



**Government of Bengal**

**Judicial Department**

**Rules and Forms**  
**under the Bengal Money-lenders Act**  
**1933**

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# ASSAM ACT IV OF 1934.

## THE ASSAM MONEY LENDERS' ACT, 1934

[Published in the *Assam Gazette* of the 27th June 1934.]

*An Act to provide for more effectual control of money-lending in Assam.*

Preamble.

WHEREAS it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lenders in Assam ;

And whereas the previous sanction of the Governor General has been obtained under sub-section (3) of section 8 of the Government of India Act to the passing of this Act.

It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Assam Money-Lenders Act, 1934.

(2) It extends to the whole of Assam including the territories mentioned in section 14 of the Assam General Clauses Act, 1915. Assam Act II of 1915.

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

Definitions.

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

(1) "Money-lender" means a person who grants a loan.

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

(3) "Loan" means an advance (whether of money or in kind) at interest made by a money-lender and shall include any bond bearing interest executed in respect of past liabilities and any transaction which in substance is a loan ; [Explanation.—A bond bearing interest executed in respect of goods taken on credit constitutes a loan.] and

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

Penalty for stating larger amount in the bond than actually lent.

3. If the loan actually made be less than the sum entered in the bond or hand note, the money-lender shall be guilty of a contravention of the provisions of this Act and shall, on conviction, be punishable with fine not exceeding two hundred rupees.

Prohibition of compound interest and provisions as to defaulting.

4. Any contract made after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract :

Simple interest in case of default.

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest, or both, the money lender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

Prohibition of charge for expenses on loans by money-lenders.

5. Any agreement between a money-lender and a borrower or intending borrower for the payment by the borrower or intending borrower to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a money-lender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

Exception.—This will not debar money-lenders from recovering reasonable costs of inspection of Revenue or Registration records including examination of titles and also costs of inspection of property, in cases where the contract includes a stipulation that property is given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof.

Keeping  
accounts.

of 6. Every money-lender shall keep accounts in the form prescribed.

Obligation of  
money-lender to  
supply informa-  
tion as to state  
of loan and  
copies of docu-  
ments relating  
thereto.

7.(1) In respect of every contract for the repayment of a loan made by a money-lender, whether made before or after the commencement of this Act, the money-lender shall on demand in writing being made by the borrower at the time of executing the contract or at any time during the continuance of the contract, supply to the borrower, or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the money-lender or his agent showing—

- (a) the date on which the loan was made, the amount of the principal of the loan, and the rate per cent. per annum of interest charged ; and
- (b) the amount of any payment already received by the money-lender in respect of the loan and the date on which it was made : and
- (c) the amount of every sum due to the money-lender, but unpaid, and the date upon which it became due and the amount of interest accrued due and unpaid in respect of every such sum ; and
- (d) the amount of every sum not yet due which remains outstanding and the date upon which it will become due :

Provided that when a demand under this subsection has once been complied with, a second demand may not be made in respect of the same loan within six months.

Copy of docu-  
ment for borr-  
ower.

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

Civil effects of  
non-compliance.

(3) If a money-lender to whom a demand has been made under this section fail without reasonable excuse to comply therewith within one month after the demand has been made, he shall not so long as the default continues be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default.

Presumption in the case of certain loans.

8. Where in any suit in respect of any loan made or any security taken for a loan made by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of 12½ per cent. per annum in the case of a secured loan or 18½ per cent. per annum in the case of an unsecured loan, the Court shall, until the contrary is proved, presume for the purposes of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged though not exceeding 12½ per cent. per annum or 18½ per cent. per annum, as the case may be, is excessive.

Bar to recovery of interest exceeding the principal.

9. No Courts shall, in respect of any loan made before or after the commencement of this Act, decree on account of arrears of interest a sum greater than the principal of the loan.

Deposit in Court of money due to money-lender.

10. (1) Where a borrower has sent to a money-lender by postal money-order or by registered post with acknowledgment due any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same, the borrower may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender, and the Court shall thereupon keep the sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

(2) If the money-lender accepts money sent in the manner specified in sub-section (1) by a borrower or withdraws money deposited under the said sub-section, he shall not be bound by any statement made by the borrower in remitting or depositing the money.

Restrictions on money-lending advertisements.

11. (1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name or address of a money-lender, or containing an invitation—

(a) to borrow money from a money-lender; or

- (b) to enter into any transaction involving the borrowing of money from a money-lender; or
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a money-lender.

Agents and canvassers inviting borrowers must not be employed by money-lenders.

(2) No money-lender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender, and no person shall act as such agent or canvasser or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a money-lender any person desiring to borrow money.

Penalty.

(3) Any person acting in contravention of any of the provisions of this section shall in respect of each offence be liable, on conviction to imprisonment for a term not exceeding three months or a fine not exceeding three hundred rupees or both.

Civil effects of contravention.

(4) Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall be illegal, unless the money-lender proves that the contravention occurred without his consent or connivance.

Penalty in case of fraud.

12. (1) Where in any suit in respect of any money lent or in respect of any security taken for money lent by a money-lender, the trying Court is of opinion that the money-lender has been guilty of fraud, or of any contravention of the provisions of this Act, or is otherwise unfit to carry on the business of money-lending, the Court may make an order debarring him from carrying on such business for such time as may be specified in the order and an appeal shall lie from such an order to the court to which an appeal ordinarily lies under the provisions of the Code of Civil Procedure, 1908, irrespective of

Acto 7 of 1908.

Penalty.

(2) Any money-lender carrying on the business of money-lending in contravention of any order made under sub-section (1) shall, on conviction, be liable to a fine which may extend to five hundred rupees.

Appeal.

13. Any order of conviction passed under this Act shall be appealable to the Court to which appeal ordinarily lies under the Code of Criminal Procedure, 1898, irrespective of the amount of fine to which an accused may be sentenced. Act V of 1899.

Power of Local Government to make rules.

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

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

- (i) the form in which money-lenders shall keep accounts ;
- (ii) the intervals at which borrowers may demand statements of accounts under sub-section (1) of section 7 and the fees to be paid for copies of documents supplied under sub-section (2) of the same section ;
- (iii) the manner in which an application for a deposit is to be made under sub-section (1) of section 10, and a notice of the deposit is to be sent to the money-lender under the said sub-section ; and
- (iv) the enforcement of orders made under sub-section (1) of section 12.

(3) The power to make rules under this Act shall be subject to the condition of previous publication.



*The 12th March 1935.*

No. 1099G.J.—In exercise of the powers conferred by section 14 of the Assam Money Lenders Act, 1934 (Assam Act IV of 1934), the Governor in Council is pleased to make the following rules for carrying out the purposes of the Act.

### RULES.

1. The account prescribed by section 6 shall be maintained in the Form I shown in the Schedule attached to these rules.

“ Provided that in the case of a society registered under the Co-operative Societies Act, 1912 (Act II of 1912), the account shall be kept in the form prescribed by that Act or rules framed thereunder ”.

2. The fees to be paid for copies of documents to be supplied under sub-section (2) of section 7 of the Act shall be three annas for every 300 vernacular or 150 English words or part thereof: Provided that where the borrower or his authorised agent is allowed to copy a document, no fee shall be charged.

3. The application under sub-section (1) of section 10 for permission to deposit in the Court any sum of money due from a debtor to a money-lender in respect of any loan or loans shall be in writing and shall contain the following particulars:—

(a) the name and full address of the money-lender in whose favour the deposit is made;

(b) a recital that the debtor has sent the money to the money-lender by postal money order or by registered post with acknowledgment due and that the money-lender has refused to accept it. (The amounts sent on account of principal and interest should be separately stated with the date of the remittance). The application shall be signed and verified in the manner provided in sub-rules 2 and 3 of rule 15 of Order I in Schedule I to the Code of Civil Procedure, 1908, by the debtor, or by his authorised agent.

4. The application shall bear a court-fee stamp of eight annas as required by Article 1 (b) of Schedule II of the Court-fees Act, 1870, and shall further be accompanied by printed forms of notice in Form II annexed to these rules for service on the money-lender with process-fees payable in court-fee stamps according to the scale prescribed by the High Court for service of summons on defendants. The blank spaces in Form II shall be filled in by the debtor or by his authorised agent.

5. If it appears to the Court, to which an application for permission to deposit under section 10 is made, that the applicant is entitled under that section to deposit the money, it shall receive the same and give the receipt in Form III annexed to these rules.

6. The money-lender may apply for withdrawal of the money in Form IV annexed to these rules, and the procedure in connection with such withdrawal shall be the same as in the case of withdrawal of other civil deposits.

7. A copy of the order under sub-section (1) of section 12 of the Act shall be served on the money-lender in the manner laid down for service of summons on defendants.

**SCHEDULE.**

**FORM I.**

(See rule I.)

Loan Account of \_\_\_\_\_ s/o \_\_\_\_\_ caste \_\_\_\_\_ residence \_\_\_\_\_

Opening balance (if any) —

Principal —

Interest —

Dr.

\_\_\_\_\_

Cr.

Particulars of advances in words whether cash or kind.		Advance in figures.		Amount of interest charged.		Remarks.	Date.	Particular of repayment whether cash or kind in words.		Appropriation.		Remarks.	
Cash.				Kind (number or weight).				Cash.					Kind (number or weight).
Value of advances in kind.				Rate of interest.		Kind (number or weight).		Value of repayment in kind.					
Rate of interest.				Amount of interest charged.		Cash.		Kind (number or weight).					
Amount of interest charged.		Remarks.		Date.		Particular of repayment whether cash or kind in words.		Appropriation.		Remarks.			
Cash.		Kind (number or weight).		Value of advances in kind.		Rate of interest.		Amount of interest charged.		Remarks.			
Kind (number or weight).		Value of advances in kind.		Rate of interest.		Amount of interest charged.		Remarks.		Remarks.			
Value of advances in kind.		Rate of interest.		Amount of interest charged.		Remarks.		Date.		Particular of repayment whether cash or kind in words.		Remarks.	
Rate of interest.		Amount of interest charged.		Remarks.		Date.		Particular of repayment whether cash or kind in words.		Appropriation.		Remarks.	
Amount of interest charged.		Remarks.		Date.		Particular of repayment whether cash or kind in words.		Appropriation.		Remarks.		Remarks.	
Remarks.		Date.		Particular of repayment whether cash or kind in words.		Appropriation.		Remarks.		Remarks.		Remarks.	

**FORM II.**

(See rule 4.)

*Form of notice of deposit under section 10(I)*

Name of money-lender

Address .....

You are hereby informed that \_\_\_\_\_ of \_\_\_\_\_  
has on \_\_\_\_\_ deposited in this Court under section  
10(I) of the Assam Money Lenders' Act, 1934 a sum of Rs.  
(Rs. \_\_\_\_\_ on account of principal and Rs.  
\_\_\_\_\_ on account of interest) to your account in connection with the loan  
of Rs. \_\_\_\_\_ which was made by you to him on \_\_\_\_\_  
You are requested to withdraw this amount at your earliest convenience. Government accept no responsibility for any loss which you may incur in connection with the aforesaid sum while it remains in deposit with the Court.

Signature of Munsif.

Address

Dated the

FORM III.

(See rule 5.)

*Receipt granted by Court for deposit of money due to money-lender.*

Station.

Court.

Whereas an application has been filed by \_\_\_\_\_  
under sub-section (1) of section 10 of the Assam Act IV  
of 1984, for depositing a sum of money on account of his debt and  
whereas the Court is of opinion that the said \_\_\_\_\_  
is entitled to deposit the amount under the said section it is hereby  
given in writing that the undermentioned amount has been deposited  
in this Court by \_\_\_\_\_.

Name of Money-lender.	Date of loan.	Amount of loan.	Payment towards Principal.	Payment towards Interest.	Total.

Date

Signature . . . . .

Seal of the Court

**FORM IV.**

(See rule 6.)

*Form of withdrawal.*

**PAYMENT ORDER.**

**PART I.**—Application for payment of Deposits (to be filled in by the applicant).

Name of applicant.	Date of deposit.	Amount to be paid.
1	2	3

Signature of applicant.....

Date . . . . .

\*Examined and found correct.

Signature of Chief Ministerial Office .....

Signature of Presiding Officer.....

\* The signature below the words "Examined and found correct" must of course be held to indicate that the officer signing the certificate has satisfied himself "that the applicant is the proper party to receive payment of the amount claimed", and that the particulars stated are correct, while the Judge in charge will be responsible that the amount claimed is in deposit, that there is no bar to payment, and that the name of the claimant corresponds with that of the payee entered in his Register.

**PART II.— (To be filled in by the Court or under its order.)**

Serial number and date of payment order.		Court's chalan number and chalan date of the original deposit from which the payment is sought.		Court's number and date of the original deposit.		Amount in deposit*.	At whose credit in deposit.*
1	2	3	4	5	6	7	8

To—The Officer in charge of the Treasury at  
Cashier of the Court

Please pay as above to

or order Buprest

Signature of Court's Accountant—

Signature of Judge in charge—

\* As per Court's Register of Deposits Received.

† Words and figures.

NOTE 1.—This order is not payable more than one month after date without a renewal enforcement by the Court and it is absolutely lapses and ceases to have effect on the 31st March next.

NOTE 2.—Payee is hereby to take notice that after tender and payment of this order, the Treasury Office will admit no further responsibility. It is the duty of the payee to see to the proper custody of this document until it is cashed.

Part III.—[to be filled in at Treasury (or at Court if payable there)].

Received contents, Rupees .. .. .

Signature of Disbursing Cashier.....

Treasury No.....

Pay Rupees... ..

Stamp of one anna if for more than Rs. 20.

Payee's signature.

The 19 .

Examined and entered.

Accountant.....

Officer in charge of Treasury.

J. A. DAWSON,  
Chief Secretary to the Government of Assam.

# Bengal Act VII of 1933.

## THE BENGAL MONEY-LENDERS ACT, 1933.

[Published in the *Calcutta Gazette* of the 26th October, 1933.]

*An Act to provide more effectual control of money-lending in Bengal.*

WHEREAS it is expedient to make better provision for the control of money-lending and to give additional powers to Courts to deal with money-lending in Bengal;

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

5 & 6 Geo.  
V, c. 61;  
6 & 7 Geo.  
V, c. 37;  
9 & 10  
Geo. V,  
c. 101.

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Money-lenders Act, 1933.

Short title,  
extent and  
commencement.

(2) It extends to the whole of Bengal:

Provided that nothing in this Act shall apply to any loan made within the limits of the Ordinary Original jurisdiction of the High Court or under a contract made within those limits.

(3) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint.

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

Definitions.

(1) "money-lender" means any person who grants a loan of money; and

(2) "prescribed" means prescribed by rules made under this Act.



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may obtain publications either direct from the High Commissioner's office  
or through any book-seller**

## NOTIFICATION.

No. 228J.—10th January 1934.—In exercise of the powers conferred by section 10 of the Bengal Money-lenders Act, 1933 (Ben. Act VII of 1933), the Governor in Council is pleased to make the following rules:—

### Rules.

1. The demand under sub-section (1) of section 7 for particulars, concerning any loan or loans shall be made by a debtor to a money-lender in Form I annexed to these rules.

2. On demand being made in the form prescribed in rule 1, the money-lender shall supply to the debtor the particulars concerning the loan or loans which are mentioned in Form II-annexed to these rules.

3. The application under sub-section (1) of section 9 for permission to deposit in the Court any sum of money due from a debtor to the money-lender in respect of any loan or loans shall be in writing and shall contain the following particulars:—

(a) the name and full address of the money-lender in whose favour the deposit is made;

) a recital that the debtor has sent the money by postal money-order to the money-lender and that the money-lender has refused to accept the same. (The amounts sent on account of principal and interest should be mentioned separately together with the date of the remittance of the same.)

The application shall be signed and verified in the manner provided in sub-rules 2 and 3 of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908, by the debtor, or by his authorised agent.

4. The application shall bear a court-fee stamp of twelve annas as required by article 1(b) of Schedule II of the Court-fees Act, 1870, and shall further be accompanied by printed forms of notice in Form III annexed to these rules for service on the money-lender with process-fees payable in court-fee stamps according to the scale prescribed by the High Court for service of summons on defendants. The blank spaces in Form III shall be filled in by the debtor or by his authorised agent.

5. If it appears to the Court, to which an application for permission to deposit under section 9 is made, that the applicant is entitled under that section to deposit the money, it shall receive the same and give a receipt in Form IV annexed to these rules.

6. The money-lender may apply for withdrawal of the money in Form V annexed to these rules, and the procedure in connection with such withdrawal shall be the same as in the case of withdrawal of other civil deposits.

**FORM I.**

(See rule 1.)

**Form of demand for the supply of particulars concerning a loan under section 7(1).**

Name of money-lender—

Address—

Under section 7(1) of the Bengal Money-lenders Act, 1933 (Ben. Act VII of 1933), I request the following particulars concerning any loan or loans made by you to me on which any amount is at present outstanding.

*Signature of debtor—*

*Address—*

*Date—*

**FORM II.**

(See rule 2.)

**Particulars concerning a loan.**

Name of debtor—

Address—

Date of demand for particulars—

1. Date of loan
2. Amount of loan
3. Rate of interest per annum (state whether simple or compound, and if compound what the period of re-accumulation)—
4. Total repayments made by the debtor up to date—
  - (a) Principal
  - (b) Interest
  - (c) Total
5. Amount outstanding on the date on which information is given—
  - (a) Principal
  - (b) Interest
  - (c) Total
6. Any special conditions on which the loan has been made—

*Signature of money-lender—*

*Address—*

*Date—*

*N.B.*—The above particulars should be furnished regarding each and every loan on which any amount is outstanding, and it will be understood that no amount save what is entered in the particulars furnished is due from the debtor at the date on which the information is supplied by the money-lender.

The money-lender may retain the portion marked Form I and return Form II to the debtor after filling in the requisite details.

**FORM III.**

(See rule 4.)

**Form of notice of deposit under section 9(I)**

Name of money-lender—

Address—

You are hereby informed that \_\_\_\_\_ of \_\_\_\_\_ has on \_\_\_\_\_ deposited in this court under section 9(I) of the Bengal Money-lenders Act, 1933, a sum of Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ on account of principal and Rs. \_\_\_\_\_ on account of interest) to your account in connection with the loan of Rs. \_\_\_\_\_ which was made by you to him on \_\_\_\_\_. You are requested to withdraw this amount at your earliest convenience. Government accept no responsibility for any loss which you may incur in connection with the aforesaid sum while it remains in deposit with the Court.

*Signature of Munsif—*

*Address*

*Dated the—*

**FORM IV.**

(See Rule 5.)

**Receipt granted by Court for deposit of money due to money-lender.**

মোদ্দার

আদালত

..... ১৯৩৩ সালের বঙ্গীয় ৭ আইনের ৯ ধারার ১ প্রকরণের লেখা অনুযায়ী.....  
.....র কথিত মোটা টাকা আমানত করণ জন্য তৎকর্তৃক উক্ত ধারালুসারে দরখাস্ত  
হইয়াছে, এবং যেহেতু এ আদালতের প্রতীতি হইতেছে যে, উক্ত.....উক্ত  
ধারালুসারে ঐ টাকা আমানত করণের অধিকারী, অতএব ইহা লিখিয়া দেওয়া হইতেছে যে  
মলিখিত টাকা.....কর্তৃক এ আদালতে আমানত হইয়াছে।

কর্তৃকদাতা।	কর্ত্তের তারিখ।	কর্ত্তের পরিমাণ।	কোন আশল দেওয়া হইলে তাহা।	কোন সুদ দেওয়া হইলে তাহা।	মোট টাকা।

তারিখ

স্বাক্ষর

**FORM V.**

(See rule 6.)

**Form of withdrawal.****PAYMENT ORDER.**

*Part I.—Application for payment of Deposits (to be filled in by the applicant).*

Name of applicant. 1	Date of deposit. 2	Amount to be paid. 3

*Signature of applicant—*

*Date—*

\*Examined and found correct.

*Signature of Chief*

*Ministerial Officer—*

*Signature of Presiding Officer—*

\*The signature below the words "Examined and found correct" must of course be held to indicate that the officer signing the certificate has satisfied himself "that the applicant is the proper party to receive payment of the amount claimed," and that the particulars stated are correct; while the Judge in charge will be responsible that the amount claimed is in deposit, that there is no bar to payment, and that the name of the claimant corresponds with that of the payee entered in his Register.

*Part II—(to be filled in by the Court or under its orders).*

Serial number and date of payment order.		Court's chalan number and chalan date of the original deposit from which the payment is sought.		Court's number and date of the original deposit.		Amount in deposit. †	At whose credit in deposit. †
1	2	3	4	5	6	7	8

To the Officer in Charge of the Treasury at  
Cashier of the Court.

Please pay as above to \_\_\_\_\_ or order Rupees ‡

*Signature of Court's Accountant— Signature of Judge in charge—*

†As per Court's Register of Deposits received.

‡Words and figures,

*Note 1.*—This order is not payable more than ten days after date without a renewal enforcement by the Court, and it absolutely lapses and ceases to have effect on the 31st March.

*Note 2.*—Payee is hereby to take notice that after tender and payment of this order, the Treasury Officer will admit no further responsibility. It is the duty of the payee to see to the proper custody of this document until it is cashed.

*Part III [to be filled in at Treasury (or at Court if payable there)].*

Received contents, Rupees

Stamp of one anna if for more than Rs. 20.
---

*Signature of Disbursing Cashier—*

*Payee's signature—*

Treasury No.

Pay Rupees

The

19

Examined and entered.

*Accountant—*

*Officer in charge of Treasury—*



Nos. 229-60 J

Copy forwarded to all Commissioners of Divisions for information and communication to all District Magistrates, in continuation of endorsement Nos. 9039-9065 J., dated the 19th December 1933.

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Nos. 261-81 J.

Copy forwarded to all District Judges for information and guidance in continuation of endorsement Nos. 9039-9065J., dated the 19th December 1933.

By order of the Governor in Council,

N. N. SEN GUPTA,

*Asst. Secy. to the Govt. of Bengal.*

*Calcutta, the 10th January 1934.*



The  
**Bombay Government Gazette**

PUBLISHED BY AUTHORITY

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THURSDAY, 12TH APRIL 1934.

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art in order that it may be filed as a separate compilation.

**PART V**

**Proceedings of the Council of the Governor  
of Bombay.**

(To be translated into Marathi, Gujarati, Kanarese and Urdu and the translations to be published in the "Bombay Government Gazette". To be translated also into Sindhi and the translation to be published in the "Sind Official Gazette". The dates of publication to be reported.)

The following Bill for the introduction of which leave was granted to Mr. Syed Munawar, M.L.C., at the meeting of the Legislative Council of the Governor of Bombay on the 16th March 1934 is published under rule 20 of the Bombay Legislative Council Rules :—

**BILL No. VII OF 1934.**

*A Bill to regulate the Money-Lending Business.*

WHEREAS it is expedient to regulate the business carried on by persons as money-lenders ;  
It is hereby enacted as follows :—

**CHAPTER I.**

**PRELIMINARY.**

1. (1) This Act may be called the **Bombay Money Lenders' Act, 1934.**

Short title,  
commence-  
ment and  
extent.

(2) This section extends to the whole of the Presidency of Bombay. The Governor in Council may, by notification published in the *Bombay Government Gazette*, extend any or all of the remaining provisions of this Act to such places or areas as the Governor in Council thinks fit.

(3) This section shall come into force at once. The Governor in Council may, by notification published in the *Bombay Government Gazette*, direct that any or all of the remaining provisions of this Act shall come into force on such date as may be specified in the said notification in such place or area to which the said provisions shall have been extended under sub-section (2).

**Definition**

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

(1) "Bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or by Letters Patent or by any Act of the Indian Legislature.

(2) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof or in British India or incorporated by an Act of Parliament or by Royal Charter or by Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies. VI of 1912.

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

(4) "Court" includes a Court acting in the exercise of insolvency jurisdiction.

(5) "Creditor" means a person who in the regular course of business advances a loan as defined in this Act and shall include, subject

to the provisions of clause 7 the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan.

(5A) "Debtor" means a person whose aggregate income in one year does not exceed Rupees two thousand, and who has borrowed a loan not exceeding Rs. 1,000. Persons who may be dependent on a debtor shall be deemed to be debtors for the purposes of this Act.

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

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

(i) a deposit of money or other property in a Government Post Office Bank or in any other Bank or in a Company or with a Co-operative Society;

(ii) a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1860, or under any other enactment;

(iii) a loan advanced by Government or by any local body authorised by Government.

(iv) a loan advanced by a Bank, a Co-operative Society or a company whose accounts are subject to audit by a certified auditor under the Companies Act;

(v) a loan advanced to a wholesale trader;

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

(vii) a transaction which is, in substance, a mortgage or a sale of immovable property.

(8) "Prescribed" means prescribed by rules made under this Act.

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

(a) separate accounts of principal and interest shall be taken ;

(b) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor as part of the transactions ;

(c) in the account of principal there shall not be debited to the debtor 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 transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable ;

(d) in the account of interest there shall be debited to the debtor, monthly, simple interest, on the balance of principal for the time being outstanding, at the rate allowed by the Court as hereinafter provided ;

(e) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion, or with the aid of arbitrators appointed by it, may determine), shall be credited first in the account of interest ; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal ;

(f) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balance (if any

appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal account, in which case double the latter balance shall be deemed to be the amount then due.

### CHAPTER III.

#### PROVISIONS REGARDING ACCOUNT.

(1) A creditor shall in order to comply with the provisions of this Act:—

Duty of creditor to maintain and furnish accounts.

(a) regularly record and maintain an account for each debtor separately, of all transactions relating to any loan advanced to that debtor, in such manner as the Local Government may prescribe;

(b) furnish each debtor every three months with a legible statement of account signed by the creditor or his agent, of any balance or amount that may be outstanding against such debtor on the 31st day of March, 30th day of June, 30th day of September and 31st day of December in each year. This statement of account shall include all transactions relating to the loans entered into during the three months to which the statement relates, and shall be sent in such manner and in such form with such details as the Local Government may prescribe, on or before the 31st May, 31st August, 30th November or 28th February in the case of any balance outstanding on 31st March, 30th June, 30th September and 31st December respectively.

*Explanation.*—(i) The Local Government shall prescribe the forms and numerals in which the accounts required by this section are to be maintained and furnished and the creditor shall, at his own option, use one of the following languages and scripts, namely,—English, Gujarati, Sindhi, Marathi, Urdu,\* Modi or Hindi; provided that, if

the debtor in writing demands that the account be furnished in any one of the above scripts it shall be supplied to him in that script at his cost according to the scale prescribed ;

(ii) The prescribed accounts shall be so kept that items due by way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained. The creditor shall not, in the absence of agreement, include the interest or any portion thereof in the principal sum ; and the principal and interest shall be separately shown in the opening balance of each new quarterly account :

Provided that—

(i) if the loan has, since originally advanced, passed by inheritance or assignment to a widow or minor, such widow or minor shall not be bound to maintain and furnish the account prescribed by this clause for a period of three months from the date of such passing ;

(ii) nothing in this clause shall be deemed to lay upon any person the duty of maintaining and furnishing the prescribed account in the case of a loan wherein the title to recover is *sub judice* between two or more persons claiming as creditors adversely to each other unless and until the title has been finally decided by a Court of competent jurisdiction.

(2) Entries in the account prescribed under clause (a) to sub-clause (1) 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 such entries certified in such manner as may be prescribed shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries. 1 of 1872.

*Explanation.*—A person to whom a statement of account has been sent under clause (b) of sub-clause (1) shall not be bound to acknowledge or deny its correctness and his failure to protest shall

not, by itself, be deemed to be an admission of correctness of the account.

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

Penalty for non-compliance with provisions clause 3.

(a) In any suit or proceeding relating to a loan, the Court shall, before deciding the claim on the merits, frame and decide the issues whether the creditor has complied with the provisions of sub-clauses (a) and (b) of section 7.

(b) If the Court finds that the provisions of clause 7 (I) (a) have not been complied with by the creditor the Court shall, if the plaintiff's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as may seem reasonable to the Court in the circumstances of the case and shall disallow costs;

(c) If the Court finds that the provisions of section 7 (I) (b) 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 failed duly to furnish the account as required by section 7(I) (b);

Provided that, if the creditor has after the time prescribed in that sub-clause furnished the account, and the plaintiff satisfied the Court for not furnishing it earlier; the Court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

*Explanation.*—A person who has kept the account and sent his quarterly statements of account in the form and manner prescribed in section 7 (I) (a) and (b) shall be held to have complied with the provisions of these sub-clauses in spite of errors and omissions, if the Court finds that the errors and omissions are accidental and not intentional or material and that the accounts have been kept in good faith with the intention of complying with the provisions of these sub-clauses.

9. The provisions of this Act shall not apply to savings any loan advanced before the commencement of this Act; provided that, if any fresh transaction



relating to a loan advanced before the commencement of this Act is made after the commencement of this Act, such transaction shall be subject to the provisions of this Act.

Powers of  
Local Govern-  
ment to make  
rules.

10. (1) The Local Government may make rules not inconsistent with this Act for the purpose of carrying out all or any of the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Local Government may make rules—

(i) prescribing the forms of numerals to be used in the accounts required by section 7(1);

(ii) prescribing the manner in which the account required by section 7 (1) (b) shall be furnished by the creditor to the debtor, the forms to be used and the details to be embodied therein, and the scale of cost to be paid by such debtors as may demand that the account required by this sub-clause be furnished in one of the scripts specified in Explanation (i) of this sub-clause;

Provided that, before making any rules under the provisions of this clause, the Local Government shall publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby at least six weeks before a meeting of the Bombay Legislative Council. The Local Government shall defer consideration of such rules until after the meeting of the said Council next following the publication of the draft in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.

