

**THE LAW OF DEBT ACTS
IN UNITED PROVINCES
AS AMENDED UP TO DATE**

BY

HAR PRASAD GUPTA, ESQUIRE,
MEMBER OF THE UNITED PROVINCES CIVIL SERVICE (Judicial branch)

with a foreword by

**THE HON'BLE
JUSTICE KHAN BAHADUR MUHAMMAD ISMAIL,**
ALLAHABAD HIGH COURT

SECOND EDITION REVISED AND ENLARGED.

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**THE LAW OF DEBT ACTS
IN UNITED PROVINCES
AS AMENDED UP TO DATE**

CONTAINING

An exhaustive and analytical Commentary

ON

The U. P. Agriculturists' Relief Act,
The U. P. Encumbered Estates Act, and
The Usurious Loans Act 1918 as amended by U. P. Act XXII of 1934.

BY

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FOREWORD
TO
THE SECOND EDITION.

Mr. Har Prasad Gupta, P. C. S. is to be congratulated on bringing out the second edition of his commentary on the Debt Acts. In the first edition Mr. Gupta had to explore virgin soil, to a large extent unaided by precedents and rulings. The present edition contains an exhaustive survey of case-law arranged under appropriate sections. How far the Debt Acts have served the purpose the Promoters had in view is a question to be determined by the politicians and administrators. The working of the Acts during recent years however has fully demonstrated many anomalies and defects. It is earnestly hoped that an amending Act will soon be introduced to modify as far as possible the rigour of some of the provisions of the Acts.

The commentary now presented to the public has many attractive features and shows that no pain has been spared to make this edition useful to the Bench and Bar.

I have no doubt that the commentary will be highly appreciated by all those who have to deal with the Acts either as lawyers or judges.

12th August 1938,

MUHAMMAD ISMAIL

PREFACE TO THE SECOND EDITION.

Since the publication of the First Edition there have been a few changes made by Legislation in Section 33 of the United Provinces Agriculturists' Relief Act as to the court fee payable in cases where the defendant gets a decree against the plaintiff in that suit and in cases where the plaintiff gets a decree against the defendant for money in that suit. These changes were made by Amendment Act IX of 1937. They have been duly incorporated in the notes under S. 33 and a Schedule VI has also been added. Certain changes have been made in the Rules 6, 16, 53 and 54 of the U. P. Encumbered Estates Act by the Local Government under their rule-making authority. They have been duly incorporated and printed in italics to facilitate knowing their new additions. Some amendments were proposed by means of two Bills published in U. P. Gazette dated 9th October, '37 in the U. P. Encumbered Estates Act, which are still before the Legislature. In view of the fact that these amendments would come before the Legislature and might be passed by the Legislature, I have given them under the heading "Proposed Legislation" below the body of the sections concerned and wherever necessary I have given my opinion about them also. In case of their enactment into law the reader would have only to strike off "Proposed Legislation" and the book would be complete and up to date.

A bill to amend the U. P. Encumbered Estates Act has been published in the U. P. Extra-ordinary Gazette, dated 1st August 1938. On its being passed finally by the Legislature, a supplement will be issued to the readers on their writing for the same to the author free of cost.

At the time the First Edition came into the field, the Acts were new and there were no pronouncements of the Hon'ble the High Court, the Chief Court and the Board of Revenue. Now all the rulings have been incorporated in the Commentary. Not only that, I have amplified my commentary further on various points which came before me while deciding cases on the bench, which I hope, would be appreciated by the Bench and Bar alike. In addition to that, I have endeavoured in the following pages to examine the decisions critically. In this, I submit, I have in no respect exceeded the fair license due to the author of a legal treatise, and I venture to express a hope that, so far as it goes, my attempt to make this book something more than a mere

collection of cases will increase its utility and render it useful to the Bench and Bar alike.

From the present Edition the U. P. Temporary Regulation of Execution Act, 1934 and the U. P. Regulation of Sales Act have been done away with as their time had already expired and there was no use reproducing them in this Edition.

In the present Edition I have given the contents in detail of the Rules framed under the U. P. Agriculturists' Relief Act and the U. P. Encumbered Estates Act 1934 so that the reader may know at a glance as to what is contained in a particular rule. I have also given a very elaborate index under each of the three Acts from which the Reader can hunt very easily each and every matter contained in the book without the least possible delay.

Great pains have been taken to simplify the subject as much as possible by a systematic arrangement, and labour has not been spared to attain fullness and accuracy. For the errors and imperfections which, notwithstanding every anxiety to prevent them, must inevitably occur in a work covering so extensive a field, I must throw myself on the indulgence of the learned reader.

I am deeply obliged to Hon'ble Justice Khan Bahadur Muhammad Ismail, a Puisne Judge of the Allahabad High Court for his kindly taking the pains to write a foreword for this humble work of mine.

Har Prasad Gupta.

July '38.

FOREWORD
TO
THE FIRST EDITION.

The 'debt legislation' effected by the Local Legislature (United Provinces) marks the acceptance of a new principle. As His Excellency Sir Malcolm Hailey remarked in his speech the idea underlying the legislation is that it is open to legislature of a country, in suitable cases, to interfere with a private contract, which is un-impeachable in all other respects, in the interest of the debtor and the agriculturist. The Acts forming the 'debt legislation' were passed in the larger interests of the country. It was a bold experiment, and time alone will show how far the experiment will be successful. Humanly speaking the legislation was wise and respected interests of the creditors as well, though not to the extent the majority of them wanted.

The legislation being new—it goes far beyond the Acts passed for the benefit of the agriculturists in Bundelkhand and the Punjab—the courts which have to administer the law, would be grateful to Mr. Har Prasad Gupta, a member of the Provincial Civil Service of these provinces, for bringing out a commentary. Mr. Gupta has taken great pains over his book and I am sure it will prove useful to the members of the bench and bar and to the public in general.

ALLAHABAD :
January 20th, 1936.

Lal Gopal Mukerji.

PRÉFACE TO THE FIRST EDITION.

Among the multifarious duties of the Judicial courts, by far the most important is to understand and interpret the law as it is forged on the anvil of the Legislature.

The Debt Legislation, which owes a greater part of its importance to substantial departure from the accepted sanctity of private contracts, is worth all the pains taken in bringing out various commentaries during the past few months. But, however, late in the day any individual effort might appear, the essential fact of an honest, humble endeavour to understand and interpret the law remains. And it is with that sincere apologia that the present work has seen the light of day.

The Debt Legislation being an innovation in these provinces—although not without its necessary earlier counterparts in other provinces, *viz*, the Deccan Agriculturists' Relief Act, the Bundelkhand Encumbered Estates' Act, and the Land Alienation Act and the Punjab Accounts Act—any attempt at its interpretation with an assertion of positivity is bound to be precocious and premature. But I fervently hope and trust that with all the shortcomings that an attempt at interpreting a new law in the absence of any authoritative Judicial pronouncement is bound to have, this humble work of mine will prove of what little value it is, to the learned profession for which it is primarily meant.

To each Act a chart has been appended to show the most salient features of the Act at a glance. In interpretation help has freely been taken from the earlier above mentioned Acts, of which references together with their relevant rulings, will be found scattered here and there throughout this work. A brief but full summary of the Encumbered Estates Act has been given at length with reference to the relevant sections and rules framed thereunder to enable a quick perception of the scheme of the Act and therein the various modes of calculation laid down in the rules have also been explained. To facilitate an easy reference relevant rules have been mentioned under each section of the Act in the index.

My most sincere and respectful thanks are due to Sir Lal Gopal Murkerji, Kt., formerly an Acting Chief Justice of the Allahabad High Court for his kindly taking the trouble to write a foreword for this humble work of mine.

I shall feel amply recompensed if this book proves of any service to the members of the bar and the bench and to the public in general.

Har Prasad Gupta.

THE UNITED PROVINCES

Agriculturists' Relief Act
No. XXVII of 1934.

*As amended by Act III of 1935 and
IX of 1937.*

SUPPLEMENT TO THE AGRICULTURISTS' RELIEF ACT.

Agriculturists' Relief Act, Section 5 and C. P. C. order 21, Rule 92—Setting aside of sale on conversion of the decree into an instalment decree.

In execution of a final mortgage decree, the mortgaged property was put up for sale and purchased by a third person on September 24, 1934. The judgment-debtor then applied for conversion of the decree into a decree for instalments, which was granted on January 12, 1937 and the original decree was superseded and was substituted by a decree for payment by instalments as contemplated by Section 5. The J. D. in pursuance of the decree passed under S. 5 applied to the execution Court to set aside the sale, which was granted on February 13, 1937. In appeal by the decree-holder that order was set aside on the ground that a sale could only be set aside under the provisions of Rules 89, 90 or 91 of Order 21 C. P. C. In revision against this order it was held in 1938 A. L. J. R. 575 (*Zamin Ali versus Purushotam Chandra*) following *Shyam Lal versus Ram Gopal* reported in 1937 A. L. J. 1197 that after the conversion of the decree into an instalment decree the sale held in pursuance of the original decree must be set aside.

It is most respectfully submitted that in case the application under Section 5 was made after the confirmation of sale and the decree was fully satisfied neither the decree could be converted into instalments under S. 5 because the proviso to Section 5 makes only unsatisfied final decrees passed before the Act revisable nor the sale already confirmed before the making of the application under S. 5 could be set aside. The auction sale becomes ultravires only on application being made under S. 5 before confirmation vide 1937 R. D. 365 Oudh and 1937 A. L. J. 723. The decree cannot be said to be fully satisfied as required by the proviso to Section 5 (1) unless the sale is confirmed and the property becomes vested in the decree-holder vide 1937 R. D. 570 (Oudh). Of course if the decree was not fully satisfied, it could be revised in the same manner and to the same extent as the preliminary decree for sale and in that case a sale though confirmed could be set aside on conversion of the decree into instalments under S. 5. But after confirmation of sale if the decree was fully satisfied, there was no decree in existence capable of being converted into an instalment decree and as such the application under S. 5 must have been dismissed and the sale could not have been set aside.

Section 5 Agriculturists' Relief Act.— “Any decree for money.” The words “any decree for money” in Section 5 (1) of the Act mean only a decree passed on the basis of ‘loan’ as defined by Section 2 (10) (a) and does not include a decree for damages for malicious prosecution, as a decree for damages is not a decree with respect to a loan. It may be remembered that this ruling is in consonance with my view in the first edition.

The court that “passed” a decree as contemplated by Section 2 (1) is the court of first instance and not the court which may be passed, either on appeal or in revision, the ultimate decree in the case. An application under section 5 (1) of the Act can be made only to the court of first instance that dealt with the suit or to the court to which the business of the Court of first instance may have been transferred.

The words “The decision of the appellate court shall be final” used in Section 5 (2) mean no more than this that the order passed by the appellate court cannot be made the subject of a second appeal. The provision about the finality of the decision of the appellate court cannot therefore, warrant the inference that the legislature intended in any way to limit or control the Revisional Jurisdiction conferred on the High Court by Section 115 C. P. C. The court exercising jurisdiction under Section 5 of the Act is a civil court and as such subordinate to the High Court, which is therefore, in accordance with Section 115 C. P. C. competent to revise the order passed by a court under Section 5. There is nothing in that Act that can be interpreted to divest this court either expressly or by necessary implication of the Revisional Jurisdiction conferred by Section 115 C. P. C.

1938 A. L. J. R. p. 628 (F. B.)

THE UNITED PROVINCES

Agriculturists' Relief Act No. XXVII of 1934.

As amended by Act III of 1935 and IX of 1937.

[PASSED BY THE LEGISLATIVE COUNCIL OF THE UNITED PROVINCES OF AGRA AND OUDH AND RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 10TH OF APRIL, 1935, AND CAME INTO FORCE ON THE 30TH OF APRIL, 1935.]

An Act to make provision for the relief of agriculturists from indebtedness.

WHEREAS it is expedient to make provision for the relief of agriculturists from indebtedness ;

AND WHEREAS the previous sanction of the Governor-General under section 80-A (3) (e) of the Government of India Act has been obtained to the passing of this Act ;

IT IS HEREBY enacted as follows :—

Preamble.—It signifies that the Act is meant to relieve the agriculturists from their indebtedness and that it does not apply to non-agriculturists.

How should the language of the Act be interpreted.—Courts have to administer the law as they find it. It is for the legislature to remedy the defect if any—A. I. R. 1935 A. p. 636. It is for the legislature to make any enactment and for the courts to enforce such enactments. Courts are not concerned with policy.

Where the Amending Act lays down a rule of procedure it ordinarily affects pending action—A. I. R. 1933 A. p. 846.

Where the main object and intention of a statute are clear, it must not be reduced to nullity by the draftman's unskilfulness or ignorance of law except in the case of necessity or the absolute intractability of the language used vide A. I. R. 1931 A page 727 (F. B.)

If the law is clear, it is the duty of the court to give effect to it without attempting to enquire into the reasons for the enactment—A. I. R. 1933 A-358.

The courts are not bound to follow the interpretation of the law which the legislature may have intended unless it can be properly so interpreted according to the judicial rules of interpretation—A. I. R. 1932 A-110.

The court must in each case apply the admitted rules of interpretation to the case in hand, not deviating from the literal sense of the word without sufficient reason,

AGRICULTURISTS' RELIEF ACT.

or more than is justified, yet not adhering slavishly to them where to do so would obviously defeat the intentions which may be collected from the whole statute—A. I. R. 1926 A-617 (F. B.)

Where the language of the statute is plain in itself it is not open to the interpreter to add to it or to deduct from it or even to consider whether the rule is likely to create hardships in particular cases if it be read in its ordinary sense. The words themselves must be considered to see the intention of the law given—A. I. R. 1928 A-241.

It is against all canons of interpretation to read additional words in an enactment of the legislature. It is not open to the Judges to legislate simply because there may be some hard cases—A. I. R. 1933 A-789 (F. B.)

If the terms of an Act are clear and precise no equitable doctrine can override the terms of the Act—A. I. R. 1931 A-380,

A clear provision of statute has to be followed and given effect to and it cannot be displaced by a mere equitable principle howsoever wholesome it might be—A. I. R. 1931 A-277 (F. B.)

Inconsistency.—It is a rule of interpretation of statutes that two different parts of the same statute cannot be read in a manner so as to make one provision contradict the other—A. I. R. 1933 A-230.

Where there are two possible constructions it is the duty of the court to use the common sense construction—A. I. R. 1929 A-750.

Any section in any Act must be interpreted in the light of the rest of the Act—A. I. R. 1929 A-421.

The safest course is to hold fast to the exact language in its ordinary interpretation, if it is capable of bearing it—A. I. R. 1924 A-792.

Meaning of words.—In interpreting a statute the proper course is in the first instance to examine the language of the statute itself and ask what its natural meaning is. Except where the terms in the statute have acquired a technical sense, ordinary meaning should be attached to the word or words used; and the intention of the statute has to be gathered from the words used and not from any speculation about its object. Regard has to be paid to three important factors—

- (1) A statute enacts everything essential to its existence.
- (2) Remedial measures must be liberally construed so as to advance the remedy.
- (3) Where the words are ambiguous and two meanings are possible, scope and object of the enactment may be looked at for the elucidation of the meaning—A. I. R. 1931 A-162 (F. B.)

Words used in an Act should be interpreted in their ordinary sense except where it is shown that they have been used in special or technical sense—A. I. R. 1935 A-378.

A doubtful interpretation on a language of a statute which works nothing but hardship should not be accepted and, if possible, any other interpretation that is not quite foreign to the language used by the statute, should be adopted—A. I. R. 1934 A-626.

It is a conclusion to be arrived at with great caution in any case that a section in an Act is a surplusage. It calls for still greater caution when the two sections, one of which is said to be surplusage, are actually contiguous to each other in the Act and neither could by any possibility have been overlooked when framing the other—A. I. R. 1926 A-653.

It is an elementary principle of the interpretation of statutes that you must give a reasonable meaning to every expression—A. I. R. 1927 A-50,

Every word of a statutory enactment must be given its full meaning and effect—A. I. R. 1935 A—723 (F. B).

Whether some words can be ignored and others imported in the interpretation. The manifest intention of the statute must not be defeated by too literal an adhesion to its precise language. No doubt generally full justice must be done to the words of a statutory enactment, but if the result of that is to do less than justice to the intelligence of the legislature, it is the duty of the courts to ignore the words which have the effect of making the enactment an absurd one.—A. I. R. 1935 A—946 (F. B).

It is not competent for a court to extend the words of an enactment by construction—A. I. R. 1918 A—168.

A court has no power to alter the law or to read into a statute words which it thinks ought to have been there—A. I. R. 1917 A 295.

Words not to be found in a section may be supplied by a necessary implication if the context so requires—A. I. R. 1925 A—610 (F.B.)

Interpretation where similar words are used in two different sections. In such a case the legislature must be presumed to have used the words in the two sections in the same sense unless there be something in the context to indicate the contrary—A. I. R. 1930 A—669.

According to ordinary rules of construction, the same meaning should be given to the same words in different portions of the same enactment unless the context compels to give a different meaning—A. I. R. 1929 A. 977 (F. B).

Where a section or an Act is capable of two interpretations the purpose of the enactment must be looked into—A. I. R. 1924 A—328.

Where words or expressions in statute are plainly taken from earlier statutes in *parimateria*, which have received judicial interpretation, it must be assumed that legislature was aware of such interpretation and intended it to be followed in later enactments. The rule is especially applicable in the case of consolidatory codes—A. I. R. 1931 A—294.

Where the section of an Act, which has formed the subject of a judicial interpretation in a number of cases, has been reproduced in a consolidating Act of a later date without any modification, this must be taken to be a clear indication that the judicial interpretations have been accepted by the legislature—A. I. R. 1930 A—82.

Whether the proceedings of the Legislative Council can be referred while interpreting the Act :— It is not proper to refer to such proceedings in order to determine the true interpretation of the language of the section—A. I. R. 1928 A—124. It is also the duty of the court to refrain from examining the discussion and the views of the legislative authority which enacted the statute. It has to look at the meaning of the words only—A. I. R. 1919 A—52.

Whether a preamble can be looked into :— A preamble can not be used to control the enactment itself when it is expressed in clear and unambiguous terms—A. I. R. 1927 A—593.

A preamble can never control or restrict the substantive provisions of an Act. It merely supplies a key to the interpretation of the sections. But where there is any doubt as to the true scope of the provisions of that enactment, the preamble may be of some guidance—A. I. R. 1932 A—617 (F.B).

Whether headings and marginal notes of a section can be considered while interpreting any section of the Act. It has been held that *headings* prefixed in the bill passed by the legislature have the force of the words used in the preamble of an Act and may be used as a key to open the minds of the

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makers of the Act and in this respect are unlike marginal headings which have no force for the purpose of interpretation—A. I. R. 1927 A—593.

The *headings* are like preamble which supply a key to the mind of a legislature but do not control the substantive section of the enactment—A. I. R. 1931 A—597 (F. B.)

A *heading* preceding any section is no doubt meant to express the intention of the legislature, though it is at least open to the question whether the words themselves have any operative effect—A. I. R. 1926 A—312.

In construing a statute *headings* should be ignored and it is only the sections which the courts are called upon to interpret as being the substantive part of the enactment—A. I. R. 1925 A—787.

Reliance could not be placed upon "*headings*" of chapters or descriptions given of sections in the margin of the same—A. I. R. 1918 A—264.

The marginal notes of a section in a Code of Law are certainly no sure guide to the real object of the legislature. But they can sometimes be looked at if there be any doubt about the meanings of the words used—A. I. R. 1925 A—503

Effect of illustration—It only simplifies the Law as interpreted in the Code and cannot be certainly taken to restrict the sense of the section—A. I. R. 1925 A—220. But where the meaning of the enactment itself is doubtful a reference to the illustration in order to clear the ambiguity could be justified. But if there be any conflict between the illustration and the main enactment, the illustration must give way to the latter—A. I. R. 1924 A—748.

Punctuation—is no part of the statute and a court of law is open to interpret the section without the commas inserted in the print. A. I. R. 1931 A—145 and A. I. R. 1933 A—521.

Where there are two provisions one *specific* and the other general, the specific provisions ought to be applied in preference to the general one. A. I. R. 1935 A—230.

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

I. (1) This Act may be called the United Provinces Agriculturists' Relief Act, 1934.

(2) It extends to the whole of the United Provinces of Agra and Oudh :

Provided that the provisions of Chapter III shall not apply to any mortgage to which the provisions of the Bundelkhand Land Alienation Act II of 1903 are applicable.

(3) The Local Government may, after obtaining the approval of the Legislative Council by notification in the Gazette, direct that all or any of the provisions of the Act shall not apply to any area which it may specify in the notification.

(4) It shall come into force on such date as the Local Government may by notification direct.

Meaning of the proviso—By this proviso it has been laid down that Chapter 3 of the Act relating to the mortgages and their redemption shall not be applicable to any mortgage to which the provisions of the Bundelkhand Land Alienation Act II of 1903 are applicable. Now the question is to what mortgages the said Bundelkhand Land Alienation Act is applicable and to what not.

The mortgages to which the said Act is applicable are given below—Mortgages executed by a member of an agricultural tribe in favour of one, who is not a member of the same tribe or in favour of one who is not a member of an agricultural tribe and resident of the district in which the land is situated. Vide Section 3 of the Bundelkhand Land Alienation Act. To Such mortgages the Chapter in the U. P. Agriculturists' Relief Act relating to mortgages and redemption will not apply.

Mortgages to which the Bundelkhand Land Alienation Act does not apply and to which Chapter 3 of the Agriculturist Relief Act will apply, are given below—(1) Mortgage executed by a member of an agricultural tribe in favour of another member of the same tribe or a member of an agricultural tribe and resident of the district in which the land is situated. Such mortgages, although of land in the Bundelkhand area, shall be redeemed in accordance with Chapter 3 of the Agriculturists' Relief Act.

(2) Mortgage executed by persons not belonging to the agricultural tribe.

Whether the remaining chapters of the Agriculturists' Relief Act will apply or not to mortgages governed by the Bundelkhand Land Alienation Act.—All the chapters except Chapter 3 shall apply to such mortgages.

Date of commencement of Act.—It was 30th April, 1935, that the Act came into force—vide Revenue Notification No. 328 dated 27. 4. 1935.

Interpretation clauses.

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

(1) "Agricultural calamity" means with reference to a particular debtor, a calamity other than a slump in prices on account of which—

- (a) if the debtor is a revenue-paying landlord, or an under-proprietor in Oudh holding a sub-settlement, there has been a suspension or remission of the revenue of any of his holdings ; or
- (b) if the debtor is a landlord, holding land free of revenue, there would have been a suspension or remission of the revenue of any of his holdings if revenue had been payable therefor ; or
- (c) if the debtor is a thekadar of land, there has been a suspension or remission of the rent of any holding payable to him ; or
- (d) if the debtor is a tenant of land or a person other than a thekadar or an under-proprietor in Oudh holding a sub-settlement and paying rent for his land, there has been a

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suspension or remission of the rent of any holding payable by him.

The criterion to know when there is an agricultural calamity :— There has been a suspension or remission of the rent or revenue where rent or revenue is payable by the debtor or had been payable by the debtor.

But it is essential that the suspension or remission should not be the cause of the slump in prices and it might be due to any other cause. The calamity may be particular to any debtor and need not be one in general suffered by the whole class.

It is only in section 6 that word calamity has been used and no-where else.

(2) "Agriculturist" means, in all sections of the Act where the term is used—

- (a) a person who, in districts not subject to the Benares Permanent Settlement Regulation I of 1795, pays land revenue not exceeding Rs. 1,000 per annum ; or
- (b) a person who, in districts subjects to the Benares Permanent Settlement Regulation I of 1795, pays a local rate under section 109 of the District Boards Act X of 1922, not exceeding Rs. 120 per annum ; or
- (c) a person holding land free of revenue, who pays a local rate under section 109 of the District Boards Act X of 1922, not exceeding Rs. 120 per annum ; or
- (d) in Oudh, an under-proprietor holding a sub-settlement of land the revenue of which does not exceed Rs. 1,000 per annum ; or
- (e) a thekadar who holds a theka of land the revenue of which does not exceed Rs. 1,000 per annum ; or
- (f) a person, other than a thekadar or an under-proprietor in Oudh holding a sub-settlement, who pays rent for agricultural land not exceeding Rs. 500 per annum ; or
- (g) a person holding land free of rent, the area of which does not exceed 80 acres ; or
- (h) a person ordinarily living outside the limits of any municipality who belongs to any of the classes of persons mentioned in Schedule I :

Provided that in sections 2(10) (a), 3, 4, 5, 8 and Chapters IV and V an "agriculturist" means also a person who would belong to a class of persons mentioned in parts (a) to (g) of this sub-section, if the limits of land revenue, local rates, rent and area mentioned in these parts were omitted :

Provided also that no person shall be deemed to be an agriculturist if he is assessed to income-tax, which, if he belongs to any of the classes (a) to (e) above, exceeds the local rate payable on the land which he holds, or, if he belongs to class (f) above, exceeds 5 per cent. of his rent, or, if he belongs to class (g) above, exceeds Rs. 25 :

Provided further that if a non-agriculturist joins with an agriculturist in any transaction of loan, save for the purpose of adding his name as security, the agriculturist shall not be considered as such for the purpose of that transaction.

Explanation I—In this sub-section "revenue" and "rent" mean revenue and rent payable irrespective of the remission that may be granted for the slump in prices or for agricultural calamities.

Explanation II.—In the case of members of a joint Hindu family or joint owners or joint tenants, each member or owner or tenant shall be considered to be an agriculturist for the purposes of Chapters II (except sections 3, 4, 5 and 8), III and VI, whose share or interest in revenue, local rate or rent or the rent-free land, as the case may be, does not respectively exceed the aforesaid limits.

Explanation III.—In Oudh an under-proprietor of specific plots not holding a sub-settlement and paying rent not exceeding Rs. 500 per annum is an agriculturist.

Explanation IV.—The word "rent" in this sub-section includes, in cases where rent is payable in kind the money equivalent thereof recorded in the *khatauni* of the previous year.

Explanation V.—The word "rent" in this sub-section shall not include *zaid mutalba* or any amount paid in excess of the rent legally payable.

Explanation VI.—When a person pays both rent and revenue, he shall not be deemed to be an agriculturist for the purposes of Chapters II (except sections 3, 4, 5 and 8), III and VI, if the total of the rent and revenue annually payable by him exceeds Rs. 1,000, or if he is excluded from the definition of agriculturist under any of the clauses (a) to (g).

Explanation VII—When a person, holding land in districts subject to the Benares Permanent Settlement Regulation I of 1795, or holding land free of revenue, pays both rent and local rate, he shall not be deemed to be an agriculturist if the total of the rent and local rate annually payable by him exceeds Rs. 500.

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Illustrations.

(i) A person who pays Rs. 800 as revenue and Rs. 400 as rent is not an agriculturist as the total of rent and revenue exceeds the limit of Rs. 1,000.

(ii) A person pays Rs. 200 as revenue and Rs. 600 as rent. He comes under clause (a) but not under clause (f), he is not therefore an agriculturist.

RULE.

1. If in any proceedings under this Act the creditor alleges that the debtor is not an agriculturist within the meaning of the Act, because the debtor is assessed to more income-tax than that laid down in the second proviso to section 2 (2) of the Act, then

**(a)* If the debtor admits that he was assessed to income-tax either for the last financial year for which assessments have been made by the income-tax department or for the year in which the suit was filed or for any of the years in which the loan or loans in suit were advanced, the onus of proving that he was not assessed to more income-tax than that laid down in the second proviso of section 2 (2) of the Act in any such year shall be upon the debtor who can discharge that onus by the production of the chalans or receipts for the income-tax to which he was assessed.

**(b)* If the debtor asserts that he was not assessed to income-tax either for the last financial year for which assessments have been made by the income-tax department or for the year in which the suit was filed or for any year or years in which the loan or loans in suit were granted, the court shall inquire from the income-tax officer of the circle concerned whether the debtor was assessed to any income-tax at all in the financial year for which the debtor asserts that he was not assessed. If the reply is to the effect that some income-tax was assessed in any of those years, then the onus of proving that the amount was not in excess of that laid down in the second proviso to section 2(2) of the Act in that year lies on the debtor who can discharge that onus by the production of the chalans or receipts for the income-tax to which he was assessed.

Clause 2.—The definition of agriculturist shall include the following persons.—

(1) Landlords or in Oudh proprietors or thekedars paying land revenue not exceeding Rs 1000/-. This definition is however restricted in its application to landlords not subject to the Benares Permanent Settlement Regulation of 1795.

(2) All those persons whether subject to Benares Permanent Settlement Regulation or holding land free of revenue, who pay a local rate under section 109 of the District Board Act not exceeding Rs. 120/-per annum.

(3) Tenants who pay rent not exceeding Rs. 500/- per annum for agricultural land and persons holding land free of rent but not exceeding 80 acres in area.

(4) Persons given in Schedule 1, or who may be notified to be included by the local Government from time to time in this schedule are included in this definition.

Qualifications for a landlord to be an agriculturist. In order to invite the application of the provision of Section 2 (2) (a) U. P. Agriculturists' Relief Act it is essential that the revenue payable must be on account of 'Land' as defined

*Substituted by the U. P. Government Notification No. 48 Rev. of 18/19th May, 1936.

in the Agra Tenancy Act 1926. Where the revenue payable by the plaintiff is on account of house sites and not on account of land as defined by the Tenancy Act, the revenue payable is not land revenue within the meaning of section 2 (2) (a) and the plaintiff is not an agriculturist and is not entitled to sue under section 33 A. R. Act—1938, R. D. 295 (H.C.)=1938 A. L. J. 135.

It is respectfully submitted that this view is not correct. The person concerned must have been paying land revenue, it being immaterial in what capacity he pays it. It was held in 1937 A. L. J. 970 by the Allahabad High Court that if a person is recorded as holding certain property or if the revenue papers show that a certain person pays land revenue etc. then he is the person who is prima facie an agriculturist within the meaning of sub section (2) of Section 2.

What is meant by the local rate. Usually it means what is popularly called 'abwab'.

Persons holding the same land in different capacities whether agriculturists.

It was held in 1937 R. D. p. 217 that a person falling within the categories (a) (d) (f) & (g) of S. 2 (2) of the Act should be considered to be holding the land though the same is in the actual occupation of a thekedar or a tenant who should also be considered to be holding such land. Each holds it in a different tenure. The proprietor holds it in his capacity as a proprietor while the thekedar holds it as such. If other conditions are fulfilled both of them should be considered to be "agriculturists" if they do not pay income-tax exceeding the amount of the local rate payable in respect of the same land. Accordingly in determining the amount of local rate the court has to take into consideration the amount of local rate in respect of land of which the judgment debtors are proprietors and also of the land of which they are thekedars.

When a Mutwalli can be said to be an Agriculturist.

It was held in 1937 A. L. J. R. 178 that a person paying land revenue as mutwalli is an agriculturist in case he has beneficial interest under the waqf otherwise not because in the latter case he is merely a trustee for other persons.

Trustee when an agriculturist.

The word "person" contained in the definition contained in section 2 (2) Agriculturists' Relief Act must be interpreted in the sense of a juristic person and would as such include a body of persons like the trustees who being land owners of the estate must be regarded as agriculturists if they pay land revenue—1937 R. D. p. 349 Oudh (F. B.).

Groveholder whether an agriculturist. Yes vide 1937 A. L. J. R. p. 686.

Condition to be fulfilled by persons given in schedule 1 to qualify as an agriculturist.

It is essential that they must ordinarily reside outside the limits of the municipality. The word "ordinarily" has not been defined. It must mean 'usually'. So to say if a person has a permanent home outside the municipal limits and also a temporary home within the municipal limits he must be deemed to be an agriculturist under schedule 1 but not the vice versa.

Effect of payment of income tax. The legislature has condoned the payment of income tax up to a certain limit, but the payment of income tax beyond that limit deprives one from the benefit granted by the Act and the assessee in that case is not to be deemed as an agriculturist.

Condonable limits. (1) Persons coming within the clause (a) to (e) should not pay income tax higher than the local rate payable on the land which they hold individually.

(2) Tenants paying rent not exceeding Rs. 500 per annum should not pay income tax more than 5 per cent. of their rent.

(3) Tenants holding land free of rent the area of which does not exceed 80 bighas, should not pay more than Rs. 25 as income tax.

Nothing has been said about those agriculturists who come in proviso (1) to section 2(2) and in their case no limit has been prescribed. Should this omission be taken to mean that they will remain agriculturists irrespective of the amount of income tax paid by them? The legislature could never have intended to except landlords, thekadars and others, paying more than Rs. 1000/- as land revenue. In their case also the same scale of condonable limits should be adopted. The only case which remains un-explained is that of tenants holding land free of rent, the area of which exceeds 80 acres. It would have been much better had the legislature been clear enough, so as to include the case of these persons also.

On whom the onus lies to prove that the debtor is not an agriculturist on account of his being assessed to more income tax than that laid down in the second proviso?

The onus will lie on one, who raises this plea but as the creditor cannot get any copy of the assessment order from the Income Tax Department so by rule 1 it has been laid down that in case the debtor admits that he was assessed to income tax for the last financial year in which the suit was filed or for any of the years in which the loan or loans in suit were advanced the onus shall have to be discharged by the debtor by the production of the chalangos or receipts for the income tax to which he was assessed. But in case the debtor denies having paid income tax during those years, the court shall enquire from the Income Tax Officer of the circle concerned whether the debtor was assessed to any income tax at all in the financial year for which the debtor asserts that he was not so assessed. If the reply is to the effect that some income tax was assessed in any of those years then the onus of proving that the amount was not in excess of that laid down in the second proviso in that year, will lie on the debtor, who can discharge that onus by the production of the chalangos or receipts for the income tax to which he was assessed. Vide Notification No. 618 I. T. / 36 dated September 18, 1936. Central Board of Revenue, the income tax officers have been requested to supply information to courts whether or not a particular person was assessed to income tax for the year concerned, but no indication of the amount of the income tax paid by such person or the amount on which he has been assessed is however to be given.

The words "is assessed" in the proviso to S. 2 of the Act do not mean "at the present time" that is to say, at the time when the court is to pass its order. They obviously mean "was assessed at the last occasion", that is to say, was assessed during the last financial year. The mere fact that during the current year the return of the debtor is still under examination and the Income tax office has not yet decided whether he should or should not be assessed to income tax, should not make any difference—1936 A. L. J. 501=A. I. R. 1936 All. 449.

Note.—The amendment in rule 1 was made after this ruling.

The court has to see whether or not the debtor was assessed either for the last financial year for which assessments have been made or for the year in which the suit was filed or for any of the years in which the loan or loans in suits were advanced and in case the creditor is found to be assessed to more income tax than that laid down in the second proviso then in such a case the debtor will not be deemed to be an agriculturist. This view clearly follows from the amended rule 1.

Proviso 2. Effect of joinder of a non-agriculturist with an agriculturist in any transaction of loan. It has been laid down that in a case where the loan is borrowed by an agriculturist along with a non-agriculturist the agriculturist shall not be deemed to be an agriculturist for the purposes of that transaction and the only exception to such a case will be one where the name of the non-agriculturist has been added only as surety. As in the document evidencing the loan usually it is not described as to whether a certain executant is a surety, so the court will in my opinion be at liberty to enter into evidence to decide this question.

Meaning of the word 'rent' and 'revenue'. They will mean revenue and rent recorded in the khatauni of the previous year irrespective of the remission that may be granted for the slump in prices or for agricultural calamities and it will not include zaid mutalba or any amount paid in excess of the rent legally payable vide explanations 1, 4 & 5.

Joint Hindu family whether an agriculturist.—It was held in 1937 A. L. J. p. 1367 and 1345 that a person under section, 2 (f) includes a Hindu Joint family and where the rent of an agricultural holding held by a Joint family does not exceed Rs 500/- it has to be treated as an agriculturist and is therefore entitled to instalments under section 3 of the Act.

On the same principle it can be said that the word person wherever used in section 2 (2) includes a Joint Hindu family. Where it exceeds the limits of land revenue, local rates, rent and area mentioned in section 2. (2) clauses (a) to (g) it will be an agriculturist under proviso 1 for the purposes of sections 2 (10) (a), 3, 4, 5, 8 and Chapters IV and V but not otherwise.

Members of a joint Hindu Family.—Where the Joint Hindu family is an agriculturist coming in section 2 (2) clauses (a) to (h), all its members will be agriculturists and will be entitled to all the benefits conferred by the Act.

It was held in 1937 A. L. J. R. 1345 that where there were three defendants members of a Joint Hindu family, out of whom two were only entered as tenants in the khewat, the tenancy is held by the Joint family which pays the rent for agricultural land not exceeding Rs. 500/- per annum and therefore the case comes under section 2 (2) (f), i. e., the whole family is an agriculturist.

It was also held that the explanation 2 is required only in the case of a Joint family where the total rent is more than Rs. 500 per annum and then the different members may claim to be agriculturists under explanation 2 but as chapter II is expected from explanation 2 they would not be agriculturists for the purposes of sec. 3 or 5.

In a previous ruling reported in 1937 A. L. J. 970 it was held that each member of a Joint Hindu family or Joint owner or Joint tenant cannot claim the benefits conferred by sec. 5 or 30 because they are expressly excluded in explanation 2. For the purposes of applications under sec. 5 or applications under Chapter IV the person recorded as owner or the person paying revenue etcetra is the only person who can apply. Normally such a person in a Joint Hindu family would be the Karta.

This latter ruling is based on the view that explanation 2 applies to members of a Joint Hindu family irrespective of the fact whether the family is an agriculturist under sec. 2 (2) or the proviso 1 to sec. 2 (2).

The correct view seems to be the one laid down in 1937 A. L. J. R. 1345 that explanation 2 is required only in the case of a Joint Hindu family where the total rent is more than Rs 500 per annum and then the different members may claim to be agriculturists under explanation. 2

Similar remarks will apply where the limits of land revenue, local rates, and area laid down in sec. 2 (2) (a) to (g) are exceeded by the Joint Hindu family. In that

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case the members will be agriculturists under explanation 2 provided their share does not exceed the aforesaid limits.

Joint owners or Joint tenants.

They stand in the same position as members of a Joint Hindu family so far as the question of their being agriculturists is concerned because explanation 2 is common to all.

Whether applications governed by Chapters IV and V are affected by the explanations to sec. 2 (2).

It was held in 1937 A. L. J. p. 680 that these applications are covered by the first proviso to sec. 2 (2) and are not effected by the explanations.

In 1937 A. L. J. 970 it seems a contrary view was taken because there it was held that Chapter IV was expressly excluded in Explanation II.

It is most respectfully submitted that the latter view is not correct but the previous one is correct because if it be taken that these explanations also affect chapters IV and V although they are silent so far as these chapters are concerned, the result will be that the first proviso will run into conflict with explanations VI and VII and will become nugatory inasmuch as these persons will be agriculturists for the purposes of chapters IV and V according to first proviso but will not be so according to these explanations. It is a rule of interpretation of statutes that two different parts of the same statute cannot be read in a manner so as to make one provision contradict the other vide 1933 A. L. R. p. 230 (All). Had the Legislature intended that these explanations will affect the first proviso, it would have expressly laid down in these explanations that such persons will not be deemed agriculturists for the purposes of Chapters IV and V and would not have been silent. So far as explanation II is concerned, it cannot be said that the Legislature intended a different rule other than that for explanations VI and VII so far as Chapters IV and V are concerned.

Proviso 3 and its application to members of a Joint Hindu family or Joint owners and Joint tenants.

The question is whether a person who is a Joint owner or Joint tenant or member of a Joint Hindu family whose name is not down in papers as an agriculturist on the ground of his being a Joint owner or Joint tenant or member of a Joint Hindu family, will render another agriculturist a non-agriculturist within the meaning of proviso 3 by joining with him in a transaction of loan. In my opinion the other agriculturist cannot be deemed a non-agriculturist because if that is done, Explanation II will become nugatory and so will the view that where a Joint family is an agriculturist within section 2 (2) (a) to (h), its members are also agriculturists.

(3) "Bond" means a bond as defined in section 2 of the Indian Stamp Act II of 1899.

(4) "Collector" means the officer appointed as Collector of a district under the Land Revenue Act III of 1901.

(5) "Court" means a civil court.

(6) "Co-operative Society" means a society registered under the provisions of the Co-operative Societies Act II of 1912.

(7) "Creditor" in Chapter V means a person who, in the regular course of business, advances a loan as defined in this Act, and includes the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise, of a creditor.

In the regular course of business.—These words have not been explained in the Act. In my opinion they mean "in the ordinary course of a professional avocation". With reference to the definition of 'creditor' where these words are used only those creditors will come under Chapter V whose regular course of business is moneylending and who are not only occasional moneylenders.

(8) "Interest" includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or in the form of service or otherwise.

(9) "Land" and "landlord" shall have the same meaning as in the Agra Tenancy Act III of 1926.

Land—In the Tenancy Act it has been defined as follows—

"Land" means land, which is let or held for agricultural purposes or as grove land or for pasturage. It includes land covered by water used for the purpose of growing singhara or other similar produce but does not include land for the time being occupied by dwelling houses or manufactories, or appurtenant thereto. Agricultural land includes all land which is fit for agriculture though in fact it is being used for some other purpose. Grove-land, assuming it to be land which if denuded of trees can be used for agriculture, is agricultural land within the meaning of clause (f)—1937 A. L. J. 686.

"Landlord"—means the proprietor of a mahal or of a share or specific plot therein.

Person—Section 3 clause 39 of the General clauses Act X of 1897 defines the words person to include any company or association or body of individuals whether incorporated or not "A firm is a person and so also a company—vide 48 M. 702 and 41 M. 624. Person includes joint Hindu family—1937 A. L. J. 1367 and 1345,

(10) (a) "Loan" means an advance to an agriculturist whether of money or in kind, and shall include any transaction which is in substance a loan, but shall not include—

(i) a loan advanced by the Local Government or by any Municipal, District or Cantonment Board authorised by the Local Government to advance loans, or by a Co-operative Society ;

(ii) except for the purposes of sections 7, 8, 33 (1), 35, 36 and 39 (1), (3) and (4), small loans not exceeding Rs. 20 repayable within a year in fixed equated instalments the total of which does not exceed the principal by more than 10 or 20 per cent. according as the instalments are spread over a period of less than six months or more than six months, provided that no further interest is charged in addition to fixed equated instalments ; and

(iii) a loan of agricultural produce payable at the next harvest

with not more than one quarter of the quantity of the said produce by way of interest.

Explanation.—(i) A loan advanced as one transaction shall for the purpose of sub-clause (ii) be deemed to be one loan even though it is evidenced by several separate documents or by separate entries in a document.

(b) "Secured loan" means a loan for which property other than agricultural produce is specifically hypothecated as secured.

(c) "Unsecured loan" means a loan which is not secured.

Loan—The definition is very wide as it includes any transaction which is in substance a loan.

Price for articles purchased on credit whether a loan.—The Oudh Chief Court held in 1936 R. D. 580 that a decree for price of articles purchased on credit is not a decree on basis of a loan. In 1937 A. L. J. 766 it was also held that the price for articles purchased by an agriculturist cannot be regarded as 'an advance in kind' within the meaning of those words in the definition of loan.

Can a mortgage deed executed in lieu of a previous one without any sum being advanced in cash at the time of renewal be treated as loan.

It was held in 1937 A. L. J. 882 that it cannot be treated as a loan as it cannot be regarded as a fresh advance in kind by the mortgagee to the mortgagor.

Secured loan when to be treated an unsecured one. A secured loan is not to be treated as such for the purposes of the Agriculturists' Relief Act if the security given is afterwards found to be void and unenforceable. When the security is held to be ineffective, the loan should be regarded as unsecured and the plaintiff is entitled to get interest at the rate laid down in Schedule III as if the loan was unsecured—1938 R. D. p. 295 (Oudh).

It is most respectfully submitted that this view is more in consonance with equity rather than with law. At the time the loan was advanced in the above case, the parties were in common agreement that it was a secured loan and so it could not be treated as unsecured when the security was found ineffective.

It was held in 1937 A. L. J. 177 that the date on which loan is taken is the correct date to determine class of loan. Where money is lent on security of a mortgage, the loan is a secured loan even though creditor gives up his security and obtains a simple money decree. The proper rate to apply is the rate for a secured loan in schedule III of the Act.

Secured loan. It has been defined to be a loan in which property other than agricultural produce is specifically hypothecated as security. Thus secured loans will include money advanced on pawn of movables other than agricultural produce and it is not necessary that it should be confined only to cases where immovable property is hypothecated.

(11) "Money" shall be deemed to include agricultural produce, implements and stock.

Money—The definition of the word 'money' is the same as in Dekkan Agriculturists Relief Act. It was held in 16 Bom. L. R. 683 that the definition of 'money' will also include bullocks.

A loan of implement and stock and of agricultural produce with the exception of those given in sec. 2 clause 10 sub-clause 3 will amount to a loan of money under this Act. Secs.
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(12) "Prescribed" means prescribed by this Act, or by rules made under this Act.

(13) "Thekadar" shall have the same meaning as in the Agra Tenancy Act III of 1926.

Thekadar.—He has been defined to be a farmer or other lessee of proprietary rights in land and in particular, of the right to receive rent or profits vide Section 199 of the Agra Tenancy Act.

The test is whether the principal lease transfers the proprietary rights or cultivatory rights only. In case it transfers the former then the lessee is a thekadar but in case it transfers the latter then he is not.

Right to receive profits includes a right to an undivided share of a co-sharer in a zamindari vide 1927 A. I. R. A—78. As the word "Rent" defined in the Tenancy Act does not include Sayar, hence a thekadar for gathering forest produce will not be a thekadar under Chapter 13 of the Tenancy Act and the lessee will not be a thekadar.

A lessee under a permanent heritable lease may be a thekadar.

(14) "Under-proprietor" shall have the same meaning as in the Oudh Rent Act XXII of 1886.

"Under proprietor" has been defined to be in the Oudh Rent Act to mean any person possessing heritable and transferable right of property in land for which he is liable or but for contract or decree would be liable, to pay rent.

The rulings on landlord, land, thekadar and under proprietor in the Acts from which their definitions have been borrowed in this Act will be applicable. It may be noted here that the definition of land, landlord and thekadar as given in the Agra Tenancy Act and not that given in the Oudh Rent Act have been adopted in this Act and so for the purposes of this Act the definitions given in the Agra Tenancy Act will also apply to Oudh.

CHAPTER II.

SUITS AGAINST AGRICULTURISTS.

Note — This chapter only applies to suits against agriculturists and not to those who are not agriculturists.

3. (1) Notwithstanding any provision in the Code of Civil Procedure, V of 1908, to the contrary, the court, at the time of passing a decree for money or a preliminary decree for sale in default of payment of money or a preliminary decree for foreclosure against an agriculturist, may, and, on the application of such agriculturist, shall, unless for reasons to be recorded it directs otherwise, direct that the total

Fixing of instalments at the time of passing of decree.

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amount found due for principal, interest up to the date of the decree, and costs, if any, shall be paid in such number of instalments payable on the dates fixed by the court as having regard to the circumstances of the judgment-debtor and the amount of the decree, the court considers proper :

Provided that the period of such instalments shall not extend beyond four years from the date of the decree in the case of an agriculturist to whom Chapter III applies, and beyond fifteen years from such date in the case of other agriculturists :

Provided further that if the court is satisfied that on account of an agricultural calamity, the payment of any instalment by a judgment-debtor is likely to cause hardship, it may, after notice to the decree-holder, allow such further time for payment of such instalment as it may consider proper.

(2) The court may, at the time of passing an instalment decree against an agriculturist, either attach his immovable property, if any, or declare a charge on such property within the meaning of section 100, Transfer of Property Act IV of 1882 to the extent of the amount decreed.

(3) An attachment under sub-section (2), shall, unless the court directs otherwise, subsist until the decree has been paid off or otherwise satisfied, and all provisions in the Code of Civil Procedure, V of 1908, relating to attachment in execution of decrees and to investigation of claims to attached property, shall apply to such attachment.

(4) If the decree provides for payment by instalments, the court shall direct that, where the number of instalments allowed is four or five and any two instalments are in arrears, or where the number allowed is six or more and any three instalments are in arrears the decree-holder may, notwithstanding the provisions of any law for the time being in force, immediately enforce payment of the whole amount then remaining due under the decree, and in the case of a decree for sale or foreclosure apply that a final decree shall be passed.

(5) Nothing in any order made in an instalment decree shall debar a judgment-debtor from paying at any time, towards the satisfaction of the decree, the whole of the amount that may be due thereunder or any amount exceeding the amount of an instalment that may be fixed under the decree.

Notes — This section relates to the fixing of instalments at the time of passing of the following decrees —

- (1) A decree for money,
- (2) A preliminary decree for sale in default of payment of money.
- (3) A preliminary decree for foreclosure against an agriculturist.

Decree for money. These words have not been defined in the Act, and the first question that arises is whether every decree for money howsoever obtained is a decree for money within the meaning of this section. The words "shall direct that the total amount found due for principal, interest upto the date of the decree, shall be paid in such number of instalments" used in this section clearly indicate that the legislature had in mind only those cases where the suit was for recovery of principal and interest. The word principal according to Chamber's Dictionary means 'money on which interest is paid.' Thus from a perusal of section 3 clause 1 it is perfectly clear beyond any shadow of doubt that only those decrees for money were meant in which the claim was for recovery of principal and interest. Other decrees for money in which principal has nothing to do, cannot be covered by this section.

In 1936 R. D. page 580 and in 1937 R. D. 402 it was held by the Oudh Chief Court that "The relief under section 5 can be granted in all decrees for money, no matter whether they are based on loans or any other claims. Similarly the Allahabad High Court in 1937 R. D. page 383 and 1936 A. L. J. 465 also observed that section 5 is most general in its scope and applies to any decree for money. These rulings cannot be made applicable to section 3 because of the reasons given above and without meaning any dis-respect I further think that even under section 5 they do not lay down good law because under this section any decree for money or preliminary decree for sale or foreclosure shall be converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of section 3 and therefore it is section 3 that governs section 5 and when under section 3 instalments cannot be granted in a decree for money in which the claim is not for principal it should not also be granted under section 5. If these rulings lay down good law then it will mean that in those decrees for money in which the claim is not for principal the court will grant the instalments under section 5 although it could not at the time of the passing of the decree under section 3. Section 8 governs both sections 3 and 5 and it clearly shows that the suit must be in respect of a loan. This is an additional ground for holding that decree for money means a decree for loan only. A suit for recovery of the price of articles purchased by the defendant agriculturist is not a suit for recovery of a loan as defined in U. P. Agriculturists' Relief Act and the defendants are not entitled to relief under the Act—1937 A. L. J. R. p. 766.

When an instalment should be granted. It will be incumbent on the court to grant instalments under this section on the application of the defendant agriculturist except in those cases where the court for cogent reasons to be reduced into writing does not allow instalments. Where the case is ex-parte the court may grant instalment if it so likes but it will not be incumbent on it to do so.

Whether court must allow pendentilite interest in every case under section 3. The words "shall direct that the total amount found due for principal, interest up to the date of the decree" leave no room for doubt that the court must award pendentilite interest when it grants instalments under this section.

Agriculturists who are entitled to get instalments not exceeding 4 years. Those agriculturists to whom Chapter 3 applies cannot get instalments beyond 4 years. Agriculturists to whom Chapter 3 applies are those persons who come within clauses (a) to (h) of section 2(2). It was held in 1936 R. D. page 592 that a

person coming under clause (f) of section 2(2) was one to whom Chapter 3 applies and in his case instalments cannot extend beyond 4 years from the date of the decree. It was further held in 1937 R. D.—75 that in the case of the agriculturists falling under clauses (a) to (h) of section 2(2) the period of instalments cannot extend beyond 4 years and so an order granting 12 years instalments is without jurisdiction. Again it was held in 1938 R. D. p 90 at 92—1937 A. L. J. 1291 that where the judgment debtor was a mortgagor agriculturist, it has no jurisdiction whatsoever to grant instalments spreading over a period of 4 years.

But in 1937 A. L. J. 1134 it was held by the Allahabad High Court that the person referred to in the first Proviso to section 3(1) for whom a four years' limit is prescribed is one who has made an application under Chapter III and to whom Chapter III therefore applies. A person who is a simple money debtor and not a mortgagor is not an agriculturist to whom Chapter III applies and he cannot therefore come under the category of agriculturists for whom a period of 4 years only is fixed from the date of the decree.

It is respectfully submitted that the above contrary view is not correct. Chapter III applies to a mortgage executed by an agriculturist as defined in section 2(2) (a) to (h). It does not apply to persons coming in the first proviso to section 2(2). Thus obviously Chapter III applies to agriculturists coming in clauses (a) to (h). Under Chapter III no instalments can be granted and therefore it cannot be said that the person referred to in the first proviso to section 3 (1) for whom a four years' limit is prescribed is one who has made an application under Chapter III and to whom Chapter III therefore applies.

Persons who are entitled to get instalments not extending beyond 15 years will be those who come under proviso 1 of section 2(2), that is to say, those persons who belong to a class of persons mentioned in paras (a) to (g) of section 2(2) but with the limits of land revenue, local rate, rent and area dropped in their case. Such persons are obviously entitled to instalments both under section 3 and 5.

Whether instalments can be granted under order 20 rule 11 for a larger period than that laid down in section 3. It was held in 1938 R. D. 64—1937 A. L. J. 1247 that the provisions of the Agriculturists' Relief Act make it imperative on the Court to pass an instalment decree in certain circumstances. They do not derogate from the provisions of 0.20 R 11 C. P. C. and the court is entitled to pass a decree for instalments extending over a period beyond four years.

Can the court extend the time for payment of any instalment ? It can only do so when it holds that the judgment debtor is unable to pay the instalment in time on account of an agricultural calamity but that is to be done only after notice to the decree-holder and not otherwise.

Creation of charge by Judge Small Cause Court. Small Cause Courts are not empowered to attach immoveable property and neither they will be entitled to do so under the provisions of section 3 sub-section 2. But so far as creating a charge on the property of the judgment debtor for the decretal amount is concerned, it has been held in 1937 A. L. J. R. 93 that small cause court, though it has no jurisdiction to attach immoveable property, has jurisdiction to create a charge thereon in virtue of the terms of section 3(2).

Creating a charge under section 3(2) is discretionary with the court. If it has considered the question of taking such action and has given satisfactory reasons for not taking such action, the Chief Court will not interfere in revision. If, on the other hand, there is no indication in the judgment that this point was considered in the court below, the position will be different—1938 R. D. 293.

Default Clause—It is mandatory on the court while fixing instalments to order that in case where the number of instalments allowed is 4 or 5 the decree-holder will be entitled to enforce payment of the amount then due under the decree when any 2 instalments are in arrears or where it allows six or more instalments the default clause will be any three instalments.

Court-fee. In an appeal against instalments granted in a decree under section 3, the court fee of Rs 10/- is payable under Schedule II Arts. 17 (vi)-1936 R. D. 236. Such an order does not come under section 5(2) in which a court fee of 8 as. is sufficient.

Appeal—It will lie against the decree passed under sec. 3 but there is no provision for an appeal from a refusal to grant instalments under section 3 of the Act. The appeal provision in sec. 23 is only for Chapter III and not for Chapter II. This Chapter II has provision for appeals from an order refusing to pass fixed instalments in a decree, which was previously passed, that provision being in sec. 5(2)—1937 A. L. J. R. p. 1345—46.

4. (1) Notwithstanding anything contained in the Code of

Civil Procedure, V of 1908, the rate at which future interest may be allowed in any decree for

payment of money or for sale in default of payment of money or for foreclosure or in any order for grant of instalments passed against an agriculturist shall not exceed the rate notified by the Local Government in the Gazette under sub-section (2) as in force at the time when the decree or order, as the case may be, is passed.

(2) As soon as possible after the rate of interest at which the Government of India will lend money to the Local Government is announced, the Local Government shall notify that rate in the Gazette, and publish it in such other manner as it thinks proper, and that rate shall be the rate in force for future interest from such date as may be notified by the Local Government until such date as it is superseded by a new rate.

Notes.—Vide Notification No. 343 Revenue Department dated 1. 5. 1935, the rate of interest under sub-section 2 of section 4 has been notified to be $3\frac{1}{2}\%$ with effect from 8. 5. 35. By subsequent R. D. Notification No. 2617—11—1, dated 7th Jan. 36 the rate with effect from 15. 1. 36 has been notified to be $3\frac{1}{2}\%$. These are the rates at which the Government of India was to lend money to the local Government at the time the notifications were made.

Can the court allow future interest under section 5 when no such interest is allowed in the decree? It was held in 1937 R. D.—76 that an order allowing future interest when no such interest is allowed in the decree is illegal, there being no provision to authorize the court to do so.

