agricultural expenses and (2) the sum required for special expenses such as stock purchase, debt-redemption, land improvement, etc. (see notes to s. 35 under the head normal credit statements at p. 187 *supra*.)

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

**Commentary.**

**History.**—This clause corresponds to s. 43 (2) (m) of the 1912 with certain alterations. (See Appendix B for the old Act).

**Principle.**—It is obvious that in the formation of a society the first essential is the careful selection as members of honest men or at any rate of men who have given satisfactory guarantee of their intention to lead an honest life in future. The best security that a co-operative society can give is the quality of its members. This condition is secured by s. 3 (c) which provides for the necessity of formal admission and by ss. 19 and 22 also. But one may after admission deteriorate in conduct or character and thereby prejudice the society. This condition cannot be satisfactorily fulfilled unless power is given to expel those who are found to be dishonest or engaging themselves in doing something which may injure the credit of the society. There is another aspect of the question. Co-operation is a business organisation and business principles demand that there should be a business like contract drawn up and subscribed to by all who are going to participate. The association must be put on a formal basis, and as the success of the enterprise depends on the loyalty with which each one of the members works for the achievement of the object, there must be freedom to choose with whom they will associate, and freedom to correct the choice or to withdraw. It is unnatural that each in doing his share of this bargain should desire some assurance that others will equally do theirs. Each member must be able to express his opinion on the advisability of admitting others; so that admission depends on popular election; he must be able to give effect to any alteration of opinion as to the fitness of another to perform his share, so that if a member is not found performing his share to the satisfaction of others expulsion by popular vote must be provided for. He must be given the opportunity of withdrawing, if he finds that he himself can no longer loyally work with others. Under no other circumstances could the motto "Each for all, and all for each be worked up to in the attainment of their common need." (*Calvert*). Thus the right to withdraw is characteristic of co-operation.

**Withdrawal** means a direct voluntary withdrawal and not a cessation of membership on account of a disqualification under the Act or expulsion for reasons stated in the by-laws. A member may be compelled to with-

draw if he ceases to possess the qualifications insisted upon in the Act or the rules, for instance, if he ceases to reside within the society's area [s. 6 (1).] In an unlimited liability society a member is liable for the debts of a society as they existed at the time when he ceased to be a member (see s. 28 and the notes under the head "as they existed at the time" at pp. 152-3. It follows, therefore, that if he had any objection to a liability he must withdraw before such liability is incurred. However even after withdrawal he remains liable for two years subsequently for the debts of the society as they existed at the time (s. 28). At the same time it should be remembered that a wholesale withdrawal should not be allowed as it may leave the creditors without any security. By-laws therefore, generally provide for two or three months' previous notice on the part of the withdrawing member. *Model by laws of credit societies* for instance, provide for three months' previous notice before withdrawal. The withdrawing member has first to pay any sum due from him to the society and to discharge all his liabilities as surety. In limited liability societies the right of withdrawal is not of much consequence, if the shares are fully paid up.

**Expulsion.**—The fact that all the members are jointly and severally responsible for outside debts involves certain consequences. Of them the following are the most important: (1) Members must be selected [s. 3 (c)] and (2) the members must be able to expel any one whose liability is worthless or who has pledged it to another society of unlimited society. (Rule 45.)

**Notes.**—This clause empowers Government to make rules providing for the expulsion of the members. Rule 45 states that a person who has become a member of two societies with unlimited liability shall be removed from membership. In other respects however it is left to by-laws, for instance, *model by laws of credit societies with unlimited liability* state that a member may be expelled for any of the following reasons: (a) If he is a persistent defaulter, (b) if he wilfully deceives the society by false statements, (c) if he is bankrupt or legally disabled, (d) if he is criminally convicted, (e) if he intentionally does any act likely to injure the credit of the society. (*Note*—Fifteen days' written notice of the proposal to expel such member shall be given to him). *Credit societies with limited liability* add: 'If he fails to pay his share instalments punctually. *Model by-laws of grain (banks) societies*: If his conduct is disgraceful in itself. *Model by-laws of producers' societies* further add: if he does his work below the standard required by the managing committee, or fails to observe proper discipline in regard to the work of the society. *Model by-laws of Labourers' and Artisans' societies*: if he has not fulfilled the conditions of membership. *Model by-laws of Better Living Societies*: a member may be expelled for any action which may be held by the managing committee and the general meeting to be dishonest or contrary to the stated object of the society or to the interest of co-operation. *Model by-laws of cattle insurance societies*: a member may be expelled or fined by the managing committee subject to appeal to

## 350 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (z)

the next general meeting for ill-treatment of cattle, fraud or deceit or breaking rules or refusing to carry out the sanitary orders of the committee. *Model by-laws of housing societies*: a member may be expelled if in the opinion of the meeting he has:—(a) gravely misused the dwelling rented by him from the society or habitually acted in it in a disgraceful manner which has caused serious offence to neighbours, or (b) wilfully disobeyed any decision of the committee or any properly appointed officer of the society. To a member so expelled from the housing society shall be refunded the amount (less a deduction therefrom of 5 per cent.) received by the society in respect of the shares held by him at the date of the resolution for his expulsion.

**Payments to be made.**—No rules have been framed providing for the payments to be made to withdrawing and expelled members of a society. The matter is left to the by-laws. For the instance, *model by-laws of consumers' societies* state that an expulsion of a member involves the forfeiture of all shares held by him while a withdrawing member is entitled to a refund of all fully paid up shares held by him.

**The liability of past members** is dealt with in s. 25 (see notes under s. 28). Other questions regarding the matter are left to by-laws. For instance, *model by-laws of producers' societies* lay down that a member who ceased to belong to the society whether by his own wish or owing to the action of the society shall be forbidden within the period of two years to do work at any industry having the same objects or purposes as the society within the same district and shall be liable to suit for damages if he should do so.

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

### Commentary.

**Old law.**—This clause corresponds to the latter part of s. 43 (n) of the Co-operative Societies Act, 1912 (see Appendix B).

**S. 27 provides for the transfer of interest** on death of a member to a person or persons nominated in accordance with the by-laws of the society (See notes under that section pp. 145-50 *ante*).

Rules 20 and 21 (see Appendix A) have been made by the Government providing for the nomination of a person to whom the interest of a deceased member may be paid or transferred.

**The by-laws of the Poona Central Co-operative Bank** provide that every individual member has a right to nominate any person to claim his share or interest in the bank after his death. He may make this nomination by a writing under his hand deposited with the bank during his life-time or by a

statement signed by him, made in any book kept by the bank for the purpose. A nomination so made may be revoked or varied by another nomination similarly made. The name and address of every person so nominated and any revocation or variation, of such nomination shall be entered in the members' register maintained by the bank and an acknowledgment of such entry shall be given to the member making a nomination or modification. To the person so nominated the member's share or interest in the bank or such portion thereof as may be specified in such nomination shall be paid or transferred after the member's death. A fee of annas four shall be charged for every variation or substitution in or for the original nomination.

**Revocation.**—Revocation or variation has to be made during the life-time of the member. It cannot be made by a will. A minor member cannot legally appoint a nominee.

**Notes.**—By-laws generally provide that the nominee must not be a servant or officer of the society without the sanction of the Registrar who will have no objection if the nominee is related to the nominator within a specified degree. It is to be noted that as rule 2 provides for the revocation or variation in a nomination by another nomination made in accordance with rule 21 (1) a nomination is not revocable in any other way than that prescribed in rule 21 (2) *e.g.*, by the subsequent will of the nominator. The rules bestow no power of bequest or of appointing an heir but merely enable a society to dispose of a deceased member's interest without litigation. The society is bound to follow the nominator's expressed wish; it must never become a party to any family arrangement in regard to division of the property. It must pay to the person nominated or to "such person as may appear to be the heir or legal representative" and leave him to fall in with any private arrangement. (For rules see appendix A)

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

#### Commentary.

**Old law** :—This clause corresponds to the latter part of cl. (t) of s. 43 (2) of the old Act of 1912 (see Appendix B).

**Notes**—At present no appeal lies from the order of the liquidator appointed under s. 47, but the powers exercised by the liquidator being subject to the sanction of the Registrar, any person affected by an order passed by the liquidator may make a representation to the Registrar who may then pass such orders as he thinks fit [s. 61 (a)]. See notes to s. 71 (2) (t) and also to s. 50 at pp. 238-47, *supra*.

**352 The Bombay Co-operative Societies Act. [Sec. 71(2) (bb-dd)]**

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

**Commentary.**

**History**—This clause is new. Rule 16 provides for the inspection of certain documents in the Registrar's office and the levy of fees for granting certified copies of the same (see Appendix A for rules).

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

**Commentary.**

**History**—This clause is new.

**Notes**—No rules have been framed by the Government providing for the procedure to be followed for the custody of the property attached under s. 55 but rule 39 states that an order issued under s. 55 shall if not carried out be executed in accordance with s. 59. (See notes at pp. 276-82 *ante*).

**If the order is sent to the Civil Court** under a certificate signed by the Registrar the Civil Court is to execute the same in the same manner as the decree of such Court and therefore, the procedure laid down in the Code of Civil Procedure will apply for the purposes of the custody of the property attached.

**If the order is sent to the Collector** accompanied by a certificate signed by the Registrar the order shall be executed by following the same procedure as is adopted for the recovery of arrears of land revenue and the procedure for the custody of property so attached as is provided in the Land Revenue Code, 1879 should be adopted.

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

**Commentary.**

**History**.—This clause is new. S. 41 states that a society may contribute to the provident fund established by such society from

its net profits, after the prescribed payments have been made to the reserve fund. (See notes under that section pp. 217-18). No rules have been framed providing for the payment of any contributions to such funds as yet.

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

**Commentary.**

**History.**—This clause is new. It empowers Government to make rules in connection with the grant of loans to co-operative societies.—*Bombay Legislative Council Debates, 25th July 1925.* Rules have been framed by the Government of Bombay governing the grant of *tagavi* under the *Agriculturists Loans Act, 1884*, to members of co-operative societies with unlimited liability registered under Act VII of 1925. (See *G. R., R. D. No. A-57 of 4th July 1922*). So also rules are framed by the Government of Bombay governing the grant of *tagavi* under the *Land Improvement Loans Act, 1883* to co-operative societies registered under Act VII of 1925 and members thereof.—(See *G. R., R. D. No. A 57 (a) of 4th July 1922*). For the rules, see notes under s. 33A at pp. 170-71 *supra*, and for details see the *Hand-book of Co-operation for Societies in Bombay and Sind* by the writer.

(3) Government may, subject to such conditions, if any, as it thinks fit, delegate all or any of its powers to make rules under this section to any authority specified in the order of delegation.

**Commentary.**

**Notes.**—No such power has yet been delegated by Government to any authority.

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



## 354 The Bombay Co-operative Societies Act. [ Sec. 71 (2) (5) ]

### Commentary.

**Previous Publication.**—Under cl. (4) the rules are subject to the condition of *previous publication*. S. 24 of the Bombay General Clauses Act, 1904, says that a draft of the proposed rules has to be published for a certain period beforehand and objections have to be invited. If any objections are received they have to be considered and the rules have to be modified or not as may be thought fit in view of those objections. After that these can be made and passed and have to be republished.

**Publication.**—Where in any Bombay Act or any rule passed under any such Act, it is directed that any order, notification or other matter shall be notified or published, then such notification or publication shall, unless the enactment or rule otherwise provides be deemed to be duly made if it is published in the Bombay Government Gazette.—S. 23, of the *Bombay General Clause Act, 1904*.

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

### Commentary.

**Notes.**—This clause of s. 71 prescribes that after the rules have been made they shall be laid for one month upon the Council table one month before the next session that is to say, supposing the rules are made during the off season when the Council is not sitting, a copy of these rules must be sent one month before to every member of the Legislative Council. So that in addition to the opportunity of seeing them printed and published in the Gazette, the members of the Council will also have independent notice that these particular rules have been made and they can read them through at their leisure, and they will have one month within which to give notice before the next Council. The resolution will be fully discussed in the Council and the Council will then decide whether any of these recommendations should be accepted or not. These will be statutory motions and they would be entirely different from recommendatory resolutions which have not the effect

of nullifying anything but merely recommending that some action be taken by Government. These resolutions of a statutory nature moved under a rule-making clause in an Act like this are given priority so that they may be really effective clauses and may give the Council an effective control over the rule-making powers. As the rules are to have force of the law it is necessary that such powers should rest in the hands of the Council.

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

Saving of existing societies.

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

### Commentary.

**History.**—This is s. 49 of the old Act of 1912 except that (2) is new (See Appendix B for the old Act).

**Under the Act of 1904** the registration of by-laws was not necessary. See notes under the head 'deemed to be registered' in s. 3 at p. 18 (*supra*.)

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

Repeals.

## SCHEDULE

*Enactments repealed*

(See section 73)

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

## APPENDIX A

### The Bombay Co-operative Societies Rules, 1927

No. 5978/24.—Whereas certain rules, which it was proposed to make under section 71 of the Bombay Co-operative Societies Act, 1925 ( Bombay VII of 1925 ), were published in Government Notification in the Revenue Department No. 5978/24 dated 14th July 1926 :

And whereas the objections and suggestions received with reference to the said rules have been considered by the Government of Bombay:

Now therefore the Government of Bombay, in exercise of the powers conferred by

No. 4358 of 30th April 1919.	section 71 of the Bombay Co-operative Societies Act, 1925 ( Bombay VII of 1925 ), and in supersession of the notifications specified in the margin, <sup>2</sup> are pleased to make the following rules:—
No. 321 of 3rd February 1920.	
No. 1312 of 26th April 1920.	
No. A-Misc.-1568 of 24th June 1920.	
No. 783 of 19th March 1921.	
No. 1937 of 29th July 1921.	
No. A-408 of 2nd December 1921.	
No. 6337-A of 28th March 1923.	
No. 6337 of 10th May 1923.	
No. 7910 of 20th September 1923.	
No. 8067 of 5th October 1923.	
No. 9744 of 7th March 1924.	
No. 7910 of 23rd June 1925.	

1. *Short title.*—(1) These rules may be called the Bombay Co-operative Societies Rules, 1927.

*Definitions.*—(2) In these rules, unless there is anything repugnant to the subject or context, (i) the expression " the Act " means the Bombay Co-operative Societies Act, 1925; (ii) " section " means a section of the Act; and (iii) words and expressions defined in the Act shall have the meanings assigned to them in the Act.

#### REGISTRATION

2. *Application for registration.*—(1) Every application for the registration of a society under sub-section (1) of section 9 shall be in the form of Schedule A hereto annexed.

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1. Revenue Department, Bombay, 11th August 1927.

2. Government Notifications, Revenue Department.

(2) In addition to the copy of the by-laws which is required to accompany the application for registration under sub-section (3) of section 9 two other copies of the proposed by-laws of the society shall be forwarded therewith.

(3) In cases where one of the members of the society to be registered is a registered society, a member of the Managing Committee of such registered society shall be authorised by such Committee by resolution to sign the application for registration and the by-laws on its behalf, and a copy of such resolution shall be appended to the application.

#### COMMENTARY

Two other copies are required to be forwarded for the reason that they are to be filed in the Registrar's and Assistant Registrar's offices. (See notes to s. 9.)

This provision in cl. (3) of rule 2 is made in view of the words, duly authorised in cl. (2) (b) of s. 9. See notes to s. 9 above.

3. *Decision of Registrar to be communicated in case of refusal to register.*—If the Registrar refuses to register the society or its by-laws under section 10, he shall communicate to the applicants his reasons for so doing.

#### *By-laws*

4. *Matters in respect of which a society shall or may make by-laws.*—(1) The matters in respect of which every society shall make by-laws are the following:—

(a) The name and address of the society and its branches, the tribe, class, caste or occupation of its members, if the membership is proposed to be so restricted, and the area for which it is to be registered;

(b) the object of the society, the purposes to which its funds are applicable, the terms of admission of members, and their rights and liabilities, the consequences of default in payment of any sum due by a member, and, in the case of credit societies, the conditions on which loans may be granted, and the rate of interest and the system of calculation of interest and the maximum number of members that may be admitted; and, in the case of non-credit societies, the mode of conducting business, purchase, sale, stock-taking, and other like matters;

(c) the mode of holding meetings, and, subject to the provisions of rules 5 and 6, the manner of making, altering and abrogating by-laws;

(d) the mode of appointment and removal of members of the committee and of the officers, if any, and the duties and powers of the committee and officers;

(e) the manner in which capital may be raised;

(f) the mode of custody and of investment of funds, and, subject to rules 14, 17, 18 and 19, the mode of keeping of accounts; and

(g) the distribution of its profits.