#### STATEMENT OF OBJECTS AND REASONS.

*Reasons.*—Despite the steady growth of the Co-operative movement in the Bombay Presidency, professional money-lenders known as Sawkars flourish in every town and village in the Presidency. Except for a small proportion of them who are honest, a very big number has acquired a reputation for dishonesty, usury and other malpractices easily practised on the illiterate, poor and labouring classes. It is

common knowledge that interest at unconscionably high rates ranging from 24 to 300 per cent. is charged by many such money-lenders who induce people to borrow, deduct first month's interest from the principal before issuing the loan and recover the dues under threats of violence. No doubt, the Usurious Loans Act, passed by the Imperial Legislature in 1918, provides a legal remedy, but this applies only to such cases of usury as are referred to courts of law. Many of the money-lenders manipulate accounts of loans in such an ingenious manner as to evade the provisions of the Usurious Loans Act. Numerous cases of substantially unfair transactions, however, do not come before courts of law not merely for economic reasons but because the poor, helpless people are afraid of harassment and victimisation by their creditors. Consequently, thousands of people belonging to the agricultural and labouring classes remain in life-long indebtedness almost invariably to the same money-lenders.

This Bill is thus a necessary adjunct to the Usurious Loans Act. Its purpose is to exercise a legal check upon unscrupulous money-lenders as also upon reckless borrowers who habitually indulge in the delight of borrowing.

The Bill is thus designed to control the profession of money-lending which has admittedly assumed a menacing aspect in this Presidency, and this fact justifies the early introduction of this measure of social legislation.

*Objects.*—The objects of the Bill are explained in the *ter* clauses :

*Clause 1.*—Specifies the title, extent, and date of commencement of the Act.

*Clause 2.*—Contains definitions of terms and expressions used in the Bill.

*Clauses 3 to 6.*—Contain provisions as regards particular suits, the points that the Court has to take into account in determining certain cases of loans, and the mode of taking account in respect of loans.

*Clause 7.*—Lays down the duties of the creditor to maintain simple but orderly account in the forms and numerals prescribed by the Government and to send to every debtor a periodical extract from these books showing the debit and credit items separately in respect of principal and interest, the rate of interest charged and the balance due

The underlying object of this procedure is to serve as a means of reminding the debtor of the dues and of enabling the creditor to recover the dues before they swell into a big amount. With due regard to the legal rights of the creditor, sub-clause (2) of the clause provides that for the purposes of section 34 of the Indian Evidence Act, 1872, certified copies of the accounts statement shall be deemed by a court of law, as admissible in evidence of the transaction. With an eye to the debtor's interest, the Explanation provides that his failure to protest against the creditor's statement is not tantamount to an admission of the correctness of the account.

*Clause 8.*—The Court derives its sanction from this clause to impose a penalty on the creditor for non-compliance with the provisions of clause 7 by disallowing the whole or a portion of the interest found due, as may seem reasonable. Here regard is had to a rudimentary principle of law that the penalty for breach should be sufficiently severe to make compliance worthwhile. The clause also authorises the Court to allow due interest to the creditor in certain *bona fide* cases where his errors and omissions in calculation have been found to be accidental and not material.

*Clause 9.*—Is a saving clause which is necessary to exempt loans advanced before the commencement of operation of this measure.

*Clause 10.*—This contains the necessary provisions for the rule-making power of the Government under the Act, and for the privilege of the Bombay Legislative Council to discuss the draft rules under the Act before the same are adopted and given effect to.

(Signed) SYED MUNAWAR, M.L.C

J. R. DHURANDHAR,

Acting Secretary to the Legislative Council  
of the Governor of Bombay.

Bombay, 10th April 1934.

## OPINIONS ON BILL No. VII OF 1934

(A Bill to regulate the money-lending business)

### OFFICIAL OPINIONS.

No. 3499 dated the 20th October 1934.

From—M. A. Bhawe, Esq., LL.M., District Judge, Thana ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

*Subject*—A Bill to regulate money-lending business.

With reference to your letter No. 777 dated 5th September 1934 requiring my opinion on the Bill to regulate the money-lending business introduced by Syed Munawar, Esquire, M.L.C., I have the honour to express my opinion as follows :—

The object of the Bill appears to be to deal with the class of money-lenders who have acquired a reputation for dishonesty, usury and other malpractices easily practised by them on the illiterate, poor and labouring classes. The fact that this evil is in existence and it requires some remedy cannot be doubted ; but the difficulty is to devise a remedy which would eradicate this evil.

In the first place I have to observe that there are a large number of cases in which the usurious money-lenders like Pathans and others who take undue advantage of illiterate and ignorant debtors never go to the Court of law. For cases of this sort any legislation intended to enlarge the powers of a Court of law for dealing with such matters would not prove effective. So legislation of this sort which is intended to enlarge the powers of Courts in dealing with these matters can affect only those money-lenders who have to resort to a Court of law for purposes of enforcing their bonds and promissory notes. So legislation of this sort would in any case be only a partial remedy. If any legislation is to be undertaken to eradicate the evil its provisions must be such that they would have both preventive and curative effect.

As regards preventive legislation, it could be effected only by empowering executive officers to keep supervision and check over the coercive methods used by heartless money-lenders

like Pathans and others of the same category who resort to threats and even to violence in order to extort money from the poor and unlucky debtors who happen to go within their clutches. In such cases legislation enlarging the powers of a Court of law would prove quite ineffective. Hence the bill now brought forward would only touch the fringe of the subject, because my experience is that there are more cases of this sort which do not come to a Court of law as compared to cases which come to a Court of law.

Now as regards the debtors also, there are two classes : Firstly, those who by sheer poverty and want are forced to borrow at high rate of interest, and secondly, those reckless spendthrifts who borrow simply for the gratification of their vicious tendencies and have to pay high rate of interest because nobody would risk his money in the hands of a reckless spendthrift unless he has chance of recovering something extraordinary by way of enforcing the obligation. It is impossible to remedy the evil in the latter class of cases by any legislation. The improvement could be brought about in such cases only by spread of education and by raising the standard of their character and their morality by the social workers.

Thus it follows that preventive and remedial measures by way of legislation are necessary in the case of really poverty stricken debtors who have to go in the clutches of grasping money-lenders out of sheer poverty and want. For debtors of this class the preventive measures would be to establish co-operative banks on sound economic lines where they can get loans at moderate rate of interest. But in such cases though the co-operative movement has been tried as an experiment to a certain extent in this Presidency, the results have been apparently not encouraging because of the fact that it is difficult to get honest men in small villages to manage small societies ; and here the fault lies in the people themselves and it could be remedied only by education and by raising the standard of character of the community by social uplift.

Then as regards the remedial measures in cases of this sort, legislation enlarging the powers of the Court in dealing with such matters is the only remedy that is likely to suggest itself. But the most difficult problem is to devise legislation which in practice would prove really effective. The difficulty in drafting any Bill on this subject lies in the fact that any provisions intended to keep check on the methods of money-lenders are likely to be defeated in practice by the money-lenders

conforming to the letter of the law without actually disclosing the real nature of the transaction. Then here also the ignorance of the debtors and the difficulty of obtaining evidence to be placed before the Court are serious drawbacks which come in the way of a Court of law in dealing with the matter in a satisfactory way. It could be said that no amount of legislation can protect a fool or an ignorant person who voluntarily goes in the clutches of a cunning and shrewd money-lender. Hence legislation of this sort would only operate as a partial palliative than a complete remedy for such evils.

With these principles in mind if we look at the present Bill it will be seen that it is not likely to prove effective at all in practice and perhaps the remedy suggested in this Bill would prove worse than the evil and it would bring about considerable handicaps in the way of honest creditors who deal with their debtors squarely and fairly.

It has to be noted that under Chapter II of the Deccan Agriculturists' Relief Act in so far as a suit of the description mentioned therein the value of the subject-matter of which does not exceed Rs. 100, even non-agriculturists get advantage of those provisions. So the provisions of section 3, clause 2 practically overlap the provisions of Chapter II of the Deccan Agriculturists' Relief Act with the only difference that the limit of the subject-matter of the suit is raised to Rs. 1,000. Practically the provisions of the first few sections of the Bill are simply an imitation of the provisions of the Deccan Agriculturists' Relief Act so as to make them applicable to non-agriculturist debtors. But in this connection the Usurious Loans Act X of 1918 also contains analogous provisions and it seems to me that this Bill is not likely to advance the cause of the debtors any further than the provisions of the Usurious Loans Act and the Deccan Agriculturists' Relief Act as they are in force.

The provisions of section 7 as regards the rules requiring the creditors to keep accounts in a particular manner and requiring them to furnish extracts of accounts to the debtors at periodical intervals, appear to be quite well on paper; but in practice it is not likely to prove effective because under the present circumstances it is the experience of the Courts in administering the Deccan Agriculturists' Relief Act that the creditors and money-lenders are astute and clever enough to manipulate their accounts in such a way as to conceal the real nature of the transaction from the Court, and the Courts have in many cases to ignore the entries in the accounts and

to come to a conclusion as regards the real aspect of the transaction by indulging in surmises and inferences which are more or less based on the experience and common sense of the Judge having regard to the circumstances of the parties and the local prevailing conditions as disclosed in the evidence. So these theoretical provisions which appear well on paper would rather prove a handicap in the way of free money-lending by honest creditors to honest debtors who also would come under the provisions of section 7. Any experienced Judge who has dealt with these matters can easily say that it is not difficult for a money-lender to manipulate accounts just to suit the requirements of any compulsory provisions of law which might be laid down without disclosing the real nature of the transaction. Hence no good purpose is likely to be served by the provisions of section 7 of this Bill. So section 8 which requires a Court before deciding the claim on merits to frame and decide an issue whether the creditor has complied with the provisions of sub-clauses (a) and (b) of section 7 would simply encourage indulgence in litigious tendencies and give a long rope to the pleaders to indulge in lengthy arguments so as to take up time of the Court unnecessarily without any useful result so far as the disclosure of the real aspect of the transaction is concerned.

Further I have to point out that provisions of section 4 are likely to prove an encouragement to dishonest debtors to put difficulties in the way of his creditors because it lays down that a suit for recovery of money loans shall be brought within the local limits of whose jurisdiction the Defendant resides. In the case of labour population it might become easy for a Defendant to shift his place of abode from time to time so as to put difficulties in the way of creditors and to plead want of jurisdiction in the Court, where the creditor acting on the information or on the fact of his residence at a particular place might institute a suit in a Court having jurisdiction with reference to the place of residence. It has to be noted that in this section the words 'ordinarily resides' have not been put in. So these provisions would come in conflict with the provisions of the Civil Procedure Code in this respect and it seems to me highly undesirable that this sort of provision which comes in conflict with the Civil Procedure Code should be enacted without any adequate advantage.

This bill is likely to prove a considerable handicap on free dealings between honest creditors and honest debtors without any advantage of bringing about a check on the methods

of unscrupulous money-lenders and improvident debtors. In fact the present draft is so materially defective in many respects that if at all any legislation on the basis of the principle of this Bill is to be undertaken practically the whole of the Bill will have to be redrafted with substantial modifications in each and every provision of the same. It is my firm conviction that if any preventive measures are to be resorted to, then it is the executive officers who can deal more effectively with the unscrupulous money-lenders who practise their trade in different localities, if they are empowered by law to keep a scrutiny and watch over their doings and to offer protection to the poor debtors who are coerced by such money-lenders by use of threats and violence and who have not the means to resort to a Court of law. Possibly the system of issuing licenses to professional money-lenders of a particular class and to prohibit money-lending by a particular class of people in a particular local area except under a license might prove somewhat useful, if the power to keep a check and scrutiny over the doings of such money-lenders is left in the hands of an executive officer of high status like the Collector or the Assistant Collector.

I am therefore of opinion that this Bill is not likely to serve the purpose for which it has been introduced."

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No. 1015 dated the 6th October 1934.

From—D. V. Vyas, Esquire, I.C.S., District Judge, Nadiad ;

To—The Secretary, the Bombay Legislative Council, Poona.

" With reference to your letter No. 777 dated 5th September 1934 on the subject noted above, I have the honour to state that the Bill to regulate the money-lending business is based principally on some of the provisions of the Deccan Agriculturists' Relief Act XVII of 1879. Sections 3, 4, 5 and 6, and 7 of the Bill respectively correspond to sections 3 (*w*), 11, 12 and 13, and 65 and 66 of that Act. The Bill does not empower the Court to reduce the stipulated rate of interest though it gives relief to debtors against compound interest. The Usurious Loans Act X of 1918 enables the Court to allow less than the stipulated rate of interest and applies to transactions secured by immoveable property.

2. Interests of debtors, both agriculturists and non-agriculturists, are adequately protected by the Deccan



Agriculturists' Relief Act and the Usurious Loans Act. Under the proposed Bill debtors in villages would not be able to secure small loans easily. The duty cast upon creditors of maintaining accounts and furnishing them every three months to debtors would make them reluctant to enter into small transactions with debtors unless the latter pledge ornaments and pay high rate of interest.

3. In the case of non-agriculturists debtors the onus to prove want of consideration lies upon them. Some of them such as labourers might be illiterate and so unable to discharge that burden. In such cases the Courts might be empowered to call upon the creditor to prove consideration. A general provision as is enacted in sections 5 and 6 of the Bill of requiring creditors to prove consideration in all cases against non-agriculturists would increase the work of the Court and might delay the disposal of suits.

4. Sections 4 and 8 (b) of the Bill affect the provisions of sections 20 and 35 of the Civil Procedure Code which is an Act of the Indian Legislature.

5. Bar Associations of this district are unanimously against the Bill and I agree with them. Their replies are forwarded herewith."

Letter dated the 29th September 1934.

From—The Honorary Secretary, Bar Association, Nadiad.

A Bill to regulate the money-lending business.

1. The object of the sponsor of this Bill is laudable. He aims at putting a check on the unscrupulous methods of the money-lenders and also at discouraging reckless borrowing.

2. Thus it is important to look at the text of the Bill and to gauge its effect on the money-lenders and the borrowers.

3. The effective sections of the Bill are sections 5, 6 and 7. Section 5 prescribes that the Court shall inquire into the history of the transactions between the plaintiff and the defendant when the latter is a debtor within the terms of this Act. The object of this inquiry is to find out any legal defence to the suit and to take accounts. This section enables the Court to unearth any unscrupulous method adopted by a money-lender. This is a good safeguard for an illiterate debtor who may not be an agriculturist.

4. Section 6 of the Bill gives effect to the law of Damdupat, which is hereby made universal by this section. It tends to make compound interest an obsolete matter. Thus this section will entail a great loss to the money-lenders and a great gain to even non-agriculturists.

5. Section 7 of the Bill tends to affect the indigenous book-keeping. It would revolutionise this art and entail unbearable hardship on the genuine money-lenders.

5A. Keeping separate accounts and submitting quarterly reviews for agriculturists and non-agriculturists, illiterate and literate debtors whether owing a petty sum or a thousand is an expensive and tedious task. It is bound to increase the work of every money-lender to such an extent as to increase his staff by one well paid clerk for this purpose. This will tend to dissuade small sum money-lending and increase the rate of interest.

6. Section 8 is a penal clause and the form of penalty would reduce the money-lending business.

7A. It is well-known that in the Kaira District the chief class of money-lenders is the Bania. Second to him is the Patidar. Many of the well-to-do agriculturists in this district are Patidars. And they indulge in money-lending also. A good amount of this business is in their hands. Their object in money-lending is more often than not buying over the debtor's land. This class of money-lenders in the district ekes out at present its agricultural income by indulgence in this business. The provisions of section 7 will force a majority of them to give up this side-business and finally fall back upon agriculture as their principal and only source of income. It will not avail to argue that the definition of creditor given in clause (5) of section 2 will save this class from the clutches of this Bill.

7B. The Bania money-lender in this district would not stand the general and sweeping charge of unscrupulousness and highhandedness. The prevalent rate of interest in this district varies between 12 and 24 per cent. Barely a case comes up where the rate of interest is 36 per cent. On the other hand the Deccan Agriculturists' Relief Act affords sufficient and full relief to the agriculturist-debtor. It cannot be claimed for this Bill that it goes beyond the Deccan Agriculturists' Relief Act in giving relief to the debtor. So the Agriculturist-debtor has nothing to gain; but as an effect of this Bill he has every reason to fear increasing hardship in obtaining money on personal credit as shown in paragraph 8.

As for the non-agriculturist-debtor there is the Usurious Loans Act of 1918. If that Act does not give relief against compound interest, it helps the debtor more effectively by allowing him lesser rate of interest than agreed to. This Act does not give the Court this right to reduce the rate of interest. Further the Act of 1918 is superior to this Act in its all embracing character. It applies to transactions secured by immoveable property.

And the benefits conferred by this Bill on the non-agriculturist-debtor are more formal than effective. They are more than counterbalanced by the evil effects of the Bill. The increase in the rate of interest and the immense hardship of having to borrow on security are such fearful consequences as to subdue enthusiasm of the poor non-agriculturist-debtor of this district for this Bill.

8. The Bill does not apply to money borrowed on security of immovable property. Hence its evil effect will be seen in the decrease of money-lending on personal security. At present the money-lender is not in a haste to demand the poor debtor's immovable property at the first or even for a few transactions, but hereafter he will no doubt be tempted to lend on security of the debtor's lands and thus get out of impositions under this Bill. Thus the Bill will accelerate the transfer of lands, etc. into non-agricultural hands. This may be termed as the most dreadful evil of the Bill.

9. Shrewd money-lending is never reckless. It is the borrower who is incalculative, speculative and heedless. Nothing can stop him from borrowing, not even exorbitant rate of 24 per cent. interest nor the necessity to pawn his whole property. Bearing this in mind, and adding to it the advantages given to the debtor—be he a non-agriculturist—by way of simple interest, quarterly accounts, and scrutiny by the Court of its own accord, and the application of the rule of Damdupat—be he a Hindu, Muslim or Jew, or Christian—this Bill instead of putting a check on reckless borrowing will increase ten-fold his desire to borrow.

10. It is a matter of regret that the Bill does not tackle the evil of Pathan money-lending Class. It will not affect these money-lenders because this class seldom goes to the Court. We have never heard of a Pathan going to Court for realizing the money lent.

11. We take this opportunity to declare that the Bill will double the work of the Civil Courts.

12. The words 'Money lender', 'Creditor' and 'Debtor' should be defined in such a way that petty transactions between persons to oblige one another may be excluded from the operation of this Act. The bill as framed will cause great hardship to petty money transactions.

13. Finally section 4 of the Bill tries to restrict the scope of section 20 of the Civil Procedure Code, 1908. It is not competent to the Local Legislature to affect the Civil Procedure Code, so also section 8, clause (b) affects the provisions of section 35 of the Civil Procedure Code.

Similarly provisions of section 6, preceding clause (a) violate the principles and the scope of the Indian Contract Act.

In view of these technical defects it would be more advisable to leave this measure for legislation by the All-India Legislature.

14. On the contrary it would suggest that something should be done on the following lines. It would be a boon to every money-lender to give a note of every transaction signed by him to every one of his debtor at the time of the transaction even without asking for it. Failure to give a note should entail on him the punishment provided for failure to give receipt for payment of money. This is all that we want. For it will then be in the interest of the debtor to preserve these chits. This method is certain in its effect, less expensive and has its immediate usefulness if the debtor smells any fraud.

(2) The establishment of the Land Mortgage Bank by the Government.

This Bar Association is further of opinion that measures of this character instead of giving relief to debtors would affect their interest adversely as has been found by experience in the case of Dekkhan Agriculturists' Relief Act. And this Bar Association would welcome the repeal of that Act in the ultimate interest of poor agriculturists themselves.

15. In the end, in view of the special conditions of this District as shown in paragraph 7 above, and inasmuch as this Bill tends to increase the rate of interest consequent upon the reduction in the number of money-lenders and increase in the cost of the money-lending business, both resulting from the operation of section 7 of the Bill, and inasmuch as it tends to accelerate the transfer of lands into the hands of non-agriculturist money-lenders, and tends to affect the simple-indigenous system of book-keeping, and finally inasmuch as it does not put a check on the reckless borrowers, "who delight in borrowing"

This Bar Association opines that this Bill is not suitable to this District and it does not lend its support to it.

Letter, dated the 20th September 1934.

From—The President, Bar Association, Borsad ;

To—The Subordinate Judge, Borsad.

"With reference to the District Court endorsement No. 934 of 1934 of the 14th instant below No. 777 from Acting Secretary to the Legislative Council I the undersigned have the honour to submit our opinion as under :—

The Bill in question is not suitable to the existing condition of the debtors and creditors both. The Bill seems to be an extension of the Dekkhan Agriculturists' Relief Act with stricter provisions to the non-agricultural classes. According to the known canons of law the debtor is bound to repay the money and nowhere it is provided that creditors should submit statements of accounts to the debtor as suggested in the Bill.

That clause would operate as a hardship on the money-lender and seems highly impracticable and unworkable.

In villages there are illiterate petty money-lenders who cannot be expected to keep regular books of accounts and submit statements. The tenor of the whole Bill is such as to put a stop to money-lending in villages and thereby create hardship on them. Such a statute is undesirable."

Letter, dated the 19th September 1934.

From—The Joint Honorary Secretary, Bar Association, Umreth ;

To—The Subordinate Judge, Umreth.

“As regards the Bill of the Money Lenders Act referred to the Bar Association for its opinion, the members of the Bar are of opinion that this act is not at all necessary in this District looking to the rate of interest, contest in money suits and transactions which take place in this District. The people are not so illiterate as they may not understand their own interest. If this act is introduced the money-lending business would be more affected and the people are likely to suffer as nobody will be inclined to lend money. The Dekkhan Agriculturists' Relief Act is in force in this District and the interest of those persons who deserve such safeguards is protected. Also the work of the Court will be much increased and hampered.”

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Letter, dated the 24th September 1934.

From—The Secretary, Bar Association, Kapadvanj ;

To—The Subordinate Judge, Kapadvanj.

“Being asked to submit our opinion to the desirability of the provisions of the Bill No. 7 of 1934—A Bill to regulate the money-lending business—we beg to submit as under :—

In our humble opinion, the Bill is likely to do more harm than good. No doubt there are instances in which unscrupulous money-lenders do try to take advantage of the debtors' position and needs, but then on the whole, the money-lending business in the Mofussil is not at all prosperous now-a-days. If we compare the loans, we might better say deposits that flock to the Banks and to the gilt-edged securities with those in past times we will at once be convinced of the correctness of the submission. The Income-tax authorities can also bear testimony to the correctness of the above opinion. The Bill, if passed in law, will make the position of the poor and needy, worse than before. There are sufficient safeguards for the agriculturist-debtors in the provisions of the Dekkhan Agriculturists' Relief Act. The definition of an agriculturist is extremely wide. It is so wide that even those who have sucked the blood of the agriculturists by having their lands, can, as debtors, take advantage of the provisions of the Dekkhan Agriculturists' Relief Act.

The provisions of the Usurious Loans Act and of the Contract Act help to a great extent the cases of those that really require the help at the hands of the Court. Further provisions like those of the Bill are therefore not necessary. The opinion that the Usurious Loans Act does not mitigate the mischief, is in our humble opinion, incorrect.

If it be said that these provisions can be avoided, it is clear to us that the provisions of the present Bill also can be avoided in a number of ways. We are therefore emphatically of opinion that the Bill need not be passed into law.”

Letter No. 113, dated the 26th September 1934.

From—A. A. Badshah, Esquire, B.A., LL.B., Subordinate Judge,  
Kaira ;

To—The District Judge, Nadiad.

“ With reference to your endorsement No. 934, dated the 14th instant, below the Acting Secretary to the Legislative Council of the Governor of Bombay’s letter No. 777, dated the 5th instant, I have the honour respectfully to state that I have consulted the Bar Association of Kaira and they have submitted the following opinion upon the said Bill :—

2. The Bar Association at Kaira is of opinion that this Bill is not at all necessary, because the Dekkhan Agriculturists’ Relief Act is in operation almost throughout the Bombay Presidency and there are adequate provisions in the said Act for safety of the debtors.

3. It is also of opinion that the small debtors will be put to much difficulty in securing small loans from Sowcars and that the Sowcars will demand ornaments etc. as pledge towards the loans so that the small debtors will be put to a great hardship and will have to pay higher rate of interest. The dishonest and unscrupulous class of money-lenders will come in place of honest money-lenders, and this Bill will have no effect upon those money-lenders.

4. That the system of supplying statement of accounts to the debtors every three months is very harsh and cumbrous and mutual trust and confidence between the debtors and creditors will hence dwindle away.

5. In short the Bar Association at Kaira is of opinion that this Bill is not necessary and not at all required.

6. Below are, I respectfully submit, my views on the said Bill.

7. That the said Bill is a wholesome welcome to small debtors who are not agriculturists. No doubt the Dekkhan Agriculturists’ Relief Act is applicable to agriculturists but I have found that unscrupulous money-lenders avoid admitting the debtor to be an agriculturist and hence he is put to more difficulty in proving himself to be an agriculturist. This Bill which applies to debtors who are indebted to a certain amount does apply to agriculturists as well as non-agriculturists and hence this will be beneficial to agriculturists who are denied to be agriculturists by unscrupulous money-lenders.

8. Time is ripe to have such legislation to save illiterate poor middle-class people who fall prey in the hands of unscrupulous and dishonest money-lenders who make most out of them. They cannot take shelter under the Dekkhan Agriculturists' Relief Act and thus they have to suffer much. This Act will, in my opinion, put an end to such practices of the money-lenders and will be greatly beneficial to middle-class people who very often require loans from money-lenders for their business or social affairs.

9. As regards the time of submitting accounts to a debtor in Chapter 3 of the Bill, my opinion is that the money-lenders should be forced to submit accounts yearly and not quarterly to the debtors.

10. As regards Clause 8 of Chapter 3 I humbly submit that the penalty imposed upon the money-lenders in that Clause is not adequate. It should be somewhat harsher."

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Letter No. 1252, dated the 20th November 1934.

From—N. S. Lokur, Esquire, LL.B., District Judge, Ahmedabad ;

To—The Secretary to the Legislative Council of the Governor of Bombay, Bombay.

"With reference to your No. 777, dated 5th September 1934, on the subject noted above, I have the honour to state that the Bar Association and all the local Subordinate Judges here are quite opposed to the Bill No. VII of 1934, and I agree with them. I doubt the utility or the necessity of such a Bill in addition to the Dekkhan Agriculturists' Relief Act and the Usurious Loans' Act which enable the Court to give the necessary relief to deserving debtors in suitable cases. The present Bill is of a sweeping character and applies to all classes of debtors, irrespective of their education or intelligence. An educated debtor belonging to one of the most advanced communities can claim the benefit of the Bill, if his income be less than Rs. 2,000. Such a debtor may even be a Mamlatdar or a Police Inspector or a pleader. The State is not bound to protect such debtor against transactions entered into by them with open eyes and after a deliberate consideration. The duty of the State in such matters would, at best, be to protect such backward and ignorant debtors as cannot protect themselves. When clause 5 (A) of the Bill is read with the Proviso to clause 3, it is not clear to whom the Bill is intended to apply. A debtor may borrow several loans of less than Rs. 1,000 from different persons, and claim to be a 'debtor'

within the meaning of clause 5 (A). A creditor may seek to take advantage of the Proviso to clause 3 by swelling the subject matter of his suit to Rs. 1,001. Even if the original loan be less than Rs. 1,000 by adding interest, or even fictitious items, the creditor may avoid the provisions of the Bill at the small expense of paying Court Fees on Rs. 1,001 and defeat the object of the Bill. Hence it should be the amount of the loan which should determine the applicability of the Bill and not the subject matter of the suit. To give the benefit of the Bill to persons who are neither ignorant nor agriculturists will not be fair and reasonable. The Bill throws on the Court the duty of inquiring into the income of the debtor and determine whether it exceeds Rs. 2,000. Apart from the additional burden it will throw on the Courts, it will often be impossible for the creditor to prove the income of his debtor, especially in the case of members of joint Hindu family. Whether the defendant is educated, intelligent and shrewd, or not, the duty is cast upon the Court by clause 5 to go into the history of the transaction and see if any defence is open to the defendant. Clause 6 of the Bill is very drastic and will result in the cessation of all money-lending business. Even now several Sowcars have given up money-lending owing to the provisions of the Dekkhan Agriculturists' Relief Act, and this Bill will complete the work of depriving the needy people of all help from the local money-lenders. It must not be forgotten that the institution of money-lending is a necessary evil and should not be annihilated so long as there is want and destitution.

The Bill does not say what is the reasonable rate of interest, and it is left to the whims of the Judges, some of whom are more sympathetic to the debtors and others to the creditors. The duty of supplying statements of accounts to the debtor every three months, which is enjoined on the creditor by clause 7, will prove a great hardship. The debtor is not bound to acknowledge their receipt, and the creditor may incur the loss of interest if he fails to prove that he did not supply the statements. Owing to this fear, he will have to send them by registered post—with acknowledgment due—and thus incur the expense of at least 4 annas every time, or a rupee every year and that will go to reduce the interest. This will be a hardship, especially when the loan is a small one. It will be enough if he supplies the statement when required by the debtor. I do not think that the Bill will achieve the desired object. Even the Dekkhan Agriculturists' Relief Act



has proved to be of doubtful utility. What is needed is spread of education and a wide spread net of well conducted Co-operative Credit Societies and Land Mortgage Banks within the easy reach of every needy village.

If, at all, any help is intended to all the debtors with a certain maximum income, instead of adding one more Act to the Statute book, some of the provisions of the Dekkhan Agriculturists' Relief Act may be extended to manual labourers having a specified maximum income, of specified Districts as a trial in the beginning. Though that Act is called the Dekkhan Agriculturists' Relief Act, it has been extended to the non-Dekkhan Districts and there should be no objection to extend it to non-agriculturists labourers. In that case, the expression 'manual labourers' should be so defined as not to include those who earn their living by their literary education or trade."

Letter No. 2113-A, dated 25th September 1934.

From—R. W. H. Davies, Esquire. I.C.S., District Judge, Ahmednagar ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

" With reference to your letter No. 777, dated the 5th September 1934, asking for my views on the Bill to regulate money-lending introduced by Syed Munawar, I have the honour to state as follows :—

2. There can be no question about the desirability of a measure such as this to protect illiterate borrowers from the malpractices and exactions of money-lenders but I doubt if the Bill under consideration will have the desired effect. It seems to me to be of little use to control interest unless means can be found to check the amount actually lent. It is well known that money-lenders make a practice of taking a bond for double the amount lent. Improvident borrowers anxious only to obtain money urgently needed are prepared to sign any document placed before them. There is nothing in the Bill which will have the effect of putting a stop to such practice.