Any order for instalments—There is a conflict of opinion between the Oudh Chief Court and the Allahabad High Court as to the meaning of the words "any order for grant of instalments". According to the view of the Allahabad High Court reported in 1937 A. L. J. R.—373 it has been held that these words are very wide and refer to any such order passed under the Act whether that order be passed under section 3 or 5. Accordingly when a new decree is passed under section 5 the court must in fixing

the future interest act in accordance with the provisions of section 4. Sub-section 2 therefore seems to lay down future rates of interest for definite periods and it is not necessary that there should be one inflexible rate after the date of the decree. With effect from 14. 1. 36 the rate should be reduced to $3\frac{1}{4}$ % per annum onwards until further notification. On the other hand it has been held by the Oudh Chief Court in 1937 R. D. page 235 (F. B.) which was followed in 1937 R. D. p. 474 that this section does not apply to decrees passed before the Act and the words "any order for instalments" include only an order made under section 3 but not under section 5 and therefore future interest, though subject to reduction under section 30 according to the rates specified in Schedule 3 is not liable to further modification, according to the rate notified by Government under section 4(2) of the Act. The words "in any decree" in Notification No. 343 dated 1st May 1935 fixing rate of interest at $3\frac{1}{2}$ p. c. per annum are not wide enough to include decrees passed before the Act. The right which has accrued to a decree holder in regard to future interest under a decree passed before the Act ought not to be taken away by interpreting section 4 so as to give it retrospective effect in the absence of clear words indicating such an intention.

It was held by Niamatullah J. in 1937 A. L. J. R. p. 681 at 682 that section 4 is confined to cases in which a decree is passed after the Act comes into force and does not at all apply to cases in which a decree previously passed is to be amended under section 30(2). The words "passed in section 4" do not indicate that the section applies to decrees previously passed. Future interest allowed by the decree cannot be reduced if it does not exceed interest which the Court can award under section 30(1) of the Act.

This ruling was distinguished in 1937 R. D. p. 505 by the Division Bench which held that in an application under section 5, the court cannot fix future rate of interest beyond the maximum prescribed by section 4. It followed 1937 R. D. 251 and as regards 1937 A. L. J. R. 681=1937 R. D. 360 it observed that in case it was in conflict with the opinion expressed by the Division Bench, it must be considered to have been overridden by the Division Bench ruling.

The Oudh Chief Court in a case prior to this reported in 1936 R. D. page 218=A. I. R. 1936 Oudh 334 held that the words "any order or grant of instalments" used in section 4 should be confined in their application to orders passed under section 3. Therefore when an order under section 5 is passed, interest both before as well as after the date of the decree must be calculated according to the rate laid down by Schedule III.

The Allahabad High Court further held in 1937 A. L. J. 1134 that there is absolutely no inconsistency between sections 4 and 30 of the Act simply because the two sections prescribe different maxima beyond which rates of interest cannot go. If there are two maxima prescribed and a case falls under both, then it will be the lower maximum that will govern the case. Where on an application under sections 5 and 30 instalments are fixed under S. 5 the court is not empowered to fix the future rate of interest beyond the maximum prescribed by section 4.

5. (1) Notwithstanding anything contained in the Code of Civil Procedure, V of 1908, the court shall, unless

Power to fix instalments after the passing of decrees.

for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to the decree-holder, direct that any decree for money or preliminary decree for sale or foreclosure passed by

it or by any court whose business has been transferred to it, against an agriculturist, whether before or after this Act comes into force shall be converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of sections 3.

(2) If, on the application of the judgment-debtor, the court refuses to grant instalments, or grants a number or period of instalments which the judgment-debtor considers inadequate, its order shall be appealable to the court to which the court passing the order is immediately subordinate, and the decision of the appellate court shall be final :

Provided that any final decree for sale which has not been fully satisfied, passed before this Act comes into force, shall, notwithstanding, anything contained in the Code of Civil Procedure 1908, be revisable in the same manner and to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.

Transfer of business of any court. It has been laid down in this section that the court which passed the decree or any court to which the business of any other court has been transferred will be competent to grant instalments after the passing of the decree under this section. Now the question is, *what is meant by the transfer of business.* In 1937 A. L. J. R.—397 it has been held that the part of the section relating to transfer of business refers clearly to instances where one court has ceased to exist and the entire business of that court has been taken over by another court. It does not refer to the case where a decree has been transferred from one court to another for execution.

Decree for money. See notes on section 3.

Pre-existing instalment decree. It can be further converted into a decree for instalments under section 5 of the Act—1936 R. D. 590 and 1937 R. D.—143=1937 A. L. J. 274.

Compromise decree. A decree for money based on compromise can be converted into a decree for payment by instalments in accordance with the provisions of section 3 of the Act—1937 A. L. J. R.—370.

Auction sale ultravires on application being made before confirmation. Application under section 5 was made before the court which passed the decree while execution of the mortgage decree was pending before the Collector and the auction sale has taken place but not confirmed, and was entertained by the court which issued orders for stay of confirmation of sale. After such an order which is in substance an order recalling the decree under Rule 3 of the Government notification in respect of sale of agriculturist land, if the collector confirms sale, the order of confirmation is without jurisdiction and confers no right on the auction purchaser—1937 R. D. 365 Oudh ; 1937 A. L. J. 723.

Whether principal or costs can be reduced in an application under sections 5 and 30. Only interest can be reduced but not the principal or costs—1937 R. D.—75 and 1936 R. D.—592.

Judgment debtor in section 5 includes legal representatives and transferees of original judgment-debtor. Where a decree was admittedly passed against an agriculturist, the transferee is entitled to the benefit of the section, irrespective of the consideration whether he is an agriculturist or not—1937 R. D. 473.

It is respectfully submitted that this view is wrong because it is against the provision of section 8 which is mandatory.

An amendment made in a decree under section 5 and 30 ensures for the benefit of all judgment-debtors even though some of them do not join in the application—1937 R. D. 473.

Object of sections 5 and 30. Provisions contained in these sections are in 'sense' provisions enacted with the object of regulating the enforcement of execution of a decree—1936 R. D. 212.

Whether instalment can be granted under the section in a final decree for sale or foreclosure passed after the enforcement of this Act. A final decree for foreclosure cannot be converted into a decree for payment by instalments whether it was passed after or before the enforcement of the Act. As regards a final decree for sale, one passed before the commencement of the Act but which has not been finally satisfied can be converted into instalments but one which has been passed after the commencement of the Act, cannot be converted into instalments under the section. Where in execution of a final decree for sale, property has been sold in full satisfaction of the decree and has been purchased by the decree-holder the decree cannot be said to have been fully satisfied as required by the proviso to section 5(1) unless the sale is confirmed and the property becomes vested in the decree holder—1937 R. D. 570 Oudh. In such a case the application under section 5 will be maintainable before confirmation of sale.

Preliminary decree—Preliminary decree for sale or foreclosure whether passed before or after the commencement of this Act can be converted into an instalment decree under this section.

What must a subsequent purchaser in a suit in which preliminary decree for sale has been passed, show to entitle relief under section 5 of the Act?

In order that this section may apply to him, he must establish three facts, namely (1) that the mortgagor was an agriculturist (2) that he himself was an agriculturist on the date of the loan, and (3) that he himself was an agriculturist at the date of the institution of the suit in which the decree was passed—1936 A. L. J. 465=A. I. R. 1936 Allahabad 434=1936 R. D. 215

Instalments whether to start from the date of the new decree or old decree. It was held in 1937 R. D. 502=1937 A. L. J. 1134 that the court can fix a period for payment by instalments starting from the date of the new decree and not necessarily from the date of the old decree.

Section 5(2)—Decision of the appellate court under this sub-section is final and not open to revision vide 1936 R. D. 580 and 1937 A. L. J. 684. In this very ruling it has also been held that no appeal lies to the High Court or Chief Court against an order rejecting an application for amendment. This ruling was followed in 1937 R. D. 324. Also see 1937 R. D. 570 where it was held that no revision lies against the order of an appellate court.

Appeal from the order of the civil judge refusing application under this section lies to the District Judge irrespective of the amount involved—1937 A. L. J. R.

363 and A. I. IL. 1936 Oudh 321. So also from the order of Judge Small Cause Court—1938 R. D. page 72 or 1937 A. L. J. 1094 and 1937 R. D. 531, 321.

Thus an appeal under section 5 relating to a decree for more than Rs. 5000 will lie to the District Judge and not to the High Court or to the Chief Court.

Court-fee—In an appeal under section 5(2) against an order passed under section 5(1) advalorem court fee is not payable and a court fee of 8 annas is sufficient. The reason is that such an order has not by itself the force of a decree. To have the force of a decree it must possess all the characteristics of a decree which is defined in the Civil Procedure Code. An order under section 5(1) of the Act may well be considered supplemental to the judgment of the court and were it not for section 5(2) which expressly allows an appeal from it, no appeal would have lain from it but from the amended decree and in that case advalorem court fee would have been payable on the subject matter of the appeal—1938 R. D. 22—23=1937 A. L. J. 1212.

Revision.—Where the judgment debtor applies under section 5 of the Act for the decree being converted into an instalment decree and thereafter applies to the executing court that the sale in execution of the decree should be stayed and the executing court rejects the application, then although there is no appeal provided against an order refusing to stay a sale in execution of a decree, the High Court shall interfere in revision—1938 R. D. page 87=1937 A. L. J. 1197.

Whether the same court can change the instalments granted before on application made by the judgment debtor a second time? It was held in 1938 R. D. p. 90 that it cannot do so as it has no jurisdiction whatsoever to entertain the application.

Change of status—A person becoming an agriculturist after the passing of the decree cannot be granted instalments as has been laid down in 41 Bombay 1964 and 56 Bombay 36. Although these rulings are under the Deccan Agriculturists' Relief Act still they will also apply to this Act.

Now the question is what suits are contemplated. The legislature has not elaborately described them as was done in the Deccan Agriculturists' Relief Act in Sec. 3 Cl. (w), (x), (y) and (z). For convenience (w), (x), (y), and (z) may be given as follows.—

(w) Suits for the recovery of money alleged to be due to the plaintiff—on account of money lent or advanced to, or paid for the defendant, or as the price of goods sold, or on an account stated between the plaintiff and the defendant, or on a written or unwritten engagement for the payment of money not hereinbefore provided for.

"Suit on a written engagement". Where a suit was brought against an agriculturist on a bond to secure the payment of the price of grain and the interest due on a mortgage bond given to secure an old debt, it was held that the suit, as constituted, fell within this clause, as being one on a written engagement for the payment of money not hereinbefore provided for (Dipchand V. Kashi P. J. for 1881, p. 116).

"Suit on an unwritten engagement"—A suit by an Inamdar to recover Mamul Judi, i. e. money due on account of Desmukhi allowance assessed on land in the village, is not a suit for money due on an unwritten engagement or rent within the meaning of this clause, the allowance being in the nature of tax or cess imposed on the property (Narayan v. Gangadher, P. J. for 1888, P. 283). The words "on a written or unwritten engagement for payment not herein provided for" are wide enough to cover the case of a surety.

Suit for money—A suit for money spent on behalf of the defendent agriculturist is one under this section (Sita Ram versus Shri Khandoba, 39 Bombay 465.)

Section 33 of U. P. Act provides that an agriculturist may file a suit for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods sold or on a written or unwritten engagement for the payment of money, and of money paid by him to such person.

When an agriculturist can bring a suit under S. 33 against the creditor for account of the items given above and claim the benefits of Chapter IV he can also claim relief as for instance reduction of interest under chapter IV under this Act when a creditor files a suit against him for the recovery of money on the basis of either of these items. Accordingly it is most respectfully submitted that the views laid down in 1936 R. D. 580 and 1937 A. L. J. 766 are not correct.

In my opinion a decree in suit given in (w) is a decree for money for the purposes of sections 3 and 5 of this Act. It may be noted that all these items come within the definition of "loan".

(x) Suits for the recovery of money due on contracts other than the above and suits for rent or for moveable property or for the value of such property, or for damages.

A suit for the redemption of a chattel or for redemption of a pledge falls under this clause.

In my opinion suits given in (x) do not come within the definition of unsecured loans. The U. P. Act is intended to relieve the rural indebtedness by way of limiting debts for the future and by reducing the existing debts by reducing interest and as these suits are not for the recovery of such debts and as there is no clear provision, so in no case can instalment be granted, in such suits under sections 3 and 5 and neither do such suits come within the special jurisdiction of courts laid down for suits against agriculturists in section 7.

(y) Suits for foreclosure or for the possession of mortgaged property or for sale of such property, or for foreclosure and sale, when the defendaat or any of the defendants, is an agriculturist.

In U. P. Act, only preliminary decrees for sale or foreclosure or final decree for sale are given in sections 3 and 5 and so decrees in suits on the basis of mortgages, in which a preliminary or final decree for sale or a preliminary decree for foreclosure is passed, can alone come in sections 3 and 5.

(z) Suits for redemption of mortgaged property, where the plaintiff, or where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

In U. P. Act, there is no provision for grant of instalments in redemption suits.

Application pending appeal under Regulation of Sales Act. Application under section 5 made during the pendency of an appeal against valuation by the collector under section, 3 of U. P. Regulation of Sales Act, the appeal should be deposited subject to the condition that if the civil court finally dismisses the application under section 5 and directs execution to proceed, the appeal will be revived at the appellants request—1936 R. D. 297.

Meaning of the word 'decree' in proviso to sec. 3. (1) for purposes of sec. 5. It means the decree for instalments and not the original decree which is converted into a decree for instalments. The Court at the time of passing an instalment decree shall, therefore, reckon the period of instalment from the date of the instalment

decree, and not from the date of the original decree—1936 A. L. J. 465=A. I. R.1936 All. 434.

Instalments in decrees more than 12 years old, the executions of which are pending—Court is justified in granting instalments in a decree more than 12 years old the execution of which is pending as allowance of instalments can in no way debar the decree-holder from obtaining relief, if default is made in the payment of instalments. Firstly on default his application can be treated as revived and secondly, he may enforce payment under sec. 3 read with sec. 5 notwithstanding the provisions of any law for the time being in force—1937 R. D. 465 Oudh,

6. In no case shall a decree passed by a civil court against an agriculturist be executed by attachment or sale of agricultural produce after a period of four years calculated from the date of the filing of the first application for execution :

Limit to the execution of decree by sale of agricultural produce.

Provided that the period during which more than one-quarter of the holding of the judgment-debtor has been sub-let or during which the judgment-debtor has suffered from an agricultural calamity shall be excluded from the period of four years mentioned in this section :

Provided also that, when instalments are granted under either section 3 or section 5, the period of execution allowed by this section shall in respect of each instalment date from the day on which the instalment falls due.

Meaning of the section.—This section takes away the rights of the decree holder to realize his decree by attachment or sale of agricultural produce after a period of four years to be counted from the date of the filing of the first application for execution in case the judgment debtor or debtors, if there be more than one, is or are agriculturists coming in clauses (a) to (h) of section 2. The limitation prescribed under section 48 C. P. C. has been curtailed by this section. It further provides that in the case of judgment-debtor agriculturist, if he puts in an application under section 3 or 5 for conversion of the decree into a decree for payment by instalments, the period for execution by attachment or sale of agricultural produce shall be four years, running in respect of each instalment, from the day on which the instalment falls due. This section is to be read with section 3, clause (4). If the judgment-debtor defaults in the payment of any two instalments, when the total number of instalments is four or five or defaults in the payment of any three instalments when the total number of instalments is six or more, under section 3, clause (4) the decree holder acquires the immediate right to enforce the payment of the decretal amount or in the case of a decree for sale or foreclosure to apply for a final decree and in that case the provisions of section 6 shall be set at nought and would automatically be inapplicable as the words 'notwithstanding the provision of any law for the time being in force,' used in section 3 clause 4 indicate.

The proviso 1 to section 6 extends this period of four years by the period during which more than one fourth of the holding of the judgment-debtor has been sublet or by the period for which he has suffered from agricultural calamity,

**Secs.
6 & 7****Applicability to decrees passed before or after the Act.**

The word 'decree' used in this section applies both to decrees passed before or after the commencement of the Act.

First application for execution, meaning of.

The words "first application for execution" apply to 'first application for execution made before or after the commencement of the Act.' The provisions of the section have a retrospective effect.

7. Notwithstanding anything contained in any other enactment for the time being in force, every suits for recovery against agriculturists. Forum of suits against agriculturists. ing an unsecured loan in which the defendant, or, where there are several defendants, any of the defendants, is an agriculturist, shall be instituted and tried in a court within the local limits of whose jurisdiction—

- (a) the agriculturist defendant, or any of the agriculturist defendants, where there are more than one such defendants, actually and voluntarily resides ; or
- (b) in case the agriculturist defendant, or all the agriculturist defendants, reside outside the limits of the United Provinces of Agra and Oudh—
 - (i) the holding or the landed property of the agriculturist defendant, or any of them, if there are more than one such defendants, is situate, and
 - (ii) if the agriculturist defendant or none of the agriculturist defendants has a holding or landed property, the agriculturist defendant or any of them, if there are more than one such defendant carries on the profession by virtue of which he is classed as an agriculturist.

Essentials for the application of the section.

1. The suit must be for recovery of an unsecured loan.
2. It must be against an agriculturist or if there be more than one defendant, any one of them must be an agriculturist.

Can the section be invoked only in suits filed after the commencement of the Act.

Section 7 applies to suits instituted before or after the commencement of the Act. Passing of an *ex parte* decree at an earlier stage makes no difference when subsequently it is set aside. The intention of the Legislature is that no court should have jurisdiction to entertain a suit when it is filed or to try it unless the conditions mentioned in the section are fulfilled—1937 A. L. J. 687; 1938 R. D. 105 (Alld.)=1937 A. L. J. 1235.

A suit for recovery of an unsecured loan was brought at Cawnpore against defendants agriculturists, residents of Barabanki District. It was held that the court at Cawnpore had no jurisdiction to try the suit and the fact that the defendants carried

on some business in Cawnpore or did some trade, could not affect the mandatory provisions of section 7—1937 A. L. J. 843.

Whether a judgment-debtor can raise objection in the executing court that the decree is a nullity because of want of jurisdiction as the suit should have been brought under section 7 at the place where he resided.

It was held in 1937 R. D. 720 that the court executing the decree cannot entertain such a plea.

Benefit under S. 14 Limitation Act whether claimable by the creditor.

It was held in 1937 R. D. 113 that the creditor is entitled to the benefit of S. 14 on his plaint being returned for want of jurisdiction under S. 7.

One agriculturist defendant residing at place A and the other at place B, where must the suit be brought.

It may be brought at either of the two places because the section lays down that it shall be instituted and tried in a court within whose jurisdiction any of the agriculturist defendants actually and voluntarily resides.

"Actually and voluntarily reside".

By these words is meant permanent and not temporary residence—54 I. C. 65. It may be noted here that as the explanation 1 appended to section 20 C. P. C. has not been incorporated in section 9 so temporary residence will not be included.

Surtey. If the agriculturist defendant is sued as a surety, then too the suit shall be instituted in the Court within the local limits of whose jurisdiction he resides—23 S. L. R. 365.

Notwithstanding anything contained in any other enactment for the time being in force. These words set at nought the section 20 C. P. C. determining the forum or any other law on the subject. Thus suit against agriculturist for recovery of a loan will not lie within the jurisdiction of the court where the cause of action wholly or in part arises.

Suits against agriculturists residing outside U. P. for recovery of an unsecured loan.

The suit shall lie in the court within whose jurisdiction the holding or the landed property of the agriculturist defendant or any of them, is situate but if none has any holding or landed property in U. P., then at the place where the agriculturist defendant or if there are more than one defendant, any one of them carries on the profession by virtue of which he is classed as an agriculturist.

Note.—Suit in another province will lie against an agriculturist of this province because this section cannot affect the jurisdiction of courts outside U. P.

8. (1) No person shall be deemed to be an agriculturist for the purposes of this chapter unless he was an agriculturist both at the time of the advance of the loan as well as at the date of the suit :

Change in the status of an agriculturist. Provided that, if a person has a subsisting interest in land, but, by reason of a temporary transfer or for any other similar reason, does not for the time being pay any rent or revenue in respect thereof

he will not merely by reason of such non-payment cease to be an agriculturist.

(2) For the purposes of section 3, 5 and 6 any change in the status of the defendant subsequent to the date of the suit in which the decree was passed shall be ignored.

Notes.—In order that a person may reap the benefit of the provisions of chapter 2, two conditions have been laid down :—

1. That the defendant must be agriculturist at the time of the advance of the loan and
2. Also at the date of the suit.

Thus the defendant must prove himself to be an agriculturist on both the dates and then and then alone he will be entitled to the benefits. By the proviso it has been laid down that if a person's interest in land subsists but for the time being on account of a temporary transfer or for any other similar reason he does not pay any rent or revenue, he shall not cease to be an agriculturist for that reason. This contemplates cases like those of leases or mortgages simple as well as usufructuary, or mortgages by conditional sale.

Extinction of the status of an agriculturist after the date of the suit, will not deprive an agriculturist from the benefit of section 3, 5 and 6. So to say an instalment order can be granted to a person who was an agriculturist at the time of the advance of the loan as well as at the date of the suit but was not at the date of the decree.

Whether privileges conferred by the Act are personal—yes. They cannot pass by assignment or transfer—A. I. R. 1925 Bombay—501,

Agriculturist assignee. He will be entitled to the benefits provided he proves himself to be an agriculturist on both the relevant dates—7 Bombay—520.

In cases where the original debtor has died or has ceased to possess any interest in the mortgaged property before the institution of the suit, it will be enough to prove that the original debtor was an agriculturist at the time of the advance of the loan and that the successor or legal representative against whom the decree is passed that he was an agriculturist at the date of suit—1937 R. D. 473 at 477 (Oudh).

CHAPTER III.

MORTGAGES AND THEIR REDEMPTION.

9. Notwithstanding anything contained in the Transfer of Property Act IV of 1882, or any contract to the contrary, no mortgage of land or grove by an agriculturist made after the commencement of this Act shall be valid if, under the terms of such mortgage, possession of the mortgaged land or grove is delivered to the mortgagee, unless the mortgagee is authorised to retain such possession and to receive the rents

and profits of such land or grove both in lieu of interest and towards payment of the principal, on condition that the expiry of a fixed term not exceeding twenty years, the mortgaged land or grove shall be redelivered to the mortgagor and the mortgage-debt shall be deemed to have been discharged.

Explanation (1).—For the purposes of this section “land” means and includes land which forms a mahal or a share or a portion of a mahal or specified plots in a mahal.

Explanation (2).—Nothing in this section shall be construed to confer a right of effecting usufructuary mortgage of land on persons who do not possess transferable rights in such land.

Notes:—Persons to whom this Chapter is applicable.

Only those agriculturists come under this Chapter who belong to either of the clauses (a) to (h) given in section 2(2),

Persons who do not come under this Chapter are as follows:—

- (1) Persons who come in proviso 1 to section 2(2).
- (2) Persons whose total rent and revenue payable annually exceeds Rs. 1000.
- (3) Persons holding land in districts subject to the permanent Settlement Regulation 1 of 1796 paying rent and local rate annually exceeding Rs. 500 in total.
- (4) Persons holding land free of revenue paying rent and local rate the total of which exceeds Rs. 500.
- (5) Any person who is excluded from the definition of an agriculturist under any of the clauses (a) to (g).

“Notwithstanding anything contained in the Transfer of Property Act 4 of 1882 or any contract to the contrary.” These words lay down that the provisions of the Transfer of Property Act or the stipulation made in any possessory mortgage deed of land or grove made after the commencement of this Act shall be dis-regarded and no mortgage shall be valid which contravenes the provisions of this section.

Essential conditions for the validity of the possessory mortgage are given below:—

- (1) That the mortgagee must be authorized to retain the possession and to receive the rent and profits both in lieu of interest and principal.
- (2) That the mortgage must be deemed to be extinguished after the expiry of 20 years and the mortgaged property must be redelivered to the mortgagor.

Mortgages to which this section applies:—

- (1) Mortgage of land.
- (2) Mortgage of grove.

Thus a mortgage of house property does not come under this section.

Persons competent to execute possessory mortgage after the commencement of the Act. Only those persons can make a valid usufructuary mortgage under this section who possess transferable rights in such land. Such persons are landlords, under-proprietors, muafidars, permanent tenure holders, and fixed rate tenants.

**Secs.
10&11**

Persons who possess no transferable rights are as follows:—

- (1) Ex-proprietary tenant (2) Occupancy or non-occupancy tenant (3) Statutory tenant and (4) Thekadars.

10. Applications under this chapter shall, if the principal money secured does not exceed Rs. 500 be brought before the Collector and the word "Court" in this chapter shall in such cases include the "Collector".

Notes:—By this section the jurisdiction to hear applications under this Chapter has been divided into 2 parts.—

- (1) Where the principal money does not exceed Rs. 500, the Collector or the Assistant Collector who may be empowered by the local government, shall hear them.
(2) Where the principal money secured exceeds Rs. 500 the civil court will alone be competent to hear these applications.

Power of the Collector to transfer applications.

He is empowered to transfer all applications under this Chapter from his own court to that of the court of any assistant collector empowered by local government or from the court of the latter to his own court or to that of any other assistant collector so empowered to exercise the powers of a collector by the local government.

11. If a mortgagee holding possession under a mortgage made after the commencement of this Act by an agriculturist remains in possession after the expiry of the period for which he is entitled to hold and on the expiry of which he is bound to deliver back the mortgaged property without any payment by the mortgagor, the court shall, on the application of the person entitled to possession, direct that the mortgage be redeemed, eject such mortgagee, and place the person so entitled in possession and may also direct the mortgagee to pay such compensation to the person found to have been wrongly kept out of possession as it may deem reasonable.

Mortgage governed by this section. Only those mortgages will come under this section which were made after the commencement of this Act, that is, after 30th April 1935.

Period when an application can be made under this section.

It can only be made after the expiry of the period for which the mortgagee is entitled to hold and at the expiry of which he is bound to deliver back the mortgaged property without any payment by the mortgagor and in case there is no fixed period then after 20 years.

Powers of the court.—Court shall direct redemption of the mortgage, ejectment of the mortgagee, delivery of possession to the mortgagor and may also direct a mortgagee to pay such compensation to a person found to have been wrongly kept out of possession as it may deem reasonable.

Sections 9 and 11 should be read together and therefore only mortgages of land or grove come under this section.

This section will not be applicable in cases where the mortgagor did not deliver possession to the mortgagee.

12. Notwithstanding anything contained in section 83 of the Application for Transfer of Property Act IV of 1882 or any redemption. contract to the contrary, an agriculturist who has made a mortgage either before or after the passing of this Act, or any other person entitled to institute a suit for redemption of the mortgage may, at any time after the principal money has become due, and, before a suit for redemption is barred, file an application before the court within whose jurisdiction the mortgaged property or any part of it is situate, in such form and giving such particulars as the Local Government may by rule prescribe, and praying for any order directing that the mortgage be redeemed, and, where the mortgage is with possession, that he be put in possession of the mortgaged property. The application shall be duly verified in the manner prescribed by law for the verification of plaints and shall state the sum which the applicant declares to the best of his belief to be due under the mortgage. The applicant shall at the same time deposit such sum with the court.

Explanation—For the purposes of sections 11 and 12 the word “property” includes grove.

RULE.

2. An application for redemption presented under section 12 of the Act shall be in the following form and shall contain the particulars specified therein —

Application under section 12.

Subordinate Judge.

In the Court of the Munsif of.....
Collector

Applicant.....*versus*.....opposite-party.

Application for redemption of mortgage under section 12 of the United Provinces Agriculturists' Relief Act, 1934, respectfully sheweth —

1. That the applicant is the mortgagor of the property sought to be redeemed.
representative of the mortgagor
 2. That the following are particulars of the mortgage —
 - (a) Date.....
 - (b) Name of the mortgagor.....
Name of the mortgagee.....
 - (c) Sum secured Rs.....
 - (d) Rate of interest.....
 - (e) Property subject to the mortgage.....
 - (f) Condition of redemption.....
 - (g) Amount now due under the mortgage, Rs.....
 - (i) by way of principal Rs.
 - (ii) interest of Rs.
- Total ...

3. (If the applicant is the mortgagor's successor in title, state facts showing derivation of title.)

4. (If the opposite-party is the mortgagee's successor in title, state facts showing derivation of title.)

5. That the applicant is an agriculturist as (state facts showing how the applicant comes within the definition of "Agriculturist").

6. That the mortgagor was at the time of mortgage an agriculturist as (state facts showing how the mortgagor came within the definition of "Agriculturist").

7. That the applicant deposits the said sum of Rupees.....to the credit of the opposite-party.

The applicant, therefore, prays that the said mortgage be redeemed (and possession of the mortgaged property be redelivered to him).

Verification.

.....

Signature of applicant.

Mortgages of occupancy holding will not come under this section and their redemption cannot be made under this Chapter.

Mortgages made either before or after the commencement of this Act come under this section.

When must the application be made.

At any time after the principal money has become due and before a suit for redemption is barred.

Applicant.—He must either be agriculturist mortgagor himself or any other person entitled to redeem that property but he must also be an agriculturist.

Requirements to be fulfilled in the application:—

1. It must be duly verified as in the case of plaints.
2. It must state the sum which the applicant declares to the best of his belief to be due under the mortgage.
3. Such sum must be deposited along with the application. The form of the application has been prescribed in rule 2.

If the application does not fulfil the conditions laid down in this section it ought to be rejected.

Any other person entitled to redemption should be read with reference to section 91 of the Transfer of Property Act. Under section 91 persons entitled to redemption are as follows.—

1. Mortgagors, who shall be deemed to include persons deriving title from him.
2. Any person (other than the mortgagee of the interest sought to be redeemed, who has an interest in or charge upon the property mortgaged or in or upon the right to redeem the same.
3. Any surety for the payment of the mortgage debt or any part thereof.
4. Any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for the sale of the mortgaged property.

Clause II. The interest must be an interest in the property subject to mortgage. An ex-proprietary tenant of Sir land in Allahabad has an interest which entitles him to redeem, vide 16 A. L. J. R.—796; 47 I. C. 861. The interest must be a proprietary interest. 30 A. L. J.—705. Any of several co-mortgagors can redeem. 3 Cal. 397 and 408. A purchaser or execution purchaser of a whole or part can also redeem. 7 Mad. page 430; 11 C. W. N.—495.

Agreement to purchase creates no interest in or charge upon property and a person who has contracted to purchase is not entitled to redeem—1926 M. W. N.—495; 92 I. C.—715. § 1

An assignee of equity of redemption during the pendency of the mortgagee's suit may redeem before confirmation of sale—26 Cal. 966; 22 All. page 243. A donee of the equity of redemption can redeem—45 Bom.—105; 59 I. C. 480. A sub-mortgagee of a puisne mortgagee can also redeem—27 All.—472; 21 I. C. 560. A charge upon the property or upon the equity of redemption will give a right to redeem—48 Mad. L. J.—213; 86 I. C.—793. A creditor who attached the equity of redemption before, and purchases it pending the mortgagee's suit for sale though bound by lispendens has right to redeem the auction purchaser at the mortgagee's sale if not made a party to the mortgagee's suit—30 A. L. J.—289; 136 I. C. 840.

An agriculturist mortgagor, who has sold his equity of redemption, cannot file a suit for mortgage account—113 I. C. page 46.

Clause III. A surety has a right to redeem as he is liable for the debt.

Clause IV. This is based on *Christian V. Field* (1842) 2 Hard. 77.

13. When the application has been duly presented and the mortgagee to be summoned. deposit has been made, the court shall issue a notice to the mortgagee to show cause on a day to be fixed in the notice why redemption should not be allowed.

14. If the mortgagee appears and accepts the deposit in full discharge of his mortgage, the court shall order that the mortgage be redeemed, that the money deposited by the applicant be paid to the mortgagee and that the title-deeds, if any, in possession or power of the mortgagee shall be deposited in court and be delivered to the mortgagor.

15. If on the date fixed the applicant does not appear and the mortgagee does not accept the deposit in full discharge of the mortgage, the court shall reject the application.

16. If, on the date fixed or any subsequent date to which the proceedings may have been postponed, the applicant appears and the mortgagee does not appear in spite of notice, or the mortgagee appears and does not accept the money deposited by the applicant in full discharge of his mortgage or objects to redemption of the mortgage on any other ground, the court shall hold an enquiry to determine whether the applicant is entitled to redeem the mortgage and whether the money deposited by him is sufficient. If the court finds that the applicant is not entitled to redeem, it shall reject the application. If it finds that the applicant is entitled to redeem, but must pay a larger amount than that deposited by him, the court shall order the applicant to deposit

Secs. 16, 17 the balance within a fixed period. If the applicant fails to deposit the said balance, the court shall reject his application. If the court finds that the applicant is entitled to redeem and that the amount deposited by him was sufficient or if it was not sufficient, the applicant has deposited the balance within the time fixed, it shall order that the mortgage be redeemed, that the money deposited be paid to the mortgagee, and that the title-deeds, if any, in possession or power of the mortgagee shall be deposited in court and shall be delivered to the mortgagor.

Notes.—1. Where the applicant appears and the mortgagee does not appear in spite of the notice having been served upon him or the mortgagee appears and does not accept the money deposited in full discharge or raises any other objection to redemption, the court shall decide such objections and if the finding is that he is not entitled to redeem, it shall reject the application but if the finding is that although he is entitled to redeem the amount is insufficient, the court shall order the applicant to deposit the balance within a fixed period, and on failure of the deposit, the application shall be rejected. If the balance is made good in time or the amount deposited is sufficient the court shall order redemption and payment of the deposit and the delivery of the title-deed to the mortgagor. This is decidedly an improvement on section 83 of the Transfer of Property Act because there if the mortgagee does not appear or raises any other objection, the application is to be filed and the applicant is forced to file a regular suit for redemption.

2. Dismissal of one application for want of deposit will not bar another application for the same purpose in future just as dismissal of one suit for redemption does not bar another.

3. There is no provision in this Act empowering the court in passing a decree for redemption or foreclosure, to direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession for such further period as will enable him to recover his principal with reasonable interest and that on the expiry of such period, the property mortgaged shall be restored to the mortgagor just as there is one in Dekkan Agriculturists' Relief Act, section 15 B, sub-sections 3 and 4. Thus the rulings of the Bombay High Court under section 15 B, sub-sections 3 and 4, will not be applicable to this Act as the provisions of the two Acts are inconsistent.

17. Where the mortgagor has deposited with the court a sum which is accepted by the mortgagee under section 14, or is held by the court to be sufficient under section 16, interest on such sum shall cease to run from the date of deposit.

Where the court finds that a larger amount than that deposited by the mortgagor is due, and the balance is deposited by the applicant, interest shall cease to run from the date of deposit of such balance.

Notes.—If the money deposited is held sufficient or is accepted in full discharge of the mortgage and the applicant is entitled to redeem, interest will cease from the date of deposit but if the money deposited is insufficient and he is entitled to redeem, the interest will cease from the date the deficiency is made good.

18. In all cases in which the court orders redemption it shall, if necessary, also put the applicant in possession of the mortgaged property, subject to any condition of the mortgage whereby a season or period of the year is fixed for surrendering possession.

After redemption the mortgagor to be put in possession, if necessary.

19. If the application is rejected the court shall return to the applicant the money deposited by him.

Return of deposit.

20. No sum deposited by an applicant under the provisions of this chapter shall, while in such deposit, be attached by any court or revenue officer in enforcement of any claim against the applicant other than a claim arising out of the mortgage.

Deposit not to be attached.

Notes.—This section makes provision that such deposit shall not be attachable by any Court and revenue officer in enforcement of any claim against the applicant except a claim arising out of the mortgage for whose redemption the money was deposited, i. e., a decree or order based on the mortgage itself. In my opinion, the money shall cease to be in such deposit, the moment the application for redemption is dismissed and there will be no bar to its attachment then, the reason being that it will become the money payable to the applicant.

21. The words "mortgagor" and "mortgagee" in this chapter include respectively the successors-in-title of the original mortgagor and the original mortgagee.

Term "mortgagor" and "mortgagee", to include their successors.

22. (1) The Local Government may empower any Assistant Collector of the first class to exercise the powers of a Collector under this chapter.

Investment of powers on assistant Collectors and transfer of proceedings.

(2) The Collector may transfer any proceedings under this chapter—

(a) from his own court to that of an Assistant Collector empowered under sub-section (1);

(b) from the Court of an Assistant Collector subordinate to him either to his own court or to that of any other Assistant Collector empowered under sub-section (1).

RULE.

3. The powers of a Collector under Chapter III of the Act are under section 22 (1) of the Act conferred on all Assistant Collectors of the first class who are in charge of sub-divisions or who have exercised first class powers for more than five years.

Section 22.

23. (1) An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this chapter. An appeal shall lie from the order of a civil court passed under this chapter to the court to which

Appeals.

Secs. 23, 24 original decrees passed by such courts are ordinarily appealable and where such decrees are appealable to more courts than one, to the court of lowest jurisdiction.

(2) No appeal shall lie from an appellate order passed under this section.

Notes.—The aggrieved party shall have the right to appeal to the District Judge from the order of the Collector or Assistant Collector. An appeal shall lie from the Civil Court to the District Judge when the amount is less than Rs. 5000 and to the High Court or Chief Court when the claim exceeds Rs. 5000. The appeal from the Collector shall lie to the District Judge when the principal amount does not exceed Rs. 500. The order of the appellate court shall be final, as no second appeal is permitted. The period of limitation for appeal to High Court or Chief Court is 90 days and for appeal to the District Judge 30 days.

Court fee.—In an appeal advalorem Court fee on subject-matter in dispute should be paid as the order has the force of a decree—1937 R. D. 575 (Alld.); 1937 A. L. J. 1173.

24. (1) No application under section 11 or 12 shall be filed unless—
When application can be filed under this chapter.

(a) the applicant is an "agriculturist" on the date of the application, and

(b) the mortgagor was an "agriculturist" at the time of the mortgage.

(2) In cases in which the status of a mortgagor as "agriculturist" on the date of mortgage is at issue and no documentary evidence is forthcoming to prove it, the status of the mortgagor on that date shall be determined with reference to the entries in the record-of-rights or the annual registers prepared under the Land Revenue Act III of 1901, of the year nearest to the year of mortgage for which they exist.

Notes.—Persons entitled to make application under section 11 or 12 must satisfy the following conditions :—

(a) The applicant in case he is mortgagor himself or is his successor-in-interest must be an agriculturist both at the time of the mortgage and on the date of the application.

(b) In case he is a person other than the mortgagor, but entitled to redeem, then he must prove that the mortgagor was an agriculturist at the time of the mortgage and that he *i. e.* the applicant was an agriculturist both on the date of the mortgage as well as on the date of the application.

Evidence to prove the status of an agriculturist.

In the absence of any documentary evidence to prove the status of a mortgagor as agriculturist on the date of mortgage, entry in the record of rights or the annual registers prepared under the Land Revenue Act 3 of 1901 *i. e.* the khasra or khatauni of the year nearest to the year of mortgage for which such entries exist shall be the criterion to prove the status on the date of the mortgage.

25. No suit shall be brought in any court for any relief which can be obtained by an application under this chapter.

Bar of suit.

Notes.—Separate suit whether a bar.

As has been laid down by this section no separate suit will lie for any relief which can be granted under this Chapter on an application by the mortgagor or the person entitled to redeem.

Persons against whom this bar will stand.—Only agriculturists who come within section 2(2) clauses (a) to (h) shall be barred from filing a separate suit for redemption.

Persons not barred.—They will be agriculturists coming in proviso 1 to section 2(2).

Whether this section a bar to a suit under section 33.

Section 25 is no bar to a suit under section 33 because the reliefs which are claimed under section 33, namely, for account and for the reduction of interest under section 30, do not amount to any relief specified in Chapter III—1937 A. L. J. R. page 882.

26. The limitation for making an application for redemption

Limitation and procedure, under this chapter shall be the same as that provided in the Indian Limitation Act IX of 1908 for a suit for redemption.

(2) The limitation for filing appeals and for execution of orders under Chapter III shall be the same as that prescribed by law respectively for appeals under the Code of Civil Procedure, V of 1908, and for decrees passed by civil courts.

(3) The provision of sections 6, 7, 8, 19 and 21 of the Indian Limitation Act IX of 1908 shall apply to applications under this chapter and the provisions of section of the said Act shall apply to appeals under this chapter.

Notes.—Period of limitation for an application under this Chapter shall be the same as for suits for redemption provided in the Indian Limitation Act 9 of 1908. Art. 148 lays down a period of 60 years for a redemption suit against a mortgagee to redeem or to recover possession of immovable property mortgaged and it runs from the time when the right to redeem or to recover possession accrues. This article applies to a suit against the mortgagee, and persons claiming or deriving title from the mortgagee, e. g., his representative, successor or assignee. But a suit against a person claiming as a transferee for value from the mortgagee is provided for by article 134 and the period prescribed is 12 years from the date of the transfer. Where the mortgaged property is sold in execution and bought by the mortgagee, mortgagor must, in order to create the ground for redemption of mortgage, get the sale set aside within one year and his omission to do so, will preclude him from suing the mortgagee purchaser for redemption as the right to redeem is extinguished unless the sale be set aside vide 24 C. W. N. P. 954 (P. C.).

Period of limitation for filing appeals and for execution of orders under this Chapter will be the same as laid down in C. P. C.

Secs. 26 to 28 The period of limitation for appeal to the District Judge is 30 days from the date of the order of the court appealed from and to the High Court 90 days.

The period of limitation for execution of orders under this Chapter shall be the same as for decrees passed by the civil courts.

27. The provisions in the Code of Civil Procedure, V of 1908, in regard to suits shall be followed, so far as they can be made applicable, to all proceedings under this chapter, and all orders passed under this chapter shall be executed in the manner prescribed for execution of civil court decrees.

Meaning of the section.—By this section the provisions of the C. P. C. in regard to suits are made applicable to applications under this chapter so far as they can be made applicable and all orders passed under this chapter are made executable in the manner prescribed for the execution of the civil court decrees.

CHAPTER IV.

RATES OF INTEREST.

Notes.—This chapter applies to all agriculturists irrespective of the limit of land revenue, local rate, rent or area possessed.

28. (1) Notwithstanding anything in any contract to the contrary, no loan taken by an agriculturist after this Act comes into force shall bear interest at a rate higher than that notified by the Local Government under sub-section (2) as the prevailing rate of interest for the particular class of loan at the time the loan was taken.

(2) As soon as possible after the rate of interest at which the Government of India will lend money to the Local Government is announced from time to time, the Local Government shall notify in the Gazette, and shall publish in such other manner as it thinks proper, the rates which shall be the prevailing rates of interest on secured and unsecured loans of the various classes mentioned in Schedule II contracted during the period such prevailing rates shall remain in force. Such prevailing rates shall come into force from such date as may be notified by the Local Government and shall remain in force until superseded by new rates.

(3) Such prevailing rates as are referred to in sub-section (2) shall be fixed at the percentage rates specified for different classes of loans in Schedule II above the rate of interest at which the Local Government borrows from the Government of India.

Meaning of clause 1.—This chapter relates to loans contracted by agriculturists after the coming into force of this Act. This section lays down that even inspite of a contract specifying the rate of interest, the loan shall not bear interest at a rate higher than the one notified by the local Government under sub-section (2) as the prevailing rate of interest for that particular class of loan, that is to say, if the loan is a secured or unsecured one, it will not bear interest higher than the rate notified in the Gazette for the secured or unsecured loans respectively.

Meaning of clause 2.—The rates notified in the Gazette for loans taken after the enforcement of this Act shall be the prevailing rates of interest for secured and unsecured loans of the various classes mentioned in Schedule II contracted during the period such rates remain in force. If the rate is superseded by new ones, the new rates shall be the prevailing rates for loans taken after that notification.

Suppose for example—An agriculturist A borrows Rs. 500 from B on 15th May 1935 and the rate notified for such unsecured loan is 6 p. c. per annum and this rate prevails up to 15th July 1935, when there comes another notification, superseding the old prevalent rate. According to this sub-section, for all loans contracted up to 15th July 1935, the rate shall be 6 p. c. per annum and for all loans taken after that date, it shall be the newly notified rate. The Court shall have to keep itself armed with all the notifications of interest and the specific period of their duration for applicability to the suits before it in respect of loans taken after the enforcement of this Act. Sub-section (3) lays down how the Local Government shall fix the rates.

These prevailing rates fixed shall be as follows—

AMOUNT OF LOANS.	SECURED LOANS.		UNSECURED LOANS.	
	Compound per cent per annum with yearly rests.	Simple per cent per annum.	Compound interest with yearly rests.	Simple per cent per annum.
(a) Rs. 500/- and under.	× + 3	× + 5½	× + 7½	× + 10½
(b) Rs. 501/- to 5000/-	× + 2½	× + 4½	× + 6	× + 8
(c) Rs. 5001/- to 20000/-	× + 2	× + 3½	× + 4½	× + 6½
(d) Over Rs. 20,000/-	× + 1½	× + 2½	× + 3½	× + 5

'X' denotes the rate of interest at which the Government of India advances loans to the Local Government from time to time.

At present the value of 'X' is 3½. Substituting this value, we get the rates fixed by notification No. 344, Revenue Department, dated 1st May 1935, with effect from 8th May 1935.

From 15th January 1936, the value of 'X' is 3¼.

29. If an unsecured loan taken after the date on which this Act comes into force, is, if it is not a loan for a fixed term, repaid within two years of the date of the taking of the loan, or if it is a loan for a fixed period, is repaid within such period the debtor shall not be liable to

Benefit for prompt payment of loans taken after the passing of this Act.

pay interest at a rate higher than the prevailing rate of interest for a secured loan of the same class in force at the time the loan was taken.

RULE.

7. With reference to section 29 of the Act, where a part-payment is made on an unsecured loan taken after the date on which the Act came into force, interest should be calculated at the unsecured rate. The account should be adjusted and interest recalculated at the secured rate if final payment is made within the specified time.

Notes:—To reap the benefit of this section the following conditions are laid down:—

1. That the loan should be an unsecured one and taken after the enforcement of this Act.

2. (i) That it should be paid within two years, if there be no fixed term, or,
 (ii) if there be a fixed term, then it should be paid within that fixed period.
 (iii) That the debtor must be an agriculturist.

The benefit conferred is that for the purposes of interest, it will rank with the secured loan of the same class in force at the time the loan was taken, and the debtor will not be liable to pay interest at a rate higher than the prevailing rate of interest for a secured loan.

30. (1) Notwithstanding anything in any contract to the contrary no debtor shall be liable to pay interest on a loan taken before this Act comes into force at a rate higher than that specified in Schedule III for the period from January 1, 1930, till such date as may be fixed by the Local Government in the

Rate of interest on undecreed loans taken before this Act came into force for the period after January 1, 1935.

Gezette in this behalf.

(2) If a decree has already been passed on the basis of a loan and remains unsatisfied in whole or in part, the court which passed the decree shall on the application of the judgment-debtor amend it by reducing, in accordance with the provisions of sub-section (1) the amount decreed on account of interest.

(3) A decree amended in accordance with the provisions of sub-section (2) shall be deemed to bear the date of the original decree, and, notwithstanding any provision in any law to the contrary, no appeal shall lie from any order amending a decree under that sub-section.

(4) Any amount already received by the creditor on account of interest in excess of that due under this section shall be credited towards the principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

Notes.—Whether interest can be reduced in a decree for price of articles purchased on credit.—

It was held by the Oudh Chief Court in 1936 R. D. at page 580 and the Allahabad High Court in 1937 A. L. J. 766 that such a decree is not a decree on the basis of loan and hence interest cannot be reduced.

It is most respectfully submitted that this view is not correct. Under section 33 (1) a suit can be brought by an agriculturist-debtor for an account of money due by him to any person as the price of goods sold. Under S. 33 (2) the Court in such suit shall follow the provisions of chapter IV of this Act. It is thus clear that in a suit for an account of money due by an agriculturist debtor to any person as the price of goods sold, interest has to be calculated in accordance with Section 30 Schedule III. There seems to be no reason why in a suit by a creditor against the agriculturist debtor for price of goods sold, the interest should not be calculated according to chapter IV which includes section 30.

Whether interest alone can be reduced or the principal or costs also.—Only interest can be reduced but not the principal or costs—1936 R. D. 592 and 1937 R. D. 75.

Alteration of interest.—It was held in 1937 A. L. J. R. page 125 that under this section the court cannot alter compound interest into simple interest.

Court to which application for reduction of interest should be made.—

It is only the trial court and not the court of appeal that can reduce interest vide 1936 R. D. pages 212 and 214 ; 158 I. C. 427.

Meaning of the word "debtor"—The word "debtor" should not be limited to the person who took the loan nor to a person who is personally liable. A debtor is one who has to pay a debt. He may be one who is personally liable or may be one who is mortgagor or the successor of a mortgagor who has to pay a debt to the mortgagee. The word might also cover one who is not an agriculturist—1937 R. D. 249 (Allahabad) and 1936 A. L. J. R. 1250 and 1937 A. L. J. 363.

It was held in 1937 R. D. 473 (Oudh) that not only the original debtor, but also his legal representatives and successors are entitled to the benefit of the provisions of section 30. Similarly the word 'Judgment-debtor' in section 30(2) of the Act should not be confined to the original 'Judgment-debtor' but should extend to his successors and legal representatives who are subsequently substituted in his place. It is not necessary that the transferee of the original debtor should also be an agriculturist. If he is a 'debtor' in the sense of a person liable to pay the debt i. e. money advanced to an agriculturist, he is entitled to the benefit of section 30(1) of the Act. Similarly if he is a judgment-debtor, he would be entitled to the benefit of section 30, irrespective of the consideration whether he is an agriculturist or not. Transferee from mortgagor agriculturist although not an agriculturist was held entitled to benefit of section. 30 in 1935 A. L. J. R. 1250.

Whether under this section interest can only be reduced from 1st January, 30 and not earlier.

Interest can only be reduced from 1st January, 30 and not earlier.—1937 A. L. J. p. 681; 1936 A. L. J. R. p. 510 ; 1937 R. D. 360. Interest before 1st January, 30 can be reduced under the Usurious Loans Act if it be usurious provided it has not become the subject of a decree.

Interest from 1st January, 30 whether to be calculated on the accumulated amount or on the principal sum.

On this point there is conflict between the Allahabad High Court and the Chief Court. The Oudh Chief Court repeatedly held in 1936 O. W. N. 471 and 1937

R. D. 434 at 436 that the word 'loan' used in section 30 (1) of the Act means not only the principal amount but the whole amount due under the terms of a contract or decree upto 31st December, 29.

On the other hand the Allahabad High Court held in 1936 A. I. R, 864 which was a Division Bench decision that the interest is to be calculated not on the accumulated amount but upon the principal sum. In another case the matter was laid before a Full Bench and it held as follows;—

The word 'loan' as defined is the "advance of money in cash or in kind" which obviously means a consideration which has passed from the creditor to the debtor *i. e.* the cash or the property which has passed from one to the other. It cannot include any interest that may accrue as a result of the contractual liability of the debtor after the advance had been made. The word 'interest' includes every kind of return which is in excess of the sum actually advanced. Taking these definitions together there can be no doubt that the 'loan' as meaning 'an advance made' means the principal amount—1937 A. L. J. R. p. 671 F. B. This full bench decision was followed in 1937 A. L. J. R. 882 and it was held that where a usufructuary mortgage deed was executed in August 1933 in lieu of two previous hypothecation bonds of 1926 and 1927 and no fresh sum was paid, the applicant was entitled to have the interest reduced for the period from 1st January, 30 till August, 1933 when the new mortgage deed was executed the reasoning being that as there was no fresh advance of any money under the usufructuary mortgage, the transaction could not be regarded as a fresh advance. The amount actually advanced is what is defined as 'loan' and the interest includes the return to be made over and above what was actually lent.

The Allahabad view follows strictly the letter of the law and is sounder than the other view, which is more equitable.

Future interest.—An order allowing future interest when no such interest is allowed in the decree, is illegal, there being no provision authorising the court to do so—1936 R. D. 590 and 1937 R. D. 76.

But in a case where decree provides for future interest, it cannot be reduced under section 30(2) if it does not exceed interest which court can award under section 30(1)—1937 R. D. 360 (Alld.)=1937 A. L. J. 681. In an application made under section 5 and 30 of the Act, according to the Allahabad High Court decisions in 1937 R. D. 502 and 1937 R. D. 251 the Court cannot fix future rate of interest beyond the maximum prescribed by section 4. In 1937 R. D. 502, 1937 R. D. 360 was distinguished. On the other hand the Oudh Chief Court has held in 1937 R. D. 235 F. B. and 1937 R. D. 474 that the words 'any order for grant of instalments' in section 4 do not include an order passed under section 5. It was laid down in 1937 R. D. 235 that section 30 aims at reduction of interest. It is not limited in its application to the contractual rate of interest payable till the institution of the suit but its object is to abrogate the contract as regards interest whether it be interest for the period preceding the suit or subsequent to the decree and the rate prescribed in Schedule III has to be applied wherever possible, though it cannot be used to enhance the rate of interest allowed in the decree. The full bench confirmed the view laid down in 1936 R. D. 218 and held that section 4 of the Act does not apply to decrees passed before the Act. Future interest allowed in such decrees, though subject to reduction under section 30 according to the rates prescribed in Schedule III, is not liable to further modification according to the rate notified by Government under section 4(2) of the Act. This ruling was followed in 1937 R. D. 474.

Appeal or revision whether lies—

No appeal lies under this section but a revision does lie—1937 A. L. J. 363. For revision also see 1937 R. D. 66, 127 and 428.

Whether order passed under this section enures for the benefit of those Judgment-debtors also who have not joined in the application.— **Sec. 30**

It was held in 1937 R. D. 474 (Oudh) that an amendment made in a decree under section 5 and 30 enures for the benefit of all the Judgment-debtors even though some of them do not join in the application made under section. 5 and 30 of the Act.

Correct date for division of loan into secured and unsecured—

The correct date for the division of loans into secured and unsecured is the date on which the loan is taken. A decree holder by bringing a suit for a simple money decree on the basis of a mortgage deed cannot obviate any disadvantage which arises from the Agriculturists' Relief Act, Sch. III by which the rate of interest is to be for a lower rate on a secured loan than on an unsecured loan for purposes of interest—1937 R. D. 127. This ruling was followed by Oudh Chief Court in 1937 R. D. 434. On an unsecured loan above Rs. 500/- compound interest with yearly rests is payable at the rate of 9 p. c. per annum and not 6½ p. c. per annum—1937 R. D. 75.

Section 30 (2) whether applies to all decrees passed before or after coming into force of the Act—Sec. 30 (2) is not restricted in its application to a decree passed before the Act came into force but is also applicable to a case in which decree is passed after the coming into force of the Act—1936 R. D. 560; 1937 R. D. 489; 1937 A. L. J. 842 and 1938 R. D. 223.=1938 A. L. J. 107. In the last mentioned case it was laid down that the principle of resjudicata can have no application because here the Legislature has made specific provisions conferring a benefit on debtor to make an application for reduction of interest at any stage before the decree is satisfied. Hence the fact that before a preliminary decree was passed in a mortgage suit, the judgment-debtor raised objections about the interest being excessive, but that he did not appear later and therefore an exparte decree was passed, will not operate as resjudicata in an application by the debtor under sec. 30 of the Act.

Where the court of its own motion reduces interest after giving an opportunity to the parties to be heard, then though the decision is not in accordance with sec. 30 (2) yet it is not a case in which the court should interfere in revision—1937 A. L. J. 1292.

Object of sec. 30 (3).

The object of this sub-section appears simply to be that the decree-holder should not be allowed a fresh period of limitation from the date of the amendment under Art. 182 (4) Limitation Act—1937 R. D. 236.

Rate of interest under sec. 30.

There is no authority in the Act for making the calculation of interest at different rates before and after the date fixed for payment under a preliminary decree for sale in a mortgage suit. What sec. 30 provides is that interest will not be allowed at a rate higher than that specified in Schedule III for the period from 1st January, 30 till such date as may be fixed by the Local Government—A. I. R. 1936 Oudh 334—1936 R. D. 218. According to Allahabad view laid down in 1937 R. D. 251=1937 A. L. J. 373 sec. 4 (2) seems to lay down future rates of interest for definite periods, and it is not necessary that there should be one inflexible rate after the date of the decree.

Schedule III (C). Under this head interest should be X plus 3. The special note (a) provides that from the period from 1st January, 30 the value of X should be 4½. Accordingly the rate of interest for this period is 7½ p. c.—A. I. R. 1936 Alld. 864.

Whether sec. 30 applies to mortgages.

The argument that sec. 30 does not apply to mortgages at all is not sound—1937 R. D. Allahabad p. 536.

Sec.
30 to
32

Application of the Usurious Loans Act.

This Act lays down rates of interest which are usually higher than those laid in Schedule III. Thus the provisions of this Act can be applied to the period before 1st January, 30 in a suit in which the decree has not been passed. But in cases where a decree has already been passed, its provisions cannot be applied because of the fact that they are not applicable to a decree.

31. (1) Notwithstanding anything in any contract to the contrary no loan taken after this Act comes into force shall bear interest at a rate higher than that specified in Schedule IV, calculated on the sum originally borrowed or such part of it as has not already been repaid after a sum equal to the sum originally borrowed has been realized or has accrued at the contractual rate on account of interest on such loan.

Rate of interest on loans taken after this Act came into force after the aggregate of interest has reached 100 per cent of the sum borrowed.

(2) Any amount already received by the creditor on account of interest in excess of that due under the provisions of this section shall be credited towards principal; but nothing in this section shall be deemed to entitle a debtor to claim refund of any part of the interest already paid by him.