(2) Every society may make by-laws in respect of any other matters incidental to the management of its business.

#### COMMENTARY

**By-laws, future interest.**—Under the English Building Societies Act, fines, penalties and forfeitures are expressly empowered to be levied from the members of such societies. The power to fine members has been considered a necessary element in membership under the English Act. On the analogy of the English Act, societies might levy a penal rate upto the date of actual repayment.—*Seventh Conference of Registrars, 1918.*

5. *By-laws.*—When a society has been registered, the by-laws submitted under sub-section (3) of section 9 shall, subject to any modification approved by the Registrar, and adopted at a general meeting, having a quorum, by a majority of not less than two-thirds of the members present at such meeting, become the by-laws of the society.

6. *Amendment of by-laws.*—By-laws may be made, altered or abrogated by a resolution passed at a general meeting of the society; provided that—

(1) due notice of any proposal to make, alter or abrogate the by-laws is given in accordance with the by-laws;

(2) the resolution is passed by not less than two-thirds of the members present at the general meeting at which a quorum shall be present, or, at an adjourned general meeting (at which if a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall form a quorum) and a copy of the resolution is forwarded to the Registrar within a period of three months from the date of the meeting.

A copy of the existing by-law or by-laws, so marked as to show the alterations proposed to be made, and three copies of the proposed amendments signed by the officers of the society, shall be attached to the copy of the resolution; and

(3) the making, alteration or abrogation of the by-laws is approved and registered by the Registrar.

7. *Loans and Deposits.*—Every society with unlimited liability shall, from time to time, fix in a general meeting the maximum liability which it may incur in loans and in deposits from non-members. The maximum so fixed shall be subject to the sanction of the Registrar, who may at any time reduce it, for reasons to be communicated by him to the society in writing, and may prescribe a period, not being less than four months, within which the society shall comply with his orders. No such society shall receive any loan or deposit from a non-member which will make its liability to non-members exceed the limit sanctioned by the Registrar.

#### COMMENTARY

The Registrar controls the borrowing power of societies with unlimited liability, through provisions in by-laws. At the Ninth Conference of Registrars opinion was expressed that if Registrars are allowed to interfere in this matter it is likely to create an impression in the minds of outside people that the Registrar certifies that the society is good for the amount upto the limit which is fixed as the maximum borrowing power. The societies themselves by their own work ought to be able to take up the necessary capital and while societies depend on funds from central banks and institutions the central banks should be in a position to assess the credit of the borrowing banks.

8. *Restrictions on borrowing by societies with limited liability.*—No society with limited liability shall incur total liabilities exceeding eight times the total of its paid-up share capital and its accumulated reserve fund; provided that for the purposes of this rule gilt-edged securities owned by the Bombay Provincial Co-operative Bank or by a District Central Bank may, upto an amount equal to twice the paid-up share capital, be excluded in calculating the liabilities, provided that such liabilities are incurred on the following conditions:—

(i) the said gilt-edged securities owned by a District Central Bank shall be deposited in the custody of the Bombay Provincial Central Bank;

(ii) in the case of the Sind Central Co-operative Bank the said securities may be lodged with the Imperial Bank of India, and in the case of the District Central Banks in Sind the securities may be deposited in the custody of the Sind Central Co-operative Bank.

“ Provided further that the Registrar may, for special reasons, exempt any District Central Co-operative Bank in the Bombay Presidency including Sind which in his opinion is well-managed from the operation of the conditions imposed by the first proviso.”—(*G. R. R. D. No. 2882/28 of 16-4-30.*)

#### COMMENTARY

It is true that a society with unlimited liability is not entitled to ask as soon as it is started for any extent of loan because it is of unlimited liability without any efforts on its part for thrift. The true commercial principle when a person asks for a loan is not the consideration what amount of savings the borrower has got, but what assets he possesses. But in the case of agriculturists there is another consideration namely that the assets of an agriculturist which may be considered sound at one time may be found to be of less value a short time after. The soundness depends on favourable monsoon. The assets of the societies in unlimited liability societies form something like the capital; if members of these societies had large assets of deposits as their savings they would get financial help from money-lenders easily and without much trouble. In all unlimited liability societies the members are jointly and severally responsible for all their society's liability. Thus, there is large security for sums which are lent to these societies and, therefore, it is not necessary to have any definite proportion between the owned capital (plus reserve fund) and borrowed capital. In agricultural credit societies owned capital should be understood in the widest sense namely all the assets of the members forming that society.—*See the proceedings of the Bombay Provincial Co-operative Conference, 1921.*

The Conference of Registrars, in 1926, recommended that the maximum borrowing power of limited liability societies, primary credit societies, central banks and provincial banks should not exceed twelve times the owned capital (share capital plus reserve fund). The borrowing power of limited liability societies should have some reference to the owned capital. The Maclagan Committee decided to fix it at eight times.

It is necessary to lay down some relation between share capital and reserve and the amounts of loans and deposits. Instances had occurred where in a society share capital plus the reserve fund amounted to Rs. 14,000 but 2½ lakhs had been lent out in the district. Two years of famine and scarcity followed and the amounts due were not recovered. The depositors clamoured for their money and the society came to grief.—*Sixth Conference*



of Registrars, 1912. The provisions of rule 8 are applied to the Bombay Provincial Co-operative Bank, Limited, and the Sind Central Co-operative Bank, Limited, Karachi.—*Bombay Government Gazette, Part I, pages 830, 1217 (January to June, 1929)*. This limitation is based first on the experience and practice of sound joint-stock banks and, secondly, on the ground that as the advances made by central banks can be recovered only once a year and repayment has often in practice to be spread over a number of years it would be risky to allow the banks to incur outside borrowings too large in proportion to the permanent owned capital.—*Co-operation in Bombay* by Prof. Kaji, p. 39.)

**Urban Banks**—This restriction is quite reasonable and is not such as to put unnecessary restraint on the safe acceptance of deposits. If we study the balance sheets of various joint-stock banks we will find that though these banks have no restrictions of any law, to prevent them from accepting deposits at any stage, they consider it prudent and safe not to go beyond ten times the share capital and reserve fund. The restrictions under the Co-operative Act is, therefore, quite liberal enough particularly when we bear in mind that we have yet to provide expert management for our Banks.—*Co-operation in Bombay* by Prof. Kaji, p. 182.

9. *Shares not to be hypothecated to the society.*—The shares of a society shall not be hypothecated to that society by its members as a security for a loan.

#### COMMENTARY

S. 25 creates a charge by the operation of law on the shares or interest in the capital of a society.—This rule provides that a charge cannot be created by the act of parties. The solvency and the stability of a society depends upon the strength of the share capital and also on the reserve fund. Shares are not made liable to attachment in execution of a decree of Civil Court (s. 26). This provision is made in order that the share capital of a society should not in any way be disturbed by acts of parties. There should be a charge on the share capital of a member to the extent to which he stands surety to another. To the share capital not only the society looks but the creditors of the society also. Upto eight times the society is authorised to borrow (rule 8) and but for this rule the security of the persons who are advancing loans to the societies will be reduced.—*Bombay Legislative Council Debates, Aug. 1, 1927*.

10. *Deposits with Agricultural Credit Societies.*—Agricultural credit societies shall not accept deposits which are not fixed for a period of at least two months, except savings deposits in such societies as have made in their by-laws provision for the encouragement of thrift among their members by the opening of savings accounts.

#### COMMENTARY

Current accounts are very desirable in primary societies if the full benefit of the co-operative movement is to be taken. But current accounts

cannot at this stage be introduced in primary societies, for the primary societies are not so developed as to be able to look after the complicated machinery which has to be set up in opening current accounts and meeting demands on them. Therefore, for the purposes for which current accounts are required a determined effort has to be made to get Savings Banks Accounts introduced in full working order as soon as possible in all societies which are suitable by their constitution. It is necessary in order to develop the resources of primary societies that they should have facilities of having short term deposits and Savings Bank deposits. The distinction is this : In regard to savings deposits, though the depositor is entitled to draw his sum at any time he is only allowed to draw it on certain fixed terms and after giving a certain notice ; with regard to short term deposits the terms on which the deposits can be withdrawn are fixed. These conditions enable the societies to meet the occasions which arise from withdrawals.—*See Proceedings of the Bombay Provincial Co-operative Conference, 1921.* The Committee on Co-operation (1915) wrote: Societies have been found taking deposits at call and opening current accounts: but although the arrangement is no doubt a convenience to the people the trouble of keeping the accounts and the risk attending this practice make it advisable to drop current accounts altogether and to prohibit the receipt of deposits at call in all primary societies (*para 50, ibid*). Short term deposits may be taken as they are often useful to meet demands for loans at times when Central Banks are not giving up funds. The only condition should be that they should be repayable at harvest or at the season when the society anticipates that most repayments will come in (*para 51, ibid*). The value of Savings Bank deposits as a means of encouraging thrift is so great that societies must be allowed to maintain them. There is, of course, the danger, when a society undertakes to meet demands at a call. Cash in hand must be maintained and this involves a risk of misappropriation by the society's officers. The cases of malversation of funds are not of rare occurrence and the difficulty might be met by arranging to keep a cash balance with a Central Bank and requiring always a few days' notice for every withdrawal. The conjunction of savings deposits with the system of co-operative loans is a most important factor in co-operation in all countries, and the Indian Legislation on co-operative societies is expressly stated to be based on the desire to promote thrift and self-help among agriculturists, artisans and persons of limited means.

The co-operative societies will furnish to agriculturists a safe method of investing small savings in an institution at their own doors which is managed publicly by persons whom they know and for objects which they can see and test and such savings have proved in other countries to constitute good lying money (*para 51, ibid*).

11. *Loans on Suretyship of Non-members.*—No society shall make any loan to a member on a bond secured by the suretyship of a non-member; provided that the Registrar may, for special reasons, exempt any society by name from the operation of this rule.

## COMMENTARY

The Fourth Conference of Registrars, 1909: The society has not the same intimate knowledge of non-members and their qualifications and cannot exercise the same control over them as in the case of members. The responsibility of members offering such security and of other members is apt to be weakened, and in any case an outside element is introduced into the society's affairs. In certain instances, e. g. where the loan is a very large one, it may well happen that a non-member's security is far superior to a member's. The fact that the interests of the society and surety are identical as regards the main object, viz., the repayment of the loan, diminishes the force of the charge of introducing an outside element. The Fourth Conference of Registrars (1909) agreed that members were always preferable to non-members as sureties, but it was not possible to oust non-members by any hard and fast rule. The Committee on Co-operation (1915) wrote: It is a well-known and distinguishing characteristic of co-operative credit that the primary security for all loans is personal. The idea of personal security implies the power of a member to repay and this in its turn depends on his capacity as a worker, his honesty of character, and lastly the amount of his property. In other words it is to the man himself and his sureties rather than to his property that regard is paid when loan is given. It is true that complaints are made that a borrower has sometimes to pay some fee to get a surety and it is also true that by the constitution of the society the members are jointly responsible for each other but it has to be remembered that there are advantages in interposing all such securities as are available before endangering the Reserve Fund. Another consideration is that by the provision of such securities recovery is facilitated and a further safe-guard is obtained against the grant of excessive loans or the misapplication of money borrowed. So long as a member does not become responsible on behalf of himself as principal and of others as surety for more than he can be relied on to pay, there is no objection to members being mutually responsible for each other either in groups of three or otherwise. There are advantages in the system to require one surety for a small loan, two for a larger loan and so on, as it places fewer difficulties in the way of small than of big loans. The Bombay Pro. Co-operative Conference, 1920, recommended that a rule be issued prohibiting the acceptance of non-members as sureties by co-operative societies but the Registrar may be authorised to exempt individual societies from the operation of this rule. The reason is that members are amenable to discipline of the society and in case of default can be dealt with under Arbitration Procedure enjoined by the Co-operative Societies Act. It is advisable that members only should be accepted as sureties. Security under co-operative principle should be personal, i. e. it should depend upon the surety as a person and not on his property. By accepting as sureties persons other than members the society widens the area of liability but the idea is opposed to the basic principle of co-operation. The Conference also recommended that power should be given to the Registrar to exempt

some societies including those which are formed for the benefit of Government Officials and others where a Khot or a Talukdar is prepared to stand as a surety for his poor tenant. In some cases it so happens that it is not possible to find a member of a society as a surety. In such case the Registrar may be empowered to make an exception.

12. *Writing off of bad debts.*—Bad debts may be written off against the reserve fund of any society, and, in the case of limited liability societies, if the bad debts exceed the reserve fund, the balance remaining may be written off against the share capital of the society:

Provided that (i) no bad debts shall be written off without the sanction of a general meeting; (ii) before any such debts are so written off, the society, if it is affiliated and indebted to a Central Bank, shall obtain the approval of that Central Bank in writing, which approval shall be given after consultation with the Assistant Registrar, and shall be countersigned by him. If the society is not so affiliated, or if the society is so affiliated and is not indebted to the Central Bank, it shall first obtain the approval of the Assistant Registrar in writing; and (iii) if the society itself is a Central Bank, the approval of the Provincial Co-operative Bank, given in consultation with and countersigned by the Registrar, shall first be obtained.

#### COMMENTARY

Where the societies are indebted to the central bank or the provincial bank by way of supervision power is given to them to see whether a bad debt is written off or not. Where a society is affiliated to a central bank (i. e. certain shares are subscribed to the central bank by the society) and is indebted to it then it is necessary to obtain the approval of the central bank before bad debts are written off against the reserve fund.—*Bombay Legislative Council Debates, Aug. 1, 1927.*

Principle—Bad debts should not be written off without the sanction of some responsible official, in order to prevent the possibility of misappropriations being concealed by the creation of fictitious bad debts.—*Practical Auditing* by Spicer and Pegler.

13. *Interlending.*—For the purposes of sub-section (1) of section 34 a loan also means and includes a deposit made by one society with another society.

#### COMMENTARY

The frame work of the Act is as follows: There is the provincial Bank at the top. That Provincial Bank supplies funds to the District Bank. The District Bank gives loans to the primary societies. If there is no District Bank then the Provincial Bank supplies funds to the primary societies. If any society has got surplus funds the Provincial Bank is

authorised to take deposits. S. 37 says that a society may invest or deposit its funds with any bank or person carrying on the business of banking approved for this purpose by the Registrar. As soon as a deposit is received the person who receives the deposit is debtor to that extent to the person who makes the deposit. A deposit is as much a loan, because, to that extent the person who accepts the deposit, is debtor to that person who makes the deposit. S. 34 says that except with the general or special sanction of the Registrar a society shall not make a loan to any person other than a member. The provision is made in order that the Registrar should be in a position to safeguard the interests of primary societies some of which are inclined to advance money to other societies in order to accommodate certain of their friends who are members in that society. If the primary society to which funds have been advanced has an unlimited liability then the society advancing the loan has got no control whatever over the amount which they advance.—*Bombay Legislative Council Debates, Aug. 1, 1927.*

14. *Accounts, Returns and documents.*—(1) Every credit society shall keep the following accounts and books, viz. :—

(a) A register of members including persons nominated under section 27 ;

(b) A register of shares and debentures ( where capital is raised by shares or debentures ) ;

(c) A share transfer register ( where capital is raised by shares or debentures ) ;

(d) Cash account ;

(e) Members' loan account ;

(f) Deposit account ;

(g) Loan register ;

(h) Interest account ;

(i) Expense account ;

(j) Bank account ;

(k) Minute book, recording the proceedings of general meetings ;

(l) Minute book, recording the proceedings of the Committee ;

(m) Register of members' credit worthiness ;

(n) Such other accounts and books as may from time to time be prescribed by the Registrar.

Provided the Registrar may exempt any society or class of societies from the operation of clause (m) mentioned above.

(2) Societies other than credit societies shall keep the accounts and books mentioned in clauses (a), (d), (k) and (l) of sub-rule (1) and such other accounts and books as may be approved or, from time to time required by the Registrar.

15. *By whom copies of documents or entries may be certified.*  
—For the purpose of section 31 copies of documents or entries in the books of a society may be certified by any officer of the society.

16. *Inspection of documents: Fees.*—Members of co-operative societies or the public may inspect the following documents in the Registrar's Office free of charge and may obtain certified copies thereof, on payment of the following fees :—

Application for registration of a society	Re. 0-2-0 each.
By-laws of registered societies	... Re. 0-2-0 per folio.
Amendment of by-laws of a registered society	... Re. 0-2-0 per folio.
Certificates of registration	... Re. 0-2-0 each.
Orders for cancellation of the registration of a society	... Re. 0-2-0 per folio.
Audit memorandum of a registered society	... Re. 0-2-0 per folio.
Annual balance sheet	... Re. 0-2-0 per folio.