3. The only slight check that there could be in this behalf, I think, would be to make the money lendable in the presence of the Sub-Registrar and to compel the keeping of accounts.

I recognise that this would ensure nothing but it might operate as some check.

4. I may point out that in clause (d) of section 6 of the Bill, it is laid down that interest shall be debited to the debtor at the rate allowed by the Court as 'hereinafter provided' but no such provision is made anywhere in the Bill.

5. The opinion of the local Bar Association on the Bill will be forwarded later when received."

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Letter, dated the 30th October 1934.

From—The Honorary Secretary, Bar Association, Ahmednagar ;

To—The District Judge, Ahmednagar.

"This Bill is avowedly being introduced to make provision for exercising 'A legal check upon unscrupulous money-lenders, as also upon reckless borrowers who habitually indulge in the delight of borrowing.'

Loans advanced by Banks, Co-operative Societies etc., are exempted from the purview of the provisions of the Bill.

Chapter 2 fixes the limit of the loans to Rs. 1,000 which come under its provisions. This is merely an extension of the limit of Rs. 100 which are provided for by the Dekkhan Agriculturists' Relief Act.

Special feature of this Bill is to make non-maintenance of quarterly statement of account and supplying the same to the debtor penal.

It is highly questionable whether that provision could really act as a check on the unscrupulous money-lenders and really give relief to or protect reckless borrowers from the clutches of the unscrupulous money-lenders. The provisions of the Dekkhan Agriculturists' Relief Act though in active operation for the last 55 years have certainly failed to relieve and ameliorate the condition of ignorant and illiterate agriculturists for which they were specially enacted. Money-lender's intelligence would still find means and ways of evading these provisions as is often done with respect to the provisions of the Dekkhan Agriculturists' Relief Act.

Further enactments like these, instead of making the condition of those for whose benefit they are intended better tend to lower their credit, and thus create great difficulties in the way of their being able to borrow. In section 2 the word 'loan' is defined but in sub-sections (v) and (vi) of that definition the words are very vague and would cause considerable difficulty and hardship in actual operation. Many of the provisions of this Bill appear to have been bodily adopted from the Dekkhan Agriculturists' Relief Act but the penal act (Dekkhan Agriculturists' Relief Act) is itself found to have conferred no benefit. The same will be the case

with this legislation. We are, therefore, of opinion that this bill is not advisable in its present form.

Some provisions with regard to the account keeping ought to be insisted upon but that will be met if all money-lenders who want to enforce their claims in Court must maintain regular accounts and must put them before the Court in proof of their claim. This would sufficiently guard the unwary debtors and save them from the clutches of unscrupulous creditors."

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Letter No. 3257, dated the 31st October 1934.

From—K. B. Wassoodew, Esquire, LL.B., District Judge, Nasik ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

" With reference to your letter No. 777, dated the 5th September 1934, forwarding a copy of the Bill No. VII of 1934—A Bill to regulate money-lending business—for my views after consulting the Bar Associations of this District, I have the honour to attach hereto copies of letters received from the said Associations for your information and to submit the following observations.

2. It must be commonly agreed that the Bill contains such sweeping provisions as to make the measure a means of repudiating solemn contracts. Some of the provisions contain such radical alterations in the existing law affecting money-lending transactions that I might go to the length of describing them as revolutionary. Such a Bill therefore ought not to be hustled on to the statute book without very careful and fullest discussion. The Bill is sufficient to rouse misgivings and is certainly one of all-India concern ; for I have noticed from the newspaper reports that there are other Provinces who have made similar attempts through their Legislative Councils for giving easy relief from debt obligations. It is therefore necessary to consider the fullest implications of the Bill.

3. The Subordinate Judges whom I have consulted in the matter are divided in their opinion as regards the necessity and propriety of the measure, some feeling that the provisions of the existing law with some modifications will afford an adequate safeguard against the rapacity of usurious money-lenders ; whilst the others holding that with some alterations the measure might be suitable. Before proceeding to discuss the details of the measure it seems to me from the point of

view of practical economics and experience that the complexity of the problem and the wide issues involved must necessarily afford a barrier to the satisfactory solution of civic and rural indebtedness. The difficulty is not so much legal, for the Courts of law have merely to administer the laws framed, as it is practical from the point of view of the economic life of the country. The attempt made to grapple with the question of the enormous rural indebtedness is indeed praiseworthy. But inasmuch as the provisions are based upon views which might be regarded as idealistic, that characteristic of the Bill constitutes in my opinion an inherent weakness of the measure. It is difficult to believe that the proverbial Marwari money lender must disappear for all time or that any other suitable agency can be substituted or would invade his professional field. So long as the Co-operative movement is in its infancy the Marwari money lender must be a necessity to a large section of the community.

4. The provisions of the Bill are largely drafted, with certain improvements and additional safeguards, on the lines of the Deccan Agriculturists' Relief Act, which itself is an eye-opener to the legislator in enacting laws for the benefit of the cultivator or improvident debtor. With the additional safeguards in the Bill one must expect total shrinking of credit and more ingenious devices to withstand, if not to frustrate the safeguards proposed. One cannot fail to recognise the difficulty of the poorer classes to be able to borrow without security and having regard to the fact that the bulk of the indebtedness prevails amongst the working classes who are improvident and possess no security, one can only imagine the condition of these classes under the new measure. Undoubtedly money-lenders' services to the people have cost them enormously and although I do not attempt to defend the evil practices which doubtless have led to economic servitude and unproductive money lending I strongly feel that by providing a barrier against facile money lending, the legislator if he thinks that he will succeed in creating an ideal economic life in the country by reducing facilities for borrowing and thus reducing the peoples wants, he is clearly mistaken.

5. Regarding criticism on the details of the Bill it is difficult at this stage to pronounce definitely against the practical working of the provisions, but there are certain criticisms thereon which cannot be lightly ignored. These criticisms are contained in the accompanying two representations of the Bar Associations of Nasik and Malegaon. Mr. Ugrankar

the Joint Subordinate Judge of Nasik has devoted considerable time to the examination of the bill and I also append his views on the subject which are interesting in many respects. He has indicated how the safeguards of sections 7 and 8 are illusory. Although one cannot agree with his views that the safeguards indirectly afford an inducement to act contrary to the object of the measure, one can readily imagine the capacity of the persons affected to devise counter measures. It seems to me that there should be a saving clause in favour of persons who have already entered into money transactions and who may have against their will to renew them during the operation of the Bill if they do not succeed in making their recoveries. The definitions of creditor and debtor and the term trader require recasting for they are not clear enough to prevent complexity in their interpretation. With regard to the venue of the trial it is sufficient to provide that the suit should be instituted within the local limits of a Court where anyone of the defendant-debtors may reside.

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Letter, dated the 22nd October 1934.

From—The Honorary Secretary, Bar Association, Nasik ;

To—The District Judge, Nasik.

In reference to your letter No. 2699 of 1934, a meeting of the Bar Association was convened on 20th October 1934 to discuss the Bill for regulating the money-lending business. The debate on it could not be complete on that day. Hence the general sense of the said meeting is given below :—

“The Bill is not acceptable for the reasons amongst others given below :—

1. The definition of ‘debtor’ in clause 5A is defective. It does not mention the date from which the year of the income is to be counted. Whether the said year is one next preceding the date of suit or is one beginning from or ending with the date of suit transaction is not clear.

2. The purpose of the bill can be defeated by issuing negotiable instruments *e.g.* Hundis.

3. Accounts required to be maintained by creditors under clause 7 are such as can be kept only by persons who are experts in account keeping. This is expecting too much from ordinary creditors.

4. It would be a hardship to insist upon having accounts from widows and minors or other heirs when they do not enter into fresh transactions.

5. Furnishing copies of accounts to debtors every three months would entail heavy expense and inconvenience to creditors. Besides no provision is made for the said expense in the bill.

6. Creditors would be most unwilling to advance the petty loans covered by the bill, when they labour under so many stringent provisions in it.

7. Provisions regarding investigation of the history of transactions and mode of taking account which are similar to those under the Deccan Agriculturists' Relief Act may with benefit be extended to non-agriculturist debtors. But the mover intends to enforce the whole bill and not any part of it.

8. The present strength of the judiciary would have to be increased fourfold, if the bill is to be made into law."

*Opinion of the Bar Association Malegaon, dated the 5th October 1934 on the "Bombay Money-Lenders' Act, 1934."*

1. We agree with the author of the Act that the illiterate poor and labouring classes, in this Presidency, are helpless victims to the wiles and unscrupulous practices of Sawkars. Many of these Sawkars pretend to keep no accounts and easily swallow the vasul paid by the debtors. Some of them keep their accounts so ingenuously that the vasul paid by the debtor evaporates into nothingness; while the double and compound interest realised by them is carefully screened from the eye of the Court.

2. "The Usurious Loans" affords but an inadequate protection. We, therefore, welcome the idea of special legislation safeguarding the interests of helpless debtors. But we are afraid, however, that the Act is not happily worded and some of its provisions go too far.

3. The definitions of such terms as,

- (1) Creditor,
- (2) Debtor, and
- (3) Loan

are complicated and will create a lot of trouble and unnecessary litigation, over questions such as (1) whether the creditor advances loan in a regular course of business or occasionally; (2) whether the debtors' income exceeds Rs. 2,000 or not; (3) whether the loan is advanced to a wholesale dealer or not etc. The definitions ought, therefore, to be simpler.

4. The clauses empowering the Court to investigate into the history and real nature of the transaction are quite welcome.

5. Clause 3 limits the application of the Chapter to suits, whose subject is valued below Rs. 1,000. We fail to understand the reason behind this limitation. The creditor may evade this Act by waiting till the debt piles up above Rs. 1,000 and thus defeat its object.

6. Clause 4 limits the jurisdiction of Courts to the residence of the debtors. This provision will impede the progress of commerce and will work undue hardship on traders.

7. Clause 7 perhaps invites the hottest debate. Sub-clause 1 compels the creditors to maintain an orderly account. This is welcome. But sub-clause 2 which saddles the creditor with the duties of furnishing quarterly accounts to his debtors goes too far. This duty will be a job by itself, to a big money-lender and will make money-lending business so onerous that the poor villagers and debtors, in whose interest the Act is framed, will be refused loans in their hour of need. Thus it will not only create hardship to creditors more than they deserve, but it will also recoil upon the poor debtors.

8. The penal provisions of the Deccan Agriculturists' Relief Act against creditors, refusing to furnish accounts on demand and pass receipts on payment of vasul, may be substituted, with necessary modifications, for this sub-clause.

9. Although therefore, we welcome this attempt to protect the poor and illiterate debtors, we cannot accept it *en bloc*. We have recommended the necessary changes at their proper places.

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Letter, dated the 9th October 1934.

From—R. G. Kashikar, Esqr., and ten others—Members of the Malegaon Bar ;

To—The District Judge, Nasik.

We the following members of the Malegaon Bar beg to submit our opinion on the Moneylender's Bill in the Bombay Presidency.

In the first place we are of opinion that the Bill presupposes that the majority of creditors are unscrupulous and dishonest, while almost all the debtors are quite clean and honest in their dealings. We are unable to subscribe to this view as our experience shows that there are dishonest creditors as well as dishonest debtors. The Bill appears to be intended for the Presidency town of Bombay where Pathans and other rapacious money lenders extort exorbitant amounts from their debtors by way of interest, but if it is extended to the whole Presidency, it is likely to cause grave hardship to the middle class Sowcars.

We take exception to the following provisions in the Bill :—

(1) Suits should be instituted in the Court in whose jurisdiction the debtor resides.

(2) The creditor must furnish every three months the statement of account of the debt with interest to the debtor.

(3) Interest should not be allowed to the creditor for the period for which no such statement is given to the debtor.

(4) The definition of the "debtor".

In this connection we humbly suggest that the word "debtor" should be defined as a person who borrows a loan not exceeding Rs. 500 instead of Rs. 1,000.

For all the reasons detailed above, we cannot give our approval to the Bill and it is quite unacceptable in the form in which it is presented.

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No. 1302, dated the 5th October 1934.

From—D. R. Ugrankar, B.A., LL.B., Joint Subordinate Judge,  
Nasik ;

To—The District Judge, Nasik.

With reference to your No. 2699 of 1934 dated 13th September 1934 I have the honour to submit my views on the Bill No. VII of 1934 as follows.

2. In the statement of objects and reasons it is stated that this bill is intended to be an adjunct to the Usurious Loans Act and to serve two objects, viz. (1) to exercise a legal check on unscrupulous money-lenders ; (2) to exercise a legal check on reckless borrowers who indulge in the delight of borrowing. Sections 4, 5 and 6 are exactly similar to sections 11, 12 and 13 of the Deccan Agriculturists' Relief Act. Section 7 relates keeping of accounts and giving quarterly statements of accounts to the borrowers. It differs only in few respects from sections 64, 65 and 66 of the Deccan Agriculturists' Relief Act, viz. (1) writing of accounts in certain language only ; (2) the statement to be given is quarterly and without demand. Section 8 prescribes the penalty. Thus broadly the mover of the bill wants a wider application of the Deccan Agriculturists' Relief Act. This can be done by appropriate amendment or recasting of the Deccan Agriculturists' Relief Act, itself.

3. Experience however has shown that the money-lender has found several ways of avoiding the provisions of the Deccan Agriculturists' Relief Act and the task of unravelling the truth and administering justice under that Act has been rendered more difficult. At the same time the agriculturist has lost all personal credit. I am afraid this additional piece of legislation will lead to similar results. The provisions of sections 7 and 8 will not act as a deterrent. An unscrupulous money-lender will keep a separate set of bogus account-books and give statements of accounts therefrom compelling the needy borrower to accept them. In fact the mover has apprehended this and therefore put in the explanation at the end of section 7. In fact sections 7 and 8 do not meet the real need at all.

4. The provisions in sections 3 to 6 of the bill far from checking reckless borrowing are likely to induce it. The greater the number of statutory safeguards giving a sense of security from being deceived, the greater is the inducement to borrow without an eye to the consequence. The Deccan Agriculturists' Relief Act has in course of time led to the same result. I think that is but natural. Spread of literacy and of



ideas of sound healthy economic living only can ween the classes of people whom the mover of the bill has in view from reckless borrowing for marriages, *mohuturs*, obsequies and such other purposes.

5. The Deccan Agriculturists' Relief Act has entailed additional work on the Subordinate Judiciary. The extension of its provisions relating to money suits to the large class of people whose annual income is anything up to Rs. 2,000 and who may borrow up to Rs. 1,000 (See clause 5A) and to their dependents is likely to increase the burden on Judges and the quantum of work in the subordinate courts. That is to my mind a highly undesirable thing in the present days of retrenchment and economy. An overworked judiciary can hardly be expected to devote that amount of careful scrutiny to the investigation of each case, which the mover of the bill evidently desires. It has been made out that the Usurious Loans Act is not availed of by Judges in proper cases. Even if it is not, attention of the Sub-Judges and also the bar may be drawn to its provisions by a fresh circular (This was I think done about 3 years ago, when I was in the Poona District). The Usurious Loans Act gives ample discretion to courts to be used in proper cases. I see no reason why the compulsory provisions of sections 11, 12 and 13 of the Deccan Agriculturists' Relief Act which was enacted to meet a particular situation in which a particular class found itself and which, it is now becoming slowly evident, has in some parts outlived its utility, should be applied *in toto* to the large mass of people and their loan transactions which are meant to be covered by the definition in clause 5A and by section 3 of the bill.

6. The two objects which the mover has in view can I think be accomplished in other ways. In order to check unscrupulous money-lenders to take advantage of the borrower's ignorance and illiteracy I would suggest legislation on the following lines:—(1) Licensing and registration of money-lenders. (2) Requiring them to write their accounts in uniform books to be made and sold by Government—each page whereof shall be serially numbered and sealed by Government official—say the Sub-Registrar. (In a suit before me in Baramati Court an account book so sealed and paged by Sub-Registrar in Kolhapur State, was produced before me. If it is done in Kolhapur State I think this can be done in British India). (3) Such account books only shall have the benefit of section 34 of the Evidence Act and no other, in suits brought by professional money-lenders.

Then in order to decrease the burden on the defendant of proving that the transaction is substantially unfair and comes within section 3 of the Usurious Loans Act—a real difficulty which oftentimes hampers the Court—it may be laid down that in all cases where the rate of interest stipulated exceeds any particular limit (say 12 per cent.) or where the borrower is illiterate it may be presumed that the transaction is substantially unfair within the meaning of section 3 of the Usurious Loans Act, unless the contrary is proved.

7. Coming to the particular provisions of the bill, I am afraid some of the expressions used are not clear and not appropriately defined.

8. In the definition of "creditor" (clause 5) the phrase "in the regular course of the business" is ambiguous. It may mean a person whose regular business is that of advancing loans; it may also include a person who in the course of any other business he has with the other party advances a loan to him, such as for instance, a person who gives a loan to a servant in the course of his employment, repayable by service. The same expression is used in the definition of "trader" and there the expression evidently means a person whose regular business is to buy and sell goods and other property, i.e. who buys and sells goods for profit as a matter of business. The statement of objects and reasons and the provisions of chapter 3 show that the definition of "creditor" is meant to apply to a person whose regular business is that of advancing loans. I think the expression "money-lender" is therefore a better expression and should be defined in the bill and used in chapter 3 and elsewhere instead of the word "creditor" which word appears to have been used in the bill in some places in its ordinary meaning. See for instance proviso (II) in the explanation of section 7 (1) :—"Wherein the title to recover is *sub judice* between two or more persons claiming as creditors adversely to each other." The definition of the word "creditor" so as to include legal representatives, heirs and assignees of the person who advanced the loan gives rise to complications which might be avoided, e.g., proviso (i) to explanation to section 7 (1) has become necessary on that account—an explanation in so far as it refers to a minor is unintelligible since in law a minor is not regarded as a person against whom any statutory duties and obligations can be enforced and in so far as it refers to a widow appears to be unreasonable, if the widow carries on her husband's business of money-lending. The Act itself is to be styled, "The Bombay Money-Lenders' Act" and is intended to apply to professional money-lenders. It is therefore rather incongruous that the bill should make use of the word "creditor" and nowhere contain the word "money-lender"—a word which is more definite and better expressive of the objects of the contemplated legislation. I think therefore the definition of "creditor" should be omitted and the word "money-lender" should be defined and employed. I would suggest a definition of a "money-lender" as follows :—

Money-lender means every person other than a Bank, company, or co-operative society whose business is that of money lending or who by himself or by his agent advertises or announces himself or holds himself out as carrying on that business. (See Halsbury's Laws of England, Vol. XXI, 1912 edition, page 44, which gives the definition of "money-lender" in the English Act.) The expression "person" in this definition shall include a Hindu joint family firm as represented by its manager or managers. The word "money-lender" as used in section 7 shall include the legal representatives and successors of a money-lender in whom the right, title or interest in the business or in a particular loan has vested whether by inheritance, assignment or otherwise.

9. "Debtor", this expression again is used in two different senses in chapter II and in chapter III. In chapter II it is meant to apply

to a person from whom the "money-lender" is seeking to recover the loan. In chapter III, section 7, it is meant to indicate the person to whom the loan is given and yet we have a single definition of "debtor" which as it is worded would apply only to a person "who has borrowed" and his "dependants"—an expression not defined at all. The object of the provisions of chapter II is to benefit not merely the person who borrowed but also on his death his heirs and legal representatives liable to pay the debt. On the other hand section 7 imposes certain duties on the money-lender and section 8 sets out the penalty for non-compliance with the provisions of section 7. Obviously the money-lender cannot be expected to know or to find out who are the heirs or legal representatives of the borrower and to furnish such persons with a statement of account as required by clause (b) of section 7 (1). Yet the same expression "debtor" is employed in both places and it is defined in clause 5 (1) of section 2 as a person "whose..... Act." This definition and the use of the same expression indiscriminately in chapters II and III are likely to create great confusion and complications and the work of the court will be rendered very difficult. It is obvious that the borrower may come within the definition, but his legal representative may not. It would lead to absurd results if in a suit for recovery of the loan it has to be held that chapter II does not apply but chapter III does apply in so far as it requires furnishing of statements of accounts to the dead borrower. It has to be noted that in section 8 the expression is "in *any* suit" and not "in any suit coming under section 3." On the other hand suppose that the original borrower is a person who does not come within the definition in section 5A of "debtor". He dies. The person who is sued is a person whose annual income is less than Rs. 2,000. The principal of the original loan is less than Rs. 1,000. If then a suit is brought as the definition stands ("and who has borrowed a loan not exceeding Rs. 1,000) chapter II will not apply to such a suit unless the person sued is proved to have been a dependant, nor sections 7 and 8 apply to the transaction. Obviously that is a position hardly in consonance with the object of the bill as stated by the mover. The definition is thus ambiguous in these and many other respects, e.g. (1) what is the period of one year to be taken for determining the income which such year is to be taken? (2) Does a loan mean a single item of borrowing or may it mean the total of several items? and if so, as soon as the total exceeds Rs. 1,000 is the money-lender absolved from his duty as laid down in section 7? To circumvent this a money-lender can very easily purport to lend a sum exceeding Rs. 1,000 and to take it back as deposit and then lend from time to time small amounts as required by the borrower, i.e. open something like a cash credit account. (3) Who are to be regarded as dependants? What is the date for determining such a position of dependence? I think, therefore, the definition requires to be revised. I would suggest the use of the expression "borrower" in contradistinction to the word "money-lender" in section 7, so as to distinguish such a person from the "debtor" occurring in Chapter II, confining that expression to the person who is sought to be held liable for the debt of a "borrower".

And I would have the expressions 'debtor' and 'borrower' separately defined appropriately so as to leave no doubt as to who are the persons entitled to the privileges of the provisions in Chapter II and who are the persons towards whom the money-lender owes the duties and obligations laid down in section 7.

10. As regards the method of determining the class of persons to whose transactions of borrowing the provisions should apply, I do not approve of the method proposed in the definition in clause 5A. In the statement of objects and reasons the class of persons intended to be benefitted are referred to as 'the illiterate poor labouring classes', 'the agricultural and labouring classes'.

According to the proposed definition any person earning a salary of even Rs. 160 per mensem can come within the definition. The income of a man is not a guide to his intelligence and literacy. I think, therefore an attempt at definition should be made in the act for the determination of the classes of persons according to their occupations cf. Deccan Agriculturists' Relief Act. I would indicate the classes in general as household or shop servants, artisans and manual labourer. At any rate there must be some definiteness about the class of persons and the burden on courts of inquiring into the question whether a particular person comes within the class or not should be reduced to a minimum. It is also unfair to the money-lender, who according to section 7 has certain duties and obligations to perform to be made to ascertain whether his borrower's annual income is really less than Rs. 2,000 and hardly reasonable that the court should be required to go into that question and into the question of any representations made by the borrower which the money-lender may set up as a plea for escaping the penalty under section 8 for non-compliance with section 7.

11. Having determined thus the class of persons to whose loan transactions the provisions are to apply, I do not think it necessary to put any pecuniary limit of indebtedness of such person in the definition itself. The provisions of section 7 and section 8 should apply to the loan transactions of such persons irrespective of the amount of the borrowing. Section 3 puts a pecuniary limit on the suits to which the provisions in sections 4, 5 and 6 are to be applied. Therefore no pecuniary limit need be put in the definition of the class of persons to whom the provisions are to apply.

12. In section 4 I would substitute the expression 'borrower' in place of 'debtor' and say 'is a borrower or a legal representative of a borrower' and delete the words 'who is a debtor' occurring before the word 'resides'.

13. If the expression 'debtor' is to be employed throughout I would have it defined clearly so as to show that that expression is meant to apply to the original borrower and to his heirs and legal representatives liable for the debt of the original borrower. Simultaneously in section 7 I would add words requiring that the money-lender shall become liable to furnish the statement of accounts to the heir or legal representative only on the latter making a demand for the same. I would

add in the definition of 'debtor' that for the purposes of Chapter II dependants on a debtor shall come within the definition of debtor and would have the word 'dependant' defined cf. section 2 of the Workmens' Compensation Act.

14. Section 4 copies section 11 of the Deccan Agriculturists' Relief Act. But whereas in the Deccan Agriculturists' Relief Act we have in section 2 (3) a clear guide as to what should be deemed as the place of residence of the agriculturist—no such guide is provided in the present bill. I think such guidance should be given in the act itself. As it is section 4 is rather hard on the Plaintiff-creditor, when he has to sue several heirs of a deceased borrower. Moreover in the case of an agriculturist there is some fixity of residence, i.e. the place where he carries on his agriculture at least for a year. That is not so in the case of wage-earners who migrate more frequently. Such persons, such as heirs, or legal representatives may be found to be residing in different places and while one of them may benefit the others may be at a disadvantage. I think therefore, if section 4 must be kept, it should apply in the case of a borrower, and in order to facilitate a dependent, sued as legal representative residing at a distance, to attend the court, discretion may be given to the court to require the Plaintiff to pay Bhatta. Here again there is the possibility of a Plaintiff describing his defendant's occupation in such a manner as to avoid the provisions of section 4. That is the present experience under the Deccan Agriculturists' Relief Act. So, the object of the mover to secure the attendance of the defendant is not attained by simply enacting section 4 as it is worded."

No. 2634, dated the 31st October 1934.

From—G. H. Salwi, Esquire, District Judge, East Khandesh, Jalgaon

To—The Secretary to Government, Home Department, Bombay.

"With reference to letter No. 777 dated the 5th September 1934 and Circular No. 885 dated the 8th October 1934 from the Secretary to the Legislative Council of the Governor of Bombay, I have the honour to submit my views and opinion on the subject noted above as follows.

2. It is a fact that in spite of the attempts that are being made to save the needy people from the clutches of dishonest and wily creditors, we find several cases of harassment and victimisation of debtors by creditors. Though it is really very difficult to eradicate the evil altogether so long as the general public is not sufficiently educated and the majority of the rural population has not become literate, it is necessary to enact laws to guard the interests of the poor and needy. The Deccan Agriculturists' Relief Act and the Usurious Loan Act have been passed with the object of relieving certain

debtors. It is, however, a fact that the provisions of those acts do not cover several cases in which it is necessary to give relief to debtors. I have no doubt about it. It is therefore that I think that some enactment is necessary to regulate the money-lending business like that which has been proposed.

3. I have gone through all the provisions of the Bill and have also consulted the Bar Association of this District as well as the three local Subordinate Judges. Both the First Class Subordinate Judges are in favour of the Bill. The Joint Second Class Subordinate Judge and the Bar Association are of opinion that it is not necessary to have an act of Legislature as contemplated by the Bill. A copy of the opinion received from the Secretary of the Bar Association is attached hereto.

4. One of the reasons to oppose the Bill is that the work of the Courts would be increased if the Bill is passed into Law. I hold altogether a different view. If the Bill is passed into law, every creditor will have to keep accounts in a prescribed form and furnish the same periodically to the debtors. A debtor when he gets the statement of his accounts periodically will be in a position to know whether the creditor is committing any fraud and also to take proper steps against his creditor if necessary in time. He will also have the advantage of being reminded of the extent of his indebtedness and is expected to make some efforts to get out of it. Very few cases will come before Courts in which accounts for several years will have to be scrutinised. Specific provisions are proposed to penalise the non-compliance with the provision that requires the money-lender to supply statements of accounts. The creditors would naturally be vigilant in supplying the statements. I am personally of opinion that the work of the Courts will be lessened and will not be increased. I have already said above that in my opinion the provisions of the Deccan Agriculturists' Relief Act and the Usurious Loans Act do not cover several cases in which it is necessary to give relief to the debtors. It is no doubt true that the Bill casts a heavy duty on the creditors in so far as it requires them to furnish statements of accounts periodically. I do not, however, think that the Bill should be rejected on that ground only.

5. Coming to the provisions in the Bill I have to make the following suggestions :—

(i) If the proposed definition of the term 'debtor' is accepted, it will be very difficult to work out the provisions

of the Act. A creditor will, as a rule, contend that the income of his debtor exceeds Rs. 2,000 with a view to evade liability under the provisions of the Act. And, it will be very difficult for a creditor to find out what the annual income of his debtor is with a view to decide whether he is bound to provide the debtor with statements of accounts. Then, I think it is necessary to extend the protection sought to be given by the Act to those who borrow loans exceeding Rs. 1,000. And, in order to evade the provisions of the Act, the creditors would require needy persons to go in for loans of over Rs. 1,000 if the definition is accepted. I therefore think that some change is needed in the proposed definition of the term 'debtor'. I am of opinion that the term 'debtor' should be taken in its ordinary sense for the purposes of the Act and certain exceptions may be added to it with a view to exclude those who do not require any help of law against their creditors such as merchants and Companies.

(ii) The proviso to section 3 of the Bill also is likely to create much trouble. The creditors will wait till the debts swell up and go over Rs. 1,000 with a view to avoid the application of the Act to their cases.

(iii) It has been proposed by section 7 (b) that the creditor should supply statements of accounts every three months. This will entail a very heavy work on the creditors, no doubt. I think it in the interest of all concerned to require statement of accounts to be furnished every six months instead of every three months.

(iv) I think that a provision should be added imposing a special penalty besides the penalties provided under sections 8 (b) and (c) on a creditor who does not supply the statement of accounts under the act in spite of the debtor's demand within a particular time—say a week or so—from the date of the demand. I also think it necessary to introduce a provision requiring a debtor to challenge the statement of accounts within a reasonable time—say a fortnight or so—from the date of the receipt of the statement when the same is supplied to him on demand.

(v) Section 8 (A) makes it compulsory on the Court to frame and decide the issues whether the creditor has complied with the provisions of sections 7 (A) and (B). This is likely to increase the work of the Courts unnecessarily. The clause should be so worded as to require the Court to note in every case whether it is satisfied that the provisions

of the Act have been complied with before awarding the claim for interest and costs wholly.