Object of the section. In the case of loans borrowed after the commencement of the Act to which sec. 28 applies, the creditor cannot get interest at a rate more than that laid down in Schedule IV after the time when a sum equal to the sum originally borrowed has been realized on account of interest or has accrued at the contractual rate on account of interest on such loan. The Schedule prescribes for the secured loan the rate notified under sec. 4 and for an unsecured loan 2 p. c. higher than that for the secured loan. This interest is to be calculated on the sum originally borrowed or such part of it as has not already been repaid. The interest will be simple both in the case of secured as well as unsecured loan even though the contract provides to the contrary. This section is another instance where the sanctity of contracts has been put an end to.

CHAPTER V.

MAINTENANCE OF ACCOUNTS.

Notes.—This chapter applies to all agriculturists irrespective of the limit of land revenue, local rate, rent or area possessed.

Duty of creditor to maintain and furnish accounts.

32. (1) A creditor shall after the date on which this Act comes into force—

- (a) regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to that debtor, in such manner as the Local Government may prescribe and
- (b) supply each agriculturist debtor every year with a full and correct statement of account signed by the creditor

or his agent of any balance or amount that may be outstanding against such debtor on account of each separate loan on such date as the Local Government may prescribe in this behalf. Such statement of account shall include all transactions entered into during the year to which the statement relates, and shall contain such details and particulars as the Local Government may prescribe. It shall be supplied to the debtor within one month of the aforesaid date in such form and in such manner as the Local Government may prescribe :

Provided that, where there is a current account, it shall be sufficient for the creditor for the purposes of clause (a) to keep one account of all transactions relating thereto, and for the purposes of clause (b) to furnish particulars of the balance due on the whole account.

(2) A person to whom a statement of account has been submitted under sub-section (1) shall not be bound to acknowledge or deny its correctness, and his failure to protest shall not, be deemed to be an admission of correctness of the account.

(3) The account prescribed under sub-section (1) (a) shall be deemed to be regularly kept in the course of business for the purposes of section 34, Indian Evidence Act, 1872, and copies of entries in such account certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

The following rules and forms are introduced by the Local Government.

RULES.

4. (1) Every creditor shall regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to that debtor in one or other of the following forms A, B or C.

Provided that where there is a current account it shall be sufficient for the creditor to keep one account of all transactions relating thereto.

In the term "current account" in this proviso, will be included in the case of banks all accounts, such as overdrafts, cash credits, pronote accounts, etc., which are maintained in the form of current accounts.

(2) As soon as possible after the date on which the Act comes into force the creditor shall open an account in one or other of the prescribed forms for each existing loan, whether taken before or after the Act comes into force with a statement showing the balance or amount of principal and interest outstanding against the creditor at the date on which the account is opened.

FORM A.

Loan account of son of caste residence
 Date as at which account is made up

Serial number of loan.	Date of advancing loan.	Principal or balance of principal if brought over from previous year.		In the case of unsecured loans, the date by which repayment must be made to the benefit of section 29.	Rate of interest.	Date of repayment.	Payment credited towards		Remarks.
		Particulars of loan, whether cash or in kind, secured or unsecured. If in kind, specify.	Amount of cash or value of loan in kind, where payable in cash.				Principi- pal.	Interest.	
1	2	3	4	5	6	7	8	9	10
		Total repayment towards the loan during the year			...				
		Balance, if any, at the end of year			...				

Note.—If the loan was taken in kind and is being repaid in kind, the entries in columns 8 and 9 will be in kind.
 If the loan was taken in cash and is being repaid in part or altogether in kind, the entries in columns 8 and 9 will be the cash equivalents of the payments in kind and the details of the payments in kind will be shown in column 10.

FORM B.

Sec. 32

Bahi Khata

Loan account of....., son of....., caste....., residence.....

Date as at which account is made up.....

DR.

CR.

(15)..... (20).....

Payment made by: Ram Adhin

Ram Adhin Pandey is given a loan

on..... on.....

Principal. Interest. Rate of interest, if repaid. } by..... after.....

Balance, if any, at the end of the year. } Principal. Interest.

(15).....

Ram Adhin Pandey is given a loan on.....

Rate of interest, if repaid. } by..... after.....

FORM C.

(Suitable for banks).....

Name of debtor..... Resident of.....

Date as at which account is made up..... District.....

Date.	To or by.	Particulars.	Rate of inter- est.	Dr. Amount.			Cr. Amount.			Dr. or Cr.	Balance.			No. of days.	Remarks.
				Rs.	a.	p.	R.	a.	p.		Rs.	a.	p.		
1	2	3	4	5			6			7	8			9	10
		Amount advanced on the mortgage-deed, dated.....for Rs..... at.....per cent. to be repaid on or before.....by equal half-yearly instalments of Rs..... on.....and.....each year commencing from.....Interest is to be paid in addition to the instal- ments on.....and..... in each year.		Rs.	a.	p.	R.	a.	p.		Rs.	a.	p.		

5. The credit or shall not calculate or enter a rate of interest in excess of that
 Section 32 (1) admissible under the Agriculturists' Relief Act.

6. Interest on an advance should be worked out up to the date of each repay-
 ment towards liquidation of such advance; and, where an advance
 or any part of it is outstanding at the close of the year, interest
 Section 32 (1). should be calculated on the balance of the principal from the date
 of the last instalment, if any, to the end of the year:

Provided that in the case of banks the requirements of this rule will be met by
 their present practice of the entry of decimals in the account on each day that a trans-
 action takes place, and the calculation of interest at periodic intervals on the basis of
 those decimals.

8. (1) The account of every loan maintained under rule 4 shall be made up
 Section 32 (1) (b). annually and a balance shall be struck on one or other of the
 following dates :—

- (i) the Dasehra festival ;
- (ii) the Diwali festival ;
- (iii) September 30 ;
- (iv) December 31 ; or
- (v) March 31.

(2) The creditor shall record in each account the date selected by him for the
 purpose of sub-rule (1), and on the first occurrence of that date after the Act comes into
 force, or after the loan is taken, as the case may be and thereafter annually on that date
 the account shall be made up and a balance struck.

9. Within one month after the making up of the account under rule 8 the
 creditor shall supply each agriculturist debtor every year with
 Section 32 (1) (b). a full and correct statement of account of any balance or
 amount outstanding on each separate loan in the following form
 D, which must include all transactions entered into during the year to which the
 statement relates :

Provided that where there is a current account it shall be sufficient for the
 creditor to furnish particulars of balance due on the whole amount.

In the case of banks, the requirements of this rule will be met if a full statement
 of the account has been supplied by means of a pass-book or otherwise from time to
 time throughout the year, and intimation is given within one month from the date
 selected for making up accounts of the balance remaining due on that date.

FORM D.

Statement of Annual Account.

Loan account of....., son of....., caste....., resident.....
 for the year ending on.....

Rate of interest of secured loan.....

Rate of interest of unsecured loan (a) if paid by specified date.....

(b) if paid after specified date.....

Serial number of loan.	Date of loan.	Principal amount of loan or balance of principal if brought over from previous year.	Amount of interest, if any, brought forward.	Payment credited during the year towards.		Balance outstanding at the end of the year.	
				Principal.	Interest.	Principal.	Interest.
1	2	3	4	5	6	7	8

Total for all loans outstanding against the debtor

.....

Signature of creditor or agent.

10. The statement of account shall be furnished to the debtor by registered post, acknowledgment due. The postal registration and acknowledgment charges shall be recoverable by the creditor as though they were a loan advanced in cash to the debtor and shall be duly entered in the loan account.

11. Where a debtor has agreed in writing to accept the statement of account by personal delivery it shall not be incumbent on the creditor to send such statement in the manner prescribed by rule 10. In such cases the debtor shall give a written receipt for each statement of account delivered personally to him.

Creditor—He is one who in the regular course of business advances a loan and includes legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise. The words "in the regular course of business" have not been defined and to my mind they mean "in the ordinary course of a professional avocation or the current routine of business". Thus to make a money lender a creditor as required by this definition it is necessary to prove that he is one who is a money lender by profession. The onus to prove that the money lender is a creditor as defined in the Act will be on the debtor who seeks to gain advantage.

Is maintenance of accounts mandatory?—Yes it is mandatory on the creditor to regularly record and maintain a correct account for each agriculturist debtor of all transactions relating to each loan advanced to the debtor.

Manner in which these accounts are to be maintained.—The accounts are to be maintained in either of the forms A, B or C prescribed by the Local Government. Form C is suitable for banks while forms A and B are suitable for ordinary creditors. These forms A, B or C are meant for one particular debtor or debtors and if there are a number of debtors, for each of them an account shall have to be maintained. Account in either of these forms may not be maintained where the creditor keeps a current account by which is probably meant a daily cash book and its corresponding ledger. The account of every loan shall be made up annually and balance shall be struck on one or other of the dates given in rule 8 and the creditor shall have to write the date selected by him in each account when the balance will be struck annually and shall state therein the amount of principal and interest outstanding against the debtor at the date on which account is opened and a balance shall be struck on the annual date thereafter every year. In these accounts the creditor shall not calculate or enter rate of interest at a rate in excess of that admissible under the Agriculturists' Relief Act and interest will be calculated according to 'Katwan' system vide rule 6.

Manner in which the accounts are to be supplied to the debtor.

- (i) In case the creditor has maintained accounts of every loan in forms A, B or C, the account will be furnished to the debtor in form D but in case the creditor has maintained a current account, it shall be sufficient for him to furnish particulars of the whole amount.
- (ii) The account will be sent each year by registered post, acknowledgment due. The postal registration and acknowledgment charges shall be recoverable by the creditor as though they were a loan advanced in cash to the creditor and shall be duly entered in the loan account.
- (iii) The account must be sent within one month after making up of the account under rule 8.
- (iv) The account must be signed by the creditor or his agent.
- (v) The account must be correct and complete.

Case in which registered notice may be dispensed with.—Where debtor has agreed in writing to accept the statement of account by personal delivery, it shall not be incumbent on the creditor to send it by registered post, acknowledgment due. But in such cases the debtor shall give a written receipt for each statement of account delivered personally to him.

Whether debtor will be bound by the statement of account submitted. Not even if he makes no protest, His failure to protest will not be deemed to be an admission of correctness of account.

Evidentiary value of the accounts. The accounts prescribed under sec. (1) (a) shall be deemed to be regularly kept in the course of business for the purposes of sec. 34 Indian Evidence Act and their certified copies shall be admissible in evidence in the same manner and to the same extent as the original entries. The copies must be certified in such manner as may be prescribed.

33. (1) An agriculturist debtor may sue for an account of money lent or advanced to, or paid for, him by any person, or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person.

(2) In such suit the court shall follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act X of 1918. It shall, after taking necessary accounts, declare the amount which is still payable by the plaintiff to the defendant, and shall on the application of the defendant, and if the money is payable, pass a decree in favour of the defendant.

* (3) Notwithstanding anything in the Court-fees Act, 1870, the court-fee payable on a plaint in a suit under sub-section (1) shall be that prescribed by Schedule VI; and the fee payable on an application under sub-section (2) shall be the amount, if any, by which the fee which would be payable on a plaint in a suit for the recovery of the amount declared under that sub-section exceeds the fee already paid by the plaintiff on his plaint, or the fee prescribed by article 1 (b) of Schedule II of the Court-fees Act, 1870, whichever is greater :

* Provided that if the plaintiff is a person who belongs to any of the class of persons mentioned in clause (b) of sub-section (2) of section 2 or is a person who pays rent not exceeding Rs. 200 or land revenue not exceeding Rs. 100, or pays both rent and land revenue the total amount of which does not exceed Rs. 150, but does not in any case pay income tax, the court-fee payable by the defendant on an application under sub-section (2), or by the plaintiff under sub-

section (4), shall be half of the amount prescribed by this sub-section or by sub-section (4), as the case may be."

(4) Subject to section 30 (2) or section 31 (2), as the case may be, if the defendant is found to have been overpaid, the court shall pass a decree for refund of the amount of such overpayment in favour of the plaintiff.

*Provided that an application for execution of such a decree shall not be admitted until the plaintiff has paid a fee, which, subject to the proviso to sub-section (3) above, shall be the difference if any between the fee actually paid by him on his plaint under sub-section (1) and the fee which would be payable under the Court-Fees Act, 1870, on the plaint in a suit for the recovery of the amount so decreed.

Notes—To whom and to what transactions the section applies.

It applies to every agriculturist debtor who is entitled to sue for accounts under a written engagement whether the written engagement amounts to a mere promissory note, a simple bond, a simple mortgage deed, a usufructuary mortgage deed or a mortgage by way of conditional sale—1937 A. L. J. 882.

When the suit is filed under sec. 33 (1) then the provisions of sub-section (2) apply and the court is bound to follow the provisions of Chapter IV of this Act and the provisions of the Usurious Loans Act of 1918—1937 A. L. J. 882.

Valuation of suits under this section.

Suits under sec. 33 are suits for an account of money and not for declaration and the valuation of such suits should be according to Rule 28 (3) of the Rules framed by the High Court under sec. 9 Suits Valuation Act vide notification No. 7067/3G—3 (4) of 17th December, 35. A plaint of such a suit can be returned for presentation to the proper court even if the question of jurisdiction is raised for the first time at the time of arguments—1938 R. D. 102 (Allid); 1937 R. D. 539; 1937 A. L. J. 1194

Appeal—Appeal against decree under sec. 33 is maintainable under the general provisions contained in S. 96 C. P. C. as the U. P. Agriculturists' Relief Act is silent—164 I. C. 684. Before the addition of the new Explanation to Rule 268 of the Oudh Civil rules, a suit was filed under sec. 33 valued at over Rs 5000/—the appeal was held to lie to the Oudh Chief Court—164 I. C. 684.

Revision—Where the Munsif wrongly returned the plaint for presentation to proper court, it was held that as no appeal lay to the High Court, the High Court had power to interfere in revision and that this was a suitable case for interference—1937 R. D. 539.

Decree at the instance of the defendant on his application.

Formerly the defendant could have obtained a decree if the money was payable, simply by making an application without paying any court fee on the amount decreed but since the Amendment Act 1937 the fee payable on an application under sub-section (2) shall be the amount, if any, by which the fee which would be payable on a plaint in a suit for recovery of the amount declared under that sub-section exceeds the fee already

paid by the plaintiff on his plaint or the fee prescribed by Article 1 (b) of Schedule II of the Court Fees Act 1870.

Exception.

Cases in which the defendant is entitled to a decree on payment of half the above requisite fee are as follows:—

(i) Where the plaintiff is an agriculturist coming within Clause, (h) of sec. 2 (2),

or

(ii) Where he pays rent not exceeding Rs 200/—

or

(iii) Where he pays revenue not exceeding Rs 100/—

or

(iv) Where he pays both rent and revenue not exceeding Rs 150/—but does not pay income tax in any case.

Court fee payable on the plaint under sec. 33 has now been fixed at the rate given in Schedule VI. Formerly before the amendment, the Court fee was chargeable under Art 17 cl (iii)—1936 R. D. 237.

When may a plaintiff get a decree.

In case the defendant is found to have been overpaid, the plaintiff can get a decree for the amount overpaid provided the refund is not for any part of the interest already paid by him. The fee payable by him will be the difference between the fee actually paid by him on his plaint under sub-section (1) and the fee which would be payable under the court fees Act 1870 on the plaint in a suit for the recovery of the amount so decreed. Unless he has paid this court fee, he shall not be able to make an application to execute the decree. The payment of court fee by the plaintiff in this case is subject to the proviso given in sub-clause (3) enumerating the cases when this fee is to be reduced to onehalf.

Plaintiff whether entitled to apply for instalments when the defendant makes an application for a decree in his favour under sub-section (2).

To my mind there is no reason why he is not entitled to instalments in accordance with the provisions of sec. 3.

The moment the defendant applies for a decree, sec. 3 must play its part.

Similarly when the plaintiff gets a decree for over payment under sub-clause (4), the defendant will be entitled to instalments under sec. 3 provided he is a person coming within the definition of an agriculturist given in sec. 2(2).

'If the money is payable'—used in sub-section 2 signify that the defendant will be entitled to get a decree only when the money has already fallen due otherwise not.

The following rulings although made under the Dekkan Agriculturists' Relief Act will be found useful here. The reason being that this section is analogous to sec. 15 D of the Dekkan Act. Accounts of the whole series of transactions must be taken as forming one single transaction—45 Bom 55 and 216. Suit for account must include all mortgages—16 Bom. 551; 40 Bom. 453.

Condition precedent. A suit will only lie on the presumption that there was a mortgage executed by an agriculturist in existence and an issue whether or not mortgage was in existence could not be entertained in a suit under this section—26 Bom. L. R. 341.

Effect of sale of equity of redemption.

An agriculturist mortgagor who has sold his equity of redemption is not an "agriculturist whose property is mortgaged" and therefore his suit for mortgage account is not maintainable—30 Bom. L. R. 1148.

Can comortgagors bring a suit for account against a purchaser from another mortgagor, who has redeemed the mortgage or against the comortgagor who has redeemed the mortgage ?

Such a suit will not lie under this section. Their remedy would be a suit for partition and possession of share on paying their quota of the redemption money—53 Bom. 353.

Scope of the suit for account. This section enables the plaintiff to sue for a general account of money dealings between him and the creditor and it enables him to sue for a bare declaration of the amount due without any relief being claimed—39 Bom. 73.

Agriculturist mortgagor asking for account being taken, must pay amount found due, even though it is larger than the sum due under the mortgage—118 I.C. 619, F. B.

Can decrees be reopened under this section ?

A court cannot go behind a decree passed in a suit instituted before this Act came into force and enquire into the history of transactions settled by the decree—7 Bom. 330.

In a suit for accounts of a mortgage, the consideration for which was a decreed debt made up of principal and interest, the court cannot go behind the decree and resolve it, in as much as the original interest had been converted into principal, not by any contract between the parties but by a decree—43 Bombay 1.

Engagement.—It refers to contractual engagements—25 Bombay 244.

Trading transactions.—Accounts can be taken in such transactions—46 Bombay 421.

Decision on the issue of status of a party as agriculturist prior to taking accounts whether amounts to a preliminary decree.—It was held in 45 Bombay 627 that it does not.

When suit under section 33 not maintainable.—

Agriculturist having major portion of property in Delhi executed a usufructuary mortgage of property in U. P. and Delhi and filed a suit under section 33 of the Act. Held that the transaction, by taking the form of a usufructuary mortgage, did not cease to be one of loan in its essence and the person borrowing the loan incurred a debt and was a debtor of his mortgagee. The next question that arose for determination was whether a mortgagor owning property in the U. P. as well as in another province, who had mortgaged properties situate in both the provinces under one deed in lieu of a single advance, was entitled to take advantage of the provisions of section 33 of the Agriculturists' Relief Act passed by the Local Legislature of the United Provinces. Their Lordships held that the point that the laws made by the Local Legislature of one province could not affect rights in land situate outside the territories for the time being constituting that province, was clear. The Act affected and was intended to effect substantive rights and section 33 did not make a provision which affected rules of procedure. The effect of sub-section (3) of section 30—A of the Government of India Act was that without the sanction or subsequent assent of the Governor General, the local legislature of a province could not validly make any such laws even for its own territories and the previous sanction or subsequent assent of the Governor General-in-Council only made such laws valid and affective within the territories of that province and did not affect rights and properties outside the province. Under these circumstances the suit was not held to be maintainable—Haji Sheikh Wahiduddin versus Makhani Lal and others. This case has not yet been reported.

**Sec.
34**

Penalty for non-compliance with the provisions of section 32.

34. Notwithstanding anything contained in any other enactment for the time being in force—

- (a) in any suit or proceeding relating to a loan against an agriculturist, if the debtor objects that the creditor has not complied with the provisions of section 32, the court shall determine such objection before deciding the claim on the merits ;
- (b) if the court finds that the provision of clause (a) of section 32 (1) have not been complied with by the creditor, it may, if the creditor's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as it may deem reasonable in the circumstances of the case, and shall disallow the creditor's costs ;
- (c) if the court finds that the provision of clause (b) of section 32 (1) have not been complied with by the creditor, the court shall in computing the amount of interest due upon the loan exclude every period for which the creditor has failed to comply with the said provision :

Provided that if the creditor has, after the time prescribed in the said clause, furnished the account and satisfied the court that he had sufficient cause for not furnishing it earlier, the court shall, notwithstanding such omission, include any such period or periods for the purpose of computing the interest :

Provided further that if the creditor has submitted an account which is not full and correct, and satisfies the court that the omission or error was *bona fide* and due to inadvertence, the court shall, notwithstanding such omission or error, include any such period or periods for the purpose of computing the interest.

Explanation.—A person who has kept his account and submitted his yearly statement of account in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 32 shall be held to have complied with the provisions of these clauses, in spite of any errors and omissions, if the court finds that the errors and omissions were accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

Notes.—In any suit or proceeding relating to a loan against an agriculturist.

The provisions of this section can only apply to a suit or proceeding relating to a loan against an agriculturist but not to a suit or proceeding by an agriculturist against the creditor. The provisions of this section cannot be invoked in a suit brought by the agriculturist under sec. 33 because it is not a suit against an agriculturist and neither can these provisions be made applicable at the time when the creditor applies for a decree under sec. 33 (2). Of course it can be said at that time that it is a proceeding against an agriculturist but sec. 34 cannot be applied because sec. 33 makes no provision for its application just as it does for the application of Chapter IV and the provisions of Usurious Loans Act. The Court in that case has to pass a decree for the amount declared to be payable by the plaintiff to the defendant after taking necessary accounts. Upto the stage of declaration of amount it is nothing but a suit by an agriculturist against the creditor.

The agriculturist before he can succeed under this section must prove the following requisites.

- (i) That it is a suit or proceeding relating to a loan against an agriculturist.
- (ii) That the person bringing the suit or starting the proceeding relating to a loan is a creditor as defined in the Act, that is to say, he is a money lender by profession.
- (iii) That he must have raised an objection that the creditor has failed to comply with the provisions of sec. 32.

Consequences of failure to comply with provisions of sec. 32 (a).

- (i) The Court may, if the creditors claim is established in whole or in part, disallow the whole or a portion of the interest found due, as it may deem reasonable in the circumstances of the case. But it must be remembered that in no case can the court disallow interest for the period prior to the commencement of the Act vide Sec. 36.
- (ii) The court shall disallow the creditor's costs. The question is whether the entire costs will be disallowed or only on the amount of interest falling due after the commencement of the Act. As according to sec. 36 the provisions of sec. 34 do not apply to the period prior to the commencement of the Act, so the Court should not allow costs on the amount of interest falling due after the enforcement of the Act. This interpretation will rather be equitable as well. If the entire costs are disallowed, sec. 36 will become meaningless.

Consequences of failure to comply with provisions of sec. 32 (b)

It will be mandatory on the court to disallow the amount of interest due upon the loan for every period for which the creditor has failed to comply with the said provision.

The only exceptions to the above rule are where the creditor has supplied the account not within one month but after one month after the making up of the account under rule 8 and has satisfied the court that he had sufficient cause for not finishing it earlier. In such a case the court shall include such period or periods which should have been excluded under 34(e), for the purpose of computing interest.

Similarly where the creditor submitted an account which was not full and correct, the court shall condone it and include such period or periods for computing interest provided the court is satisfied by the creditor that the omission was bonafide and due to inadvertence.

Accidental errors and omissions—In keeping the accounts and submitting the yearly accounts in the form and manner prescribed in clauses (a) and (b) of sec. 32 (1) they shall be ignored provided they were not material and the accounts were kept in good faith with the intention of complying with the provisions of these clauses.

35. (1) Any creditor who, after the commencement of this Act, records in his book of accounts or in the statement of account submitted to the debtor as lent to an agriculturist a sum larger than that actually lent, whether by way of charges for expenses, inquiries, fines, bonuses, premia, renewals, or otherwise, shall be punished for the first offence with fine which may extend to one hundred rupees, and, for a second or subsequent offence with regard to the same or any other agriculturist, with fine which may extend to five hundred rupees.

(2) Where in any suit concerning a loan taken by an agriculturists the court finds that the creditor has, without reasonable cause, refused or neglected to deliver to the debtor a receipt for any payment by him on account of such loan or to credit such payment on the written instrument securing such loan, it may award the debtor such compensation not exceeding double the amount of such payment as it may consider proper.

Clause (1)—Entry of a sum larger than that actually lent either in the account books of a creditor or in the statement of account submitted by him to the debtor irrespective of the fact whether he records the additional sum by way of charges for expenses, enquiries, fines, bonuses, premia, renewals or otherwise shall amount to an offence punishable with a fine not exceeding one hundred rupees as maximum fine for the first offence and for a second or subsequent offence with regard to the same or any other agriculturist, with fine not exceeding five hundred rupees.

Essential condition for the offence committed under this clause is that the entry must have been made after the commencement of this Act, which date is 30th April 1935.

Clause (2)—This clause makes it obligatory on the court to award compensation not exceeding double the amount of the payment made on account of a loan by a debtor to a creditor for which the creditor has, without reasonable cause, refused or neglected to deliver to the debtor a written receipt for the same or to record an endorsement or payment on the written instrument securing such loan.

When can the court apply these clauses ?

So far as clause (2) is concerned, it can be invoked only in a suit concerning a loan but not independantly of it.

So far as Clause (1) is concerned although it is not mentioned in the clause itself that the creditor can be punished with fine only in a suit brought by the creditor against the agriculturist but I think that this fine can be levied only in that suit because the offence is committed only under sec. 35 but not under any section of the Indian Penal

Code. It was only in the latter case that a complaint could have been filed against the creditor in the criminal court.

To what loans are the clauses applicable ?

Clauses (1) and (2) apply to loans borrowed before or after the commencement of the Act but it is essential in each case that the wrong complained of under these clauses must have been committed after the commencement of the Act.

Cattle being included in money, a creditor receiving bullocks from an agriculturist is bound to give a receipt as was held in 27 I. C. 178; 16 Bom. L.R. 683. These rulings will apply because the definition of 'money' is the same in this Act as well as the Dekkan Agriculturists' Relief Act.

36. The provisions of sections 32, 34 and 35 shall not, in the case of a loan advanced before the commencement of this Act, apply to the period prior to the commencement of this Act.

Saving in cases of previous loans.

CHAPTER VI.

MISCELLANEOUS.

37. When a loan has been advanced in kind, a debtor may at his option repay it either in the same kind or in cash at a fair rate, if no rate has been agreed upon, or in any other form and at the rate agreed upon between the creditor and himself :

A loan taken in kind may be paid by the debtor at his option in the same or another kind.

Provided that if there is a dispute about the fairness of the rate the question shall be referred either by the creditor or the debtor to the Collector, whose decision shall be final.

Comment. To whom is this section applicable ?

It applies only to those agriculturists who come within the clauses (a) to (b) of Sec. 2(2) and not those coming within the proviso (1) to that sub-section.

Modes of repayment of loan advanced in kind.

The debtor is given the option to repay the same.

- (i) either in the same kind ; or
- (ii) in cash at the rate agreed upon, if there be any ; or
- (iii) in cash at a fair rate when the parties agree to the fair rate and if they are at variance then at the rate decided by the Collector on a reference made to him by any, which decision will be final ; or
- (iv) in any other form agreed upon by the parties.

38. (1) A debtor may at any time, whether during the pendency of a suit or otherwise, deposit in court a sum of money not less than one-fourth of the amount due at the time in full or part-payment of a loan not being a loan secured by a mortgage, and may apply that such sum be paid to the person to whom it is due,

Deposit of whole or part of a debt in court.

**Secs.
38, 39**

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

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

Notes:—In respect of what loans can a deposit of whole or part of a debt be made in court ?

In respect of any loan except those secured by a mortgage.

What is the debtor required to do ?

He has to deposit the money in court and apply that such sum be paid to the person to whom it is due.

Court:—It means a Civil Court.

Although it is not laid down as to in which court will the deposit be made and the application filed, but I think that naturally it must be made in the court of competent pecuniary jurisdiction in which a suit for the recovery of the loan could have been brought.

Amount that can be deposited.

Not less than one fourth of the amount due at the time of deposit.

Effect of deposit.

From the date of the deposit interest shall cease to run on the amount so deposited.

Duty of the court on deposit and the application being made.

It shall issue a notice to the creditor named in the application of the debtor and shall pay the amount to the creditor on his application.

39. (1) Every loan given after the date on which this Act comes into force shall be evidenced by a written document, of which a copy shall be given to the debtor.

Preparation of a document for every loan and the supply of a copy to the debtor.

(2) In the case of unsecured loans, an entry shall be made in every such document specifying the date by which repayment must be made in order to earn the benefit of section 29 and the rate of interest which shall prevail if re-payment is made by such date.

(3) No interest shall accrue on any loan until a copy of a written document prepared according to the provisions of sub-sections (1) and (2) has been supplied to the debtor as required by sub-section (1).

(4) Notwithstanding anything in the Indian Stamp Act II of 1899, no such written document as is referred to in sub-section (1) shall require a stamp duty higher than that which would have been payable in respect thereof had it not contained the details mentioned in sub-sections (1) and (2), and no copy supplied to the debtor as required by sub-section (1) shall require any stamp duty.

RULE.

12. When a scheduled bank makes advances against current accounts, as defined in the proviso to sub-rule (1) to rule 4, the following documents will be deemed to satisfy the requirements of section 39 of the Act :—

(1) A letter from the bank to the borrower giving full details of the limit of the accommodation made available to the borrower and the other particulars required by the Act.

(2) The bank's ledgers.

(i) For the purposes of sub-section (3) of section 39 a copy of the bank's letter to the debtor mentioned in (i) above will suffice.

Requisites for a loan advanced after the commencement of this Act—

(i) It must be evidenced by a written document.

(ii) A copy of the written document shall be given to the debtor.

(iii) In the case of an unsecured loan, there shall be made an entry in every such document evidencing the loan specifying the date by which repayment must be made in order to earn the benefit of Sec. 29 and the rate of interest which shall prevail if repayment is made by such date.

Consequences of not delivering the copy of the document evidencing the loan.

No interest shall accrue until a copy of the written document is delivered to the debtor. This means that if a person delays in delivering the copy, he will not get interest for the period the copy was not delivered.

Will the written document require a higher stamp duty on account of the details mentioned in sub-sections 1 and 2.

No, it will require the same duty as if those details were not given in the document. Thus a promissory note or a Hundi payable on demand will not require any higher stamp duty because of the inclusion of the details mentioned in clauses 1 and 2.

Will the copy of the written document to be submitted to the debtor require any stamp duty ?

It will not require any stamp duty whatsoever.

Can a suit for recovery of a parol debt advanced after the commencement of this Act to an agriculturist debtor lie against him ?

The suit will be barred by sec. 39 (1) and will fail.

The following conclusions are deduceable from sections 29 and 39 (2) :—

(1) When the loan is for a fixed term and is repaid within such period, the debtor shall pay interest at a rate agreed to prevail in the document in that case or the rate given in section 28 for a secured loan of that class, whichever is less, in place of the contractual rate of interest for the unsecured loan.

(2) When the loan is not for a fixed term but is repaid within 2 years from the date of the taking of the loan, the debtor shall pay interest at a rate given in sec. 28 for a secured loan of that class, in place of the contractual rate of interest for the unsecured loan.

40. (1) Notwithstanding anything contained in the Indian Stamp Act II of 1899, and the rules made under the Indian Registration Act XVI of 1908, the stamp duty and the registration and the copying fees on bonds of value or amount not exceeding rupees three thousand, executed by an agriculturist and registered under Indian Registration Act shall be as laid down in Schedule V.

(2) If a bond is executed on a form printed under the authority of the Local Government, no copying fee shall be leviable for making a copy or a note of the bond in the books prescribed under the Indian Registration Act XVI of 1908.

RULE.

13. With reference to section 40, sub-section (2) of the Act, the Local Government are pleased to approve the following form of bond in respect of which no copying-fee shall be leviable if a bond is executed on such form printed under the authority of the Local Government:

FORM OF BOND

(This form may be inscribed on the stamp-sheet.)

I....., son of....., by
 caste.....and residing at....., pargana
tahsil.....district.....
 having borrowed rupees.....[half of which is rupees
] or, being liable for rupees.....on account
 of.....from/to....., son by
 caste.....and residing at....., pargana
, tahsil....., district,..... hereby
 agree as follows:—

1. That I shall repay to the said....., his
 heirs, representatives, successors or assigns the said principal sum of rupees.....
 on demand (or on the.....
 day of.....and so long any part of the said principal sum shall
 remain outstanding I shall pay simple interest at the rate of.....
 per cent. per annum (or compound interest at the rate of.....
 per cent. per annum with yearly rests).
 or that I shall repay to the said....., his heirs, or representatives, successors
 or assigns the said sum of rupees.....with
 interest at the rate of.....per cent per annum in
 the following instalments.....

2. That if I repay the said sum of rupees.....on or before the.....day of.....the interests stipulated in clause 1 shall be reduced to.....per cent. per annum.

Dated the.....day of.....19 .

Signed.....

Witnessed by—

(1).....

(2).....

Written by.....

Comment:—Schedule V replaces the provisions of the Indian Stamp Act and the Indian Registration Act so far as bonds executed up to a sum of Rs three thousand by an agriculturist coming within clauses (a) to (h) of Sec. 2 (2) are concerned.

41. (1) The Local Government may make rules consistent with this Act for the purpose of carrying out the provisions of this Act.

Power of Local Government to make rules.

(2) Before making the rules under this section the Local Government shall publish a draft of the same in the Gazette and shall concurrently cause a copy of the said draft to be sent to every member of the Legislative Council.

(3) In making the rules finally the Local Government shall consider the opinions received by them as well as any opinion expressed by the Legislative Council.

Notes.—Rules framed by the Local Government have been published in the United Provinces Gazette of the 10th of August, 1935 and have been incorporated in this volume at their proper places.

42. Except as otherwise provided by this Act no order passed by the Local Government or the Collector under this Act shall be called in question in a civil court.

Comment—This section bars the Civil Courts from calling in question the orders passed by the Local Government or the Collector under this Act.

SCHEDULE I.

The classes mentioned in section 2 (2) (h)

Agricultural labourers, general labourers, cowherds, goatherds, dairymen, blacksmiths, carpenters, fishers, hunters, boatmen, barbers, potters, midwives, watchmen, washermen, weavers or other servants of the village community or any similar class of persons whom the Local Government may, by notification in the Gazette, from time to time include in this schedule.

SCHEDULE II.

Percentage rates mentioned in section 28 by which the prevail-

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ing rate of interest should exceed the percentage rate at which the Local Government borrow from the Government of India.

Amount of loan.	Secured loans.		Unsecured loans.	
	Compound per cent. per annum with yearly rests.	Simple per cent. per annum.	Compound per cent. per annum with yearly rests.	Simple per cent. per annum.
(a) Rs. 500 and under	3	5½	7½	10½
(b) Rs. 501 to Rs. 5,000	2½	4½	6	8
(c) Rs. 5,001 to Rs. 20,000	2	3½	4½	6½
(d) Over Rs. 20,000 ..	1½	2½	3½	5

SCHEDULE III.

Rates of interest for section 30.

AMOUNT OF LOAN.	SECURED LOANS.		UNSECURED LOANS.	
	Compound per cent per annum with yearly rests.	Simple per cent per annum.	Compound per cent per annum with yearly rests.	Simple per cent per annum.
(a) Rs. 500 and under	X + 2½	X + 5	X + 5½	X + 9½
(b) Rs. 501 to 5,000	X + 2	X + 4	X + 4½	X + 7½
(c) Rs. 5,001 to 20,000	X + 1½	X + 3	X + 3½	X + 6
(d) Over Rs. 20,000	X + 1	X + 2	X + 2½	X + 4½

Note.—X in this schedule means—

- (a) For the period from January 1, 1930 or the date on which the loan was taken, whichever was later, till the first date notified under section 4, a rate of 4½ per cent.
- (b) For the period from the first date notified under section 4 till the date fixed by the Local Government as the final date to which section 30 shall apply, the rate for the time being notified under section 4 in respect of the period for which each such rate is in force or 4½ per cent. whichever is less.

By the United Provinces Agriculturists' Relief (Amendment) Act III of 1935 for the words "the rate notified under section 4 as the rate in force on the date when the loan was taken" the following words have been substituted in part (b) of the footnote: "the rate for the time being notified under section 4 in respect of the period for which each such rate is in force." This amendment came into force from the 20th July 1935 (*vide*) Revenue Department Notification No. 590-Rev., dated 18th July 1935, published in the United Provinces Gazette of the 20th July 1935.

SCHEDULE IV.

Rates of interest mentioned in section 31.

Simple interest at the rate notified under section 4 as in force at the time when the aggregate of interest realized or accrued becomes equal to the sum originally borrowed in the case of secured loans, and 2 per cent. above that rate in the case of unsecured loans.

Notes.—See notes to section 31 of this Act.

SCHEDULE V.

Scale mentioned in section 40.

Amount or value of the bond.	Stamp duty.		Registration fee.		Copying fee.
	Rs.	a.	Rs.	a.	
Where the amount or value secured does not exceed Rs. 50.	0	1	0	1	As. 3
Where it exceeds Rs. 50 but does not exceed Rs. 100.	0	2	0	2	3
Where it exceeds Rs. 100 but does not exceed Rs. 200.	0	4	0	4	4
Where it exceeds Rs. 200 but does not exceed Rs. 300.	0	6	0	6	6
Where it exceeds Rs. 300 but does not exceed Rs. 400.	0	8	0	8	8
Where it exceeds Rs. 400 but does not exceed Rs. 500.	0	12	0	12	10

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Scale mentioned in section 40.—(concluded.)

Amount or value of the bond.	Stamp duty.		Regis- tration fee.		Copying fee.
	Rs.	a.	Rs.	o.	As.
Where it exceeds Rs. 500 but does not exceed Rs. 600.	1	10	2	4	12
Where it exceeds Rs. 600 but does not exceed Rs. 700.	0	2	2	4	12
Where it exceeds Rs. 700 but does not exceed Rs. 800.	2	6	2	4	12
Where it exceeds Rs. 800 but does not exceed Rs. 900.	2	12	2	4	12
Where it exceeds Rs. 900 but does not exceed Rs. 1,000.	3	2	2	4	12
For every Rs. 250 or part of Rs. 250 above Rs. 1,000 and up to Rs. 3,000.	1	0	0	4	Nil

SCHEDULE VI.*

Schedule of Court-fees payable on a plaint under section 33.

	Rs.	a.	p.
If the principal amount of loan is less than Rs. 100 ...	2	0	0
If the principal amount of loan is not less than Rs. 100 but is less than Rs. 250 ...	5	0	0
If the principal amount of loan is not less than Rs. 250 but is less than Rs. 500 ..	7	8	0
If the principal amount of loan is not less than Rs. 500 but is less than Rs. 1,000 ...	10	0	0
If the principal amount of loan is Rs. 1,000 or above ...	15	0	0

*Added by Act IX of 1937.

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THE UNITED PROVINCES

**Encumbered Estates Act
No. XXV of 1934.**

As amended by Act IV of 1935.

SUPPLEMENT TO THE U. P. ENCUMBERED ESTATES ACT.

Encumbered Estates Act, Section 7 (1) (a)—Stay of execution proceedings.

Where the mortgaged property was attached by a simple money decree-holder and soon after the mortgagee brought a suit on foot of his mortgage and impleaded the mortgager as well as the attaching creditor and obtained a preliminary decree and sometime after a part of the mortgaged property was sold in execution of the attaching creditor's decree and was purchased by another person, who was made a party in the final decree proceedings. In execution of the mortgage decree the property purchased by the third person in execution of the simple money decree was sold and while the sale was awaiting confirmation, the mortgager made an application under S. 4 of the U. P. Encumbered Estates Act and the Collector passed an order under S. 6. Thereupon the applicant made an application praying that action be taken under Section 7 of the Act.

It was held that the court was bound to grant the applicant's application as the proceedings that were pending at the date of the said order were proceedings in respect of a debt with which his immovable property is encumbered, as required by S. 7 (1) (a) of the Act. The argument that as the proceedings which were pending in the court below were not in respect of the property belonging to the applicant, the section was inapplicable, was held to be untenable—1938 A. L. J. 576, Sauti Raghubar Dayal *versus* Amba Prasad.

Encumbered Estates Act, Section 7 (3)—Sanction of the Collector for sale. Even court precluded from executing a sale deed in compliance with a decree for specific performance.

A suit for specific performance was decreed against K. and M. and the decree-holder applied to the court for execution of the sale deed in terms of the decree. In the meanwhile K. applied under S. 4 of the U. P. Encumbered Estates Act and the Collector forwarded it to the Special Judge under S. 6. The applicant objected to the execution of the sale deed on the ground that his proprietary rights in land could not be transferred in view of S. 7 (3).

Held that a decree for specific performance only declares the right of the decree-holder to have a transfer of the property covered by the decree executed in his favour. The decree by itself does not transfer title. Both the Judgment-debtor and the Court are precluded from transferring the property without the sanction of the Collector—Enayet Ullah *versus* Khalilullah Khan, 1938 A. L. J. 569.

S. 45 Encumbered Estates Act. Appeal against the decision of Special Judge 2nd Grade whether can be transferred by the District Judge to a Civil Judge.

In my opinion the appeal from the decision of the District Judge 2nd Grade will lie to the District Judge who must try it himself and can not transfer it to the Civil Judge because under the Bengal Assam and Civil Courts Act he can transfer appeal from the decision of a Munsif to the Civil Judge but there is no provision of law entitling the District Judge to transfer an appeal against the decision of a Special Judge 2nd Grade to a Civil Judge.

S. 45 There is no bar against a landlord acquiring property by sale, lease or succession after the making of the application.

THE UNITED PROVINCES
Encumbered Estates Act No. XXV of 1934.
As amended by Act IV of 1935.

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Brief Summary of The U. P. Encumbered Estates Act.

A landlord shall make an application under section 4 to the Collector, attaching with it a certified extract from the latest Khewat of all the mahals in which his landed property lies, showing the nature and extent of his proprietary rights in those mahals, whether protected or unprotected (rule 1). If he is a Hindu, he shall also comply with rule No. 2 and if necessary rule No. 3.

If the landlord makes two applications, the Collector shall report to the Board of Revenue under section 5 in accordance with rule No. 4. On receipt of the application, the Collector on acceptance, shall pass an order forwarding it to the Special Judge under section 6 and shall report only those public debts to the Special Judge, which require to be reported under rule 5. After the passing of an order under section 6, the consequences laid down in section 7 shall ensue. Soon after the Collector has forwarded the application to the Special Judge, he shall ask the tahsildar of each Tahsil in which the property lies, to submit a statement showing the pre-slump and post-slump profits of each separate property situated in a different mahal and in a different village, under rule 16 and the tahsildar in calculating pre-slump and post-slump profits shall take the value of sub-clauses (2) and (3) of section 2, clauses J and K in accordance with rules 17, 19 and 18, 20 respectively. On receipt of this statement, the Collector shall find out the transfer value of each separate property by multiplying the pre-slump profits with the transfer multiple selected by the Collector and given in appendix I under rule 21 and the instalment value by multiplying the standard instalment multiple with the post-slump profits under rule 22. The standard instalment multiples will vary from 5 to 7.5. If one-fifth of the standard transfer multiple comes to be less than 5, the standard instalment multiple will be taken to be 5 and if more than 7.5 it will be taken to be 7.5. The sum total of the transfer value of each separate property will be the transfer value of all the properties of the landlord and the sum total of the instalment values shall be the instalment value of all the properties. The transfer and instalment values of protected and unprotected properties shall be found out separately vide rule 23.

Procedure before the S. J.

Meanwhile the Special Judge shall call upon the applicant to submit a written statement under section 8 (1) and shall communicate this order to the applicant through the Collector under rule 7 but when applicant is the manager under the superintendence of the Court of Wards, the Special Judge shall send for the purposes of the proviso to section 8 (2) a copy of the application to the landlord by registered post under rule 8. Rules for publication of notice under section 9 (2) and section 11 (1) and service are contained in rules 9, and 11 to 14.

The creditors shall file the written statements under section 9 complying with the provisions laid down in section 10 duly verified in the manner prescribed by law for the verification of claims (rule 10).

ii BRIEF SUMMARY OF THE U. P. ENCUMBERED ESTATES ACT.

All claims to the property mentioned in notice under sections 11 (1) shall be made under section 11 (2) and the Special Judge shall determine whether they are liable to attachment, sale or mortgage in liquidation of debts under section 11 (2). The decree passed shall be deemed to be a decree of a civil court of competent jurisdiction.

Any creditor may get transfers made in between 30th April 1935 and the date of the application, annulled under section 12 by the Special Judge.

Claims if not made within the time and in the manner required by this Act, shall be deemed for all purposes and on all occasions to have been duly discharged (section 13).

The Special Judge shall determine the amount of debts under section 14 and the proceedings in his court will be governed by the provisions of the Civil Procedure Code but the evidence shall ordinarily be recorded by the Special Judge in English.

The S. J. shall in his decree rank all debts for priority under section 16 and shall also determine the amount of public debts reported to him by the Collector under section 17 and they shall be included in the total debt to be liquidated under chapter III (rule 55).

The effect of the decrees of the Special Judge shall be to extinguish all previously existing rights together with rights, if any, of mortgage or lien (section 18). The Special Judge shall send decrees under section 19 to the Collector for execution and he shall at the same time intimate to him the extent to which the debt to which the decree relates has been reduced and the amount of costs awarded against the debtor (rule 15).

Procedure before the Collector.

The Collector shall determine the amount of public debts not reported to the S. J. under section 21 in accordance with rules 56-58 and which are to be liquidated under chapter V of the Act.

On receipt of the S. J.'s report under section 19, the Collector shall summon the landlord and ask him to pay the whole debt or a part of it within a period of 2 months under section 22, rule 24 and if in order to do so the landlord wants to sell any of his property the Collector shall not sanction it under section 7 and if he sanctions, he shall sanction subject to rules 83 to 85 provided he considers the price fetched, fair and the whole price is deposited in his court (rule 24).

If the nature and extent of proprietary rights given in this application under section 4, differ from those reported by the S. J. under section 19 (2), the Collector shall recalculate the preliminary transfer and instalment values of the proprietary rights in land (rule 25) after summoning the landlord and the creditor under rule 26 and complying with rules 26 to 30.

Soon after the period of two months allowed under section 22 is over, the Collector shall proceed to realise the value of the property other than the proprietary rights in land under section 24 in compliance with rules 31 to 33.

If the debts still remain unliquidated and any person applies to take a mortgage under section 25 rule 34, the Collector shall proceed under rules 70 to 75.

The application must comply with rule 70 and must state the property of which and the period for which he is prepared to take the mortgage but the term must not be more than 20 years otherwise the application shall be rejected (Rule 71). When the Collector finds the application in order, he shall proceed to prepare a statement of the post-slump profits on the date of the application, of the property sought to be mortgaged

BRIEF SUMMARY OF THE U. P. ENCUMBERED ESTATES ACT. iii

and of the debtor's entire property. If he finds the profits of the former to exceed three-fourth of the profits of the latter he shall reject the application (section 25, proviso 1, rule 72). The Collector will calculate the value of a mortgage with possession under section 25 proviso 2 in accordance with rule 73 as follows:—

First he shall find out the instalment value of the property to be mortgaged by multiplying its post-slump profits with the standard instalment multiple (rule 22). Next he will select the figure in column B opposite the number of years in column A of appendix II for which the mortgage is to be taken and multiply the instalment value with this figure and the total by 0.15. The amount arrived at will give the value of the mortgage applied for. If the value exceeds the debt, the application shall be rejected, if not, the Collector shall grant the mortgage under rule 75. Under rule 76 after rejection of the previous application, another modified application may be made.

If at any time as laid in section 25, provisos 3 and 4, there is an alteration in the land revenue (R. 78) or otherwise, first the Collector shall determine under rule 77, the amount 'X' due to the mortgagee after the mortgage has run for an exact number of years and next determine the fresh post-slump profits and instalment value and calculate the period of the mortgage as follows:—(rule 78)

Let X be the amount remaining due and Y the figure in the column B of appendix II.

$$X = \text{instalment value} \times 0.15 \times Y.$$

We know the value of X and also the instalment value and therefore 'Y' can be calculated. In appendix II column B see the figure nearest the value of Y and next the corresponding figure in column A. That will give the period of mortgage. But if at any time any part of the revenue is remitted owing to a failure of the crop, the fresh period of the mortgage shall be determined under rule 79 by adding the loss to the amount due on the mortgage at the next whole number of years and calculating the period of the mortgage as above.

$$X \text{ plus loss} = \text{Instalment value} \times 0.15 \times Y.$$

Similarly if the mortgagor makes a part payment under section 41, the fresh period of the mortgage shall be determined under rule 80 as above, after deducting the sum received from the amount found due at the next whole number of years under rule 77 and proceeding as usual.

$$X \text{ minus sum received} = \text{instalment value} \times 0.15 \times Y.$$

If at any time there is a fresh settlement and the mortgaged property is brought under it, the fresh period of the mortgage will be determined under rule 81. The Collector shall take the net assets of the property which the Settlement Officer accepted for assessment, as the post-slump profits, determine the instalment value and the amount of the mortgage due at the next whole number of years according to rule 77 and next shall determine the fresh period of the mortgage under rule 78.

$$X = \text{Instalment value} \times 0.15 \times Y.$$

Thus rules 78 to 81 deal with four cases in which the fresh period of mortgage has to be determined.

A copy of the order altering the period shall be given by the collector to the mortgagor and the mortgagee. (rule 82).

But if no mortgage is granted under section 25, the Collector shall add all the transfer values and instalment values of the debtor's protected and unprotected properties and shall proceed as follows:—

(1) If the debt remaining due at the time is less than the instalment value of protected as well as unprotected land, i. e., of the whole proprietary rights in land

IV BRIEF SUMMARY OF THE U. P. ENCUMBERED ESTATES ACT.

the Collector shall liquidate under section 27 rule 35 and determine the amount of instalments and the period of repayment under rules 36 to 40 with the aid of appendix II.

Column A has a corresponding figure in column B. The rules make us take for granted that the debt denoted by figure in column B would be repaid with interest at 4½ per annum in the corresponding number of years in column A.

To find out what amount of debt shall be repaid with interest at 4½ per annum in a given number of years and at the given annual instalment, all we have to do is to multiply the amount of annual instalment by the corresponding figure in column B opposite the given number of years in column A.

(i) Amount of debt = annual instalment × corresponding figure in column B.

(ii) Annual instalment = Amount of debt ÷ corresponding figure in column B.

If we have to determine the amount of annual instalment, we have to divide the amount of debt by the corresponding figure in column B. Thus rule 36 gives us the formula to find out the annual instalment as well as the amount of debt that a given annual instalment would pay in a given number of years at 4½ p. m. interest. The Collector shall determine the maximum instalment paying capacity of the debtor in accordance with formula given in rule 37.

Maximum instalment = total instalment value ÷ 13.294.

This 13.294 is a fixed amount in every case. Next the Collector shall determine the period in which this maximum instalment will liquidate the debt under rule 38.

$\text{Debt/Maximum instalment} = P.$

The value of P found, would on comparison with column B of appendix II lie between two figures in column B. If the upper figure in column B is taken the debt will not be liquidated in the opposite number of years in column A but if the lower is taken, more than the debt would be repaid in the opposite number of years in column A.

Take the number of years opposite the lower of the figures but reduce the maximum instalment to some extent so that the exact amount of debt can be paid.

Final maximum instalment = debt/figure in column B opposite the number of the years taken.

Thus both the final maximum instalment and the period have been determined.

Under section 27 we have seen that instalments shall not be granted over a period of 20 years. So now the Collector shall determine the minimum annual instalment that would liquidate the debt in 20 years under rule 39.

Annual instalment = debt divided by Corresponding figure in column B (ii)

Minimum annual instalment = Debt/Figure opposite 20 years in Column B.

= Debt/13.294.

Thus the minimum instalment shall always be the debt divided by 13.294 in every case.

Having found out the final maximum instalment, its corresponding period and the minimum instalment payable for 20 years, the Collector will, having regard to the circumstances of the case so that neither should the period be too long nor the amount too small, fix the period and calculate the annual instalment according to the formula given above. These instalments will be payable to the Government and the Government will issue bonds under section 30, rule 45.

BRIEF SUMMARY OF THE U. P. ENCUMBERED ESTATES ACT. v

II. Where the debt exceeds the total instalment value of the protected as well as the unprotected property, the Collector shall proceed under section 28. If the debt is less than the sum total of the transfer value of unprotected property and instalment value of protected property, he shall proceed under section 28 (I). But if it exceeds, he shall proceed under section 28 (II). See rule 41.

If the case comes in section 28 (1) the Collector will make calculations as follows:—

Herein two cases would arise (1) Where there is no protected property and (2) where there is both protected and unprotected property.

(1) In cases where there is no protected property, the Collector will first determine the share of unprotected property that has to be transferred to creditors. The following formula is adopted for the purpose.

$$\text{Share} = \frac{\text{The debt minus the instalment value}}{\text{Transfer value minus instalment value.}}$$

After determining this share and its corresponding transfer value, the Collector will find out what debt is still to be liquidated and next proceed to determine the annual instalment that would pay this remaining debt in 20 years.

Minimum annual instalment is equal to $\text{debt}/13.294$.

The landlord will pay this remaining debt to the Government in annual instalments for 20 years.

Thus the whole debt will be liquidated by the transfer to the creditors of the above share of unprotected property and 20 annual payments to Government and the Government shall issue bonds to the creditors for the debts remaining after the transfer of share, under rule 46, section 31. Under this rule the debts highest in rank will be liquidated by bonds and the rest by transfer of share. The share of unprotected property transferred to each creditor will be his debt divided by the transfer value of the whole unprotected property.

Note. The fraction of share may be rounded upwards slightly to fix a convenient fraction.

II. In cases where there is both protected and unprotected property the Collector will determine the share of unprotected property to be transferred to the creditors according to the following formula:—

$$\text{Share} = \frac{\text{Debt minus the total instalment value of both properties.}}{\text{Transfer value of unprotected property minus its instalment value.}}$$

Next just in case I, the annual instalment payable to Government for 20 years will be determined by dividing the remaining debts by 13.294.

Note. Here also the fraction may be slightly rounded up to make it convenient.

If the share found is equal to or greater than unity, the whole of the unprotected property will be transferred and the landlord will pay 20 instalments each of an amount = instalment value of protected land/13.294 to the Government, who will issue bonds to the creditors for the amount remaining due under rule 46, section 31.

When the case comes in section 28 (2) rule 43 there will arise three cases. (I) Where there is no protected property. (II) Where there is both protected and unprotected property and (III) Where there is only protected property and no unprotected property.

I. In the first case because the debt must exceed the transfer value of unprotected property, the whole of the unprotected property will be transferred to the creditors in the order of priority of debts and the lowest rank creditors left after the transfer of

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the whole unprotected property will get nothing. No bond at all will be issued in such cases—see rule 47, clause I.

II. In the second case the whole of the unprotected property will be transferred to the creditors and the landlord will in addition pay to the Government 20 instalments each equal to the instalment value of the protected property divided by 13.294. It should be remembered that protected property is incapable of transfer except for the life term of the landlord and therefore the Government has framed section and rule for taking instalments for 20 years. If any creditor is left unsatisfied, he will get nothing. In such cases the creditors whose debts are the highest in rank in the order of the Special Judge under section 19 will be given bonds as in rule 46 and the rest will be allotted shares. Each creditor who is to get shares, will get a share = Debt/Transfer value of unprotected property.

When the whole unprotected property has been dealt with the remaining creditors will get nothing. See rule 47 Clause II.

III. In the third case there is no property for transfer and only bonds equal to the instalment value of protected property will be issued and the creditor will get them in order of priority and after the bonds have been distributed no creditor will get anything. See Rule 47 Clause III.

If the Collector finds that the landlord is unable to maintain himself or his family, after allowing for short collections and the cost of management of property left with him out of the percentage profits left after meeting the annual instalments, the Collector shall prepare a fresh liquidation scheme after reducing the instalment multiple—rule 44. The annual instalment should be fixed in accordance with rule 44, clause (V). The Collector shall give option to the creditors in the order of their priority either to take bonds or share in unprotected property (rule 48).

If the Collector issues bonds of a certain amount, and the value of the bonds to be issued to a creditor is not an exact number of bonds the Collector will either ask the debtor to pay the sum above the exact number of bonds or ask the creditor to pay the remaining sum to him to grant an exact number of bonds (rule 49).

If the debtor owns several unprotected properties X, Y and Z and objects to the grant of shares in any one of them but has enough other unprotected property to liquidate the debts, the Collector shall grant shares in it in accordance with the method laid down in rule 50. It may be noted that in the example under rule 50 value under section 33 is obtained by multiplying the post-slump profits by the transfer multiple given therein.

If any creditor, who has been granted share in the property, wants to have it sold, he should apply within three months of the passing of the transfer, to the Collector under section 34 for sale of that share and the Collector shall sell it and charge $\frac{1}{4}$ per cent of the sale price (rule 91) and pay the rest to the creditor. Persons entitled to possession of any property under this Act shall be put into possession by the Collector (section 35).

Annual instalments shall be paid along with land revenue and cesses in instalments in which the land revenue is paid (rule 53). Under section 29 arrears will be recoverable as arrears of land revenue (rules 59 to 61). If any two consecutive instalments are in arrears and are not paid within six months of the falling due of the 2nd instalment the Collector shall report under section 29, rule 62 and the Government shall order as laid down in rule 62.