#### COMMENTARY

##### *Seventh Conference of Registrars, 1913:*

" S. 74 of the Indian Evidence Act describes a public document and s. 176 compels a public officer to supply certified copies to persons entitled to inspect the originals of such public documents on payment of fees. A rule under s. 43 of the Co-operative Societies Act describes the classes of documents in a Registrar's office which the public have a right to inspect and to prescribe fees for the supply of certified copies of such documents." In the Indian Companies Act there is a provision that certified copies of documents filed with a Registrar shall be supplied to any person on payment of certain fees. There are public documents within the meaning of S. 71 of the Indian Evidence Act, Publicity is a part of the life of co-operative societies. Confidence would be inspired if copies of documents were given. Fees ought to be imposed in order to check captious inquiries.

17. *Registrar may require statements and returns to be furnished.*—The Registrar may require any society to submit any statement and any periodical return of receipts and disbursements on such dates and in such form as he may prescribe. Every housing society shall submit a property register to the Registrar on such dates and in such form as he may prescribe.

18. *Periodical financial statements to be furnished.*—All registered societies classified by the Registrar as Central Banks or as Urban Banks with a working capital of more than Rs. 50,000 shall submit to that officer a quarterly finance statement in the form prescribed by Government for the quarters ending March 31st, June 30th, September 30th, and December 31st, not later than April 30th, July 15th, October 15th and January 15th, respectively.

19. *Annual balance sheet.*—On or before April 30th of each year the committee of every society shall publish an annual balance sheet, showing (a) the profit and loss, and (b) the receipts and expenditure of the previous financial year, and (b) the assets and liabilities as they stood on March 31st. This balance sheet shall be open to the inspection of any member during office hours at the office of the society and a copy thereof shall be submitted, before May 15th, to the Auditor appointed by the Registrar for the audit of that society.

20. *Transfer of Interest.*—The name and address of every person nominated under section 27 and any revocation or variation of such nomination shall be entered in the register kept under rule 14, sub-rule (1), clause (a).

21. *Nomination of Persons.*—(1) A member may, by writing under his hand deposited with the society during his life-time, or by a statement signed by the member made in any book kept by the society, nominate any person to whom under section 27 his share or interest in the society, or so much thereof as may be specified in such nomination, shall be paid or transferred on his death.

(2) A nomination so made may be revoked or varied by another nomination similarly made.

22. *Distribution of profits.*—In calculating the profits of a society for the year, for the purpose of declaring a dividend or bonus, all accrued interest which has been unauthorisedly overdue for more than six months shall be deducted from the gross profits of the year before the net profits are arrived at. All accrued interest, that has been so deducted from the profits of the year and is actually recovered during the subsequent year, may be added to the profits of the subsequent year.

#### COMMENTARY

The Eighth Conference of Registrars at Simla 1918 passed the following resolutions in accordance with the recommendations of the Committee

on Co-operation, 1915, "that no provincial bank or central bank should take into account unrealised overdue interest for the purpose of payment of dividends unless permitted to do so by the Registrar or some other person authorised by them in that behalf and subject to such conditions as may be laid down;"... "that no primary society should take into account unrealised over-due interest for the purpose of declaring profits unless permitted to do so" etc. S. 71 (p) provides that rules may be framed prescribing the conditions under which profits may be distributed to the members of a society. The Committee on Co-operation (1915): Central Banks have shown large net profits and consequently declared large dividends by reckoning as profits considerable sums of interest due from societies. In cases where the accrued interest is overdue and has not been paid by the debtor society this practice is wrong. Societies might default in the payment of interest year after year and in such cases it would be wrong to treat interest earned as available for dividend. Societies have to deal with persons who have not much property moveable or immoveable which could be attached or sold. It was proposed that interest accrued but overdue for more than six months should be excluded from the calculation of profits for distribution both in the case of primary societies and central banks.

23. *Distribution of bonus.*—No registered society shall distribute any bonus on shares beyond the dividend declared under section 38.

24. *Payment of dividend by Consumer's Producer's, or Housing Societies.*—No Consumers', Producers' or Housing Society shall pay its shareholders a dividend exceeding  $6\frac{1}{2}$  per cent. in any year on the paid-up share capital standing in the name of each shareholder. If a society is unable to pay a dividend of  $6\frac{1}{2}$  per cent. in any year it may make good the deficit by paying the difference out of profits in future years.

25. *Distribution of balance of profits.*—Any distribution of the remaining balance of profits under section 40 and after the distribution of dividend under section 38 shall be in accordance with the by-laws of the society regarding such distribution. It shall be in proportion to the wages earned by each member in the case of a producers' society, and to the amount of goods purchased by each member, or, where it is so provided in the by-laws, by each member or customer, in the case of a consumers' society. It shall also be in proportion to the amount of rent paid by each member in the case of a Housing Society, and, in the case of a resource society, may be in proportion to the goods obtained or sold through the society by each



member, or to the loans borrowed from, and the deposits made with, the society by each member.

26. *Restriction on distribution of funds by way of bonus, dividend or otherwise.*—Without the sanction of the Registrar, no part of the funds of a registered society shall be divided, by way of bonus or dividend or otherwise, amongst its members in any year unless the entire expenditure incurred by such society has been debited in the annual profit and loss account before the net profit has been calculated.

Provided that any loss or portion of loss on account of bad debts written off during the year may not be so debited if it be deducted from any bad debt or with the sanction of the Registrar from the Reserve Fund.

27. *Investment of funds.*—With the previous sanction of the Registrar any society may invest its funds, or a portion thereof, in the purchase or leasing of land or buildings and in the construction of buildings, provided that the purchase of such land or the construction of such buildings is likely to be advantageous to the society in the conduct of its business.

28. *Reserve Fund.*—The reserve fund of any registered society may be utilised in the business of the society, or be invested or deposited in any of the ways mentioned in clauses (a), (b), (c) and (d) of section 37. The Registrar may, for reasons to be communicated in writing by him to the society, by general or special order, direct that the latter course be adopted. In the case of a society constituted with the object of co-operative housing on a co-partnership tenancy basis, the reserve fund may be utilised for expenditure on the maintenance, repair and renewal of the buildings of the society.

29. *Audit.*—Societies with a total working capital exceeding Rs. 50,000 at the beginning of the Co-operative year may be required by the Registrar to bear the charges of the audit of their accounts. The amount of the charges to which they are liable shall be fixed by the Registrar and shall be recoverable under section 65.

#### COMMENTARY

Co-operation would not go on without assistance from Government. In European countries help was freely given in the form of State contribution to the expense of audit. In unlimited societies a reserve fund must

be built up and this would be impossible in a great many cases if the audit costs were levied. (The Bombay Co-operative Departmental Conference (1916) passed a resolution that a full and thorough Government audit is very necessary and very desirable in the interests of the advancement of the movement in order to ensure the confidence of the investing public until its progress justifies the audit being taken over and managed by the societies themselves in consonance with the fundamental principle of self-help in co-operation. In point of fact there is no method of control by which co-operative societies can be said to be controlled in anything like so thorough a manner as audit, and so long as the audit remains entirely in the hands of the Registrar, it may be taken that the control of the societies remains in his hands also. If anything is to be done in the direction of self-control and self-help then audit is one of the directions in which the burden could be shouldered.—*Bombay Provincial Co-operative Conference, 1919.*

30. *Charges for audit.*—The Registrar may, with the previous sanction of Government, levy an audit rate not exceeding  $\frac{1}{2}$  per cent.<sup>1</sup> calculated on the working capital of every registered society, as it stood at the close of the last preceding co-operative year, and employ the proceeds of the rate in maintaining a staff to audit the accounts of such societies. Societies falling under rule 29 shall be exempt from this rate. Audit fees assessed under this rule shall be recoverable under section 65.

31. *Audit of Accounts of Consumers' Societies.*—(1) Consumers' Societies with a working capital exceeding Rs. 50,000 may at their option arrange for their own annual audit independently. The societies arranging for their own audit shall report the fact to the Registrar before the 1st of May every year. Failing the receipt of a report from any Consumer's Society before the 1st of May in any year, the Registrar shall arrange for the compulsory audit of such society by an official auditor. When the audit is made by an official auditor, a fee of Rs. 10 per day for the whole period of the audit (a portion of a day being treated as a full day) shall be recovered from the society and credited to Government.

(2) If, after an inquiry under section 43 or an inspection under section 44, the Registrar has grounds for thinking that the audit arranged independently by the society has been seriously defective, he may order the official auditor to make a fresh audit of the society, and may recover the cost of the audit from the society.

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1. It is proposed by Draft Notification No. 3818/124 of 5-8-1931, published in B. G. G., p. 1809, of 6-8-31, that the figure 5/8 be substituted for the figure "1/2".

32. *Arbitration.*—When a dispute has been referred to the Registrar under section 54, the Registrar or his nominee shall issue a notice to all parties, and, unless either of the parties desires within 15 days of the issue of such a notice that the matter be referred to arbitration, shall proceed to decide the dispute himself.

When either of the parties desires that the matter be referred to arbitration the Registrar ( or his nominee ) shall call on each party to nominate its arbitrator within 15 days, and to send a statement signed by the proposed arbitrator about his willingness to serve as an arbitrator. When there are more persons than one on each side, the principal party on each side will have the right to nominate the arbitrator. In such cases the Registrar will decide who is the principal party and his decision shall be final.

Where either of the parties fails to make a nomination within the period aforesaid the Registrar may nominate an arbitrator on behalf of such party.

The Registrar or his nominee will act as Chairman of the Committee of three Arbitrators. He will fix the date and place of hearing the dispute, and carry on the necessary correspondence in connection with the disposal of the case.

When any dispute is referred to the Registrar's nominee or to three arbitrators for decision and is not decided by them within two months or such further period as the Registrar may allow, the Registrar may decide the dispute himself or refer it again to his nominee for decision.

33. *Registrar may appoint any person to be his nominee for any specified area.*—The Registrar, by special order to be notified in the *Bombay Government Gazette*, may appoint any person to perform the duties of his nominee for disputes arising in any one or more co-operative societies within any area specified in the order, for a period to be specified in the order. Such period shall not ordinarily exceed one year but may be extended by further special order for a further period not exceeding one year in each case.

34. *Payment of expenses of arbitration.*—The Registrar or his nominee and the arbitrators shall have power to order the expenses of determining the disputes to be paid out of the funds of the society, or by such party or parties to the dispute as they may think fit, according to a scale laid down by the Registrar. The Registrar may

fix the fees to be paid to his nominee out of the expenses so recovered.

#### COMMENTARY

**Levy of arbitration costs under the ordinary law cannot be justified.** The power to levy costs of arbitration has been taken by this rule but it appears doubtful how far it is legal unless the Act is suitably amended. ( *See also proceedings of the Tenth Conference of Registrars, 1928.* )

'Out of the Funds of the Society'.—Some of the parties in suits before the arbitration courts are absent when awards are passed. In such cases the society has to bear the expenses. It generally succeeds in realising them by executing the arbitrator's awards.—*Bombay Legislative Council Debates, 1 August, 1927.*

**Registrar may fix fees to be paid :—**There are housing societies in and around Bombay and when disputes arise in these societies which require to be settled by arbitration, arbitrators who are willing to work gratis cannot be obtained. The object of this rule is to permit fees in certain cases to be paid, in cases where the Registrar thinks that fees must be paid and where the Registrar thinks that otherwise no arbitrators will be forthcoming. It is not that fees will be paid in every case. Fees will be paid according to the nature and amount of work that is to be done in a particular reference. This power is taken because the difficulty of securing voluntary workers to arbitrate is particularly felt in the case of disputes in housing societies.—*Bombay Legislative Debates, 1 Aug., 1927. S. 43* (1) of Act II of 1912 did not invest with power to make rules to levy costs of arbitration and in fact no rules were framed by the Government of Bombay in that direction, as the levy of arbitration costs under the law as it stood was not justified. There was no provision of law under which costs of arbitration could be levied or included in the decree of the arbitrator. With a view to make the levy of the costs of arbitration legal this clause has been inserted. (The Tenth Conference of Registrars, 1928, have passed a resolution recommending an amendment to the Act of 1912 providing for power to levy costs of arbitration.) The Government of Bombay has accordingly framed the above rule.

35. *Procedure in arbitration proceedings.*—The Registrar or his nominee shall record a brief note in English or in vernacular of the evidence of the parties and witnesses who attend, and upon the evidence so recorded, and upon consideration of any documentary evidence produced by either side, a decision or award, as the case may be, shall be given in accordance with justice, equity and good conscience, and shall be reduced to writing. If any party duly summoned to attend fails to appear, the dispute may be decided *ex parte*. In cases where three arbitrators are appointed, the opinion

of the majority shall prevail. In case of equality of votes, it shall be decided by the Registrar himself.

36. *Appearance by pleaders.*—In proceedings held under rules 32 to 35, no party shall be represented by a legal practitioner.

37. *Execution of arbitration orders in special cases.*—Subject to the provisions of section 59 of the Act, the Registrar may by an order in writing specially authorise any officer of the Co-operative Department not below the rank of a Special Mamlatdar or an Auditor to call for and send arbitration orders obtained by any society for execution. The societies in respect of which these powers are to be exercised by the officers so authorised shall be mentioned in the order.

37A. "When recovery of arbitration awards is made by village officers, the Registrar shall have power to order the expenses of such recovery to be paid out of the funds of the society or by such party or parties in default as he may think fit according to a scale laid down by the Registrar." (*G. R. R. D. No. 684/28 of 13-8-1930.*)

38. *Liquidation.*—Where a Liquidator has been appointed under section 47 the following procedure shall be adopted :—

(1) The appointment of the Liquidator shall be notified by the Registrar in the *Bombay Government Gazette*.

(2) The Liquidator shall at once take charge of the books and property and assets of the society and publish by such means as he may think proper a notice requiring all claims against the dissolved society to be notified to him within two months of the publication of the notice. He shall thereafter proceed to take such further action as he is empowered to take under the Act. All liabilities recorded in the account books of a society shall be deemed to have been duly notified to the Liquidator.

(3) The Liquidator shall make separate orders against the various members and past members of the society, noting the amount to be realised from each as a contribution under clause (d) of section 50 and as the cost of liquidation under clause (i) of the said section. These orders shall be submitted for approval to the Registrar, who may modify them or refer them back to the Liquidator for further inquiry or other action or may forward them for execution under section 59.

(4) If the sum assessed against any member is not recovered, the Liquidator may frame a subsidiary order or orders against any other member or members to the extent of the liability of each for the debts of the society, until the whole amount due from members is recovered, and these orders shall be dealt with in the same way as orders under sub-rule (3).

(5) The Liquidator shall submit a quarterly progress report to the Registrar in such form as the Registrar may require.

(6) All funds in charge of the Liquidator shall be deposited either in the Post Office Savings Bank or in a Central Co-operative Bank, and shall stand in his name.

(7) Where recovery of the dues is made by village officers the Liquidator may pay to such officers remuneration at the rate of one per cent. of the amount collected by such officers.

(8) The Registrar shall fix the amount of fee, if any, to be paid to the Liquidator.

(9) At the conclusion of the Liquidation a general meeting of the members of the dissolved society shall be called at which the Liquidator shall summarise his proceedings, point out the causes of the failure of the society, and report what sum, if any, remains in his possession after meeting all the liabilities of the society, as determined under the rules.

39. *Execution of orders.*—Every order passed by the Registrar under section 50A and every order issued under section 55, shall, if not carried out, be executed, in accordance with section 59.

40. *Disposal of records of a society whose registration is cancelled.*—(1) When an order directing a society to be wound up is issued under section 47 and no Liquidator is appointed, the officers of the society which is wound up shall, within 15 days of the publication of the order in the *Bombay Government Gazette*, send by registered book post or railway parcel, the records and books of the society to the Assistant Registrar or hand over the same to the local Auditor.

(2) When the affairs of a society for which a Liquidator has been appointed have been wound up and an order cancelling the registration is made under section 49, the Liquidator will forward all the books and records of the cancelled society, and all his own papers and proceedings, by railway parcel to the Assistant Registrar,

together with an account of his expenses, showing how the balance has been disposed of, and attaching the receipt of the person to whom it was handed over.

(3) All the books and records of a society whose registration has been cancelled and the proceedings of Liquidation shall be destroyed by the Assistant Registrar, after the expiry of two years from the date of the order cancelling the registration of the society.