(vi) No provision has been made requiring the creditors to pass receipts as soon as payments are made to them. I think it necessary to make it compulsory on every creditor to pass receipts for payments in a certain form as may be prescribed by the Local Government.

6. It is clear from what I have said above that I am of opinion that the Bill should be passed into Law with some changes and additions which I believe are needed in the interest of both the classes."

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Letter dated 21st September 1934.

From—The Secretary, East Khandesh Bar Association, Jalgaon ;

To—The District Judge, Jalgaon.

“ With reference to letter No. 357 of 1934 dated 13th September 1934 from the First Class Sub-Judge, Jalgaon, on the above subject, I have the honour to submit herewith the opinion of the Local Bar Association.

It is not necessary to have an Act of the Legislature as contemplated by the Bill. The provisions of the Bill are mainly drawn on the provisions of the Deccan Agriculturists' Relief Act and the Usurious Loans Act. Both these Acts can deal with such unfair dealings as are referred to in the statement of objects and reasons if they come up before a Court of Law. This Bill does not go any further. The Bill aims at improving both the money-lenders as well as the debtors but it casts a heavy duty on the former to keep accounts in forms prescribed by the Local Government and to render periodical accounts to the latter—a system which is not applicable even to such recognised institutions as Banks, Companies or Co-operative Societies. Though the Bill aims at the strict observance of these rules by the money-lenders, the debtors are left free to raise any sort of contentions notwithstanding that they do not raise any protest against such accounts when received from the creditors. The other provisions of the Bill including the various definitions will tend to delay the proceedings in Courts of law. For these among other reasons the Association submits that the legislation is not called for and will not serve the purpose for which it has been introduced. But on the contrary it will tend to offer a tool for the harassment of money-lenders.”



No. 1611, dated the 16th November 1934.

From—G. H. Guggali, Esq., I.C.S., District Judge, West Khandesh,  
Dhulia ;

To—The Secretary to the Legislative Council of the Governor of  
Bombay.

“ With reference to your letter No. 777 dated the 5th September 1934, I have the honour to offer my remarks as below :—

I consulted the Local Bar Associations. They are not in favour of the Bill. In their opinion, it is unnecessary ; it is likely to create unnecessary hardship to honest creditors ; and the evils of money-lending can be minimised by proper application of the provisions of the Usurious Loans Act. Two of the Sub-Judges are also of the same opinion ; but the other Sub-Judges are in favour of the Bill with some modifications.

There is no doubt that there is a good deal of evil from the present system of unchecked money-lending. The poor and the illiterate fall easy victims to the greedy money-lenders. Often an exorbitant rate of interest is charged. The accounts are not properly kept ; they are often manipulated. If therefore, by a suitable piece of Legislation, the money-lending business is properly controlled and if the courts are given wide powers to deal with such cases, it will be a distinct service to the society.

The main provisions of the Bill may be briefly summarised as below. A debtor is a person whose aggregate annual income does not exceed two thousand rupees and who has borrowed a loan not exceeding one thousand rupees (Section 2). In a suit against a debtor to recover the debt due from him, the court has to go into the history and merits of the case and to take an account from the commencement of the transactions between the parties—out of which the suit-transaction arose—by allowing a suitable rate of interest and by ignoring any adjustment or settlement of accounts. Sections 5 and 6. The creditor has to keep the accounts in a manner prescribed by the Government and has to furnish the debtor with a statement of accounts—every three months—in default of which he is liable to lose interest in whole or in part and also costs.

*Sections 7 and 8.*

The principles involved in these sections deserve to be accepted.

*Section 2.*

The definition of the term 'debtor' is not happy. The restriction of the loan to Rs. 1,000 is arbitrary. There is no need to put such a limit. A debtor may be defined as a person—whose aggregate income in one year does not exceed Rs. 1000—if he resides in towns like Bombay, Poona, Ahmedabad and Karachi and Rs. 500 if he resides at any other place and who has borrowed a loan.

In sub-section 7-v—instead of a 'a loan advanced to a whole-sale trader'—it may be read as 'a loan advanced to a trader'. Traders as a class are generally capable of taking care of themselves. There is no need to make a distinction between whole-sale traders and other traders.

*Sections 5 and 6.*

These provisions require that the court should go into the history and merits of the case and to take an account from the commencement of the transactions ignoring any settlement of accounts. It is argued that these provisions are redundant in view of the provisions of the Usurious Loans Act. Under section 3 of the Usurious Loans Act—if the court has reason to believe that the interest is excessive and the transaction was substantially unfair, it may reopen the transaction, take an account, reduce the rate of interest and give other adequate relief. These provisions are found to be not very effective in the actual working. The provisions are not mandatory. There is no obligation on the court to go into the history of the case. In the case of a promissory note—for instance—the consideration is presumed to have passed. Further there are the provisions of the Indian Evidence Act which preclude the admission of evidence other than the document itself to prove the real nature of the transaction. Often a transaction is fair and simple on paper. It is only when the court goes into the history of the case that the inequitable nature of the transaction is likely to be revealed. The Bill imposes an obligation on the court to go into the history of the case to ascertain whether there has been any fraud, undue influence etc. and with a view to take an account. In the case of ignorant and illiterate debtors who seem to be incapable of protecting their own interests—the remedy seems proper.

There are similar provisions in the Deccan Agriculturists' Relief Act. There is a good deal of criticism against that Act.

But on the whole I think it is necessary and serves a very useful purpose.

Considering the deep-rooted evil of unchecked money-lending, the principle underlying Sections 5 and 6 deserves to be accepted.

The next important provisions are contained in Sections 7 and 8 which require a creditor to keep regular accounts in the manner prescribed by the Government and to furnish statements of accounts to the debtor every three months. No doubt some hardship will be caused to the money-lenders. Some of the money-lenders may be driven out of the profession. But on the whole the effects will be beneficial. The furnishing of statements may be made six monthly or the creditor may be made to make entries in a book—to be supplied to the debtor—as transactions occur.”

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Letter No. 28-C-6, dated the 16th November 1934.

From—H. K. Chainani, Esquire, I.C.S., District Judge, Sholapur ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

“ With reference to your letter No. 777, dated the 5th September 1934, I have the honour to state, after consulting the Sub-Judges in this District and the Bar Association, Sholapur, that in my opinion, the above Bill goes too far and is likely to inflict serious hardship on *bona fide* and honest money-lenders. I am strongly opposed to Chapter II of the Bill, which requires the Courts to enquire into the history of every transaction. Even under the ordinary law, it is open to a defendant to allege failure of consideration and to show that the amount received by him is less than that mentioned in the document. This provision is, therefore, not necessary, and is not likely to do much good to the debtors. On the other hand, it will considerably increase the work in the Civil Courts and thus prolong litigation.

2. The definition of the words, ‘ Creditor ’ and ‘ Debtor ’, given in section 2, is also very unsatisfactory. In this country, very few people keep accounts, while several people do not earn income in cash but in kind. Consequently, it would be

very difficult for the Civil Courts to determine whether a person's income is or is not less than Rs. 2,000.

3. In my opinion, the existing malpractices will be considerably checked, if all professional money-lenders are required to keep regular accounts and to furnish extracts from those accounts to the debtors, when asked to do so. Power should also be given to the Courts to allow in money suits such rate of interest as they may consider reasonable. The Civil Courts exercise this power in the case of agriculturist debtors, under section 71 (a) of the Deccan Agriculturists' Relief Act. Similar power may now be given to them, for the benefit of non-agriculturist debtors.

4. I, therefore, suggest that Chapter II of the proposed Bill should be omitted, while Chapter III should be modified as mentioned above."

Letter No. 4105, dated the 19th/21st November 1934.

From—C. C. Hulkoti, Esquire, LL.B., District Judge, Satara ;

To—The Secretary to the Legislative Council of the Government of Bombay.

*Subject* :—Bill No. VII of 1934.

Bill to regulate the money lending business.

" With reference to Government Circular, Legal Department, No. 885, dated the 8th October 1934, calling for my opinion on the above subject, I have the honour to state as follows :—

I have gone through the provisions of the Bill and I consulted the Subordinate Judges and the Bar Associations in the District. All the Bar Associations are against the Bill. Amongst the Subordinate Judges except one, all are similarly against it.

Many provisions of the Bill, for instance, the compulsory examination of the debtor and the creditor, (2) the enquiry into the history of the transactions by the Court and (3) the particular method of taking accounts are already contained in the Deccan Agriculturists' Relief Act (*vide* sections 7, 12 and 13 of the Act).

It is undoubted that the shrewd Sawkars have managed somehow in several instances to evade these provisions of the Deccan Agriculturists' Relief Act, and the needy debtor, more often than not, meekly submits to the terms of the village Sawkar. It is also found by experience that in a Court of Law it is often difficult for the agriculturist debtor to prove the real nature and scope of the transactions.

The question is whether the position of the agriculturist debtor has improved as the result of the provisions already contained in the Deccan Agriculturists' Relief Act. Several public enquiries into the matter from time to time have revealed the fact that the position, on the whole, of the agriculturist debtor has not improved. So it is doubtful whether the provisions contained in the present Bill will in any way improve the position of the non-agriculturist debtors.

There is also the Usurious Loans Act (India Act X of 1918) on the Statute Book for several years. It also contains several provisions for reducing the high rate of interest ; (2) for re-opening the transactions ; taking accounts between the parties and (3) for investigating into the transaction in order to see whether it is substantially fair or unfair (see section 3 of the Act).

Some of the provisions of the present Bill will be unworkable and would in a large number of cases work hardship on petty creditors in the village ; for instance, the duty imposed on the creditor to maintain and furnish accounts periodically under section 7 of the Bill in question. In villages generally the creditors also are illiterate persons carrying on money-lending business on a small scale. In some families the money-lending business is conducted by females and minors. It is impossible for such class of people to maintain and furnish the accounts contemplated by the Bill.

The chief consideration is whether the stringent provisions of the Bill will not further undermine all the private credit and introduce further difficulties in the way of securing a loan by a poor debtor, in his hour of need.

The Bill, in the main, is intended to extend the provisions of the Deccan Agriculturists' Relief Act to persons who are not agriculturists. Speaking for myself the provisions of the Deccan Agriculturists' Relief Act, so far as the agriculturist debtors are concerned have not conduced much to the benefit of the rural agriculturist debtors. In my view, the provisions of the present Bill will not serve any useful purpose, regard being had to the already existing provisions in the Deccan Agriculturists' Relief Act and the Usurious Loans Act.

The definitions of the debtor and creditor in the Bill are not clearly and properly worded.

So I am against the Bill."

No. 2179, dated the 18th October 1934.

From—S. M. Kaikini, Esquire, LL.B., District Judge, Belgaum ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

“ With reference to Government letter No. 77, dated the 5th September 1934, and subsequent Circular No. 885, dated 8th October 1934, in the Legislative Department, on the above subject, I have the honour to offer the following remarks :—

In the Statement of Objects and Reasons it is stated that numerous cases of substantially unfair transactions do not come before Courts of Law... because the poor, helpless people are afraid of harassment and victimisation by their creditors. So, this Bill is said to be a necessary adjunct to the Usurious Loans Act. However, the Bill contains no clause which can give any relief to a debtor who does not come before a Court of Law. Not only this, but it contains no relief to a debtor if he were to come as a plaintiff before the Court.

As regards the clauses themselves the definition of ‘ Debtor ’ in 5A of clause 2 does not make it clear whether it would include a co-operative society or any partnership.

I do not think it proper that from the definition of ‘ Loan ’ a simple mortgage or for the matter of that any mortgage transaction should be omitted as is done by VII of sub-clause 7 of clause 2. So also a loan advanced by means of a cheque or hundi is excepted by sub-clause VI. There seems to be no proper object in doing so. Sawkars can easily evade the provisions of this Bill by advancing money by means of cheques or hundis.

There seems to be no valid reason why the creditor should file a suit in the place where the debtor resides. In some districts a similar provision in the Deccan Agriculturists’ Relief Act has given rise to a crop of fresh suits for setting aside decrees as obtained without jurisdiction when the debtor was sued in the place where the transaction took place. There is always the temptation for debtors to put off the evil day of paying their debts on such technical grounds. And in the villages there are pettifoggers and touts to mislead the ignorant villagers.

Besides such a rule was not open to much hardship or abuse in the case of *bona fide* agriculturists attached to their lands. In the case of non-agriculturists this rule is sure to be very much abused and that by the debtors themselves.

Clause (5) expects the Court to examine the defendant debtor almost in every case as a witness. Similar provision in

the Deccan Agriculturists' Relief Act has been in some parts of this Presidency interpreted strictly and the wretched man is dragged to the Court under a warrant of arrest. After this he does not gain much, but he loses his wages for the period that he is kept away from his work in his remote village. I personally should desire that much latitude in this matter should be left to the presiding Judge. Only where he suspects real fraud and the amount at stake is pretty large that he should compel the presence of the defendant debtor.

Clause (6) though refers to the rate of interest as 'hereinafter provided' no such provision for the rate is laid down. I would suggest that no fixed rate should be laid down, but it should be provided that the rate should be 'reasonable' thus giving proper discretion to the Courts to fix it having regard to the particular locality and period under consideration.

In the explanation to clause 7 Kanarese is omitted as one of the languages in which the account may be kept. Clearly this is an oversight.

I do not see any advantage in compelling the creditor to submit quarterly accounts to his debtor. Majority of the debtors would be illiterate; they would not understand how these accounts stand and if they come to them too often they would only throw them away. In such things the principle laid down in the adage 'Familiarity breeds contempt' cannot be ignored. I would suggest that such accounts be furnished once in a year, the period being fixed as regards different localities according to the time when the agriculturists get their harvest or the artizans get price for their wares. If it be thought that these should be six-monthly then the period may be fixed according to the kharif and rabbi crops. In any case quarterly accounts would be found to work too harshly on the creditors and would not have any effect on the debtors whom they are meant to benefit. The incidence of the cost for maintaining these and observing the provisions of this clause is sure to fall on the debtors themselves.

The first part of the proviso (ii) (2) to clause 7 seems to be redundant. Such accounts are as a matter of fact regularly kept in the course of business and so it is not correct to describe them as 'deemed to be regularly kept . . . for the purposes of section 34, Indian Evidence Act'. A simple rule in the form of the last four lines of that sub-clause would meet the provisions of section 65 (f) of the Indian Evidence Act."

No. 1993, dated the 23rd October 1934.

From—D. C. Joshi, Esquire, LL.B., District Judge, Bijapur ;

To—The Secretary to the Legislative Council of the Governor of Bombay, Bombay.

“ With reference to your letter No. 777 of 5th September 1934, forwarding a copy of the Bill to regulate the money-lending business, for my opinion, I have the honour to state that with all my sympathies to ameliorate the condition of ‘ debtors ’ as defined in the Bill I cannot support it as I do not think that any useful purpose will be served by such a measure. So long as there is no improvement in the economic condition of the debtors which only can wean them from their chronic habit of reckless borrowing and spending beyond their means, provisions such as these will only serve as a sign manual to unscrupulous money-lenders in that they will provide them with directions as it were as to what evidence they are to keep ready in case the matter is taken to a Civil Court. Courts also will be helpless when the only material in the case would be the manipulated accounts of the Sowcar. The Usurious Loans Act and the Deccan Agriculturists’ Relief Act are sufficient for all practical purposes to afford the necessary checks to give relief to such debtors. Experience shows that even these Acts which are so long in use have not yielded the results expected of them and I do not think that under the circumstances such a Bill would be of any material use to achieve the object which the framer of the bill has in view.

2. In case Government is inclined to agree to the measure, it may be restricted in its application to industrial centres where large number of labourers congregate and are victimised by such unscrupulous sowcars.”

No. 3438, dated the 15th October 1934.

From—K. M. Kumthekar, Esquire, LL.B., District Judge, Kanara ;

To—The Secretary to the Legislative Council of the Governor of Bombay, Bombay.

“ With reference to your letter No. 777, dated the 5th September 1934, read with your circular letter No. 885, dated the 8th October 1934, on the above subject, I have the honour to state that I consulted all the Subordinate Judges and their Bar Associations and also the District Bar Association and their opinions are as follows.



2. The First Class Subordinate Judge, Karwar. Has no remarks to offer.
- The Subordinate Judges of Kumta and Honawar. Are in favour of the Bill.
- The Subordinate Judge, Sirsi. Is not in favour of the Bill.
- The District Bar Association and the Bar Association of Sirsi. Are against the Bill.
- The Bar Association of Kumta. Is in favour of the Bill.
- The Bar Association of Honawar. Have given no opinion.

3. The Honorary Secretary of the Karwar District Bar Association observes that :

(A) ' Money-lending as a business by itself does not exist on such a large scale in this district as it does in other districts. Monied people are slower to lend ; borrowers are more eager to borrow. In such an atmosphere, the necessities of the borrower would take a less important place in the mind of the money-lenders if restrictions were imposed on the latter, . . . . '

(B) ' Specially in districts where all the provisions of the Deccan Agriculturists Relief Act are not applicable, this Bill would introduce almost the same, if not identical, difficulties in the way of creditors as the Deccan Agriculturists' Relief Act as at present does. At a time when the Deccan Agriculturists' Relief Act itself is about to be repealed (or at least when the general consensus of opinion is to get it repealed). this Bill would introduce many more clogs on the passing of money from the rich to the needy. '

4. I am of the same opinion which the Karwar Bar Association holds. So far as the Kanara District is concerned, I am of opinion that there is no such necessity that the Bill be passed into law.

5. I have, however, to make the following observations regarding the provisions of the Bill :—

(A) The present Bill in question has not made any distinction between agriculturists and non-agriculturists. In the case of the former class in most districts, the Deccan

Agriculturists' Relief Act is in force and it is not clear from the present Bill whether in the areas where the Deccan Agriculturists' Relief Act is in force and where borrower is an agriculturist, the operation of the intended legislation is excluded. It would be better to state in the present Bill whether it supersedes the Deccan Agriculturists' Relief Act wherever it is applicable.

(B) Provisions prescribing it as a general rule requiring the Courts to go into the history of every transaction are likely to increase considerably the work of the judiciary. Having regard to the existence of the Deccan Agriculturists' Relief Act which concerns agriculturists, who are mostly illiterate, such provisions enjoining the Courts to go into the history of every transaction seem to be unnecessary, for, in the definition of a borrower, under the present Bill, would be included also literate classes, who would be capable enough to bring to the notice of the Courts their rights and defence. It is enough to frame the provisions so as to give a *discretion* to the Courts as distinguished from an *obligation* to go into the history of every transaction.

(C) Definition of a loan in the new Bill does not include a transaction which is in substance a mortgage or a sale. I think in view of this a usurious money-lender can very well take shelter under any nominal mortgage so as to evade the provisions of the contemplated legislation.

(D) In the new Bill there do not seem to be any provisions to save the operation of section 92 of the Indian Evidence Act. Under that section, it would not be open to a party to dispute the contents of a writing, and in view of this it would not be open to the Courts also to go into the history of the transaction and find that the consideration of a pronote, for instance, is less than what is mentioned in it; unless there are some such provisions analogous to section 10 of the Deccan Agriculturists' Relief Act to save operation of section 92 of the Indian Evidence Act.

6. If, however, the Bill be passed into law and be made applicable also to this district, I would suggest that the word 'Kanarese' will have to be inserted in the Explanation to section 7 of the Bill between the words 'Marathi and Urdu' in line 7 of the Explanation."

No. 2203, dated the 12th November 1934.

From—N. R. Gundil, Esquire, LL.B., District Judge, Ratnagiri ;

To—The Secretary, Legislative Council, Bombay.

“ I have the honour to acknowledge receipt of your letter No. 777, dated the 5th September 1934, asking my opinion upon Bill No. VII of 1934 (a Bill to regulate money-lending business). In reply, I have the honour to offer the following remarks after a careful consideration of the scheme and details of the Bill in question. I propose to roughly divide my observations under the two heads just mentioned. Those on the first head will be more or less general, and those on the second will bear upon the different clauses of the Bill. I am afraid that they will, to a certain extent, overlap, but that cannot be avoided, having regard to the manner in which I propose to discuss the subject.

2. Money-lending is not by itself an evil. It serves a real economic purpose, as there will be always people who will want money and those who will have money enough to lend. Money-lending, therefore, cannot be entirely done away with, although there can be no two opinions that malpractices of professional money-lenders ought to be effectively checked. But any patch work legislation, or legislation of panic, will not achieve that object so long as poverty and unthrifty ways of life hold sway in this country. The difficulties which present themselves in dealing with the problem of indebtedness are enormous. The problem requires to be carefully studied, and equally carefully handled. So long as the temptation to reckless borrowing exists, the malpractices of the professional money-lenders are bound to thrive, and, speaking for myself, no good result will be achieved by stifling the money-lender, while the former still continues to exist. A great step in the direction of relieving rural indebtedness has been just taken by Government by their recent announcement to open Land Mortgage Banks in several important centres of this Presidency. These institutions ought to be helpful in relieving indebtedness, and I think that any consideration of the problem should be postponed till sufficient experience is gained of the success of the Land Mortgage Banks. Next, the conditions luridly depicted in the speeches of the several of the Honourable Members during the debate on the Bill on 18th August last are not in evidence in the mofussil generally. Extortionate money-lending might be

met with in large industrial towns, but the Bill as it stands is not designed to restrict its application to these areas alone. The rate of interest prevailing in the Mofussil is, at the highest, not more than 24 to 37 per cent., as far as my experience goes. But in every such case the provisions either of the Deccan Agriculturists' Relief Act or the Usurious Loans Act are being applied to give relief against the extortionate rate. That being so, in the rural areas at least the Bill will be unnecessary. And, as I shall point out, it will be altogether a measure of disproportionate harshness.

3. Taking up the scheme of the Bill and its purpose the honourable mover declared in the Statement of Objects and Reasons that he had designed it for the purpose of exercising a legal check upon unscrupulous money-lenders by providing an effective control upon the profession of money-lending, and also upon reckless borrowers whom he described as the agricultural and labouring classes. As far as the agricultural class is concerned, the Deccan Agriculturists' Relief Act applies to them, and the provisions of the present Bill are a superfluity. The Bill must, therefore, be discussed as affecting professional money-lenders and labouring classes. Neither of these expressions are defined in any of the clauses of the Bill, nor is its application restricted to them alone. On the contrary, the expressions 'creditor' and 'debtor' occurring in sub-clauses (5) and (5A) of clause 2 include within their scope every kind of lender and borrower. Indeed, it was pointed out during the debate on the Bill that it was designed to apply to all classes. The expression 'creditor' will include not only a professional money-lender, but also any person who would accommodate a neighbour or a friend by advancing money, provided that the borrower is a debtor with an annual income not exceeding Rs. 2,000, and the loan does not exceed Rs. 1,000. Substantially, therefore, the provisions of the Bill, if it ever passes into Law, can be availed of in almost every conceivable case of a loan or a friendly advance. The Bill is much wider in its scope than the honourable mover intended. At this place, I must also point out that there is a class of rural money-lenders who lend small sums of money in villages. They belong to the same class as the borrowers, in point of occupation, intelligence, and literacy. Indeed, in some cases, experience has shown that the position is reversed. The petty money-lender is himself an illiterate rustic, while the borrower stands on a much higher level. It would be unfair to apply the provisions of the Bill to money-lenders of

that kind. The definition of the expression 'debtor', too, is, in my opinion, ill-conceived. It will certainly include various classes of persons including those who are in receipt of monthly salary or wage, and who from the limit of the annual income will, almost in every case, possess the advantages of education. In the case of such people reckless borrowing must be presumably set down to an unthrifty life, and consequent open-eyed indebtedness. I do not see why such people should be given a disproportionate protection of law for deliberate indebtedness. In short, the provisions of the Bill go far beyond its professed limits.

4. The next point is whether the provisions of the Bill will exercise a salutary check upon the avarice of the much maligned money-lender, and give adequate protection to the borrower. There is more than one way for the former to evade the provisions of the Bill. Chapter II, clause 3, of the Bill restricts the Civil Courts' jurisdiction to suits whose subject-matter does not exceed Rs. 1,000. The creditor will surely contrive to evade this provision by taking a bond, or a promissory note, or some such instrument, for a face consideration exceeding that amount. The rate of interest might be such that the subject-matter of the suit may exceed Rs. 1,000, even if the principal secured is less than that sum. In either of these cases the Civil Court will be powerless to give any relief. Next, a mortgage or a sale transaction is saved out of the provisions of the Bill by virtue of sub-clause (7) (vii) of clause 2 of the Bill. Experience of the working of the Deccan Agriculturists' Relief Act has sufficed to show that a money-lender almost always takes either a mortgage or a sale of his debtor's immovable property, and in the latter case, with a written or parole agreement of restoration of the property on repayment of the debt. That practice will be encouraged on a very large scale by the exception provided in the Bill. Further, sub-clause (7) (vi) of clause 2 excepts an advance on Negotiable Instrument, other than a promissory note. That would mean that an advance made on a Hundi or by means of a Cheque will not be a loan within the meaning of that clause. There are various other ways in which the provisions of the Bill can be avoided by the creditor. And I have contented myself pointing out only those that are most striking.

5. Speaking of the debtor, I am of opinion that the Bill will scarcely place him in any better position in the way of relieving him of his indebtedness. So long as the need of

borrowing exists he will have to agree to such terms as the money-lender might dictate with a view to evade the provisions of the Bill. In trying to make the creditor honest the Bill affords ample opportunities for the debtor to be dishonest. It makes no provision against dishonest or vexatious defences on the part of the debtor. It is entirely one sided, without affording any kind of protection to the money-lender or creditor against this state of things. Chapter II of the Bill substantially reproduces the provisions of the Deccan Agriculturists' Relief Act and must be, therefore, considered in the light of experience gained from the working of the latter. Both are pieces of class legislation, giving undue privileges to one class over another, and are therefore invidious. Majority of judicial opinion has insistently demanded repeal of the Deccan Agriculturists' Relief Act with a suitable substitution which may give real benefit to an indebted agriculturist. That is because the credit of the agriculturist has shrunk so low that he can scarcely get a loan except on terms which are in some cases very unfair, and from which the Act was designed to save him. The present Bill will have the same effect upon the non-agricultural classes of borrowers. And I am afraid the result will be that their position will be rendered worse than it is now.

6. The most drastic portion of the Bill is Chapter III dealing with the keeping of accounts and furnishing copies thereof to the debtor at the end of every quarter. In my opinion, an insistence on this practice will be harsh. The professional money-lenders maintain regular accounts as a rule; but, as I have pointed out, the provisions of the Bill apply to persons who cannot be regarded as professional money-lenders in the true sense of that expression. I have said before that there is a class of rural money-lenders who are no better than their debtors in point of intelligence and literacy. In their case keeping of regular accounts will be an impossible condition, unless they are compelled to maintain a scribe at a cost which will be disproportionate with the small profits which they may derive by their equally small lendings. Unfortunately, this part of the Bill makes no distinction whatsoever between the different classes of money-lenders. Further, it places the debtor's honesty at a great premium, and does not make any provision against his evasion of his soweat furnishing him with a quarterly statement of accounts. He will always pin down his creditor to the statutory obligation of furnishing him with the statements of accounts on the

penalty of being mulcted of interest and costs, while he will have perfect liberty to evade being served with the quarterly statement.

7. *Clause 2, sub-clauses (5) and (5A).*—Passing on to the different clauses of the Bill I have sufficiently commented upon the expressions ‘creditor’ and ‘debtor’ defined in sub clauses (5) and (5A) of clause 2 of the Bill. I must, however, add that the definition of the expression ‘debtor’ creates another artificial class of privileged persons in addition to an agriculturist, and in almost every case an enquiry of his status will have to be made by the Court. The clause does not prescribe the point of time which may be determinative of the status of a ‘debtor’, that is to say, whether his income at the date of the transaction or at the date of the suit should be the deciding factor. The clause contains no inclusive definition, such as the one found in section 2 of the Deccan Agriculturists’ Relief Act. An ascertainment of annual income in the case of a person receiving a fixed salary or wage may be easy enough. But enormous difficulties will have to be met in ascertaining the status of a borrower when the sources of his income are not apparent. None of the provisions of the Bill casts any obligation upon the borrower debtor to maintain any account of his annual income. This state of things will considerably add to the work of the Civil Courts, and in my opinion it will be unfair to expect the Judges to do this kind of extra work, with their retrenched prospects and their equally retrenched establishments.

*Clause 2, sub-clause (7), and clause 3, sub-clause (1).*—There appears to be a conflict between the two clauses. In sub-clause (7) ‘loan’ is defined as an advance in cash or kind at interest. Sub-clause (1) of clause 3, however, deals with suits not only for the recovery of loans falling within the definition of sub-clause (7) of clause 2 but also for the recovery of money on written or unwritten engagements to pay not provided for elsewhere in the Bill. These latter do not properly fall within the definition of ‘loan’ contained in sub-clause (7) of clause 2. Such written or unwritten engagements are perhaps intended to be covered by the latter portion of sub-clause (7) of clause 2, that is to say the transactions ‘which the Court finds to be in substance a loan’. This will create a very great difficulty in the way of the Court to decide what is a loan in the absence of any guidance in the enactment itself.

*Exceptions (v), (vi) and (vii) to sub-clause (7) of clause 2.*— I have already commented upon exceptions (vi) and (vii) to sub-clause (7) in course of my general remarks. It only remains to notice exception (v), that is to say, a loan advanced to a wholesale trader. This kind of loan is saved out of the provisions of the Bill. The expression 'Trader' is defined in sub-clause (9) of clause 2 and includes 'wholesale merchant'. There is nothing in the Bill to indicate who is to be regarded as a wholesale trader. The expression 'wholesale' is not at all defined. It is a relative expression. For instance, a village grocer may be regarded as typical of both. He is a retail trader in relation to the village customers, and may be regarded as a wholesale buyer from the town merchant. But his purchases from the latter can scarcely be called wholesale purchases in the common acceptance of the term, having regard to the quantities which he buys at one time, and in such a case the town merchant will regard him as a retail purchaser.