BRIEF SUMMARY OF THE U. P. ENCUMBERED ESTATES ACT. vii

When the produce is below normal in any year the Collector may decrease the amount of annual instalment under section 36 in accordance with rule 63 and in that case he shall revise the instalment and the period as laid down in rule 64.

First the amount due on the next date following the season in which instalment was reduced, will be determined by multiplying the annual instalment by the figure in column B against the number of years the instalments have still to be paid. To this amount will be added the amount reduced in the last instalment and not paid. This amount divided by the figure in column B opposite the number of years, i. e. the same figure which was taken above, shall give the amount of annual instalment. But if the Collector considers it to be more, he can increase the period and by dividing the debt by the figure in column B against the number of years taken the instalment is obtained. We shall have the instalment determined and the same would be paid for the number of years taken. If the instalments require revision, either due to alteration in the land revenue or change in the circumstances of the debtor under section 37 or redetermination of instalment under section 38 at the revision of settlement, the Collector shall redetermine the number and amount of instalments in accordance with rules 64, 65 and 67.

Principle of calculation will be that laid down in rule 64. First the amount of the outstanding debt will be found as given above. Next the new instalment value will be found by multiplying the instalment multiple with the new post-slump profits. Dividing instalment value by 13.294 the result will give us the amount of maximum instalment. Dividing the remaining debt by the maximum instalment we shall get a figure which would lie between any two figures in column B. The years against those figures will be noted down. The lower figure and the year against it will be taken and the instalment found by dividing the debt by the figure against the number of years taken. It should be remembered that if the amount is to be altered owing to change in circumstances of the debtor the Collector before whom liquidation proceedings were carried shall determine the number and amount (rule 67) otherwise the Collector in whose district the property, whose land revenue was altered lies, shall determine the same (rule 66).

The provisions of Bundelkhand Act II of 1903 shall not effect the order of payment by instalments or by transfer of the debtor's proprietary rights in land under its jurisdiction (section 39).

Although the Oudh Settled Estates Act and the U. P. Estates Act prohibit the creation of a charge on property registered under them, yet section 40 of the Encumbered Estates Act negatives that provision and lays down that the Collector shall distribute the amount to be paid in instalments over the landlord's separate properties left with him in proportion to the land revenue, real or nominal, payable by him, or if the Collector thinks fit, in proportion to the instalment value of each property, and shall declare the amount allotted to each property, a charge on that property (rule 51). The Collector shall determine the amount payable every year by each separate property along with its land revenue and cesses by dividing the amount allotted to that property by the figure in column B of appendix II against the number of years in which the debt has to be paid. But if the number of years is 20 this figure will always be 13.294 (rule 52).

Under rule 54 a final liquidation award will be prepared by the Collector and copy given to each creditor and the landlord. The Collector will also grant a certificate to each creditor showing the amount reduced by the Special Judge and the amount lost by him by the transfer of land.

VIII BRIEF SUMMARY OF THE U. P. ENCUMBERED ESTATES ACT.

If the debtor pays a lump sum towards the liquidation of the debt under section 41 he shall declare his wishes for its apportionment and the Collector shall accordingly make a necessary alteration in the amount payable along with the land revenue of each of the property affected. (rule 68). Period of 20 years can be exceeded when the number of annual instalments is varied under chapter V (rule 69).

Section 42 provides for restoration of possession after the expiry of the period of the mortgage. Section 43 lays down the consequences of quashing proceedings under section 20 while section 44 lays down when disabilities imposed under section 7 shall cease. No transfer or lease of property other than proprietary rights in land shall be sanctioned by the Collector if it is against the interest of creditors (rule 83), and no transfer of proprietary rights in land shall be sanctioned before the liquidation scheme is completed, which will prejudice the interests of creditors individually or collectively (rule 84.) No transfer of proprietary rights in land shall be sanctioned after the preparation of the liquidation scheme, if such transfer in the opinion of the Collector will render the collection of instalments more difficult (rule 85). If the transfer is sanctioned, charge on the property transferred, of the instalments, shall be brought home to the transferee and he should be asked to pay the same (rule 85). Sections 45 and 46 deal with appeals and revisions respectively. Section 47 provides that proceedings before the Special Judge or the Collector under this Act are unquestionable. Section 48 deals with insolvency proceedings.

Section 49 lays down that if the landlord is indebted in his own account but applies in respect of debts due from the deceased ancestor only or if he has appropriated the assets of the deceased, he should either apply in respect of his whole property or pay his personal debts and the value of the property appropriated or withdraw the application. If he elects neither, the application shall be rejected.

Section 50 provides that proceedings would continue and would not abate on the death of the landlord, if a notice has been published under section 9. Section 51 provides that investigation conducted by the Special Judge shall be deemed to be a judicial proceeding and he shall be deemed to be a public servant. Section 52 provides that the Special Judge shall have the same powers as the Civil Court for production of documents, awarding of costs and compelling attendance of witnesses. Section 53 protects all public servants for anything done by them in good faith pursuant to this Act.

Rules 87 to 89 deal with the powers conferred on all Assistant Collectors holding sub-division and exercising first class powers to exercise powers of a Collector under section 54.

Fee of the lawyers in respect of claims before the Special Judge has been held to be the same as prescribed for regular suits (Rule 93). Section 55 lays down the matters for consideration of the Local Government while framing multiples.

Section 56 provides that instalments may be revised in case there is change in rules for determining multiples.

Section 57 gives powers of transfer of cases to the Collector from his court to that of any Assistant Collector of first class exercising first class powers and holding charge of a sub-division and withdrawing cases so transferred.

Section 58 gives powers to the Board of Revenue to transfer proceedings from the court of one Collector to another in accordance with rule 90.

Section 59 provides that the powers of the Collector under the Land Revenue Act for collection of land revenue or any money recoverable as land revenue shall be unaffected.

Rule 92 provides for payment of interest on bonds on presentation of the same by the lawful holder.

UNITED PROVINCES ENCUMBERED ESTATES ACT

To whom applicable	Benefits	Disadvantages	Remarks
<p>Landlords including proprietors of a mahal or a part, ubaridars, under-proprietors or sub-proprietors, proprietors of specific plots.</p> <p>Exceptions—Mortgagees or thekaddars or persons paying local rate less than 1/-</p> <p>Note.—These exceptions were included in the definition of Agriculturist in the A. Relief Act.</p>	<ol style="list-style-type: none"> 1. Apportionment of liability in the case of joint debtors or members of a joint Hindu family. 2. Discharge of claim, if claimant puts in no appearance. 3. Application of the Usurious Loans Act and the principle that the interest shall not exceed that portion of the principal which may still be found due on the date of the application. 4. Treatment of that accumulated interest alone as principal, which was converted into principal before 31st December, 1916, and not after. 5. Extinction of all previously existing rights of mortgage or lien. 6. Liquidation of debts in the special manner provided by this Act. 7. Stay of all proceedings or suits after order under Sec. 6. 8. Jurisdiction of S. J. 	<ol style="list-style-type: none"> 1. All property to be made applicable for payment of debts. 2. Incompetency to make transfer by sale, mortgage etc. after order under Sec. 6. 	<ol style="list-style-type: none"> 1. Temporary Enactment. 2. Persons who have made an application under this Act, cannot make an application under the Temporary Regulation of Execution Act. 3. Regulation of Sales Act will be inapplicable in cases where relief has been granted under the Encumbered Estates Act as no agricultural land is to be sold in that case by the Collector in execution of the decree. 4. Provisions of Usurious Loans Act X of 1918 will be applicable to proceedings under this Act. 5. Provisions of Agriculturists' Relief Act 1934 will not be applicable.

THE UNITED PROVINCES
Encumbered Estates Act No. XXV of 1934.

As amended by Act IV of 1935.

[PASSED BY THE LEGISLATIVE COUNCIL OF THE UNITED
PROVINCES OF AGRA AND OUDH.]

*An Act to provide for the relief of Encumbered Estates in
the United Provinces.*

WHEREAS it is expedient to provide for the relief of Encumbered Estates in the United Provinces and whereas the previous sanction of the Governor-General under section 80-A of the Government of India Act has been obtained to the passing of this Act ; It is hereby enacted as follows :

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called the United Provinces Encumbered Estates Act, 1934.

(2) It extends to the whole of the United Provinces of Agra and Oudh except the districts of Garhwal and Almora, the Naini Tal tahsil of the Naini Tal district and the tract of Jaunsar Bawar of the Dehra Dun district.

(3) (a) This Chapter and Chapter III shall come into force on such date as may be notified in the Gazette by the Local Government in that behalf.

(b) The remaining chapters shall come into force on the expiry of a period of one year from the date notified under the provisions of clause (a) :

Provided that the Local Government may from time to time by notification in the Gazette bring the said chapters into effect in any district or districts on any earlier date or dates.

Object of the Act. This Act it seems, has been framed with a view to help those landlords who were burdened with private debts and whose property is also encumbered. At the time the loans were advanced, the value of the property offered as security was very high but now due to the shrinkage of the prices of the immovable property, they find that they are in hot waters for no fault of theirs. To place them as far as possible on the same footing when prices were high, this Act has been enacted as a temporary measure to compensate the loss due to the fall in prices and to enable them to discharge their debts in full as far as possible. The debtors, who come under this Act benefit in two ways.

(1) That the debts will be scaled down by reduction of interest. (2) That these reduced debts will be liquidated by the property valued according to the pre-slump rate. It is analogous to the Provincial Insolvency Act as the whole property of the debtor will be made available to the court. It may be noted that the provisions of this Act have mostly been borrowed from the Bundelkhand Encumbered Estate Act of 1903.

Section I, sub-section 2.—Some districts have been excluded from the operation of this Act and therefore in these parts, the Encumbered Estates shall not benefit under this Act.

Commencement of the Act.—The whole Act came into force with effect from 30th April 1935 vide Notification No. 329, Revenue Department, dated the 27th April 1935.

The Amendment Act also came into force with effect from 27th July 1935 vide Notification No. 601, Revenue Department, dated 27th July 1935.

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

Definitions.

(a) "debt" includes any pecuniary liability except a liability for unliquidated damages ;

Proposed change—

2. In section 2, clause (a), substitute a "comma" for "Semi-colon" and add after the words "unliquidated damages" the following :

"Maintenance, decree for torts, trust money, trade debts unconnected with zamindari, and arrears of rents for houses and shops."

2(a) Unliquidated damages.

It was held by the Board in 1937 R. D. 131 and 204 that the usual meaning of unliquidated damages is "damages that have not been ascertained" and once the amount of damages has been settled in a decree they cease to be unliquidated.

Mesne profits are unliquidated damages—*Champa Devi versus Asa Devi*—1937 R. D. 577 (H. C.)=1937 A. L. J. 945. Followed in 1938 R. D. 35=1937 A. L. J. 1139.

"Liquidated damages." Means damages assessed beforehand by the parties to an agreement or fixed by some statute—1937 R. D. 577 at 580.

Instances of unliquidated damages.

Compensation for breach of contract, damages for malicious prosecution, defamation, libel or slander or damages for unlawful acts, claim for mesne profits and the like.

Debt means a present obligation to pay a liquidated sum of money and it is not sufficient that it may be ultimately recoverable—I. L. R. 24 Mad. 139 at 144.

(b) "private debt" means any debt other than a public debt ;

(c) "public debt" means a debt due to Government, or to a local authority ;

Local Authority means a Municipal Board, District Board or other authority legally entitled to be entrusted by the Local Government with the control or management of a Municipal or local fund.

(d) "land" means a share of or interest in a mahal in the United Provinces, but does not include the interest of a mortgagee or *thekadar* or an assignment of land revenue unless it is transferable and perpetual ;

Land does not necessarily mean land used for agricultural purposes. Section 2(d) merely defines land as a share or interest in a mahal. A person therefore owns land, if he has a share or interest in a mahal and a liability to pay revenue and rates, even though his share is included in Municipal limits and he pays water rate and house-tax—1937 R. D. 332, at p. 334.

(e) "protected land" means land to which the provisions of the Oudh Settled Estates Act V of 1917 or of Part II of the United Provinces Estates Act VII of 1920, apply and "unprotected land" means land to which these provisions do not apply ;

Protected land and unprotected land.

Settled Estate in the Oudh Settled Estates Act V of 1917 or the U. P. Estates Act VII of 1920 means immoveable property for the time being subject to the provisions of these Acts by virtue of a declaration made under either of these Acts.

The effect of the declaration is that no person entitled to a settled Estate shall have power to transfer, dispose of, alienate, convey, charge, encumber or lease the same or any part thereof or the profits thereof, for any greater or larger interest or time than during his life nor shall such estate be held to vest in such person for any larger or greater interest or time than for his life. Land subject to these Acts is termed protected land and land not subject to these Acts is termed unprotected land.

(f) "mahal" has the same meaning as in sub-section (4) of section 4 of the Land Revenue Act III of 1901 ;

(h) "landlord" means a proprietor of a mahal or of a share of or interest in a mahal, and includes an ubaridar, an under-proprietor or a sub-proprietor and a proprietor of specific plots, but does not include a mortgagee or a *thekadar* ;

Provided that no person shall be deemed to be a landlord if his land is assessed to less than a local rate of one rupee under section 109 of the District Boards Act X of 1922 ;

Proposed change—

3. In section 2, clause (g), substitute colon after the words "a Thekedar" and add the words :

"or a person whose principal sources of income is trade or service."

Ubaridar is a life grantee, dependant on the good behaviour of the grantee. It carries with it the privilege of payment of a reduced demand of land revenue. (District Gazetters of Jhansi and Jalaun).

"His land" meaning of

These words must mean all the land which applicant holds as landlord in the province on the basis of which he makes his application—1937 R. D. 332 at 333.

Qualification for a landlord.

The requisite qualification for a landlord is that the land held by him is assessed to a local rate which shall not be less than Re. 1 and not that he must pay Re. 1 as local rate—1938 R. D. 334. But mortgagees and thekadaras are not landlords.

- (h) "sir" has the same meaning in Agra as in the Agra Tenancy Act III of 1926 and in Oudh as in the Oudh Rent Act XXII of 1886 ;
- (i) "khudkasht" means land, other than *sir*, cultivated by the landlord with his own or hired stock or by his own or hired labour ;
- (j) "pre-slump profits" of land mean the balance left after deducting the amount of the annual Government revenue, if any, without allowing for the remission for the fall in prices and the rates payable annually under the United Provinces Local Rates Act I of 1914, or any other Act for the time being in force, from the aggregate amount of—
- (i) the rent which the landlord is entitled to receive annually from his tenants without deducting the remission due to the fall in prices.
- (ii) the rent determined in accordance with rules framed by the Local Government which the landlord would have to pay annually for his *sir* and *khudkasht*, if any, if he were an exproprietary tenant thereof without making any allowance for the remission for the fall in prices,
- (iii) all other profits annually receivable by the landlord, and
- (iv) in the case of profits occasionally receivable or varying in amount from year to year other than the

price of timber trees sold, the average annual amount of such profits from the end of the year 1338 *Fasli* ;

- (v) one-fifteenth part of the estimated price of timber trees owned or possessed by the landlord situated on his land.
- (k) "post-slump profits" of land mean the balance left after deducting the amount of the annual Government revenue, if any, as reduced by the remission for the fall in prices, and the rates payable annually by the Proprietor under the United Provinces Local Rates Act I of 1914, or any other Act for the time being in force from the aggregate amount of—
- (i) the rent which the landlord is entitled to receive annually from his tenants as reduced by the remission for the fall in prices ;
- (ii) the rent determined in accordance with rules framed by the Local Government which the landlord would have to pay annually for his *sir* and *khudhasht*, if any, if he were an exproprietary tenant thereof after allowing for the remission due to the slump in prices ;
- (iii) any other profits annually receivable by the landlord ;
- (iv) in the case of profits occasionally receivable or varying in amount from year to year other than the price of timber trees sold, the average annual amount of such profits from the end of the year 1338 *Fasli* ;
- (v) one-fifteenth part of the estimated price of timber trees owned or possessed by the landlord and situated on his land :

Provided that in calculating the pre-slump profits no regard will be had to remissions of rent and revenue and in calculating the post-slump profits no regard will be had to remissions of rent or revenue other than those for the fall in prices :

Provided also that if the pre-slump profits as calculated in accordance with sub-clause (j) are less than the post-slump profits the pre-slump profits shall be calculated in the manner laid down for calculating the post-slump profits in sub-clause (k) ;

These definitions are rather important for the purposes of this Act as on these depend the calculation of instalment value and transfer value.

Pre-slump profits is the sum total of the following.

- (1) The rent due to the landlord.
- (2) The rent which he would have had to pay for his *and sir khudkash*, had he been an expropriatory tenant. This rent would be determined in accordance with rule 17. The rent under this clause will be calculated only if the zemindar holds *sir and khudkash*.
- (3) Annual profits due to the landlord, *e.g.*, cesses nazrana, haq-i-chaharum, etc.
- (4) Average annual amount of occasional profits *e.g.*, Sewai or Sayar.
- (5) One-fifteenth of the estimated price of timber trees belonging to him and in his possession minus the land revenue and the rates payable annually under the U. P. Local Rates Act I of 1914 or any other Act.

Note. In Bundelkhand Encumbered Estates Act this clause V was absent.

It should be remembered that no remission either due to fall in prices or to any other cause will be taken into account in the calculations of the land revenue or the rents. See rule 16 also.

Post-slump profits is the sum total of the above items (1) to (5) minus the land revenue and the local rates or any other rates after allowing only for the remissions in rent and revenue due to fall in prices and no more. See rules 18 and 20.

It was for the first time in 1339 F that remissions in land revenue and rent were granted for the fall in prices.

Proviso 2. This lays down that when the pre-slump profits are found to be less than the post-slump profits, the post-slump profits shall be deemed to be pre-slump profits. But such cases would be rather rare.

(l) "instalment value" of the proprietary rights in land means the sum which could be repaid with interest at the rate specified in section 27 by instalments over a period of 20 years out of the profits of that land after making due allowance for short collections, the cost of management and the maintenance of the landlord and his family ;

(m) "transfer value" of proprietary rights in land is the valuation at which such proprietary rights would be transferred to a creditor under this Act in liquidation of a debt.

These should be read with section 26 and section 55. First the Local Government shall frame rules under section 55 for the guidance of the Collector in determining multiples under section 26 having regard to (1) the market value of land in the area or areas where the landholder's property is situated (2) the percentage of the post-slump profits to be retained by the landlord for the maintenance of himself and his family and for the management and upkeep of the property.

When the Collector has determined the instalment and transfer multiples of the different properties of the debtor under section 26 in accordance with the rules framed

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by the L. G. under section 55, the instalment value shall be such instalment multiple of the post-slump profits in the fasli year of the application while the transfer value shall be such transfer multiple of the pre-slump profits in the fasli year of the application.

By *instalment value* will be meant the sum repayable with interest at the rate specified in section 27 in instalments spreading over a period of 20 years, out of the profits of that land after allowing certain percentage of profits for the maintenance of the landlord and his family and for the cost of management and upkeep of the property and for short collections, which would mean collection of petty sums. In section 55 there is no provision of due allowance for short collections, That will be done by the Collector under section 26. In this definition there is no provision for the maintenance of dependents and upkeep of the property, but in section 55, clause (2) regard will be had to them also while framing rules. See rules 22 and 44.

By *transfer value* is meant the amount for which the property, whose transfer value has been determined, would be transferred to a creditor in liquidation of a debt under section 31. See rule 21. Also see notes under section 26.

Instalment value is the product of the multiplication of instalment multiple by the post-slump profits of the property whose instalment value is to be found.

Transfer value is the product of the multiplication of the transfer multiple by the pre-slump profits of the property whose transfer value is to be found.

CHAPTER II

APPOINTMENT OF OFFICERS.

3. (1) The Local Government may appoint any civil judicial officer to be a Special Judge of the first or second grade for any local area and such Special Judge shall, subject to the orders of Government as regards the area and extent of his jurisdiction, exercise the powers conferred, and perform the duties imposed, on him by this Act.

(2) The Local Government may suspend or remove any Special Judge so appointed.

Jurisdiction of the Special Judges 1st grade and 2nd grade.

They shall have jurisdiction only in respect of applications to which the landlords land revenue payable and nominal unreduced by the remission for prevailing low prices is over Rs 500/-per annum or Rs 500/-per annum respectively—Notification No. 767, Revenue dated 9th Oct. 35.

Sec.
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CHAPTER III.

THE APPLICATION.

4. (1) At any time within one year after the date on which this chapter comes into force any landlord who is subject to or whose immoveable property or any part thereof is encumbered with private debts, may make an application in writing to the Collector of the district in which his land or any portion of his land is situated stating the amount of such private debts and also of his public debts both decreed and undecreed and requesting that the provisions of this Act be applied to him :

Application for benefit of Act and time within which it may be made.

Provided that when the property of any landlord is under the superintendence of the Court of Wards any application under this section shall be made by the manager of his property, and when any landlord is by reason of personal incapacity disqualified from instituting any proceeding in a Civil Court, an application under this section may be made on his behalf by his legal or natural guardian or any person actually managing his property :

Provided also that no application by a member of a joint Hindu family shall be entertained unless—

- (a) all the members of such family join and the fact is stated in the application, or
- (b) the applicant makes in the application an express declaration of his intention of separating from the joint family and states the names and addresses of the remaining members of the family and the share which the applicant would be entitled to get on partition of the family property.

Provided also that no landlord who has been adjudicated insolvent and has not been discharged shall apply under this section :

Provided also that if an application under this section is made by all the heirs of a deceased debtor who are not members of a joint Hindu family, then this fact shall be stated in the application :

Provided also that if an application under this section is made by one or more but not by all the heirs of a deceased debtor who are not members of a joint Hindu family then this fact shall be stated in the application and the names and addresses of those heirs

who have not joined in the application and the shares of all the heirs in the property inherited by them from the deceased debtor will be mentioned in the application.

(2) The Local Government may by notification in the Gazette extend the time prescribed for making applications under this section for a further period of six months.

(3) If within three months after the date on which Chapter III of this Act comes into force a landlord has applied for amendment of a decree under the provisions of the United Provinces Agriculturists' Relief Act, 1934, the period from the date of his application to the date of the final disposal thereof shall be excluded from the period within which he may make an application under sub-sections (1) and (2) of this section.

(4) If a landlord presents an application under this section within a period of six months next following the last date on which an application may be made under the provisions of sub-section (1) or (2) of this section, as the case may be, and satisfies the Collector that he was prevented by any sufficient cause from applying within the period prescribed by those sub-sections, the Collector may accept the application,

Landlords—U. P. Encumbered Estates Act is intended for the benefit of landlords who were landlords at the time the Act came into force or became landlords by succession within the period prescribed in section 4 of the Act and such landlords alone are entitled to its benefits. It is not intended for the benefit of landlords who became such after the Act came into force, as if such persons purchased any property or became possessed of it, they did so with their eyes open and subject to any encumbrances existing on it; and that they were not landlords within the meaning of the Act and were therefore not competent to bring an application under Section 4—*Bidhichand versus Karorimal* (B. R.) 1936 R. D. 375 at 380. Followed in 1937 R. D. 103, 105, 158, 163 and 199 and 1938 R. D. 118, 332, 556. A person was a landlord when the Act came into force *i. e.* on 30th April 1935. Subsequently in July, he appears to have divested himself of his proprietary rights. In order to secure the protection of the Act he managed to recover a portion just sufficient to bring him within the definition of a landlord. On the day following he presented an application under Section 4. He was held to be entitled to make the application because he was a landlord on 10th April 1935—*Bhola Nath versus Roshan Singh* 1937 R. D. 358.

Landlord under the Act must mean the landlord whose name is recorded in the revenue papers. Accordingly where a landlord executes a conditional sale of his land and thereafter, in mutation proceedings, his name is expunged from the khewat, he is no longer a landlord within the meaning of the Act, in as much as he is no longer responsible for the land revenue in any shape or form—*Radha Krishna versus Mahabir* 1937 R. D. 146. 1936 R. D. 333 referred; 1937 R. D. 146 was relied upon in 1938 R. D. 338 and 354 where it was held that a landlord divesting himself by an

out sale is not entitled to protection on the strength of an agreement to repurchase contained in the sale deed itself or separately. Where a person was not a landlord when the Act came into force, a subsequent transfer of zemindari property by a deed of gift executed in his favour by his father, cannot entitle him to make the application because so long as the father lives, the son cannot be accepted as an heir as contemplated by the 4th and 5th provisos of S. 4—1938 R. D. 556.

Hindu son—A Hindu son, whose name is not recorded in the Khewat, is not competent to bring an application under section 4 merely because he thinks that he has got a share by Hindu Law in the property—Brij Raj Singh *versus* Official Receiver 1936 R. D. 333 and 1938 R. D. 556.

Trustees—Duly constituted trustees, acting on behalf of a landlord, can make an application under section 4—1937 R. D. 91.

Whether Revenue Court alone competent to decide the question whether applicant is a landlord.

It is only the Collector who can give a decision as to whether the applicants under Section 4 E. E. Act are, as members of a joint Hindu family landlords within the meaning of Cl. (g) of Sec. 2 and of the proviso attached thereto. It is not open to the Collector to leave the decision on this point to the Special Judge—Sri Dhar Lal *versus* Ram Saroop 1937 R. D. 77 and 158. Also see 1938 R. D. 544.

Duty of the Collector—He must satisfy himself that the provisions of section 4 are fulfilled—1937 R. D. 498 : 77 and 101, 189. The attachment of a copy of the Khewat does not absolve the Collector from his responsibility, in as much as the extract from the Khewat is merely a piece of evidence which can be rebutted by an objecting party—1937 R. D. 77. It is his duty to see that the applicant is a landlord. He is competent to scrutinize application whether it is duly made—1936 R. D. 375. Where the court fails to notice that no copy of the Khewat was attached to the application as required by rule 1, and passes an order without enquiry of any kind, the order will be cancelled—1937 R. D. 189.

Whether Collector alone can decide that the application was duly made—Yes vide 1937 R. D. 478. He should not refer the objection to the Special Judge—1937 R. D. 358. He can call record from the court of the Special Judge—1937 R. D. 163 and 199. Also see 1938 R. D. 544.

Meaning of the Word 'duly' made—The word 'duly' means in accordance with law and rules governing the subject—1936 R. D. 333 and 375. An application filed without extracts from Khewats is not duly made and the Collector should withhold orders under section 6 at least until the extracts are filed—1936 R. D. 375.

Special Judge whether can question the order passed by the Collector on the application made under section 4.—It is not open to him to refuse to proceed with the application on the ground that the applicant was not entitled to apply under Section 4 or that the Collector should not have treated the application as one "duly made" He has no option but to follow the procedure laid down by the Act—1937 R. D. 555. (H. C.)=1937 A. L. J. 867 and 1938 R. D. 64=1937 A. L. J. 1207.

Objection by creditor before Collector, if can be heard and limitation for the same. It is true that the Act does not provide for the formal issue of notice to objectors or for the formal filing of objections. Nor does it lay down that if the objections are filed, the objectors should be called and heard. It

does not, however, forbid objections and if an objection is filed, it is within the competence of the Collector to consider it and take any action thereon that he considers fit—1936 R. D. 375. The usual method is to file an application for review under O. 47 C. P. C. for which there is a limitation of three months. No doubt the court can extend the time for good reasons as for instance in case of persons who have tried to take an advantage which was not intended for them or persons who have failed to comply with the express provisions of the Act and rules—1938 R. D. 365 at 367. If an application has been accepted although not duly made, the court can cancel an order which was manifestly wrong—1936 R. D. 333. This view does not stand good now because the Collector cannot cancel himself. He can only recommend to the Board of Revenue.

Proper order on the creditors objection—If the Collector finds that the applicant, not being a landlord, within the meaning of the Act, is not entitled to protection of the Act, he has no right to cancel the order passed by him but should submit the matter to the Board for orders in revision under Section 46 with a recommendation that his order inadvertently passed under Section 6 should be cancelled—1937 R. D. 358, 146, 478, 332, 371, 268, 199, 158, 482, 103, 105, 1938 R. D. 366 and 544.

He can review his order under O. 47 Rule 1 but is not competent to cancel it. If he finds that the order under Section 6 should not have been passed he should refer the case to the board in revision with a recommendation that his order be set aside—1937 R. D. 103.

Nondisclosure of members of a Joint Hindu family and its effect. Proper remedy thereof.

The second proviso of S. 4 is a mandatory provision and no application under his section can be entertained unless the application complies with the proviso. If therefore an applicant fails to disclose the existence of sons who are joint with him, the omission whether accidental or deliberate, is most material, and the application under that section cannot be said to have been duly made. It is not possible, after the expiry of limitation to allow the applicant to correct his application in such a way as to bring it within the requirements of law. The application must be rejected—1937 R. D. 368, 568, and 1938 R. D. 197, 148, 268, 334 and 352. But if the request had been made within the period of limitation, then an amendment would be permissible so far as this is allowable under the C. P. C.—1937 R. D. 568.

The applicant is not entitled to amend under O. VI R. 17 C. P. C. in a case where he had made a very specific assertion that there were no other members of the joint family—1938 R. D. 137. In 1937 R. D. 590 amendment was allowed after the expiry of limitation as the applicants realizing the mistake came forward at the earliest opportunity. In this case the distinguishing feature was that the applicants, unintentionally omitted to sign the application as guardians of their minor sons. The grace given in 1937 R. D. 590 should be confined to persons who have obviously made a genuine slip which they seek to correct at earliest possible moment—1938 R. D. 552.

Who can amend the application ?

Application defective in as much as two sons not shown—Collector alone and no Special Judge can amend—1938 R. D. 112.

Mutwali and his right to apply.

He is entitled to apply—1938 R. D. 196.

Malikana adna—is a sub-proprietor and as such he can apply provided he can prove that he pays the local rate required—1938 R. D. 119,

Manager of wakf property.

He is entitled to apply—1938 R. D. 201.

Groveholder.

A groveholder who pays no land revenue or cesses is not a landlord under the Act and therefore cannot apply—1938 R. D. 202.

Interpretation of landlord.

There is no need to go to another Act for assistance in interpreting the definition of landlord given in the E. E. Act—1938 R. D. 41.

Description of wife as member of a joint Hindu family.

It is not of much importance and will not vitiate the application—1938 R. D. 41.

Gift by a landlord—

Proposed applicant under Section 4 transferring bulk of property by a gift deed in consideration of the donee undertaking to conduct the litigation under the E. E. Act and to find finance for the same, and the deed of gift entitles the donee to apply for mutation forthwith, then there is a transfer of proprietary rights for a consideration. The donee cannot join in the application under Section 4. Since in such a case property passes to the donee, it follows that if the property retained by the donor does not pay Rupee 1 local rate, he will not be entitled to apply under Section 4—1938 R. D. 83.

Second application if maintainable after dismissal of the first—It was held in 1937 R. D. 38 that the dismissal of an application for the restoration of an original application does not debar the applicant from making a second application under the Act, the two remedies prescribed by O. 9 R. 4 C. P. C.—one to bring a fresh suit, and the other to apply for an order for setting aside the dismissal being not mutually exclusive.

Period within which an application could be presented—

The application was to be presented at any time within one year after the date on which Chapter III came into force. Chapter III came into force on 30th April 1935. The application could be made within one year, not from but after that date. Thus limitation ran from the 1st May 1935 and expired on the following 30th April, not on the following 29th April. Under clause 2 of the same section the Local Government was empowered to extend this period by six months. By Notification No. 812/VII/I-434, dated the 1st April 1936, the time prescribed for making application under Section 4 was extended by a further period of six months; this can only mean six calendar months from 1st May within the definition of the word month in Section 4 (28) General clauses Act I of 1904. Limitation therefore ran to the last day of October 1936. The last day of October was a Gazetted Holiday while the 1st November was a Sunday and therefore under Section 4 Limitation Act an application presented on Monday, the 2nd November 36 was within time—1937 R. D. 202 and 298.

Section 4(4)—Meaning of 'Prevented'—Where beyond the plea of old age and illness there is no adequate reason to explain delay, not of a few days or even of a week or two, but of 4½ months, the application cannot be accepted under Section 4(4)—1937 R. D. 484. The word "Prevent" in Section 4(4) connotes some physical disability (e. g. serious illness or absence from India) which actually hinders a man from applying in time and the Act should be interpreted strictly to 'prevent' an applicant under Section 4 of the Act from filing his application in time. Whereas applicant who is himself a money lender, manages to settle one of his own debts by transferring to his creditor a mortgage which he held himself, and thinking that he will be able to settle his other obligations by similar negotiations, does not apply under the Act until expiry of limitation when his hopes are finally disappointed owing to his debtors

applying under the Act, it does not mean that he was prevented from applying within the meaning of section 4 (4) and he cannot be given the benefit of section 4(4)—1937 R. D. 396.

Where a debt was discharged by the fact that the suit brought by the creditor was dismissed for default but it was revived by a subsequent order of the appellate court, such order having been passed after the last date on which an application under section 4 could be made, the debtor is entitled to six months extension of limitation granted under the Act. It is reasonable to hold that the debtor was prevented from applying in time because during the whole period of limitation of the Act there was no debt in respect of which he could apply—1938 R. D. 15. On the death of landlord in August 1936, his widow proceeded on pilgrimage while the mutation proceedings were being carried on. She returned in April 1937, and finding that mutation had been effected in favour of her minor son, presented an application under section 4. Held that she was prevented from lodging her application in time—1938 R. D. 362.

Applicant when not entitled to protection under the Act.

In the district in which the applicant filed the application, he was only a groveholder and not a zamindar and as he did not show any other property in his application although he had, he must be held to have forfeited his claim to protection under the Act—1938 R. D. 241.

Where an applicant filed an application in a district where he had property but not sufficient to give him the qualification of a landlord under the Act and a long time beyond limitation asked, on his right to apply being questioned, to have further property in another district taken into consideration, which had not been shown in the application, it was held that the application was invalid—1938 R. D. 265. A person possessing property in district A but no property in district B when Act came into force made an application in district B. It was held that he had no right to protection under the Act even though he acquired property subsequently in district B and possessed already property in district A when the Act came into force—1948 R. D. 333.

Evidentiary value of Khewat.

Khewat is only a piece of evidence in an application under section 4 that the applicant is a landlord and it is open to him to show that despite the absence of the entry of his name from Khewat, he is nonetheless a landlord—1938 R. D. 119. 1937 R. D. 482 followed.

Neither application nor vakalantnama signed—defect whether curable ?

The mere fact that an application under Sec. 4 and also the vakalantnama are unsigned will not make the application void. The defects are curable by amendment—1938 R. D. 330.

Presentation in person if necessary.

There is no provision of law or in the rules that an applicant under section 4 Encumbered Estates Act must file his application in person—1938 R. D. 366.

Manner in which application made under section 4 are to be disposed of by collector.

The summary fashion of dealing with applications under the E. E. Act is most reprehensible—1938 R. D. 352.

Inoumbrance. Includes a mortgage in fee or for a less state, and a trust for securing money, and a lien and a charge of a portion, annuity or other capital or annual sum—section 2 VII English conveyancing Act 1881,

Property of a landlord judgment-debtor auctioned but sale not confirmed.

Held that the landlord was entitled to apply under section 4 until the sale is confirmed—1933 R. D. 196.

5. No landlord who has made an application under section 4 shall be entitled to make another application to any other Collector. If such other application is made, all proceedings arising out of it shall be void and such application shall be reported to the Board of Revenue.

Bar of second application.

Section 5. We have seen in Section 4 that an application shall be made to the Collector within whose jurisdiction the land or any part thereof is situated. So to say, it will be at the option of the applicant to apply to any one of the Collectors within whose jurisdictions his land is situated. This section lays down that when once he has made an application before the Collector of one place, he shall not make another application before the Collector of another place, where his land is situated. But if he does make another application, all the proceedings arising out of it shall be void and the case shall be reported to the Board of Revenue—rule 4. It must be remembered that proceedings arising out of the 1st application shall not be void and only those arising out of the 2nd shall be void. But there is no bar of another application to the same Collector if the former was rejected owing to some technical defect.

6. When an application has been duly made according to the provisions of section 4, the Collector shall forthwith pass an order that it be forwarded to the Special Judge and shall furnish the applicant free of cost with a certified copy of the order. He shall then forward the application to the Special Judge and shall inform him of such public debts outstanding against the landlord as may be laid down in rules framed by the Local Government in this behalf.

Can the Collector cancel his own order passed under this section.

He himself cannot cancel the order if he finds that his previous order was wrong. He has to submit the matter to the Board for orders in revision with a recommendation that his order inadvertently passed under section 6 should be cancelled and the Board alone has the power to cancel it—1937 R. D. 478 and 1933 R. D. 112, 202 and 366, 544 and others reported under section 4.

Creditors right to appeal or revision against an order passed under this section.

It is not open to the creditors to come to the Board in appeal under section 45 E. E. Act with the plea that applicants under section 4 are not landlords within the meaning of section 2(g) of the Act. Only parties to suit or proceeding can present an appeal. The creditors cannot be said to have been parties to the proceedings in the court of the S. D. O. But it is open to them to draw the attention of S. D. O. to his mistake; if they think that a mistake has been made in passing an order under section 6. They can ask him to move the Board to cancel that order in the exercise of the powers of revision—1937 R. D. 268. Decreeholder not a party before the Collector has no

right to appeal—1938 R. D. 118. Since a creditor is no party to the application, he should come to the Board, not by way of appeal but under section 46 in revision—1938 R. D. 352. Board can treat appeal as revision—1938 R. D. 118. But in case the creditors are already parties to the application made under section 4, they shall have a right to come in appeal against the order passed under section 6.

Papers to be forwarded to the Special Judge.

The only documents to be sent to the Special Judge are (1) the original application, with all documents attached thereto, made under Section 4 and (2) the Collector's order passed under Section 6. These documents shall form the basis of the record in the court of the Special Judge—1937 R. D. 101, 103.

Town Area tax.

A Town Area tax is not recoverable as arrears of land revenue and cannot therefore be continued to be recovered as if no application had been made under section 4 E. E. Act. The Town Area dues should be reported to the Special Judge, as land down in R. 55 of the Rules and the Town Area is not at liberty to recover these dues by way of attachment and sale of immovable property so long as such application is pending before the Special Judge—1937 R. D. 203.

Procedure for public debts.

Public debts collectable as arrears of land revenue and debts due to cooperative societies are not to be reported by the Collector to the Special Judge. They will be realized as if no application had been made. Other public debts may be reported to the Special Judge at any time and a decree shall be passed by the Special Judge about them.

Consequences of acceptance of an application by the Collector.

7. (1) When the Collector has passed an order under section 6 the following consequences shall ensue :—

- (a) all proceedings pending at the date of the said order in any civil or revenue court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered, except an appeal or revision against a decree or order, shall be stayed, all attachments and other execution processes issued by any such court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued ;
- (b) no fresh suit or other proceedings other than an appeal or revision against a decree or order, or a process for ejectment for arrears of rent shall, except as hereinafter provided, be instituted in any civil or revenue court in the United Provinces in respect of any debts incurred before the passing of the said order :

Provided that when a landlord has executed an usufructuary mortgage in respect of any of his land and is in possession of that

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land as a *thehadar* of a mortgagee, no fresh process shall issue for his ejection from that land for arrears of the *theha* rent.

(2) After the passing of the said order and until the application is dismissed by the Special Judge under sub-section (3) of section 8 or proceedings under this Act are quashed under section 20 or until the Collector has liquidated the debt in full under section 23 or section 24 or granted a mortgage under section 25 or passed orders under section 27 or section 28, no decree obtained on the basis of any private debt incurred by the landlord after the passing of the order under section 6 shall be executed against any of his property, other than proprietary rights in land, which has been mentioned in the notice under 11 and the landlord shall not be competent without the sanction of the Collector to make an exchange or gift of, or to sell, mortgage or lease, any of that property.

(3) After the passing of the order under section 6 and until the Collector has declared in accordance with section 44 that the landlord has ceased to be subject to the disabilities of this sub-section no decree obtained on the basis of any private debt incurred after the passing of the order under section 6 shall be executed against any of the landlord's proprietary rights in land mentioned in the notice published under section 11 and the landlord shall not be competent, without the sanction of the Collector, to make any exchange or gift of, or to sell, mortgage or lease those proprietary rights, or any portion of them.

(4) Any transfer made in contravention of the provisions of this section shall be void.

Proposed change—

4. In section 7, clause (a), add the words "or instituted without knowledge of the issue of order under section 6 of this Act" after the words "pending at the date of the said order" and add a proviso as follows at the end of clause: "Provided that the attachments which have become null and void under this clause shall revive automatically on the dismissal of the application of the debtor under section 4 of this Act."

5. In section 7, clause (b), add the word "review" after the words "an appeal" and before the words "or revision," and also add the words "if the plaintiff had knowledge of the issue of order under section 6 of this Act" after the words "any Civil or Revenue courts in the United Provinces."

S. 7 (1) (a) Execution process—meaning of—

An order appointing a receiver for the purpose of safeguarding and protecting the property which is subject of a mortgage decree is not an execution process and cannot therefore be stayed under Section 7(1)(a)—1936 R. D. 209 at 211.

Proceedings for compulsory registration of sale deed.

Such proceedings cannot be regarded as a proceeding in respect of any public or private debt to which the transferor is subject, or with which his immovable property is encumbered, even though the sale deed purports to have been executed for the payment of certain debts. Consequently if the transferor soon after the alleged execution of the sale deed institutes proceedings under the U. P. E. E. Act, he is not entitled to obtain an order under section 7 (1) (a) for stay of proceedings—1936 R. D. 458.

Confirmation of sale after application made under Sec. 4 of the Act whether ultravires so far as the share of the applicant is concerned—Yes vide 1936 R. D. 537. Proceedings after sale but before confirmation must be stayed under section 7(1)—1937 A. L. J. 865.

Proceedings under Sec. 144 C. P. C. for refund of pre-emption money.

Where a suit was filed for pre-emption and decreed by the trial court and the pre-emptor got into possession after paying the pre-emption money but subsequently the vendee won in appeal and recovered possession of the property without paying money, this money due from the vendee to the pre-emptor was held to be a debt within the meaning of Section 2 (a) and as such on an application having been made by the vendee under this Act, the proceedings which the pre-emptor might be taking under Section 144 C. P. C. for the recovery of his money shall be stayed—1937 R. D. 444.

It is most respectfully submitted that this view is not sound because the money deposited by the pre-emptor in pursuance of an order of the court and withdrawn by the vendee cannot in any view of the case be said to be a 'debt' within the meaning of Section 2 (a) on the failure of the pre-emption suit in appeal. Section 7 should not have been applied to proceedings under Section 144 for refund of the pre-emption money.

Section 7 (1) (b)—Scope of—Suits for possession not covered.

It is confined in its operation to suits "*in respect of debts incurred before the passing of the order by the Collector under section 6 of the Act and has no application to suits for possession of immovable property.*" Hence a claim for possession of immovable property, is not barred by Section 7 (1) (b)—Champa Devi *versus* Asa Devi 1937 R. D. 577=1937 A. L. J. 945. Followed in 1938 R. D. 34=1937 A. L. J. 1139.

Claim for mesne profits whether a claim in respect of a debt.

It is not and cannot be stayed under Section 7 (1) (b)—1937 R. D. 537. Followed in 1938 R. D. 34.

A suit to enforce pecuniary liability under a family settlement whether a suit in respect of a debt.

Yes. Such a suit must be stayed under Section 7 (1) (b)—1937 R. D. 537. Sum of money claimed for profits for a certain year—Relief must be stayed—1938 R. D. 34.

Proper order for stay in a suit in which some reliefs fall under section 7 (1) (b) and others not.

An order staying the entire suit is wrong in law and the Court can recall under its inherent powers its wrong order staying the entire suit and direct that the case in respect of reliefs not barred by Section 7 (1) (b) should proceed while that barred by

Section 7 (1) (b) should not proceed—1937 R. D. 577=1937 A. L. J. 945. Followed in 1938 R. D. 34.

Applicability of section 7 (1) (a) to Insolvency Courts—

Such courts are Civil Courts and the provisions of Section 7 (1) (a) apply to those courts—1937 R. D. 114 (4. c.)=1937 A. L. J. 158.

Brij Kishore
Purotsam Das.

Execution against Surety under S. 145 C. P. C.

It must be stayed against him on an application having been made under Sec. 4 by one of the Judgment-debtors and an order having been passed thereupon by the Collector under Sec. 6 till the matter has been decided upon by the Court which will hear the application of the Judgment-debtor under the E. E. Act—Inamullah *versus* Babu Ram—1937 R. D. 174 (H. C.)=1937 A. L. J. 346.

Attachment null and void.

Attachment of money already effected is rendered null and void under Sec. 7 on an order being passed under Sec. 6. So long as the money is not disposed of by paying it over to the decreeholder or otherwise, the attachment must be deemed to be in force and become null and void under Sec. 7 (1) and consequently the money cannot be made over to the decreeholder—1937 R. D. 279 (Oudh).

Execution in decree for arrears of rent must also be governed by Sec. 7 and the Judgment-debtor is entitled to the benefit of the Act in as much the attachment must become null and void. G. O. No. 642 dated 9th April 1936 questioned and negatived—1937 R. D. 300, and 510 and 1938 R. D. 348. In the last mentioned case the decree was for arrears of land revenue.

Regulation of Sales Act and Sec. 7. E. E. Act.

The provisions of Sec. 7 are mandatory and any order passed by the Court acting under the Regulation of Sales Act after an order passed under Sec. 6 of the E. E. Act is ultravires—1937 R. D. 30, at 32, 301 and 479.

Proceedings must be stayed. Should the E. E. Act proceedings be quashed, the proceedings under the Temporary Regulation of sales Act shall revive—1937 R. D. 142 and 1936 R. D. 490.

Order of the Collector sanctioning sale under Sec. 7 for the marriage expenses and for repair of residential house of the applicants cannot stand, in as much as such transfer is to the prejudice of the creditors—1937 R. D. 69.

Sec. 7 (2)—Scope of.

Under Sec. 7 (2) the person debarred is the landlord. A pledgee not even of the applicant under Sec. 4 but of a firm in which the applicant is only one of several partners cannot, on acceptance of the application, be restrained from selling the pledged goods in accordance with the provisions of Sec. 176 Contract Act—1937 R. D. 383.

It is most respectfully submitted that this ruling is not sound in as much as the applicant had interest in the goods pawned and he owed money as one of the partners to the creditor and under these circumstances Sec. 7 was applicable and the property could not be sold.

Joint decree and a joint judgment-debt.

Execution must be stayed even if one of the Judgment-debtors applies until the S. J. has determined the amounts required to be determined under Sec. 9(5) (a)—1938 R. D. 85; 1937 A. L. J. 886 and 1938 R. D. 558.

Court to which stay application for execution is to be made—

It must be made to the executing court and not the S. J.—1938 R. D. 85.

Process-meaning of—Process means a suit. It is wide enough to include the whole course of proceedings in a Law suit from the original writ (which in India will be plaint) to the final writ of execution—1938 R. D. 212.

Meaning of phrase "Other than" in Sec. 7(b).

This phrase does not govern the words "a process for ejection". It only applies to words "an appeal or revision against a decree or order"—1938 R. D. 209.

A suit for ejection on the ground of forfeiture before the expiry of the term fixed for tenancy is a suit in respect of the arrears of rent which must be held to be within the meaning of the word 'debt' as defined in the Act—1938 R. D. 209.

Execution in a Court outside U. P.

A Court is not justified in staying execution proceedings in a court not situated in this province or to issue an injunction against a party residing outside the Jurisdiction of the court as the Act was passed for stay of proceedings in U. P. only and for relief of Encumbered estates in U. P.—1938 R. D. 213 (Oudh) and 1938 A. L. J. R. p. 481. In the latter case it was also held that the operation of Sec. 13 is limited to courts having jurisdiction in the United Provinces. A decreeholder in another province can execute his decree against property in that province. Or. 39 R. 1 C. P. C. does not apply.

Suits and proceeding.

A suit must commence with a plaint and a proceeding, which is capable of termination in a decree or order having the force of a decree could not on that ground alone be deemed to be a suit within the meaning of the Code if it had not commenced with a plaint. Such a proceeding in strictness is only a proceeding in a suit—22 M. 256. Thus every suit is a proceeding but not the *vice versa*.

Private debts incurred after the passing of the order under Sec. 6.

The suits filed for recovery of private debts incurred after the passing of the order under Sec. 6 shall not be stayed at any time but no decree passed on the basis of private debts, shall be executable against proprietary rights in land mentioned in notice published under Sec. 11 until the Collector has declared under Sec. 44 that the landlord has ceased to be subject to disabilities of Section 7 (3) or against property other than proprietary rights in land mentioned in the notice under Section 11 until (1) the application is dismissed by the S. J. under Section 8 (3), or (2) the proceedings are quashed under Section 20 or (3) the Collector has liquidated the debt in full under Section 23, 24 or (4) granted mortgage under section 25 or (5) passed orders under Section 27 or 28.

Disability imposed under Section 7 (2) and 7 (3).

The landlord shall not be competent, without the sanction of the Collector, to make any exchange or gift of, or to sell, mortgage or lease proprietary rights or any portion of them or other property mentioned in the notice published under section 11.

When will the disability cease.

In the case of proprietary rights in land, published in the notice under Section 11, it will cease after declaration made by Collector under Section 44.

In the case of property other than proprietary rights published under Section 11, no declaration will be made by the Collector but the disability will cease in each of the cases (a) to (e) given in Section 44 which are the same as given in Section 7 (2).

Transfer made in contravention of section 7 (2) and 7 (3).

Such a transfer shall be void. See A. I. R. 1933 A. 830, 46 C. 183 (P. C.); 1925 Nag. 455.

Note.—The disability clause has been borrowed from the Bundelkhand Encumbered Estates Act and is the same as Section 10. So the rulings under that Act will be applicable.

Transfer by way of wakf whether void.

The disability is wide enough to cover a case of wakf—51A. 40.

Agreement of sale executed after disability but sale deed effected after cessation of disability after decree in a suit for specific performance of the agreement.

It was held that the agreement was void and the sale was also void because a void agreement cannot be ratified by the Court. As the sale deed followed the agreement, it must date back to the date of the agreement for its validity—25 A. L. J. 1065.

Will.

It does not come under the disability clause—33 A. 233.

Sale in execution of a decree for damages.

Such a sale should be stayed under section 7.

Proceedings etc.—In *Sheo Baran Singh vs. Ranbir Prasad*, 1938 A. L. J. 541 at 543 it was held that proceedings, attachments, processes and suits mentioned in clauses (a) and (b) of Section 7 of the Encumbered Estates Act are proceedings, attachments, processes, and suits against the landlord in respect of debts but the landlord himself is not necessarily under any disability for taking proceedings which he may be entitled to take under the law for the protection of his interest, and consequently the application under Section 30 of the *Agriculturists' Relief Act* was maintainable.

Power of S. J. to appoint receiver.

The Special Judge has no power to appoint receiver under rule 6. The appointment of a receiver was not even justified by the provisions of O. 40 Rule 1(2). The duty of the S. J. is only to ascertain the assets and liabilities of the landlord and for that purpose the appointment of a receiver is not necessary—1937 A. L. J. 1317. The amendment proposed under Section 8, published in Gazette dated 9th October, 1937, if carried into law, will entitle the court to appoint a receiver.

Proceedings for realization of compensation awarded in a partition case.

They are liable to be stayed under Section 7—1938 R. D. 349.

Purchaser in execution of a decree of puisne mortgagee whether entitled to stay of execution in a decree on the basis of a prior mortgage to which the puisne mortgagee is a party.

Held that as soon as the Collector acted under Section 6 after satisfying himself that the application was duly made under section 4, the provisions of section 7 would operate—1937 A. L. J. 877.

Held, further, that the applicant being an outsider to the suit and the execution proceedings the order passed was an order passed on a 'case decided' within the meaning of Section 115 C. P. C.

Section 7 and Or. 2, R. 6, C. P. C.

In a composite suit in which two reliefs are not affected by Section 7 of the Act while the third is such that the suit in respect thereof must be stayed, the provisions of Or. 2, R. 6, C. P. C. apply and the court should order separate trial of the suit so far as it relates to the cause of action in respect of the relief that is effected by Section 7 of the Act, and with regard to the rest, it should proceed—1937 A. L. J. 1139.

Application under Section 7 whether starts a fresh proceeding.

An application under Section 7 of the Act starts a fresh proceeding and its termination on dismissal implies a case decided within the meaning of Section 115 C. P. C.—1937 A. L. J. 886.

Remedy of creditor against order staying execution proceedings under Sec. 7 by the Collector—He must come to the Board by way of revision and not in appeals—1938 R. D. 558.

CHAPTER IV.

PROOF OF DEBTS AND PROCEDURE OF SPECIAL JUDGE.

8. (1) When the Special Judge has received an application under section 6, he shall call upon the applicant to submit to him within a period to be fixed by him in this behalf a written statement containing so far as may be practicable—

- (a) full particulars respecting the public and private debts to which the landlord is subject, or with which his immovable property or any part thereof is encumbered;
- (b) the nature and extent of the landlord's proprietary rights in land ;
- (c) the nature and extent of the landlord's property which is liable to attachment and sale under section 60 of the Code of Civil Procedure V of 1908, exclusive of his proprietary rights in land and
- (d) the names and addresses of his creditors, so far as they are known to, or can be ascertained by, the applicant.

Verification of statement. (2) The statement shall be verified in the manner prescribed by law for the verification of plaints :

Provided that, when the application is made by the manager of any property under the superintendence of the Court of Wards it shall not be necessary for such manager to verify the statement ; but the landlord shall, so far as may be practicable, within a period to be fixed by the Special Judge in this behalf furnish such information regarding any of the matters mentioned in clauses (a), (b), (c) and (d) of sub-section (1) of this section as the Special Judge may require.

(3) When the written statement referred to in sub-section (1) or the information referred to in the proviso to sub-section (2) has not been submitted or furnished within the period fixed without any

reasonable cause, the Special Judge may dismiss the application and in that case shall inform the Collector that he has done so."

Proposed change—

6. In section 8, add a new clause and number it as clause (4) to the following effect :

"(4). The Collector or the Special Judge shall appoint a receiver of the estate of the debtor if in his opinion the debtor is using dilatory tactics in the disposal of the proceeding under this Act or is misappropriating or making improper use of the income of his estate to the detriment of the interests of the creditors ; but may appoint a receiver in any other suitable case if he thinks it necessary in the interests of the creditors "

8. On receipt of the application under section 6 the Special Judge shall be bound to ask the applicant to furnish the particulars given in this section clauses (a) to (d). His order shall be communicated to the applicant, through the Collector—rule 7.

The applicant must lay before the court all the property that is legally liable to be sold in satisfaction of debts whether it be moveable or immovable. Sub-section 2 requires the verification of the written statement like that of the plaintiffs under C. P. C.

Proviso. When the applicant is manager of the Court of Wards, the landlord shall be bound to furnish the above particulars and it shall not be necessary for the manager to do so. Collector shall send a copy of the application to the landlord by registered post at the cost of the applicant—rule 8.

Sub-section 3. This has been newly added by the Amendment Act 1935. This empowers the Special Judge to dismiss when the written statement or the information required has not been submitted within the period fixed by him without any reasonable cause. But if he is satisfied that there was reasonable cause for delay, he will not dismiss it.

The proposed amendment empowers the S. J. to appoint a receiver.

9. (1) The Special Judge shall publish in the Gazette a notice calling for claims. notice in English, Urdu and Hindi calling upon all persons having claims in respect of private debts both decreed and undecreed against the person or the property of the landlord by or on whose behalf the application has been made under section 4 to present to the Special Judge, within three months from the date of the publication of the notice, a written statement of their claims.

(2) The Special Judge shall also cause copies of such notice to be published in such papers including at least one paper published in English as he may direct and to be exhibited at his own office, at the office of each Collector within whose district any part of the property of the landlord is situate, and at some conspicuous place in the village where the landlord resides and shall also send a copy of the notice by regis-

tered post to each of the creditors whose names and addresses are mentioned in the statement under clause (d) of sub-section (1) of section 7.

(3) The written statement must be presented within the period specified in the notice, unless the claimant satisfies the Special Judge that he had sufficient cause for not presenting it within such period, in which case the Special Judge may receive the statement if presented within a further period of two months.

Provision for admission of claims within a further period of two months.

(4) If one or more members of a joint Hindu family apply under the second proviso of sub-section (1) of section 4 then the Special Judge shall apportion the debts due by and the property belonging to the joint family between members who have so applied and for the purposes of this Act, those members who have applied under section 4 will be treated as if they had separated from the other members.

Apportionment of debts and property in case of application by members of a joint Hindu family.

(5) (a) If one or more of several joint debtors, who are not members of the same joint Hindu family, apply under section 4 but all the joint debtors do not apply then the Special Judge shall determine the amount of the joint debt which is due by the debtor or debtors who have applied and the amount due by those who have not applied. For the purpose of this determination the Special Judge shall make the joint debtors who have not applied parties to the proceedings and shall hear any objection that they may make before recording his finding.

Determination of liability of joint debtors who are not members of a joint Hindu family.

(b) If all the joint debtors have not applied under section 4 the creditor shall have a right to recover from the debtors who have not applied only such amount on account of the joint debt as may be decreed by the Special Judge to be due by them.