41. *Interest in liquidation proceedings.*—On any debt, which is due from a society that is being wound up, the creditor may prove for interest up to the date of the Registrar's order for winding up at a rate, which, in the case of the Bombay Provincial Co-operative Bank or a District Central Co-operative Bank or other Co-operative Bank permitted by the Registrar to finance societies, shall be the contract rate, and in other cases shall be a rate to be fixed by the Registrar and not exceeding the contract rate.

Provided that, if any surplus assets remain after all liabilities, including liabilities on shares, have been paid off, further interest on such debts at a rate to be fixed by the Registrar and not exceeding the contract rate may be allowed to creditors from the date mentioned above up to the date of the repayment of the principal.

42. *Service of summonses miscellaneous.*—(1) Summonses issued by the Registrar, or by a person authorised to hold an inquiry or to make an inspection or by the Auditor or Liquidator, or by the Registrar's nominee, under section 58, shall, if sent for service to a Mamlatdar or Mahalkari, be served by such officer.

43. *Fees to be credited to Government.*—All (fees) fines levied under section 61 and rule 42 shall be credited to Government.

44. *Mode of serving summonses.*—(1) A summons issued by any of the officers mentioned in rule 42 may be served personally or through a Mamlatdar, Mahalkari or any member of the Co-operative Department or any Honorary Organiser or Chairman or Secretary of the society or by registered post, acknowledgment paid.

(2) The serving officer shall, in all cases in which summons has been served, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a 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.

(3) The person issuing the summons may examine the serving officer on oath, or cause him to be so examined by the Mamlatdar or Mahalkari through whom it is served, and may make such further inquiry in the matter as he thinks fit; and shall either declare that the summons has been duly served or order it to be served in such manner as he thinks fit.

#### COMMENTARY

**Summons may be served through Chairman or Secretary of the society.**—It is necessary to enforce some of the duties on the Chairman or the Secretary of societies just to arouse them to their responsibilities. If the Chairman or the Secretary be an interested party then the duty may be transferred to other officers mentioned in the rule.—*See the proceedings of the Twelfth Bombay Provincial Conference, 1923.*

45. *Membership of two societies with unlimited liability prohibited.*—No person being a member of a society formed on a basis of unlimited liability shall be a member of any other society formed on a similar basis without the special or general sanction of the Registrar; and where a person has become a member of two such societies, either or both of the societies shall be bound to remove him from membership upon a requisition from the Registrar to that effect.

#### COMMENTARY

**Membership of two societies with unlimited liability prohibited.**—Under S. 71 (d) and (y) the Government may make rules which may prescribe the conditions to be complied with by persons applying for admission, withdrawal and expulsion of members. Rule 4 (b) of the Bombay Co-operative Societies rules, 1927, lays down that every society shall make by-laws of the terms of admission of members and their rights and liabilities. The model by-law 10 (f) of co-operative credit societies with unlimited liability provides that a member may be expelled if he persistently borrows loans elsewhere than from the society without first communicating his intention to the managing committee and hearing what they have to say by way of advice or warning. It is a strict Raiffeisen rule that a member of a society with unlimited liability should not be admitted into a second similar society and if he becomes a member of another similar society and refuses to withdraw he may be expelled. The societies are corporate bodies and it is the society and not the members personally which enter into contract. The unlimited liability is what is termed contributory liability.

**Object.**—In the case of unlimited liability society, in case of need arising for discharging their liabilities the whole property of the member remains pledged to the society for the satisfaction of the claims of the society's creditors and thus no remnant remains available for being pledged



elsewhere. It has, therefore, been found necessary to prohibit members of one unlimited liability Society joining another society of a similar type except under special circumstances.—*Tenth Bombay Provincial Co-operative Conference, 1921.*

46. *Societies not to be involved in controversial matters of a religious character.*—No society may take any action which would involve the society in the discussion or propagation of controversial opinions of a religious character, and the Registrar may prohibit any action or rescind any resolution which in his opinion is of such a tendency.

#### COMMENTARY

**History.**—The Committee on Co-operation in India, 1915, wrote: "It is necessary that Government should exercise its power to prevent any misuse of the co-operative organisation to further religious or political aims. The Co-operative Societies Act indicates that societies are intended for the promotion of the 'economic interests of their members' (See s. 5). It is obvious that an organization like that of co-operative societies might in certain circumstances be employed for improper objects, and it would be unwise for Government to deprive itself of the power to intervene if it saw it developing in undesirable directions." From the political point of view the Committee found the societies affording an excellent outlet for the public-spirited activities of Indians who desired to ameliorate the conditions of their fellow country-men on the lines of self-help. In view of the recommendations of the Committee the Bombay Government has issued this rule.

The Legislature has no right to confer special privileges on an organisation that is definitely allied to one political party in the country. The time has come for provision to be made for the prevention of the application of co-operative funds for political purposes. During the last few years the tendency to apply the funds of an essentially non-political society for political purposes has increased. There is no reason why members of a co-operative society who desired to subscribe for political purposes should be disabled from doing so, but that was not the same thing as forcing a minority to see the resources of prestige and influence or their local branch used for one political party. It seems to be a most dishonourable thing that a majority in a body consisting of persons of mixed political opinions should devote money to a political object. The co-operative movement was a great and splendid movement which should be purged of its faults. Politics was becoming a vital principle in the co-operative movement; whether it is really for the benefit of the members is a question. There are co-operative societies where the alarm is taken and the political agitators had been practically cleared out.

**Political.**—S. 71 says that Government may, for the whole Presidency or any part of the Presidency, for any society or class of societies make rules to carry out the purposes of that Act. The purposes of this

Act are the well-being of the society, amity and good feeling between the different members of the society. If certain members of the society think that they can advance their material or moral interests by supporting a certain cause or upholding a certain political opinion they should not be barred from holding that opinion and discussing certain matters. The word political is nowhere defined. It is vague. The Trade Unions Act definitely provides that the members of the union have the right to subscribe to a political levy if they decide to do so on their own votes. Then there is no reason why there should be any interference.

**Religious character.**—If the religious opinion is not of a controversial nature the rule does not debar the society from taking any action. The societies are intended for the well-being of the people for amity and not for strife, but for good feeling between the different members of the society.—*Bombay Legislative Council Debates, 2 Aug., 1927.*

**47. Registrar to keep a record of names, addresses and by-laws of societies.**—The Registrar shall keep a register of the names and addresses of all registered societies and shall record a copy of the registered by-laws and subsequent amendments to the by-laws of such societies.

#### SCHEDULE A.

( See rule 2. )

##### *Form of application for registration of a Society.*

1. Name of proposed Society
2. Address to be registered
3. Is liability limited or unlimited
4. Area of operations
5. Objects of the Society
6. If the capital is to be raised by shares, what is the number and value of shares which it is proposed to issue
7. In other cases, what is the amount of the capital it is proposed to raise by loan or deposit
8. Language in which the books and accounts will be kept
9. With this application for registration are sent three copies of the proposed by-laws signed by the applicants (not less than ten).

( Signatures )

Name and father's name	Age	Caste	Profession	Place of residence, village and taluka

# APPENDIX B

## ACT NO. II OF 1912<sup>1</sup>

[ 1st March, 1912. ]

[As modified up to 1st December, 1928.]

### An Act to amend the Law relating to Co-operative Societies.

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

#### *Preliminary.*

1. (1) This Act may be called the Co-operative Societies Act, 1912; and  
Short title and extent. (2) It extends to the whole of British India.

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

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

(b) "committee" means the governing body of a registered society to whom the management of its affairs is entrusted:

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1. For Statement of Objects and Reasons see Gazette of India, 1911, Pt. V, p. 95; for Report of Select Committee, see *ibid.*, 1912, Pt. V, p. 7; and for Proceedings in Council, see *ibid.*, 1911, Pt. VI, pp. 186, 679, and *ibid.* 1912, Pt. VI, pp. 3, 31 and 256.

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), see Bal. Code; in the Sonthal Parganas by Notification under s. 3 of the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), see B. and O. Gazette, 1913, Pt. II, p. 105; in the Arakan Hill District, by Reg. 1 of 1916, s. 2 and Sch. I, Bur. Code, Vol. I.

This Act has been repealed in its application to Bombay, by Bom. Act VII of 1925; in its application to Burma, by Bur. Act VI of 1927.

- (c) "member" includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws and any rules :
- (d) "officer" includes a chairman, secretary, treasurer, member of committee or other person empowered under the rules or the by-laws to give directions in regard to the business of the society :
- (e) "registered society" means a society registered or deemed to be registered under this Act :
- (f) "Registrar" means a person appointed to perform the duties of a Registrar of Co-operative Societies under this Act: and
- (g) "rules" means rules made under this Act.

*Registration.*

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

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

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

- (1) the liability of a society of which a member is a registered society shall be limited :
- (2) the liability of a society of which the object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists, and of which no member is a registered society, shall be unlimited.

5. Where the liability of the members of a society is limited by shares, no member other than a registered society shall—

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

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

(b) have or claim any interest in the shares of the society exceeding one thousand rupees.

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Act which does not consist of at least ten persons above the age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons—

**Conditions of registration.**

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

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

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

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

**Power of Registrar to decide certain questions.**

8. (1) For purposes of registration an application to register shall be made to the Registrar.

**Application for registration.**

(2) The application shall be signed—

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 6, sub-section (1) ; and

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

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

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

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

11. (1) No amendment of the by-laws of a registered society shall be valid until the same has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Registrar.

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

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

#### *Rights and liabilities of members*

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

Member not to exercise rights till due payment made.

13. (1) Where the liability of the members of a registered society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, have one vote only as a member in the affairs of the society.

(2) Where the liability of the members of a registered society is limited by shares, each member shall have as many votes as may be prescribed by the by-laws.

(3) A registered society which has invested any part of its funds in the shares of any other registered society may appoint as its proxy, for the purpose of voting in the affairs of such other registered society, any one of its members.

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

(2) In case of a society registered with unlimited liability a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless—

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

(b) the transfer or charge is made to the society or to a member of the society.

*Duties of registered societies.*

15. Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change thereof.

16. Every registered society shall keep a copy of this Act and of the rules governing such society, and of its by-laws, open to inspection free of charge at all reasonable times at the registered address of the society.

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

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

(3) The Registrar, the Collector or any person authorised by general or special order in writing in this behalf by the Registrar shall at all times have access to all the books, accounts, papers and securities of a society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

*Privileges of registered societies.*

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

19. Subject to any prior claim of the Government in respect of land-revenue or any money recoverable as land-revenue or of a land-lord in respect of rent or any money recoverable as rent, a registered society shall be entitled in priority to other creditors to enforce any outstanding demand due to the society from a member or past member—

- (a) in respect of the supply of seed or manure or of the loan of money for the purchase of seed or manure—upon the crops or other agricultural produce of such member or person at any time within eighteen months from the date of such supply or loan ;
- (b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw materials for manufacture, or of the loan of money for the purchase of any of the foregoing things—upon any such things so supplied, or purchased in whole or in part from any such loan, or on any articles manufactured from raw materials so supplied or purchased.



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

21. Subject to the provisions of section 20, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member, and neither the Official Assignee under the Presidency-towns Insolvency Act, 1909, nor a Receiver under the Provincial Insolvency Act, 1908, shall be entitled to or have any claim on such share or interest.

22. (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws :

Provided that—

- (i) in the case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid ;
- (ii) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the

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*See now the Provincial Insolvency Act, 1920 ( 5 of 1920 ).*

case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

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

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

Liability of past member.

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

Liability of the estates of deceased members.

25. Any register or list of members or shares kept by any registered society shall be *primâ facie* evidence of any of the following particulars entered therein:

Register of members.

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

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

26. A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed by the rules, be received, in any suit or legal proceeding, as *primâ facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

Proof of entries in societies' books.

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

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

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

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

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

28. [(1)] The Governor General in Council, by notification<sup>1</sup> in the Gazette of India, may, in the case of any registered society or class of registered societies, remit<sup>2</sup> the income-tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits;

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

<sup>4</sup>(1) \* \* \*

<sup>5</sup>(2) The Local Government, by notification in the local official Gazette, may, in the case of any registered society or class of registered society, remit—

1. This section was re-numbered by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

2. For Notifications under this section, see General Statutory Rules and Orders, Vol. IV, pp. 340-341.

3. The letter and brackets (a) were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

4. Clauses (b) and (c) were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

5. This sub-section was added by *ibid.*

- (a) the stamp-duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable, and
- (b) any fee payable under the law of registration for the time being in force.

*Property and funds of registered societies.*

29. (1) A registered society shall not make a loan to any person other than a member :
- Restrictions on loans.

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society.

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

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

30. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by-laws.
- Restrictions on borrowing.

31. Save as provided in sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the Local Government may, by rules, prescribe.
- Restrictions on other transactions with non-members.

32. (1) A registered society may invest or deposit its funds—
- (a) in the Government Savings Bank; or
- (b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882, or
- Investment of funds.

(c) in the shares or on the security of any other registered society, or

- (d) with any bank or person carrying on the business of banking, approved for this purpose by the Registrar, or
- (e) in any other mode permitted by the rules.

(g) Any investments or deposits made before the commencement of this Act which would have been valid if this Act had been in force are hereby ratified and confirmed.

33. No part of the funds of a registered society shall be divided by way of bonus or dividend or otherwise among its members ;  
 Funds not to be divided by way of profit.

Provided that after at least one-fourth of the net profits in any year have been carried to a reserve fund, payments from the remainder of such profits and from any profits of past years available for distribution may be made among the members to such extent and under such conditions as may be prescribed by the rules or by-laws :

Provided also that in the case of a society with unlimited liability no distribution of profits shall be made without the general or special order of the Local Government in this behalf.

34. Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding ten per cent. of the remaining net profits to any charitable purpose, as defined in section 2 of the Charitable Endowments Act, 1890.  
 Contribution to charitable purpose.

*Inspection of affairs.*

35. (1) The Registrar may of his own motion, and shall on the request of the Collector, or on the application of a majority of the committee, or of not less than one-third of the members, hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.  
 Inquiry by Registrar.

(g) All officers and members of the society shall furnish such information in regard to the affairs of the society as the Registrar or the person authorized by the Registrar may require.

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

Inspection of  
books of indebted  
society.

Provided that—

- (a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
- (b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

37. Where an inquiry is held under section 35 or an inspection is made under section 36, the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society.

38. Any sum awarded by way of costs under section 37 may be recovered, on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable actually and voluntarily resides or carries on business, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person.

*Dissolution of society.*

39. (1) If the Registrar, after an inquiry has been held under section 35 or after an inspection has been made under section 36 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society.

(2) Any member of a society may, within two months from the date of an order made under sub-section (1), appeal from such order.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the appellate authority.

(5) The authority to which appeals under this section shall lie shall be the Local Government :

Provided that the Local Government may, by notification in the local official Gazette, direct that appeals shall lie to such Revenue-authority as may be specified in the notification.

40. Where it is a condition of the registration of a society that it should consist of at least ten members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.

41. Where the registration of a society is cancelled, the society shall cease to exist as a corporate body—

(a) in the case of cancellation in accordance with the provisions of section 39, from the date the order of cancellation takes effect ;

(b) in the case of cancellation in accordance with the provisions of section 40, from the date of the order.

42. (1) Where the registration of a society is cancelled under section 39 or section 40, the Registrar may appoint a competent person to be liquidator of the society.

(2) A liquidator appointed under sub-section (1) shall have power—

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

(b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society ;

(c) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants ;

(d) to determine by what persons and in what proportions the costs of the liquidation are to be borne ; and

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

(g) Subject to any rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908<sup>1</sup>.

(f) Where an appeal from any order made by a liquidator under this section is provided for by the rules, it shall lie to the Court of the District Judge<sup>2</sup>.

(h) Orders<sup>3</sup> made under this section shall, on application, be enforced as follows :—

(a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as a decree of such Court ;

(b) when made by the Court of the District Judge on appeal, in the same manner as a decree of such Court made in any suit pending therein.

(d) Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act.

*Rules.*

43. (1) The Local Government may, for the whole or any part of the Province and for any registered society or class of such societies, make rules<sup>4</sup>

Rules.

to carry out the purposes of this Act.

1. In its application to British Baluchistan this sub-section shall be read as if the words " or the British Baluchistan Civil Justice Regulation, 1896, as the case may be " were added, see Schedule I of Regulation II of 1913, Bal. Code.

2. For sub-section ( f A ) which applies to U. P. and Madras only, see U. P. Act 3 of 1919 and Mad. Act 10 of 1920.

3. This sub-section has been modified in its application to U. P. and Madras, see U. P. Act 3 of 1919 and Mad. Act 10 of 1920.