*Clause 4.*—There is also a conflict between clause 3, sub-clause (1) and clause 4 of the Bill. The former deals with different kinds of suits and is substantially a reproduction of clause (w) of section 3 of the Deccan Agriculturists' Relief Act. Clause 4, however, deals with the suits for the recovery of *money loans* alone, and does not indicate the *forum* in the case of suits based on other than money-loans and contemplated by clause 3, sub-clause (1).

8. Chapter II of the Bill does not contain any clause empowering a Civil Court to grant instalments to a debtor, and thus omits one of the main reliefs which a debtor would seek in cases falling under the Bill. There is, no doubt, the general provisions of the Civil Procedure Code empowering a Court to grant instalments for the payment of the judgment, but that power is limited since it can be only exercised at the time of passing the decree. Once a decree is passed, the Court has no power to grant instalments unless with the consent of the judgment-creditor. This difficulty is got over by section 20 of the Deccan Agriculturists' Relief Act which enables a Court to grant instalments even in execution. Some such provision is, therefore, necessary in the present Bill.

9. I have sufficiently commented upon Chapter III of the Bill regarding the maintenance of accounts by the creditor and furnishing copies thereof at stated intervals to the debtor. Here I shall only add that explanation (i) to sub-clause (1) (b) of clause 7 dealing with the different languages in which statements of accounts shall be furnished, omits several others



which are in use in the Presidency, and more especially Kanarese."

No. 9007, dated the 2nd November 1934.

From—A. S. Akhund, Esquire, B.A., LL.B., District Judge, Hyderabad ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

" With reference to your letter No. 777, dated the 5th September 1934, I have the honour to state that the evil connected with the problem of indebtedness is a very real one and it has been demonstrably recognized by various Provincial Governments in the shape of legislation on similar lines. Only recently, the Punjab Regulation of Accounts Act has been brought on the statute book.

The object of the proposed bill is to protect the industrial as well as the agricultural workers. It incorporates provisions of Dekkhan Agriculturists' Relief Act (sections 4, 5 and 6 of the bill) while sections 7 and 8 which are the central feature of the bill are for the benefit of agriculturists as well.

The co-operative movement has not replaced the private agency of money-lenders in the mofussil and much leeway has got to be made to make the movement beneficial.

It cannot be disputed that indebtedness degrades borrowers—both industrial and agricultural workers—beyond all measure. There is no incentive for him to work as he can hardly visualize the prospect of being free from debt. He therefore becomes a desperate citizen with no place under the sun. He develops a too pessimistic and frenzied outlook on life. Being sinned against he does not scruple to sin against society. In my humble opinion, the criminal propensities of these people have, to a great extent, a psychological reaction on account of grinding poverty which is not wholly of their seeking.

In this Province, there is a peculiar aspect of civil litigation which cannot but be deprecated in too scathing terms. There are money-lenders in the rural areas who forge thumb-impressions of *living persons* on false accounts and this daring of theirs is only equalled by their rapacity in filing suits on the said accounts in the *life-time* of their victims. What they could be doing in the case of their less favoured victims, i.e., the dead can be easily imagined. If the extent of this evil and its

demoralizing effects on the administration were recognized, it would be none too early to come to the help of the illiterate people, a good deal of whose sufferings are imposed upon them by the money-lender who is like the "old man of the sea". I have dealt with this question, in my various reports and lastly in my Administration Report from Larkana and it is reproduced in the Report on the Administration of Criminal and Civil Justice in the Province of Sind, 1932, at page 2.

Such being the case, it is, I think, necessary to bring forward a bill as early as possible to control money lending, but any Legislation to be passed must provide an *effective solution* of the evil sought to be eradicated.

In the first place, I venture to suggest that the bill should be applied to professional money-lenders only who alone are in the habit of exploiting the needy borrower. The bill should not include people who out of good motives would like to accommodate a friend or a neighbour to save him from having recourse to professional money-lenders.

The agriculturists are protected under the Deccan Agriculturists' Relief Act; therefore the provisions of the bill (sections 4, 5 and 6) would appear to be for the benefit of industrial workers in urban areas who would not seem to need that protection on account of the Usurious Loans Act, provided it is applied as it should be.

As regards the provisions of sections 6 and 7, I think they would be necessary with certain modifications. This scheme will to a great extent eliminate the chance of making false accounts on forged thumb-impressions. No money-lender will be foolhardy to do that as he would be easily caught since he will have to send that account to his victim.

I would suggest that instead of the provisions in section 7 (b) it might be enacted that every money-lender should provide every borrower with a pass book (duplicate) in which the statement of account, and payment should be written periodically at the time of each entry. Failure to comply with these provisions should be penalized more stringently than suggested by the mover of the bill for by the penal provisions as suggested in section 8 (b) and (c) one reverts to the same position as before the proposed bill.

If therefore the bill is to be effective, the non-compliance with the provisions of section 7 (a) and (b) should be penalized by the dismissal of a suit. That would have a far reaching effect than the penalty suggested, for the money-lender would

cover that loss i.e., the amount disallowed for interest in various ways. This would rather give him a loophole to evade the Act.

In the alternative, I would suggest that it would be profitable to enquire as to how the Punjab Regulation of Accounts Act is working in the Punjab."

No. 3913, dated the 11th October 1934.

From—M. A. Shaikh, Esquire, M.A., LL.B., District Judge, Sukkur ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

" With reference to your No. 777, dated the 5th September 1934, I have the honour to state that I am of opinion that—

1. The Bill should be made applicable in the first instance to big commercial and industrial centres like Bombay and Ahmedabad.

2. Definition of debtor should be restricted to workmen in mills, factories, docks, ships, fisheries and Railway employees and illiterate women.

3. The Bill should not be made applicable to small towns in the mofussil unless the definition of " Debtor " is restricted as said above.

4. The opinion of the Sukkur Bar Association is that the Bill is uncalled for and unjustifiable in the present state of money-lending business."

No. 193, dated the 29th October 1934.

From—A. A. Chitre, Esq., B.A., LL.B. (Advocate), J.P., Chief Judge, Court of Small Causes, Bombay ;

To—The Secretary to the Government of Bombay, Home Department.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business).

" As required by the Circular of the Acting Secretary to the Legislative Council of the Governor of Bombay No. 885, dated the 8th of October, I have the honour to forward to you my opinion on the abovementioned bill a copy whereof was sent to me by the Acting Secretary to the Legislative Council with his letter No. 777, dated the 5th September.

Sections 7 and 8 are the only provisions of the Bill with the principles whereof I am generally in accord, as the rest of the provisions in my opinion are either unworkable or redundant in view of the provisions of the Usurious Loans Act and some of them would in practice cause great hardship directly to the money-lender and indirectly to the borrower by making the money-lender more chary of advancing monies except on worse and more stringent terms than those on which he does so at present, especially when it is realized that in a country like India, the majority of such transactions are with more or less illiterate borrowers who are too ready to pass any writing or evidence against themselves in any form the creditor desires them to do, as against which they have nothing but their own uncorroborated testimony to rely upon.

I state below some of the objections to which in my opinion the detailed provisions of the Bill are open :—

*Section 2 (5A).*—The last portion of this section is redundant in that such dependants would be covered by the prior definition.

*Section 2 (7) (iv).*—This would induce money-lending firms to form themselves into private limited companies to escape the provisions of the Bill.

*Section 2 (7) (v).*—This provision would exclude all transactions on the security of cheques and hundis in the form of Bills of Exchange and money-lenders would resort to such transactions to avoid coming under the provisions of the Bill.

*Section 4.*—This provision would be unworkable. As framed the section will not apply in cases where more Defendants than one are sued as debtors and if it is made applicable to such cases then in the case of defendants residing in different places there will be no Court having jurisdiction to try the creditor's suit. Besides it would work great hardship in cases where the debtor having entered into the loan transactions in one place chooses to go away from that place. In such cases it often happens that the creditor is unable to trace even the debtor's whereabouts for considerable period, and thus before the creditor is able to find out the place of residence of the debtor, the claim might get timebarred.

*Section 5.*—Even at present whenever the claim of the money-lender is disputed both the parties are examined by the Court to find out the actual nature of the transactions between the parties under the Usurious Loans Act. When the debtor admits the claim of the money-lender it is the practice to apprise the debtor of the significance of the admission, but if after an

understanding of the matter he does not choose to place the true facts before the Court it is hardly possible to find out such facts at variance with the admission.

*Section 6.*—The principles which have been followed in framing this section are the same which are followed as far as possible even at present when taking accounts under the Usurious Loans Act.

*Section 7—Explanation (i).*—The provision about furnishing the debtor every three months with an account in any of the seven languages named which the debtor may choose to select would be unworkable and would necessitate the employment by money-lenders of servants, conversant with all the seven languages which would be quite impracticable or appointment of interpreters and translators the cost of which would be prohibitive except perhaps in the case of a few very large and well-organized money-lending establishments.

*Section 7 (2).*—The first portion of this clause is redundant as the accounts referred to would be covered over otherwise by section 34 of the Indian Evidence Act. The second portion which authorizes the use of certified copies in place of the creditor's original books would not in practice serve any useful purpose at all, but on the contrary would lead to abuses, as must be evident to anybody with any experience of the trial of money-lenders' suits."

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Letter No. 342, dated the 15th November 1934.

From—D. T. Chaubal, Esquire, Judge, Small Causes Court, Ahmedabad ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

“With reference to your letter No. 777, dated the 5th September 1934, regarding Bill No. VII of 1934 to regulate the money-lending business, I have the honour to state that while in agreement generally as to the necessity of some legal check against victimisation of poor people by unscrupulous money-lenders I am of the opinion that the provisions of the Bill require substantial modification by restriction of their scope and simplification of procedure before they can be successfully worked in practice,

2. The main difficulty would be with regard to the definition of the word 'debtor'. As it stands it comprises all classes of debtors including traders and agriculturists. In respect of the former when applying the test of yearly income laid down in section 2 (5A) unnecessary contest, vague evidence and delay may well be imagined from the experience of the Deccan Agriculturists' Relief Act. In my view traders who incur debts for business purposes with attendant risks should find no place in the new Act which may more advantageously be confined to labourers, artisans and employees whose income could be more easily determined and who need real protection. Agriculturists may similarly be eliminated because a special law exists for them. Further question is about the classes of suits falling under the Act. Section 3 to section 6 appear to include suits other than those for recovery of loans which seems rather inconsistent with the preamble and objects and reasons of the Bill. In this connection the provisions indicated in section 2 (2) and (3) of the Usurious Loans Act X of 1918 defining 'loans' and 'suits' may be preferably adopted.

3. Then as to procedure, the requirement in section 4 of the proposed Act that every suit must be brought in the Court within whose jurisdiction the Defendant resides seems too hard and unfair on creditors, some of whom may not even be literate or sufficiently wealthy themselves. That will be particularly so when debtors take recourse to fleeing. In this respect facility given to the debtors might be to their own prejudice by discouragement of all loans. The event of debtor shifting to Native States seems not to have been considered. Then again the procedure laid down in section 5 which is apparently engrafted from the Deccan Agriculturists' Relief Act will tend, as the experience under that Acts shows, to delays and is likely to throw unnecessary burden of work on Courts in many cases. The same applies to the requirement of preliminary issues in section 8 (a) and of opening up all transactions between the parties. Instead of all this perhaps a simpler and shorter step would be to call upon the Courts to investigate the history of the particular transaction before them with the express view that the debt is not unduly swollen by interest being frequently capitalised and charged at unreasonably heavy rates."

Letter No. 7717, dated the 19th October 1934.

From—E. V. Castellino, Esq., M.A., LL.B., Officiating Judge,  
Court of Small Causes, Karachi ;

To—The Acting Secretary to the Legislative Council of the  
Governor of Bombay.

*Subject*—Bill No. VII of 1934 (A Bill to regulate  
the money-lending business).

“With reference to your letter No. 777, dated 5th September 1934, and the Circular No. 885, dated 8th October 1934, on the above subject, I have the honour to submit my opinion as under.

I welcome the Bill. In no Court in the whole of the Province of Sind are there as many suits filed by money-lenders in the course of the year as in the Court of Small Causes, Karachi, and I have been anxiously awaiting some form of legislation to give substantial protection and relief to debtors. The proposed Bill which is modelled, I find, on the Deccan Agriculturists' Relief Act XVII of 1879 and which reproduces some of its sections almost verbatim however requires certain amendments which I venture to suggest below :—

1. As there is the possibility of a shrewd money-lender endorsing a promissory note received from a debtor in favour of a third person in order to defeat the provisions of the Act, I would add the word ‘endorsement’ after the word ‘assignment’ in the second last line of sub-section (5) of section 2.

2. I would make it clear in sub-section (5A) of section 2 that the status of the debtor at the time of the loan and not at the time the suit is brought or comes for hearing is to be considered by inserting the words ‘at the time of the loan’ after the word ‘year’ in the second line of the sub-section. A debtor may earn Rs. 2,000 a year at the time of the loan but at the time the suit is brought or comes up for hearing the debtor may be drawing Rs. 2,050 and thus be excluded from the benefit of the Act unless the point is made clear as suggested by me. I notice that the income of the debtor is fixed at a maximum of Rs. 2,000. No apparent reason is assigned for this limitation. There have been cases of some debtors appearing in my Court whose income was more than Rs. 170 per mensem. I would venture to suggest that the benefit of the Act be extended to those whose yearly income does not exceed Rs. 4,000. Then

again no reason is given for limiting the extent of the loan to Rs. 1,000. The jurisdiction of this Court is Rs. 2,000 and I would venture to suggest that the figure of Rs. 1,000 be raised to Rs. 2,000.

3. I have nothing to say to the definitions of 'Interest' and 'Loan' in sub-section 6 and 7 of section 2 as they are with very slight modification the definitions given in section 2, sub-section 1 of the Usurious Loans Act X of 1918 but I would add the following proviso at the end of sub-section 7 of section 2 :—

'Notwithstanding anything contained in section 92 of the Indian Evidence Act oral evidence shall be admissible to prove that the transaction before the Court was in substance one of loan.'

4. Section 3 of the proposed Act resembles clause (w) of section 3 of the Deccan Agriculturists' Relief Act but I would suggest the insertion of the word 'due' after the word 'loans' in the first line of section 3 and would alter the word 'one' to 'two' in the last but one line of the section.

5. Section 4 of the proposed Act corresponds to section 11 of the Deccan Agriculturists' Relief Act. I would delete the words 'for recovery of money loans' and insert instead the words 'of the description mentioned in section 3'.

6. It will be noticed that the last words of section 6 of the proposed Act are 'at the rate allowed by the Court as herein-after provided'. I do not find any such provision hereafter. I would therefore suggest the following as section 6A :—

'In taking an account under section 6 in any suit under this Act where interest is chargeable such interest shall be awarded at the following rates :—

(a) the rate, if any, agreed upon between the parties, or the persons (if any) through whom they claim, unless such rate is deemed by the Court unreasonable ; or

(b) if such rate is deemed by the Court unreasonable or if no rate was agreed upon, such rate as the Court may deem reasonable not exceeding 18 per cent. per annum where the loan is unsecured and 12 per cent. where the loan is secured'. Compare section 71A of the Deccan Agriculturists' Relief Act.

I notice that the Central Provinces Government has recently passed an Act limiting the rate of interest as proposed by me.



7. I find there is no provision in the proposed Act to compel the creditor to pass a receipt for a payment made to him or to a person on his behalf. I would therefore suggest provision being made as follows :—

‘ 7A. The creditor or any person on his behalf to whom payment in liquidation of the debt is made by the debtor or any person on his behalf shall at the time of such payment tender to the person making the payment whether he demands the same or not a written receipt for the amount of such payment but this shall not preclude the debtor from proving the payment in any other way.’

As the failure on the part of the creditor to pass a receipt has to be penalised I would suggest amendments in section 8 of the proposed Act by adding the words ‘ and section 7A ’ in the last line of clause (a) of section 8 and substitute the words ‘ clause (a) of sub-section 1 of section 7 and section 7A ’ for the words ‘ clause 7 (1) (a) ’ in the second line of clause (b) of section 8 of the proposed Act. I would make no alteration in the explanation to the section. I may mention that section 7A proposed by me is on the lines of section 64 of the Deccan Agriculturists’ Relief Act.”

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No. X dated the 17th November 1934.

From—V. M. Ferrers, Esquire, I.C.S., Judicial Commissioner of Sind ;

To—The Secretary to Government, Legal Department, Bombay.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business).

“ With reference to your letter No. 777, dated 5th September 1934, on the subject noted above, I have the honour to state that the Bill No. VII of 1934 finds little favour in Sind.

Of those whom I have consulted, some damn the proposal with faint praise, and some in plain terms.

The senior Judge of this Court and myself are in the second category.

Bills to abolish usury have since the beginning of history occupied the attention of all the legislatures of every civilized community.

All attempts have ended in total failure.

In our own country the Deccan Agriculturists' Relief Act is the outstanding example.

The theoretical reasons why the thing cannot be done have been stated by many writers at some length, and by Bantham with particular cogency.

His arguments have never yet been refuted ; nor is it likely that they ever will.

If any practical proof is required, the experiment has been tried in many places and at many times : and the result has always been the same.

The present Bill is another of many well-meant attempts to achieve the impossible.

It is unnecessary to reiterate reasons which can be found in many elementary primers : it is enough to say, that in my opinion the proposal now under consideration would merely make bad worse."

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Letter No. 6229 dated the 22nd November 1934.

From—G. Davis, Esquire, I.C.S., Remembrancer of Legal Affairs ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business).

" With reference to your letter No. 777, dated the 5th September 1934 in connection with the above subject, I have the honour to state as follows :—

1. This is a big and very complicated problem and a mere compliance with the provisions of this Bill will throw an immense amount of work upon money-lenders and the courts. One need not be particularly sorry for the money-lenders but the Bill seems to suffer from that very defect which the mover finds in the Acts already on the Statute Book and which is one of his arguments in favour of his Bill, namely, that the Deccan Agriculturists' Relief Act and the Usurious Loans Act affect only cases brought to court : so apparently does this new Bill.

2. I can see no penalty provided for failure to keep accounts in the prescribed form. Nor is it clear how this Bill will restrain borrowers from borrowing. It will not be beyond the ingenuity of the money-lender to discover means of evading

the provisions of the Act. I suspect this Bill is another of Mr. Syed Munawar's importations. I think myself it would be desirable to start to grapple with this problem in a more modest manner, and in my own opinion a Bill for the registration of money-lenders and a provision that no court should take cognizance of a suit for the recovery of a debt by a money-lender unless the money-lender was a registered money-lender and kept his account in a prescribed form would be a simple and more effective beginning. I think myself the appointment of a small committee of officials and non-officials to consider this and any other measure which has the same purpose and to make proposals for legislation, if they come to the conclusion that such is desirable, would be of greater benefit to the public than the passing of this Bill by the Legislative Council."

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Letter dated the 18th October 1934.

From—Sir J. B. Kanga, Advocate General, Bombay ;

To—The Acting Secretary to the Legislative Council.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business).

"I have the honour to inform you that I was a member of the Committee appointed by the Bombay Bar Association to report on the above Bill.

I agree with the views expressed in the Report of the Association a copy whereof is forwarded herewith."

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(*Report of the Bombay Bar Association, dated the 20th September 1934.*)

"The Association approves of the principles underlying the Bill that debtors must be rescued from the clutches of money-lenders and that Courts should not be a party to unconscionable bargains between them. But the Association cannot support the Bill as drafted. It appears to the Association to be a hasty and ill-conceived piece of legislation.

If any amendment is required in the law as it stands the proper method of dealing with it is to amend and alter the Usurious Loans Act.

Without wishing to criticise the Bill under consideration in detail the Association wishes to point out that section 4 of the Bill is clearly *ultra vires* of the Local Legislative Council as it seeks to deprive the High Court of jurisdiction vested in it by Clause XII of the Letters Patent. It is needless to say that this can only be done by an Act of the Indian Legislature."

Letter No. 2397 dated the 14th November 1934.

From—G. Louis Walker, Esquire, Solicitor to Government ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay,

“ Referring to your letter No. 777 dated the 5th of September with which you sent me a print of the Bill No. VII of 1934 and requested me to communicate to you my views I have the honour to state as follows :—

2. It appears to me that the Bill is limited in its application and is open to all the objections set out in the speech made by Rao Bahadur G. V. Pradhan on the first reading of the Bill.

3. In my opinion the object of the Bill will be better attained if a provision is made for the registration of money-lenders.”

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Letter No. 2203 dated the 11th September 1934.

From—P. B. Shingne, Esquire, B.A., LL.B., Government Pleader, High Court ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

*Subject*—A Bill to regulate the money-lending business.

“ With reference to your letter No. 777, dated the 5th September 1934, on the above subject, I have the honour to forward herewith my opinion on the provisions of the bill, noted above.”

*(Opinion on the provisions of the bill to regulate the Money-Lending Business by Mr. P. B. Shingne, Government Pleader, High Court, Bombay, dated the 11th September 1934.)*

“ The object in view is praiseworthy. The provisions meant to achieve the object are in some particulars of a drastic kind, e.g. those in Clause (7) of the Bill. Some of the creditors may not be able to keep pace with them.

2. There are ways in which the creditors can in spite of the provisions in the Bill defeat the object of the Bill. They can lend and at the time of lending cut down the money-payment or take a note or bond for a larger sum. These are the usual devices in force and even educated persons submit to these devices in case of need.

3. Barring the provisions in clauses (7) and (8), there is the Deccan Agriculturists' Relief Act, which applies in the case of Agriculturists. There is also the Usurious Loans Act. It is not known to me if there is a large body of debtors from classes (other than those protected by those Acts), who require to be protected.

4. There is no provision in the Bill of the nature of Section 10A of the Deccan Agriculturists' Relief Act.

5. It is said in the Statement of Objects and Reasons, that the Bill, if passed into law, will act as a check on reckless borrowers. I do not know how this object is proposed to be achieved."

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Letter No. A.G.R. 107, dated the 16th November 1934.

From—H. B. Clayton, Esquire, C.I.E., I.C.S., Commissioner,  
Southern Division ;

To—The Secretary to Legislative Council of the Governor of  
Bombay.

*Subject*—Bill to regulate the money-lending  
business.

"With reference to your letter, No. 777, dated 5th September 1934, I have the honour to forward herewith the reports of the Collectors in the Southern Division and to state that as far as I have had time to consider the matter I am disposed to agree with the views expressed by the Collector of Dharwar."

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Letter No. L.A.W. 463, dated the 6th November 1934.

From—R. S. Hiremath, Esquire., L.Ag., Collector of Belgaum ;

To—The Secretary to the Legislative Council of the Governor of  
Bombay.

*Subject*—Bill to regulate money-lending business.

"With reference to your No. 777, dated the 5th September 1934, on the subject mentioned above, I have the honour to observe as under :—

It has been made clear in the Statement of Objects and Reasons appended to the Bill, that the purpose of the Bill

is to exercise a legal check upon unscrupulous money-lenders as also upon reckless borrowers, who habitually indulge in the delight of borrowing. The Bill is directed against professional money-lenders known as 'Sawkars' who advance loans and recover interest at exorbitant rates. The spirit underlying the Bill is commendable, but I am doubtful about its practicability and whether it will serve the purpose for which it has been designed.

From the definitions of 'Creditor', 'Debtor' and 'Loan' in Chapter I, it is apparent that the Bill seeks to exercise a check upon *regular* money-lending business carried on by *individuals* to the extent of Rs. 1,000. In rural areas where the Bill would thus be appropriately applicable, money-lending is not so regular and yet the money-lenders are oppressive enough and probably more in number than the so-called regular money-lenders. Again, relief, if any, is admissible to either party—the debtor or the creditor—only when the transactions entered into by them, are brought for inquiry before a 'Court'.

In many cases, loans are advanced on the security of ornaments at exceptionally high rates of interest and if the interest is not paid regularly, it is added to the principal, and the mortgaged ornament which is worth considerably higher than the loan advanced is ultimately gulped against the principal and the accumulated interest. Again, there is a class of creditors who have their own ways of extorting their dues, without recourse to a Court of Law. In such cases, which are not infrequent, the object of the Bill is completely defeated. In fact, it has been admitted by the mover of the Bill himself that there are numerous instances of substantially unfair transactions which do not reach Courts of Law for various reasons.

Chapter III of the Bill prescribes the mode of maintaining and furnishing of accounts by the creditor. This provision is calculated to prevent the manipulation of fraudulent accounts by the creditor, and to give the debtor an idea as to his exact liabilities. Most of the money-lenders as also the borrowers in rural areas, are illiterate and the enforcement of complying with this provision would operate harshly upon the former and be of no material use to the latter. Dishonest creditors, purporting to evade their responsibility in this connection, would be shrewd enough to execute from their debtors bonds for a sum greater than Rs. 1,000 even though the loan actually advanced is less than the amount. Also, creditors, acting in good faith, would charge a higher rate of interest to

compensate the extra labour involved in maintaining and furnishing of accounts in the prescribed manner, in respect of any loan, however small. It would thus be rendering the debtors more helpless and throwing them at the mercy of their creditors than hitherto, if the Bill passed into Law.

The proposed Bill is not, therefore, a welcome measure. In fact, no piece of legislation, like the one under reference, can successfully solve the problem of rural indebtedness. What is required is the starting of more co-operative and mortgage banking institutions. Further, the most important point is mass education which should be undertaken with a view to enable the villager to realise his exact financial position. He must be taught to live within his means, improve his agriculture, work hard and be sober. If this is realised, there will be far less occasions for him to fall a prey to the malpractices of the 'Sawkar'."

No. L.A.W. 81, dated the 23rd October 1934.

From—M. D. Bhat, Esq., I.C.S., Collector of Bijapur ;

To—The Commissioner, Southern Division, Belgaum.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business).

"With reference to your memorandum, No. A.G.R. 107, dated the 18th September 1934, on the subject mentioned above, I have the honour to state that I do not see how the proposed Bill will help to check unscrupulousness on the part of money-lenders or recklessness on the part of borrowers, to any great extent. There is already the Usurious Loans Act in force which gives Courts power to reopen transactions and reduce interest if it is found to be unconscionable. Instances of manipulation of accounts with a view to evade the provisions of the Usurious Loans Act are not known to be so numerous as stated by Mr. Munawar in his statement of objects and reasons. There does not, therefore, appear to be any necessity to give Courts the powers proposed in Chapter II on the lines of the powers given to them under Sections 3, 12 and 13 of the Deccan Agriculturists' Relief Act.

2. Sections 7 and 8 appear to be harsh and unfair to money-lenders. It is not understood how the maintenance of accounts and supplying statements periodically in the prescribed forms

to borrowers will serve to make debtors less dependent upon creditors and to check the alleged harassment and victimization on their part. The statements to be supplied by creditors will be of little use to borrowers who are literate, methodical and prudent as they already know how they stand in regard to their debts while these statements will be unintelligible and of no avail to borrowers who are illiterate, unsystematic and imprudent. Thus the possession of these statements by borrowers will hardly serve to check recklessness on their part.

3. If the Bill is passed into law, small money-lenders will have to give up their business and poor persons will find it difficult to obtain loans whether in towns or villages when they are sorely needed. Unscrupulous creditors will on the other hand try to find out ways and means for circumventing the law and continue to defraud borrowers as before.

4. On the whole I am of opinion that the Bill as proposed is not feasible. Perhaps a simpler Bill giving protection to persons earning their livelihood by manual labour and whose annual income does not exceed Rs. 300 would be more useful if money-lenders are required to give receipts to borrowers whenever payments are made or to enter payments in pass-books issued to them on the lines of the provisions of Sections 64 and 66 of the Deccan Agriculturists' Relief Act."

Letter No. M.S.C. 364, dated 4th November 1934.

From—L. N. Brown, Esq., I.C.S., Collector of Dharwar;

To—The Commissioner, Southern Division, Belgaum.

*Subject*—Bill to regulate the money-lending business.

" With reference to your memorandum, No. A.G.R. 107, dated September 18th 1934, I have the honour to state that I am opposed to the proposals of the Bill. It is a fallacy to suppose that borrowers are benefitted by legislation of this sort. Money-lenders would still lend money, but would demand higher interest; the credit of agriculturists would be restricted, and their operations greatly hampered.

2. It is also by no means certain that money-lenders deserve the bad reputation which Syed Munawar attributes to them. In times of scarcity, money-lenders often advance grain or



money to their neighbours either without interest or at low rates of interest. They are a very necessary factor in Indian rural life, and attempts to regulate them out of existence are not only futile but mischievous."

Letter No. 5611, dated the 9th November 1934.

From—M. J. Desai, Esq., I.C.S., Collector of Kanara ;

To—The Commissioner, Southern Division.

*Subject*—A Bill to regulate the money-lending business.

"With reference to your No. A. G. R. 107, dated 18th September 1934, I have the honour to state that the Bill No. VII of 1934, is open to objection on the general ground of restricting the credit of the ryots. It has been urged, and with a certain degree of force, that the Deccan Agriculturists' Relief Act has been responsible for narrowing down the ryots' field for borrowing and that the transactions which would ordinarily be simple mortgages, have now become virtual sales, as the Sawkar does not want to give a loan without full security. The general effect of the present Bill will also be a greater reluctance on the part of Sawkars to give loans, and as in the case of the Deccan Agriculturists' Relief Act, the Sawkar being the more intelligent party will try to circumvent the provisions of sections 5 and 6 of the Bill by having a virtual sale of the ryots' lands while giving a loan. The ryot being needy will submit to this alternative and unscrupulous money-lenders will be able to take up the lands for very small amounts. Personally I am opposed to any interference between the relations of the Sawkar and the ryot, unless we can supply cheap credit through other agencies. The co-operative societies have not been an unmixed blessing. The rigour with which the recovery work is undertaken has made the co-operative societies unpopular as the ryot was usually able to play off the Sawkar in a Civil Court for a number of years. The village still prefers the Sawkar, even with his high rate of interest, as the Sawkar can be put off from time to time and also certain relief obtained by a little tact. There are not enough facilities for credit, not to say of cheap credit, for the

agriculturists in this district and I would oppose any measure which tends to narrow down further the field of credit facilities for the ryot.