(6) If one or more but not all the heirs of a deceased debtor who are not members of a joint Hindu family apply under section 4 the Special Judge shall apportion the debts due by and the property belonging to the deceased debtor between those heirs who have made the application and those who have not and subject to the provisions of section 49 that portion of the debt which falls to the

Apportionment of liability of heirs of a deceased debtor.

share of the heirs who have applied shall be liquidated from the property allotted to them and they shall not be responsible for the portion of the debt which falls to the share of the heirs who have not joined in the application.

Proposed change—

7. Delete clause (5) of section 9 and substitute in its place the following clause :

“(b) If all the joint debtors have not applied under section 4, and the liability has been determined under sub-clause (a), the creditor shall be put to option whether he would like to realize the whole, nothing or a portion to be specified by him from the applicants. The Court shall apportion the liability between the applicants and non-applicants accordingly. But if there is a variation between the option exercised by the creditor and the liability determined by the Court under clause (a) and the effect of this variation is that the non-applicants are made liable for more than their share of liability the non-applicants shall be entitled to participate in the assets of the debtor to the extent of the excess over their share of liability as if they are the creditors and to this extent the liability of the debtor to that particular creditor will be extinguished.”

Verification of the written statements.

The written statements of claims filed by creditor under section 9 shall be verified in the manner prescribed by law for the verification of plaints—Rule 10.

The written statements must be presented within three months from the date of the publication of the notice in the Gazette.

Time within which the Written Statements must be filed.

The Special Judge has been authorised to receive the written statement within a further period of two months provided the claimant satisfies the court that he was prevented by sufficient cause from filing the written statement within the period prescribed. But he shall have no power to accept the written statement if filed beyond the further period of two months.

Consequence of not filing the Written Statement within time.

It shall be deemed for all purposes and on all occasions to have been duly discharged—section 13.

Presentation by whom.

The section is silent as to the person who should present the written statement but I think that it must be presented either by the claimant himself or his authorised agent or counsel.

Members of a joint Hindu family whether joint debtors or, heirs of a deceased ancestor.

Section 4 read with rule 2 requires that either all the members of the joint Hindu family should join in the application or if all do not join, the applicants must state the names and addresses of those members who do not join and they must make

an express declaration of separating from the joint family and state the share to which they would be entitled on partition of the family property.

In case all the members join, the entire family property will be liable for the debts but in case a few only join the Special Judge shall apportion the debts due by and the property belonging to the joint family between members who have applied and those who have not. The creditor shall have a right to recover from the non-applicants only that amount of the joint debt as may be decreed by the Special Judge to be due by them. For the apportionment of liability he shall have to implead all the members of a joint Hindu family who have not joined in the application and shall hear their objections, if any. Of course the shares in the joint family property will be determined according to Hindu law and the individual liability of each member will be according to his share in the joint family property.

Joint debtors or heirs of a deceased ancestor not members of a joint Hindu family. If all the joint debtors or heirs of deceased ancestor apply, the case will present no difficulty as the entire property will be liable and there will be no question of any apportionment.

But if one or more of several joint debtors or heirs of a deceased ancestor, not members of a joint Hindu family apply under section 4, the Special Judge shall be in duty bound to implead the remaining joint debtors or heirs as parties for the determination of the liability of those who have applied and those who have not and he shall hear their objections, if any, as to apportionment. In the first case the Special Judge shall not have to apportion the debts due by the property as between those joint debtors who have applied and those who have not, but in the case of heirs of a deceased debtor, he shall have to apportion the debts due by and the property belonging to the deceased debtor between those heirs who have applied and those who have not. The applicants will not be liable to pay the debts due from the other joint debtors or heirs after apportionment and the *vice versa* will also be true.

Effect of the section on sections 42 and 43 of the Contract Act.

According to section 42 of the Contract Act all the joint promisors during their joint lives, and after the death of any of them, his representative jointly with the survivor or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

According to section 43 of the Contract Act the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise unless a contrary intention appears from the contract. If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Thus the provisions of sections 42 and 43 of the Contract Act have been negated by section 9 (5) (a) and (b) and the right which the joint promisor had of compelling the other promisor to contribute equally with himself to the performance of the promise under Sec. 43 has been given effect to not only against the non-applicants but also against the promisee who will recover from the debtors who have not applied under section 4 only such amount of the joint debt as may be decreed by the Special Judge to be due by them and from the applicants that amount which may be held to be due from them after apportionment.

As between the non-applicants themselves, section 9 (5) (a) and (b) will have no application and the creditor will be entitled to realize the amount held to be due by them from any of them.

Apportionment means division in just shares or adjustment in due proportions—Chamber's dictionary.

Defects in the section.

1. Provision of impleading joint debtors coming in 5 (a) has only been made although it should have been common to all the cases contemplated by clauses (4) to (6) because unless all persons liable for the claim are not before the court, how can the court effectively apportion the liability so as to be binding on all.

2. Provision made in 5 (b) should have been common to all the cases and should not have been confined to joint debtors coming in 5 (a) only.

Whether decision against the non-applicant debtors will amount to a decree capable of execution.

Only in clause 5 (b) applicable to joint debtors coming in 5 (a) has the word 'decree', been used but not in clauses 4 and 6 and as such it does not stand to reason that a decree capable of execution against the non-applicants was meant in any case. Had the Legislature really intended to lay down that a decision against the non-applicants would amount to a decree capable of execution it must have said so expressly just as a provision has been made in S. 14 (7) that such decree shall be deemed to be a civil court of competent jurisdiction.

Whether non-applicant joint debtors entitled to benefit of section 14.

In my opinion they cannot be deemed to be applicants so as to be entitled to benefit of section 14. The legislature has provided only for apportionment of liability but not for determination of the liability against them also in accordance with section 14. Had it intended to do so, it could have said so in section 9. If the other view is taken, those persons would have also benefited, who were not landlords even, simply because the other joint debtor was a landlord and so it is submitted that such an interpretation will be out of place.

Application whether to be dismissed on default in payment of the publication charges within the time fixed by the Court.—The Special Judge is certainly entitled to dismiss the application in such a case as the applicant must be conceived all along to know that he has to deposit certain charges at different stages and he can hardly be considered to have been taken by surprise, if when the time comes, he is not given a very long time for deposit of the charges—1938 R. D. 530. This ruling relates both to section 9 as well as section 11.

Note. The proposed amendment, if accepted as law, will redress the grievance of the creditor as it will be open to him to realize the whole or less or nothing from the applicant and in case he exercises an option which results in the increase of the liability of the non-applicants, the latter shall be entitled to participate in the assets of the debtor to the extent of the excess over their share of liability as if they are the creditors and to this extent the liability of the debtor to that particular creditor will be extinguished.

10. (1) Every claimant referred to in section 8 shall, in the written statement of his claim, give full particulars thereof, and shall state so far as they are known to or can be ascertained by him, the nature and extent, if any, of the landlord's property other than proprietary rights in land.

Claim to contain full particulars.

(2) Every document on which the claimant bases his claim, or on which he relies in support thereof, shall be delivered to the Special Judge along with the written statement if the Special Judge so directs, on some later date or dates to be specified by him from time to time in that behalf.

(3) If the document is an entry in any book, the claimant shall produce the book before the Special Judge, together with a copy of the entry on which he relies. The Special Judge shall mark the book for the purpose of identification and, after examining and comparing the copy with the original, shall return the book to the claimant.

(4) If any document in the possession or under the control of the claimant is not delivered or produced by him, as required by this section, the Special Judge may refuse to receive it in evidence on behalf of the claimant at the investigation of the case.

Section 10. This section seems to have been borrowed from section 11 of the Bundelkhand Encumbered Estates Act as the provisos of both are almost alike. There is a similar provision in order VII rule 7, 14 and 17 and 18 of the Civil Procedure Code. Under section 8 there is a provision of the filing of a written statement by the applicant while under this section, there is a provision of a written statement by the creditor.

The following essentials are to be complied with by the creditors.

1. He shall give the full particulars of his claim and deliver the documents, the basis of the claim or those on which he relies in support of his claim along with his written statement, if so directed by the Special Judge in the notice under section 9 or on some later date or dates to be specified by the Special Judge in this behalf but if the document is an entry in any book, he shall produce the book before the Judge together with a copy of the entry and the Judge shall return the original after marking the book and examining and comparing it with the copy.

2. He must state in the written statement to the best of his knowledge the nature and extent of the landlord's proprietary rights in land and his other property.

Sub-section 4 lays down that if the creditor fails to deliver or produce the document in his possession or under his control as required by the Judge, the Judge may, in his discretion, refuse to accept it in evidence at a later stage. Also see A. I. R. 1928 Oudh page 445.

11. (1) The Special Judge shall publish a notice in the manner specified in section 9 specifying the property mentioned by the applicant under section 8 or by any claimant under section 10.

(2) Any person having any claim to the property mentioned in such notice shall within a period of three months from the date

of the publication of the notice in the Gazette make an application to the Special Judge stating his claim and the Special Judge shall determine whether the property specified in the claim, or any part thereof, is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant.

(3) The Special Judge shall determine all claims made under this section before he proceeds to determine the amount due to any creditor under section 14 and shall not pass any decree under that section until the expiry of a period of one month after the last day on which he determines a claim under this section.

(4) Any order passed by the Special Judge under this section shall be deemed to be a decree of a Civil Court of competent jurisdiction.

Proposed change—

8. *In section 11, clause 2, add the following words :*

'or afterwards till the proceedings have been completed under section 24 of the Act : provided the claimant satisfied the Court that he was prevented by any sufficient cause from appearing earlier and on such terms as to costs as it thinks fit "after the words" within a period of three months from the date of the publication of the notice in the Gazette ".

Time limit for objection under Sec. 11(2)—

The objection with respect to any property published in the notice in the U. P. Gazette under section 11 must be filed within 3 months from the date of the publication of the notice in the Gazette. If filed beyond three months, the court need not entertain it and must dismiss it on the ground of limitation. This decision will be deemed to be a decree of a competent court.

Consequence of not filing an objection—Although the Act is silent as to the consequence of omission to file an objection but I think that a subsequent suit will be barred by section 11 (2) as this section is mandatory. Of course it can be argued that had the legislature intended to mean this, it could have made a provision similar to section 13. But in my opinion this argument will not be sustainable because of the mandatory nature of the section 11 (2) otherwise the result will be that the whole Liquidation Scheme will be upset and many other complications will arise.

Can the applicant resist the objection by the claimant that a certain property not shown by the applicant to be his, is his P

So far as the section goes there is no bar against him to do so but usually no applicant will care to resist because he stands to gain by the inclusion of more property.

Defective nature of the section.

This section is open to much objection because many persons who in fact own the property alleged by the claimant to be the applicants or by the applicant to be his, will not even know of the notification in the Gazette and will thus stand ruined.

The court in the interests of justice can only do this much that in a case where the applicant and the claimant are at variance as to the property alleged to be the applicant's, should require the claimant to prove that the property alleged by him to be the applicant's is the applicant's and if it finds that the claimant has failed to prove, it must not deem that property to be the applicant's.

If the claimant alleges that the applicant has fictitiously transferred any property after the commencement of the Act, he should apply for annulment of the transfer under section 12 of the Act and for that purpose must implead the transferee but if the allegation is that the transfer was made before the commencement of the Act, the court should not hold the property to be applicant's because such a transfer cannot be annulled under the Act. But in other cases where the applicant does not controvert the allegations of the claimant, the property shall have to be deemed to be the applicant's.

In my opinion this section requires drastic amendment and sooner the legislature pays its attention to it the better and should give necessary amendment a retrospective effect.

Order passed under section 11 (2), effect of.

The order passed shall be deemed to be a decree of a civil court of competent jurisdiction and will be appealable. It will be unlike an order under order 21 R. 58 against which a regular suit can be filed.

Regular suit, maintainability of.

No regular suit will be maintainable against the decision under section 11 (2) as the decree shall amount to a decree of a civil court of competent jurisdiction.

Period that must elapse after decision under section 11 (2) for determination of claims under section 14.

No decree shall be passed under section 14 until the expiry of one month after the date of decision under section 11 (2)—as for instance a claim under section 11 (2) is decided on 20th January 1938, a decree under section 14 shall not be passed before 21st February 1938. Limitation starts not from 20th January 1938 but after 20th January 1938, that is, from 21st January, 1938 and one month must expire on 20th February 1938 and the decree under section 14 can only be passed on 21st February 1938 and not before.

Non-payment of publication charges—Court is entitled to dismiss application vide 1938 R. D. 530.

Note—The amendment proposed in the U. P. Gazette dated 9th October, 37 if enacted into law, will go a long way to redress the grievance and remedy the defect because in that case a claim as regards property will be entertainable till the proceedings have been completed under section 24 of the Act provided the claimant satisfies the Court that he was prevented by sufficient cause from appearing earlier, subject to payment of such costs as the court thinks fit.

12. Any transfer of property made by a landlord or other person acting on his behalf between the day on which the first chapter of this Act comes into force and the day on which he applies under section 4, not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, may be annulled at the instance

Annulment of transfer by landlord in certain cases.

of any creditor, if the Special Judge finds that such transfer was made with a view to deprive the landlord's creditors of their rights under this Act.

Ingredients of the section.

1. There must be a transfer of property by a landlord or other person acting on behalf of the landlord.
2. The transfer must have been made between the day on which the first chapter of this Act comes into force viz. 30th April 35 and the day on which the application under section 4 was made.
3. The transfer must have been made with a view to deprive the landlord's creditors of their rights under the Act.

Exceptions. 1. A transfer made before and in consideration of marriage.

2. A transfer made in favour of a purchaser or encumbrancer in good faith and for valuable consideration.

Transfer made before and in consideration of marriage, meaning of.

Such a transfer must not only be made in consideration of marriage but also before marriage. Thus transfer made after and in consideration of marriage will be liable to be annulled under this section. It may be noted here that transfer in lieu of an ante-nuptial agreement although valid under section 53 Transfer of Property Act vide 12 I. C. 401 will not be valid under section 12 of this Act because in section 12 the words used are purchaser or encumbrancer in good faith and not transferee in good faith.

Onus.

The creditor will have to prove that the transfer was made with a view to deprive the creditors of their rights under the Act. If the purchaser or encumbrancer wants to bring his transfer within the exceptions, he shall have to prove his case.

The mere factum of transfer is sufficient to prove that the transfer was made with a view to deprive the creditors of their rights under the Act because the property transferred will not be available to creditors in the liquidation scheme.

Property.

Transfers of movable and immovable property would both be covered by this section just as the statute 13 Elizabeth C. 5 applies to goods as well as to land.

Gift made in lieu of dower.

Such a transfer is a hiba-bil-ewaz, which is a pure gift as was held in 1936 A. L. J. 1027 and as such it may be annulled under this section because the donee cannot be said to be a purchaser or encumbrancer in good faith. It is true that such a gift has the incidents of sale but still the transaction cannot be called a sale transaction and the donee a purchaser.

Exchange—A transfer by exchange will be liable to annulment under this section.

Wakf—A deed of wakf executed as a device to put property out of the reach of creditors has been held to be a transfer to which section 53 of the Transfer of Property Act applies—52A, p. 720. Such a transfer is liable to be annulled under this section also.

Creditors—The word creditor is correlative to debtor and signifies a person to whom a debt, that is, a liquidated or specific sum of money is due. In its ordinary acceptation the term implies a person, who has lent money or goods to another which has remained unpaid. It includes not only decree-holders but also ordinary creditors—27 B. 146 ; 771, C. 50 and 96 I. C. 356.

Preference to one creditor by a debtor.

A debtor may convey property to any creditor in satisfaction of the debt due to him even though the transfer is affected to avoid an impending execution by another creditor—43 I. A. 104 ; 27 B. 322 ; 101 I. C. 568 ; 44 C-662 P.C, 22 C. W. N. 982. But the debtor must not reserve any benefit for himself—50 I. C. 264 P. C.

A sale in lieu of dower in favour of wife is valid because the position of the wife is that of a creditor and her husband can give preference to her as compared to other creditors—114 I. C. 504.

Consideration—This word is used in the same sense as in the Indian Contract Act and therefore excludes natural love and affection. Transfers for natural love and affection are dealt with as transfers without consideration—58 I. C. 165 ; 101 I. C. 172.

Good faith—Good faith is here used in the sense of the phrase as defined in the General clauses Act 10 of 1897, s. 6. "A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not. The knowledge and intention of the transferee are the determining factors—75 I. C. 1043; 89 I. C. 953.

If the vendee was aware of the fraudulent intention of the transferor and aids and abets it, the transfer is voidable—72 I. C. 452. If the vendor's intention was to convert his immovable property into cash so as to put it out of the reach of creditors, and the vendee was aware of such intention, the sale would be voidable although the consideration was paid—24 M. L. J. 293. But if the vendee was not a party to the fraud, the sale would be valid—27 B. 322; 20 M. 465; 92 I. C. 810, even if the vendee was aware of the impending execution—29 I. C. 428; 135 I. C. 641.

Thus where the transferee is a party to the fraud, it cannot be said that he has acted in good faith. A transferee who has constructive notice of a fraud is not a transferee in good faith—72 I. C. 727. If the transferee proves that he paid the fair value of the property the court will lean towards holding that he acted bonafide—135 I. C. 641; 5 Bom. L. R. 142. Good faith as well as consideration is made, in terms an essential condition of the validity of the transfer—37 M. 227 P. C. A transaction which is intended to defeat or delay creditors cannot be good in part and bad in part—130 I. C. 62; 72 I. C. 452.

Distinction between Sec. 53 Transfer of Property Act and section 12 of this Act.

1. Section 53 protects transferees in good faith and for consideration in general but section 12 only protects purchasers or encumbrancers in good faith and for valuable consideration.

2. Section 53 covers immovable property alone but this section covers both movable as well as immovable property.

3. Under section 53 intention to defeat or delay creditors is material but under this section the Court has only to find that the transfer was made with a view to deprive the creditors of their rights under this Act.

4. Section 53 applies to all transfers made at any time but this section applies

only to those transfers which were made after 30th April 35 and before the date of the application made under section 4.

'Any transfer'—includes all transfers in general.

Section analogous to Section 53 of Provincial Insolvency Act. This section is more or less in the same form as Sec. 53 Provincial Insolvency Act and as such the principle laid down in 1931 P. C. 75 as to onus will hold good here also.

13. Every claim decreed or undecreed against the landlord
Claim not duly notified to be deemed discharged. in respect of a private debt, other than a debt due to a Co-operative Society registered under the Co-operative Societies Act II of 1912, by its members, shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and on all occasions to have been duly discharged.

Proposed change—

9. In section 13 substitute "comma" for "full-stop" at the end of section and add the following words: "But the Special Judge shall have power to entertain any claim not made within time but before proceedings have been completed under section 24 of the Act provided he is satisfied that the claimant was prevented from sufficient cause from making a claim within the prescribed time subject to costs as the Court thinks fit.

- (i) Provided that this section will not apply to the debt which is admitted by applicant-debtor in the application under section 4 or written statement under section 8 of the Act:
- (ii) Provided further that this section will not apply to a creditor who has not been impleaded as opposite party by the applicant debtor and whose debts are secured by mortgages including deeds of further charge and the mortgagee is in possession of the property :
- (iii) Provided further that a creditor who has not been impleaded as an opposite party shall be entitled to put forward his claim before the case has been finally disposed of by the Special Judge :
- (iv) Provided further that this section will not apply to creditors who do not prefer any claim against the heir or heirs of a deceased debtor for his or their personal debts in proceedings under section 49 of the Act.

Preliminary requisites for a claim.

1. The claim must be made within three months from the date of publication of the notice under section 9(1) unless the claimant satisfies the Special Judge that he had sufficient cause for not presenting it within such period, in which case the Special Judge may receive the statement, if presented within a further period of two months.

2. The claim must be made in the manner required by Section 10.

Consequence of non-observance of the aforesaid requisites.

The claim shall be deemed to have been duly discharged for all purposes and on all occasions irrespective of the fact whether it is a decreed or undecreed claim so far as the applicants are concerned. It was held in 1937 A. L. J. 1101 that the Act allows a claimant certain definite period within which to put forward his claim in a written statement. He has the period specified in the notice and in addition a further period of two months at the discretion of the Special Judge. Beyond that period of two months no further period can be allowed and as soon as the period of two months elapses, the claim is deemed to have been duly discharged. Also F. A. F. O. No. 117/37 decided on 21. 3. 38.

Exceptions to the section.

1. Debt due to a Co-operative Society registered under the Co-operative Societies Act II of 1912 by its members. Under rule 5 such debts need never be reported to the Special Judge and collection of such debts will continue as if no application had been made under the Act.

2. Public debts whether reportable or not reportable under rule 5.

Analogous law

This Sec. is the same as Sec. 12 of the Bundelkhand Encumbered Estates Act. The following rulings under the B. E. E. Act will be useful.

Judgment debt is a private debt within the meaning of section 12 where the holder of a decree against six judgment-debtors, five of whom took the benefit of the Act, failed to put forward his claim before the Special Judge within the time allowed by law, the judgment debt must be deemed to have been duly discharged to the extent of the joint liability of the persons taking benefit under the Act. The judgment-debtor, who did not take the benefit of the Act, is only liable for his share—30 A 141.

The failure of the mortgagee to make any claim against those of his co-mortgagors, who had obtained benefit under this Act in a case in which some of the mortgagors had, while others, had not obtained benefit, could not put the mortgagee in a worse position than he would have occupied, if he had allowed the integrity of the mortgage to be broken up by permitting the holders of a share in the equity of redemption to redeem that share on payment of a proportionate amount of the debt—10 A. L. J. 171. Where the proceedings under the Act are not duly taken in as much as the plaintiff's next friend is also acting in the same proceeding as agent of the opposite party, the debtor is not discharged—21 A. L. J. 793.

Effect of omission to claim on non-applicant debtors.

The debtor or debtors who did not take benefit of the Act will be liable for his or their share only and not for the whole debt—30 A. 141. The reason is obvious as the remaining debt due from applicants under section 4 will be deemed to have been duly discharged.

Note.—This section entails great hardship on creditors. Most of them are

often ignorant of the application as none is expected to read the Gazette and the papers in which publication under Sec. 9 is made. The section is unwholesome in two ways (i) even a debt which is admitted by the applicant, is deemed to be duly discharged in case the creditor fails to put forth his claim before the Special Judge (ii) even claims of those creditors, whose names are deliberately not shown by the applicant in the written statement, are deemed to be duly discharged because of their not being filed before the Special Judge. The proposed amendments published in the U. P. Gazette dated 9th October 1937, if enacted into law, will go a long way to redress the grievances and remedy the defects. The result of the amendments will be that debts admitted in the application or written statement of the applicant and debts secured by mortgages including deeds of further charge where the mortgagee is in possession of the property but whose debt is not shown, shall be excepted from the operation of this section and secondly the creditor who has not been impleaded, shall have a right to put forward his claim before the case has been finally disposed of by the Special Judge in case the first amendment is accepted while if the second amendment is accepted, the Special Judge shall have power to entertain any claim not made within time but made before proceedings under Sec. 24 of the Act have been completed provided he is satisfied that the claimant was prevented from sufficient cause from making a claim within the prescribed time subject to payment of such costs as the court thinks fit.

14. (1) The Special Judge shall, by an order in writing, Examination of claims and determination of amount of debts. fix a date for inquiring into each claim made in pursuance of the notice published in accordance with section 8 and give notice of such date to the claimant and the person who made the application under section 4.

(2) The Special Judge shall examine each claim and after hearing such parties as desire to be heard and considering the evidence, if any, produced by them shall determine the amount, if any, due from the landlord to the claimant on the date of the application under section 4.

(3) All evidence recorded in any suit or proceeding which is stayed under sub-section (1) of section 9, may be taken by the Special Judge as evidence recorded before himself.

(4) In examining each claim the Special Judge shall have and exercise all the powers of the court in which a suit for the recovery of the money due would lie and shall decide the questions in issue on the same principles as those on which such court would decide them, subject to the following provisions, namely—

(a) the amount of interest held to be due on the date of the application shall not exceed that portion of the principal which may still be found to be due on the date of the application ;

(b) the provisions of the Usurious Loans Act X of 1918 will be applicable to proceedings under this Act :

(c) the provisions of the United Provinces Agriculturists' Relief Act of 1934 shall not be applicable to proceedings under this Act.

(5) For the purpose of ascertaining the principal under clause (a) of sub-section (4) the Special Judge shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transaction before December 31, 1916.

(6) For the purpose of ascertaining the principal under clause (a) of sub-section (4) the Special Judge shall not treat as principal any accumulated interest which has been converted into principal at any statement or settlement of accounts or by any contract made in the course of the transaction after December 31, 1916.

(7) If the Special Judge finds that any amount is due to the claimant he shall pass a simple money decree for such amount together with any costs which he may allow in respect of proceedings in his court and of proceedings in any civil court stayed under the provisions of the Act together with *pendentelite* and future interest at a rate not greater than the rate specified in section 27, and if he finds that no amount is due he may pass a decree for costs in favour of the landlord. Such decree shall be deemed to be a decree of a civil court of competent jurisdiction but no decree against the landlord shall be executable within the United Provinces except under the provisions of this Act.

Amendment of section 14 of the United Provinces Act, XXV of 1934.

4. *The following explanation be added to clause 5 of section 14 of the Act :*

Explanation—The interest accumulated up to December, 31, 1916, which became a part of the principal under the terms of the deed would be deemed to have become a part of the principal for the purposes of this section.

Powers of the Special Judge.

1. The Special Judge shall have and exercise all the powers of the court in which a suit for the recovery of the money due would lie. Thus if the claim is one regarding which a suit for recovery would have lain in the revenue court, the Special Judge shall have all the powers of the revenue court for the determination of that claim. Similarly he shall have all the powers of a civil court with respect to a claim triable by the civil court but for this Act,

2. He may take the evidence recorded in any suit or proceeding stayed under sub-section (1) of section 7 as evidence recorded before himself. For this purpose he shall have to summon the record of that suit or proceeding.

Limitation of the powers of the Special Judge.

1. The provisions of the U. P. Agriculturists' Relief Act of 1934 shall not be applicable to proceedings under this Act.

2. He shall not treat as principal any accumulated interest which has been converted into principal after 31st December 1916.

(1) At any statement or settlement of accounts or

(2) By any contract made in the course of the transaction.

3. He shall treat as principal the accumulated interest converted into principal before 31st December 1916 (i) at any statement or settlement of account or (ii) by any contract made in the course of the transaction.

4. The amount of interest held to be due on the date of the application shall not exceed that portion of the principal calculated as above which may still be found to be due on the date of the application.

5. He shall apply the provisions of the Usurious Loans Act of 1918.

6. He shall not allow pendentilite and future interest at more than 4½ p.c. per annum.

7. He shall determine the amount due on the date of the application under section 4.

8. In determining the amount due under a decree he shall accept the findings of the court which passed the decree except in so far as they are inconsistent with the provisions of section 14.

Claim for unliquidated damages:—

Such a claim cannot be examined by the Special Judge because it does not come within the definition of debt. Under section 9 claims in respect of private debts alone are called to be filed. Neither was a suit to recover unliquidated damages barred by section 7. The moment a decree is passed for unliquidated damages, they cease to be unliquidated and then the Special Judge can pass a decree on the basis of that decree.

For unliquidated damages see section 2(a). Claim arising out of partnership is not a claim for unliquidated damages and can be decided by the Special Judge.

'Before December 31, 1916' and 'after December 31, 1916.'

These words not only govern "by any contract made in the course of the transaction" but also 'at any statement or settlement of accounts'.

By any contract made in the course of the transaction.

It is often contended that if there is a stipulation in a deed executed before December 31, 1916 that the accumulated interest shall be treated as principal, the Special Judge should not treat it as principal because such a contract cannot be said to have been made in the course of the transaction. This contention is unsustainable because in my opinion the course of the transaction runs from the very inception of the transaction itself and it is not necessary that there should be a subsequent contract before December 31, 1916. On equitable grounds too this view cannot be sustained because when by means of a subsequent contract entered into between the parties before December 31, 1916, accumulated interest has been treated as

principal, which shall also be deemed as principal under clause 5, there is no reason why interest accumulated before December 31, 1916 which is to be treated as principal under the terms of the deed, should not be so treated under Clause (5).

The amendment proposed in U. P. Gazette dated 9th October, 1937, will clear the ambiguity, if accepted as law.

Amount of interest held to be due on the date of the application.

It is often contended that section 14 has applied the law of damdupat, the effect of which is that in holding the amount of interest to be due on the date of application under Sec. 14 (4a) the Special Judge should also take into account the interest paid before. In my opinion this contention is without force because the section does not say a word about damdupat law. The true interpretation in my opinion is that the Special Judge shall not decree amount due on account of interest on the date of the application exceeding that portion of the principal which may still be due on the date of the application. Thus on the date of the application the amount held to be due under section 14 (4a) on account of interest shall not exceed the principal due on that date. First the Special Judge shall determine the principal sum due on the date of the application in accordance with sub-clauses (5) and (6) after accounting for the sums received towards principal. Next he will calculate the amount of interest due at the contractual rate after accounting for the amounts received on account of interest and if it exceeds the principal sum remaining due, the Special Judge shall hold that amount of interest to be due on the date of the application which equals the principal sum due on that date and shall not allow the rest.

Usurious Loans Act X of 1918.

This Act has been held to apply to the proceedings under this Act. So far as its applicability to undecreed loans is concerned, there is no difficulty. But so far as decrees are concerned which shall also be scrutinized in the light of section 14, the question is whether Usurious Loans Act as amended by U. P. Act No. XXII of 1934 will apply or not. In my opinion it will not, because the amendment Act applies only to suits instituted after the passing of that Act *viz.*, 27th April 1935—Sec. 1 (2). Secondly as the Usurious Loans Act only applies to suits but not decrees, so decrees cannot be affected by the Usurious Loans Act under the U. P. Encumbered Estates Act.

Account stated.

Any admission of a debt due by the defendant to the plaintiff is treated as an account stated as was observed by Blackburn, J. in *Laywick V. Pickles* (33 L. J. Q. B. 43). An account stated is an adjustment assented to by both the parties—C. 447 at 451. It is an admission by one who is in account with another that there is a balance due from him—Anson, 17th Edition p. 447-445. For the purposes of an effective statement or settlement of account under Cl. (5) and (6) to Sec. 14, it must be tantamount to a new contract and a substantive cause of action in itself to recover the amount stated or settled. If such statement or settlement was arrived at before December 31, 1916 the entire amount will be treated as principal but if it was arrived at after December 31, 1916 it will not be so treated.

Agriculturists' Relief Act.

This Act will not be applied to these proceedings and therefore it will not be permissible to say that interest should be calculated as provided by section 30 Schedule IV of the Agriculturists' Relief Act.

Effect of submission of account under section 32 Agriculturists' Relief Act by the creditor.

But where the creditor has submitted an account under section 32 of the Agriculturists' Relief Act charging interest according to Schedule IV the landlord can with all the force at his command say that on the date the account was sent to him the amount due, be treated as that given in the account sent because had no such account been sent, he would have filed the suit under section 33 Agriculturists' Relief Act for reduction of interest. His contention will be treated as right because after receipt of this account he had no necessity to bring the suit under section 33. The creditor should be held bound to the amount claimed in the account. Of course from the date of this account to the date of the application the interest will be calculated at the contractual rate, if not usurious, and not at the rate given in Schedule IV because the provisions of the Agriculturists' Relief Act are not applicable to these proceedings.

Pendentilite and future interest and costs.

The Special Judge shall be bound to award pendentilite and future interest. It is not discretionary with him to do so. The words "together with pendentilite and future interest" should be read with "shall pass a simple money decree." So far as costs are concerned, the court may or may not allow them as the word used is "may" and not 'shall'. Had the legislature intended that award of pendentilite and future interest was also discretionary with the court, it must have used the following words to carry its meaning, "together with pendentilite and future interest which the Special Judge may allow".

Possessory mortgages.

In their case the pendentilite interest will not be granted and future interest may be granted only from the date of dispossession from the mortgaged property and not earlier. In the case of possessory mortgages of tenancy plots which are void,; neither a decree should be passed by the Special Judge because no claim can be decreed on the basis of a void mortgage nor should the possession of the mortgagee be disturbed because the mortgagor cannot recover possession unless he restores the benefit gained by him by executing the mortgage, that is to say, repays the mortgage money. See 19 R. D. 77.

Court fee in an appeal against decree passed under section 14.

The memorandum of appeal cannot come under the descriptions in Articles 11 or 17 Schedule II of the Court fees Act and therefore it must come under the description in Art 1 of the Court fees Act. The court fee is consequently payable advalorem—1937 A. L. J. 1373.

Special Judge ordered "a money decree shall be passed in favour of creditor no. 1 in respect of the amount found due" and appointed a commissioner to find the amount. Held that having regard to the definition of decree contained in C. P. C. and to the provisions of section 14 (7) the decision of the S. J. is a decree though the amount that may be due to the opposite party remains to be fixed and hence advalorem court fee is payable in an appeal against such order—1938 R. D. 212.

Execution of decree passed by a court outside U. P.

The decree shall not be executable within the U. P. except under the provisions of this Act. But if the landlord applicant has properties outside U. P., a decree passed outside can be executed against the property outside U. P. A suit beyond U. P. cannot be stayed under section 7 and a decree can be passed by any court beyond U. P. and executed against property beyond U. P. because the U. P.

Encumbered Estates Act can have no application at all whatsoever there. Also see 1938 A. L. J. R. p. 481.

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But if such claimant once chooses to come and prove his claim under the U. P. Encumbered Estates Act, he cannot bring a suit on the basis of the same debt in a court beyond U. P. or execute the decree.

Lawyer's fee.

Lawyer's fee will be the same as for regular suits—rule 93.

15. In determining the amount due on the basis of a loan which has been the subject of a decree the Special Judge shall accept the findings of the court which passed the decree except in so far as they are inconsistent with the provisions of section 14.

Provided that the Special Judge shall not determine any claim under a decree, until any appeal or revision filed against such decree has been finally decided or the period allowed for appeal has expired and in all such cases the finding of the Special Judge shall be based on the final decree.

Decrees on the basis of loan to be touched to what extent under Section 14.

The Special Judge shall accept the findings of the court which passed the decree except in so far as they are inconsistent with the provisions of sec. 14.

Except in so far as they are inconsistent with the provisions of section 14.

The court will have to scrutinize the decree in the light of section 14 and if it finds that the interest due under the decree on the date of the application exceeds the principal sum due on that date, which is to be determined in the light of section 14 (5) and (6), the court shall reduce the interest to equal it to the principal but shall not disturb the finding about costs.

Suppose A got a decree against the applicant landlord for Rs. 100/—principal and 300/—interest and costs. The Special Judge shall in determining the amount due under section 14 on the date of the application pass a decree for 100/—principal plus 100/—interest together with costs awarded in the decree and execution costs, if any. If the decree awarded future interest on costs also, the S. J. shall also add the interest due on costs to that amount but not exceeding the amount of costs. In case preliminary mortgage decree awards interest on the aggregate sum including costs, the decree holder is entitled to interest on costs so included—89 I. C. 228.

Decree providing no future interest, can the S. J. grant pendentilite and future interest in a decree under section 14 (7).

In my opinion the S. J. shall grant pendentilite and future interest as the provisions of section 14 (7) to that effect are mandatory. The provisions of section 15 are to be looked into only to determine the amount due on the date of the application and not otherwise. On equitable grounds as well this interest must be allowed as no one knows how long will it take the Collector to execute the decree and but for these proceedings, the decree holder would have realized his money long ago and it is nothing but fair that such interest must be allowed.

16. The Special Judge shall rank all debts for priority, provided that debts in the earlier of the following classes shall have priority over those in the later classes :—

Class (1)—Debts recoverable under the Agra Tenancy Act III of 1926, the Oudh Rent Act XXII of 1886 and the Land Revenue Act III of 1901 ;

Class (2)—Public debts due to the Government and public debts due to a local authority creating a charge on immovable property ;

Class (3)—Debts secured upon property against which the Collector may take action under the provisions of section 24 up to the value of the security ;

Class (4)—Other secured debts ;

Class (5)—Debts due on account of goods supplied or services rendered ; and

Class (6)—Unsecured debts due to a local authority, debts falling into class (3), in excess of the value of security and other unsecured debts.

Section 16. The Special Judge shall decide the ranks in which the debts shall stand for priority as regards liquidation, in accordance with the classes given in this section. As between the debts falling in any one class, the Judge shall have the unfettered right to decide the priority of one over the other. The Judge would do well in deciding the same judicially and not arbitrarily.

For the purposes of this Section debts have been divided into six classes in their order of merit :—

Class I. In the first class are placed debts recoverable under the two Rent Acts and the Land Revenue Act. Under this class all those dues, due to the government which are recoverable as arrears of land revenue shall come, such as irrigation charges, etc. Arrears of rent, and arrears of profits as between co-shares shall come under this head.

Class II. Under this class loans such as taqavi loans or other loans advanced by the Government shall come in public debts. Public debts due to a local authority creating a charge on immovable property would include taxes levied by any local authority, which are charges on the immovable property by virtue of those local acts.

Class III. Herein come secured debts upon debtor's property other than proprietary rights in land against which the Collector may proceed under section 24, but only to the extent of the value of the security. Amounts above the value of the security shall come in class VI, *e. g.*, a personal decree under order 34, rule 6 C. P. C.

Class IV. Under this class would come debts secured on proprietary rights in land and other property not included in class III. Ordinarily secured debts prior in time shall be ranked above those later in time.

Class V. Debts due on account of goods supplied would mean debts due from the landlord to the person or persons for the commodities supplied to him.

Debts due for services rendered would include wages due to servants or labourers from the landlord for the services rendered by them.

Class VI. All taxes due to the local authorities which are not held to amount to charges on immovable property under those Acts, would come in this class besides all other unsecured debts and secured debts exceeding the value of security falling into class III.

Note:—This section is an improvement on section 17 of the Bundelkhand Encumbered Estates Act of 1903.

17. (1) If the amount of any public debt reported by the Collector under section 6 is disputed and if a suit would lie in any civil or revenue court to determine the amount of that debt, the Special Judge shall, after such inquiry as may be necessary, determine such dispute.

(2) If a suit did not lie in any civil or revenue court to determine the amount of a public debt the Collector's decision about the amount of the debt shall be final.

Section 6 provides that the Collector shall inform the Special Judge of the public debts along with his order forwarding the application under that section. This section lays down that if such public debts are disputed, then the Special Judge shall decide it only in cases when a suit for the determination of that claim is maintainable in the Civil or Revenue court otherwise he would accept the order of the Collector as final.

18. Subject to the right of appeal or revision conferred in Chapter VI, the effect of a decree of the Special Judge under sub-section (7) of section 14 shall be to extinguish the previously existing rights, if any, of the claimant, together with all rights, if any, of mortgage or lien by which the same are secured and, where any decree is given by the Special Judge to substitute for those rights a right to recover the amount of the decree in the manner and to the extent hereinafter prescribed.

Effects of the decree of the Special Judge passed under section 14 (7).

1. All previously existing rights of the claimant shall be extinguished.
2. All rights of mortgage or lien by which the claimant's rights are secured, shall be extinguished.
3. The decree shall substitute for those rights a right to recover the amount of the decree in accordance with the provisions of Chapter V. Thus the property of the applicant shall be deemed to be free from encumbrance, attachment, charge or lien the moment a decree is passed by the Special Judge and soon after the applicant will be entitled to get into possession of his property though it was in the possession of a mortgagee. He will be entitled to apply for delivery of possession to the collector under section 35 of the Act. But in case the amendment proposed in U. P. Gazette dated 9th Octobr 37 is carried into effect, usufructuary mortgagee or a mortgagee by conditional sale, in possession will not be deprived of possession under Sec. 35.

Analogous law.

This section is the same as explanation to section 13 of the Bundelkhand Encumbered Estates Act.

Case law.

A bond by a disabled proprietor arranging an authorised mode of payment of a sum awarded by the Special Judge is void—19 A. L. J. 645. After a decree under section 14 (7) and pending an appeal in the chief court, the collector alone can stay proceedings for delivery of possession arising under section 35 and not the appellate court—1937 R. D. 200.

Lien is a word used in English Law. Under English Law the seller parts with the equitable estate as soon as the contract is made, and equity gives him a lien, *i. e.* a right to enforce payment out of the interest he has transferred and this lien continues after he has, by conveyance, parted with the legal estate. But the contract in India does not operate to transfer any estate, and so the whole ownership still being in the seller, there is not and cannot be a lien prior to conveyance. The English lien is a right which begins with the contract while the Indian charge is a right which begins with the conveyance—*Har Lal Versus Mohammadi* 21 All. 454 at 458. The effect of both is the same for both give a right to a court sale. But there is this distinction that an equitable charge being a creature of equity cannot be moulded by equity whereas a statutory charge is more rigid and depends for its existence on the terms of the contract or Statute. This distinction was explained by the Privy Council in the leading case of *Webb Versus Macpherson*—31 Cal. 57, 30 I. A. 238.

19. (1) The Special Judge shall send the decrees granted

Transmission of decrees to Collector. under sub-section (7) of section 14 to the Collector for execution in accordance with the provisions of the next chapter. The Special Judge shall also inform the Collector of the order in which he has ranked the debts for priority.

(2) The Special Judge shall inform the Collector of the nature and extent of the property mentioned in the notice under section 11 which he has found to be liable to attachment, sale or mortgage in satisfaction of the debts of the applicant.

Section 19. This section provides the mode of the execution of decrees passed under section 14, sub-section 7 by the Special Judge. Such decrees would be executed by the Collector and the Special Judge shall send them for execution to the Collector. The Special Judge shall also inform the Collector of his order ranking the debts in order of priority under section 16. He shall also intimate the extent to which the debt has been reduced and the amount of costs awarded—rule 15. The Special Judge shall also inform the Collector of his order under section 11, sub-section 2 stating the property or properties liable to attachment, sale or mortgage in liquidation of the debts. This section is a modified form of section 19 of the Bundelkhand Encumbered Estates Act.

20. The applicant may at any time within a period of one

Quashing of proceedings. month from the day on which the Special Judge decides any claim under section 11 apply that the proceedings under this Act be quashed and the Special Judge

shall quash such proceedings and pass such order as to the the costs of the proceedings before him as he thinks proper, provided that the order of quashing proceedings shall not take effect unless the landlord within one month of such order pays into court the amount of any costs ordered by the Special Judge under this section.

Section 20 Note.—This section is to be read with section 43.

The applicant is at liberty to get the proceedings quashed but he must do so within a month from the date of the decision of the claim under section 11. On the application having been made by the debtor, the Special Judge shall quash the proceedings and pass order for costs but the quashing order shall not take effect unless the landlord within one month of such order pays into court the amount of costs.

Effect of non-payment. But if he does not pay the costs at all or pays them after one month, the quashing order shall not take effect and the proceedings will continue. Section 43 provides the consequences ensuing from the order quashing the proceedings. The two provisions are inconsistent in as much as section 20 provides that the order shall not take effect unless the landlord pays the costs within one month while section 43 lays down that when an order has been passed under section 20 quashing further proceedings, the consequences enumerated therein shall ensue. Both the provisions can be reconciled and conflict removed if they are taken to mean that the consequences given in section 43 shall ensue after the landlord has paid the costs within one month of the quashing order but with effect from the date of the passing of the order under section 20. If no costs are paid as required by section 20, the order under section 20 quashing the proceedings shall not take effect and unless it takes effect, the consequences given in section 43 cannot ensue.

Time limit for making application under this section when there is no claim under S. 11.

Decree under section 14 (7) cannot be passed until the expiry of a period of one month after the date of the decision of the claim under section 11 and application under section 20 in such a case can be made within one month from the date of decision under section 11 which means that it must be made before the decree under section 14 (7) is passed.

It follows that in cases where there is no claim under section 11, the application under section 20 must be made before the decree under Section 14 (7) is passed.

CHAPTER V.

EXECUTION OF DECREES AND LIQUIDATION OF DEBTS.

Note. This chapter lays down the procedure to be followed by the Collector for execution of decree and liquidation of debts.

21. The Collector shall after hearing any objection preferred by the applicant, determine the amount of any public debt which has not been reported under section 6 and which in accordance with rules framed by the Local Government in this behalf is to be liquidated under this chapter.

Determination of amount of public debts not reported by Collector.

Section 21. In the case of those public debts in respect of which the Collector is not required to inform the Special Judge and those which under rules 55 to 58 are to be liquidated under this chapter, the Collector shall determine the amount after hearing the objections, if any, preferred by the applicant.

22. The Collector shall allow the debtor a period of two months within which he may pay into court the whole or any part of the amount due from him.

Period for payment of debts

Section 22. Under this section, the Collector is bound to allow 2 months' time to the applicant for payment of the whole or any part of the amount due from him. See rule 24.

23. (1) If on the expiry of the said period the debtor shall have paid into court the full amount due from him the Collector shall discharge all his debts.

Liquidation of debts by means of money paid by debtor.

(2) If on the expiry of the said period the debtor shall not have paid into court the full amount due from him the Collector shall expend the amount, if any, paid in discharging the debts in order of priority and shall proceed to liquidate the amount still remaining due in accordance with the provisions of the following sections.

Section 23. If the applicant pays the amount in full on the expiry of two months, the Collector shall discharge all his debts. If the debts are not paid in full and only a part is paid, the Collector shall spend the sum received to discharge the debts in order of priority and shall proceed to liquidate the remaining amount as laid down in the further sections.

24. (1) The Collector shall first realize the value of such of the debtor's property other than proprietary rights in land as shall have been reported by the Special Judge under the provisions of sub-section (2) of section 19 to be liable to attachment or sale :

Realization of value of debtor's property other than proprietary rights in land, and application of proceeds for liquidation of debts.

Provided that the Collector before passing orders under this section for the sale of any property shall hear any objection which the debtor may have to make to the sale of that property :

Provided also that the Collector shall leave to the debtor at least one residential house and the necessary furniture therefor if—

- (a) the debtor owns such house and furniture and desires to retain it and
- (b) such house and furniture is free from any mortgage and charge :

Provided also that if the debt can be liquidated under section 27 the Collector shall not sell any property to the sale of which the debtor has objected.

(2) The amount so realized shall be expended by the Collector in discharging the debts in order of priority.

(3) For the purpose of execution against property outside the United Provinces the decrees passed by the Special Judge shall be deemed to be decrees in favour of the Collector.

(4) For realizing the value of the debtor's property under this section the Collector may exercise all the powers of a Civil Court for the execution of a decree.

Section 24. If the applicant does not pay the debts in full within two months as required by section 22, the Collector shall sell all the property other than proprietary rights in land held liable to attachment, sale or mortgage by the Special Judge and reported by him under section 19, sub-section 2 and from the sale proceeds realized by him under rule 32, he shall pay the debts in the order of priority subject to the following provisos:—

1. That he shall hear the objections, if any, made by the debtor to the sale of the property. See rule 31.

2. That he shall leave at least one residential house and furniture, which the debtor wishes to retain and which belongs to him and is free from any mortgage or charge. Also he shall not sell such personal property of the debtor and his family as is in his opinion reasonable for persons of the debtor's position to possess, unless such property is pledged as security for a loan—rule 33.

3. That he shall not sell any property objected to by debtor if the debt can be liquidated under section 27.

Sub-section 3. It lays down that if the property or any part thereof to be sold under this section is situated outside U. P. the decrees of the Special Judge shall be deemed to be decrees in favour of the Collector.

Sub-section 4. Ordinarily such property is sold in execution of a decree by the Civil Court under the provisions of C. P. C. This section confers powers on the Collector to exercise all the execution powers of a civil court for realizing the value of the debtor's property.

25. If the sum, if any, realized under section 23 and section 24 is insufficient to liquidate the amount due by Liquidation by grant of a mortgage. the debtor then if any person agrees to pay the amount still due and to accept a mortgage in either of the forms set out in the schedule in consideration of such payment, the Collector shall grant such a mortgage :

Provided that the post-slump profits of the area mortgaged shall not exceed three-quarters of the post-slump profits of the debtor's entire proprietary rights in land :

Provided also that the amount for which the mortgage is granted shall not be less than the value of the property mortgaged

calculated at such multiple of the post-slump profits of that property as may be fixed by the Local Government from time to time by rule in this behalf :

Provided also that if during the period of mortgage the land revenue of the land mortgaged is altered either at a quinquennial settlement or by the granting of a remission or by a variation of the remission for the fall in prices, then the period of the mortgage shall be redetermined by the Collector in accordance with rules framed by the Local Government and shall not be subject to a limit of 20 years.

Provided also that if the land mortgaged is brought under settlement the period of the mortgage shall be redetermined by the Collector in accordance with rules framed by the Local Government and shall not be subject to a limit of 20 years.

Explanation.—“Payment” in this section shall include the discharge of any debt due to the mortgagee himself.

Section 25. This section lays down that if the sums realized so far under the previous sections fall short of the amount due from the debtor, the Collector shall grant a mortgage of the proprietary rights in land provided any person agrees to pay the remaining debts and accepts a mortgage in either of the forms given in the schedule in lieu of such payment, subject to the provisos given below. See rules 70—71 and rule 75.

1. That the area of the property mortgaged shall not be more than what gives the $\frac{3}{4}$ th post-slump profits of the debtor's entire proprietary rights in land, that is to say, the Collector shall leave free an area, which would give $\frac{1}{4}$ post-slump profits out of the whole area for the maintenance of the landlord, his family and dependents and for the management and upkeep of the property. See rule 72.

Area of mortgaged Property.

2. That the mortgage sum shall be an amount equivalent to the value of the property mortgaged calculated at such multiples of the post-slump profits as may be fixed by the Collector under rules 73 and 74.

Mortgage money.

3. That the period shall not be more than 20 years, unless the land revenue has been altered either at a quinquennial settlement or by the grant of a remission or on account of a variation of the remission for the fall in prices, in which cases the Collector shall re-determine the period in accordance with rules 77 to 79, and he shall also re-determine the period, when the mortgaged property is brought under a new settlement, or when a payment is made under section 41 in accordance with rules 77, 78, 80 and 81. It should be remembered that in the last but one case it is not necessary that the land revenue should vary. In all such cases the maximum limit shall not be subject to the limit of 20 years. In the first instance the limit will not be more than 20 years but when any of such events given above happens, the Collector shall re-determine the period and the mortgage will last for that period.

Period and its alteration.

Explanation provides that if any debt is due to the mortgagee, it shall be discharged out of the mortgage consideration.

26. If the sum, if any, realized under section 23 and section 24 is insufficient to liquidate the debt and a mortgage is not granted under section 25 then the Collector shall in accordance with rules framed by the Local Government determine—

Determination of instalment value and transfer value of debtor's proprietary rights in land.

- (a) the multiple to be used in calculating the instalment value of the debtor's proprietary rights in land and
- (b) the multiple to be used in calculating the transfer value of the debtor's proprietary rights in land :

Provided that different multiples may be determined for calculating the instalment and transfer values of different portions of the debtor's property.

- (c) the instalment value of the debtor's proprietary rights in land by applying to the post-slump profits of that land in the *Fasli* year in which the application is made the multiple or multiples determined under clause (a) and
- (d) the transfer value of the debtor's proprietary rights in land by applying to the pre-slump profits of that land in the *Fasli* year in which the application is made the multiple or multiples determined under clause (b) :

Provided that if the Collector, after hearing any of the parties who wishes to be heard, finds that the profits of the debtor have decreased since the year 1338 *Fasli* owing to a decrease either in the cultivated area or in the kind of profits mentioned in sub-clauses (iii), (iv) and (v) of clause (j) of section 2 or otherwise, he shall for the purpose of determining the transfer value of the debtor's proprietary rights in land add to the pre-slump profits such portion of that decrease as he may find to be due to the fall in prices.

Section 26. If the amount remaining due is not liquidated under section 25, the Collector shall determine the instalment and transfer values of the debtor's proprietary rights in land under rules 23, 25, 26, 30 after fixing the respective multiples in accordance with rules 27 and 28.

Transfer Value and Instalment Value.

Instalment value multiple multiplied by the post-slump profits in the *Fasli* year of the application will give the instalment value of the proprietary rights in land while transfer value multiple multiplied by the pre-slump profits in the *Fasli* year of the application will give the transfer value.

Proviso. But if the Collector finds, on objection by any of the parties that the pre-slump profits in the *Fasli* year of the application are less than the profits in the

year 1338 F. either on account of a decrease in the cultivated area or in the amount of profits under section 2, clause (J), sub-clauses III to V or otherwise, the transfer value shall be the transfer value multiple of the pre-slump profits in the Fasli year of the application plus such decrease in profits which may be due to the fall in prices. See rules 29 and 26.

27. If the amount still due by the debtor is less than the instalment value of his proprietary rights in land as determined under section 26 the Collector shall in accordance with rules framed by the Local Government order him to pay such amount to the Local Government in instalments with future interest at a rate to be determined by the Local Government which shall not be higher than $4\frac{1}{2}$ per cent. per annum, provided that such instalment shall not extend beyond a period of 20 years.

Order for payment in instalments where debts do not exceed instalment value of proprietary rights in land.

Section 27. If the amount remaining due after section 24 is less than the instalment value of his proprietary rights in land both protected and unprotected found under section 26, the Collector shall order the applicant to pay the same in instalments spreading over not more than 20 years together with future interest at the rate fixed by the Local Government but not higher than $4\frac{1}{2}$ p. c. per annum, to the Local Government along with his land revenue and cesses and the Local Government shall grant to each creditor a bond or bonds for the amount due to him bearing interest at 1 p. c. less than the rate fixed under section 27 and payable in not more than 20 years. The instalments shall be recoverable by the L. G. as an arrear of land revenue and L. G. shall be entitled to redeem the bonds at any time. See rules 35 to 40.

Future interest.—The Local Government has fixed the future rate of interest under this section at $4\frac{1}{2}$ p. c. per annum *vide* Revenue department, Notification No. 588, dated 18th July, 1935, published in U. P. Gazette, dated 20th July 1935.

Bond rate of interest.—This rate shall therefore be $3\frac{1}{2}$ p. c. per annum. The Government shall issue bonds at this rate. Proprietary rights in land include both protected and unprotected land.

Amount payable to the Government.—It shall be the amount equal to the total value of bonds.

Note. This section should be read with sections 29 and 30.

28. (1) If the amount still due by debtor exceeds the instalment value of his proprietary rights in land but does not exceed the instalment value of his proprietary rights in protected land, if any, together with the transfer value of his proprietary rights in unprotected land, if any, the Collector shall, in accordance with rules framed by the Local Government, under section 31 transfer to the creditors shares in the debtor's

Transfer of proprietary rights and order for payment in instalments where debts exceed instalment value of proprietary rights in land.

entire proprietary rights in unprotected land and in accordance with rules framed by the Local Government order the debtor to pay the difference between the amount still due by him and the total transfer value of the shares so transferred to the Local Government in instalments over a period of 20 years with future interest at the rate determined under section 27.

(2) If the amount still due by the debtor exceeds the instalment value of his proprietary rights in protected land, if any, together with the transfer value of his proprietary rights in unprotected land, if any, the Collector shall transfer to the creditors the whole of the debtor's proprietary rights in unprotected land, if any, and order the debtor to pay an amount equal to the instalment value of his proprietary rights in protected land, if any, to the Local Government in instalments over a period of 20 years with future interest at the rate determined under section 27.

Section 28. This section for the first time introduces protected and unprotected land, which terms, it seems, have been specially coined for the purposes of this Act. We remember that those estates which are registered under the Oudh Settled Estates Act or the Agra Estates Act leave no proprietary interest in the proprietor except that he holds a life interest in those properties and as such no more than a life interest can be conveyed by sale or mortgage or acquired at an auction sale. This section lays down that in no case is protected land to be transferred and that must be the case as it is not capable of transfer. This section deals only with those proprietors, whose estate is registered under the Agra Estates Act or Oudh Settled Estates Act. Often it is only very big Taluquaders and landholders who get a declaration made under those Acts and it is only after the declaration has been made that their Estates come within the fore-corners of those Acts.

Liquidation Scheme—Reading clause 1 we find that share certificates in the property not governed by the two Estates Act is to be granted in accordance with rules 41 and 42, but not in protected land. When the case comes in clause 2 of this section, proprietary rights in unprotected land are to be transferred in accordance with rule 43. In no case is protected land to be transferred. It shall remain quite safe. The mode of liquidation in such cases is given in section 31.

The first case will arise when

$$X > A' + B' \text{ but } < A' + B.$$

The second case will arise when

$$X > A' + B.$$

Here X denotes the amount of the debt remaining unsatisfied, A denotes the transfer value of the protected land, A' denotes the instalment value of the protected land while B denotes the transfer value of unprotected land and B' denotes the instalment value of unprotected land.

In case the debtor is not a person whose estate is registered under either of the two Estates Act and the amount still due from him after section 24 exceeds the instalment value of his proprietary rights in land but is less than the transfer value, the Collector shall transfer to each creditor a share in the debtor's proprietary

rights in land or grant him bond or bonds of the kinds given in section 30 or partly grant bonds and partly shares in liquidation of the debts but their total value shall be equal to the amount due to the creditor or creditors. The above proposition follows from a careful reading of section 28 and section 31 by making the transfer and instalment value of protected land zero and by reading 'proprietary rights in land' for 'proprietary rights in unprotected land.

In the rules under section 28 (1) three cases have been dealt with.