4. For rules, see different Local Rules and Orders.



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

- (a) subject to the provisions of section 5, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member ;
- (b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications ;
- (c) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the conditions to be satisfied prior to such making, alteration or abrogation ;
- (d) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership ;
- (e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise ;
- (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings ;
- (g) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers ;
- (h) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance-sheet showing the assets and liabilities of a society ;
- (i) prescribe the returns to be submitted by a society to the Registrar and provide for the persons by whom and the form in which such returns shall be submitted ;

- (j) provide for the persons by whom and the form in which copies of entries in books of societies may be certified ;
- (k) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares ;
- (l) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and enforcement of the decisions of the Registrar or the awards of arbitrators ;
- (m) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members ;
- (n) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred ;
- (o) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made, and the amount which may be lent, to an individual member ;
- (p) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society ;
- (q) prescribe the extent to which a society may limit the number of its members ;
- (r) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies ;

(s) subject to the provisions of section 39, determine in what cases an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals; and

(l) prescribe the procedure to be followed by a liquidator appointed under section 42, and the cases in which an appeal shall lie from the order of such liquidator.

(g) The Local Government may delegate, subject to such conditions, if any, as it thinks fit, all or any of its powers to make rules under this section to any authority specified in the order of delegation.

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

(e) All rules made under this section shall be published in the local official Gazette, and on such publication shall have effect as if enacted in this Act.

#### *Miscellaneous.*

44. (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government, including any costs awarded to the Government under section 37, may be recovered in the same manner as arrears of land-revenue.

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

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

Power to exempt societies from conditions as to registration.

46. The Local Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

**Power to exempt registered societies from provisions of the Act.**

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

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

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

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

48. The provisions of the Indian<sup>1</sup> Companies Act, 1882, shall not apply to registered societies.

**Indian Companies Act, 1882, not to apply.**

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

**Saving of existing societies.**

50. [Repeal.] Repealed by s. 3 and Sch. II of the Second Repealing and Amending Act, 1914 (17 of 1914).

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1. See now the Indian Companies Act, 1913 (7 of 1913).

# INDEX

	PAGE		PAGE
<b>Aboriginal and Hill tribes—</b>		<b>Agricultural—(contd.)</b>	
problems of	50	department	129
indebtedness among	51	<b>Agricultural organisers—</b>	
Government concessions and		who are	129
grants to societies of	51	<b>Agriculture—</b>	78
<b>Accounts—</b>		<b>Agriculturist—</b>	12
to be kept by credit society...	314	who is	54
model forms of,	314	under D. A. R. Act	54
<b>Accounts and returns—</b>		majority of, necessary in	
model forms of,	314	credit societies of un-	
<b>Act—</b>		limited liability	54
Colton Transport Act, 1925	48	whether a person is non-	
Madras Agricultural Pests		agriculturist or,	77
and Diseases Act	48	<b>Agriculturists' Loans Act—</b>	176, 187
Civil Procedure Code, 1908...	143	<b>Amalgamation—</b>	
Government of India Act	2	of societies	92
Friendly Societies Act	145, 183	<b>Amendment—</b>	
Presidency Towns Insol-		when and how to move	88
vency Act, 1909	142	of by-laws	94
Provincial Insolvency Act,		what is	93, 94
1920	142	form of certificate for, of	
Provident Funds Act, 1897...	143	by-laws	95
title of an, may be resorted		Registrar may register	
to explain enacting part	11	amendment of by-laws	95
<b>Address—</b>		appeal against refusal to	
of societies	105	register	96
object of having compul-		<b>Amount—</b>	
sory, of societies	105	of loan	317
change to be notified to		<b>Annual general meeting—</b>	
Registrar	106	procedure to be followed at...	87
<b>Adjournment—</b>		adjournment of,	88
of annual general meeting...	88	<b>Apex banks—</b>	189
<b>Admission—</b>		<b>Appeal—</b>	
of members	336, 303	no, against various orders	
<b>Adult education—</b>	45	of liquidator	251
<b>Age—</b>		to Government against	
of members	72, 73	order or decision of or	
<b>Agricultural societies—</b>		sanctioned by Registrar	288
classification of	23	against orders of arbitra-	
<b>Agricultural—</b>		tors or Registrar's	
improvements	38, 39		

PAGE	PAGE
<b>Appeal—(contd.)</b>	<b>Arbitrator—(contd )</b>
nominee etc. ... 271	orders to be executed by
against refusal to register	Civil Court as decree ... 275
amendment of by-laws ... 96	orders to be executed by
<b>Application for registration ... 80</b>	Collector as arrears of
<b>Application—</b>	land revenue ... 275
for registration must be	awards exempted from
signed by person duly	stamp duty ... 166
authorised when society	<b>Area—</b>
is member ... 84	for membership ... 69, 71, 300
<b>Arbitration—</b>	<b>Artisan—</b>
Registrar's power of ... 30	societies for, ... 63
liquidator may get disputes	<b>Ascertainment—</b>
referred to, ... 245	of debt of members ... 305
reference to arbitration ... 257	<b>Assistant Registrar—</b>
object of providing for, ... 261	exercises powers of Regis-
Assistant Registrar exercises	trar providing for settle-
powers of Registrar in	ment of dispute through
matters relating to, ... 261	arbitration ... 261
what is, ... 261	necessity of, ... 33
procedure to be followed	powers of, ... 33
in, ... 269	charges of, ... 34
appeal in matter of pro-	<b>Audit—</b> 109
ceedings in, ... 271	if State-controlled assures
order in appeal against arbi-	Government that socie-
trator's etc., is final and	ties are developing on
conclusive ... 272	sound lines ... 115
<b>Arbitration Act, 1899—</b> 258	interests of outside investors
submission to arbitration	safeguarded by, ... 116
disputes under, ... 258	successful management is
<b>Arbitrator—</b>	ensured by, ... 117
whether subordinate to	is necessary to prevent
Registrar or Government... 289	fraud and misappro-
authorised to administer	priation ... 117
oaths, ... 262	helps to install sense of
has arbitrator power to	responsibility ... 118
decide who is legal	provides sheltering autho-
representative? ... 265	rity to managing committee 118
whether Limitation Act	includes examination of
applies to proceedings	overdue debts ... 119
before, ... 266	includes verification of cash
procedure to be followed	balance and securities ... 121
by, ... 269	includes valuation of assets
appeal against orders of, ... 271	and liabilities ... 122
decision in appeal against	charges of, ... 128
order of, is final and	Registrar to audit society
conclusive ... 272	himself or through

Audit—(contd.)	PAGE	Award—	PAGE
another	... 132	of arbitrators exempted	
provides economic education	118	from stamp duty	... 166
what is	... 110	<b>Association—</b>	
definition of	... 110	spirit of,	... 4
intended for detection of		<b>Attachment—</b>	
fraud	... 110	shares in a corporation under	
intended for detection of		ordinary Civil law liable	
errors	... 110	to,	... 143
nature of co operative,	... 113	principle of exemption of	
distinction between audit		shares of societies from,	... 144
of a company and that		liability to,	... 144
of co-operative society 1'4,	115	<b>Attachment before award—</b>	269, 270
object of	... 115	direction in matters with	
may be done by Registrar		reference to,	... 270
himself or by some one		appeal against order of,	... 271
authorised by him	... 132	order in appeal against,	
audit classification of society	21	final and conclusive	... 272
Registrar has to do the		<b>Award—</b>	
duty of,	... 29	form of,	... 263
<b>Auditor —</b>	111	finality of,	264, 272
under Company law is		exempted from stamp-	
appointed at general		duty	... 264
meeting	... 110	attachment before,	269, 270
under Company law is		directions in matters re-	
agent of share-holders	... 110	garding attachment	
under Company law has		before,	... 270
access to books etc.	... 110	appeal against	... 271
duty of, under Company		appeal against order of,	
Act	... 110	attachment before judgment	271
under Company Act	111, 112	<b>Backward Classes—</b>	
under Co-operative Socie-		societies for,	... 50, 171, 781
ties Act	111, 112	<b>Balance sheet—</b>	
qualities required of,	... 111	periodical publication of,	314, 315
Co-operative auditor,	... 112	annual,	... 108
liability of,	... 118	<b>Banker's Books Evidence Act...</b>	157
in ascertaining liabilities		<b>Banks—</b>	
should note certain points...	123	classification of,	... 22
special auditors	... 126	unions of,	...
sub-auditors	... 126	<b>Bank Inspectors—</b>	... 130
may summon at the time		<b>Bar of suit—</b>	
of audit any officer etc,	... 131	in winding up and dissolu-	
may compel production of		tion matters	... 250
any book or documents		<b>Better living—</b>	
etc.	... 132	societies	... 50
not an officer of society	... 17	how to achieve	... 49
		<b>Board of agriculture—</b>	... 129

	PAGE	<b>By-laws—(contd.)</b>	PAGE
<b>Body Corporate—</b>		system of calculating interest laid down in case of credit societies in, ...	301
society is	... 133	maximum number of members to be admitted in case of credit societies to be fixed in, ...	302
advantages of being,	... 134	mode of conducting business, purchase, sale, stock-taking etc. in non-credit societies to be laid down in, ...	302
<b>Bombay Co-operative Institute—</b>	220	mode of holding meetings to be laid down in, ..	302
assets of cancelled housing society vest jointly in Registrar's nominee, the society and,	... 256	manner of making, altering and abrogating,	... 302
<b>Bombay Legislative Council—</b>		mode of appointment and removal of members of committee and officers laid down in, ...	303
rules are liable to be modified or rescinded by,	... 354	duties and powers of committee and officers laid down in, ...	303
rules to be laid before, for one month previously...	354	manner in which capital may be raised laid down in, ...	303
<b>Bonus—</b>		mode of keeping accounts laid down in, ...	303
restrictions on distribution of funds by way of,	... 211	mode of custody and investment of funds laid down in, ...	303
what is,	... 141	mode of distribution of profits laid down in, ...	303
definition of,	... 141	definition of,	... 298
<b>Books—</b>		conditions to be satisfied prior to making,	... 298
to be kept by credit societies of indebted society	... 227	procedure when Registrar refuses to register,	... 298
inspection of, of indebted society	... 227	copies of, to be sent along with application for registration of,	... 298
of society	... 156	abrogation of,	... 298
Bankers'	... 157	procedure to make by-laws legal and binding	... 298
mode of proof of entries in Banker's	... 157	matter in respect of which by-laws may be made	... 298
to be maintained by society...	158		
to be kept open for inspection	... 158		
<b>Breach of trust—</b>			
what is meant by,	... 249		
<b>Burma Co operative Societies Act, 1927</b>	... 183		
<b>By-laws—</b>	12, 82, 298		
amendment of	93, 94		
form of certificate of amendment of	... 95		
Registrar may register amendment of	... 95		
appal against refusal to register amendment of	... 96		
what is	... 15		
rate of interest in case of credit societies to be fixed in,	... 301		



<b>By-laws—(contd.)</b>	<b>PAGE</b>	<b>Central Banks—(contd.)</b>	<b>PAGE</b>
in matter of name of society	299	from,	... 187
in matter of address and branches of society	... 330	constitution of,	... 188
in matter of caste, tribe, class or occupation of members	... 300	deposit by,	... 189
in matter of area	... 300	loans by,	... 189
in matter of object of society	... 300	<b>Central Co-operative Institute—</b>	<b>257</b>
in matter of purposes to which funds of society may be applied	... 300	<b>Certificate—</b>	
in matter of terms of admission of members	... 300	of registration	... 86
in matter of consequences of default in payment of any sum due by member	300	<b>Certificate of entries in books—</b>	<b>156</b>
in case of credit societies what do by-laws provide	300	<b>Certified copy—</b>	
providing for conditions on which loans may be granted in case of credit societies	... 301	of documents	... 315
of co-operative society	... 15	charges for supply of,	... 215
<b>Cancellation—</b>		charges for supply of, of entries in books of society	... 315
distinction between winding up order and,	... 232	what is,	... 315
effect of, of registration	... 234	<b>Charge—</b>	
when should Registrar make order of,	... 235	difference in priority and,	... 137
form used in making an order for,	... 236	corresponds to lien in English law	... 137
Registrar's power of,	... 31	definition of,	... 137
<b>Cancelled society—</b>		what is first,	... 138
disposition of surplus assets of,	... 253, 255	and set off in respect of shares or interest of member	... 140
<b>Capital—</b>		what is,	... 102
interest in,	... 141	of share or interest	... 102
what is,	65, 102	<b>Charitable—</b>	
<b>Cattle—</b>		what is charitable purpose	... 218
problem of,	... 44	history of the provision for contribution to, purposes,	219
insurance societies for	... 44	what is charitable purpose	... 220
<b>Central Banks—</b>		<b>Civil Court—</b>	
what are,	60, 61	award of arbitrators etc. not to be questioned by,	... 272
object of,	... 61	to execute orders of liqui- dator, or arbitrator, or Registrar as decree of that court	... 275
loans by primary societies		agreement to refer disputes to arbitration ousts juri- sdiction of,	... 259
		non-member sureties to be proceeded against in,	... 266
		cannot call in question order passed in appeal in arbi- tration matters by Regis- trar or his nominees	... 272
		jurisdiction barred in wind-	

Civil Court—(contd.)	PAGE	Committee—(contd.)	PAGE
ing up and dissolution matters ...	251	or legal representative sum due to deceased member...	150
can interfere if liquidator's act is <i>ultra vires</i> ...	252	on the establishment of co-operative credit societies in India, (1901) presided over by Sir Edward Law ...	57
<b>Capitalist and co-operation—</b>	7	on Co operation in India (1915) presided over by Sir Edward Maclegan ...	59
<b>Classification—</b>	21	what is, ...	16
sale societies ...	23	managing committee ...	16
insurance societies ...	24	appointed to inquire into problems of depressed classes and aboriginal tribes presided over by State of 1930 ...	51
of Institute ...	24	<b>Companies Act, 1913—</b>	
of Unions ...	22, 24	provision for decision of disputes under, ...	258
of guaranteeing unions ...	24	<b>Company law—</b>	
of supervising unions ...	24	of registration ...	62
according to Bombay Co-operative Societies Act ...	24	<b>Compulsion—</b>	
Purchase societies ...	23	in co operation ...	3
Purchase and Sale societies ...	23	<b>Compulsory by-laws—</b> ...	228, 229
Producing societies ...	23	<b>Construction—</b>	
Production and Sale societies of Primary Societies ...	22	previous state of the law may be resorted to for, of the Act ...	3
agricultural societies ...	22	<b>Consumers' society—</b>	13
non-agricultural societies ...	23	what is ...	19
limited societies ...	23	distinguished from Producers' society ...	20
unlimited societies ...	23	restrictions on transactions with non-members by ...	196
audit, ...	21	<b>Contribution—</b>	
of societies ...	21	to charitable purposes ...	218
scientific ...	21	history of provision for contribution to charitable purpose ...	219
according to Government of India Annual Returns ...	22	what is, ...	218
of banks ...	22	liquidator to determine, to be made by members etc....	241
<b>Collector—</b>		what is included in, ...	242
to execute orders of liquidator, arbitrator or Registrar as arrears of land revenue ...	275	to be determined from past members or representa-	
execution of orders of liquidator, arbitrator or Registrar through, does not oust jurisdiction of insolvency court ...	280		
land of defaulters not to be handed over to societies but should be purchased by societies by offering adequate bids ...	280		
<b>Committee—</b>	12		
may pay to heir or nominee			