Apart from the above, the Bill contains certain clauses, e.g., submission of three monthly accounts, which cannot be observed by petty money-lenders. Accounts in this district and in most of the Karnatak districts are kept in Kanarese but that language is not recognised by Explanation I of section 7. Clause 4 regarding jurisdiction is vague. The debtor may take a loan in Dharwar and then come and stay in Karwar. In such a case no proceedings could be instituted at Dharwar. And it is equally doubtful whether he could be sued at Karwar, as he is not a debtor, within Karwar limits. The best thing is to amend the clause and say 'within the local limits of whose jurisdiction such defendant who is a debtor resided when he took the loan.' The definition of 'debtor' in clause 5-A is also much too wide. Instead of including 'all persons dependant on the debtor' in the definition, it is better to limit it to 'the legal representatives and successors in interest whether by inheritance, assignment of or otherwise of the person who took the loan.'

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Letter No. M.S.C.S.R. 21, dated the 5th November 1934.

From—S. Aminuddin, Esq., I.C.S., Collector of Kolaba ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

*Subject*—A Bill to regulate the money-lending business.

“ With reference to your letter, No. 777 of 5th September 1934, I have the honour to offer my remarks on the above bill as under.

There is no doubt that the bill will go some way to help the agriculturist debtors but how far it would be of any material help to the debtors can only be judged after some years of its operation. The creditors owing to many restrictions put upon them for instance furnishing each debtor every three months with a legible statement of account signed by the creditor would hesitate to advance money to the debtors with the result that poor agriculturists and labourers will be handicapped in getting money in times of need and difficulty.

I would suggest compulsory registration of money-lenders alongside with this legislation.

Provision may be made in the bill to the effect that the promissory notes or the accounts of those who are either illiterate or can sign their names only should compulsorily be attested by two witnesses who can read as well as write. This will check to some extent the tendency of some dishonest creditors to take promissory notes or to write accounts for sums in excess of the loans actually made.

The proposed Act would exercise a legal check upon unscrupulous money-lenders such as Marwadis and Pathans."

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Letter No. L.A.W.S.R. 207, dated the 30th October 1934.

From—Sahebzada Sardar Muhammad Khan, Collector of Ratnagiri,

To—The Secretary to the Legislative Council of the Governor of Bombay.

*Subject*—Bill to regulate the money-lending business.

“ Referring to your No. 777, dated 5th ultimo, I have the honour to state that it happens many a time that the defendant is purposely kept back by the creditor from attending the Court on the day fixed for the hearing of the suit on some ground or other to get the *ex parte* decree passed in his favour. The facts of the case would not all come on the record unless the defendant is present. To secure this object, it is necessary to compel the defendant to be present before the Court. It is, therefore, suggested that the words ‘ may compel the defendant to attend the Court, if he be absent and ’ after the words ‘ the Courts ’ occurring in line third in section 5 of the Bill may be added. There should also at the same time be provided some penal clause for non-attendance of the defendant.

2. The proposed Bill will go a long way in mitigating the evil caused by usurious money-lenders. It is a long felt necessity. I, therefore, recommend that the Bill may be passed into law.”

Letter No. M.S.C. 649, dated the 19th November 1934.

From—J. H. Garrett, Esq., C.S.I., I.C.S., Acting Commissioner,  
Northern Division ;

To—The Secretary to the Legislative Council of the Governor of  
Bombay.

*Subject*—A Bill to regulate the money-lending  
business.

*Reference*—Your letter, No. 777, dated 5th  
September 1934.

“ I have the honour to state that I have no desire to see this Bill passed in its present form. I have grave doubts as to its practicability.

2. I attach hereto the reports of the Collectors of Kaira, Broach and Panch Mahals and Thana in the matter. Reports from the Collectors of Ahmedabad and Surat have not yet been received.”

Letter No. M.S.C. 247, dated the 22nd October 1934.

From—M. S. Jayakar, Esq., M.A., Collector of Kaira ;

To—The Secretary to the Legislative Council of the Governor of  
Bombay.

*Subject*—A Bill to regulate the money-lending  
business.

“ With reference to your letter, No. 777, dated 5th September 1934, I have the honour to state that the bill is designed to control the profession of deceitful money-lending which has admittedly assumed a menacing aspect. It appears to have been closely modelled on the lines of the Deccan Agriculturists' Relief Act. It applies only to low sums of money borrowed by the poorer classes of the population and it would be a boon to those classes of people who borrow money from unscrupulous and relentless Shahukars.”

Letter No. M.S.C.; dated the 16th October 1934.

From—M. J. Dikshit, Esq., Collector of Broach and Panch Mahals ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

*Subject*—Bill No. VII of 1934 to regulate the money-lending business.

*Reference.*—Your No. 777, dated 5th September 1934.

“ I have the honour to state that the provisions of the draft Bill are adequate. Section 4 of the Bill provides that every suit for recovery of money loans shall be instituted in the court within the local limits of whose jurisdiction the debtor-defendant resides and not elsewhere. This would make the position of the money-lenders difficult as they would have to first find out the residence of debtors if they have run away in order to evade payments. Under the existing law in the Civil Procedure Code, the suits are to be filed in the courts exercising jurisdiction over a place where the cause of action has arisen. It is, therefore, suggested that section 4 may be so worded so as to give option to the creditors to file a suit either in the court having jurisdiction over the place where the cause of action has arisen or where the defendant resides.”

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Letter No. M.S.C. 385, dated the 5th October 1934.

From—Khan Bahadur Shaikh Yakub Vazir Muhammad, M.B.E., C.S., Collector of Thana ;

To—The Commissioner, Northern Division.

*Subject*—Bill to regulate money-lending business.

“ With reference to the letter, No. 777, dated 5th September 1934, from the Secretary to the Legislative Council of the Governor of Bombay, inviting views on the abovenoted Bill, I have the honour to state that I generally agree with the provisions of the Bill, and consider that it would to a certain extent control the profession of money-lending, which has admittedly assumed a menacing aspect in the Presidency. I would, however, suggest that some provision may be made in the Bill for the registration of money-lenders or Sawkars, termed in the Bill as “ creditors.” A creditor is defined in the Bill as a person who in the *regular course of business* advances a loan. There may be a number of money-lenders including

Pathan money-lenders, continuing malpractices in money-lending business who have a loop-hole to escape as having no regular course of business though actually the money-lending business is carried out so as to defeat the object of the Bill.”

### Non-official opinions.

No. 1285/34, dated the 2nd September 1934.

From—Diwan Bahadur Ambashanker Uttamram Malji, Pleader,  
Broach ;

To—The Secretary to the Legislative Council of the Governor  
of Bombay.

“ With reference to Bill No. VII of 1934 for regulating the money-lending business, I have the honour to offer the following criticism for favour of taking such action as may be found necessary :—

(1) It should be made clear whether this Bill if passed will affect the Deccan Agriculturists' Relief Act. Probably the idea is to protect non-agriculturists, thinking that the agriculturists are already protected by the Deccan Agriculturists' Relief Act.

(2) If the above is the idea it would be better to incorporate in the Deccan Agriculturists' Relief Act provisions similar to those in Chapter III of the Bill, as the necessity of these provisions in the case of agriculturists would be greater.

(3) The definition of ' Debtor ' [section 2, clause 5 (a) ] is very confusing and it is not understood why he should be a person with a liability not exceeding Rs. 1,000 with an annual income of Rs. 2,000. Generally with an income of Rs. 2,000 the debtor's credit to the extent of thrice as much is very safe and the liability should therefore be Rs. 6,000 instead of Rs. 1,000.

(4) It is not clear whether the aforesaid liability of Rs. 1,000 is intended to be of the particular creditor or is to be understood as the debtor's total liability.

(5) It is not easy to understand how the creditor is to know the income of his debtor. At least the creditor if he went to some court other than the one showed in the section, the creditor must allege that the debtor's income exceeds Rs. 2,000.

(6) The Bill extends to mortgage transactions as well and it is not understood how mortgage suits relating to the sale of immovable property could be instituted where the debtor resided. Probably section 4 requires a small addition on the lines of the last paragraph in section 11 of the Deccan Agriculturists' Relief Act."

*(Resolution of the Panchayat of Bhiria district Nawabshah, Sind.)*

The Panchayat of Bhiria (district Nawabshah, Sind) at its meeting dated 10th August 1934 has passed the following resolution :—

This Panchayat strongly protests against the introduction of the bill in connection with the money-lending business by Mr. Syed Munawar, M.L.C., a Muslim Member of the Bombay Legislative Council on the grounds—

that in the province of Sind, the money-lending business in towns and villages is mostly conducted by Hindu Banias who are generally not conversant with any of the languages specified in the article 1 (b) of the Bill and the submission of the quarterly statements of balance sheets to each borrower especially by money-lenders in the villages on the due dates, is a hardship imposed on them which will ultimately result in their gradually closing down this business and thus depriving them of their ancestral means of livelihood. Consequently the general business of such localities will proportionately be affected if the agriculturists and the other poorer classes of people who are from time to time dependent on the money-lenders are made to suffer on this account.

This Panchayat considers that there is no necessity of this Bill being passed by the Legislative Council, as under the existing acts, the courts have already full powers to grant any reasonable rate of interest in case of any suit against the money-lenders.

In case this act is presented and is finally passed in the Legislative Council, this Panchayat strongly protests against its extension to the province of Sind and accordingly requests the Governor in Council to be pleased to withhold its application to this province.

Resolved that a copy of the above resolution be sent to the Government of Bombay, Legislative Department, the Commissioner-in-Sind and the Collector of Nawabshah.

The following objections from Mr. Mukhi Chellaram Phuleband of Nawabshah are submitted against the Bill introduced by Mr. Syed Munawar, M.L.C., relating to money-lenders :—

1. That there is no necessity of such an Act when there is already power invested in the Courts to order inspection of books or to reject or allow any items in the accounts.

2. That this will curtail the right of free lending and borrowing.

3. That this act will produce disastrous effects on the agriculturist. An agriculturist now-a-days takes loan from a merchant and which loan account, by process of striking balance within the period of 3 years generally extends to about 8 to 10 years allowing him to retain the amount all this time. Zamindars can hardly cope with the requisite money borrowing demands of the local farmers. A zamindar has not enough money to supply the necessities to preserve life of his farmers. Pecuniary position of zamindars is hopeless. Though there are co-operative banks who extend loans to farmers, yet it is proved beyond doubt that they have failed to render any adequate help to satisfy the needs of the poor farmers. It is the merchant who is in position to do money lending business and if obstacles are put in his way he will feel shy and positively refuse to do business.

4. At present there are better investments and bania is pouring his money in purchasing buildings and selling them or earn by rent etc. Money lending to the farmer is already becoming unpopular on account of the following reasons :—

(1) That money lent to an agriculturist is locked up for long periods.

(2) That such loans are very often time-barred.

(3) The recovery through the Court is difficult.

(4) The existence of Encumbered Estates and like institutions makes it impossible to recover the whole amounts.

(5) If the agriculturists are not helped by the merchant with money the former will turn criminals in the condition of their desperateness.

(6) That on account of this act, the merchant class, which extends loans will be exposed to frivolous demands of the debtor and make the recovery more impossible.

(7) The people are now intelligent and knowing and acquainted with accounts etc. The debtor is no less vigilant



and knows his rights very well and therefore this Act would be unnecessary and superfluous.

(8) The efforts have been put very recently that such Acts like Deccan Agriculturists' Act, Encumbered Estates' Act should be amended to minimize the severity of their principles against the creditors. But if severities are on the contrary augmented, the money-lending to the farmers will greatly suffer.

(9) There are large tracts of Government lands created by the Barrage system. It is the substantial help of the merchant which enables the poor farmers to purchase these lands.

(10) After the opening of the Co-operative Society banks, the merchant class has refrained from extending loans to the farmers and if further restraints are added in the shape of above Bill, they will stop extending loans to the farmers any more.

5. For the reasons above mentioned, the act is unnecessary.

(a) Before the Act is passed, it is advisable to form a sub-committee consisting of the majority of the people of the same business and of the agriculturists, who shall be the sufferers by this Act, to enquire and report the prevailing conditions of money lending business. By so doing the public will have the opportunity to frame their just opinion and the Government also will come to know the public voice regarding the Bill. The results will be very bad if this Act is passed. We therefore both the creditors and debtors shall be very thankful to the Government if they see that this Bill is not ratified in any case.

(b) But in case the act is approved of, the period of 3 months should be extended to 12 months to avoid unnecessary costs of maintaining clerks etc. to keep accounts. Further the Act should be passed on special condition that Encumbered Estates and Deccan Acts are repealed and that after the special officer determines the balance in any account, the same may be recovered immediately by a process without going to a Court of law.

(c) The accounts may still be maintained in Hindu Sindhi letters.

[Similar objections have been received from the Panchayat Bucheri, Taluka Nawabshah, District Nawabshah (Sind).]

No. Personal/35308, dated the 14th September 1934.

From—A. G. Gray, Esq., Manager, the Bank of India, Ltd., Bombay;

To—The Acting Secretary, Legislative Council, Poona.

Re : Bill No. VII of 1934—Money-Lending.

In answer to your letter No. 777 of 1934 dated the 5th instant, I beg to state that as the Bank of India Ltd., does not appear to be concerned with the proposed Bill, the view expressed below is my personal opinion.

My experience of money-lending business within the scope of the Bill is derived chiefly from efforts I have made to relieve my servants and other similar (non-agricultural) people from the clutches of Sawkars.

I consider—

- (1) that a Sawkar who takes a promissory note for a sum in excess of the loan should be penalised in some manner ;
- (2) that the rate of interest should be limited or restricted ; nevertheless the maximum rate permissible should be substantial.
- (3) that loans granted by Sawkars should be classified :—
  - (a) Loans against adequate tangible security.
  - (b) Loans ' secured ' by promissory notes by 2 or more persons, but 2 *brothers* should be regarded as one person only for this purpose.
  - (c) Loans ' secured ' by promissory notes by one person, i.e. the borrower only.
- (4) that there should be a scale of maximum interest for each class of loan.

It must be borne in mind that Sawkars are very careful living people and they are not fabulously rich—they have numerous bad debts.

The Court making enquiries, *vide* page 4, section 5 may be directed to pay particular attention to the efforts or to the absence of any effort made by the borrower to pay interest and/or to repay the loan by instalments.

No. 74-A.B.I. dated the 20th September 1934.

From—The Secretary, Karachi Chamber of Commerce;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

A Bill to regulate the money-lending business.

I am directed to acknowledge, with thanks, receipt of your letter No. 777, dated 5th September 1934, and its accompaniment, on the above subject, and to inform you that generally speaking the Committee consider that legislation of this nature is highly desirable.

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Letter dated the 19th September 1934.

From—The President, Shree Dharma Shikshan and Nirashrit Sahayak Mandal, Bombay;

To—The Secretary to Government, Legislative Council.

With reference to your letter No. 777, dated 5th September 1934, I have the honour to inform you that the Mandal entirely agree with the spirit underlying this Bill which is in the interest of the poor people. The money-lenders are unscrupulous and catch the opportunity of the pitiable condition of the masses as it tempts them to borrow the money through their Agents. It is noticed with regret that majority of the industrial working class is always in debt, generally due to very low and inadequate earnings and to a small extent due to bad habits. There is no necessity to look into the *bona fides* but to use remedy to prevent further indebtedness and thereby to allow these poor people to pass their lives in happiness to some extent. The money-lending business has nearly occupied the whole of mill areas. The most dangerous amongst those are the Pathans. These Pathans charge a very high rate of interest not less than annas four in the rupee per month. They pay the amount after deducting the interest. The procedure of this business is known to all. They lend the amount, but take a promissory note of double the amount. These Pathans never approach the Court, but use threats and all sorts of efforts of harassing to recover the money. These men are always seen wandering in the localities of workers, and on the

pay day at the gates of Mills. To tell in short when once a man falls a victim to their prey, he is tyrannised in such a way that his ability and vigour are deprived away and the debt becomes the main obstacle to his efficiency.

In order to check this business I would like to suggest that there should be a Registrar and the person who wants to transact such business must register his name. The strong action of course is necessary to those who do private business besides the certain rate of interest will have also to be fixed, say from 2 to 6 per cent. or otherwise. The Pathans and Marwaris should not be allowed to assemble at any gates of the factories. Every possible restrictions should be placed on Pathans who are most dangerous as they recover the money by might and not by law.

The time at my disposal being insufficient I have not gone in details but I wholeheartedly support the Bill and congratulate the Honourable Member Mr. Syed Munawar for his attempt to introduce the same. I strongly hope the Government will also support it and get it passed.

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Letter, dated the 29th September 1934.

From—The Representatives of the Christian Churches, Karachi;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

We, the representatives of the Christian Churches of Karachi, have read with great pleasure the text of Bill No. VII of 1934 which is intended to regulate the Money-Lending Business, and most earnestly trust that it will soon be placed on the statute book.

We, who are daily living in contact with men of all classes and creeds, have almost unrivalled opportunities of observing life, and are only too well aware of the strangle-hold which many money-lenders have upon countless helpless individuals. The money-lender has generally education and a knowledge of the law coupled with marvellous astuteness and an elastic conscience to aid him, whereas the debtor labours under many disadvantages. This Bill appears to us to be very urgently needed and we accord it our wholehearted support. We should like to see even more attempted by legislation and trust that this will be regarded as a step to more exhaustive legislation on the subject.

We desire to congratulate the author of the Bill, and assure him that he has the fullest co-operation of all who are really conversant with the evils which at present exist as a result of our failure to grapple earlier with the problem.

No. 2593/340, dated the 8th October 1934.

From—The Secretary, Chamber of Commerce, Bombay ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

I am directed to acknowledge receipt of your letter No. 777 of the 5th ultimo enclosing a copy of Bill No. VII of 1934 (a Bill to regulate the money-lending business) and asking for the views of the Chamber on its provisions.

2. In replying to a reference arising out of the recommendation of the Royal Commission on Labour in India that besetting of industrial establishments for the recovery of debts should be made a criminal and cognizable offence, the Committee in 1932 stated that they did not consider that they had sufficient information to justify, at that stage, the enactment of legislation for making habitual usury a criminal offence. The Committee recommended that the Government of India should undertake a thorough investigation of all the information on this subject which was contained in various reports and then proceed to legislate with a view to the registration of money-lenders and the regularisation and control of the granting and taking of loans and the rates of interest charged. It has now been decided that it shall be left to the Provinces to bring in their own measures to deal with the question of money-lending, and by unanimously passing the first reading of the present private Bill the Legislative Council has approved of its principle.

3. My Committee have examined the Bill in consultation with the Finance and Labour Sub-Committees of the Chamber. They have also been favoured with a copy of Mr. A. G. Gray's letter of 14th ultimo to your address and they are of the opinion that the suggestions contained therein merit examination. My Committee also suggest for the consideration of Government the desirability of licensing professional money-lenders with a view to controlling their activities. Finally my Committee consider that this is too important a matter to be dealt with in a private Bill and that it is for Government to introduce the best possible measure after full examination of the whole problem by their experts.

No. 2009/159, dated the 9th October 1934.

From—The Secretary, Millowners' Association, Bombay ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

“ I am directed to acknowledge the receipt of your letter No. 777, dated 5th ultimo enclosing a copy of the Bill introduced on the 18th August in the Bombay Legislative Council by Mr. Syed Munawar, the object of which is ‘to regulate the business carried on by persons as money-lenders.’ My Committee do not propose to discuss in detail the provisions of the Bill as circulated, as they are of opinion that the subject with which it deals is of sufficiently great importance to warrant its being dealt with in an official Bill after all the implications of the legislation proposed have been thoroughly discussed from all points of view. My Committee understand that a number of Provincial Governments have introduced various forms of debt legislation but a great deal of this legislation has proved inadequate or ineffective as a means of remedying the evils which the legislation was intended to remove. This being the case my Committee feel that the greatest care should be taken to ensure that any debt legislation introduced in Bombay should avoid the defects of similar legislation in other Provinces.

I am, however, to make it clear that my Committee are emphatically in favour of reasonable measures being taken to prevent the unjust harassment of the ‘poor debtor’ by the usurious money-lender. They feel that what is required is that greater facilities should be given to the ‘poor debtor’ to obtain redress in obvious cases of fraud or excessive interest, and are inclined to the view that habitual usury should be made a criminal offence and that certain classes of money-lenders should be licensed.”

Letter, dated the 14th October 1934.

From—The President, The *Alina* Village Uplift Association, *Alina* (District Kaira) ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

“ Many thanks for your letter of the 18th August, together with the enclosure. It was very kind of you to send me a

copy of Bill No. VII of 1934 by the Honourable Syed Munavar.

I am submitting my opinion on it which is as follows :—

1. I accept the Bill in its principle, but I am opposed to some of its details, and my opposition is based on the fear that the Bill if passed into law will fail in actual operation, and the shrewd money-lenders will evade it, as they evade the Usurious Loans Act of 1918. The Act will provide that the money-lenders shall keep regular accounts in prescribed forms. Will the Government appoint supervisors to see that all creditors keep regular accounts in prescribed forms and that all debtors receive them at the interval of every three months? I hope this the Government is not going to do. Then how will the Government assure that the provisions of the Act are scrupulously observed. Hence even this Act, will apply only to such cases as are referred to a court of law. Generally the Sawcars take the law in their own hands and a majority of cases never go before a court of law.

2. Again the rates of interest charged by the Sawcars especially the Kabulees 'vary from 24 to 300 per cent.' and very cruel and violent methods are employed to extract such high rates. Can this bill provide only a particular rate of interest which in no case should be beyond 20 per cent. Will it not be possible and desirable to declare the money-lending business of Kabulees as illegal in this Presidency.

3. The money-lenders often get mortgaged, agricultural land as security for the loan, and in a few years the illiterate farmer passes on a sale-deed, as he is unable to pay the debt which sometimes becomes higher than ten times the original. Thus the farmers can barely sustain themselves on the small fragments of land, while the Banias being unable to manage the vast lots are compelled to allow some of them, remain barren for ever. These conditions exist in most of the villages of Gujarat. This in the long run tells upon the agricultural wealth of the province. Will not therefore it be within the scope of this bill to provide that 'All agricultural land shall hereafter cease to be a mortgagable property.'

The bill as it stands will give some relief to the borrowing community which is now on the verge of exploitation. Co-operative movement spread on sound and sane lines alone will stamp out the disease of 'rural indebtedness'."

No. 766, dated the 12th October 1934.

From—The Chairman, Bombay Provincial Co-operative Institute,  
Gujarat Branch, Broach ;

To—The Secretary, Legislative Council, Bombay.

Herewith please find a copy of the resolution passed by the Sub-Committee meeting of this Branch held on 30th September 1934 on the Bill No. VII of 1934 to regulate the money-lending business for favour of such action as may seem meet to you."

(*Extract from the proceedings of the Sub-Committee Meeting of the Gujarat Divisional Co-operative Institute held on 30th September 1934.*)

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*Resolution No. 1—Subject.*—Press Note dated 4th September 1934 regarding Bill No. VII of 1934 (A Bill to regulate the money lending business) and also a letter with a copy of the Bill from the Secretary to the Legislative Council, Bombay, inviting views on the subject.

The Committee after due deliberations comes to the conclusion that the following suggestions be submitted to the Secretary of the Legislative Council :—

(1) It appears from the statement of objects and reasons that the idea is to apply the provisions of it to agriculturist-debtors also.

(2) So far as agriculturists are concerned the provisions of chapter III of the Bill may be incorporated in the Dekkhan Agriculturists' Relief Act to make the Dekkhan Agriculturists' Relief Act a complete code in itself and agriculturists be excluded from the Bill.

(3) There is a greater need for safeguarding the interest of the agriculturists than all sorts of persons having an aggregate income of Rs. 2,000.

(4) The definition of debtor is vague. It is inconceivable as to how a debtor with Rs. 2,000 as income can do with a loan of Rs. 1,000 only. He may require loan to the extent of Rs. 5,000 to 6,000 if he has to do business.

(5) It is not also clear whether the amount of Rs. 1,000 is intended to be a total liability of the debtor or the debt of one particular creditor. This also requires to be clearly stated.

(6) The definition of the creditor is also not quite suited to the purpose of the Bill. There are big landlords who are advancing loans to needy persons, though they are not doing regular money lending business, they are often charging 75 per cent. to 100 per cent. as interest and yet they are not within the definition given in the Bill.

Carried unanimously.



Letter, dated the 22nd October 1934.

From--P. B. Apte, Esquire, Honorary Secretary, Bar Association, Khed ;

To--The Secretary, Legislative Council, Bombay.

" Herewith I, on behalf of the Khed Bar Association, enclose a copy of resolution passed in the meeting held on 5th October 1934, for discussing and expressing its opinion regarding the Bombay Bill No. VII introduced in the Bombay Council regulating money-lending business for favourable and kind remarks.

The Association is of opinion that the Bill No. VII regulating the money-lending business be not passed at all."

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(Copy of Resolution passed in the meeting of the Khed Bar Association on 5th October 1934.)

The Bombay Bill No. VII of 1934 to regulate the money-lending business was put up for discussion.

Mr. R. W. Joshi proposed that it should be thrown out *in toto*. Mr. K. G. Dikshit said it will be still hard for the poor to borrow money. Mr. Modak proposed that the provisions of the Dekkhan Agriculturists' Relief Act be extended to non-agriculturists in suits below Rs. 1,000.

The sections were read out. The general sense was therefore against the Bill. It will not be helpful to the poor. There will be number of difficulties in practice. It will perhaps make the matters worse. The provisions of the Dekkhan Agriculturists' Relief Act are in force and the present Bill if passed will still more adversely affect the borrowing capacity. It should therefore not be passed at all.

(Carried unanimously.)

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Letter, dated the 22nd October 1934.

From--The Honorary Secretaries, the Bombay Presidency Social Reform Association, Bombay ;

To -The Acting Secretary to the Legislative Council of the Governor of Bombay.

" We have been directed by the Managing Council of the Bombay Presidency Social Reform Association to write to

you as follows with reference to Bill No. VII of 1934, to regulate money-lending business, moved by Mr. Syed Munavar, M.L.C.

Our Association is in favour of restricting the indebtedness of the agriculturist and industrial worker and agrees with the principle of the bill, but is of opinion that some of its provisions are very stringent against the money-lender. So far as the agriculturists are concerned there are the provisions of Dekkhan Agriculturists' Relief Act in the Bombay Presidency. It is a matter of common knowledge that the provisions of the Dekkhan Agriculturists' Relief Act have been abused and dishonest defences are resorted to by the agriculturists. The innate simplicity and truthfulness of the agriculturists have to some extent disappeared and they are now encouraged to put forward false pleas, and litigation has increased by leaps and bounds. The definition of the agriculturist is so wide that persons who ought not to get the benefit under the Act are enabled to take advantage of its provisions. The result is that agriculturists have lost their credit and creditors do not advance money even on mortgage of land but insist on an out and out sale. Similarly the provisions of the proposed bill under consideration are likely to be evaded by ways which ingenuity might suggest and litigation is bound to increase. Our Association thinks that at the initial stage of legislation of this kind Conciliation Boards should be established in villages and Taluka towns. The members of the Board should be nominated by Government on the advice of the District Judges. The amount of the subject matter in the villages should be limited to Rs. 100 and in the towns to Rs. 500. There should be no appeal from the decision of the conciliation Board. As regards the Bombay City the provisions of the Usurious Loans Act should be largely resorted to by the Small Causes Court. The proposed bill does not in any way deal with the increasing evil in the City and elsewhere, of Pathans and others recovering their dues by force and compulsion without having recourse to the Courts of law. This is a crying evil which requires immediate redress.

Our Association thinks that a comprehensive bill should be brought by Government after ascertaining the manner in which similar attempts at legislation have worked in other provinces. It will be then possible to remove the defects and avoid the pit-falls and the resultant evils of such a piece of legislation. Otherwise the remedy may be worse than the disease."

Letter dated the 24th October 1934.

From—Sohrab R. Davar, Esq., Bar-at Law, Principal, Davar's College of Commerce, Bombay ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

Re : The proposed Bombay Money-lenders' Act, 1934.

“ In reply to your letter No. 777 of 1934 dated 5th September 1934 and in continuation of my acknowledgment dated 26th September 1934 in the above matter, I have the honour to communicate my views to you as requested on provisions of the said Bill.

*The necessity for such a measure.*

In my opinion in addition to the present legislation as covered by the Usurious Loans Act, 1918, and other Acts, it is absolutely necessary that a Bill which protects certain classes of labourers, artisans and illiterate or half literate poor against the grasping hand of the Sahukars and money-lenders on the countryside and the petty Marwaris and Danawallas in the towns is absolutely necessary.

*Class of people who should be protected.*

In my opinion the class of people who particularly require protection are labourers, artisans and the poor population, whose yearly income does not exceed Rs. 1,000 and whose borrowings are within the amount of Rs. 500 a year. I should therefore suggest that an alteration to that effect may be made in the definition of the word ‘debtor’ in section 2 (5a) of the Act. I should not extend the scope of its operation to those with an income or borrowing in excess of the amounts above indicated. The additional advantage would be that the limit of income under Rs. 1,000 would simplify the work of the Courts, because under it all paying income-tax would be marked out as beyond the operation of this Act in the capacity of debtors. This is of particular importance in view of the fact that in course of litigation the natural question would arise as to whether a debtor who seeks protection under the clauses of this Bill is one who does not command an income exceeding Rs. 1,000, which issue may have otherwise to be tried and settled before the case could proceed further.

*Definition of a money-lender and a Bank.*

On this point I should prefer that a money-lender is specifically defined on the footing more or less of the definition in the English Money-lenders Act of 1900 of England with the necessary modifications or additions, viz., 'the expression money-lender in this Act shall include every person whose business is that of money-lenders or who advertises or announces himself or holds himself out in any way as carrying on that business and shall not include a co-operative Society under the Co-operative Societies Act of 1912'.