(1) Where there is no protected property,

Here fraction to be transferred to creditors will be found out according to the formulae.

$$\text{Fraction} = \frac{\text{Debt minus instalment value}}{\text{Transfer value minus instalment value.}}$$

$$= \frac{X-B'}{B-B'}$$

The fraction may be slightly rounded to make it a convenient fraction. Its value will be deducted from the debt and the remaining debt will be liquidated by grant of instalments for 20 years, which the debtor shall pay to the Local Government. Minimum instalment = Remaining debt/13. 294.

(2) Where there is both protected and unprotected property. Here fraction of the unprotected property to be transferred will be

$$= \frac{\text{Debt} - \text{total instalment value of both protected and unprotected land.}}{\text{Transfer value of unprotected property minus its instalment value} = \frac{X - (A + B')}{B - B'}}$$

The remaining sum shall be paid in instalments for 20 years. Minimum instalment = Balance of debt/ 13. 294.

(3) In case where there is only protected property.

In this case no property will be transferred and the debtor shall pay only 20 instalments to Government, each equal to instalment value/13.294.

Under section 28 (2) also similar three cases would arise.

(1) In the first case no bonds shall be issued and no instalments shall be granted.

The whole of the unprotected property shall be allotted to co-sharers. When the whole has been allotted, the remaining creditors will get nothing.

(2) In the 2nd case the highest rank creditors will be given bonds equal in value to the instalment value of protected property and the remaining will get unprotected property as in (1).

(3) In the 3rd case no property shall be transferred and only bonds equal in value to the instalment value of the protected property shall be issued to the creditors in order of their rank and the remaining creditors shall get nothing.

29. (1) The instalments ordered under section 27 or section 28 shall be paid by the debtor to the Local Government along with his land revenue and cesses and any such instalment not paid on due date shall be recoverable as an arrear of land revenue.

(2) If the full amount of any two consecutive instalments has not been paid within six months of the date on which the second of

such instalments fell due, the whole amount remaining due from the debtor may subject to the rules framed by the Local Government be recovered as an arrear of land revenue.

(3) Notwithstanding anything in the United Provinces Court of Wards Act of 1912, the Court of Wards shall at the request of the Local Government assume charge of the estate of any debtor who has been ordered to pay instalments under section 27 or section 28 and who has not paid two consecutive instalments within six months of the date on which the second of such instalments fell due.

Section 29. Instalment under section 27 or section 28 shall be treated for the purposes of payment or realization as arrears of land revenue. See rules 52, 53 and 59 to 61.

Mode of realization is given in section 146 of the Land Revenue Act III of 1901.

Meaning of Sub-section 2—This gives the Collector the power to realize the arrears of land revenue within a period of six months from the date on which the 2nd instalment fell due. Thus this sub-section gives grace time to the debtor for making payment of the instalment at least upto accrual of the 2nd instalment if not after, as the Collector may exercise his power to realize as arrears of land revenue on the date following the accrual of the 2nd instalment. See rule 62.

Sub-section III. It lays down that the Local Government may order the Court of Wards to assume superintendence of the estate of a debtor, who has failed to pay any two consecutive instalments granted under sections 27 and 28 within six months of the accrual of the 2nd instalment and the Court of Wards shall assume charge accordingly notwithstanding anything to the contrary in the United Provinces Court of Wards Act of 1912. Thus the Court of Wards shall not be able to refuse the order of the Local Government. This will act as a Scarecrow to the debtors. See rule 62.

30. If the Collector has proceeded under section 27 he shall
Giving of bonds to creditors. in accordance with rules framed by the Local Government give to each creditor a bond or bonds for the amount due to him. Such bond or bonds shall bear interest at one per cent. less than the rate fixed under section 27 and shall be payable by the Local Government within a period which shall not exceed 20 years :

Provided that the Local Government may at any time pay to the creditor the whole amount remaining due at the date of payment.

Section 30. See commentary below section 27.

See rules 45 and 49. For payment of interest see rule 92.

31. (1) If the Collector has proceeded under sub-section (1) of
Liquidation of debts by transfer of proprietary rights and by bonds. section 28, he shall in accordance with rules framed by the Local Government liquidate the amount due to each creditor by transferring to him a share

of the debtor's entire proprietary rights in unprotected land or by giving to him a bond or bonds of the description mentioned in section 30, or partly by one of these methods and partly by the other, provided that the transfer value of any share in the debtor's proprietary rights in unprotected land transferred to the creditor together with the amount of the bond or bonds given to him shall be equal to the amount due to him.

(2) If the Collector has proceeded under sub-section (2) of section 28 he shall as far as possible proceed as in sub-section (1) and the whole of the landlord's debt shall be deemed to be satisfied in full by the transfer to the creditors of his proprietary rights in unprotected land and by giving to them of bonds the total amount of which is equal to the instalment value of his proprietary rights in protected land.

Section 31. See commentary on section 28.

This provides the mode of liquidation in cases coming in section 28, sub-sections 1 and 2. In either of the two cases, the debts will be liquidated either by transfer of proprietary rights in unprotected land or by the grant of bond or bonds under section 30 or in both ways, the total of which should in every case be equal to the amount due to the creditor or creditors. In the 2nd case, the total amount of the bonds shall be equal to the instalment value of his proprietary rights in protected land. See rules 46, 47 and 49. Interest shall be payable to the lawful holder of the bond on presentation to the treasury. See rule 92.

32. If the Collector proceeds under section 28, then as far as possible, he shall liquidate the debts which have been ranked highest by the Special Judge first by means of sale under section 24, and then by means of bonds :

Liquidation of debts in order of priority.

Provided that any creditor or creditors who would get cash or bonds under the provisions of this section may, if he or they so desire, have land transferred to him or them in accordance with the provisions of section 31.

Section 32. So far we have not dealt as to how the money realized under section 24 is to be spent. This section lays down that if the Collector proceeds under section 28 to liquidate the debts, then he shall as far as possible pay first the debts in the order of priority held under section 16, out of the sale proceeds realized under section 24 and next by means of bonds under section 30. It should be remembered that highest does not mean highest in amount but it means highest in the rank under section 16.

The proviso lays down that if any creditor or creditors who is to get cash or bonds under this section, wants to have land transferred to him, he or they may get it done in accordance with section 31. Thus this proviso gives an option to the creditor,

33. The Collector may on the application of a debtor whose unprotected land is included in more than one mahal transfer to any creditor in exchange for the share in the debtor's entire proprietary rights in unprotected land which may have been transferred to him under section 31 a share or shares in any particular mahal or mahals which do not form part of the debtor's protected land, provided that the value of the share or shares transferred under this section shall be equal to the value of the share transferred under section 31.

Explanation.—For the purposes of this section the value of proprietary rights in land shall be calculated by applying to the post-slump profits of that land the multiple determined by the Collector under clause (b) of section 26.

Section 33. Exchange of lands.

Suppose the debtor has unprotected land in Mahals A and B. The Collector has ordered the transfer of shares in Mahal A to the creditor under section 31 and suppose the debtor does not wish to part with it but is willing to part with share in land of equal value in Mahal B. What is he to do? He should apply to the Collector and the Collector may, in his discretion, transfer the same in exchange in accordance with rule 50. But it is essential that the value must be equal in both.

34. A creditor to whom a share of the debtor's proprietary rights in land has been transferred under section 31 or section 33 may within three months of the passing of the order of transfer apply to the Collector to have the share so transferred or any part thereof sold by public auction. The Collector shall sell such share or part by public auction and pay the sum realized, less a percentage determined by rule framed by the Local Government in this behalf, to the applicant.

Section 34. This gives a right to the creditor to get the shares given to him under section 31 or 33, sold at any time within 3 months of the order of transfer if he does not want shares and requires cash. He has to make an application and the Collector shall be bound to sell the same and shall charge commission at $\frac{1}{4}$ p. c. (rule 19) and shall pay the balance to the creditor. His claim will be deemed satisfied although he may not get full value.

35. If at any time after the decrees granted by the Special Judge have been sent to the Collector under the provisions of section 19 any person entitled to possession of any property under the provisions of this Act applies to the Collector to be put in possession of such

property the Collector shall deliver possession of such property to him.

Proposed change—

10. In section 35, add the following proviso at the end of the section by substituting "semi-colon" for "full stop".

"Provided that no such delivery of possession shall be ordered if the person in possession is a usufructuary mortgagee or a mortgagee by conditional sale accompanied with possession shall not be entitled to any interests so long as he remains in possession".

Section 35. The Collector shall be bound to deliver possession to persons held entitled to possession on the application of that person at any time after the decree of the Special Judge has been transferred for execution to him.

Persons entitled to possession after the transmission of the decree by the Special Judge to the Collector are:—

1. The landlord, who pays the debts in full under section 23 and whose property is mortgaged with possession.
2. The mortgagee to whom a mortgage has been granted under section 25.
3. The auction-purchaser under section 24 or section 34.
4. Creditors who have been given shares in the debtor's proprietary rights in unprotected land under section 31 or section 32 proviso or section 33.
5. A mortgagor under section 42 after the expiry of the period of the mortgage.
6. The applicant. He becomes entitled to possession as against the mortgagee because the mortgage rights come to an end the moment a decree under Sec. 14 (7) is passed. See 1937 R. D. 200.

36. If in any year the produce of any portion of the debtor's property is below normal, the Collector may, in accordance with rules framed by the Local Government in this behalf decrease the amount of instalment which has been ordered under section 27 or section 28 and which falls due in that year and shall provide for the payment by the debtor of the amount so decreased either by increasing some or all of the subsequent instalments or by increasing the number of subsequent instalments.

37. If during the currency of the settlement, whether at a quinquennial settlement or otherwise, any alteration takes place in the land revenue payable by or in the circumstances of a debtor against whom an order for the payment of instalments has been passed under section 27 or section 28, the Collector may in accordance with rules framed by the Local Government in this behalf re-determine the number and amount of the unpaid instalments.

38. If at a revision of settlement the Settlement Officer ^{Re-determination of instalment after settlement.} alters either the rents payable to or the land revenue payable by a debtor against whom an order for the payment of instalments has been passed under section 27 or section 28 he shall re-determine the instalment value of the debtor's proprietary rights in land situated in the district under settlement and the amount and number of the instalments in which the balance of the debt has to be repaid shall be re-determined by the Collector in accordance with rules framed by the Local Government in this behalf.

Section 36—38. (i) The Collector may re-determine the instalments in the following cases:—

1. When the produce of any portion of the debtor's property is below normal in any year.
2. Whenever any alteration in the revenue payable by the debtor takes place either at any quinquennial settlement or otherwise.
3. Whenever any alteration takes place in the circumstances of the debtor.
4. When the rules framed for determining multiples are changed by the Local Government.

(ii) The Collector shall re-determine the instalments in the following cases:—

1. Whenever there is any alteration in the rent or revenue payable to or by the landlord at any revision of settlement.
2. When the debtor under section 41 deposits any amount. The rules 64 to 69 relate to the alteration of instalments.

39. Nothing in the Bundelkhand Alienation of Land Act II of 1903 shall prevent the ordering of payment of instalments by the Collector under section 27 or section 28 or the transfer of the debtor's proprietary rights in land by the Collector to the creditors under section 28.

Saving.

Section 39. The provisions of the Bundelkhand Land Alienation Act shall not be applicable to provisions of this Act under section 27 or 28. This would mean that if the property, the shares in which are transferred, is situated within the jurisdiction of the Bundelkhand Land Alienation Act, the provisions of the Alienation Act to the contrary, forbidding transfer shall not be applicable to this Act and the shares in the property shall be transferred irrespective of its provisions. Also see notes under Section I of the Agriculturists' Relief Act.

40. Notwithstanding anything in the Oudh Settled Estates Act V of 1917, or in the United Provinces Estates Act VII of 1920, the Collector shall in accordance with rules framed by the Local Government determine the extent to which the instalments ordered under section 27 or section 28 shall

Instalments to be a charge on land.

be a charge on any portion of the debtor's land which has not been transferred by the Collector under section 28 or of which a mortgage has not been given under section 25.

Section 40. The instalments granted under section 27 or 28 shall be a charge on the protected or unprotected land of the debtor or on property which has not been mortgaged under section 25 and the Collector shall determine the extent in accordance with rule 51. Provision made in the rules, makes a distribution of the charge on various properties. This means that unsecured debts shall also create a charge on the property of the debtor. It will be a charge created by law and the provisions of the Oudh Settled Estates Act or the U. P. Estates Act to the contrary, shall be negated. These two Acts forbid any charge on properties registered under them. Also see notes under section 2 under the head 'Protected land' and Sec. 28.

41. A debtor may at any time after an order for the payment

of instalment has been passed under section 27 or section 28 or a mortgage granted under section 25 pay into the court of the Collector who passed

the order or granted the mortgage any sum towards the liquidation of the debt in respect of which the order was passed or the mortgage was granted. The Collector shall receive such sum and credit it to the Local Government or pay it to the mortgagee and shall in accordance with rules to be framed by the Local Government in this behalf determine the number and amount of the future instalments or the future period of the mortgage.

Section 41. Benefit of payment of a lump sum.

The debtor is at liberty to pay any amount towards the liquidation of debts under any of the sections 25, 27 or 28 and the Collector shall be bound to credit it to the L. G. in the case of instalments or pay it to the mortgagee under section 25 and on such payment shall redetermine the number and amount of future instalments under rules 68—69, and the future period of the mortgage under rule 80.

It should be remembered that if the debtor only pays the instalments as they fall due, then he will not be entitled to the benefit of this section.

42. (1) If a mortgagee holding possession under a mortgage

granted under this Act remains in possession after the expiry of the period for which he is entitled to hold and on expiry of which he is bound to deliver back the mortgaged property without any payment by the mortgagor, the Collector shall, on the application of the person entitled to possession direct that the mortgage be redeemed, eject such mortgagee and place the person so entitled in possession and may also direct the mortgagee to pay such compensation to the person found to have been wrongly left out of possession as it may deem reasonable.

Restoration of possession on expiry of mortgage.

(2) The Collector may enforce the payment of any compensation ordered under sub-section (1) as if it were an arrear of land revenue.

Section 42. Sub-section (1) of this section is similar to Section 11 of the Agriculturists' Relief Act and Section 18 of the Bundelkhand Encumbered Estates Act.

This Section is for the benefit of the debtor and comes into play only in the case of mortgages granted under section 25. By virtue of this enactment, if the mortgagee overstays the mortgage period and the debtor makes an application under this section the Collector shall be entitled to eject the mortgagee, redeem the mortgage and recover compensation and possession. There will be no bar of regular suit as there is no corresponding section like section 25 of the Agriculturists' Relief Act. If no application is made, a suit shall lie—39 I. C. 582; 1926 Allahabad 136.

Sub-section (2) lays down that the Collector is at liberty to enforce the realization of the compensation as an arrear of land revenue.

43. When an application has been dismissed under sub-section (3) of section 8 or when an order has been passed under section 20 quashing further proceedings under the Act, the following consequences shall ensue, namely.—

Consequences of quashing proceedings under section 20.

- (a) the whole of the proceedings under this Act shall be set aside ;
- (b) notwithstanding anything contained in section 18 all rights and remedies and proceedings stayed under sub-section (1) of section 9 shall revive to the creditors as if no action had been taken under this Act ; and,
- (c) in computing the period of limitation prescribed for any suit or other proceeding for the recovery of debts in respect of which a written statement has been filed under section 10 the period from the date of the order of the Collector under section 6 to the date of the order of the Special Judge quashing further proceedings under the Act shall be excluded ;
- (d) in computing the period of limitation prescribed for any suit or proceeding in respect of a claim which has been stated before the Special Judge under section 11 the period from the date of the publication of the notice under sub-section (1) of that section to the date of the order of the Special Judge quashing proceedings under this Act shall be excluded.

Proposed change—

11. In section 43, delete the words beginning from "under sub-section (3) of section 8 or when an order has been passed under section 20 quashing further proceedings under the Act".

12. Delete clause (c) of section 43 and substitute in its place the following :—" In computing the period of limitation prescribed for any suit or other proceedings for the recovery of debts, the period from the date of the application under Sec. 4 to the date of the dismissal of the application or the date of the knowledge of such dismissal shall be excluded.

Consequences of the dismissal of the application under section 8 (3) or of the quashment order under section 20 are given below :—

(a) Annulment of all proceedings under this Act.

(b) Restoration of status quo *i. e.*, revival of all those proceedings which were stayed under section 7, sub-section 1, clause (a)

(c) We have seen that section 7, sub-section (1), clause (b) barred the institution of any fresh suit or other proceeding or a process for ejection for arrears of rent or a process for ejection of the mortgagor thekadar for arrears of the theka rent after the Collector had passed the order under section 6. Now the creditor shall be given the benefit of excluding the period from the date of the order of the Collector under section 6 to the date of either of the above orders in computing the period of limitation prescribed. The word 'suit' would include process for ejection also.

(d) In respect of claims made before the Special Judge under section 11, the period from the date of publication of the notice under section 11, sub-section (1) to the date of either of the above orders shall be excluded from the period of limitation prescribed for any suit or proceedings in respect of such claim.

Period under section 48 C.P.C. and Limitation Act extended—See 42 A. 118 ; 51 B. 143.

For those persons who failed to state their claim under section 10 or section 11, the period of limitation shall remain the same and they would not be entitled to exclude any period.

Effect of the proposed amendment. Consequences will ensue no matter how the application is dismissed. By the substitution of new Cl. (c) in place of old Cl. (c), in computing the period of limitation prescribed for any suit or proceedings for recovery of debts, the period from the date of the application under Sec. 4 to the date of its dismissal or knowledge of dismissal shall be excluded. The amendment is sound.

Cessation of dis-
abilities.

44. (1) In each of the following cases, namely,—

(a) when the debt has been liquidated under section 23 or section 24 ;

(b) when a mortgage has been granted under section 25 ;

- (c) when the amount ordered to be paid in instalments under section 27 or section 28 has been paid in full or realized as an arrear of land revenue ;
- (d) when proceedings have been quashed under section 20,
- (e) when the application has been dismissed under sub-section 3 of section 8,

the landlord shall cease to be subject to the disabilities mentioned in sub-section (3) of section 7 and the Collector shall forthwith make a declaration to that effect.

(2) In computing the period of limitations prescribed for any proceeding stayed under sub-sections (2) and (3) of section 7 the period from the date of decree referred to in those sub-sections upto the date of declaration under sub-section (1) of this section shall be excluded.

Comment. Section. 7 imposed disabilities on the debtor to the effect that the landlord shall not be competent without the sanction of the Collector to make any exchange or gift of or to sell, mortgage or lease proprietary rights or other property or any portion of them after the passing of the order under section 6. Now according to this section either when the debt has been liquidated in full under any of the secs. 23, 24, 25, 27 and 28 or the application is dismissed under section 8 (3) or proceedings have been quashed under section 20, the disabilities imposed on the landlord shall cease and a declaration shall forthwith be made by the Collector to that effect.

The Legislature has erred in omitting disabilities imposed under sub-section (2) of section 7. In sub-section (2) the disabilities were imposed on property other than proprietary rights in land and in (3) they were imposed on proprietary rights in land.

Sub-section 2. Revival of proceedings and exclusion of time in computing limitation for execution of decrees passed on the basis of private debts incurred after the passing of order under section 6.

All proceedings in respect of decrees on the basis of private debts incurred after the passing of the order under section 6, stayed under section 7 (2) and (3), shall revive and the period from the date of such decree upto the date of declaration under sub-section 1 of this section shall be excluded in computing the period of limitation for execution of those decrees.

CHAPTER VI.

APPEAL AND REVISION.

- 45.** (1) An appeal against any decision, decree or order of a Special Judge of the first grade under this Act shall lie to the High Court or Chief Court as the Appeals.

case may be. The period of limitation for appeals under this subsection shall be ninety days.

(2) An appeal against any decision, decree or order of a Special Judge of the second grade under this Act shall lie to the District Judge. The period of limitation for appeals under this subsection shall be thirty days.

(3) An appeal against any decision, decree or order of a Collector or Settlement Office under this Act shall lie to the Board of Revenue. The period of limitation for appeals under this subsection shall be sixty days.

(4) The provisions of sections 4 and 12 of the Indian Limitation Act IX of 1903 shall apply to appeals under this Act.

(5) The decision on an appeal under this section shall be final.

Proposed amendment.—

5. *In section 45, clause 2 of the Act be numbered as 2 (a)*

Amendment of section 45, clause 2 of the United Provinces Act, XXV of 1934.

and the following be added as sub-clause (b) to clause 2 :

“(b) a second appeal shall lie from the order of the District Judge to the Chief Court or the High Court, as the case may be. The period of limitation for such an appeal shall be 90 days.”

Section 45, clause 4 of the Act be amended as follows :—

After the figure 12, figures 14 and 18 be added and after the word “appeals” the words “or any other proceedings in the case” be added.

Section 45. Applicability of C. P. C.

The provisions of the civil procedure code are applicable only in so far as they are consistent with the provisions of the Act itself—1937 A. L. J. 1101.

Final, meaning of

The word final as used in section 45 (5) could only mean “not subject to appeal.” It could not be final in the sense that the power to interfere in revision is shut out and consequently the High Court has power to interfere in revision under section 115 C. P. C.—1937 A. L. J. 1101.

It is most respectfully submitted that this view is not correct. The word ‘final’ clearly signifies that the decision is not open to question any more. In section 5(2) of the U. P. Agriculturists’ Relief Act the same words were used and it was held in 1936 R. D. 580 and 1937 A. L. J. 684 that the final order is not open to revision.

Second appeal. No second appeal lies under the Act. But where a judgment-debtor puts in an application in the court of the Munsif executing the decree, who also happens to be the Special Judge, saying that he has made an application under the Encumbered Estates Act and asking the court to give effect to the provisions of

section 7 Encumbered Estates Act but the court being of the opinion, that section does not apply, rejects the judgment-debtor's prayer and on appeal the Civil Judge being of the same opinion as the Munsif, dismisses the appeal, then second appeal is not barred by sections 45 to 47 E. E. Act on the ground that the Munsif who rejected the judgment-debtor's application also happens to be a Special Judge for the purpose of the E.E. Act. For the order passed in the present case cannot be said to have been passed by the Munsif as a Special Judge. It is clearly passed by him in his ordinary jurisdiction as a munsif under section 47 C. P.C. The restrictions prescribed by sections 45 to 47 E. E. Act apply only to orders, decrees, decisions and proceedings of Special Judge under the Act and not to those of ordinary courts—1937 R. D. 280 (Oudh).

It is very difficult to hold that the right of appeal given by sub-section 2 is only against decisions, decrees or orders which fall specifically under the Act in the sense that they are such orders as can be passed under one of the sections of the Act itself. This section makes all orders, decrees and decisions of a Special Judge 2nd grade appealable to the District Judge without any exception, no order being non-appealable as under C. P. C. Hence where a Special Judge of 2nd grade has dismissed the application under E. E. Act for default of payment of publication charges, and the applicant has applied for getting the dismissal set aside, then if the Special Judge refuses to restore the applicants' application to the file, the order of refusal is appealable to the District Judge and consequently no revision can lie to the High Court under Sec. 115 C. P. C.—1938 R. D. 530.

Note. In case the amendment proposed in U. P. Gazette dated 9th October, '37 is carried into effect, a second appeal will lie.

46. Any court empowered under section 45 to hear an appeal
 Power to call for proceedings and pass orders thereon. under this Act may of its own motion, or on the application of any person concerned, call for the record of proceedings in any case under this Act pending in a court from which appeals lie to such court and after giving due notice to the parties concerned pass such orders thereon consistent with the provisions herein contained as it thinks fit, and such order shall be final.

Notes.—Against the decision, decree or order of a Special Judge 1st grade, only the High Court or the Chief Court shall have a right to exercise revisional powers while against the decision, decree or order of the Special Judge 2nd grade the District Judge shall have such right and not the High Court as no appeal lies to the High Court. Against the decision of the Collector or the Settlement Officer the revisional powers vest in the Board of Revenue only.

The power of calling for a record in revision given by Sec. 46 relates only to proceedings in a case under the Act pending in a Court, that is to say, the Act does not provide a power of revision such as that provided by Sec. 115 C. P. C, which specifically provides that the High Court may call for the record of any case which has been decided by any Court Subordinate thereto etc.—1938 R. D. 530.

47. Except as provided in sections 45 and 46, no proceedings
 Proceedings not to be questioned. of the Collector or Special Judge under this Act shall be questioned in any court.

CHAPTER VII.

MISCELLANEOUS.

48. (1) From the date of the application under section 4 up to the date when the Collector has liquidated the debts in full under section 23 or section 24 or has granted a mortgage under section 25 or has ordered the payment of instalments under section 27 or 28 or has transferred the whole of the landlord's proprietary rights in unprotected land under section 28 or the proceedings under this Act have been quashed—

- Insolvency proceedings.
- (a) no creditor shall be entitled to present an insolvency petition against the landlord and
 - (b) the landlord may present a petition that he be adjudged to be insolvent and, if he does so, no further proceedings shall be taken under this Act, while the insolvency proceedings are pending.

(2) Subject to the provisions of sub-section (1) the landlord or any creditor may present a petition that the landlord be adjudged insolvent but any amount or amounts due under any order passed by the Collector under section 27 or 28 shall for the purpose of the insolvency proceedings be deemed to be a debt or debts secured upon such of the landlord's subsisting property in land as has been reported by the Special Judge under sub-section (2) of section 19 to be liable to attachment or sale.

Section 48. (i) *Creditor's petition for insolvency.* This section bars any creditor to present any insolvency petition against any landlord after the application under section 4 up to the date when the Collector has liquidated the debts under this Act or has passed an order quashing the proceedings or the application has been dismissed under section 8 (3).

(ii) *Landlord's petition for insolvency.*—The landlord debtor shall be at liberty to present any insolvency petition after the application under section 4 but in that case the proceedings under this Act shall remain in abeyance during the pendency of the insolvency proceedings.

The effect of liquidation of the debts in full under secs. 23, 24, 25 or 31 is to wipe off the debts and therefore if the insolvency petition is presented after liquidation under these sections, they are not to be treated as existing debts. But if the petition is presented by the creditor or landlord after liquidation by grant of instalments under section 27 or 28, the amount ordered to be paid by instalments, shall be deemed to be debts secured on the landlord's property reported by the Special Judge under section 19 (2), liable to attachment and sale, provided the landlord has subsisting rights in it. This will have a salutary effect upon those creditors, who have been granted

instalments under section 27 or 28 as they will be placed in the list of secured debtors.

It should be remembered that no person, who has made an application under the Insolvency Act shall be entitled to make an application under Sec. 4 of this Act so long as the insolvency application is not dismissed. But what would happen if a creditor had presented an application under the Insolvency Act before any application is made under this Act? In my opinion on the presentation of an application by the landlord under section 4 the insolvency proceedings shall be stayed under section 7 after the passing of an order by the Collector under section 6, but it is essential that he must not have been adjudicated an insolvent, because after adjudication as an insolvent he cannot make the application under section 4. The plain meaning of Sec. 7 and 48(2) is that such an application filed by the creditors before the application under Sec. 4 will be stayed and will remain pending during the disposal of the case in the court of the S. J. and the Collector—1937 A. L. J. 158.

49. (1) If the debts of a landlord are the debts due from his deceased ancestor which are legally recoverable only from certain property in the possession of the landlord only such property and no other property belonging to the landlord shall be dealt with under the provisions of this Act; and all reference to the property of the landlord in the various sections of this Act shall be deemed to be references only to such property and to no other.

(2) If in the course of inquiry it is proved that a landlord who has applied for the application of this Act only in respect of debts due from his deceased ancestor has appropriated any property received from such ancestor or that he owes also other debts which are recoverable from him personally and in respect of which claims have been preferred under section 19, the Special Judge shall give him the option of either withdrawing his application or paying the personal debts and value of any property appropriated by him as aforesaid or having the whole of his property dealt with under this Act. In case he withdraws his application all proceedings under this Act shall be quashed. If he elects to pay his personal debts and the value of any property appropriated by him the Special Judge shall give him such time for doing so as he shall think necessary and on the landlord paying the same shall proceed with the case. If the landlord fails to pay the same within the time allowed by the Special Judge his application shall be dismissed. If the landlord elects to have the whole of his property dealt with under this Act, the Special Judge shall require him to give particulars of all such property and after giving the claimants another opportunity of giving further particulars of property as required by

section 10 shall take fresh proceedings under section 11 in respect of such property. If the landlord refuses or neglects to exercise any of the options provided in this sub-section the Special Judge shall dismiss his application.

(3) In all cases in which proceedings are quashed or the application is dismissed under this section the Special Judge may make such order as to costs as he thinks proper.

Section 49. Debts due from the deceased ancestor. In the case of debts due from a deceased ancestor and legally recoverable only from certain properties in possession of the landlord, i. e., when the decree is against the assets or the debt can be recovered only from his assets and the application under sec. 4 is made in respect of them, only properties belonging to the deceased debtor shall be liquidated and no others. But if on enquiry in the course of this application under section 4, it is established that :—

- (1) the landlord has appropriated any property of the deceased ancestor ; or
- (2) he is personally indebted also,
the Special Judge shall give him the following options :—
 1. Either to withdraw the application ; or
 2. To pay the personal debts and the value of the property appropriated by him as aforesaid ; or
 3. To have his whole property liquidated under this Act.

Effect of acceptance of the various options.

If he elects option No. 1, the proceedings under this Act shall be quashed.

If he elects option No. 2, the S. J. shall give him time and on payment shall proceed with the case but in case of failure the application shall be dismissed.

If he elects option No. 3 the S. J. shall ask him to give particulars of all such property and proceed as is laid down in this Act. But if he refuses, or neglects to exercise any of the above options the application shall be dismissed. Rule 3 requires that if the applicant wishes provisions of this section to be applied he shall note this fact in his application.

Sub-section 3. The Special Judge may award costs when he quashes the proceedings or dismisses his application.

50. If a landlord with regard to whom a notice has been published under section 9 dies before a declaration has been made in respect of him under Sec. 44,-

Death of proprietor before liquidation.

- (a) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the landlord were still living ; and
- (b) any person succeeding to the whole or any portion of the landlord's property shall become subject in respect of that property to the disabilities imposed by sub-section (2) of section 7 and shall continue to be subject until a declaration has been made in respect of him under section 44,

Abatement—On the death of the landlord the proceedings shall not abate. The successor shall be under the same disabilities under section 7, sub-section 2 as his ancestor was and shall remain so until declaration under section 44 is made.

51. Every investigation conducted by the Special Judge with reference to any claim made to him under this Act, or to any matter connected with any such claim, shall be deemed to be a Judicial proceeding within the meaning of the Indian Penal Code, Act XLV of 1860; and the Special Judge shall be deemed to be a public servant within the meaning of the Code.

Investigation to be deemed a judicial proceeding.

Special Judge to be deemed a public servant within the meaning of Indian Penal Code.

Section 51. As the Special Judge shall be deemed to be a public servant, he shall be entitled to all the protections enjoyed by public servants and no suit or other proceedings shall lie against him in respect of anything done by him in good faith.

52. For the purpose of compelling the attendance of witnesses and the production of documents, and of awarding costs, the Special Judge shall have the powers conferred on a Civil Court by the Code of Civil Procedure, Act V of 1908.

Powers to summon witnesses, compel production of documents, and award costs.

53. No suit or other proceeding shall be maintained against any public servant in respect of anything done by him in good faith pursuant to this Act.

Bar of suits.

Section 53. This is a special provision for protection of Judges. Under U. P. General Clauses Act of 1904 an Act is said to be done in 'good faith' when it is done honestly, whether it is done negligently or not.

54. (1) The Local Government may make rules consistent with the provisions of this Act for regulating the procedure of the Collector, the Special Judge and the Settlement Officer in proceedings under this Act and generally for carrying out the purposes of this Act, may fix the legal fees chargeable under this Act and may confer the powers of the Collector under this Act on any Assistant Collector of the first class.

Power of Local Government to make rules.

(2) Before making the rules under this section the Local Government shall publish a draft of the same in the Gazette and shall concurrently cause a copy of the said draft to be sent to every member of the local Legislative Council.

(3) In making the rules finally the Local Government shall consider the opinions received by them as well as any opinion expressed by the local Legislative Council,

Section 54. See rules 86 to 89 and 93.

55. In framing rules to guide the Collector in determining multiples under section 26 the Local Government shall have regard to—

Matters to be regarded in making rules relating to multiples.

- (1) the market value of land in the area or areas in which the landlord's property is situated.
- (2) the percentage of the post-slump profits which the landlord must retain to maintain himself, his family and dependents and for the management and upkeep of his property.

Section 55. See notes under section 2, clauses L. and M.

56. The Local Government may at any time alter the rules which they have framed for determining multiples under section 26 and, if they do so, the Collector may revise the instalments ordered under section 27 or section 28 either by altering the amount of each instalment or by increasing or decreasing the period over which the instalments are payable.

Revision of instalments in consequence of change in rules.

Section 56. With the change of multiples at any time, the Collector may revise the instalments granted under section 27 or 28 by varying the number and amount.

57. The Collector may, subject to rules framed by Local Government, transfer any proceedings under this Act which are pending in his court to the court of an Assistant Collector of the first class empowered under section 54 and may withdraw any proceeding so transferred.

Transfer of proceedings by Collector.

See rule 90.

58. The Board of Revenue may transfer any proceedings under this Act from the Court of one Collector to that of any other Collector.

Transfer of proceedings by Board of Revenue.

59. Nothing in this Act shall affect the powers of the Collector under the Land Revenue Act III of 1901, to collect the land revenue or any money recoverable as an arrear of land revenue.

Saving.

Section 59. This Act leaves the powers of the Collector to collect land revenue or any money recoverable as an arrear of land revenue, under the Land Revenue Act III of 1901 unaffected. This section was necessary as arrears of instalments granted under section 27 or 28 shall be recoverable as an arrears of land revenue vide section 29. The mode of collection of arrears of land revenue is given in section 146 of the Land Revenue Act.

Proposed change.—

Add a new section to the following effect :—

"The provisions of this amending Act shall take retrospective effect and all suits or other proceedings decided against the provisions of the amending Act shall be revived, on an application on behalf of the aggrieved party to the Court concerned at the stage they were when the said decision was arrived at and that only for the purpose of giving benefit of the amending Act and the other findings or decisions or orders of the Court shall not be affected by this revival."

This new section will be numbered Section 60 and it gives the amendment Act a retrospective effect.

SCHEDULE.

FORMS OF MORTGAGE.

(See section 25.)

1. A mortgage by which the mortgagor delivers proprietary possession of the mortgaged land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of a specified term not exceeding twenty years the mortgaged debt shall be deemed to be fully satisfied and the land shall be re-delivered to the mortgagor without any payment by him.

2. A mortgage without possession, subject to the condition that, if the mortgagor fails to pay the principal and interest according to his contract, the mortgagee may apply to the Collector to place him in possession of the mortgaged land for such term not exceeding twenty years as the Collector may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession and to be deemed to be fully satisfied on the expiry of such term.

Rules made under the United Provinces Encumbered Estates Act, 1934.

Note.—*The section numbers in the margin are references to the sections of the Act as re-numbered by the United Provinces Encumbered Estates (Amendment) Act, 1935.*

CHAPTER I.

THE APPLICATION AND THE DETERMINATION OF THE DEBT TO BE LIQUIDATED.

Section 4. 1. A landlord applying under section 4 shall attach to his application a certified extract from the most recent *khewat* of all the mahals in which his landed property lies, showing the nature and extent of his proprietary rights in these mahals and whether his land is "protected" land or not.

Section 4. 2. If the applicant is a Hindu his application must, in accordance with the section proviso to section 4 (1) of the Act—

(1) contain a declaration that the applicant is not a member of a joint family, or

(2) state that the applicant is a member of a joint family and that all the members of such family join in the application, and give the names and addresses of all such members, or

(3) state that the applicant is a member of a joint family and specify which, if any, members of such family join in the application giving their names and addresses; in this case the application must also give separately the names and addresses of all members of such family who do not join in the application, and must contain a declaration of the intention of the applicant and such members of the family who join with him in the application, of separating from the rest of the joint family and must state the

* R. D. Notification No 618 Revenue, dated 10th August, 1935.

share which the applicant and those who join with him, if any, would be entitled to get on partition of the family property.

3. If the applicant wishes the provisions of section 49 to be applied he shall state this fact in his application and shall also state whether or not he is the sole heir of the deceased debtor and, if he is not, the names and addresses of the heirs who have joined with him in the application and of those who have not so joined.

4. In making a report to the Board of Revenue under section 5 the Collector shall, as far as possible, state the amount of land revenue payable by the applicant in each district in which his property lies and also the names and addresses of the creditors and the amount owed to each.

5. Public debts which can be collected as arrears of land revenue will not be reported by the Collector to the Special Judge. The collection of such amounts will continue as if no application had been made under the Act. Debts due to Co-operative Societies will also be collected as if no application under the Act had been made. In order to find out whether any other public debts are outstanding against the landlord the Collector shall inform the Collector of each of the districts in which the landlord's property is situated or in which he carries on any business that he has applied under the Act and shall also inform the Director of Agriculture. He shall also inquire from the District Judge of each of these districts whether any suit has been filed by Government against the landlord and is still pending and whether any decree in favour of Government has been passed against the landlord and is still unsatisfied. Each Collector will make inquiries from the local bodies in his district regarding the landlord's public debts. Public debts which cannot be collected as arrears of land revenue may be reported to the Special Judge at any time; debts due to Co-operative Societies need never be so reported.

6. *Proceedings under this Act shall be governed by the Provisions of the Code of Civil Procedure of 1908 for the time being in force so far as they are applicable and not inconsistent with the provisions of the Act and of these rules.*

Note. This rule was substituted for the old rule 6 by order dated 4th December 36, Revenue Department.

Formerly some specific sections and orders of C. P. C. were made applicable but now the entire C. P. C. has been made applicable provided they are applicable and not inconsistent with this Act and its rules.

7. When the Special Judge makes an order under section 8 (1) calling on an applicant to submit a written statement the order shall be communicated to the applicant through the Collector.

8. When an application is made by the manager of any property under the superintendence of the Court of Wards the Special Judge shall, for the purposes of the proviso to section 8 (2), send a copy of the application to the landlord by registered post and the expenses of so doing shall be paid by the applicant.

9. When a copy of a notice published under section 9 (2) is to be sent by registered post to every creditor named by the applicant in his statement submitted under section 8 (1) the expenses of so doing shall be paid by the applicant.

10. The written statements of claims filed by creditor under section 9 shall be verified in the manner prescribed by law for the verification of plaints.

11. When the Special Judge causes a copy of a notice to be published in a newspaper under section 9 (2) or section 11 (1) the expenses of publication shall, if it is made under section 9 (2) be paid by the applicant and, if it is made under section 11 (1), by the applicant or by such claimant as the Special Judge may direct.

12. Save as otherwise provided in these rules every notice, summons, order or other process shall ordinarily be sent to the person concerned by registered post. If the person concerned refuses to receive it or cannot be found or, if in any case the Special Judge so directs, it shall be served, as nearly as may be, in the manner provided for service of summonses in Order V of the Code of Civil Procedure, 1908, and such service shall be effected through the District Judge.

13. Save as otherwise provided in these rules every process, Sections 9 and whether sent by registered post or according to 11. the provisions of the Code of Civil Procedure, 1908, shall be sent at the expense of the party on whose behalf it is issued, unless the Special Judge otherwise directs, and the necessary expenses shall be deposited within a time to be fixed by the Special Judge before the process is issued. These expenses will be reckoned as costs of the proceedings.

14. Fees payable for the service of processes according to the Sections 9 and provisions of the Code of Civil Procedure shall be 11. the same as those prescribed for the service of similar processes issued by a Civil Court.

15. When the Special Judge sends a decree to the Collector Section 19. under section 19, he shall, at the same time intimate to him the extent to which the debt to which the decree relates has been reduced under section 14 and the amount of the costs awarded against the debtor.

CHAPTER II.

THE PRELIMINARY VALUATION.

16. As soon as the Collector *receives under Sec. 9 (2) of the Act a copy of the notice published under the orders of the Special Judge* he shall obtain from Sections 2 and 26. the tahsildar of each tahsil in which the landlord's land is situated a statement showing in detail the pre-slump and post-slump profits under each of the sub-clauses of clauses (j) and (k) of section 2 of each of the landlord's separate properties in that tahsil. For the purposes of these rules properties which are situated in different mahals or in different villages will be considered to be separate properties. *Zaid mutalba* will not be included in the rent in this statement.

Note.—The portion in italics was substituted by No. 275—Rev. dated 16/9/36

17. The rent (pre-slump) which the landlord would have to pay annually for his *sir* and *khudkasht*, as referred to in section 2 (j) (ii) of the Act will be determined as follows :—

(i) In Agra, under section 14 (1) of the Agra Tenancy Act, 1926, on sale of proprietary right an ex-proprietary right arises in all *sir* land and in *khudkasht* of 10 or more years' standing.

This area will be valued at the rates prescribed for ex-proprietary tenants in section 14 (1) of the Agra Tenancy Act.

Khudkasht of less than 10 years' standing will be valued at the rates prescribed for statutory tenants under that Act.

(ii) In Oudh, under section 7-A (1) of the Oudh Rent Act, 1882, as amended by U. P. Act IV of 1921, on sale of proprietary rights an exproprietary right arises in all *sir* land and in *khudkasht* of 12 or more years' standing. This area will be valued at the rates prescribed for exproprietary tenants in section 7-A (1) of the Oudh Rent Act.

Khudkasht of less than 12 years' standing will be valued at the rates prescribed for statutory tenants under that Act.

(iii) In making valuations under this rule the remissions in rent for the fall in prices will be ignored as they are pre-slump valuations.

(iv) A local inspection is not obligatory when making these valuations.

18. The rent (post-slump) which the landlord would have to pay annually for his *sir* and *khudkasht*, as referred to in section 2 (k) (ii) of the Act, will be in each case the valuation made under rule 17 reduced as follows:—

(i) In Agra, in the case of *sir* and the *khudkasht* of 10 or more years' standing, the valuation under rule 17 reduced in the same proportion that the recorded occupancy rental of the mahal concerned was reduced by the remissions for the slump in prices in the case of *khudkasht* of less than 10 years' standing the valuation under rule 17 above reduced in the same proportion that the recorded statutory rental of the mahal concerned was reduced by the remissions for the slump in prices.

(ii) In Oudh, in the case both of *sir* and all the *khudkasht*, the valuations under rule 17 reduced in the same proportion that the recorded statutory rental of the mahal concerned was reduced by the remissions for the slump in prices :

Provided that, for reasons to be recorded, the Collector may substitute for the proportion by which rentals were reduced by the remissions for the slump in prices in the mahal concerned, the proportion by which they were reduced in any neighbouring and similar mahal or mahals, if he considers that this would give a more equitable result. This substitution would be unavoidable in the case of a mahal containing no cash-rented areas, and it may be necessary when the cash-rented area of a mahal is small compared with the area of *sir* and *khudkasht*.

19. (i) Under section 2 (j) (iii) will be included the pre-slump valuation of grain-rented, favoured, rent-free and unrented holdings, which will be made as follows in both Agra and Oudh:—

(ii) The rental of grain-rented holdings will be assumed to be the average cash yield per annum to the proprietor from the holdings as recorded in the patwari's papers for the three normal years nearest before 1338 F. (The entries of 1338 F. will never be taken.)

If such figures are not available or are obviously quite unreliable, these holdings will be valued at the rates for statutory tenants of the mahal concerned before the slump in prices.

(iii) The rental of favoured, rent-free and unrented holdings will be assumed to be the valuation of those holdings at the rates for statutory tenants of the mahals concerned before the slump in prices.

(iv) A local inspection is not obligatory when making these valuations.

20. (i) Under section 2 (k) (iii) will be included the post-slump valuation of grain-rented, favoured, rent-free and unrented holdings, which will be made as follows in both Agra and Oudh:—

(ii) The rental of grain-rented holdings will be assumed to be the average cash yield per annum to the proprietor from these holdings as recorded in the patwari's papers for the years 1339—1341 F., provided that if the recorded cash yield in these years is obviously unreliable, or if no figures have been recorded for two or more of these years, the valuation will be made at the pre-slump rates for statutory tenants for the mahal concerned reduced by the

same proportion that the recorded statutory rental of the mahal was reduced by the remissions for the slump in prices.

(iii) The rental of favoured, rent-free and unrented holdings will be the valuation made under rule 19 (iii) reduced in the same proportion that the recorded statutory rental of the mahal concerned was reduced by the remissions for the slump in prices :

Provided that, for reasons to be recorded, the Collector may, in clauses (ii) and (iii) of this rule, substitute for the proportion by which recorded statutory rentals were reduced by the remissions for the slump in prices in the mahal concerned, the proportion by which they were reduced in any neighbouring and similar mahal or mahals, if he considers that this would give a more equitable result. This substitution would be unavoidable in the case of a mahal containing no cash-rented statutory area, and it may be necessary when the cash-rented statutory area of a mahal is small compared with the grain-rented, favoured, rent-free and unrented areas.

21. The pre-slump profits of a property when multiplied by the transfer multiple ultimately selected by Sections 2 (m) and 26. the Collector for that property, give the transfer value of that property. The standard transfer multiples are given in Appendix I. The standard multiple for a circle can subsequently be varied by the Collector for any particular property within that circle in accordance with the rules in Chapter III, but for the preliminary valuation of the property the Collector will multiply the pre-slump profits by the standard transfer multiple of the circle in which the property lies and so obtain the preliminary transfer value thereof.

This calculation will be made only for "unprotected" properties.

Note.—The standard transfer multiples given in Appendix I are for revenue paying properties. In the case of a *revenue-free* property the standard transfer multiple is—

(a) in permanently settled areas $12\frac{1}{2}$ per cent. above the standard transfer multiple shown in Appendix I, and

(b) in temporarily settled areas 25 per cent. above the standard transfer multiples shown in Appendix I,

22. The standard instalment multiple is one-fifth the standard transfer multiple, but if one-fifth of the standard transfer multiple exceeds 7.5 the standard instalment multiple will be 7.5, and if one-fifth of the standard transfer multiple is less than 5, the standard instalment multiple will be 5.

Note. The standard instalment multiple for a *revenue-free* property is one-fifth of the standard transfer multiple for revenue paying areas of the circle in which the property lies as shown in Appendix 1, not as increased by the note to rule 21. It is also subject to the same limits as the standard instalment multiple of a *revenue paying* property.

The standard instalment multiples for a circle can subsequently be varied by the Collector for any particular property within that circle in accordance with the rules in Chapter III, but for the preliminary calculations the Collector will multiply the post-slump property by the standard instalment multiple of the circle in which the property lies and so obtain the preliminary instalment value thereof.

This calculation will be made for both "protected" and "unprotected" properties.

23. The Collector will then add together the preliminary transfer values of all the applicant's unprotected properties. He will then add together the preliminary instalment values of all the applicant's unprotected properties. Finally, he will add together the preliminary instalment values of all the applicant's protected properties.

This will complete the preliminary valuation.

CHAPTER III.

LIQUIDATION OF PRIVATE DEBTS.

24. When the Special Judge's report is received under section 19, the Collector shall summon the landlord and ask him whether he intends to pay any portion of the debt under section 22. If in order to do so the landlord

Section 19, 22
and 7.

wishes to sell any of his property, the Collector shall not sanction the sale under section 7, unless he considers that the price obtained is a fair one and unless the whole of the sale-price is deposited in his court.

See also rules 83, 84 and 85.

25. If the nature or extent of the landlord's proprietary rights in land, as reported by the Special Judge, differs from the nature and extent of those rights as mentioned in his application by the landlord himself the Collector shall re-calculate the preliminary transfer and instalment values of the landlord's proprietary rights in land.

Section 26.

***25-A.** In certain cases it may be quite evident from the amount of the decrees forwarded by the Special Judge under section 19 (1), the value of the applicants' property reported under section 19 (2) other than proprietary rights in land, and the preliminary instalment value of the applicants' landed property calculated under rules 23 and 25 that the whole debt can be liquidated under section 27 without the transfer of any portion of the debtors' proprietary rights in land. In such cases it is unnecessary for the Collector to consider whether the standard transfer multiples should be revised under rules 31 (1) and 32 and thence to the calculation of suitable instalments under rules 35—40. In any case where doubt exists as to the possibility of liquidation by instalments the procedure of rule 26 *et seq* should be strictly followed.

26. The Collector shall then, without necessarily waiting for the expiry of the period of two months prescribed under section 22, summon the landlord and all the creditors and after explaining the preliminary valuations shall hear any objection which they may make to them, and shall take any necessary evidence. He shall then record his decision on the following points:—

Section 26.

(1) Whether the pre-slump and post-slump profits accepted by him for calculating the preliminary transfer and instalment values are correct.

(2) Whether the standard multiples are suitable or whether some or all of these multiples should be modified.

*Added by Government Notification published in the United Provinces Gazette, dated 11th July, 1936,

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27**

(3) Whether there has been any decrease in the profits since 1338 F., due to a fall in the cultivated area or to a decrease in the kind of profits mentioned in sub-clauses (iii), (iv) and (v) of clause (j) of section 2, and, so, how much thereof is due to the fall in agricultural prices.

Note.—The appeal against an order of a Collector made under this rule lies to the Board of Revenue, but if the Collector wishes to correct the patwari's papers he must for that purpose proceed separately under the Land Revenue Act, 1901, and the appeal against such order will lie to the court to which such appeals lie under that Act.

The proceedings taken under the Land Revenue Act, if any, should not be allowed to delay the Collector's decisions on points (1) to (3) above. He should record his decisions on these points first and then take any action he thinks necessary under the Land Revenue Act, 1901.

27. (i) In arriving at decisions under clause (2) of rule 26 the Collector will first select for each unprotected property the suitable transfer multiple.

Section 26.

(ii) He will in the case of each such property take the standard transfer multiple and consider whether it is suitable for application to the property under consideration, or whether good reasons exist for raising or lowering it.

If compared with other properties in the same settlement circle the rent is easily and regularly collected or the cost of management is small, such would be good reason for raising the multiple. In considering rental collection regard should be had both to pre-slump collections and collections of the rents as reduced by the slump remissions.

If, on the other hand, rental collections are comparatively difficult in the property under consideration compared with the rest of the settlement circle in which it lies, or if the cost of management is high, such would be good reason for lowering the transfer multiple.

Again, if a property is markedly below the average of the settlement circle in which it lies, there may be reason to reduce the transfer multiple and *vice versa*.

The Collector shall consider carefully all factors that may come to his notice in this connexion.

Example.—Suppose that the standard transfer multiple for a particular settlement circle which is unirrigated and generally precarious is 25 and that the property in question lies in this circle but has some irrigation and is on the whole above the level of the rest

of the circle, the Collector might fix a transfer multiple of 26 or 27 for this property.

(iii) The Collector shall not fix a transfer multiple for any particular property which differs from the standard transfer multiple of the settlement circle in which the property lies by more than 16 per cent. either way, without obtaining the previous sanction of the Commissioner.

Section 26. 28. (i) Having fixed the transfer multiple of each unprotected property the Collector will next proceed to select the suitable instalment multiple for each separate property, whether protected or unprotected.

(ii) He will in the case of each property take the standard instalment multiple as determined in rule 22 and consider whether it is suitable for application to the property under consideration or whether good reasons exist for raising or lowering it.

In modifying the standard instalment multiple consideration must be given to the needs and circumstances of the indebted landlord in so far as they affect the probability that he will be able to pay the proposed instalments regularly. In this connexion rule 57 will also be considered. It must be remembered that if the instalment multiple be raised the annual instalments to be paid by the debtor will be raised and *vice versa*.

It is of paramount importance to the successful working of the Act that instalment be fixed within the capacity of the debtor to pay annually, and hence that the instalment multiple be not fixed too high.

Good reasons for raising the instalment multiple would be—

(a) that the debtor has a stable income from sources other than his agricultural land and so can afford to allot to the payment of his debt more of his net income from his agricultural land than he would otherwise have been able to do, or

(b) that the property includes a large proportion of *sir* and *khudkash*, or a very paying farm of the landlord.

Great care should be taken not to fix too high an instalment multiple if the post-slump profits are largely made up of the kind of profits mentioned in sub-clauses (iv) and (v) section 2 (k) of the Act.

Examples.—(1) In the example at the end of clause (ii) of rule 27 the standard instalment multiple is 5. As the property is more

stable than above the average of the settlement circle in which it lies, the instalment multiple might for this reason be raised to 5'25 or even to 5'5.

(2) If in another case the standard instalment multiple is 7, but the landlord has a stable source of income apart from his agricultural land and he is as a result able and willing to allot towards the payment of his debt a greater share in the profits of that land, the Collector might fix a multiple of 7'5. If, on the other hand, the landlord has no outside income and is usually irregular in the payment of his land revenue, the Collector should lower the multiple to 6'5 or even 6.

(iii) The Collector shall not fix an instalment multiple for any property which differs from the standard instalment multiple of the settlement circle in which the property lies by more than 0'75 either way, without obtaining the previous sanction of the Commissioner.

(iv) The Commissioner shall in no case sanction an instalment multiple greater than 9, and he shall not sanction an instalment multiple greater than 7'5, unless he is satisfied that the landlord has a sufficiently large stable income apart from the profits of his agricultural land to enable him to pay the resulting instalments regularly.

29. In determining whether any decrease in cultivated area that may have taken place since 1338 F. in the property under consideration is due to the slump in prices, the Collector shall endeavour to ascertain the precise cause of the reduction in the cultivated area and for this purpose shall also have regard to any variations in the cultivated area of neighbouring mahals and villages and the reasons therefore.

30. (i) When the Collector has decided all the points mentioned in rule 26, he shall then, if changes have been made, recalculate the transfer value of each unprotected property of the landlord by multiplying the revised pre-slump profits thereof by the transfer multiple which he has finally fixed or has been ordered or allowed by the Commissioner to fix.

(ii) He will then re-calculate, where necessary, the instalment value of each protected and unprotected property of the landlord by multiplying the revised post-slump profits thereof by the instalment multiple which he has finally fixed or has been ordered or allowed by the Commissioner to fix.

(iii) Finally, he will by addition calculate—

(a) the transfer value of the whole of the landlord's unprotected property,

(b) the instalment value of the whole of the landlord's unprotected property, and

(c) the instalment value of the whole of the landlord's protected property.

31. (i) As soon as the period of two months prescribed under section 22 has expired the Collector shall proceed to hear any objection which the landlord may make to the realization under section 24 of the value of his property other than his proprietary rights in agricultural land.

(ii) If the question whether the debt can be liquidated under section 27 (*i.e.*, without transfer of any part of the landlord's unprotected agricultural land) depends on objections made against the Collector's calculations of the transfer and instalment values of the land, the Collector shall first proceed to decide these objections.

(iii) He shall then proceed to decide the objections made to the sales proposed under section 24, but he shall not permit any such sales to take place until any appeal against his orders under clause (ii) has been decided by the appellate court or those orders have become final because no appeal is filed within the period of limitation.

32. As soon as all objections under section 24 have been finally decided and the orders referred to in rule 31 (ii) have become final, the Collector shall realize the value of the landlord's property other than his proprietary rights in land to the sale of which either no objection has been made or any objection made, has been disallowed.

33. The Collector shall in no case sell under section 24 such personal property of the debtor and his family, as is, in his opinion, reasonable for persons of the debtor's position to possess unless such property is pledged as security for a loan.

Unless the debts can be liquidated under section 27, the Collector shall sell any immovable property, other than agricultural land, which is subject to a mortgage and any moveable property which has been pledged as security for a loan.

Section 25. **34.** If anyone applies to take a mortgage under section 25 the Collector shall proceed according to the rules contained in Chapter VI.

Section 27. **35. (i)** If a mortgage is not given under section 25 the Collector will now add together the instalment value of the unprotected and protected properties of the landlord.

If the debt remaining to be liquidated at this stage, including interest up to the date on which the Collector passes final orders for liquidation, is less than the total instalment value of the whole of the landlord's property, both protected and unprotected, the Collector shall proceed under section 27.

(ii) In this case the Collector has a certain amount of discretion, because by paying the maximum instalment each year the debtor could liquidate the debt in less than 20 years. On the other hand, the Act permits repayment in any period up to 20 years, and in order to ensure that, as far as possible, there will be no failure in the payment of instalments, it is desirable to fix the period of repayment somewhere between the shortest period in which the debt could be repaid and the maximum period of repayment, *viz.*, 20 years.

In fixing the period of repayment and consequently the amount of each annual instalment the Collector will bear in mind that a decrease in the annual payment will facilitate collection, but prolong the period of the debtor's disabilities under section 7 (3) of the Act.

It is, however, of paramount importance that the annual repayment instalment should not be fixed so high as to incur a risk of failure on the part of the landlord to maintain payment of the annual instalments.

(iii) The method of determination of the period of repayment and the amount of the annual instalment is explained in the following rules.

Section 27. **36. (i)** Appendix II gives in column B for each exact number of years (in column A) up to 25 the amount of debt that, together with interest at $4\frac{1}{2}$ per cent. per annum, would be paid in that number of years.

Examples.—(1) If Rs 1,000 were paid each year for 10 years, the amount of debt paid off in those 10 years, together with interest at $4\frac{1}{2}$ per cent. per annum, would be 1,000 multiplied by the figure in column B of Appendix II against the figure 10 in column A, viz. :—

Rs. 1,000 multiplied by $8\cdot011$ = Rs. 8,011.