	PAGE		PAGE
<b>Contribution—(contd.)</b>		<b>Co-operative society—</b>	
tives of deceased mem-		conditions necessary to	
bers after hearing them...	243	make a society a true,	... 52
can nominees, heirs or legal		what is,	...7, 11, 12
representatives be arrested		special privileges conceded	
etc. for contributions levied		to,	... 168
by liquidator	... 245	classification of,	... 21
<b>Consolidation—</b>		<b>Co-operative Unions—</b>	
of holdings	... 4	what are,	... 130
<b>Conflict of interest—</b>		<b>Co-partnership—</b>	
of Producers and Consumers	20	Housing Societies in	
<b>Co-operation—</b>		Bombay Presidency	
an alternative form of orga-		are on basis of,	... 20
nisation to capitalism	... 7	<b>Corporate body—</b>	
ten main points of,	... 82	society is,	... 133
is moral movement	... 6	under Company law	... 133
distributive justice in,	... 4, 5	is a privilege of society	... 133
distinction between trade		advantages of,	... 239
unionism and,	... 5, 6	execution cannot be issued	
tends to the elimination of		against individual mem-	
middleman and protests		bers of registered society...	240
against exploitation	... 6	<b>Corporation—</b>	
what is	... 3, 4	shares in, are liable to	
<b>Co-operative—</b>		attachment and sale	
„ mortgage credit	174, 175	under ordinary civil law...	143
„ education	... 22	<b>Costs—</b>	
„ marketing	... 43	of inquiry	... 229
„ spirit	... 41	procedure to be adopted before	
„ finance	... 61	ordering, of inquiry	... 229
object of prohibiting the use		recovery of costs of inquiry	
of word " co-operative " by		or inspection of books of	
others	... 286	society	... 230
use of word, prohibited to		<b>Cottage industries—</b>	... 40
others	... 285	<b>Court fees—</b>	
<b>Co-operative system—</b>		societiss not exempted so	
as against joint-stock system	10	far from,	... 161, 166
<b>Co-operative Institutes —</b>		<b>Court of Wards—</b>	
what are,	... 139	deposits by,	... 195
to be consulted before con-		<b>Credit society—</b>	
tributing to charitable		organisation of,	... 81
purposes	... 220	conditions of,	... 36
origin and history of		what sort of societies are	
Bombay,	... 221	included in the classi-	
objects of the Bombay,	... 221	fication of,	... 23
<b>Co-operative principles—</b>		<b>Credit Statements—</b>	
what are	... 52	details of,	... 190

	PAGE		PAGE
<b>Creditor—</b>		<b>Dekkhani Agriculturists' Relief Act, 1879—</b>	
interest may be paid by liquidator at contract rate to, ...	246	agriculturist under, ...	54
rights of, to apply for inspection ...	227	provisions do not apply except ss. 2 and 21 ...	78
of society may apply to Registrar to have its books inspected ...	227	exempts agriculturist from arrest etc. even when dues of society are concerned ...	137
liquidator may pay any class or classes of creditors in full ...	241	does not apply to societies so far as registration of documents ...	166
<b>Crop-protection—</b>		intended to decrease litigation ...	46
against pests, insects and diseases ...	47	provides for Village-munsifs ...	46
<b>Dairy societies—</b>		<b>Delegation of powers—</b>	
Government loans to, ...	171	of making rules by Government ...	303
<b>Debenture—</b>		to Assistant Registrars ...	33
what is, ...	170	to Deputy Registrar ...	34
difference between a shareholder and holder of, ...	170	<b>Deposits—</b>	
definition ...	159	interest on, not exempted from income-tax ...	165
definition under Company law ...	159	accounts are confidential ...	158
bonds exempted from compulsory registration ...	166	what are, ...	173
<b>Debts—</b>		to be received by society with unlimited liability ...	175
full disclosure of, ...	305	to be received by society as laid down in rules and by-laws ...	183
redemption of old, ...	179	what are ...	185
instructions by Registrar in matter of redemption of, ...	180	from non-members in limited societies ...	185
Circulars by Registrar in matter of redemption of old debts ...	181	importance of local, ...	185
can liquidator recover time-barred? ...	246	by banks and limited liability societies ...	186
of a society ...	152	of Local Funds in societies ...	194
as existed at the time of ceasing to be member ...	152	of contributions by villagers towards cost of school buildings in societies ...	194
<b>Deceased member</b>		by Court of Wards in societies ...	195
value of interest of, ...		banks and societies with limited liability to maintain fluid resources ...	
liability of the estates of, ...	153		
<b>Definition—</b>	12, 13, 14		
agriculturist ...	53		
of person ...	16		
two kinds of, ...	14		

	PAGE		PAGE
<b>Deposits—(contd.)</b>		<b>Documents—</b>	
when accepting, ...	186	production of, how enforced	274
by municipalities in societies	194	certified copies of ...	315
<b>Depressed classes—</b>		charges for supplying of certified,	315
Government loans to societies among,	171	<b>Duties—</b>	
problems of,	50	of members of committee ...	311
indebtedness among,	51	of society ...	105
government concessions and grants to societies of,	51	<b>Economic interests—</b>	38
<b>Deputy Registrar—</b>		include better living ...	38
powers of ...	33	include better business ...	38
appointed in Sind ...	34	include better method of production	38
<b>Dispute—</b>	257	include thrift ...	38
arrangement to refer, to arbitration bars jurisdiction of Civil Court ...	259	include self-help ...	38
what is a, ...	264	<b>Economic need—</b>	
includes debts or demands due to society by member etc. ...	264	persons with common,	10
shall be referred to arbitration ...	265	<b>Economic wastage—</b>	45
when to be decided by Registrar himself ...	272	<b>Education—</b>	
<b>Dissolution—</b>		primary, for peasants and workers	45
bar of suit in dissolution matters ...	250	<b>Election—</b>	
object of provision of barring jurisdiction of civil courts	251	of committee ...	309
<b>Distribution—</b>		of members	97, 303
of profits	212, 213	<b>Errors—</b>	
<b>Dissolution—</b>		of omission ...	111
of members of committee ...	312	of commission ...	111
<b>Dividend—</b>		clerical, ...	111
restrictions on, ...	201	compensating, ...	111
object of limiting, ...	201	<b>Evidence—</b>	
maximum rate in case of Consumers' societies ...	204	of entries in books ...	156
maximum rate in case of Producers' societies ...	204	<b>Evidence Act—</b>	
maximum rate in case of Housing societies ...	204	entries in books of account how admissible under ...	157
<b>Division—</b>		production of title-deeds of witness not party to suit ...	158
of reserve funds ...	206	secondary evidence under, ...	158
<b>Divisional—</b>		<b>Exemption—</b>	
Board of agriculture ...	129	from registration ...	159
		from income-tax ...	161
		from stamp-duty ...	161
		from registration-fees ...	161
		from court-fees ...	161
		from super-tax ...	164
		from income-tax not allowed in respect of interest	

<b>Exemption—(contd.)</b>	<b>PAGE</b>	<b>Funds—(contd.)</b>	<b>PAGE</b>
of securities held by society ...	164	raised by issue of shares ...	342
notification exempting societies from stamp-duty ...	165	in shape of reserve fund ...	344
from compulsory registration applies to share certificates and debenture-bonds ...	166	in shape of deposits ...	345
from payment of registration-fees ...	166	investment of, ...	211
not applies regarding court-fees ...	166	instructions regarding investment of, ...	200
<b>Exemption—</b>		investment of, ...	210
Government Resolution on, of societies from registration-fees ...	166	restrictions on distribution of, by way of bonus, dividend or otherwise ...	211
from Dekkhan Agriculturists' Relief Act applies to societies for the purposes of registration ...	166	raising of, by rural societies ...	187
<b>Exclusion—</b>		investment of, ...	198
of religious and political discussion 296, 22 ( <i>App. A</i> )		investment of reserve, ...	199
<b>Expulsion—</b>		what are, ...	199
of members ...	98	utilization of cash balances investing funds in constructing or leasing of land or building or constructing one on land ...	199
<b>Famine—</b>		<b>General—</b>	
Commission report 10 ( <i>intro</i> )		purpose society ...	21
<b>Fluid resource—</b>		<b>General meeting—</b>	
what is meant by, ...	208	obligation to hold, ...	86, 87
<b>Friendly Societies Act, 1896—</b>	145, 183	rule may provide for, ...	307
provision for decision of disputes under, ...	258	powers to be exercised at, ...	307
application for inquiry into affairs under ...	224	procedure to be followed at, ...	307
prohibits inspection of loan account ...	158	duties of, ...	308
<b>Fragmentation of holdings—</b>	46	president of ...	89
<b>Frauds—</b>		special, ...	89
two classes of, ...	110	procedure followed at special, ...	90
<b>French—</b>		<b>General society—</b>	14
classification of societies ...	22	what is, ...	20
<b>Full disclosure—</b>		difference between general purpose society and, ...	20
of debts ...	297	<b>General purpose society—</b>	
<b>Funds—</b>		what is ...	21
how to be raised ...	341	difference between general society and, ...	21
		<b>Governor General—</b>	
		previous sanction of, ...	2
		<b>Government—</b>	25
		rules may prescribe period and terms for giving aid by, ...	335
		rules may prescribe terms under which interest on	

<b>Government—(contd.)</b>	<b>PAGE</b>	<b>Housing Society—(contd.)</b>	<b>PAGE</b>
debentures may be guaranteed by, ...	353	two types of, in Bombay	
powers to make rules may be delegated by, ...	353	Presidency ...	20
may give loans or guarantee interest ...	170	surplus assets of cancelled... assets of society directed to be wound up vest in Registrar, nominee of society and Institute ...	256 256
loans to co-operative societies ...	171	<b>Income-tax—</b>	
loan to Dairy societies ...	171	societies exempted from, 161, 162	
loan to Weaver's societies ...	171	notification of exemption from, ...	164
loans to societies of backward classes ...	171	interest on securities held by societies not exempted ...	164
loans to Power Pump societies ...	171	exemption does not extend to interest on deposits ...	165
loans to Housing societies ...	171	<b>Illiteracy—</b>	310
recovery of sums due to, ...	289	of masses ...	9
may exempt societies from conditions as to registration ...	290	<b>Increase of production—</b>	38
may exempt societies from operation of the Act ...	292	by scientific methods ...	38
appeal against order or decision of or sanctioned by Registrar to, ...	288	by improved implements ...	39
power of, to call for proceedings of subordinate officers and pass orders ...	288	by using better seed ...	39
who are officers subordinate to, ...	289	by introducing new crops ...	39
<b>Government Savings Bank—</b> ...	169	<b>Increasing wealth of people—</b>	38
society may invest deposit funds in, ...	198	by increasing production ...	38
<b>Grain Banks—</b> ...	18, 349	by decreasing consumption... by substituting productive for wasteful use of factors of wealth ...	38 48
<b>Guaranteeing Unions—</b> ...	24	by teaching producers to produce wealth in hours during which they are idle ...	39
<b>Headings—</b> ...		by cotton spinning ...	40
may be used for interpreting Act ...	2	by hand-loom industry ...	40
may be looked to when words are of doubtful meaning ...	3	by dairying ...	40
<b>Hoarding—</b>		by pottery industry ...	40
how to diminish tendency for, ...	49	by sericulture ...	40
<b>Honorary organisers—</b> ...	126	by poultry farming ...	40
<b>Housing society—</b> ...	13	by cultivation of lac ...	41
Government loans to, ...	171	by fruit farming ...	41
restrictions on transactions with non-members by, ...	196	by vegetable growing ...	41
what is ...	20	by bee farming ...	41
		by rope making ...	41
		by decreasing general sources of waste ...	44
		by decreasing special sources of waste ...	45

PAGE	Inspection—(contd.)	PAGE
<b>Indian Companies Act, 1913—</b>	member prohibited under	
does not apply to societies	Friendly Societies Act ...	158
registered under the Act...	books to be kept open for, ...	158
292	of certain documents in	
<b>Indian Trusts Act, 1882—</b>	Registrar's Office ...	158
societies may deposit funds	of record of rights by	
in securities mentioned in,	societies ...	168
investment of funds under	of affairs of society ...	223
s. 20 of, ...	officer appointed to inspect	
199	must be furnished neces-	
<b>Industrial and Provident</b>	sary information ...	225
<b>Societies Act, 1898—</b>	what is, ...	226
application for inquiry into	difference in audit, supervi-	
affairs under ...	sion and, ...	225
224	object of ...	225
<b>Industrial organisers—</b>	of books of indebted society	227
who are ...	costs of inspection of books	
129	of society ...	230
<b>Immoveable property—</b>	recovery of costs of, ...	230
what is, ...	what is ...	31
restriction on loans on	of books ...	106
security of, 173, 175	of books of account of	
	company ...	106
<b>Insolvency Court—</b>	Act, rules, by-laws, and re-	
jurisdiction not barred ...	gister of members are	
280	open to, ...	107
when jurisdiction not barred	of documents ...	108
under Presidency Towns	<b>Inquiry—</b>	
Insolvency Act, 1909 not	by Registrar ...	222
to have claim on share or	object of, ...	224
interest ...	into constitution, working	
142	and financial condition of	
under Provincial Insolvency	society ...	224
Act, 1920 not to have	instructions in the matter of	
claim on share or interest	inquiry ...	225
of member in capital of	costs of, ...	229
society ...	procedure adopted before	
142	ordering costs of, ...	229
<b>Inspector—</b>	recovery of costs of, ...	230
duties of, ...	<b>International Co-operative</b>	
difference in duties of su-	Alliance— ...	221
pervisor and, ...	<b>Interest—</b>	
226	on deposits not exempted	
<b>Inspection—</b>	from income-tax ...	165
what is, ...	<b>Invest—</b>	
failure to keep open for in-	what is meant by, ...	199
spection copy of Act, by-		
laws, rules and register of		
members by society of		
working capital of Ra.		
50,000 or over is offence ...		
108		
resolutions and proceedings		
not to be kept open for, ...		
108		
deposit accounts not open to,		
158		
of loan account by another		



<b>Invest—(contd.)</b>	<b>PAGE</b>	<b>Land Revenue—(contd.)</b>	<b>PAGE</b>
utilization of cash balances...	199	cut by Collector as arrears of,	... 275
of funds in purchasing or leasing of land or building or constructing a building	... 200	arrears to be recovered by adopting certain processes.	279
instructions in the matter of investing or depositing funds	... 200	sums due to Government by society, officer or member, past member may be recovered as arrears of,	... 289
<b>Irrigation—</b>		agriculturist cannot be arrested for money decree by following summary procedure of recovery of,	... 137
societies	... 342	meaning of the term	... 135
<b>Insurance societies—</b>	... 24	definition of the term,	... 135
what sort of societies are included in,	... 24	arrears how to be recovered.	136
<b>Institute—</b>		<b>Legal Practitioner—</b>	
included in classification in 'other societies'	... 24	not allowed to appear in arbitration proceedings	... 269
<b>Interest—</b>		<b>Legal representative—</b>	
transfer on death of member	145	has the Registrar or arbitrator power to decide who is..	265
in capital	... 141	<b>Liability—</b>	
charge and set off in respect of, of member	... 140	of past member	... 150
of member not liable to attachment	... 142	of estate of deceased member	153
difference in share and,	... 66	<b>Lien—</b>	
on securities held by society not exempted from income-tax	... 164	in English law corresponds to charge	... 137
what is, 66, 102, 144, 147, 306		of company on shares	... 141
<b>Joint—</b>		<b>Limit—</b>	
and several liability	54, 55	to number of members	... 332
<b>Joint-stock Company—</b>		<b>Limitation Act—</b>	
as against co-operative society prohibited from membership	... 305	whether applies to proceedings before arbitrator	... 266
<b>King Committee Report—</b>		<b>Limited liability—</b>	... 76
of Central Provinces	14 (intro)	the word 'limited' shall be the last word in societies with,	76
<b>Labourers—</b>		what is,	... 63
society for,	... 19	object of,	... 63
<b>Landschaften—</b>	... 179	distinction between unlimited liability societies and societies with,	... 243
<b>Land Mortgage Banks—</b>	179	<b>Limited societies—</b>	
what are,	... 177	classification of	... 23
purpose of,	... 178	<b>Liquidation—</b>	231
necessity of starting,	... 178	unlimited liability enforced only on,	54, 60
<b>Land Revenue—</b>			
orders of liquidator, arbitrator or Registrar to be exe-			

Liquidation—(contd.)	PAGE	Liquidator—(contd.)	PAGE
costs of	... 246	may pay any class or classes	
<b>Litigation—</b>	... 45	of creditors in full	... 241
D. A. R. Act, 1879	... 46	to determine contribution to	
how to decrease,	... 46	be made by members	... 241
Village-munsif	... 46	how should non-members	
<b>Local Funds—</b>		sureties be dealt with	... 242
deposits in societies,	... 194	directions to,	... 242
<b>Liquidator—</b>		may institute and defend	
can nominee, heirs or legal		suits in name of his office.	243
representatives of members		recoveries of sums ordered by,	
be arrested etc. for contri-		may be made as arrears of	
butions levied by,	... 245	land revenue	... 244
may get disputes referred to		costs of liquidation to be	
arbitration	... 245	determined by,	... 246
may decide questions of pri-		<b>Loans—</b>	
ority of claims and pay		what are,	... 173, 185
ratably	... 246	from non-members in un-	
may fix time within which		limited societies	... 185
creditors to prove their		by rural credit societies from	
debts	... 246	central or provincial banks	187
can time-barred debt be re-		procedure in applying for long	
covered by,	... 246	term,	... 191
no appeal against various acts		under Agriculturists Loans	
of,	... 251	Act,	... 171
Civil Court can interfere if		under Land Improvement	
acts of liquidator are <i>ultra</i>		Loans Act	... 171
<i>vires</i>	... 252	by Government to co-	
orders to be executed by Civil		operative societies	... 171
Court as its decree	... 275	to dairy societies	... 171
orders to be executed by		to weavers' societies	... 171
Collector as arrears of land		to societies among backward	
revenue	... 275, 276	classes	... 171
whether subordinate to Regis-		to power pump societies	... 171
trar and Government	... 289	to Housing societies	... 171
may be appointed by Regis-		by member of managing	
trar	... 231	committee	... 316
appeal against order of Regis-		payments to be made and	
trar appointing,	... 231	conditions to be com-	
Registrar to fix remuneration		plied with by members	
of,	... 232	receiving loans.	... 317
powers of,	... 236	order of preference in giving,	317
should use his powers reason-		amount of, which may be lent	317
ably and fairly	... 238	purposes or objects of,	... 319
exercises powers with sanc-		periods during which loans	
tion of Registrar	... 239	to be returned	... 320
procedure followed by,	... 241	maximum period for grant-	