The definition of a banker as is sought to be given in section 2 (1) is highly objectionable in my opinion. This sub-section restricts the word bank to a joint stock company incorporated under an Act or Royal Charter or Letters Patent either in India, the United Kingdom or the Colonies and those falling under these denominations of bank are excluded from the operation of the Act. The consequent danger is that a money-lender can easily get himself incorporated as a private limited company with two members made up of himself and his wife or one of his sons holding all capital and thus evade the operation of this Act. Besides, there is no reason why the private banker should be dealt with differently from a joint stock bank on this question. The definition of a bank has never been attempted before by either Indian or British legislature in any of the Acts in a detailed or straightforward manner. The one as given in the Bills of Exchange Act of England or the Negotiable Instruments Act of India does not in any way touch the question inasmuch as the English Act defines the banker as 'banker includes a body of persons whether incorporated or not who carry on the business of banking'. Our Negotiable Instruments Act also carries us no further. Mr. Hart, the greatest living authority on Banking Law of England defines in his book entitled Law of Banking the banker as 'one who in the ordinary course of his business, honours cheques drawn upon him by persons from and for whom he receives monies on current accounts'. This definition was largely influenced by a decision of the House of Lords, viz., *Copland v. Davies (1872) L.R. 6 H.L. 358*. This would no doubt bring the joint stock banks also indirectly under the operation of the Act but there a Saving Clause may be inserted in the Act making Pass-books as issued by all regular bankers who allow cheques to be drawn as a sufficient compliance of furnishing accounts. Moreover the type of borrower who is sought to be protected here would hardly be expected to open current accounts with a banker or

borrow a loan from him of such a small denomination and hence there would be no injustice or hardship inflicted by this form of definition under the Act. I should again exclude persons who give an occasional loan to anyone by expressly providing to the effect that the Act should apply only to such persons, firms or companies who carry on a regular business of money-lenders, either exclusively or side by side with their other business.

### *Penalty.*

Section 8 provides for the penalty which leaves to the Court a discretion to disallow a portion of the interest and I do not agree that it is a Penal section likely to cause great hardship in view of the fact that in spite of powers given to the Court, the Courts are not likely to go to the extreme limit of disallowing the whole interest. In the English Money-lenders Act the Penal clause exists, though for a different incident, i.e., for false statements and representations of such accounts. This Penal clause in section 4 of the Money-lenders Act of 1900 of England provides that those who make this false statement shall be guilty of misdemeanour and shall be liable to be punished with or without hard labour for a term not exceeding two years or to a fine not exceeding £500 or to both.

### *Additions suggested.*

In addition to the above sections there is one excellent provision in the Bengal Money-lenders Act of 1932 to which I would like to draw the attention of the authorities. Here the Hindu Law rule of Damdupet is applied by which the amount of interest recoverable by the creditor must not exceed at any time the amount of the principal with a little modification. The Bengal Money-lenders Act thus provides that notwithstanding anything in any other Act where the arrears of interest on a debt amount to a sum greater than the principal of the loan, the Court (unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claims earlier) shall limit the amount of such interest recoverable from an amount equal to that of the principal of the loan. The Bengal Act also obliges the money-lenders within a month of the written demand being made by the debtor to furnish particulars of the loan to the debtor and in case of wilful default it is provided that interest shall cease to run during the period of default. It also provides that where a money-lender refuses to accept the remittance made by money order it is open to the debtor to deposit the amount in Court and that on such deposit being made the Court shall

send a notice of the deposit to the money-lender who shall be at liberty to withdraw the money without being bound by any statement made by the debtor in remitting or depositing the money. These provisions should also in my opinion be considered in connection with further additions in the Act.

With reference to other sections of the Bill I have no comments to offer as they appear to me quite satisfactory with a view to carry out the objects in view of the draftsman."

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Letter dated the 22nd October 1934.

From—The Joint Honorary Secretaries, The Society of the Honorary Presidency Magistrates of Bombay ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

The Bombay Money-Lenders' Bill (VII of 1934).

"We have the honour to acknowledge receipt of your letter No. 777 of the 5th September 1934 and in reply to state that the above Bill has been duly considered by the Managing Committee of the Society of the Honorary Presidency Magistrates and we have been instructed to convey to you their views as follows :—

2. Whilst our Committee agree that the Bill is laudable in its object, they are nevertheless of the opinion that it is hardly likely to prove effective in its working. The Committee are led to this conclusion by an examination of what seems to be its pivotal provision, viz. Section 7. In the first place it is extremely doubtful that the debtors, belonging as they generally do to an illiterate and improvident class of people, will be able or in a position to scrutinise the quarterly statements to be furnished to them by the creditors and to ascertain whether the statements are correct or not. Secondly as the debtors are not bound to acknowledge receipt of those statements (*vide explanation at the end of section 7*) they may not trouble or be able through illiteracy to acknowledge and obtain from the creditors a receipt of such acknowledgment. A loop-hole is thus left open in the Bill for the creditors to allege falsely that they have punctually furnished their debtors with the prescribed statements and by thus circumventing the provisions of section 7, they would escape the penalties provided in section 8 of the Bill.

3. The provisions of Chapter III regarding accounts appear rather cumbersome, inasmuch as they burden the lenders with a considerable amount of clerical work. This may be resented and lead to a contraction of lending with the result that the agriculturists who constitute the main body of borrowers, may find themselves deprived of their usual sources of accommodation in consequence of the lenders being unwilling to submit to what might be considered by them to be inconvenient conditions.

4. Experience has shown that needy and improvident agriculturists cannot be shielded against the malpractices of money-lenders by mere legislation. The Sawkar is usually a literate, shrewd and practical person having also the means to command the advice and assistance of competent lawyers. The small debtor, on the other hand, whom it is sought to protect, is almost invariably an illiterate and simple person and is, moreover, generally in such desperate straits that he is prepared to obtain money on any terms. With such a combination no legislation however well framed can successfully protect the small debtor from the resourceful Sawkar.

5. Our Committee are of opinion that the more effective remedy for affording relief and amelioration to needy debtors in villages would be by means of co-operative banking institutions, a net work of which should be established in due course throughout the rural areas."

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No. 51, dated the 30th October 1934.

From—The Honorary Secretary, District Agricultural Association,  
Dharwar ;

To—The Acting Secretary to the Legislative Council of the Governor  
of Bombay.

"I have the honour to enclose herewith a copy of the resolution passed by my Committee regarding Bill No. VII of 1934 (A Bill to regulate the money-lending business) for your information."

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*A Copy of the resolution No. V passed at the meeting of the Managing  
Committee of the Dharwar District Agricultural Association  
held on 23rd October 1934.*

"Resolved that the general principle and spirit underlying the Bill No. VII is approved as the Bill is in the interest of the Agriculturists."

Proposed by Mr. D. L. Patil.

Seconded by Mr. R. Y. Hulkoti.

Passed *nem. con.*

Letter No. 2672, dated the 31st October 1934.

From—The Secretary, Indian Merchants' Chamber, Bombay ;

To—The Secretary, Bombay Legislative Council, Bombay.

“ I am directed to refer to your letter No. 777, dated 5th September 1934, and, in reply, to communicate to you hereby the views of my Committee on the subject matter of the Bill to regulate money-lending business introduced in the last session of the Bombay Legislative Council.

My Committee are aware that suggestions have been made from various quarters and particularly by the Central Banking Enquiry Committee in regard to the necessity for some legislation regulating the operations of money-lenders, with a view to eradicate some of the unhealthy and rapacious practices generally associated with certain types of money-lenders. They are in general sympathy with proposals for legal checks designed to control the questionable practices in the profession of money-lending and to secure to the illiterate and poor labourers protection from such practices. But the Bill under reference, they are afraid, will not fulfil the object in view and, therefore, does not meet with their approval. It is possible that in its present wide form it may affect adversely the interests of borrowers, by unnecessarily restricting credit operations of money-lenders and by making credit very shy. As, in the opinion of my Committee, the present Bill is too wide and will fail to achieve its objects, they do not propose to enter into a detailed examination of its various provisions.

My Committee would, however, suggest that Government should now, instead of leaving the matter to be dealt with by a private Bill, draft a Bill of their own, more certain and definite in its object and scope. Such a Bill should cover only loans to labourers and artisans and such other class of people who are supposed to be victimised now and who require to be protected. There is absolutely no need to bring in transactions covering sale of goods within the purview of such a legislation. Money-lending should be properly defined so that casual advances or accommodation by those who are not professional money-lenders could be excluded. The Bill suggested by my Committee should be made applicable to borrowers with an annual income of not more than Rs. 1,000 and loans of amounts below Rs. 500.

My Committee would, therefore, recommend the introduction of a Government Bill more precise in its object and more



limited in its scope. They would repeat that the Bill, as at present drafted, is highly unsuitable and should, therefore, be rejected."

Letter No. 71, dated the 5th November 1934.

From—Rao Bahadur N. P. Valanju, Sub-Government Pleader,  
Devgad, district Ratnagiri ;

To—The Acting Secretary to the Legislative Council of the Governor  
of Bombay.

"I have the honour respectfully to submit herewith my views on the provisions of the Bill No. VII of 1934 after full discussion and mature deliberation with my friends.

I ought to express my sense of gratitude to you for giving me an opportunity of submitting my views on a measure of profound momentous and far-reaching consequences. I hope they will be of some use to the poor masses the amelioration of whose pitiable condition ought to be genuine desire of every enthusiastic lover of the motherland."

*A brief note in support of the Bill No. VII of 1934—Grave  
and growing menace of Usury Curse.*

1. It would be quite obvious that the question of usury has, in course of time, evolved into such complications and subtlety, owing mainly to various measures, judicial decisions and wide extention of equitable doctrines, for and against usury, as also, owing to the very large and far-reaching range of human affairs and dealings, often so well-marked with conspicuous intelligence, cunning and intrigue, as also owing to the general recklessness on part of ignorant borrowers, that much can very ably and justifiably be argued on either side of usury.

2. For the sake of convenience and simplification, therefore, it would be more advisable to discuss the subject of so profound and immense importance under the following heads :—

(a) (i) Origin and growth of usury.

(ii) The disastrous social and other consequences that naturally follow in its train.

(iii) Equitable and legal remedies put in force to counteract the tortuous and menacing evil and other effects.

(b) (i) Equitable and legal measures indirectly lending support to usury on equitable basis.

(ii) Subsequent resort by usurious money-lenders to fraudulent and coercive means, measures and subterfuges to conceal the real nature of transactions by putting them under counterfeit colouring, with a view to get round the scrutiny prescribed by law and evade the penalty imposed upon such unconscionable agreements.

(iii) Legal measures now in force and their possible efficacy to counteract the evils.

(iv) Remedial measures undertaken by social service and other charitable and welfare societies and their results.

(v) Need for co-operation of the educational masses to make any legal measures feasible and workable.

(c) (i) Urgency and desirability of the measure proposed to be introduced by Bill No. VII of 1934.

(ii) Suggestions, if any, submitting possible alterations, additions or omissions in the body of the Bill with a view to render it more effective and quite workable in practice to carry out its aims.

### 3. *Origin and growth.*—Historical retrospect :—

(a) Usury originally meant the interest paid by the borrower for the loan of money. It is now applied to exorbitant and unfair rate of interest on money lent.

(b) The practice of requiring in repayment of money lent, anything more than the amount lent, was formerly thought to be a great moral wrong, by all Christian nations. The sacred Koran recording the Prophets' oral revelations, too, would appear to have condemned the practice of charging interest on loans. Only the Hindu Law favours the enforcement of interest. "Thou shalt not lend upon usury to thy brother." Deut XXIII, 19.

(c) The above cited dictum formed the original and ancient rule and was adhered to, faithfully. However with the steady advance of society with its increase in wants and necessities of life, the said rule had to undergo steady relaxations and in course of time it came to be relaxed to such an extent that the said rule was practically completely nullified, and it came to be deemed that it was not more wrong to take pay for the use of money than for the use of a horse. "Thou oughtest therefore to have repaid my money with usury. Mutt XXV, 27."

(d) It is worth noting, however, that the lingering and unvanquished influence of the former opinion together with the fact that the nature of money made it easier for the lender to oppress the borrower, caused nearly all Christian nations to fix by law the rate of interest to be charged on loans, *vide* provisions of the Statute 3 and 4, William IV, Chapter 42, Section 28, which were extended to the territory under the Government of East India Company, as well within the jurisdiction of Her Majesty's Courts by Act XXXII of 1839 empowering the courts of law to allow interest in certain cases of loans.

(e) In course of time, Usury Laws came to be repealed and after the abolition of the Usury Laws in 1854 which punished severely

money-lenders and others who exacted exorbitant and unconscionable rates of interest, many poor, indigent, needy and ignorant borrowers were harshly dealt with and practically robbed by heartless money-lenders. A similar measure passed in India, viz. Act No. XXVIII of 1855, called the Usury Laws Repeal Act, 1855, was followed by similar consequences.

(f) The disastrous results inevitably springing forth were rather too glaring to escape keen observation or to be lightly ignored or overlooked. Accordingly in 1900 the Money-lenders Act was passed and came into operation in November of that year in England. In India too a similar Act No. X of 1918 called the Usurious Loans Act which gave wide powers to the courts to deal with usurious loans had to be perforce put in force.

4. *Disastrous consequences of usurious dealings.*—The terribly ruinous consequences of running recklessly into debts, cannot be over-estimated. Every-day experience has quite sufficiently brought home to us that there is no one habit, that is responsible for so many ruined homes as the craze for borrowing money for the sake of mere luxury or ambitious display of futile greatness and pomp, e.g. in marriage and other social functions and ceremonials. Such persons who are either ignorantly blind to or purposely shut their eyes towards the consequences of their recklessness, naturally fall a very easy prey to the manoeuvres of shrewd usury. And once they get entangled into their net, there is no safer and surer way out, for life. By cunning and intelligent devices and subterfuges, the lenders get borrowers more and more involved and would not leave them alone though everything not excluding the home has been usurped from them. The immense masses of India will be found to be ambitious to live far beyond their means and borrowing in such cases becomes rather inevitable. There is no wonder then, that such persons having been left no voice, no property and no status in life, are perforce beguiled and led to subscribe to any writing without knowing the contents, at the sweet will of the lender. Real relief is necessary in such cases particularly, for the King is the protector of all, poverty or ignorance notwithstanding. Unless practical relief be extended to such poor who are unwittingly imposed upon, immense masses of people, mainly from agricultural and labouring classes, are bound to drag their wretched life in life-long indebtedness and poverty, deprived of all chance and charm in life, the fruit of their toil and moil being safely pocketed by money-lenders with impunity and disregard for all humanity. On the other hand it cannot be denied that in the rapid development and progress of society, with their ever growing needs and anxiety to improve the standard of living and social status, the existence of honest and *bona fide* lenders is quite indispensable. But this profession would seem to have practically fallen into the hands of such unscrupulous, merciless, stingy and scurrilous people with only monetary outlook, very narrow and often mean, that there are not few among the lenders who would ever fail to insist upon Shylock's pound of flesh. The profession of money-lending has thus so much

deteriorated that it has practically developed into an instrument of regular, legal and organized torture. In distant part of village-life, far removed from bustle of cities and towns, the lenders assume the position of super-lords and despots and easily dominate the will of the ignorant and needy masses by carrying on exploitation in any way they like. Often they take the law into their own hands. No one can raise a voice of protest against them for fear of revenge and victimization. The voiceless members are thus led like dumb driven cattle. The riots, grave disorders and serious disturbances of public peace which led to the passing of the Dekkan Agriculturists' Relief Act, 1879, are glaring examples of the unbearable and terrible torture to which the poor classes were being mercilessly subjected and which made them rather despondent.

5. *Equitable and legal remedies.*—Adverting to equity, it will be obvious that equity too would not effect a substantial and radical change in the attitude of usurious lenders towards the poor borrowers. No doubt, acting upon the indisputable maxim, "He who seeks equity must do equity." Equity asserted itself and interposed in various cases of hardship to the borrower. All such contracts being declared void, by the statutes against usury, the courts of equity followed the law in the construction of the statutes. When therefore the usurer or lender came into a court of equity seeking to enforce the contract, the court refused any assistance and repudiated the contract *in toto*. On the other hand if the borrower came into a court of equity seeking relief against the usurious contract, he was made to pay what was really and *bona fide* due by him. The ground of distinction being that a court of equity was not positively bound to interfere in such cases by active exertion of its powers, but it had a discretion on the subject and would prescribe terms of interference, on the principle that he who seeks equity must do equity. It would, it was thought, be against conscience that the party should have full relief and at the same time should pocket the money loaned, which might have been granted at his own mere solicitations, for then, the statute made to prevent fraud and oppression, would be made the instrument of fraud. But in the other case if equity should relieve the lender, it would be aiding a wrong doer who sought to make the court the means of carrying into effect a transaction manifestly wrong and unconscionable. Thus courts of equity too could not very effectively check the evil. They interfered only when some one sought relief.

6. *Legal remedies.*—The Acts referred to above, e.g., the Usurious Loans Act, 1918, and other provisions in the Contract Act, Negotiable Instruments Act, Insolvency Acts, Civil Procedure Code as also Dekkan Agriculturists' Relief Act, the Agriculturist Loan Act, the Land Improvement Loans Act and the Land Alienation Act in the Punjab are all examples of Legislation designed either to keep the Agriculturists and Labourers out of debt or to save them from the worst consequences of their position. The fact that there is a Bill called the Punjab Relief of Indebtedness Bill, now before the Punjab Legislative Council, would

go to show that legislative interference to remove the evil is deemed everywhere necessary.

7. (i) *Equitable measures tending indirectly to support usury.*—The interpretation that has been put upon the said maxim, has naturally put the money-lenders on their guard and led them to invent devices and mould their dealings in a way that would make recourse to courts unnecessary or futile. Legal measures, such as Act XXVIII of 1855 repealing Usury laws, was followed by similar results.

(ii) Taking advantage of the said opinions and Acts the Sowkars and money-lenders resorted to fraudulent and coercive means and subterfuge with a view to conceal the real nature of the transaction by garbing them to all appearance, in a form different from what they really agreed between them and thus they succeeded in getting round the scrutiny prescribed by law and evaded the penalty with which such transactions were made punishable under the English Money-lenders Act, 1900, which effectively tried some measures to check the evil by providing for Registration, by imposing penalties for false statement and representation, by giving full measure of relief to money-lenders in cases of exorbitant interest, etc. Similar attempts were made in India by Act No. X of 1918 but conditions of the people in India differing widely from those obtainable in Europe, as regards proper diffusion of education and wealth, they were not sufficient to give substantial relief to the poor agriculturists and labourers to save whom all endeavours were made.

(iii) Among the social endeavours made to ameliorate the condition of the poor and indigent labouring and agricultural classes, those ably outlined and steadily undertaken by Sir Frederick Sykes the former Governor of Bombay ought to be prominently and gratefully acknowledged first. No one had given more careful, anxious and diligent consideration to the question of all round progress of the poor masses, so very important to Indian people for whom he so arduously worked. The scheme of village reconstruction and rural uplift so ably outlined and inspiringly inaugurated by Sir Sykes with such keen foresight, prudence, remarkable ability, genius and zeal and towering personality as also with real progress and welfare of masses at heart, will in a long run be solvent of all difficulty and lead India on the real road to success. He has given wise and momentous lead and guidance by placing before the educated Indians a constructive scheme of social work for affording relief to masses from heavy indebtedness, *vide* page 65, paragraph (e) of Village Improvement by Sir Sykes the then Governor of Bombay. Now it remains for the educated India to come forward and carry the scheme to success, though the task is rather uphill one. The scheme will be a real memorial to the monumental work done by Sir Sykes and will go down to posterity with abiding gratitude.

It cannot be denied that so far indebtedness is concerned, the most effective solution lies in the development of Co-operative Societies on sound and charitable basis and in popularizing them by wide and

extensive propoganda by means of Cinema shows etc., bringing home the evils of reckless indebtedness to people living in nooks and corners of villages. These societies seem not to have flourished as expected and gain materially in popularity for various reasons to discuss which is beyond the scope of this note.

(iv) Any number of Acts cannot effectively put a strong control upon the practice of usury unless educated men come forward to undertake the work in co-operation with the Government wholeheartedly. In my opinion a league easily accessible to all classes, with legal powers to bring to book and light the malpractice of Sowkars and money-lenders would serve a very useful purpose. Unless this is done the new Bill would not be able to go appreciably in advance of the Act of 1918. Wide diffusion of knowledge and proper education is a *sine qua non* to any success in rural masses who are so deeply immersed in poverty as to need material help from outside before they stand on their own legs to work out their own salvation.

8. *Need for legislation.*—From what has been discussed above it will be quite obvious beyond any shadow of doubt that any step or measure calculated to relieve the borrowers from general indebtedness will always be highly appreciated and gratefully accepted and supported. It will be the legitimate duty of every true lover of the mother-land to help his poor brethren from the immeasurable difficulties and troubles in life.

(ii) I am however constrained to submit, with the most unqualified deference to the mover of the Bill and with no less gratefulness that the Bill does not provide adequate measures of relief to cover up all sorts of malpractices and tortures so well delineated in the statement of objects and reasons.

(iii) The statement refers to cases of grave injustice and unfair transactions which do not or are prevented from coming before the court. In such cases efficacious measures do not seem to have provided for in the Act. Some penal clauses after due scrutiny by some officer or recognized public bodies would seem to be quite indispensable, for in the absence of it the Sowkars will be able to defeat and delay the provisions of law by some counter devices.

9. In clause 2, section 5-A, there appears to be no necessity for limiting the loan to Rs. 1,000. It may be extended to all loans of whatever amount. Clause 5 of section 5 the phrase "Wholesale trader" not being specifically defined is likely to be misconstrued. It may well be dropped. In section 3 the proviso if omitted would do no harm, but would rather be conducive to some good. Registration should be made a necessary prelude to the carrying of any money-lending business referred to in section 7 on pain of penalty for default, and secret business should be detected and tried to be punished.

10. In section 7 it should be made clear what penalty the lender will be responsible for in case of failure to comply with the provision. In section 8 the provision made for throwing of the claim in part or whole would not be adequate remedy.

11. In short sound provisions to carry into practical effects the aims of the Act will have to be added without which there will not be any radical change and the Act will remain imperfect."

*(A copy of the Resolution from the President of the Nandurbar Vepari Mahajan, No. 117/1990 dated the 1st November 1934.)*

The Vepari Mahajan meeting held on \_\_\_\_\_ resolved as under :—

The proposed Bill is not likely to achieve the object in view. It will cause considerable hardships both to creditors and debtors. The Bill is not restricted to money-lenders properly so-called but extends to all persons dealing in commodities on credit. The Indian System of Book-Keeping will be greatly interfered with, and may probably vanish. For these and other reasons the Mahajan of Nandurbar thinks that this Bill should not be passed into law.

Letter, dated the 1st November 1934.

From—The Honorary Secretary, Prarthana Samaj, Bombay ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

“ With reference to the Bill No. VII of 1934 (A Bill to regulate the money-lending business) I am directed by the Managing Committee of the Bombay Prarthana Samaj to inform you that the Bill does not fall within the aims and objects of the Prarthana Samaj and hence the Committee regrets that it cannot express any opinion on the Bill.”

Letter, dated the 11th November 1934.

From—The Honorary Secretary, Arya Mahila Samaj, Bombay ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

“ With reference to your communication of the 5th of September 1934 requesting our Samaj to give its opinion on the Money-lending Bill introduced in the Legislative Council, I am directed to address as under :—

The Samaj is in sympathy with the object of the Bill, viz. : to restrain malpractices employed by the money-lender.

However, it appears to the Samaj that the Bill is inadequate to eradicate the manifold evils of money-lending. Although various measures imposing disabilities on money-lenders are recommended in the Bill, they will be insufficient so long as the illiteracy of the Indian masses continues."

Letter dated the 9th November 1934.

From—The General Secretary, Young Women's Christian Association, Bombay;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

"With reference to your letter No. 777, dated September 5th, 1934, I write to inform you that our President thanks you for the opportunity of considering Bill No. 7 of 1934, and on behalf of the Association she begs to say that it will undoubtedly be beneficial to the classes concerned, but that the Association is not competent to make any further suggestion."

Letter No. 88-Union, dated the 11th November 1934.

From—The Honorary Secretary, the Bombay Postal Union, Bombay;

To—The Secretary to the Legislative Council of the Governor of Bombay.

"With reference to your letter No. 777, dated the 5th September 1934, forwarding a copy of the Bill No. VII of 1934 to regulate the money-lending business, I have the honour to say that my Union supports the Bill being passed into law of the Presidency. It is also of opinion that the Bill should provide some means to the debtor to seek the help of the Court of Law in case he finds afterwards that the transaction entered into by him was an extortionate and made under circumstances beyond his control. The provisions of the proposed Act will apply to a suit instituted by the creditor only and therefore the above provision in the Act is thought necessary in the interest of the debtor.

The definition of the loan under section 2 (7) is restricted to a great extent. A loan to or by or a deposit with any society or association registered under the Societies' Registration Act, 1860, is a transaction between two parties and can be termed to



be in substance a loan though on a very easiest term made under a lending business. This should have been included in the definition of the term loan. The societies registered under the Societies' Registration Act will find some relief if their transactions, though they may not be on the basis of a Promissory note, are included in the definition of 'loan' and regulated by the proposed Act. The reason why these transactions are desired to be regulated thus is that a barred debt which is extinct by limitation can be recovered when a promise is made in writing and signed by the person to be charged therewith or by his duly authorised agent, *vide* section 25 of Indian Contract Act. Similarly money advanced is promised to be repaid in writing and signed by the person to be charged therewith should have a place in the category of a loan."

Letter dated the 11th November 1934.

From--D. G. Karve, Esqr., M.A., Professor of History and Economics, Fergusson College, Poona ;

To--The Secretary to the Legislative Council of the Governor of Bombay.

"With reference to your No. 777 of 1934, dated the 5th/18th September 1934, requesting me to communicate to you my views on Bill No. VII of 1934 (A Bill to regulate the money-lending business), I have the honour to forward herewith five copies of my note on the Bill. This note has been published in the 'Servant of India' on 25th October 1934."

(Note by Mr. D. G. Karve, Professor of History and Economics, Fergusson College, Poona.)

#### REGULATION OF MONEY-LENDERS IN BOMBAY.

Mr. Syed Munawar has recently introduced in the Bombay Legislative Council a Bill to regulate the business of money-lending in the Bombay Presidency. It is well-known that the average rural and urban borrower in India is extremely ignorant and needy. This opportunity has bred in the class of Indian money-lenders a crop of undesirable practices which are reprehensible on economic as well as moral grounds. It is the duty of the state as representing the collective interests and conscience of the community to protect the helpless clients of money-lenders from the frequently sharp practices of the latter. The same principle

that justifies labour and tenancy legislation ought to justify measures aimed at preserving the interests of the needy and ignorant borrowers from the tyranny of unchecked and unregulated money-lending.

The case for state regulations of the business of money-lending is even stronger than that for the protection of labour. In the field of the relations between lenders and borrowers the present system of law and justice in India must be held responsible for having created a very unjust and unsocial situation. It is well-known that in pre-British days though the economic condition of the average borrower was not perhaps much better than what it is now, the hold of the Savkar on the client and the assistance that he could muster from the organised power of the state in support of his contractual claims were distinctly feebler. As a general rule the earlier governments never helped the creditor to get possession of the borrowers' immovable property, except in very few cases of specific and *bona fide* mortgages and sales. Even in respect of the immovable property of the client the attitude of the community was not to countenance any action on the part of the Savkar which would leave the borrower in an indigent and crippled position. Under these circumstances if the "real credit" of the borrower was meagre the temptation to borrower was also reduced, and both lender and borrower were extremely cautious about their transactions.

The British system of justice is based on the most doubtful assumption about the sanctity of contract. It is assumed that individuals know full well the results of their own actions and that if they willingly enter into a debt transaction it is the duty of the state to enforce its terms. This is a travesty of legal as well as moral justice when applied to conditions in India. The average borrower in rural as well as urban areas is so very ignorant, weak and helpless that it is unjustifiable to assume that any contract entered into by him with the money-lender is a free contract in the correct sense of the term. Even if such a transaction is technically free, as indeed is the wage or rent contract, in the interest of justice and social stability, the law must regulate and check its operation if it proves detrimental to important interests such as the cultivators and workers. The law in India has not been sufficiently mindful of this wider social aspect of credit transactions and has on the whole allowed the unscrupulous money-lender far more indulgence than he deserves.

It must be admitted that several remedial measures have been passed to counteract the evil effects of the prevailing system of unchecked freedom to the money-lender. The Deccan Agriculturists' Relief Act and the Usurious Loans Act are indicative of a realisation on the part of the legislators of their wider responsibilities in this matter. By common consent, however, both these measures, and especially the latter which is of wider application, have failed to achieve their object. A very important explanation of this apparent failure of remedial legislation is of course the ignorance and weakness of the borrowers themselves. Anything that secures the intellectual, moral and economic progress of the average borrower is a desirable ally of the protective action planned by the state. The ignorance and weakness of the borrower

must not, however, serve as an excuse for a complacent or apologetic attitude with respect to the law as it stands. It is clear that at least in two important respects the present arrangements for the protection of the just interests of the borrower require to be improved.

It is the peculiar merit of Mr. Munawar's bill that it is based on the realisation of this two-fold need. In the first place it is necessary that so important a profession as that of money-lending should be required to follow certain well recognised forms of book records, accounts and procedure. This is desirable not only because the average client is not in a position to insist upon regularity in the practices of the creditor but also because the latter very often invokes the supreme power of the state in execution of what he claims to be his just dues. Excepting a few provincial measures no attempt has been made hitherto to regulate the accounts and procedure of the money-lenders. Bombay has lagged behind in this respect in spite of the admonitions of such bodies as the Royal Commission on Agriculture and the Banking Enquiry Committees. Mr. Munawar proposes in his Bill several clauses for this much needed regulation.