(2) If there were 15 annual payments of Rs. 2,000 the debt liquidated in the 15 years, including interest at $4\frac{1}{2}$ per cent. per annum, would be Rs. 2,000 multiplied by $10\cdot926$ = Rs. 21,852.

(ii) Conversely, the annual instalment that would liquidate any given debt in a given number of years with interest at $4\frac{1}{2}$ per cent. per annum will be the debt divided by the figure in column B of Appendix II opposite that number of years in column A.

Example.—(1) If the debt is Rs. 10,000 and it is to be repaid (with interest at $4\frac{1}{2}$ per cent. per annum) in 10 years, the instalment to be paid in each of those 10 years would be

Rs. 10,000 divided by $8\cdot011$ = Rs. 1,249.

(2) And if the debt has to be repaid in 20 years, the annual instalment to be paid would be

Rs. 10,000 divided by $13\cdot294$ = Rs. 753.

Section 27. ^{that can be paid each year by the whole of the} The Collector will first calculate the maximum instalment debtor's property, protected and unprotected. To do this he will divide the total instalment value of the debtor's whole property, protected and unprotected by $13\cdot294$, rounding the result to the nearest whole rupee.

Example.—Thus, if the total instalment value of the debtor's whole property, protected and unprotected, is Rs. 2,50,000 the maximum instalment payable each year would be

Rs. 2,50,000 divided by $13\cdot294$ = Rs. 18,805.

38. The Collector will next ascertain in how many years such maximum annual instalment would liquidate the debt.

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He will divide the debt by the figure obtained in rule 37 above i.e., by the maximum instalment payable by the property. The result will be a figure lying between two of the figures in column B of Appendix II.

After a number of years equal to that shown in column A opposite the upper of those two figures in column B the debt would not quite be liquidated.

After a number of years equal to that shown in column A opposite the lower of these two figures in column B, something more than the debt would be paid off.

The number of annual payments will be the number in column B opposite the lower of the figures in column B, and in order to pay off the exact amount of the debt the annual instalment will be lowered to some extent. The actual instalment necessary would be the debt divided by the lower figure in column B mentioned above.

Example.—Thus, in the example given in rule 37, if the debt is Rs. 1,60,000 the Collector will divide Rs. 1,60,000 by the figure Rs. 18, 805 obtained under the rule 37. The result is 8'508 which lies between the figures 8'011 and 8'643 in column B of appendix II. The corresponding figures in column A are 10 and 11 years. In 10 years the debt would not quite be liquidated, whereas in 11 years too much would be repaid.

The minimum number of instalments would thus be 11 and the amount of each instalment would be

Rs. 1,60, 000 divided by 8'643=Rs. 18, 512.

Thus, in this case the least period in which the debt of Rs. 1,60,000 could be liquidated would be 11 years and the annual instalment would be Rs. 18,512.

39. The Collector will next calculate the minimum annual instalment which would liquidate the debt, together with interest at $4\frac{1}{2}$ per cent. per annum, in 20 years.

From rule 36 (ii) this is the debt divided by 13'294.

Example.—In the example given in rule 38 this would be.

Rs. 1,60,000 divided by 13,294—Rs. 12,036.

40. The Collector will then, having regard to the circumstances of the case, fix the period of repayment somewhere between the minimum period of repayment and the maximum of 20 years, and calculate the annual instalments to be paid accordingly.

Example.—For instance, in the example given in rule 38, the debt could be repaid in the minimum period of 11 years by annual instalments of Rs. 18,512.

It could be repaid in 20 years by annual instalments of Rs. 12,036.

The Collector might in this case pass an order that the debt should be liquidated in 15 years. The annual payments then would be.

Rs. 1,60,000 divided by 10·926=Rs. 14,644.

Note.—The figure 10,926 is that found in column B of Appendix II opposite 15 years.

41. (i) If a mortgage is not given under section 25 and the debt remaining to be liquidated at this stage exceeds the total instalment value of the landlord's protected and unprotected property, the Collector will proceed under section 28 of the Act.

(ii) He will add the transfer value of the landlord's unprotected property, if any, to the instalment value of his protected property, if any.

(iii) If this total exceeds the debt remaining to be liquidated, the Collector will proceed under clause (i) of section 28.

(iv) If, however, this total is less than the debt remaining, the Collector will proceed under clause (ii) of section 28.

42. When proceeding under clause (i) of section 28 the Collector will make the following calculation:—

1.—In cases where there is no protected property.

(i) The Collector will first determine the share of the landlord's unprotected property that has to be transferred to the creditors.

This is represented by the fraction.

$$\frac{\text{The debt minus the instalment value.}}{\text{Transfer value minus instalment value.}}$$

So the Collector will

(a) subtract the instalment value from the debt,

(b) subtract the instalment value from the transfer value,

(c) divide the figure (b) into the figure (a), working out the result to the nearest fourth place of decimals. This will be the share of the landlord's unprotected property to be transferred to the creditors.

Example.—Thus, supposing the debt is Rs. 1,50,000, the transfer value Rs. 2,50,000, and the instalment value Rs. 51,000.

The share to be transferred is $\frac{1,50,000-51,000}{2,50,000-51,000} = \frac{99}{129} = 0\cdot4975$.

So that nearly half the unprotected property will have to be transferred to the creditors.

(ii) The Collector will next determine the annual instalments that the landlord will have to pay for the next 20 years in order to liquidate the remainder of the debt.

He will calculate the transfer value of the share of the unprotected property that is to be transferred to the creditors, and deduct this amount from the debt. The balance has to be paid by the landlord to Government by 20 annual instalments. The amount of each instalment will be the balance of the debt divided by 13'294 and rounded to the nearest rupee.

Example.—Thus, in the example given in clause (i) above a share equal to 0'4975 of the property is to be transferred to the creditors. The transfer value of this share is 0'4975 multiplied by Rs. 2,50,000=Rs. 1,24,375. The balance of the debt after this share has been transferred will be Rs. 1,50,000 *minus* Rs. 1,24,375, which comes to Rs. 25,625. This has to be repaid by the landlord to Government in 20 annual instalments of Rs. 25,625 divided by 13'294 =Rs. 1,928 per annum.

(iii) The debt will thus be completely liquidated by transferring to the creditors the share of the unprotected property calculated under (i) above and 20 annual payments to Government as calculated under (ii) above.

Example.—In the example given above the debt of Rs. 1,50,000 would be completely liquidated by transfer of a share equal to 0'4975 of the unprotected property of the landlord to the creditors and the payment to Government of 20 annual instalments of Rs. 1,928.

Note.—(1) Where, by slight rounding upwards, the share to be transferred as calculated under clause (i) of this rule can be fixed at a convenient fraction, this will greatly simplify the actual calculations. For instance, in the example it would be better to increase the share to be transferred to half. The transfer value of this share is one-half of Rs. 2,50,000=Rs. 1,25,000. The balance of the debt to be liquidated by annual instalments payable to Government would become Rs. 1,50,000 *minus* Rs. 1,25,000=Rs. 25,000 which would be liquidated by 20 annual instalments of Rs. 25,000 divided by 13'294, *i.e.*, Rs. 1,881 per annum.

(2) The share as calculated in (i) (c) above should never be rounded downwards, unless the amount of rounding is negligible, otherwise the instalments payable in liquidation of the balance of the debt may prove too high.

II.—In cases where there is both protected and unprotected property.

(i) The Collector will first determine the share of the landlord's unprotected property that has to be transferred to the creditors.

This is represented by the fraction.

The debt *minus* the sum of the instalment values of both protected and unprotected property.

The transfer value of the unprotected property *minus* the instalment value of the unprotected property.

So the Collector will

(a) add together the instalment values of both the protected and unprotected property of the landlord,

(b) subtract the figure in (a) from the debt still to be liquidated,

(c) subtract the instalment value of the unprotected property from the transfer value of the unprotected property.

(d) divide the figures (c) into the figure (b), working out the result to the nearest fourth place of decimals.

This will be the share of the landlord's unprotected property to be transferred to the creditors.

Example—If the debt is Rs. 1,50,000, the transfer value of the unprotected property Rs. 2,50,000 and the instalment values of the unprotected and protected properties Rs. 51,000 and 40,000 respectively, the fraction of the unprotected property that will have to be transferred to the creditors will be $\frac{1,50,000 \text{ minus } 91,000}{2,50,000 \text{ minus } 51,000} = \frac{59}{190} = 0.2965$

So that a share of 0.2965 of the unprotected property will have to be transferred to the creditors.

(ii) The Collector will next determine the annual instalments that the landlord will have to pay to Government for the next 20 years from the profits of the remainder of his unprotected property *plus* his protected property.

He will calculate the transfer value of the share of the unprotected property that is to be transferred to the creditors and deduct this from the debt. The balance has to be paid by the landlord to Government by 20 annual instalments. The amount of each instalment will be the balance of the debt divided by 13.294 and rounded to the nearest rupee.

Example.—In the example in clause (i) a share equal to 0·2965 of the unprotected property will be transferred. The transfer value of this is 0·2965 multiplied by Rs. 2,50,000=Rs. 74,125. The balance of the debt after this transfer will be Rs. 1,50,000 *minus* Rs. 74,125=Rs. 75,875. This has to be paid by the landlord to Government in 20 annual instalments each of Rs. 75,875 divided by 13·294, *i. e.*, of Rs. 5,707.

(iii) The debt will thus be completely liquidated by transferring the share of the unprotected property calculated under (i) above and 20 annual payments to Government as calculated under (ii) above.

Example.—In the example given the debt of Rs. 1,50,000 would be completely liquidated by transfer of a share of 0·2965 of the landlord's unprotected property to the creditors and the payments to Government of 20 annual instalments of Rs. 5,707.

Note.—(1) The instructions as to rounding the share to be transferred given in the notes at the end of Part I of this rule apply equally to Part II. For instance, in the example given in Part II the share of the unprotected property to be transferred might be rounded upwards to $\frac{3}{10}$ ths. The transfer value of this share would be $\frac{3}{10}$ ths. of Rs. 2,50,000, =Rs. 75,000, and the balance of the debt to be liquidated by instalment payable to Government would be Rs. 1,50,000 *minus* Rs. 75,000. This would be liquidated by 20 annual instalments of Rs. 75,000 divided by 13·294, *i. e.*, Rs. 5,642.

(2) The share to be transferred should only be rounded downwards when the amount of rounding is negligible.

(iv) If the fraction calculated in (i) of this part of this rule is equal to or greater than unity, the whole of the landlord's unprotected property will be transferred to the creditors and in addition the landlord will pay to Government 20 annual instalments each equal to the instalment value of his protected land divided by 13·294.

Example.—Had the debt in the last example been Rs. 2,90,000 the fraction of the unprotected property to be sold would have been $\frac{2,90,000 \text{ minus } 91,000}{2,50,000 \text{ minus } 51,000} = \frac{199}{199} = 1$. Thus, all the unprotected property would have to be transferred to the creditors and Rs. 2,90,000 *minus* Rs. 2,50,000=Rs. 40,000 would have to be liquidated by 20 annual payments of Rs. 40,000 divided by 13·294, *i. e.*, Rs. 3,009.

43. As explained at the end of rule 41, if the sum of the transfer value of the landlord's unprotected property and the instalment value of his protected property, if any, is less than the debt remaining to be liquidated, the Collector will proceed under clause (ii) of section 28.

Section 28 (ii).

I.—In cases where there is no protected property.

If the debt remaining to be liquidated exceeds the transfer value of the unprotected property and there is no protected property, the whole of the unprotected property will be transferred to the creditors.

II.—In cases where there is both unprotected and protected property.

If the debt remaining to be liquidated exceeds the transfer value of the unprotected property *plus* the instalment value of the protected property, the whole of the unprotected property will be transferred to the creditors, and the landlord will, in addition, pay to Government 20 annual instalments each equal to the instalment value of the protected property divided by 13·294, the result being rounded to the nearest whole rupee.

III.—In cases where there is only protected property.

In such cases no property will be transferred to the creditors but the landlord will pay to Government 20 annual instalments each equal to the instalment value of the protected property divided by 13·294, the result being rounded to the nearest whole rupee.

44. (i) In order to ensure that any instalment calculated under rules 40, 42 or 43 can be paid by the landlord, the Collector shall calculate the difference between the post-slump profits of the property that will remain with the landlord and the amount of instalment to be paid annually by him to Government.

(ii) If this difference is not sufficient to maintain the landlord and his family, after allowing for probable short collections, if any, and the cost of management of the property remaining with the landlord, the Collector shall reduce the instalment multiple or multiples and prepare a fresh liquidation scheme.

(iii) The Collector shall also have regard to the existence of any public debts not included in the liquidation scheme. (See also rule 57.)

(iv) The lowering of the instalment multiple increases the amount of land that has to be transferred to the creditors and decreases the amount that has to be paid to Government by instalments. It increases the amount which the landlord retains each

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year for the maintenance of his family and the upkeep of the remainder of his estate.

(v) In no case in which the landlord has not a regular income, apart from the profits of his agricultural land will the annual instalment fixed be greater than the difference between two-thirds of the landlord's present assets as reduced by the slump in prices and the amount of land revenue payable by him after deducting the remissions for the slump in prices.

45. If liquidation proceeds under section 27 each creditor will be given bonds, the total of which will be equal to the amount due to him.

Sections 27 and 30.

46. If liquidation proceeds under section 28 (1) the Collector shall give bonds up to the amount of the debt that has to be liquidated by payment of instalments to Government, to those creditors whose debts have been ranked highest for priority by the Special Judge and shall allot shares in the landlord's unprotected property to the others.

Sections 28 (1) and 31 (1).

Example.—If in the example given in rule 42-II (i) the total debt of Rs. 1,50,000 is composed of Rs. 50,000 due to A, Rs. 40,000 due to B, and Rs. 60,000 due to C in that order of priority.

Rupees 75,875 is to be liquidated by instalments to Government, and Rs. 74,125 of the debt is to be met by transfer of a share of 0·2965 of the unprotected property.

Thus A will get bonds to the value of Rs. 50,000. B will get bonds to the value of Rs. 25,875 (*i. e.* Rs. 75,875 less Rs. 50,000) and for his remaining dues of Rs. 14,125 he will get a share in the unprotected property of the landlord, the transfer value of such share being Rs. 14,125. This share will be $\frac{14,125}{2,50,000} = 0\cdot0565$ of the unprotected property.

C will get the remainder of the share that has to be transferred to the creditors, *viz.*, 0·2965 *minus* 0·0565 = 0·24 of the landlord's unprotected property.

Note.—If the Collector had rounded the share of the unprotected property to be transferred to $\frac{3}{10}$ ths as explained in note (i) to that example

A would get bonds to the value of Rs. 50,000,
 B would get bonds to the value of Rs. 25,000 (*i. e.* Rs. 75,000 less Rs. 50,000)
 and a share of $\frac{15,000}{2,50,000} = \frac{3}{50}$ of unprotected property, and

C would get the balance of the share of the unprotected property to be transferred, *vis.* $\frac{3}{10}$ ths minus $\frac{3}{50}$ ths = $\frac{6}{25}$ ths.

Sections 28 (2) and 31 (2). **47.** If liquidation proceeds under section 28 (2) the following cases arise:

1—In cases where there is no protected property.

The whole of the unprotected property will be allotted to the creditors. They will be allotted shares at their transfer value in the order in which their dues have been ranked for priority by the Special Judge, and when the whole of the unprotected property has been allotted in this way, the remaining creditors will get nothing.

No bonds at all will be issued in such cases.

Example.—Suppose the total debt is Rs. 3,90,000 made up of Rs. 20,000 due to *A*, Rs. 60,000 due to *B*, Rs. 70,000 due to *C*, Rs. 90,000 due to *D*, and Rs. 1,50,000 due to *E*, in that order of priority; and that the transfer value of the unprotected property is only Rs. 2,00,000.

A would get a share of this unprotected property equal to $\frac{20,000}{2,00,000} = \frac{1}{10}$ th.

B would get share of this unprotected property equal to $\frac{60,000}{2,00,000} = \frac{3}{10}$ ths.

C would get share of this unprotected property equal to $\frac{70,000}{2,00,000} = \frac{7}{20}$ ths.

D would get share of this unprotected property equal only to $\frac{50,000}{2,00,000} = \frac{1}{4}$ th.

E would get nothing at all.

II.—In cases where there is both protected and unprotected property.

In such cases the creditors whose debt ranks highest for priority will be given bonds as in rule 46 and the rest will be allotted shares in the unprotected property at their transfer value in order of priority. When the whole of the unprotected property has been allotted in this way, the remaining creditors will get nothing.

Example.—Suppose the debt is exactly as in the example in Part I above, and that the transfer value of the unprotected property is Rs. 2,00,000 and in addition there is protected property of which the instalment value is Rs. 30,000,

The amount available for liquidation is thus the unprotected property to the value of Rs. 2,00,000 *plus* bonds to the value of Rs. 30,000=Rs. 2,30,000 against debts of Rs. 3,00,000.

A would get bonds to the value of Rs. 20,000 ;

B would get the rest of bonds, *i. e.*, to the value of Rs. 10,000, and for the rest of his dues of Rs. 60,000 *minus* Rs. 10,000=Rs. 50,000 a share in the unprotected property of which the transfer value equals Rs. 50,000 *i. e.* a share of $\frac{50,000}{2,00,000} = \frac{1}{4}$ th.

C would get a share in the unprotected property equal to $\frac{70,000}{2,00,000} = \frac{7}{20}$ ths.

At this stage unprotected property is left to the transfer value of only Rs. 2,00,000 *minus* Rs. 1,20,000=Rs. 80,000.

D's dues are Rs. 90,000, so he would get the rest of the unprotected property (*i. e.* $\frac{2}{3}$ ths. of the whole unprotected property) and nothing more.

E would get nothing at all.

III.—In cases where there is only protected property.

In such cases there is no property for transfer and only bonds equal in value to the instalment value of the protected property will be available for distribution among the creditors in order of priority of their dues. When all the bonds have been distributed the remaining creditors will get nothing.

Example. Suppose the debts are exactly as in the example in Part I above and the instalment value of the protected property is Rs. 1,60,000.

A would get bonds to the value of Rs. 20,000.

B would get bonds to the value of Rs. 60,000.

C would get bonds to the value of Rs. 70,000.

D would get bonds only to the value of Rs. 10,000, although his dues are Rs. 90,000.

E would get nothing at all.

48. Notwithstanding anything in rules 46 and 47 if a share of the landlord's property has to be transferred the Collector shall give the creditors in the order of priority of their debts the option of having their debts satisfied by bonds or by a share in the landlord's unprotected property.

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49. If the value of the bonds to be given to any creditor is not an exact multiple of the face value of the bond of lowest denomination, the Collector shall either arrange that the debtor pays to the creditor the difference between the amount to be given to the creditor in bonds and the amount that can be paid in an exact number of bonds; or that the creditor pays into court the difference between the amount due to him and the next highest amount that can be paid in an exact number of bonds.

Example.—If the face-value of the bond of lowest denomination is Rs. 100 and if the creditor is entitled to payment in bonds to the value of Rs. 1,033, then either the debtor must pay Rs. 33 to the creditor who will then receive bonds for Rs. 1,000 or the creditor must pay into court Rs. 67 in cash and receive bonds for Rs. 1,100.

50. If the Collector decides to allot shares in particular properties to particular creditors instead of allotting to each creditor a share of the whole of the landlord's unprotected property, he shall calculate the value, as defined in section 33, of each of the landlord's unprotected properties and the value, again as defined in section 33 of the share in the whole of the landlord's unprotected property allotted to each creditor and shall distribute shares in the landlord's particular unprotected properties accordingly.

Note.—The value, as defined in section 33, is the transfer multiple fixed by the Collector under section 26 (b) multiplied by the post-slump profits.

Example.—Suppose that the debtor possesses three unprotected properties, the details of which are given below and no protected property :—

Name of property.	Pre-slump profits.	Post-slump profits.	Transfer multiple.	Instalment multiple.
	Rs.	Rs.	Rs.	Rs.
X ...	10,000	7,000	21	5
Y ...	15,000	12,000	27	6
Z ...	8,000	7,500	20	5

Then the transfer values, instalment values and values as defined

in section 33, of these three properties and of the whole of the debtor's property, are as given below:—

Name of property.	Transfer value.	Instalment value.	Value under section 33.
	Rs.	Rs.	Rs.
X ...	2,10,000	35,000	1,47,000
Y ...	4,05,000	72,000	3,24,000
Z ...	1,60,000	37,000	1,50,000
Total ...	7,75,000	1,44,500	6,21,000

If the total debt is Rs. 4,59,759 the share of these unprotected properties transferred is

$$\frac{4,59,750 - 1,44,500}{7,75,000 - 1,44,500} = \frac{3,15,250}{6,30,500} = \frac{1}{2}$$

The total of the bonds to be given is Rs. 72,250. If there are three debts—Rs. 1,49,750 to A, Rs. 1,55,000 to B and Rs. 1,55,000 to C in that order of priority, then

A gets bonds for Rs. 72,250 plus a share equal to

$$\frac{1}{10} \text{th} \left(\frac{77,500}{7,75,800} \right) \text{ of the debtor's property ;}$$

B gets a share equal to $\frac{1}{5}$ th $\left(\frac{1,55,000}{7,75,000} \right)$ of the debtor's property ;

C gets also a share equal to $\frac{1}{5}$ th of the debtor's property.

The values under section 33 of these three shares are
 Rupees 61,000,
 „ 1,24,200,
 „ 1,24,200.

Thus, as the value under section 33 of property Y is Rs. 3,24,000, A might be given a share in property Y of $\frac{62,100}{3,24,000} \times 16 = 3$ as. 1 pie and B and C might each be given a share of $\frac{1,24,200}{3,24,000} \times 16 = 6$ as. $1\frac{1}{2}$ pies in that property. The debtor would retain the whole of properties X and Z and an 8-pies share in property Y.

51. The Collector shall distribute the amount to be paid in instalments by the landlord over his separate properties, as defined in rule 16, such as are left to him, in proportion to the land revenue, real or nominal, payable by him on account of those properties and shall declare that the amount allotted to each property shall be a charge on that property :

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provided that the Collector may, if he thinks fit, distribute the amount to be paid by the landlord over his separate properties, such as are left to him, in proportion to the instalment values of these properties.

Example.—Suppose the landlord has been ordered to liquidate debt to the total of Rs. 1,000 to Government by instalments and that he has three properties left to him, A, B and C for which he pays sums of Rs. 70, Rs. 20 and Rs. 10 respectively as land revenue, taking no account of slump remissions. Then, if the Collector distributes the amount due proportionately to the land revenue, the charge on property A will be Rs. 700, that on property B Rs. 200 and that on property C Rs. 100.

52. The Collector shall calculate the amount that has to be paid each year along with the land revenue and cesses of each of the debtor's separate properties remaining with him by dividing the amount allotted to that property under the previous rule by the figure in column B of Appendix II corresponding to the number of years in which the debt has to be paid.

53. (a) The annual amount payable along with the land revenue and cesses of each of the debtor's separate properties shall be payable in instalments proportionate to the land revenue instalments on the date or dates on which the land revenue and cesses fall due. These instalments shall be held to be the instalments ordered under sections 27 and 28 and recoverable under section 29 and these dates shall be held to be the dates on which the instalments fall due.

Example.—If the annual amount payable along with the land revenue of property A is Rs. 1,600 and the land revenue of that property is payable as follows:—4 annas on 1st December, 4 annas on 1st January, 4 annas on 1st May and 4 annas on 1st June. Then the instalments are:—

Rupees 400 payable on 1st December.
Ditto 1st January.
Ditto 1st May.
Ditto 1st June.

**(b) The first instalment will fall due on the date in which the next instalment of land revenue falls due following the date when*

* This rule (b) was subsequently added.

the Final Liquidation Award is declared by the Collector under rule 54 A.

Thus in the above example if the period of the instalments is 15 years and the Collector's order is dated the 20th December 1936, the first instalment of Rs. 400 falls due on 1st January 1937 and unless any subsequent change is made in the annual instalment, payment will be completed with the collection of the instalment of Rs. 400 which falls due on 1st December 1931.

54. The Collector shall finally prepare a Final Liquidation Award and give a copy to the landlord and to each creditor.

He shall also issue to each creditor a certificate showing—

(1) the amount by which his debt has been reduced by the Special Judge ;

(2) the amount which he has lost by the transfer of land, *i. e.*, the difference between the transfer value of the share transferred to him and the value of that share calculated in accordance with the explanation to section 33.

**(a) The Collector may proceed with the preparation of his Liquidation Award under these rules as soon as the decrees of the Special Judge have been received. His final award should not, however, be declared until either the period of limitation for filing appeals against the decrees of the Special Judge has expired or any such appeals have been decided and the award modified, if necessary in accordance with orders in such appeal.*

**(b) Bonds to be given to creditors under sections 30 and 34 of the Act will be issued to the Collector from the Public Debt Office of the Reserve Bank of India on an indent in the prescribed form signed by the Collector and bearing the seal of the Collector's Court.*

** (c) Indents for bonds shall not be forwarded by the Collector nor shall the transfer of any of the debtor's property in accordance with the Final Liquidation Award be effected until the period of limitation for appeal against the award has expired and any such appeal has been decided. On the expiration of two months from the date of the final award the Collector shall inquire from the Board of Revenue, whether any appeal has been admitted and, if not, shall immediately forward his indent for bonds and take steps to transfer shares in accordance with his award. When an*

* These rules 54 (a) to (d) were subsequently added,

appeal has been admitted, the Collector shall await the decision of such appeal and then forward his indent for bonds and take steps to transfer shares in accordance with the award as modified by the appellate court.

(d) Creditors will be entitled to receive interest on the bonds given to them from the date of declaration of the Collector's final award under rule 54 A. While indenting for bonds the Collector shall intimate the date of the final award in each case to enable the Public Debt Office to enface the bond or bonds to be issued accordingly.

CHAPTER IV.

LIQUIDATION OF PUBLIC DEBTS.

Section 21. **55.** Public debts which are decreed by the Special Judge shall be included in the total debt to be liquidated under Chapter III.

Section 21. **56.** Public debts which are not reported to the Special Judge in accordance with rule 5 fall into two classes—

(1) those which are due when the Collector prepares the Final Liquidation Award ;

(2) those which will fall due after the Final Liquidation Award has been prepared, e. g., taqavi under Act XIX of 1883.

Section 21. **57.** Public debts which fall under class (1) of rule 56 should not be included in the liquidation scheme but should be collected in the ordinary manner unless Government sanction their inclusion in the liquidation scheme and their collection by instalments. The Collector may however take their existence into consideration in fixing the instalment value of the debtor's property. If they are so large as to be likely seriously to affect the liquidation scheme, or if the land on which they are secured has to be transferred to a creditor, the Collector should delay passing final orders of liquidation till he has realized them.

58. Public debts which fall into class (2) of rule 56 should generally (with the exception of land revenue and irrigation dues which are not debts but recurring charges) be included in the debt to be liquidated under Chapter III unless they are so small that the debtor is willing to pay them at once or unless their liquidation would involve transfer of land to Government. In the latter case final orders of liquidation shall be postponed until they are paid.

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CHAPTER V.

THE COLLECTION OF THE INSTALMENTS.

59. The Collector, as soon as he has made the Final Liquidation Award, shall inform the Collector of each district in which the debtor's property is situated of the amount which the debtor must pay in instalment along with the land revenue and cesses of each of the debtor's separate properties situated in that district.

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60. Sub-divisional officers will be responsible to the Collector for the collection of the amounts due in their sub-divisions.

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61. Promptness in collecting instalments is of the greatest importance. In the majority of cases the annual payment will have been fixed at the largest amount which the Collector considers can safely be demanded. If there are, therefore, any arrears outstanding at the end of either the *kharif* or the *rabi* season it will be extremely difficult to collect these arrears without allowing future instalments to fall into arrears.

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62. When two consecutive instalments have been paid in full within six months of the date on which the second of them falls due the Collector shall report the matter to Government. Government shall decide whether the whole of the amount due by the debtor shall be recovered as an arrear of land revenue, or whether the Court of Wards shall assume charge of the debtor's property, or whether some other method of liquidating the arrear should be adopted. In

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making a report under this rule the Collector shall give a list of the whole of the debtor's property whether situated in his own or in other districts.

63. If the loss of produce in any season in any separate property (as defined in rule 5) of the debtor exceeds 6 annas in the rupee of the normal, the Collector of the district in which that property lies may reduce the instalment or instalments payable in that season along with the land revenue of that property according to the following scale :—

Loss of produce in annas per rupee of the normal.	Reduction in instalment or instalments in annas per rupee.
Between 6 annas (exclusive) and 8 annas (inclusive) ...	4 annas
Between 8 annas (exclusive) and 10 annas (inclusive) ...	8 "
Between 10 annas (exclusive) and 12 annas (inclusive) ...	12 "
More than 12 annas ...	16 "

When there is a general remission or suspension of revenue, the Collector may order a general reduction of instalments. In all other cases each case must be considered on its merits, and the Commissioner's sanction taken before an instalment is reduced.

Example.—Suppose that the annual payment to be made along with the land revenue of a certain mahal is Rs. 1,600, and that the instalments are as follows :—

- Rupees 350 due on December 1.
- „ 350 due on January 1.
- „ 450 due on May 1.
- „ 450 due on June 1.

Then if there was 9 annas loss in the *rabi* crop in that mahal each of the *rabi* instalments might be reduced by Rs. 225.

64. If any reduction is made under rule 63 in the amount payable in any season the Collector who made the reduction shall calculate the amount remaining to be paid, along with the land revenue of the property in which the crops failed, at the beginning of the next season as follows : If payments have been regularly made, Appendix II gives the amount of the debt itself outstanding, expressed as a multiple of the annual payment, corresponding to the number of annual payments which

remain to be paid. On the next date on which an instalment falls due and on which the landlord has completed an exact number of annual payments since the liquidation order was passed, the amount due on that date can therefore be determined from this Appendix. To this must be added the amount not paid owing to the reduction of the instalments under rule 63.

The number of years in which the total outstanding debt shall be paid off shall be determined in accordance with the principles of Chapter III, regard being had to the instalment value of the particular property the instalments relating to which were reduced.

Example.—Suppose that in the example in rule 63 the annual instalment payable along with the land revenue of the property in which the crops have suffered is Rs. 1,600, and that the first instalment ordered by the Collector under rule 40, 42 or 43 of Chapter III fell due on January 1, and that on January 1 next following the season in which the instalments were reduced, the landlord has still 10 complete annual instalments to pay. Then the amount due from him on that day is, from Appendix II, Rs. $1,600 \times 8.011$ or Rs. 12,818, (The figure 8.011 being taken from column B of Appendix II against 10 years.) Adding Rs. 450 the amount not paid in the previous *rabi* the total amount due is Rs. 13,268. This can be paid by 10 payments of $\frac{13,268}{8.011} =$ Rs. 1,656. If the Collector considers that there is no objection to increasing the annual instalment to this amount then he shall order the landlord to pay this amount annually after January 1, *i. e.*, Rs. 362 on December 1 and January 1 and Rs. 466 on May 1 and June 1. The amount due on December 1 immediately succeeding the *rabi* season in which the crop suffered will be the previous instalment of Rs. 350. If the Collector does not consider that it is safe to increase the annual instalment he shall order the payment of the outstanding debt in 11 annual instalments of Rs. $\frac{13,268}{8.643}$ or Rs. 1,535. (The figure 8.643 being taken from column B of Appendix II against 11 years.)

If the annual instalment has to be altered either because the settlement has been revised or the land revenue altered, or because the debtor pays a lump sum towards his debt or his circumstances deteriorate and he is unable to pay the instalment previously ordered, or they improve and he wishes to pay a larger annual instalment, the Collector shall

proceed to calculate the future annual payments in accordance with the principles set forth in rule 64.

Example.—Suppose that the instalment multiple applicable to a certain mahal is 6 and that the profits when the instalment was fixed were Rs. 1,000. Now if these profits are reduced by re-settlement to Rs. 800 the instalment value of the mahal is reduced from Rs. 6,000 to Rs. 4,800. Suppose that there are 10 annual payments of Rs. 450 each remaining to be paid when the new settlement comes into force then the amount of the debt itself outstanding is Rs. 3,605 (Rs. 450 × 8'011). The maximum annual payment that can be paid is the instalment value divided by 13'294, *i. e.*, Rs. $\frac{4,800}{13'294} =$ Rs. 3 61. Dividing 361 into the remaining debt Rs. 3,605 (see rule 38) the result is 9'986 which lies between 9'832 and 10'391 in column B of Appendix II, the figures corresponding to 13 and 14 years in column A. So that the outstanding debt will not quite be paid off in 13 years. The Collector should therefore order that the outstanding debt be liquidated in 14 annual payments of Rs. 347 (Rs. $\frac{3,605}{10'391}$).

66. If the annual payments have to be altered on account of Sections 37 and 38. the settlement of, or an alteration in, the land revenue of the debtor's property or a portion of his property then the amount of the annual payment to be made along with the land revenue of each separate property shall be determined by the Collector of the district in which that property is situated.

67. If the annual payments have to be altered on account of Sections 37 and 38. a change in the circumstances of the debtor the alteration shall be made by the Collector of the district in which the liquidation proceedings were carried out.

68. If the debtor pays a lump sum towards the liquidation of his debt he shall declare how he wishes that Section 41. sum distributed over the charges on his separate properties, and the necessary alteration in the amount payable along with the land revenue of each of these properties shall be made by the Collector of the district in which that property is situated.

Example.—Suppose that in the example in rule 65 above there has been no re-settlement but the landlord pays Rs. 3,000 towards the liquidation of his debt. The amount of the debt itself then outstanding would be Rs. 3,605 less Rs. 3,000 = Rs. 605. The

Collector should in this case leave the number of years, in which the remaining debt is to be liquidated largely to the debtor provided that the total period of liquidation is not increased. If the debtor chooses to liquidate it in two years, he would have to pay Rs. $\frac{605}{1.879}$ = Rs. 322 each year. On the other hand if he wished to repay the balance in 10 years, the annual instalment would be Rs. $\frac{605}{8.011}$ = Rs. 76.

69. In altering the number of annual payments (under this chapter only) the Collector is empowered to extend the total period of payment beyond 20 years.

CHAPTER VI.

LIQUIDATION BY MORTGAGE.

70. The period of mortgages granted under section 25 shall be an exact number of years and shall begin one month before the first instalment of the *kharif* rents falls due, or one month before the first instalment of the *rabi* rents falls due, and shall end one month before the first instalment of the *kharif* rents falls due or one month before the first instalment of the *rabi* rents falls due.

71. Any person who applies under section 25 to be given a mortgage shall state in his application the property of which and the period for which he is prepared to make a mortgage. If the period applied for is more than 20 years or not in conformity with rule 70 the Collector shall reject the application.

72. If the Collector does not reject the application under the previous rule he shall, after hearing the applicant and the debtor, prepare a statement of the post-slump profits on the date of the application of the property of which a mortgage has been applied for and of the debtor's entire property. If the post-slump profits of the property applied for exceed three-quarters of the post-slump profits of the debtor's entire property the Collector shall reject the application.

73. The Collector will calculate the value of a mortgage with possession as follows :—

(i) He will multiply the post-slump profits of the property to be mortgaged by the *standard* instalment multiple (see rule 22) and so obtain the instalment value.

Note. The standard instalment multiple will not be varied.

(ii) He will take the figure in column B of Appendix II opposite the number of year in column A for which the mortgage is to be taken, and multiply it by 0·15.

(iii) He will then multiply the instalment value from (i) above by the figure obtained from (ii) above and the result, calculated to the nearest whole rupee, will be the value of the mortgage applied for.

Example.—(i) If the post-slump profits of the property to be mortgaged are Rs. 1,000 and the *standard* instalment multiple is 7, the instalment value will be Rs. 7,000.

(ii) If the application is for a mortgage of 10 years; the figure opposite 10 in column B of Appendix II is 8·011. The result of multiplying this by 0·15 is 1·2016.

(iii) Multiplying the instalment value of Rs. 7,000 by 1·2016, the value of the mortgage will be Rs. 8·414.

74. If the value of the mortgage as calculated under rule 73 exceeds the value of the outstanding debt to be paid by the applicant the Collector shall reject the application.

75. If the application is not rejected the Collector shall grant the mortgage, put the mortgagee in possession, pass an order stating the amount of the debt and the number of years for which the mortgage was given and give a copy to the applicant and a copy to the debtor.

76. Anyone whose application for the grant of a mortgage has been rejected under rule 71, 72 or 74 may at any time submit a modified application.

77. To obtain the amount due to the mortgagee after the mortgage has been in existence for an exact number of years, the Collector shall proceed as follows:—

(i) He will take from Appendix II the figure in column B opposite the number of years the mortgage has still to run.

(ii) He will then multiply the amount for which the mortgage was originally given by the figure from (i).

(iii) He will then take from Appendix II the figure in column B opposite the number of years for which the mortgage was originally given, and divide this into the figure in (ii)

Example.—Suppose the original debt paid off under section 25 by the mortgagee was Rs. 10,000 and the mortgage was given for 20 years. To find the amount of the original debt still outstanding after nine years the Collector would proceed as follows;—

(i) The mortgage has 11 more years to run. The figure in Appendix II in column B opposite 11 years is 8'643.

(ii) The original mortgage was for Rs. 10,000. Multiplying this by 8'643, the result is Rs. 86,430.

(iii) The figure in Appendix II in column B opposite 20 years is 13'294.

The amount of the debt itself still due to the mortgagee is thus

$$\text{Rs. } 10,000 \times \frac{8'643}{13'294} = \text{Rs. } 6,501.$$

78. If during the currency of the mortgage the land revenue of the area mortgaged is altered, either by an alteration in the remission for the fall in prices or otherwise, the Collector shall in accordance with rule 77 determine the amount due under the mortgage at the beginning of the season in which the alteration in the revenue comes into force, re-calculate the post-slump profits of the area mortgaged and determine the future period of the mortgage in accordance with the principles of rule 73.

Example.—Suppose that the debt is Rs. 8,411, the post-slump profits Rs. 1,000 and the standard instalment multiple 7, then according to rule 73 the debt will be paid off by a mortgage for 10 years. Suppose that from the beginning of the fourth year the remission for the fall in prices is decreased and the post-slump profits are thereby increased by Rs. 200. The amount due at the beginning of the fourth year is Rs. 8,411 $\times \frac{5'947}{8'011}$ or Rs. 6,244. To obtain the period in which this debt will be liquidated divide the amount due by 0'15 times the new instalment value. The result is $\frac{6'244}{0'15 \times 8,400}$ or 4'956. The nearest figure to 4'956 in column B of Appendix II is 5'200 which corresponds to 6 in column A. So the future period of the mortgage must be fixed at 6 years.

79. If any part of the revenue of the area mortgaged is remitted because of a failure of the crop the Collector shall add the corresponding loss in post-slump profits to the amount that is due under the mortgage at the next date on which the mortgage has been in existence for an exact number of years, and re-determine the future period of the mortgage in accordance with the principles of rule 73.

Section 25.
Third proviso.

Example.—Suppose that in the example in rule 78 there is a crop failure in the fifth year (that is in the second year of the revised mortgage) and that rent and revenue in the *rabi* season of that year are remitted to the extent of 12 annas in the rupee. At the beginning of the sixth year (when the revised mortgage will have four more years to run out of its six years) the amount still due under the mortgage is Rs. $6,244 \times \frac{3.609}{5.209}$ or Rs. 4,260. (The figures of the revised and not of the original mortgage have to be used as it is the revised mortgage that is in operation.) If the revenue instalments are equal in *kharif* and *rabi*, the loss caused by the remission is Rs. $\frac{1}{2} \times 1,200 \times \frac{2}{3} =$ Rs. 450. The total amount outstanding at the beginning of the sixth year is therefore Rs. 4,710. This can be liquidated in four more years $\left(\frac{4,710}{8,400 \times 0.15} = 3.738 \right)$ which is nearest the figure 3.609 in column B of Appendix II corresponding to 4 in column A.)

80. If the debtor pays any sum under section 41 the Collector shall determine the future period of the mortgage, if any, in accordance with the principles of the above rules.

Section 41.

Example.—Suppose that in the seventh year of the mortgage in the example in rule 79 above the mortgagor pays Rs. 1,000 towards the liquidation of his debt. Then the amount due at the end of the seventh year, when two more years out of the four years of the revised mortgage have still to run, is Rs. $4,710 \times \frac{1.879}{3.609} - 1,000$ or Rs. 1,452. This will be liquidated in one more year $\left(\frac{1,452}{0.15 \times 8,400} = 1.152 \right)$.

81. If any part of the property mortgaged is under settlement, the Settlement Officer shall report to the Collector the net assets of that property which he has accepted for assessment, and the Collector shall treat these assets as the post-slump profits of that property and re-calculate the future period of the mortgage in accordance with the principles of these rules.

82. The Collector shall give a copy of any order altering the period of the mortgage to the debtor and to the mortgagee.

CHAPTER VII.

MISCELLANEOUS.

83. The Collector shall not sanction any transfer or lease under sub-section (2) of section 7 if he considers that it is against the interest of the creditors.

84. Before the liquidation scheme has been completed the Collector shall sanction no transfer of property under sub-section (3) of section 7 which will prejudice the interest of the creditors collectively or individually.

85. After the liquidation scheme has been completed the Collector shall not sanction under sub-section (3) of section 7 any transfer which will in his opinion render the collection of the instalments more difficult. Under section 40 the payment of instalments remains a charge on the property transferred. This should be pointed out to the transferee when the Collector sanctions a transfer, and he should if possible be induced to pay into court the amount of the charge on the property transferred. This amount can be calculated from Appendix II.

86. All Assistant Collectors of the first class holding charge of a sub-division are hereby empowered to receive applications under section 4 of the Act.

87. The powers of the Collector under Chapter V of the Act with respect to cases in which—

(1) the land revenue, nominal or actual, of the property reported by the Special Judge under section 19 is less than Rs. 5,000 (without deducting the remission for the fall in prices) and

(2) the total of the decrees passed by the Special Judge under section 12 is less than Rs. 1,00,000,

are hereby conferred on all Assistant Collectors empowered to receive applications under rule 86 above.

88. All the powers of the Collector under the Act with respect to cases mentioned in rule 87 "*except the power to sign an indent for bonds under rule 54. B*" are hereby conferred on all Assistant Collectors empowered under that rule.

Section 54 (1).

89. If the Collector considers that it is desirable to confer enhanced powers on any Assistant Collector he should apply accordingly to Government through the Commissioner.

Section 54 (1).

90. On receipt of the report of the Special Judge under section 19 the Collector shall, if the land revenue (without deducting the remissions for the fall in prices) payable by the debtor in any other district is greater than the land revenue payable by him in the district in which the application under section 4 was made, refer the case to the Board of Revenue for orders whether he should proceed with liquidation himself or whether the case will be transferred to another district.

Section 58.

91. The percentage to be deducted from the price of any land sold under section 34 shall be one-quarter of one per cent. Any amount so deducted will be credited to Government under head XXXVB—Miscellaneous.

Section 34.

92. The interest due on a bond given under section 27 or section 28 shall be payable to the person legally in possession of it on the presentation of the bond at the headquarters treasury of the district the Collector of which passed orders for liquidation, or at such other treasury as may be ordered by Government.

Sections 30 and 31.

93. For the purposes of awarding costs under sub-section Sections 14 (7) and (7) of section 14 of the Act in respect of a claim 54 (1). decided by the Special Judge, legal practitioners' fees shall be taxable at the rate prescribed by the General Rules (Civil) of the High Court of Judicature at Allahabad or the Oudh Civil Rules as the case may be.

Report of Public debts and their Liquidation.

Under the Act public debts have been divided into two classes:—

(1) Those which can be collected as arrears of land revenue and (2) those which cannot be so collected. So far as those public debts, which can be collected as arrears of land revenue, and debts due to Cooperative Societies are concerned, the Collector will not report them to the Special Judge. Their collection will continue as if no application had been made under the Act (Rule 5).

Public debts which cannot be collected as arrears of land revenue may be reported to the Special Judge at any time. So far as the public debts reported to the Special Judge are concerned, if there be any dispute, the Special Judge shall determine such dispute after such enquiry as may be necessary provided a suit was maintainable in any civil or revenue court to determine the amount of the public debt. But where no such suit is maintainable, the Collector's decision about the amount of the debt shall be final (S. 21). Public debts which are decreed by the Special Judge shall be included in the total debt to be liquidated under Chapter III (Rule 55). Public debts which are not reported to the Special Judge are to be further divided into two classes:—

(1) those which are due when the Collector prepares the Final Liquidation Award;

(2) those which are due after the Final Liquidation Award has been prepared, (Rule 56.)

Public debts falling in class (1) should not be included in the Liquidation Scheme but should be collected in the ordinary manner unless Government sanctions their inclusion in the Liquidation Scheme and their collection by instalments (R. 57). Public debts falling in class (2) should generally (with the exception of land revenue and irrigation charges) be included in the debt to be liquidated under Chapter III unless they are so small that the debtor is willing to pay them at once or unless their liquidation would involve transfer of land to Government. In the latter case final orders of liquidation shall be postponed until they are paid. (Rule 58).

APPENDIX I.

*Standard Transfer Multiples.****MEERUT DIVISION.****DEHRA DUN DISTRICT.**

Dehra.—Home, Dehra Suburban, Dehra Plateau (29) ; Submontane, Hill tract, Jakhan Canal, Marsh, (26) ; Boulder, Song Khadar, Nagsidhsuswa, (25) ; River tract, (23).

SAHARANPUR DISTRICT.

Roorkee.—Manglaur 2, Manglaur 4, Roorkee 5, Jwalapur 3, Roorkee 6, Jwalapur 4, Roorkee 7, (24) ; Manglaur 11, Jwalapur 11, Jamalpur 7, Manglaur 10, Manglaur 3, Jwalapur 5, Bhagwanpur 3, Roorkee 8, (22).

(GROUP D.)

Roorkee.—Jwalapur 1, Jwalapur 7, Bhagwanpur 4, Jwalapur 2, Jwalapur 6, (22) ; Roorkee 1, Bhagwanpur 1, Jwalapur 9, Bhagwanpur 2, Manglaur 1, (17). **Deoband.**—Deoband 3 and 5, Rampur 7, (20) ; Nagal 1, 2 and 6 (16) ; Nagal 4, Deoband 4, (14). **Nakur.**—Nakur 1, Sultanpur 8, Sarsawa 2, Gangoh 2, (25) ; Sultanpur 4, 5, 6 and 7, Nakur 3, Sarsawa 1 and 3, Gangoh 3 and 4, (22) ; Sultanpur 1 3 and 9; Sarsawa 5, Sultanpur 2, Nakur 5, Gangoh 5, (19). **Saharanpur.**—Saharanpur 1 and 3; Muzaffarabad 1 and 6, Fyzabad 4 and 6, Haraura 2, (26) ; Muzaffarabad 2, 3 and 5; Haraura 1, Fyzabad 2, (20) ; Fyzabad 1 and 5, Saharanpur 2, Haraura 3 and 4, Muzaffarabad 4, Fyzabad 3, (13).

MUZAFFARNAGAR DISTRICT.

Jansath.—Jauli Jansath Canal, Khatauli Canal, Bhokerheri Canal, Bhumosambalhera Canal, Bhokerheri Bhoor, (27) ; Jauli Jansath Bhoor, Khatauli Bhoor. Khatauli Nagar, Bhokerheri G. S. T., Jauli Jansath Nagar, (25) ; Bhumosambalhera G. F. T., Bhumosam-

* These standard transfer multiples which are given in brackets are for revenue-paying areas only.

In the case of revenue-free areas the standard transfer multiples are:—

(a) in permanently settled areas twelve and half per cent. above the multiples shown in this appendix.

(b) in temporarily settled areas twenty-five per cent. above the multiples shown in this appendix.

balhera G. S. T., Khatauli Kali, Bhumosambalhera Bhoor, Bhokerheri G. F. T. (22). **Kairana**.—Shamli Canal, 1, 2 and 3, Jhinjhan Canal 1 and 2, Kairana Canal 2, Thanabhawan Canal 3, Shamli Northern Krishna, Thanabhawan Northern Krishna, (27); Jhinjhana Katha Jumna 1, Kairana Katha Jumna 1, Bidhauri Katha Jumna 1. (24). Kairana Katha Jumna 2, Bidhauri Katha Jumna 2, Jhinjhana Katha Jumna 2, (22). **Muzaffarnagar**.—Baghra Canal, Baghra Hindan, Purchhapar Canal, Muzaffarnagar Canal, Charthawal Canal, Parchhapar G. F. T., Muzaffarnagar Kali, Purchhapar Bhoor, (28); Muzaffarnagar Bhoor, Gordhanpur Special Khadir, Purchhapar G. S. T., Charthawal Hindan, (25); Charthawal Kali, Gordhanpur G. S. T., Purchhapar Kali, Gordhanpur G. S. T. (Non-alluvial), (22). **Budhana**.—Kandhla Canal 1, 2, and 3, Budhana Canal, Shikarpur Canal, Shikarpur Hindan, Budhana Well, Shikarpur Well, (28); Kandhla Well, Budhana Hindan, Shikarpur Kali, (25); Budhana Kali, (22).

MEERUT DISTRICT.

Meerut.—Meerut Town Circle, (25); Circles 3, 4 and Central, (23); 1 and 2 Circles, Meerut (20); **Sardhana**.—Pargana Barnawa, Circles 1, 2 and 3, Pargana Sardhana, 1, 2 and 3, Pargana Daurala, 1, 2, 3, and 4, (22). **Ghaziabad**.—Pargana Jalalabad, Circles 1, 2, 3, 4, and 5; Pargana Dasna, Circles 1, 2, 3, 4 and 5; Pargana Loni, Circles 1 and 2, (23); Pargana Loni, Circles 3 and 4; (21). **Baghpat**.—Pargana Baraut, 1, Pargana Kotana, 2, Pargana Chaprauli, 1, Pargana Baghpat, 1 (a) and 1 (b), (24); Pargana Baraut, 2 and 3, Pargana Kotana, 2 and 3, Pargana Chaprauli, 2, Pargana Baghpat, 2 (a), 2 (b) and 3, (23); Khadar, (19). **Mowana**.—Pargana Hastanapur, 1, 2 and 3, Pargana Rithore, 1, 2 and 3; (23). **Hapur**.—Pargana Garh, 1, Pargana Pooth, 1, Pargana Sarawa, 1, Pargana Hapur, 1 and 2, (23); Pargana Garh, 2 and 3, Pargana Pooth, 2 and 3, Pargana Sarawa, 2 and 3, Pargana Hapur, 3 and 4, (21).

BULANDSHAHR DISTRICT.

Bulandshahr.—Siana East, Ganges Canal, Central, Kali (31). **Anupshahr**.—Ganges Canal, Well, Usar, (31). **Khurja**.—Ganges Canal 1, Ganges Canal 2, Mat Branch, Jewar Distributary, (31). **Sikandrabad**.—Circles 1 and 2. (31). **Bulandshahr**.—Chhoiya, (28). **Anupshahr**.—Nim, Kharon, (28). **Khurja**.—Patwaha, (28). **Bulandshahr**.—Nim, (23). **Anupshahr**.—Ganges Bank, (23). **Khurja**.—East Pahasu, Jamna Khadir, (23). **Samdabad**.—Circles 3, 4, 5 and 6, (23).

AGRA DIVISION.

ALIGARH DISTRICT.

Sikandra Rao.—Koil, 1 and 2, Sikandra Rao, 1 and 3, (29).
Hathras.—Hathras, 1 (29). **Atrauli.**—Atrauli, 1, 2, 3, 4 and 5, Koil, 3, 4, 5, 6 and 7 (29). **Sikandra Rao.**—Sikandra Rao, 2 and 4, (29).
Hathras.—Hathras 2 and 3, (29), **Khair.**—Khair 1, (29). **Iglas.**—Iglas, 1 and 2, (26). **Atrauli.**—Atrauli 6, (26). **Khair.**—Khair, 2, 3, 4 and 5, (26).

MUTTRA DISTRICT.

Muttra.—Muttra Canal, 1 and 2 Main well, (24). **Chhata.**—Chhata Canal, 1 and 2, Kosi Canal, 1 and 2, (24). **Mat.**—Mat Canal, (24). **Sadabad.**—Sadabad Canal, Sadabad Well, 1. Mahaban, Canal (24). **Muttra.**—N. W. Well, (23). **Chhata.**—Chhata well, Kosi Well, (23). **Mat.**—Mat Well, (23). **Sadabad.**—Sadabad Well, 2 and 3, Mahaban Well, (23). **Muttra.**—Jumna, (22). **Chhata.**—Jumna Chhata, Jumna Kosi, (22). **Mat.**—Jumna, (22). **Sadabad.**—Jumna Sadabad, Jumna Mahaban (22).

AGRA DISTRICT.

Agra.—City Circle, (35). Suburban Circle, Canal Circle, (28); Dabar Canal, Khadir Circle, (22). **Itmadpur.**—Upland A and B Circles, Ravine A Circle, (30); Upland C Circle, Ravine B Circle, (27); Ravine C Circle, (24). **Firozabad.**—Upland A, (41); Upland B, (35); Ravine Circle, (25). **Bah.**—Chambal Circle, Central Circle, Jamna Circle, (33). **Fatehabad.**—Upland A Circle, Jamna A Circle (28); Upland B Circle, South-west Circle, (26). **Khairagarh.**—Doab Circle, (27); Ban Circle, (21); Dang Circle, (18). **Kiraoli.**—Canal Circle (27); Khari Nadi Circle (21); Dabar Circle, (18).

MAINPURI DISTRICT.

Mainpuri.—Mainpuri, 1 and 2, Kuraoli, 1, 2 and 3, Ghiror, 1 and 2, (33); Mainpuri, 3, Kuraoli, 4, (31). **Bhongaon.**—Bhongaon, 1, 4, 5 (a) and 5 (b), Alipur Patti, 2, 4 and 5 (a), Kishni, 1 and 4, Bewar, 3, 4 and 5 (b) (31), Bhongaon, 2 and 3, Kishni, 2 and 3, Alipur Patti, 3 and 4 (a), Bewar, 4 (a), (29). **Karhal.**—Karhal Barnohal, 1 and 2, (35); Karhal Barnohal, 3 and 4, (27). **Shikohabad.**—Shikohabad, 1 and 2, (34); Shikohabad, 3, 4 and 5, (32). **Jasrana.**—Mustafabad, 1 and 2, (32).

ETAH DISTRICT.

Etah.—Kail Nadi, 1 and 2, Central, 1 and 2, Suburban, Isan Nadi, 1 and 2, Bhur, 1 and 2, Dumat, 1 and 2, Circle, 1, 2 and 3, Kali Nadi, (34). **Jalesar.**—Eastern, South-eastern, North-eastern, Central, 1 and 2, Brackish Water, (34). **Qasgang.**—Pargana Bilram—Northern, 1, 2 and 3, Suburban, Pargana Bilram, South-west and South-east, Pargana Bilram, Pargana Sirpura—Northern, Western, Central, Pargana Sahawar—Mohampur, Central, Western, Sahawar, Pargana Bachlana—Upland 1 and 2, (30). **Aliganj.**—Pargana Azamnagar—Bilsarh, Dumat, Central, Western, Pargana Berna—Upland, 1 and 2, Pargana Patiali—Suburban, Dumat, (30). **Qasganj.**—Pargana Bilram—Burhganga Bhur, Kali Nadi, 1 and 2, Pargana Sirhpura—Eastern, Kali Nadi, 1 and 2, Pargana Sahawar—Burhganga Bhur, Kali Nadi, 1 and 2, Pargana Pachlana—Upland, 3, (27). **Aliganj.**—Pargana Azamnagar—Burhganga Bhur, Kali Nadi Bhur, Pargana Patiali—Patiali Bhur, (27). **Qasganj.**—Pargana Mai—North-West, North-East, Southern, Alluvial, Pargana Faizpur Badaria—Western, Burhganga, Ganges, Alluvial, Pargana Soron—Upland 1 and 2, Burhganga Valley, 1, Burhganga Valley, 2, Pargana Sahawar—Burhganga Valley, 1, Burhganga Valley, 2, Pargana Pachlana—Tarai, (26). **Aliganj.**—Pargana Azamnagar—Burhganga, 1 and 2, Kali Nadi 1 and 2, Pargana Berna—River, 1 and 2, Pargana Patiali—River, Pargana Nidhpur—Danda, 1 and 2; Burhganga, Flooded, 1 and 2, Alluvial, (26.)

ROHILKHAND DIVISION.

BAREILLY DISTRICT.

Nawabganj.—Circles 1 and 5, Circle 2, (20); Circle 3 and 4, (18). **Baheri.**—Circle Richha 1, Chaumahla 1, Sirsanwan and Kabar, (22); Circle Richha 2 and Chaumahla 2, (19); Circle Richha 3 and Chaumahla 3, (17). **Aonla.**—Circle Sirauli 3 and 4, Aonla 4, and 5, Sanha 1 and Ballia 1, (24); Sirauli 1, Aonla 1, Sanha 2 and Ballia 3, (22); Sirauli 2, Aonla 2 and 3, Sanha 3, Ballia 2, (18). **Faridpur.**—Circles 3, 5 and 6, (22); Circles, 1 and 4, Circle 2, (21). **Bareilly.**—Circles 3, 5, 6 and 1, 2 of Mirganj, (25); Circles 1, 4, 7 and 3 of Mirganj, (24); Circle 2, (23).