Loans—(contd.)	PAGE	Managing Committee—	PAGE
ing loans	... 323	what is,	... 309
interest on,	... 324	election of,	... 309
punctuality in repayment of,	325	management of societies	
renewals of,	... 327	to rest with,	... 310
security for granting loans...	328	exercises powers of society	
necessity of taking mortgage		with certain limitations	... 311
of immoveable property in		illiteracy of members,	... 310
giving,	... 329	to exercise prudence and	
qualifications of sureties to		diligence of ordinary	
be looked into before		men of business	... 311
granting,	... 329	responsibility of,	... 311
death or insolvency of		acts of, are valid to what	
surety for,	... 330	extent	... 311
non-member sureties whether		powers and duties of,	... 311
may be accepted for,	... 330	removal of member of,	... 312
restrictions on,	... 172	when is member of, dis-	
to be received by society		qualified to act as	
with unlimited liability	... 175	Committeeman	... 312
on suretyship of non-members	175	loans by member of,	... 316
from Government fall under		<b>Marginal notes—</b>	
three different heads	... 187	may not be referred to for	
by Government to dairy		interpreting the Act	... 2
societies, etc.	... 187	<b>Marketing—</b>	
by Government under Agri-		of produce	... 42
culturists Loans Act, 1884	187	<b>Maximum liability—</b>	... 347
by Government under Land		<b>Meetings—</b>	... 86
Improvement Loans Act,		general	... 86
1883,	... 187	special general,	... 86
<b>Local Government—</b>		annual general,	... 86
defined	... 25	special general meeting could	
<b>Maclagan Committee Report—</b>		be called by one-fifth of	
14 (intro)		members of the society	... 89
<b>Magistrate—</b>		procedure of special general,	90
to recover costs of inquiry		annual general,	... 86
or inspection on appli-		procedure followed at annual	
cation from Registrar		general,	... 87
as fine	... 230	failure to call general annual,	
cognisance of offences by	... 287	is liable to penalty	... 87
cognisance of offences		adjournment of,	... 88
under this Act to be		<b>Member—</b>	13
taken by Presidency		charge and set off in respect	
Magistrate or first class		of shares or interest of,	... 140
Magistrate	... 287	transfer of interest on death	
<b>Majority—</b>		of,	... 145
coercing minority	89, 90		
<b>Malaria—</b>	... 45		
<b>Mamlatdars—</b>			
Special Mamlatdars	... 129		

<b>Member—(contd.)</b>	<b>PAGE</b>	<b>Member—(contd.)</b>	<b>PAGE</b>
minor, cannot make nomination	... 147	minors may be,	... 304
register of,	... 316	women are not excluded from being,	... 304
expulsion of,	... 349	persons mentally disabled excluded,	... 304
withdrawal of,	... 348	exclusion of a person when allowed	... 304
payment to be made to,	... 350	indebtedness of a person whether ground for exclusion of a person from,	... 305
liability of past,	... 350	joint-stock company prohibited from,	... 305
principle in limiting number of,	... 331	object must be promotion of economic interests of,	... 52
limitation of number of,	... 332	occupation of,	... 75
who is,	... 97	default by, of society with working capital of Rs. 50,000 or more in giving notice, sending return or document is offence	... 282
rights of,	... 97	wilful neglect or default by, to furnish information to Registrar etc. is offence	... 282
disabilities of,	... 98		
votes of,	... 98	<b>Middleman—</b>	
not to have more than one vote	... 100	regarding the number of,	... 42
<b>Member—</b>		increasing the number of producers by reducing the number of those who at present add nothing to the wealth of country such as,	... 42
register is <i>prima facie</i> evidence of admission as,	... 155	marketing	... 42
register is <i>prima facie</i> evidence of ceasing to be,	... 155	wilful furnishing of false information or making false return by, is offence...	... 282
may inspect certain documents in Registrar's office	... 158	default by,	... 284
loans to member on suretyship of non-member	... 175	guilty of offence under this Act is liable to fine	... 285
costs of inquiry or of inspection of books may be ordered to be received from,	... 230	elimination of profits of,	... 37
three-fourths of, may apply for winding up of society	231, 239	co-operation tends to the elimination of,	... 6
who is,	... 16	<b>Minor—</b>	
new-comers should be encouraged to be,	... 17	member cannot make nomination	... 147
persons claiming through,	... 266	remedies against, under ordinary law	... 148
liability of past,	... 150		
liability of deceased,	... 150		
past-member under Company Law	... 150		
standing as surety not governed by s. 28	... 153		
liability of the estates of deceased,	... 153		
register of,	... 155		
condition of admission as,	... 303		

<b>Minor—(contd.)</b>	<b>PAGE</b>	<b>Non-member—(contd.)</b>	<b>PAGE</b>
may be admitted as, ...	304	bility societies from, ...	185
<b>Misapplication—</b>		restrictions on transactions	
what is meant by, ...	249	by resource societies ...	196
<b>Mis-appropriation—</b>	110	restrictions on transactions	
<b>Misfeasance—</b>		by Consumers' societies ...	197
what is, ...	249	restrictions on transactions	
<b>Moneylender—</b>		by Producers' societies ...	197
if driven from land it will		restrictions on transactions	
be by growth of co-opera-		by Housing Societies ...	198
tive movement ...	8	sureties how to be dealt	
<b>Money-order commission—</b>		with by liquidator ...	242
privileges regarding, ...	168	<b>Normal credit statements—</b>	187
<b>Moral movement—</b>		details of ...	190
co-operative movement is, ...	6	<b>Notice—</b>	
<b>Mortgage—</b>		protection to bonafide pur-	
security ...	175	chaser or transferee for	
<b>Mortgage Banks—</b>	177	value without, ...	139
<b>Moveable property—</b>		of two months necessary for	
what is, ...	173, 231	instituting suits against	
restrictions on loans on		society or its officers ...	294
security of, ...	173	<b>Oaths Act—</b>	262
lending on security of, ...	174	<b>Object—</b>	
<b>Municipalities—</b>		of reserve fund ...	205
deposits in societies by, ...	194	of a society ...	35
<b>Name of society—</b>	91	supply of capital for pro-	
how to change ...	91	ductive purposes ...	36
<b>Nash ( prof. )</b>	24	education in true uses of	
<b>Net profits—</b>		credit ...	36
what are, ...	210	combination to secure the	
proportion of, to be carried		fullest advantages in a	
to reserve fund, ...	210	world of competition ...	36
<b>Nominee or nomination—</b>		elimination of middleman's	
of a person ...	147	profits ...	37
minor member cannot make	147	<b>Officer of society—</b>	
of persons ...	149	default by, with working	
<b>Non-agricultural societies—</b>		capital of Rs. 50,000 or	
classification of ...	23	more in giving notice,	
<b>Non-member—</b>		sending return or docu-	
loans on suretyship of, ...	175	ment is offence ...	282
restrictions on receiving		wilful neglect or default by,	
deposits and loans from, ...	183	to furnish information to	
object of placing restrictions		Registrar is offence ...	282
on receiving by societies		wilful furnishing of false	
deposits and loans from, ...	183	information or making	
restriction on loans and		false return by, is offence	282
deposits by unlimited lia-		default by, ...	284

Officer of society—(contd.)	PAGE	Past members—(contd.)	PAGE
guilty of offence liable to fine	... 285	under Co-operative Societies Act	... 150
<b>Officer—</b>	... 13	<b>Payment—</b>	
who is	... 17	right of membership not to be exercised unless, is made	... 96
auditor is not,	... 17	<b>Penal interest—</b>	
<b>Order—</b>		provision for,	... 327
of preference for loans	... 317	<b>Period—</b>	
<b>Organisation—</b>		for loans	... 321
of credit societies	... 81	<b>Person—</b>	
procedure of, of credit societies	... 81	claiming through member	... 266
<b>Organisers—</b>		ten,	... 70
honorary	... 80	residing in same town or village or same group of villages	... 69
agricultural	... 80, 129	includes company or association	... 70
divisional	... 81	above the age of eighteen years	... 72
district	... 81	definition of	... 16, 173
taluka	... 81	wilful disobedience of summons, requisition or order by, is offence	... 283
industrial	... 129	<b>Personal—</b>	
<b>Overdue—</b>		sureties	... 328
debts	119, 326	<b>Persons residing in same town or village or same group of villages</b>	... 69
<b>Offence—</b>		<b>Philanthropy—</b>	... 7
what is, under the Co-operative Societies Act,	... 282	<b>Post office Savings Bank—</b>	
default in giving notice, sending any return or document by society with working capital of Rs. 50,000 or more by member or officer is,	... 282	facilities to societies for opening public accounts in, procedure regarding opening accounts in,	169 ... 199
wilful neglect or default by society, officer or member in furnishing information to Registrar is,	... 282	<b>Powers</b>	
wilful furnishing of false information by society, officer or member or making false return is,	... 282	of committee	... 311
penalty for,	... 285	<b>Preamble</b>	... 1
use of word "co-operative" by others is,	... 285	is key for opening meaning... may be consulted if language is obscure or ambiguous	... 1 ... 2
cognisance of, under this Act under this Act is non-cognisable	... 287 ... 287	<b>Primary societies</b>	
<b>Past members—</b>		classification of,	... 22
liability of,	... 150	<b>Principle</b>	
under Company Law	150, 151	of co-operation	... 3
		rior claim	... 134

<b>Prior claim—(contd.)</b>	<b>PAGE</b>	<b>Provident fund—(contd.)</b>	<b>PAGE</b>
of landlord in respect of rent, etc. ...	136	not liable to attachment ...	142
<b>Priority—</b>		history of, ...	217, 218
difference in charge and, ...	137	object of, ...	217, 218
<b>Privileges—</b>		what is, ...	218
remittance transfer receipts at par ...	168	<b>Profits—</b>	
of inspection of record of rights and other revenue records ...	168	restriction on, distribution of, ...	211
of societies regarding money-order commission ...	168	distribution of, ...	213
regarding opening of public accounts of societies in post office savings banks ...	169	principle on which distribution depends ...	213
regarding the use of strong box of State treasury ...	169	principle on which depends, distribution in Consumers' co-operation ...	214
duties of societies enjoying special privileges ...	169	distribution of, in case of Housing societies ...	214
depositing papers and fund in strong box in local treasury ...	200	distribution of, in case of Producers' societies ...	215
societies are granted privileges because object of societies is not profit-sharing ...	219	distribution of, in case of Resource societies ...	215
<b>Producing societies—</b>		distribution of, in Resource societies with unlimited liability without shares ...	215
what sort of societies are included in the classification of ...	23	distribution of, in Resource societies with unliability with shares ...	216
<b>Producers' society—</b>		what are, in co-operative society ...	216
distinguished from Consumers' society ...	20	of past years ...	216
what is, ...	19	to be distributed according to conditions in rules ...	216
restrictions on transactions with non-members by, ...	196	<b>Proxy—</b>	
<b>Production and Sale societies—</b>		voting by, ...	100
what sort of societies are included in the classification ...	23	voting by, why discouraged ...	100
<b>Profits—</b>		<b>Public health—</b>	45
of society exempted from income-tax ...	165	<b>Publication—</b>	
<b>Promotion—</b>		of balance sheet ...	314, 315
of thrift ...	7	<b>Publicity—</b>	
<b>Propaganda—</b>	222	maximum ...	107
<b>Provident fund—</b>	217	<b>Punctuality—</b>	
		in repayment ...	325
		<b>Purchase and Sale societies—</b>	
		what sort of societies are included in the classification of, ...	23
		<b>Purchase societies—</b>	
		what sort of societies are	

Purchase societies—(contd.)	PAGE	Recovery—(contd.)	PAGE
included in the classification of,	... 23	due to Government by society, member, officer etc. may be made as arrears of land revenue	... 289
<b>Purposes—</b>		of costs	... 246, 269
of loans	... 319	<b>Register—</b>	
<b>Provincial bank—</b>		of members	... 154
loans by primary societies from,	... 187	is <i>prima facie</i> evidence of evidence of admission	... 155
procedure in applying for loans to,	... 188	is <i>prima facie</i> evidence if ceasing to be member	... 155
capital how raised	... 191	<b>Register of members—</b>	108, 155
deposits of individuals in,	... 191	rules providing for	... 316
deposit of co-operative societies	... 192	under company law is <i>prima facie</i> evidence	... 155
savings bank account in,	... 192	<i>prima facie</i> evidence of date of entry and discontinuance of membership	... 155
current accounts in,	... 192	<b>Register of shares—</b>	
sinking fund in,	... 192	rules providing for,	... 316
loans advanced to other societies by,	... 192	<b>Registration—</b>	
overdrafts when allowed	... 192	association which is illegal for want of,	... 63
trade bills and bankers' bills by,	... 193	<b>Registered—</b>	
cash credits when allowed by	... 193	society	... 18
maximum credits to central banks	... 193	deemed to be,	... 18
maximum credits to primary societies	... 193	<b>Repeal—</b>	
loans to resource societies	... 193	enactments repealed by this Act	... 355
loans to Producers' societies	193	<b>Resident—</b>	
loans to Consumers societies	193	who is,	... 79
loans for redemption of old debts	... 194	<b>Resolution—</b>	
recoveries and extensions	... 194	how to be carried	... 88
<b>Profiteering—</b>	... 37	<b>Registrar—</b>	13, 18, 25
<b>Qualifications—</b>		certain documents kept open for inspection in office of,	158
of sureties	... 329	sanction necessary for loans to another society,	... 173
<b>Quorum—</b>		instructions by, in matter of redemption of old debts	... 179
at a meeting	... 87, 308	circulars issued by, in matter of redemption of old debts	179
<b>Recall—</b>		inquiry by,	... 222
of loans	... 325	inquiry into working, constitution and financial condition of society by,	... 224
<b>Record of rights—</b>			
open to inspection by societies	... 168		
<b>Recovery—</b>			
of debts	... 276		
summary procedure for,	... 276		



<b>Registrar—(contd.)</b>	<b>PAGE</b>	<b>Registrar—(contd.)</b>	<b>PAGE</b>
may inspect books of society on application of creditor assets of Housing society directed to be wound up vest in nominee of society, Central Co-operative Institute and, ...	227	appeal to Government against order or decision of, or sanction by, ...	288
object of appointing ...	256	power of, to call for proceedings of subordinate officers and pass orders ...	288
importance of the post of, ...	25	who are officers subordinate to, ...	289
powers of, ...	26	may recover costs of inquiry or inspection by applying to magistrate ...	230
has power of registration ...	29	may order winding up of society ...	231
has to do duty of audit ...	29	may appoint liquidator ...	231
has power of arbitration ...	30	appeal against order appointing liquidator ...	232
has power to wind up ...	31	to fix remuneration of liquidator ...	232
has power to cancel a society powers given to, are objected to ...	31	exercises powers of Court under Societies Act ...	235
should have powers of superintendence, guidance, and control, ...	32	when should make order for cancellation ...	235
assistant, ...	33	may assess damage against delinquent promoters, etc... ..	247
deputy, ...	33	prosecution under Co-operative Act not to be lodged without sanction of, ...	287
various powers of ...	31	<b>Registration—</b>	
may require periodical returns and statements ...	108	effect of, ...	133
to be furnished with property register by Housing societies ...	108	cancellation of, ...	134
to audit society himself or through another ...	132	when to be completed, ...	84
may register society and by-laws ...	84	effect of, ...	85
to communicate decision in case of refusal to register... ..	85	evidence of, ...	85
decision of, final for purposes of formation, registration or continuance of society ...	77	form of certificate of application for, ...	86
may register amendment of by-laws ...	95	Registrar has discretion of, ...	62
when to decide dispute himself ...	272	main object of, ...	62
has power to enforce attendance of witnesses ...	274	application for, when society is member must be signed by person duly authorised	84
has power to enforce production of documents ...	274	<b>Registration Act—</b>	
		societies exempted from compulsory registration of instruments relating to shares and debentures ...	159