BIJNOR DISTRICT.

Bijnor.—Circles 1, 9, 11, 12 (34); Circles 2, 7, 10, 13, Circles, 3, 14, Circles, 5, 6, 8, (31); Circle, 15, Alluvial, (14). **Dhampur.**—Dhampur Circle, 1, Nehtour Circles, 1, 2, Sheohara Circles 3 and 4, Budpur

Circles 1 and 2, Dhampur Circles 2, 7, Sheohara Circles 1, 5, Dhampur Circles 4, 5, 9, 10, Seohara Circle 2, (28); Dhampur Circles 3, 8, Dhampur Circle 6, Budpur Circle 3, (26). **Najibabad.**—Kiratpur Circle 2, Najibabad 1, Akbarabad 1, 2, 3, Kiratpur 1, 4, Najibabad 3, 4, Kirtapur 2, 5, Najibabad 2, 2, 6, Najibabad 5, 8, (28); Najibabad 7, Kiratpur 6, (20). **Nagina.**—Nagina 2, 3, 4 (Non-Alluvial), Afzalgarh Circles 4, 6 (30); Nagina Circle 1, Budhapur Circles 1 and 2, 4 (Non-Alluvial), Afzalgarh 1, 2, 3, 5, Badhapura 3 (a), (b), (c), Afzalgarh Circle 4 (a), (26); Pargana Nagina 4 (Alluvial), Badhapura 4 (Alluvial), (16).

BUDAUN DISTRICT.

Budaun.—1st Dumat, 2nd Dumat, Ujhani, 1st Dumat, Ujhani, 2nd Dumat, (Alluvial), (24); Bankati, Khadir, (22); Bhur, (19). **Sahaswan.**—Dumat, 1st Khadir Bela, (18); Bhur, 2nd Khadir, (Alluvial), (17). **Bisauli.**—Dumat, Salaisi Dumat, 1st Dumat, 2nd Dumat, (20). **Dataganj.**—Dumat, Bankati, Alluvial, (22); Matiyar, Bankati, Bhur, Khadir, Alluvial, (19). **Gunnaur.**—Khadir Bankati, Bela, 1st Khadir, Khadir Dumat, Khadir Bhur, Alluvial, 2nd Khadir, Bhur, Alluvial (20).

MORADABAD DISTRICT.

Moradabad, 3, 4, 6, Bilari, 3, 6, 7, 4, Sambhal, 3, 5, 4, Amroha, 10, 2, 6, 5, 11, 3, Hasanpur, 8, 9, Thakurdwara, 1, 2, 3, 5, (24); Moradabad, Bilari, Sambhal, 6, 7, Amroha, 9, 8, Hasanpur, 6, 2, 3, 4, 5, 7, Thakurdwara, 4-A, 4-B. 6, (21); Moradabad, 8, 1, 5, 7, 2, Bilari, 1, 2, 5, Sambhal, 8, 1, 9, 2, Amroha, 12, 1, 4, 7, Hasanpur, 1, Thakurdwara. (20).

SHAHJAHANPUR DISTRICT.

Shahjahanpur.—Rasgawan and Remainder, (25); Khanant Valley, Sukheta Valley, Simari, and Remainder, (24); Garai North, Garai South and Remainder, (23). **Powayan.**—Baragaon, Powayan, Nahil Central, Gola and Abad North, Abad South, Nahil Khanant, Golarya, Nahil Jungle and Banda, (22); Viran Jukhna, Viran forest, Bhainsi Sanwat, Gomti and Sanwat Khanant, (21). **Jalalabad,** Bhur Jalalabad, Bhur Chauki, Remainder and Allahganj, (25); Tarai Umar-sandh and Remainder Tarai, (23); Bankatiganj Khadar and Remainder Bankati, (21); **Tilhar.**—Tarai—Tilhar, Garra—Jalalpur, Domat—Nirgohi, (92); Bahagul—Jalalpur, Niranpur Katra, Kaimnau—Nirgohi, Ramganga—Khera Bajhera, Bhur—Tilhar, Bahgul—Khera Bajhera, Bhur Khera Bahjera (20).

PILIBHIT DISTRICT.

Pilibhit.—Circles Pilibhit Suburban 1 and Jahanabad 1, (21); Circles Pilibhit 2 and Jahanabad 2, (20); Pilibhit 3 and 4 and Jahanabad 3 and 4, (19). **Bisalpur.**—Circles 1 and 3 (21); Circle 2, (20); **Puranpur.**—Roster Circles 4, 6, 7, (2.); Roster Circles 2 and 3, Roster Circles 1, 5, 8, and 9, (19).

ALLAHABAD DIVISION.

FARRUKHABAD DISTRICT.

Farrukhabad.—Bangar Ordinary, 1 and 2 class, Mixed Kali Nadi, 1 and 2 class, Bangar Suburban, 1 and 2 class, (3). **Kaimganj.**—Bangar Suburban Circle, 1 and 2 class, Mixed Suburban Circle, 1 and 2 class, Bangar Ordinary, 1 and 2 class, (31). **Kanauj.**—Mixed Esan Nadi, 1 and 2 class, Bangar, 1 and 2 class, Mixed Kali Nadi Circle, (31). **Chhibramau.**—Suburban Circle, Ordinary Bangar Circle 1, (31). **Farrukhabad.**—Tarai Middle Suburban, 1 and 2 class, Tarai Middle Ordinary, 1 and 2 class, Mixed Ganges Circle Papar, Ordinary Upland, 1 and 2 class, (25). **Kaimganj.**—Tarai Middle Suburban Circle, Tarai Middle Ordinary Circle, Mixed Ordinary Circle, 1 and 2 class, (25). **Kanauj.**—Kachcha, 1 and 2 class, Mixed Ganges Circle, (25). **Chhibramau.**—Ordinary, Bangar Circle 2, Mixed Kali Nadi Circle, 1 and 2, Mixed Esan Nadi Circle, 1 and 2, (25). **Farrukhabad.**—Alluvial Ganges, 1 and 2 class, Alluvial Ramganga 1 and 2 class, (16). **Kaimganj.**—Alluvial, 1 and 2 class, (16). **Kanauj.**—Alluvial, 1 and 2 class, (16).

ETAWAH DISTRICT.

Etawah.—Pachar Circle, Ghar Circle (Sirsa Doab), (27); Patti Kamait (24). **Bharthana.**—Pachar Circle, (28); Ghar Circle, (25) Chakarnagar Circle, (23); Sahson Circle, (22). **Bidhauna.**—Circle 1, (27); Circle 2, (25). **Auraiya.**—North 1 and 2 and South 1 and 2, Ilaqas Bhareh and Sandaus, (28); Kbarka Circle, (23).

CAWNPORE DISTRICT.

Akbarpur.—Red Loam 1, Usar Dumat 1, (29); Rind 1, Rind 2, Dumat 1, Red Loam 2, Usar Dumat 2, (25); Sengur, Dumat 2, (24). **Bilhour.**—Usar Dumat 1, Sheorajpur, Bangar Dumat 1, Swarup 1, Ganges Esan Doab, Red Loam 1, Stiff Dumat 1, (26); Usar Dumat 1, Bilhour, Usar Dumat 2, Bangar Dumat 2, Swarup 2, Red Loam 2, Stiff Dumat 1, Esan Sand, Ganges Cliff, (25). **Bhognipur.**—Dumat Wet 1, Sengur Dumat Dry, Dumat Wet 2,

(30); Jumna, (25). **Cawnpore**.—Suburban, Urban, (33); Ganges Cliff, Dumat North 1, Dumat South, Dumat North 2, Red Soil 1, Alluvial, Ganges Pando Doab, Southern, (31); Red Soil 2, (30). **Derapur**.—Dumat 1, (35); Dumat 2, Rind 1, Rind 2, Usar Dumat 1, Usar Dumat 2, Dumat Wet 1, Sengur North, (30); Sengur South, Dumat Dry, Dumat Wet 2, (26). **Ghatampur**.—South 1, South 2, Ganges Pando Doab, 2, Dumat Wet 1, (30); Dumat Wet 2, Dumat Dry, Non-Jumna, (Alluvial), (29).

FATEHPUR DISTRICT.

Fatehpur.—Fatehpur Circle 1, Fatehpur Circle 2, Fatehpur Circle 4 (Non-Alluvial), Fatehpur Circle 4 (Alluvial), Haswa Circle 1, Muttour Circle 2, Muttour Circle 2, (Alluvial), (18); Fatehpur Circle 3, Haswa Circle 2, Haswa Circle 3, (Alluvial); Ghazipur Circle 1, Ghazipur Circle 2, Ghazipur Circle 3, (Alluvial) Muttour Circle 1, Ayah-Shah, (14). **Khajua**.—Kora Circle 1, Kora Circle 2, (Alluvial), Bindki Circle 1, Bindki Circle 2, Tappa-Jar Circle 1, Tappa-Jar Circle 1, (Alluvial), Kotiya-Gunir Circle 1, (27); Kora Circle 2, Tappa-Jar Circle 2, (20); Kotiya-Gunir (Alluvial) Bindki (Alluvial), Kora Circle 3, (15). **Khaga**.—Hathgaon Circle 1, (32); Hathgaon Circle 2, Kotila Circle 1, Kotila Circle Alluvial, Dhata Circle 1, Dhata Circle 2, Ekdala Circle 1, (28); Hathgaon Circle 3, Ekdala Circle 2, Ekdala Circle 3, (24).

ALLAHABAD DISTRICT.

Chail.—Circles 4, 6, and 7, (33); Circles 1, 2 and 5, (30); Circles 3, 8 and 9, (26). **Sirathu**.—Circle 1, Pargana Kara, (29); Circles 2, pargana Kara, (26). **Manjhanpur**.—Circle 1, pargana Karari, Circle 1, pargana Atherban, (32); Circle 2, pargana Karari, Circle 2, pargana Atherban (30); Circle 3, pargana Karari, Circle 3 pargana Atherban, (27). **Phulpur**.—Circle 1, pargana Sikandra, Circle 2, pargana Jhusi, Circle 3, pargana Jhusi, (33); Circle 2, pargana Sikandra, Circle 1, pargana Jhusi, Circle 4, pargana Jhusi, (32) **Soraon**.—Circle 1, pargana Mirzapur Chauhari, Circle 2, pargana Soraon Circle 3, pargana Soraon, (31). Circle 1, pargana Soraon Circle 3, pargana Nawabganj, (28); Circle 1, pargana Nawabganj, Circle 2, pargana Nawabganj, (25) **Handia**.—Circle 3, pargana Kewai, Circle 4, pargana Kewai, Circle 3, pargana Mah, (29); Circle 2, pargana Kewai, Circle 4, pargana Mah, Circle 6, pargana Kewai, Circle 2, pargana Mah, (27); Circle 1, pargana Kewai, Circle 5, pargana Kewai, Circle 1, pargana Mah, (26). **Karchhana**.—Loam

pargana Arail, River 1, pargana Bara, River 1, pargana Arail, River 2, pargana Bara (29); Rice 1, pargana Arail, Kachhar, Loam 1, pargana Bara, Mar 1, pargana Bara, Loam 2, pargana Arail, River 2, pargana Arail, Rice 2, pargana Arail, Highlying 1, pargana Bara, Loam 2, pargana Bara, Mar 2, pargana Bara Highlying 2, pargana Bara (24). **Meja**.—Loam 1, River 1, Kachhar, (32); Loam 2, River 2, Matyar, Pal 1, (29); Loam 3, River 3, Pal 2, Lapermar, Laper River, (25).

JHANSI DIVISION.

JHANSI DISTRICT.

Circles 1 to 9, Lalitpur Sub-division, Circles 20 to 26, (18); Jhansi Proper, Circles 10 to 19, Lalitpur Sub-division, Circles 27 to 37, (16).

JALAUN DISTRICT.

All tahsils.—All Circles, (16).

HAMIRPUR DISTRICT.

All tahsils.—All Circles, (16).

BANDA DISTRICT.

All tahsils.—All Circles, (16).

BENARES DIVISION.

BENARES DISTRICT.

Benares.—City Circles Nos. 1, 2, 3, 4, (a), 4 (b) and 5 of Pargana Dehat Amanat, (48). **Benares.**—Dhankhar Circles 1, 2, and 3 of Kaswar Raja, Circle 1 of Katehar East, Circles 1, 2, 3, 5 and of Kole Aslah East, Circle 1 of Sultanpur, Circle 1 of Katehar West, Circles 1 and 3 of Sheopur, Circles 2 and 4 of Athagaon, Circles 2 and 4 of Kaswar Sarkari, Circles 1 (a), 1 (b), and 2 of Pandrah, Circles 1, 2, 3, 4, 5 and 6 of Kole Aslah, (34). **Chandauli.**—Circle 2 of Pargana Mahaich, 2 of Pargana Dhus, 1, 2 and 4 of Pargana Budhwal, 3 of Pargana Mahuari, 3, 4, 5 and 6 of Pargana Majhwar and 2 of Pargana Narwan, (33). **Benares.**—Circles 4, 5 and 6 of Pargana Kaswar Raja, Circle 3 of Pargana Jalhupur, Circle 2 of Pargana Katehar East, Circle 2 of Pargana Sultanipur, Circles 2 and 3 of Katehar West, Circles 2, 4 and 5 of Pargana Sheopur, Circles 1 and 3 of Athagaon, Circles 1, 3, 5 and 6 of Kaswar Sarkari, Circle 3 of Pandrah, (31). **Chandauli.**—Circle 2 of Pargana Ralhupur, 2 and 4 of Pargana Mahuari, 3 of Pargana Barah, and 7 of Pargana Majhwa, (30). **Chandauli.**—Circle 1 of Pargana Mahaich, 1 and 3 of Pargana

Ralhpur, 1 of Pargana Dhus, 1 and 5 of Pargana Mahuari, 1, 2 and 3 of Pargana Mawai, 1 and 2 of Pargana Majhwar, 1 of Pargana Narwan, 1 and 2 of Pargana Barah and 3 of Pargana Budhwal, (28). **Benares.**—Circles 4 and 5 of Katehar East, Circles 1, 2, 4, 5, 6 of Jalhpur, and Circles 4 and 5 of Katehar West. (24).

MIRZAPUR DISTRICT.

Mirzapur.—Kon, (33). **Mirzapur and Chunar.**—Chaurasi Suburban, Haveli, Chunar, (33). **Mirzapur.**—Chaurasi Pahari, (26). **Robertsganj.**—Barhar, (19). **Mirzapur.**—Upraudh, (19). **Robertsganj.**—Agori, (19).

JAUNPUR DISTRICT.

Jaunpur.—Pargana Haveli—City Circle 1, Pargana Haveli—Loam Circle 2, Pargana Saremu—Loam Circle 1, Pargana Rari—Loam Circle 1, Pargana Qariat Dost—Loam Circle 1 and Pargana Khapraha—Loam Circle 1, (34) ; Pargana Haveli—Gomti Circle 3, Pargana Haveli—Sai Circle 3, Pargana Saremu—Gomti Circle 2, Pargana Rari—Gomti Circle 2, Pargana Rari—Sai Circle 3, Pargana Qariat Dost—Sai Circle 2, Pargana Khapraha—Sai Circle 2 and the whole of Pargana Zafarabad (30) ; Pargana Haveli Usar (Rice) Circle 5 and Pargana Saremu Usar (Rice) Circle 3, (24). **Mariahun.**—Pargana Mariahun Loam Circle 1, Pargana Barsathi—Loam Circle 1, Pargana Gopalpur—Loam Circle 1, (34) ; Pargana Mariahun—Rice Circle 2, Pargana Barsathi—Rice Circle 2, (28) ; Pargana Mariahun—Sai Circle 3, Pargana Mariahun—Basuhi Circle 4, Pargana Mariahun—Barna Circle 5, Pargana Barsathi—Basuhi Circle 3, Pargana Barsathi—Barna Circle 4 and Pargana Gopalapore—Basuhi Circle 2, (18). **Kerakat**—Pargana Chandwak—Loam Circle 1, Pargana Guzara—Loam Circle 1, Pargana Bealsi—Loam Circle 1, Pargana Dariyapur—Loam Circle 1, and Pargana Pisara—Loam Circle 1, (34) Pargana Chandwak—Gomti Circle 2, Pargana Guzara—Gomti Circle 2, Pargana Bealsi—Sai Circle 2, Pargana Daryapar—Gomti Circle 2, and Pargana Pisara—Gomti Circle 2, (30). Pargana Chandwak Usar (Rice) Circle 3, Pargana Bayalri Usar (Rice) Circle 3, Pargana Daryapar Usar (Rice) Circle 3, Pargana Pisara Usar (Rice) Circle 3, (28). **Shahganj.**—Pargana Ungali—Loam Circle I and the whole of Pargana Rari, Pargana Chanda—Loam Circle 1, Qariat Mendha—Loam Circle 1, (34). Pargana Ungali—Gomti Circle 2, Pargana Chanda—Gomti Circle 2, Pargana Qariat Mendha—Gomti Circle

2, Pargana Ungali—Usar—(Rice) Circle 3, (34). **Machhlishahr**,—Pargana Ghiswa—Loam Circle 1, Pargana Garwara—Loam Circle 1, Pargana Mongara—Loam Circle 1, Pargana Ghiswa—Sai Circle 2, and Pargana Garwara—Sai Circle 2, Pargana Ghiswa Usar (Rice) Circle 3, Pargana Garwara Usar (Rice) Circle 3 and Pargana Mongara Usar (Rice) Circle 2, (34).

GHAZIPUR DISTRICT.

Ghazipur.—Karauda Alluvial Ganges, (32). **Sayedpur**—Khanpur Matiyar (Usar), Khanpur Gomti, (32). **Mohammadabad**.—Alluvial Karial, Mohammadabad, Alluvial Tarai, Mohammadabad, Loam, Zahurabad, Loam (Bhainsahi) Pachotar, (32). **Ghazipur**.—Loam City, Ghazipur, Alluvial Ganges, Ghazipur, Loam, Ghazipur, Alluvial Ganges, Zamania, (30). **Sayedpur**.—Saidpur 1st Loam, Shadipur 1st Loam, Saidpur Ganges 3rd, Bahariabad 1st Loam, Saidpur 2nd Loam, Shadiabad 3rd, Matiyar, Shadiabad 2nd Loam, Khanpur 1st Loam, Bhariabad Matiyar (Usar), (30). **Mohammadabad**.—Loam Dehma and Mohammadabad Loam Mangai, Pachotar, (30). **Ghazipur**.—Ghazipur Rice, Zamania Superior Karil, Karaunda Loam Ganges, Zamania Rice, Zamania Inferior Karil, (28). **Sayedpur**.—Saidpur Matiyar (Usar), (28), **Mohammadabad**.—Dhankhar Clay, Pachotar, Dhankhar Jhil, Zahurabad Loam, Sarju, Dehma, Zahurabad, Dhankhar Usar, Zahurabad. (28).

BALLIA DISTRICT.

Ballia.—Circles 1, 2 and 4, (42). **Rasra**.—Sarju Circle B, Rasra Circle A, (42). **Ballia**.—Circle 3, (31). **Rasra**.—Kopachit Circles A and B, Sikanderpur and Bhadaon A and B, (31). **Bansdih**.—Circles 2, 3 and 4, (31). **Rasra**.—Sikanderpur and Bhadaon—D (Circles C, D and E), (31) **Rasra**.—Sikanderpur and Bhadaon—F, (23). **Ballia**.—Circle 5. (23). **Bansdih**.—Circle 1, (23).

GORAKHPUR DIVISION.

GORAKHPUR DISTRICT.

Sadar.—All the Circles in Pargana Bhawapur, except Circle 7 Alluvial. All the circles in Pargana Hasanpur Magher, except Circles 4 and 5 Alluvial, (70). **Bansgaon**.—All the circles in Pargana Dhuriapar, except Circles 5, 6, 4 Alluvial, 6 Alluvial, 7 Alluvial, 7 Non-alluvial and 4 Non-alluvial. All the circles in Pargana Chullupar, except Circles 1 Alluvial, 2 Alluvial, 4. All the circles in Pargana Unwal. All the circles in Pargana Bhawapur, except Circles 9

Alluvial and 10 Alluvial, (70). **Hata**.—Silhat-Bangar Southern, (70). **Padrauna**.—Circles 8 and 9, (70). **Deoria**.—Circle Bangar, (70). **Sadar**.—Circle 7 Alluvial, Pargana Bhawapar Circles 4 and 5 Alluvial, in Pargana Hasanpur Magher. All the Circles in Pargana Haveli, except Circles 1, 2, 3, 10 Alluvial, and 11 Alluvial, (65). **Mahrajganj**.—All the Circles in Pargana Haveli West, except Circles 10, 11 and 14, Circles 1, 4, 5 and 6 in Pargana Haveli East, (65). **Bansgaon**.—Circles 5, 6, 4 Alluvial, 6 Alluvial, 7 Alluvial, 7 Non-alluvial, 4 Non-alluvial in Pargana Dhuriapar, Circles 1 Alluvial, 2 Alluvial, 4 in Pargana Chullupar. Circles 9 Alluvial, 10 Alluvial in Pargana Bhawapar, (65). **Hata**.—Haveli, Silhat-Bangar Northern and Shahjahanpur, (65). **Padrauna**.—Circles 4, 5, 6 and 7, (65). **Deoria**.—Circle Bhat, (65), **Sadar**.—Circles 1, 2, 3, 10 Alluvial and 11 Alluvial in Pargana Haveli, (60). **Mahrajganj**.—Circles 10, 11 and 14 in Pargana Haveli West. All the Circles in Pargana Haveli East, except Circles 1, 4, 5 and 6. All the Circles in Pargana Tilpur and Binayakpur, (60). **Hata**.—Silhat-Kachhar and Alluvial (60). **Padrauna**.—Alluvial Mahals and all the Circles, except 4, 5, 6, 7, 8 and 9, (60). **Deoria**.—All the Alluvial circles, (60).

BASTI DISTRICT.

Basti.—Circles 1—12, (65). **Khalilabad**.—Circles 2, 3, 4 and 7, (70); Circles 1, 5, 6 and 8, (65). **Domariaganj**.—Circles 1—9, (60). **Bansi**.—Circles 1—9, (65). **Harraiya**.—Circles 3, 4, 7 and 8, (65); Circles 1, 2, 5 and 6, (60).

AZAMGARH DISTRICT.

Nizamabad.—Circle Suburban, (70); Bangar Circle, Kachhar Circle (60). **Sagri**.—Circle Bangar, (70); Circle Kachhar, Circle Alluvial, (70). **Phulpur**.—Northern Circle, Southern Circle, (70). **Lalganj**.—Bangar Circle, Ordinary Circle, (70). **Muhammadabad**.—Bangar Circle, Ordinary Circle, (60). **Ghosi**.—Bangar Circle, Kachhar Circle, Mixed Circle, (55).

KUMAUN DIVISION.

NAINI TAL DISTRICT.

Kashipur.—Jaspur Bangar A, Phika Poli, Kosi Khadar, (38); Jaspur Bangar B, Kashipur Bangar, Dhela Tumaria, (26); Jungle Tarai, the *bandobasti* villages of the Tarai and Bhabar Government Estates. (20).

LUCKNOW DIVISION.**LUCKNOW DISTRICT.**

Lucknow.—City Circle 1, Matiyar Circle 2 of Pargana Lucknow, Inferior outer Circle 3, Superior outer Circle 4, Matiyar Circle 2 of Parganas Kakori and Bijnaur, (28); Dumat 1, Gomti 3, Sai Circle 1, Bhur Circle 5, Tarai Circle 6, (26). **Malihabad.**—Usar Circle of Pargana Malihabad, Usar Circle 4 of Pargana Mahona, (27); Dumat Circle of Pargana Malihabad, Dumat Circle 3 of Pargana Mahona, Beta Circle, Bhur Circle, Jhil Circle 5, (24). **Mohanlalganj.**—Matiyar Circle 2 of Parganas Mohanlalganj and Nigohan, Dumat Circle 1, Sai Circle 1, Bhur Circle 2, (32).

UNAO DISTRICT.

Purwa.—Pargana Purwa 1, 2, 3 and 4, Pargana Maurawan, Main Circle, Pargana Asoha 1 and Pargana Baiswara 1 and 2, (31); Pargana Maurawan, River Circle, Pargana Asoha 2, Pargana Baiswara 3, (29); Pargana Asoha 3, Pargana Baiswara 4, (26). **Unao.**—First Class 1 and (2), (26); Intermediate Class 4, (24); Third Class 3, 5, 6 and 8 (22). **Hasanganj.**—Superior Class 4, Auras and Mohan, (32); First Class parganas Jhalotar, Ajgain, Gorinda, Parsandan 1, 2 and 3, Parganas Mohan and Auras 1 and Pargana Aswan-Rasulabad, (26); Pargana Jhalotar, Ajgain and Gorinda Parsanda 4, Pargana Auras 5, Pargana Mohan 2, Pargana Aswan Rasulabad, (24). **Safipur.**—First Class Pargana Safipur, 1 and 2. Parganas Bangarmau and Fatehpur Chaurasi, 1 and 2 (27); Intermediate, Pargana Safipur, 3 and 4 (23); Third Class Parganas Safipur 5; Pargana Bangarmau and Fatehpur Chaurasi 3, 4 and 5, Tahsil Safipur Alluvial 6, (20).

SITAPUR DISTRICT.

Sidhauri.—Superior Dumat, Inferior Dumat, Half Tarai, Eastern High Lying (29); Tarai, Chauka, (28); Jhil, Gomti Sarain, Western High Lying (27). **Biswan.**—Uperhar, 1, 2 and 3, Tarai 1, (28); Tarai, 2, High Lying, Low Lying West 1, Low Lying East 1, (26); Eastern, Ganjar, Low Lying West 2, Low Lying East 2, (25). **Sitapur.**—Northern Dumat, Northern Sarain, Gond Basin, (30); Central Gond, West Perai, North-Western Jhil, Perai Nadi, (29); Ramkot Jhil, Sarain Gond Saddle, Southern Sarain, Saran Perai Plateau, Sarain Gond Plateau, Uperhar Circle, Tarai Circle, (28). **Misrikh.**—Inferior Dumat Circle, Kathna Perai Circle, Perai Dumat, Eastern Kathna (29); Southern Light Circle, Chandra Light Circle, Southern Gomti

Bhur, Gomti Kathna Bhur, (28). Superior Dumat Circle, Machhresta Korauna Dumat, Lower Beta Circle, Machhresta Stiff Circle, Usar Jhil Circle, Sarain Circle, (26).

RAE BARELI DISTRICT.

Salon.—Salon, Circles 1 and 2, Parshadipur North, Rokha, (35). **Dalmau.**—Dalmau Circle, Khiron Circle, Sareni Circle, (33). **Maharajganj.**—Bachhrawan Circle 1, Hardoi Circle, Inhauna, Circles 1 and 2, Bachhrawan, Circle 2, Semrauta Circle, Kumrawan Circle, Mohanganj, Circles 1 and 2, (31). **Salon.**—Salon, Circles 3 and 4, Parshadipur South, (29). **Rae Bareli.**—Rae Bareli, Circle 1, (26); Rae Bareli, Circles 2 and 3, (20).

HARDOI DISTRICT.

Bilgram.—Town Circle, Superior Dumat, Jail, Superior Ridge, Light Dumat, (26); Sai, Inferior Ridge, Stiff Tarai, Light Tarai, Superior Light Dumat, Inferior Light Dumat, Ridge, Garra Tarai, Stiff Tarai, Ram Ganga Tarai, Ganga Tarai, Stiff Circle, Light Circle, Saindha Circle, Kachar, (21). **Sandila.**—Superior Dumat, Usar Circle, Light Loam, Inferior Dumat, Sai Circle, (25). **Shahabad.**—Gomti Bhoor Circle, Superior Dumat, Superior Light Dumat, Superior Garra Tarai, Gomati Bhur, Eastern Tarai, Ridge Circle, Inferior Light Dumat, Jhil Circle, Sai Basin, Western Garra Tarai, Saindha, Baukab Bhur, Garra R. Ram Ganga Bhur, Khadar Bangar, Inferior Garra Tarai, Dumat Matyar, (23). **Hardoi.**—Town Circle, Superior Dumat, Bhansta Circle, Superior Jhil Usar, Superior Light Dumat, Inferior Dumat, Sai Circle, Inferior Jhil Usar, Inferior Light Dumat, Sai Basin, Alluvial, Superior Tarai, Gomti Bhur, Garra Bhur, Ridge, Swamp, Inferior Tarai, Garra Ram Ganga Bhur, (23).

KHERI DISTRICT.

Lakhimpur.—Parganas Kheri and Paila, Circles 1 and 2. O. K. Tracts 1 and 2, Aliganj South, Circle 1, Sansarpur, Circle 1, (28). **Muhamdi.**—Pargana Pasgawan, Circle 1, Pargana Kasta, Circle 1, Pargana Haidrabad, Circle 1, Pargana Muhamdi, Circle 1; Pargana Aurangabad, Circle 1, Pargana Pasgawan, Circle 2, Pargana Kasta, Circle 2, Pargana Muhamdi, Circle 2, Pargana Aurangabad, Circle 2, Pargana Haidrabad, Circle 2, (28). **Lakhimpur.**—Pargana Srinagar, O. S. Tract 1, Pargana Bhur, Aliganj South, Circle 2, Pargana Bhur, Aliganj North, Circle 1, Pargana Paila, Circle 3, Pargana Paila, Grant Circle, Pargana Srinagar, O. S. Tract 2, Pargana Bhur, Srinagar Circle, Pargana Kukra, Sansarpur, Circle 2, Pargana Kukra, Kukra

Circle 1, Pargana Bhur, Aliganj, 2, Pargana Srinagar, Circle 3, Pargana Kheri, Circle 3, Pargana Bhur, Aliganj South, 3, Pargana, Kukra, Kukra Circle 2, Pargana Kukra, Grant Circle, (26). **Muhamdi**.—Pargana Haidrabad, Circle 3, Pargana Pasgawan, Circle 3, Pargana Pasgawan, Grant Circle, Pargana Muhandi, Circle 3, Pargana Aurangabad Circle 3, Pargana Kasta, Circle 3, Pargana Haidrabad, Grant Circle, Pargana Atwapiparia, Circle 2, Pargana Atwapiparia, Circle 1; (26). **Nighasan**.—Pargana Firozabad, Central Circle, Class 1, Pargana Dhaurehra, Central Circle, Class I, Pargana Nigghasan Central Circle 1, Pargana Dhaurehra, Central Circle 2, Pargana Firozabad, Central Circle 2, Pargana Khairigarh, Haveli Class 1, Pargana Dhaurehra, Chauka, and Dahawar Circle, Pargana Firozabad, Chauka and Dahawar Circle, Pargana Nighasan, Soheli Circle 1, Pargana Khairigarh, Konawat Class 1, Pargana Nighasan; Central Circle 2, Pargana Nighasan, Chauka 1, (26). **Lakhimpur**.—Pargana Bhur, Circle 1 Bhur, Pargana Bhur, Circle 2 Bhur; (23). **Muhamdi**.—Pargana Magdapur, Grant Circle, Pargana Magdapur, Bhur Circle, Pargana Aurangabad, Bhur Circle. (23). **Nighasan**.—Pargana Firozabad, Gogra Circle, Pargana Dhaurehra, Gogra Circle, Pargana Khairigarh, Konawat Class 2, Pargana Palia, Palia Circle, Pargana Nighasan, Soheli Circle 2, Pargana Nighasan, Chauka 2, Pargana Khairigarh, Haveli Class 2, Pargana Khairigarh, River, Pargana Khairigarh Forest. (23).

FYZABAD DIVISION.

FYZABAD DISTRICT.

Fyzabad.—Mangalsi, I and III, Haveli Oudh, I and III, (36); Mangalsi, II, IV, and VI; Haveli Oudh, III, Amsin, I and III, (34); Mangalsi, V, Haveli Oudh, IV, Amsin, II (a), II (b) and IV; Mangalsi, VII, Haveli, Oudh V, Amsin, V, (28). **Akbarpur**.—Akbarpur, II and III; Majhaura, II, Surhurpur, I and II; Birhar, I, Akbarpur I and V; Manjhaura, III, Surhurpur III, Akbarpur IV and V; Manjhaura III, Surhurpur III, Akbarpur IV and VI; Manjhaura, I (55) **Bikapur**.—Khandasa, II, Pachmirath, III and IV, (40); Khandasa, I, Panchmirath, I, V and VIII; Khandasa, III and IV, Panchmirath II, VI and VII; (35). **Tanda**.—Tanda, I, Tanda, II, III and IV; Birhar, II and III; Tanda, V, Birhar, IV, (33).

GONDA DISTRICT.

Tarabganj.—Gwarich, I, II, Digsir, I, Nawabganj, I, Gwarich, III, IV, V, Digsir, II, III, Mahadewa I, II, III, Nawabganj, II, Digsir,

IV, Mahadewa, IV, Nawabganj, III, IV, (36). **Gonda**.—Paharpur, I, Gonda, IV, Paharpur, II, III, Gonda, II, III, VI, Gonda, I, VI, (37) **Utraula**.—Utraula, I, Budhapair, I, Mankapur, I, Sadullanagar, I, Utraula, II, III, Budhapair, II, Sadullanagar, II, Babhnipair II, Utraula, IV, Babhnipair, III, Mankapur, II, III, Budhapair III, Sadullanagar, III, IV, (35).

BAHRAICH DISTRICT.

Kaisarganj.—Pargana Hisampur, II, Pargana Hisampur III to VI, Pargana Fakharpur, I, (40); Pargana Fakharpur, III, Pargana Hisampur, I, (23). **Nanpara**.—Pargana Charda, I, Pargana Dharamanpur I, (40) **Bahraich**.—Pargana Bahraich II, Pargana Ikauna III, Pargana Bhinga, I, (40).

SULTANPUR DISTRICT.

Sultanpur.—Circles I, II, and III, of both parganas. (48) **Kadi-pur**.—Circles I, II, and III of both Aldemau and Chanda parganas, (41) **Musafirkhana**.—Dumat circles of all the four parganas, Gomti and Naya circles of all the four parganas, Usar and stiff soil circles of all parganas, (45). **Amethi**.—Circles I and II of both parganas, Circle III of Pargana Amethi, (41).

PARTABGARH DISTRICT.

Partabgarh.—Partabgarh, I, II, III and IV, Athena, I, II, III, and IV, (36) **Patti**.—Circles I and IV, (35); Circles II and III (31). **Kunda**.—Pargana Manikpur, I, II, III, and IV, Pargana Birhar I, II, III, IV and V, Pargana Dhingwas, I, II and III, Pargana Rampur I, II, and III, (32).

BARA BANKI DISTRICT.

Nawabganj.—Circle I of group A, (42); Circle I of group B, (35); Circle I of group C. (30), **Fatehpur**.—Circle I, (38); Circles II, III, IV and V, (35). **Ramsanehighat**.—Circle XIV of group A, Circles I, II, VIII, IX, X, XI, and XII of group B, Circles III, IV, V, VI, VII, XIII, and XV of group C. (39) **Haidergarh**.—Sidhaur, I, Subeha, II and Haidergarh, IV, Haidergarh, I, Sidhaur, II, and Subeha III, Subeha, I and Haidergarh, III, (33).

APPENDIX III—(concluded)
 Table of Compound Interest.
 (2) Principal Re. 1—half-yearly rests.

Year.	5 per cent	5½ per cent.	6 per cent.	6½ per cent.	7 per cent.	7½ Per cent.	8 per cent.	9 per cent.	10 per cent.	11 per cent.	12 per cent.	Year.
½	1·02500	1·02750	1·03000	1·03250	1·03500	1·03750	1·04000	1·04500	1·05000	1·05500	1·06000	½
1	1·05063	1·05576	1·06090	1·06006	1·07123	1·07641	1·08160	1·09203	1·10250	1·11302	1·12360	1
1½	1·07089	1·08479	1·09273	1·10070	1·10872	1·11675	1·12486	1·14117	1·15703	1·17424	1·19102	1½
2	1·10381	1·11462	1·12551	1·13648	1·14752	1·15865	1·16986	1·19252	1·21551	1·23882	1·26251	2
2½	1·13141	1·14527	1·15927	1·17341	1·18709	1·20210	1·21665	1·24618	1·27628	1·30696	1·33823	2½
3	1·15969	1·17677	1·19405	1·21155	1·22926	1·24718	1·26532	1·30226	1·34010	1·37884	1·41852	3
3½	1·18869	1·20913	1·22987	1·25092	1·27228	1·29395	1·31599	1·36086	1·40710	1·45468	1·50367	3½
4	1·21840	1·24238	1·26677	1·29158	1·31681	1·34244	1·36857	1·42210	1·47746	1·53469	1·59395	4
4½	1·24886	1·27654	1·30477	1·33355	1·36290	1·39281	1·42331	1·48610	1·55133	1·61910	1·68952	4½
5	1·28008	1·31165	1·34392	1·37090	1·41660	1·44544	1·48024	1·55297	1·62889	1·70815	1·79100	5
5½	1·31209	1·34772	1·38423	1·42164	1·45997	1·49924	1·53945	1·62285	1·71034	1·80209	1·89830	5½
6	1·34489	1·38478	1·42576	1·46785	1·51107	1·55545	1·60103	1·69588	1·79586	1·90121	2·01220	6
6½	1·37851	1·42286	1·46853	1·51555	1·56396	1·61378	1·66507	1·77220	1·88665	2·00578	2·13298	6½
7	1·41297	1·46199	1·51259	1·56481	1·61869	1·67430	1·73168	1·85194	1·97993	2·11609	2·26101	7
7½	1·44830	1·50220	1·55797	1·61567	1·67535	1·73709	1·80094	1·93528	2·07893	2·23248	2·39673	7½
8	1·48461	1·54351	1·60471	1·66817	1·73399	1·80223	1·87298	2·02237	2·18287	2·35527	2·54059	8
8½	1·52122	1·58595	1·65285	1·72239	1·79468	1·86981	1·94790	2·11338	2·29202	2·48481	2·69296	8½
9	1·55966	1·62967	1·70243	1·77837	1·85749	1·93993	2·02582	2·20848	2·40662	2·62147	2·85447	9
9½	1·59865	1·67438	1·75351	1·83617	1·92250	2·01268	2·10685	2·30786	2·52695	2·76565	3·02567	9½
10	1·63862	1·72043	1·80611	1·89584	1·98979	2·08815	2·19112	2·41171	2·65330	2·91776	3·20714	10
10½	1·67958	1·76774	1·86029	1·95746	2·05943	2·16646	2·27877	2·52024	2·78506	3·07824	3·39957	10½
11	1·72157	1·81635	1·91610	2·02107	2·13151	2·24770	2·36992	2·63365	2·92526	3·24754	3·60354	11
11½	1·76461	1·86630	1·97359	2·08676	2·20611	2·33199	2·46472	2·75217	3·07152	3·42616	3·81976	11½
12	1·80873	1·91762	2·03279	2·15458	2·28333	2·41944	2·56330	2·87601	3·22510	3·61460	4·04894	12
12½	1·85394	1·97036	2·09378	2·22460	2·36324	2·51017	2·66584	3·00643	3·38635	3·81340	4·29188	12½
13	1·90021	2·02454	2·15659	2·29690	2·44596	2·60430	2·77247	3·14068	3·55567	4·02314	4·54939	13

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**The Usurious Loans Act X
of 1918**

*As amended by the U. P. Amendment
Act No. XXII of 1934.*

The Usurious Loans Act X of 1918
As amended by the U. P. Amendment Act
No. XXII of 1934.



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Sec.
1

The Usurious Loans Act (X of 1918.)
As amended by the Usurious Loans (United Provinces)
Amendment Act no XXII of 1934.

(PASSED BY THE LEGISLATIVE COUNCIL OF THE UNITED
PROVINCES OF AGRA AND OUDH.)

Received the Governor-General's assent on 10th April, 1935.

An act to give additional powers to courts to deal in certain cases with usurious loans of money or in kind.

Whereas it is expedient to give additional powers to courts to deal in certain cases with usurious loans of money or in kind; it is hereby enacted as follows:—

Short title and extent. 1. (1) This Act may be called the Usurious Loans Act, 1918.

(2) It extends to the whole of British India including Baluchistan.

(4) The Local Government may, by notification in the Local Official Gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

The following amendments have been made by the U. P. Usurious Loans (Amendment) Act, 1934:

(1) *It extends to the whole of the United Provinces of Agra and Oudh.*

(2) *The provisions of this Act shall apply to all suits instituted after the passing of this Act to which the Usurious Loans Act of 1918 hereinafter referred to as the principal Act would apply.*

Short History—The earliest Usury Law in India was the Regulating Act of 1774, which applied to European British Subjects in India and fixed the maximum rate of interest at 12 p. c. per annum. In due course Regulations for Bengal, Madras and Bombay Presidencies were passed and the maximum rate of interest was fixed at 12 p. c. per annum.

**Secs.
1 & 2**

These regulations were repealed by the Usury Laws Repeal Act 28 of 1855, which removed the maximum limit and enacted that interest at the rate stipulated between the parties, shall be awarded. In the year 1918, to undo the mischief the Usurious Loans Act, 1918 was passed by the Legislative Assembly, on 22nd March, 1918. The object of the Act was to enable courts to reduce the interest where it found that the interest was excessive and the transaction was unconscionable. Both these conditions were required to exist simultaneously before the court could grant any relief.

Truly speaking, relief was granted in rare cases only, because of the strict requirements of law. It was under these circumstances that the Legislative Council of this province took up the matter and passed the Amendment Act by virtue of the provisions of Sec. 80 A of the Government of India Act of 1919. This is undoubtedly a measure, which will help the courts to reduce the interest. The most important part of it is that now it shall be mandatory on the courts to reduce the interest when either of the above two conditions exist. Another important feature of this Act is that it prescribes limits above which the rate shall be deemed excessive and below which it shall not be deemed excessive. Thus the courts have been saved of the trouble of going into the attendant circumstances to hold a certain rate of interest to be excessive.

Applicability of the Amended Act.—It is applicable to all suits instituted after the passing of this Amendment Act to which the Principal Act would apply. The Principal Act applies to all loans taken after its coming into force on 22nd March 1918. The Act of 1918 is not retrospective and is inapplicable to mortgage bond executed before 22nd Mar. 1918—A. I. R. 1929 Allahabad. p. 59. The Act can be applied in favour of a person, who confesses judgment—A. I. R. 1924 Rang. 144. It is also applicable in a case heard *ex parte* vide Sec. 3, clause (1).

Retrospective effect of the Amendment Act.—It is retrospective in the sense that it applies to loans taken before its passing but not to loans taken before the passing of the Principal Act. But it is not applicable to suits instituted after its passing, *i. e.*, 27th April 1935.

Passing of this Act.—The Amendment Act was published in the U. P. Gazette on 27th April 1935, after having received the assent of Governor-General. In accordance with Sec. 5 of the U. P. General Clauses Act 1 of 1904, this Act shall be deemed to have been passed on that date. In the Amendment Act, 'this Act' means the Amendment Act of 1934.

Usurious Loans Act is a remedial Act and a court ought not to be alert in placing a restricted construction upon its language 5. O. W. N. 780.

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

(1) 'Interest' means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or *in the form of service to be rendered* or otherwise.

(2) 'Loan' means a loan whether of money or in kind, and includes any transaction which is in the opinion of the court in substance a loan.

(4) 'Suit to which this Act applies, means:—

(i) Any suit,

(a) for the recovery of loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement whether by settlement of account or otherwise, made after the commencement of this Act in respect of any loan made either before or after the commencement of this Act; or

(c) for the redemption of any security given after the commencement of this suit, in respect of any loan made either before or after the commencement of this Act; or

(d) for account of a loan by a debtor against his creditor.

(ii) Any proceedings for the determination of a claim under the Encumbered Estates Act, 1934.

Notes—Clause 1. Interest.—In its definition the words "or in the form of service to be rendered" have been newly added by the Amendment Act. The application of these words would arise in cases where the advance is in cash or kind and repayment is in service. But such cases would be rare except in a few districts like Gorakhpur, Basti, Gonda and Tarai.

Clause 2. Loan.—This definition is the same as in Agriculturists' Relief Act. Loans such as due to Local Government or any Municipal or District or Cantonment Board, authorised by the Local Government to grant loans or by a Co-operative Society, small loans not exceeding Rs. 20/- repayable within a year in fixed equal instalments and loans of agricultural produce were excluded in the A. Relief Act from the orbit of the loan. No kind of loan is excepted in the Usurious Loans Act and it will apply to all classes of loans.

Clause 3 (i)—A suit for the redemption of jewels pledged is not one to which the Act can apply, for under section 2 clause (3), the applicability of the Act is confined to a suit for the enforcement of the security kept—27 Bom. L. R. 1162.

A suit for the redemption of credit is one to which the Act is applicable—50 Bom. 107—A. I. R. 1925 Bom. 65. Case of a surety is covered by clause (b) and he can be relieved against—47 Alld. p. 745.

Clause (d)—Section 33 of the Agriculturists' Relief Act provides for a suit by a debtor against his creditor for an account of money lent or advanced to or paid for, him by any person or due by him to any person as the price of goods or on a written or unwritten engagement for the payment of money, and of money paid by him to such person. It lays down that the provisions of the Usurious Loans Act 1918 should be followed in such suit by the court.

This seems the reason why this clause (d) has been added in this Act otherwise such suits, would not have come within the suits mentioned in this Act.

Clause, 3 (ii)—It has been added to make this Act applicable to proceedings under the Encumbered Estates Act, 1934, for the determination of any claim.

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

(a) that the interest is excessive, or

(b) that the transaction was as between the parties thereto substantially unfair, the court *shall exercise one or more of the following powers*, namely may,—

(i) Reopen the transaction, take an account between the parties and relieve the debtor of all liability in respect of any excessive interest ;

(ii) Notwithstanding any agreement purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof ;

(iii) Set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just.

Provided that in the exercise of these powers the court shall not—

(i) reopen any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any person from whom they claim, at a date more than *17 years* from the date of the transaction ;

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

Explanation :—In the case of a suit brought on a series of transactions the expression 'the transaction' means for the purposes of proviso (1) the first of such transactions.

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

(b) In considering whether interest is excessive under this section, the court shall take into account any amounts charged or paid,

whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewal or any other charges, and if compound interest is charged, the periods at which it is calculated and the total advantage which may reasonably be taken to have been expected from the transaction.

Provided that in the case of loans secured by a first mortgage the court shall deem the interest excessive if—

(1) the rate exceeds 12 p. c. per annum or

(2) the amount of interest that might become due at any time exceeds the amount that would become due at the time if the rate were 12 p. c. per annum and the interval between rests were six months.

Provided also that in the case of loans secured otherwise than by a first mortgage the court may, if it considers that the nature of the security warrants it, deem that the interest is not excessive even though the rate exceeds the amount that would become due at that time if the rate were 12 p. c. per annum and the interval between rests were six months.

Provided also that in the case of unsecured loans the court shall, unless the contrary is proved, deem the interest excessive if the rate exceeds 24 p. c. per annum or

(i) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 24 p. c. per annum and the interval between rests were six months.

Provided also that in the case of secured loans the court shall not deem the interest excessive if (1) the rate does not exceed 7 p. c. per annum, and (2) the amount of interest that might become due at any time does not exceed the amount that would become due at that time if the rate were 7 p. c. per annum and the interval between rests were six months

Provided also that in the case of unsecured loans the court shall not deem the interest excessive if—

(i) the rate does not exceed 9 p. c. per annum and

(ii) the amount of interest that might become due at any time, does not exceed the amount of interest that would become due at that time if the rate were 9 p. c. per annum and the interval between rests were six months.

(c) In considering the question of risk, the court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous

transaction of the debtor, by way of loan, so far as the same were known or must be taken to have been known to the creditor.

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

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

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

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

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

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

Comment.

Has reason to believe—mean something more than mere suspicion, namely that the person has sufficient cause to believe that thing. The court should apply its mind even in *ex parte* cases—A. I. R. 1930 C. 776. Under section 3, the court shall exercise one or more of the following powers when it is satisfied either that the interest is excessive or that the transaction was unconscionable.

Formerly the word used was 'may.' Now the word used is 'shall' which is mandatory and the court shall be bound to grant relief, if any one of the conditions is established.

(1) It may reduce the interest and award what sum is due at the reduced rate and disallow the rest of the claim. Transferee of a debtor is a debtor and that of a creditor a creditor within the meaning of this section and the court can relieve the transferee of the debtor. It may refuse if the court thinks that the transferee has accepted with eyes open or that he is a speculator—A. I. R. 1928 Oudh P. 396.

(2) Irrespective of the fact that by means of an agreement, the old dealings have been closed and new obligations to pay by renewal of the transaction substituted, the court may reopen the transaction and account afresh and free the debtor from excessive interest and in case the debtor has made payments or made allowance

towards this excessive liability, order repayment of the sum paid or allowed in excess, which it considers repayable in respect of the same. Thus the court has the power to go behind the dealings of the parties and reopen them. See 3 O. W. N. P. 222.

(3) The court has also the power to set aside wholly or in part or revise or alter any security given in respect of the loan or any agreement made in respect of the loan and also the court can order the creditor to make amends to the debtor in case he has made a transfer of the security.

The limitations to the exercise of these powers are (i) that the court shall not be entitled to reopen any agreement entered into by the parties or any person from whom they claim, which substitutes a new liability for the old ones and which was executed more than 17 years after the date of the transaction. For example if the transaction of loan was made in 1913 and the renewal took place in 1931 the court shall not open the renewed contract.

(ii) Also that the court shall do nothing which would affect any decree of a court. If in lieu of a debt, a decree is passed and fresh loan made in lieu of that decree, the court shall not touch it. The court has no jurisdiction to reduce the rate of interest as set forth in a decree of court—163 I. C. 537=1936 A. L. J. 510. The court in exercise of its powers under sec. 3 must not do anything which affects any decree, whether such decree be interparties or not—1936 A. L. J. 919. If the suit is on the basis of several loan transactions the word transaction used above shall mean the first of such transactions. The words 'shall exercise one or more of the powers' mean in my opinion one or more than one or all of these powers.

Excessive interest. What interest is excessive is discretionary with the court but in considering this point, the court shall have regard to the amounts charged or paid for expenses, inquiries, fines, bonuses, premiums, renewals or any other charges and to the rests if compound interest is charged and in general to the sum total of the advantages which might have been expected to accrue from the transaction. To facilitate the court, the legislature has fixed certain scales of interest for secured and unsecured loans below which the interest shall not be deemed to be excessive and certain scales above which the interest shall be deemed to be excessive and in between the two, the court shall exercise its discretion whether it is excessive or not bearing in mind the rules for guidance laid down and given above. It is a relative term and depends upon surrounding circumstances, which must be proved by evidence.—144 I. C. 218.

Secured loans. Interest shall not be deemed excessive if the rate does not exceed 7 p. c. per annum with half-yearly rests or when the amount of interest found due at any time does not exceed the amount of interest calculated at the rate of 7 p. c. per annum with half-yearly rests at the same time. This would mean that even if the contractual rate of interest is more than 7 p. c. per annum with half-yearly rests, the interest will not be deemed excessive so long as the amount of interest found due at that rate, does not exceed the amount of interest that might be found on calculation at the rate of 7 p. c. per annum with half-yearly rests.

Second or subsequent mortgages. In the case of mortgages after the 1st mortgage, the court instead of shall, may deem the interest excessive if it exceeds 12 p. c. per annum with half-yearly rests or the amount of interest exceeds the amount found due at this statutory rate, provided it considers that the nature of the security warrants it,

Unsecured loans. Similarly interest shall not be deemed excessive if the rate does not exceed 9 p. c. per annum with half-yearly rests or the amount of interest found due at the rate charged does not exceed the amount found due on calculation at the rate of 9 p. c. per annum with half-yearly rests.

But interest shall be deemed excessive if the rate exceeds 24 p. c. per annum with half-yearly rests or the amount found due as interest exceeds the amount of interest found due at 24 p. c. per annum with half-yearly rests.

The rates of interest in between the two limits fixed for the secured and unsecured loans respectively shall be in the discretion of the court to decide whether they are excessive or not. The court shall exercise that discretion in the manner laid down above.

The words "*unless the contrary is proved*" do not find place in proviso 1 intended for secured loans but in this proviso, they have been added and their significance is that in the case of unsecured loans, the court should presume the interest to be excessive, if it exceeds the statutory rate unless the plaintiff creditor proves to the contrary, which burden would lie on him.

Clause C. The word excessive was defined in section 3 clause 2 (a) and therein the words used were 'having regard to the risk incurred.' In this clause (C) the legislature has prescribed some rules for the guidance of the court for considering the question of risk. The rules are that the court shall have regard to the presence or absence of the security and its value, the monetary condition of the debtor and the result of any previous transaction of loan taken by the debtor, so far as the same were known to the creditor or must be taken to have been known to the creditor. The last would include the general repute of the debtor in dealing with the transactions of loan previously. 'Excessive' is a relative term and what is excessive in one case will not necessarily be so in another. It depends upon the surrounding circumstances. Courts, however, cannot assume their existence; they must be found on proper evidence—1933 N. 224 (1928 O. 396 F. B. and 1930 C. 249 relied on).

Sub-section 2. Clause d. So far we have dealt with section 3 clause (i) (a) and now comes clause (b) when the court has reason to believe that the transaction was as between the parties thereto substantially unfair. What is substantially unfair—See A. I. R. 1930 Cal. 776.

In considering this question the rules prescribed for guidance are that the court shall have regard to the following circumstances:—

I. Circumstances materially affecting the relation of parties at the time of the loan or

II. Circumstances tending to show that the transaction was unfair.

Necessities or the supposed necessities of the debtor at the time of the loan known to the creditor or which must be taken to have been known to the creditor must also be looked into, to find whether the creditor has taken advantage of the miserable position of the debtor. If the court finds it to be in the affirmative the court shall deem the transaction unfair. If the rate of interest is very high, that by itself, is sufficient evidence that the transaction is substantially unfair. The court is limited to a consideration of circumstances, which existed at the date of the loan as was held in 1935 M. 468 and not to the happening of subsequent events—A. I. R. 1933 Nag. 224. In this ruling 23 Cal. 15 (P. C.) and 1918 A. I. R. 249 were referred. From the mere fact that the mortgagor was indebted and in urgent need of money, it cannot be inferred that the mortgagees were in a position to dominate his will, and interest at Rs. 2-8-0 per cent, per mensem compoundable quarterly was not held unconsiderable

—27 A. L. J. 1091. But this rate cannot be allowed now in view of the amended Act. The rate of Rs. 1 per cent. p. m. or, for the matter of that Rs. 1-4-0 p. c. p. m. cannot be characterised as in any way excessive extortionate in the case of a handnote which does not carry any security—116 I. C. 43. Where a mortgage stipulated interest at 1 p. c. p. m. with yearly rests, and there was no evidence either that the rate of interest prevailing at the time was lower than that provided in the bond or that the transaction was substantially unfair: Held that Sec. 3 was no bar to the enforceability of the claim for interest—56 C. 960.

Sub-section 3. The section 3 of the Usurious Loans Act shall apply

(1) to all suits in fact for recovery of loans, irrespective of the form in which they are brought.

(2) Suits for the enforcement of any agreement or security in respect of a loan *o. g.* mortgages, unpaid purchase money charges etc.

(3) Suits for the redemption of any such security.

Sub-Section 4. This section shall not affect any bonafide transferee for value and who had at the time of such transfer no notice of any fact which would have entitled the debtor to relief against the creditor under this section. But the transferee shall have to satisfy this to the court. The onus will rest on him to prove the same. A person is said to have notice of a fact when he actually knows that fact or when but for wilful abstention from an enquiry or search, which he ought to have made or gross negligence, he would have known it—Section 3 T. P. Act.

Sub-section 5. The powers given in this section shall not be taken to override the existing powers or the jurisdiction of any court before whom the suit is pending. Suppose for example A brings a suit in the court of the Munsif for recovery of Rs. 1200/- and the court under section 3 of this Act reduces the claim to Rs. 1000/- then the jurisdiction of the Munsif to try the suit will remain as it was.

Insolvency proceedings.—Section 4. On any application relating to the admission of a proof of a loan in any insolvency proceedings, the court may exercise the like powers as may be exercised under section 3 by a court in suit to which this Act applies.

Notes. In insolvency proceedings the insolvency court may exercise the powers given in section 3 of this Act in deciding the amount due to the creditor when he comes to prove his claim just like a regular court.

The Usurious Loans Act of 1918.

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CORRECTION.

Page.

- 10 Read 'debtor' for 'creditor' in the last para.
- 11 Read "excepted" for 'expected' in VIIth para.
- 57 Read "furnishing" for 'finishing'.

Corrigenda under the U. P. Encumbered Estates Act.

CORRECTION.

Page.

- 6 Read 'his sir and khudkasht' for 'his and sir khudkasht'.
- 15 Read 'laid' for 'land'.
- 35 Add 'Proposed' before 'Amendment'.
- 69 Strike the first 'section' in rule 2 line 3.
- 69 Read "applicant" for 'application' in rule 2(3) line 4.
- 96 Read '1937' for 1931 in rule 53 line 8.

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