<b>Registration Act—(contd.)</b>	<b>PAGE</b>	<b>Restriction—(contd.)</b>	<b>PAGE</b>
object of exemption ...	160	shares ...	104
<b>Registration fees—</b>		object of, on receiving by societies deposits and loans from non-members ...	183
societies when exempted from, ...	161	on distribution of funds by way of bonus, dividends or otherwise ...	211
Government Resolution exempting Societies from, ...	166	on borrowing by societies with limited liability ...	211
societies exempt from payment of, ...	166	on distribution of profits ...	211
<b>Reserve fund—</b>		on interest ...	64
investment of, governed by s. 32 ...	199	on loans ...	172
provision of, ...	204	on loans on security of moveable property ...	173
what is, ...	205	on loans on security of immoveable property ...	173, 175
uses to which it may be put under Companies Act ...	205	on transactions with non-members by resource societies ...	196
fluid resources and, ...	208	on transactions with non-members by Consumers' societies ...	197
use of, towards public purposes ...	209	on transactions with non-members by Producers' societies ...	197
use of, towards purposes of provincial or local interest ...	209	on transactions with non-members by Housing societies ...	198
use of, towards some public purpose likely to promote objects of the Act, ...	210	object of placing, on investment of funds of society... society not to invest or deposit funds in shares of societies with unlimited liability ...	200
proportion of net profits to be carried to, ...	210	<b>Revenue Court—</b>	
miscellaneous directions regarding employment of, ...	211	recovery through, ...	
disposal or use of, ...	344	award of arbitrators etc. not to be questioned by, ...	272
in case of district central banks ...	344	Collector to execute orders of liquidator, arbitrator or Registrar as arrears of land revenue ...	275
<b>Reside—</b> ...	79	<b>Revenue Jurisdiction Act, 1876—</b>	
<b>Resource society—</b> ...	13	can protection be claimed by revenue officers executing illegal decrees ...	281
what is ...	18		
restrictions on transactions with non-members by, ...	196		
<b>Restriction—</b>			
object of placing, on borrowing ...	183		
on borrowing by societies with limited liability ...	185		
on loans and deposits by non-members in unlimited liability societies ...	185		
on transfer of shares or interest ...	103		
on frequent changes of			

PAGE	<b>Rules—(contd.)</b>	PAGE
	prescribing amount of loans to individual member ...	316
	prescribing prohibitions and restrictions subject to which societies may trade with non-members ...	330
	providing for formation and maintenance of reserve funds ...	330
	providing for objects to which reserve fund to be applied ...	330
	providing for investment of funds of a society ...	330
	prescribing limit of number of members ...	331
	prescribing conditions for distribution of profits among members ...	333
	prescribing maximum rate of dividend which may be paid by societies ...	333
	prescribing procedure regarding appeals ...	334
	providing that share capital should be variable so that value of shares should not increase ...	334
	providing that necessary share capital should be available as required ...	334
	providing that qualified persons should not be unnecessarily excluded from membership ...	336
	prescribing for procedure of liquidator ...	337
	prescribing mode of appointing arbitrators ...	340
	prescribing procedure to be followed before arbitrators etc. ...	340
	prescribing procedure for fixing and levying expenses of arbitration ...	340
	providing for issue and	
	can protection be claimed by, under Revenue Jurisdiction Act executing illegal decrees ...	281
	<b>Revocation—</b>	
	of nomination of persons ...	351
	<b>Rules—</b>	13
	what are ...	18
	prescribing period and terms for giving Government aid ...	353
	prescribing terms under which Government may guarantee interest on debentures of societies ...	353
	Government may delegate powers to make, ...	353
	previous publication of, necessary ...	353
	liable to be modified or rescinded by Bombay Legislative Council ...	354
	to be laid on Council Table for one month ...	354
	may provide for persons by whom and form in which copies of documents or entries in books to be certified ...	315
	may provide for charges to be levied for supply of certified copies ...	315
	may provide for formation and maintenance of register of members ...	316
	may provide for formation and maintenance of register of shares ...	316
	prescribing for payments to be made by members applying for loans ...	316
	prescribing for conditions to be complied with by members applying for loans ...	316
	prescribing for periods for which loans may be made ...	316

<b>Rules—(contd.)</b>	<b>PAGE</b>	<b>Rules—(contd.)</b>	<b>PAGE</b>
service of processes ...	341	performed by committee and officers ...	309
providing for writing off of bad debts ...	341	prescribe accounts to be kept by society ...	313
regulating manner of raising funds by shares or debentures ...	341	prescribe books to be kept by society ...	313
providing for withdrawal and expulsion of members ...	347	provide for accounts ...	313
providing for payments made to members ...	347	provide for charges of audit ...	313
providing for liabilities of past members ...	347	provide for audit of accounts ...	313
providing for nomination of persons ...	300	provide for periodical publication of balance sheet showing assets and liabilities ...	313
prescribing cases where appeal lies from order of liquidator ...	311	may prescribe returns to be submitted ...	314
providing for inspection of document in Registrar's office ...	353	may provide for persons by whom and form in which returns to be submitted ...	314
providing for levy of fees for granting certified copies of documents ...	353	object of making ...	295
prescribing procedure followed for custody of property attached before award ...	353	are made to carry out purposes of Act ...	299
may provide for ascertaining value of deceased member's share ...	305	may prescribe maximum number of shares or capital by member ...	296
may provide for general meeting ...	307	may prescribe form of application of registration ...	296
may provide for procedure at general meeting ...	307	may prescribe conditions of application for registration ...	296
may provide for powers to be exercised by general meetings ...	307	may prescribe procedure in making application for registration ...	296
may provide for appointment, suspension and removal of members of committee ...	309	may prescribe matters where by-laws may be made ...	297
may provide for procedure at meetings of committee ...	309	may prescribe procedure in altering and abrogating by-laws ...	297
may provide for powers to be exercised by committee ...	309	may prescribe conditions required prior to making, abrogating or altering by-laws ...	297-8
may provide for duties to be		may prescribe conditions for admission to membership... ..	303
		may prescribe conditions for persons admitted as members ...	363

Rules—(contd.)	PAGE	Secretary—	PAGE
may provide for election of members ...	303	illiteracy of, ...	313
may provide for admission of members ...	303	duties of, ...	313
may provide for payment to be made before exercise of right of membership ...	303	qualifications of, ...	313
may provide for interest to be acquired before exercise of right of membership ...	303	<b>Security—</b>	
<b>Raiffeisen—</b>		directions regarding taking, ...	176
principles ...	72	in case of land mortgage banks ...	177
<b>Rate—</b>		<b>Self-help—</b> ...	9
of interest ...	324	<b>Set-off—</b> ...	140
<b>Religious matters excluded</b> ...	22 (App. A)	in respect of shares or interest of member ...	140
<b>Removal—</b>		what is, ...	142
of members of committee ...	312	definition of, ...	142
<b>Renewal—</b>		<b>Shares—</b>	
of loans ...	327	restrictions on transfer of, ...	103
<b>Returns—</b>	314-15	charge of, ...	102
<b>Revisional powers—</b>		in corporation under ordinary Civil Law liable to attachment and sale ...	143
under Bombay Co-operative Societies Act ...	288	certificates are exempted from compulsory registration ...	166
<b>Rights—</b>		charge on, ...	140
of members ...	97	not liable to attachment ...	142
<b>Rural—</b>		what are, ...	144, 306, 342
credit society ...	81	meaning of ...	144
<b>Sale societies—</b>		instruments of society relating to, exempted from compulsory registration ...	159
what sort of societies are included in the classification of, ...	23	what are, under Company Law ...	159
<b>Secondary occupations—</b>		certificates exempted from compulsory registration ...	166
cotton spinning ...	40	advantages of ...	343
hand loom industry ...	40	in case of credit societies with limited liability ...	343
dairying ...	40	difference between a holder of debentures and holder of shares, ...	170
pottery ...	40	hypothecation why restricted limitation to number of, taken by individuals ...	6
rope making ...	40	register of shares ...	310
sericulture ...	40	what is, ...	6
poultry farming ...	40	difference in, and interest ...	6
lac cultivation ...	41		
fruit farming ...	41		
vegetable growing ...	41		
apiculture or bee farming ...	41		
for agriculturists ...	39		

	PAGE	Society—(contd.)	PAGE
<b>Share Capital—</b>		cancelled	255
what is,	66	surplus assets of cancelled	
<b>Sign—</b>	80	housing society	256
defined	80	Indian Companies Act, 1913	
<b>Society—</b>		does not apply to register-	
what is,	17	ed,	292
better living,	50	branches of, outside Bombay	
cattle insurance,	44	Presidency	294
established with the object		may use Remittance Transfer	
of facilitating the opera-		Receipts at par	168
tion of a society	51	may inspect record of rights	
conditions necessary to make		and other revenue records...	168
a truly co-operative,	52	enjoys concession regarding	
of which a member is a		money-order commission...	168
society	71	enjoys concession regarding	
size of	71	opening public accounts in	
for big landlords	75	post-office savings bank	169
land of defaulter's to, cannot		enjoys the privilege of using	
be transferred under s. 59		strong box of State treasury	169
(2) but should be purchased		enjoying privileges from State	
by offering adequate bid		to do certain duties	169
by,	280	Government loans to Dairy,	171
default by societies with		Government loans to	
working capital of Rs.		Weavers'	171
50,000 or more is offence	282	Government loans to back-	
wilful default or neglect to		ward classes,	171
do any act or furnish in-		Government loans to Power	
formation to Registrar is		Pump,	171
offence	282	Government loans to	
wilful furnishing of false		Housing,	171
information or making		may lend against stock or	
false return by, is offence.	282	gilt-edged securities	175
default by.	284	Government loans under three	
inquiry into constitution,		heads,	187
working and financial		object of restrictions on in-	
condition of society by		vestment of funds of,	198
Registrar	224	instructions regarding invest-	
suspension of,	227	ment of funds by,	200
supervising union may have		organisation of,	80
power to suspend,	227	change of name of,	91
inspection of books of in-		amalgamation of	92
debted,	227	transfer of,	92
on application of creditor		three months notice to credi-	
Registrar may inspect		tor's is necessary for amal-	
books of,	227	gamation or transfer of	
disposal of surplus assets of			

<b>Society—(contd.)</b>	<b>PAGE</b>	<b>Society—(contd.)</b>	<b>PAGE</b>
assets and liabilities of society ...	93	exemption from registration fees ...	161
organisation of credit, ...	81	exemption from income-tax ...	161
class of, ...	74	exemption from stamp-duty ...	161
caste, ...	74	exemption from court-fees... ..	161
tribal, ...	74	exemption from super-tax ...	164
guilty of offence liable to fine.	285	not exempted from income-tax in respect of interest on securities held by societies ...	164
sums due to Government may be recovered as arrears of land revenue ...	289	profits are exempted from income-tax ...	165
may be exempted from conditions as to registration by Government ...	290	exempted from restriction imposed on creditors of agriculturists by D.A.R. Act ...	166
two months notice necessary for instituting suits against officers or, ...	294	<b>Special Mamlatdars—</b>	
address of, ...	105	duties of, ...	126
object of having compulsory address of, ...	105	<b>Special meeting—</b>	
Registrar to be informed of change of address of, ...	106	powers of, ...	308
disadvantages of an unregistered, ...	134	<b>Stamp duty—</b>	
books, registers and lists to be maintained by ...	158	societies when exempted from, ...	161
classification of ...	21	notification exempting societies from, ...	165
must be audited by Registrar himself or by some one authorised by him ...	132	awards of arbitrators exempted from, ...	166
cases where prior claim exists of a, ...	134	<b>Sub-division of land—</b> ...	47
enjoys concession regarding attachment or sale of salary of Public servant etc. under Civil Procedure Code, 1908 ...	143	<b>Summary procedure—</b>	
how protected from litigation shall pay money due to deceased member ...	149	adopted for recovery of debts of societies ...	276
debts of, ...	151	arrears of land revenue recovered by adopting, ...	279
formed with the object of facilitating operations of a which may be registered ...	34	<b>Summons—</b>	
instruments relating to shares and debentures exempted from compulsory registration ...	159	how to be sent ...	132
		wilful disobedience, ...	132
		<b>Supervising Union—</b>	
		object of ...	32
		for urban banks ...	129
		<b>Supervision—</b>	
		what is, ...	31, 225
		difference between audit, inspection and, ...	225
		what is ...	127
		object of, ...	128
		union for, ...	129

<b>Supervision—(contd.)</b>	<b>PAGE</b>	<b>Transfer of share or</b>	<b>PAGE</b>
duties of, ...	227	<b>interest—(contd.)</b>	
may have power to suspend		when requires registration ...	160
society ...	227	<b>Trusts Act—</b>	
<b>Super-tax—</b>		co-operative societies may	
societies exempted from, ...	163	invest funds in securities	
notification of exemption of		specified in, ...	198
societies from, ...	164	<b>Unions—</b>	
<b>Supervisor—</b>		what are ...	61
duties of, ...	226	object of ...	62
difference in duties of in-		object of supervising, ...	32
spectator and, ...	226	classification of ...	24
<b>Strong box—</b>		guaranteeing, ...	24
deposit of papers and funds		supervising ...	24
in, in local treasury ...	200	<b>Unlimited—</b>	
<b>Sureties—</b>		membership ...	17
who are not members how to		<b>Unlimited liability—</b>	
be dealt with by liquidators	242	registered society cannot be	
member standing, not govern-		member of society with ...	60
ed by s. 29 ...	153	distinction between societies	
<b>Takavi—</b>		with limited liability and	
under Agriculturists' Loans		with, ...	243
Act ...	171	why enforced in primary	
loans under Land Improve-		credit societies ...	54
ment Loans Act ...	171	advantages of, in primary	
<b>Thrift—</b>	71	credit societies ...	54
promotion of, ...	91	rights and duties of members	
<b>Taluka Development Associa-</b>		in societies with, ...	57
<b>tions—</b>	341	enforced only on liquidation	54
<b>Teaching—</b>		consequence resulting from	
producers to produce more		the principles of ...	54
wealth in leisure hours ...	39	<b>Unlimited societies—</b>	
<b>Tenant—</b>		classification of, ...	23
co-partnership (housing) ...	20	<b>Unregistered—</b>	
<b>Townsend Committee of Madras—</b>		society's disadvantages ...	86, 134
Report of, ...	15 (intro.)	<b>Urban banks—</b>	
<b>Trade unionism—</b>		capital of non-agricultural	
distinguished from co-opera-		credit societies ...	190, 191
tion ...	5, 6	deposits by municipalities in, ...	194
<b>Transaction—</b>		to furnish quarterly financial	
with non-members. ...	183, 195	statements ...	108
<b>Transfer—</b>		<b>Central Banks—</b>	
what is ...	102	to furnish quarterly financial	
to minors ...	103	statements ...	108
<b>Transfer of share or interest—</b>	101	<b>Usury—</b>	8
restrictions on, ...	103		
on death of member ...	145		



	PAGE		PAGE
<b>Value—</b>		<b>Votes—</b>	
of deceased members share...	148	of members	... 98
of share	... 148	by proxy	... 100
<b>Village—</b>		principle involved in one	
guidance	... 50	man one,	... 99
<b>Waste—</b>		society may vote through one	
prevention of,	... 44	of its members	... 101
<b>Whole-sale—</b>		<b>War bonds—</b>	
societies	... 6, 37	recovery of interest on,	... 200
<b>Winding up—</b>		<b>Weaving Inspectors and</b>	
Registrar's power to,	... 31	<b>Assistants—</b>	... 129
of society	... 231	<b>Weavers societies—</b>	
distinction between cancella-		Government loans to,	... 171
tion of registration and,	... 232	<b>Winding up—</b>	
of societies where member-		bar of suit in matters regard-	
ship is reduced	... 233	ing,	... 250
of a company	... 233	object of provision of barring	
<b>Withdrawal—</b>		jurisdiction of civil courts	
payment on	... 233	in,	... 251
<b>Witnesses—</b>		<b>Woman—</b>	
power to enforce attendance		admitted as members	304
of,	... 274	<b>Zamindars—</b>	
attendance with documents		banks for,	... 11, 75
how enforced,	... 274		

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