This brings us to the second, and in one sense the more important, drawback of the present machinery of law for the protection of the borrower's interests. In the absence of any clear lead either in the terms of the law or in the policy of the state the judges have generally been unwilling to give full effect to the intentions of protective legislation. As the Central Banking Enquiry Committee observes: "if the Act (Usurious Loans Act, 1918) were fully utilised it would go far to relieve the country of some of the worst evils of uncontrolled usury . . . a special report on the working of the Act should be included in the annual reports on the administration of civil justice." The Royal Commission on Labour, which had occasion to investigate the problem of indebtedness among the industrial workers, is more specific on the point of judicial inactivity in this matter. While recognising certain inherent defects in the Usurious Loans Act of 1918 the Commission observes: "But the reluctance of civil courts to deal with issues not raised by the pleadings seems to have been the main obstacle." If in pre-British regimes the money-lenders were less unchecked in their transactions and claims it was so chiefly on account of the fact that the governmental authorities of the day refused to be instrumental in enforcing what they did not believe to be just claims—measuring justice not according to the letter of the law and the contract but interpreting it according to well-recognised canons of social justice. Such a positiveness and elasticity must characterise the role of a judge in dealings between a Savkar and his average client. To break the unwillingness of the ordinary judges to assume this role is no simple task, but we are convinced that Mr. Munawar's bill is a move in the right direction inasmuch as it specifically requires the judges to go into the history of transactions coming before them, in a prescribed manner.

The provisions of the bill are simple. The Governor in Council has been given the authority to extend by notification any or all of the

provisions to such places or areas as he deems fit. The special procedure to be sanctioned by the Act is to apply only in such cases as concern debtors whose aggregate income in one year does not exceed Rs. 2,000 and who have borrowed a loan not exceeding Rs. 1,000. It is provided that suits should be instituted and tried in a court within whose jurisdiction the debtor lives. In disputed claims it is sought to be made obligatory on the court to examine both plaintiff and defendant as witnesses and to trace and ascertain the whole history of the transaction. Even in cases of admitted claims the court is expected to go into the detailed history of the transaction. In effect both for disputed and undisputed claims the rule will be for the judges to go by themselves into the character of the whole transaction unless, for reasons to be stated in writing, they decide that such a course is unnecessary. Detailed rules are provided regarding the manner in which the court shall trace the history of each transaction, distinguishing between interest and principal payments. The addition of accumulated interest to the principal sum after the commencement of a transaction is proposed to be disallowed except for special reasons acceptable to the court. The "damdupat" rule is also specifically stated.

Money-lenders are required to maintain their accounts in a form sanctioned by the local Government. They are further required to furnish each debtor with quarterly statements of detailed accounts of their transactions. Entries made by creditors and statements supplied by them under these provisions will be treated as valid evidence, but the failure of a debtor to deny the correctness of statements supplied to him shall not be treated as an admission on his part of the correctness of the account. If the court finds that a creditor has not discharged any or some of the obligations placed on him in these respects it shall exclude amounts due as interest for the period for which proper statements have not been supplied.

The difficulties in the way of a private member who intends to move an important legislative measure are so great that we must be prepared for many doubtful points in a bill like this. In fact it was the clear duty of the Government itself, which alone is endowed with all the information and technical assistance needed, to initiate a measure of this type which has been long recommended by public opinion and authoritative bodies. Failing any activity on the part of Government a bill like that of Mr. Munawar should attract sympathetic and helpful attention at the hands of officials and non-officials.

In view of the importance of a measure like this it may be desirable to expand the preamble as so to state more fully the aims and objects of the bill. Whether Rs. 2,000 per year is a suitable limit for indicating the class of debtors needing special protection is doubtful. In this as in several other provisions the mover has the urban borrower more prominently in view. The limit here proposed is indeed much lower than the one that the Royal Commission on Labour had in view, but we feel that even for urban areas a figure of Rs. 1,200 per year should suffice. For the rural areas the extent of landholding or some other similar criterion might be more suitable.

It appears that in certain respects the bill throws on the judge unjustifiable responsibility. For instance the inclusion of accumulated interest in the principal during the currency of a transaction is too important a matter to be left to the discretion of the court. Specific rules of guidance must be supplied by the law itself. Thus it might be proposed that unrecovered interest for a period, say, of three years, should be justifiably added to the principal. Though the provisions regarding the maintenance and supply of accounts are generally sound it is doubtful whether a detailed time-table such as that provided in Section 7 (b) of the Bill will be found convenient. It will be better to time the issue of these statements in greater accord with indigenous and local events or festivals. Further, there is no provision in the bill for securing a proof to the effect that the creditor has supplied a statement of account to the debtor. Perhaps this is a matter to be regulated by rules. But it is best that the statement should be served through state officials and, if practicable, copies should be supplied for record with the latter.

The most significant omission in the bill is, however, with regard to the rate of interest. Though the dampudat rule is some check on the uncontrolled operation of heavy interest rates it is desirable that if the full benefit of the measure is to be derived the Government should provide maximum rates in several localities for the guidance of the courts. The rates of co-operative societies might in some measure be used as indicative in this respect. In view of the fact that the benefit of the measure is to accrue to persons of comparatively small means there appears to be no justification for the limit of Rs. 1,000 as the maximum amount in dispute. Quite conceivably the debtor may have a smaller amount in dispute in one suit but his general position might be involved to a greater extent.

It is well-known that full legislative relief will not be given to debtors of small means only by regulation of money-lenders' accounts and procedure of courts connected with their claims. As several Commissions and Committees have pointed out, civil laws like that of bankruptcy and limitation and criminal laws like the one bearing on besetting and harassment require to be suitably altered. Besides there are people who have no faith whatsoever in law being able to protect those who cannot protect themselves on account of their ignorance and weakness. It appears to us that such people are unduly pessimistic and if their views were to prevail half the social legislation in civilised countries might have to be removed from the statute book. There is a clear case for legislation regarding the position of small rural and urban debtors in India *vis a vis* the money-lender. In the absence of a more comprehensive official measure it is in some such way as Mr. Munawar proposes that we must advance. Regulation of accounts and equitable inquiry by courts must be cardinal features of any remedial scheme in this field. If the Government of Bombay feel that in other respects the bill is defective let them help to improve it, or let them come out with a promise for initiating more elaborate legislation. The inaction of our Government in matters of social and economic legislation is no longer justifiable.

Letter dated the 14th November 1934

From—The Honorary Secretary, Parliamentary Sub-Committee,  
Bombay Presidency Women's Council ;

To—The Acting Secretary to the Legislative Council of the  
Governor of Bombay.

I have much pleasure in communicating the following  
opinion of my Sub-Committee on the  
marginally noted Bill, which the Govern-  
ment of Bombay was good enough to  
forward to the above Council for their  
views. The Management Committee of the above Council  
have accepted the opinion of my Sub-Committee, and have  
authorised me to communicate the same to you.

Bill No. VII of 1934  
(A Bill to regulate the  
money-lending business).

My Sub-Committee is in favour of the provisions of the Bill,  
but in our opinion requires some additions as it does not go  
far enough. We believe that the object of the Bill would  
be strengthened if registration and licensing of professional  
money-lenders were made compulsory.

We further desire that the provisions of the Bill should  
be made applicable to loans up to Rs. 2,000.

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Letter dated the 13th November 1934.

From—The Editor, " Harijan Samachar " and Secretary, Meghwal  
Navyuwan Bharat Sangh, Bombay ;

To—The Acting Secretary to the Legislative Council of the  
Governor of Bombay.

" I have the honour to acknowledge receipt of your letter  
No. 777, dated the 5th September 1934, regarding Bill No. VII  
of 1934 (A Bill to regulate the money-lending business) and  
have great pleasure in enclosing herewith an English transla-  
tion of the views expressed by my Meghwal Navyuwan Bharat  
Sangh, a body representing the Meghwal community of  
Bombay, as published in the ' Harijan Samachar ' issue  
of the 15th September 1934. I am also enclosing two copies  
of the ' Harijan Samachar ' wherein the views have appeared  
in Gujarati.

My community is in favour of passing the Bill and entertains  
the hope that it will have the support of all the members and  
will be passed."

*(Views of the Meghwal Community of Bombay as published in the  
" Harijan Samachar " of the 15th September 1934.)*

### THE BOMBAY MONEY-LENDERS BILL, 1934.

" Mr. Syed Munawar, M.L.C., deserves thanks for having taken great pains in introducing the above Bill No. VII of 1934 in the Bombay Council. The Bill aims at regulating the money-lending business which has been developing everywhere in this Presidency day by day. The flourishing conditions of this business go to indicate that the masses have been thrown economically out of their gear. The present Bill attempts to give a protection to the indebted masses against the devilish tyranny of the creditors. It specifically provides that only those debtors whose aggregate income in one year does not exceed Rupees two thousand and who have borrowed a loan not exceeding Rupees one thousand can claim protection under this Act against the oppression of their creditors. Secondly, it provides that the court has power to decide whether any transaction is in substance a loan.

The Bill will protect the labouring classes whose sources of income are so meagre that they are forced to borrow money from the Marwaris and the Pathans, not for running any kind of business, but for keeping their body and soul together. Who have not heard of the blood-sucking methods of the Marwaris and the Pathans while doing their money-lending business among the labouring and farming classes ?

It is as clear as day light that the number of debtors from the labouring and farming classes far exceeds that of the petty businessmen. Moreover the petty businessmen have other sources of income and the farming classes have but few and the labouring classes have none. As the needs of the toiling masses are but scanty the extent of their borrowing capacity is also but scanty. A labourer or a poor farmer may not venture to borrow a sum of Rs. 100 or so. It will be found that the number of such cases is alarmingly large and such cases urgently require the helping hands of the legislature. We are glad to note that this Bill seeks to give this protection to the toiling masses and the petty farming classes.

As the Co-operative Societies are not of much use owing to the wrangles of the parties and mismanagement in these societies, the toiling masses have to resort to the Pathans and the Marwaris who become fat, on their blood. The Harijans form a majority of the toiling masses and petty farmers. Nearly ninety-nine per cent. of the Harijan debtors are in the grips of the Pathans and the Marwaris. Their loan may start with Rs. 10 to Rs. 50 which may ultimately swell up to Rs. 100 to Rs. 400 by compound interest alone. As their sources of income are very scanty and the items of expenses are numerous, they cannot afford to pay the instalments of interest on their petty loans. Many cases have occurred among the Harijan labourers when the Pathans have rushed into the hovels of the Harijan debtors and have kicked their hearths, beaten the males and dragged the females to their own tenements. Some cases

have occurred when the Harijan debtors have succumbed to death due to the thrashing of the Pathans. Now, who can deny the protection of law to such cases? The labourers and the Harijans are afraid to complain against the Pathans, as they are illiterate and ignorant they entertain a groundless apprehension that they will themselves be convicted for not paying the instalments due to the Pathans, if this case is referred to the court. That is why they prefer facing the atrocities of the blood-thirsty Pathan creditors to complaining against them to the court or police.

In conclusion we have to point out that in the interests of the great body of poor, helpless, ignorant debtors, the Bill must be supported by all the Councillors and the Government and immediately passed into law."

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Letter dated the 15th November 1934.

From—The Secretary, Lokmanya Seva Mandal (formerly Tilak Utsav Mandal), Chinchpokly, Bombay ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

" I thank you for the copy of the Bill to regulate the money-lending business, you submitted to our Mandal with a view to elicit its opinion on it, and I have the pleasure to say that I have been successful in securing substantially collective opinion of my Mandal on the said bill, which, I am sending herewith and which, I hope, will receive due attention and consideration at your hands.

Lastly, before concluding, I will like to request you to convey our hearty congratulations to Mr. Syed Munawar on his having brought such a bill of social reform before the Council, and tell him we wish every success in his move. Thanking you."

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*(The views of the Lokmanya Seva Mandal on the Bill to regulate the money-lending business.)*

This meeting of the Lokmanya Seva Mandal, held on 12th November 1934, is of opinion that the present Bill, though noble in its aims and objects, falls too short of any effective check upon the unscrupulous practice carried on in the business of money-lending. Though the measure makes it compulsory for the money-lenders to keep honest accounts, it needs must wait till a borrower seeks the help of a court of law to effectively realise its noble object. The Bill will come to the help of the poor labouring and agricultural classes only when they go to the court to seek its help. But this does not improve the present state of



affairs. The real difficulty under the present circumstance is, that in ninety-nine cases out of hundred, the borrower does not go to the court, lest he should be more harassed by the Sawakar. So some sort of controlling check on the business of money-lending itself was necessary and to that effect we have the honour to make the following few suggestions :—

(i) That there should be a compulsory registration of all those money-lenders, who carry on regular business of money-lending, and especially among them, the Pathan money-lenders.

(ii) That the rates of interest, instead of leaving to the free will of the Sawakars to fix, should be fixed by the law itself, at least their maximum and minimum limits ; and they should vary according to Mofussil or Town areas, say 12 per cent. in Mofussils and 25 per cent. in Towns.

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Letter dated the 11th November 1934.

From--The General Secretary, Shivaji Vijaya Maratha Mandal,  
Bombay ;

To--The Acting Secretary to the Legislative Council of the  
Governor of Bombay.

“ I have the honour to forward herewith some suggestions with regard to the Bill No. VII of 1934 now before the Bombay Council.

1. Definition of ‘ Creditor ’ should be more definite. Transactions between people more or less in the nature of help or convenience should be excluded.

‘ Creditor ’ should mean a person who is by profession a money-lender or who habitually deals in money-lending.

2. Chapter III is drastic provision. It would affect private relation between persons and this creates an atmosphere of distrust.

Especially a condition to send copies of accounts would be a hardship. A wily creditor conversant with law would defeat ends of justice. At the most, it should be made incumbent upon a creditor to supply extracts of a transaction if called for to do so by a debtor in writing.

On the whole, if we look to the statement and objects, it appears sufficient and convenient to apply provisions of the Deccan Agriculturists’ Relief Act to debtors who are not agriculturists.”

From—N. B. Chandrachud, Esqr., Pleader, Poona;

To—The Secretary to the Legislative Council of the Governor of Bombay.

“I beg to thank you for forwarding to me Bill No. VII of 1934 for communicating my views on the said bill.

1. There can be no two opinions about the necessity of a measure to regulate money-lending business. The methods used by some money-lenders in case of needy borrowers are revolting. The Pathan money-lender is a curse to the depressed classes. Every one knows that the claims are false but the law, as it stands, is helpless.

With all respect to the gentleman who drafted the measure I am of opinion that the measure as it is is absolutely useless. The sponsor appears to have neither legal talents or acumen nor business experience. He has simply copied some of the provisions of the Deccan Agriculturists' Relief Act and other statutes and brought forth a measure which possesses no merit and is open to all faults.

At one time I had a mind to suggest some amendments but I gave up the attempt as a hopeless one. Every line in each clause shall have to be amended. The clauses relating to the definitions of 'Creditor' and 'Debtor' 'to the jurisdiction of the court,' 'to the duty of the creditor of keeping accounts' are almost absurd.

The Measure in question was sent to the Poona Bar for their opinion. The Bar spent a lot of time in discussing the measure and ultimately gave their opinion that the measure as it stands is a hopeless one.”

No. 16, dated the 16th November 1934.

From—The President, Khoti-Sabha, Chiplun, District Ratnagiri;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

“In reply to your No. 777 dated 5th September 1934 requiring me to communicate the views of my Sabha on the provisions of the Bill No. 7 of 1934 (a Bill to regulate the money-lending business) I have the honour to send herewith the views of my Sabha as regards the Bill. The members of my Sabha are almost all Marathi-knowing people and hence I have given the views in Marathi and have attached thereto a summary in English of the views.”

[A summary of the views expressed by the Chiplun Taluka Khoti Sabha on the provisions of Bill No. 7 of 1934 of the Bombay Legislative Council (a Bill to regulate the money-lending business).]

This Meeting is of opinion that the proposed bill should not form part of the Statute Book of the Bombay Legislative Council and should not be passed.

The following are some of the reasons why the Bill should not become Law :—

(1) The provisions of the Bill are a direct incitement to *Socialist* Principles and would create a war between the capitalists and the socialists.

(2) The provisions of the Bill go one step forward than the Deccan Agriculturists' Relief Act at a time when it is being thought necessary to get the Deccan Agriculturists' Relief Act amended so as to put down fraud and evil practices of persons who pose as agriculturists when they are not so practically.

(3) As the Usurious Loans Act of 1918 of the Legislative Assembly remedies the real and honest grievances sought to be relieved by this Bill, the Bill is superfluous. Moreover the question being an all-India one should be thrashed in the Legislative Assembly and not in the Provincial Councils.

(4) The Bill gives an unlimited power to Court.

(5) The growth of the Co-operative Societies will do away with the necessity of the Bill.

(6) The definition of "Trader" is too wide and would include even hawkers in villages.

(7) As the Bill excludes dealings above Rs. 1,000 a provision to exclude paltry loans was necessary.

(8) The right to go into the history of the transaction when the debtor admits the debt *bona fide* is against the principles of general Law.

(9) No accounts have been kept in mortgage transactions when the profits were to be taken in lieu of interest. This Bill would require past accounts in such transactions even. That is clear injustice.

(10) The experience of the enforcement of the Deccan Agriculturists' Relief Act goes to show that the power to determine the line-month of the closing of old transactions and opening new ones would be improperly used.

(11) The rate of interest is never uniform everywhere. The Bill does not provide for it and gives an unlimited power to Government when making rules and to Courts when deciding cases which would be improperly used by both.

(12) The Courts have no actual experience of village life and society. The power to fix the value of personal labours, etc., would thus be abused.

(13) The Rule of Damdupat disregarding *Ruju-khata* or new agreements in lieu of old ones is against the Hindu Law even. Its enforcement against all the castes is improper.

(14) The rigid enforcement of the rule of keeping accounts and giving copies would work hardships to poor Rayats.

(15) The Bill instead of regulating the transactions of Usurers would go to create ill-feeling amongst poor villagers (really uneducated but knowing only to write their signatures) who are uneducated and who carry on money-dealing amongst themselves in time of need.

(16) Keeping of accounts and giving copies every three months are practically unenforceable in village life.

(17) The power of making rules given to Government under the Bill is unlimited. It ought to be controlled by the Legislative Council.

(18) The costs of sending copies of account every three months even when there is no transaction during the period would in many cases exceed the actual loan. The debtors will not be able to bear it and the creditors must get it as the copy benefits the debtor.

(19) The debtors are not saddled with the responsibility of examining the correctness or otherwise of the copies to be given every three months and a go-by is given to the ordinary presumptions of Law by allowing a debtor to dispute their correctness at any time.

(20) The penalty in clause 8 is too much.

(21) The right given to a debtor to demand the copies of accounts in a language which is not the Vernacular of the District is strange.

(22) It is clear injustice that the Bill would apply to transactions which are clear renewals of transactions before the enactment of the Bill.

(23) Most of the Usurers from whom the Bill intends to protect poor Rayats have never to come to Court for the repayment of their loans. They recover the loans and their improper interest in their own way. A few Usurers do come to Courts but they come quite prepared. This Bill would work hardship to poor traders who have faith in the administration of justice or to poor villagers who become useful to one another in time of need. The smooth working of village life would be hampered and poor Rayats shall have to fall into the trap of usurers from whom the Bill intends to protect them.

For all these reasons the Chiplun Taluka Khoti Sabha is of opinion that the Bill should not be passed.

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No. 199, dated the 15th November 1934.

From—The Secretary, Maratha Vidya Prasarak Samaj, Dharwar ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

“ With reference to letter No. 777 of 5th September 1934 I have the honour to state that this Samaj is in favour of the Bill to regulate the money-lending business as it is likely to

exercise a check on the unscrupulous money-lenders to some extent and also upon reckless borrowers who habitually indulge in the delight of borrowing.”

Letter dated 16th November 1934.

From—The Honorary Secretary, Bombay Engineering Employers' Federation, Bombay ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

Re: Bill No. VII of 1934 (A Bill to regulate money-lending business.)

“ With reference to your letter No. 777 dated 5th September 1934, I beg to inform you that the views expressed are generally in favour of the Bill.

The following observations made by individual members, may however, be of interest :—

(1) *Clause No. 9.*—If payment of interest or part repayment of a loan is a ‘ transaction ’, practically all loans made before the Act comes into force would come ultimately within the scope of the Act as it would be difficult to isolate such a ‘ transaction ’. I presume there is good reason for excluding existing loans from the provisions of the Act but it would be of advantage to debtors, and I cannot see that it would be disadvantageous to honest creditors, to require periodical statements of debts and interest in all cases of petty loans.

In brief, the meaning of clause 9 depends on the interpretation of ‘ transaction ’. The present wording, however desirable, appears to defeat the intention of the Clause as set forth in the ‘ Statement of Objects and Reasons ’.

(2) The Bill should be supported, as although it will not give complete protection to the borrowers, it would impose some check on the money-lenders. Furthermore, there is nothing in the Bill to prevent the taking of receipts by money-lenders for larger amounts than actually advanced, but if the Bill is passed, experience of its working will probably show in what ways it could be strengthened.

(3) I think we can agree that the regulation of money-lending would be a great benefit to a very large proportion of the population. On the other hand there are obvious difficulties in discriminating between the legitimate money-lending business, which must in some cases be helpful to

individuals and to business and extortionate money-lending practices which lead to the ruin of so many lowly paid Indians.

The subject, however, would appear to be one upon which the Government should draft a Bill after investigating the problems from all angles and I do not feel a private bill, such as the one under reference, is likely to meet adequately so complicated a situation.

I would like, therefore, to give support to the principles and intentions of the Bill and suggest the Federation recommend Government to bring in an official Bill to provide legislative measures to deal with the evil of money-lending."

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Letter, dated the 16th November 1934.

From—The President, Hetkari Bhandari Mandal, Dadar, Bombay ;

To—The Secretary to the Legislative Council of the Governor of Bombay, Council Hall, Poona.

“ With reference to your office No. 777, dated 5th September 1934, I have the honour to send herewith the opinion expressed by our Mandal regarding the Bill No. VII of 1934 circulated for public opinion.”

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*Opinion of the Hetkari Bhandari Mandal, Bombay, on the Bombay Bill VII of 1934.*

1. There cannot be two opinions as to the urgent necessity of a measure to give adequate statutory relief to the debtors in this Presidency.

2. This Bill is intended for the benefit of the debtors. ‘The Bombay Debtors’ Relief Act of 193’ would have been a better title of the Bill.

3. The principal difficulty is how to put an end to the practice of the creditors obtaining writings from the debtors for amounts twice or even four times the actual amount advanced by them. Merely providing provisions for the enquiry into the history and merits of the case will not remove the difficulty. The Court should be expressly directed and empowered to punish the creditors who are found to have obtained writings from the debtors for amounts exceeding the actual amounts advanced by them to the debtors.

4. The section 4 of the Bill, no doubt, is a big jump in favour of the debtors but it is feared it may operate against the debtors themselves in obtaining loans. This difficulty will be experienced by the debtors who

have come to the cities to earn their bread. By providing a proper definition of the word 'resides' this difficulty may be partially avoided.

5. There should be a provision in the Bill to the effect that a writing witnessing the loan should necessarily be in the language of the debtor and not in any other language.

6. There should also be a provision that the creditor must satisfy the Court that he has done all he can to give notice to the debtor of his intention of filing a suit against him or his legal representatives.

7. It is highly desirable that a provision should be incorporated in the Bill that the creditor obtaining a decree under the influence of this Bill will be precluded from attaching the salary of the judgment-debtor when the same does not exceed Rs. 30 per month in cases where the judgment-debtor is a servant in a private firm or when he is employed by a private individual."

(Similar views have been received from the following with their letters as mentioned below.)

(1) Letter, dated the 19th November 1934, from the President, Kite Bhandari Aikya-Vardhak Mandali, Bombay.

(2) Letter, dated the 19th November 1934, from the Secretary, Kamgar Hitawardhak Sabha, Bombay.

(3) Letter, dated the 18th November 1934, from the President, Konkan Prant Shetkari Sangh, Bombay.

Letter, dated 16th November 1934.

From—K.B. Jan Muhammad Khan, M.L.C., Sukkur District ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

"With reference to your letter No. 777, dated 5th September 1934, I have the honour to state that the Bill as drafted is free from objection and if passed into law will be of some real relief to the needy persons in rural and urban areas against the nefarious devices of the overgreedy money-lenders.

2. In section 7 (I) of the Bill, the word 'Sindhi', needs to be made clear that it includes 'Hindu Sindhi'."

No. 2030/34, dated the 19th November 1934.

From—The Secretary, Maharashtra Chamber of Commerce, Bombay ;

To—The Secretary, Bombay Legislative Council, Bombay.

"I am directed by the Committee of this Chamber to refer to your letter No. 777, dated the 5th September 1934, and to communicate to you their views thereon as under.

The Committee of this Chamber generally approve of the principle underlying the proposed legislation, viz. the necessity of protecting illiterate and helpless debtors against the oppressive malpractices of certain types of money-lenders conducting their business in this Presidency. They are, however, of opinion that the bill in its present form is too wide for the purpose and is likely to prejudicially affect both debtors and creditors who do not require the kind of protection contemplated by the proposed bill. The Committee would therefore suggest that the operation of the bill should be restricted to loans of sums not exceeding Rs. 500 and the debtors whose annual income does not exceed Rs. 1,000. Casual or accommodation loans as well as moneys due on account of sale of goods to traders [wholesale traders being specially excepted as per section 2 (7) (v)] should also be excluded from the purview of the bill.

The Committee are of opinion that the general drafting of the bill leaves much to be desired in the way of precision and accuracy and would suggest to Government to introduce a properly drafted bill of their own for the purpose in view, restricting its operation to loans and advances made to artisans and labourers who are the usual victims of nefarious malpractices associated with certain money-lenders. Amongst other provisions, the following should be specially given effect to:—

(i) Money-lending should be properly defined so as to exclude moneys due on account of sale of goods to traders and not to wholesale traders as in section 2 (7) (v).

(ii) 'And shall disallow costs' in section 8 (b) occurring at the end, should be omitted and costs always allowed.

(iii) When a debtor has been furnished with a copy of his account, it should be obligatory on him either to admit or deny the correctness thereof. Or in the alternative it should be sufficient for the creditor merely to inform the debtor of the balance due by him at the end of the specified period.

(iv) If the above suggestion is acceptable, the rules should provide amongst other details that it will be sufficient for the purposes of the Act if a creditor allows the debtor to inspect his account in the creditor's book and gets it initialled by him as an evidence thereof, or in the alternative, the postage incurred in furnishing the debtor with a copy of his account or in informing him of the balance payable by him, should be borne by the debtor.



Before concluding, the Committee would once again like to point out the necessity of a more precise and accurate bill being introduced for the purpose in view."

Letter, dated the 17th November 1934.

From—The Secretary, Deccan Maratha Education Association, Poona ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

" With reference to your No. 777 of 5th September 1934, I have the honour to state that our Association feels the need of regulating the Money-lending Business to save the poor agricultural and labouring classes from the oppressive method of calculating interest by the Pathans and other Sawkars. The present bill is a move in the right direction and we are in agreement with the principles underlying it."

Letter, dated the 19th November 1934.

From—The Honorary Secretary, Bombay Incorporated Law Society, Bombay ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business.)

" I have the honour to acknowledge receipt of your letter No. 777 of the 5th September last inviting the opinion of the Law Society on the abovementioned Bill.

In reply thereto, I have to state that my Society is in sympathy with proposals for legal checks designed to control the questionable practices of professional money-lenders, in the interest of illiterate and poor labourers. My Society, however, does not approve of the Bill. The Bill, as framed, is, in the opinion of my Society, calculated to affect adversely the interests of borrowers, by unnecessarily restricting credit operations of money-lenders. Clause 4 of the Bill, as to jurisdiction, is also open to serious objection. The Society is of the opinion that Government should, instead of leaving the matter to be dealt with by a private Bill, draft a Bill of their own, covering only loans to labourers and artisans and such other

class of people who require protection and excluding transactions regarding the sale of goods from the purview of such legislation. My Society is further of opinion that the suggested Bill should be confined in its operation to borrowers with an annual income of not more than Rs. 1,000 and loans of amounts below Rs. 500."

Letter, dated 20th November 1934.

From—The General Secretary, National Seamen's Union of India, Bombay;

To—The Secretary, Legislative Council, Bombay.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business).

"With reference to your letter No. 777, dated Poona, the 5th September 1934, enclosing a copy of the above Bill for expression of opinion thereon by this Union, I am desired by the Union to communicate its views as under:—

The Union wholeheartedly supports the principle underlying this Bill, namely, protection of poor borrowers,—mostly wage-earners and lower middle classes,—from the usurious practices and highhanded methods of money-lenders, a big majority of whom practise fraud and charge extortionate rates of interest on the needy borrowers with the result that they are kept in life-long indebtedness.

A fairly big number of lenders who carry on their business with small investments of Rs. 100 to Rs. 200 deduct from the principal the first month's interest at the rate of four annas in the rupee and give the balance to the borrower. These lenders are mostly concerned with the realisation of interest only, which they forcibly collect from the borrowers. Where no security is offered by the borrower to the lender for the money advanced as a loan, the latter fraudulently takes two promissory notes from the borrower—one for the loan actually advanced and the other for a sum three or four times the actual sum. There are various other sorts of malpractices of money-lenders which have become proverbial.

Many lenders, who are not *bona fide*, are known to keep two sets of accounts in respect of one single loan and do not furnish any account to the borrower, so that he goes on paying the interest but does not know how much more is actually due by him to the lender.

The Bill which is long overdue is a modest attempt to afford legal protection to borrowers from some of the vagaries of the money-lenders. It does not go far enough.

The Union is of the opinion that there should be a clause in this Bill to prohibit besetting a factory, workshop or office on pay-day for recovering loans. The lender can have only legal remedy and should not be allowed to harass the borrower at his place of work. Without such a provision the Bill will be incomplete.

The Union strongly urges the necessity of passing the Bill with suitable modifications into law at an early date."

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Letter, dated the 20th November 1934.

From—The Honorary Secretary, Bombay Bar Association, Bombay;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

"With reference to your letter No. 777 of 1934, dated 5th September 1934, I have the honour to forward herewith the views of my Association."

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*(Views of the Bombay Bar Association on the Bombay Money-lenders Bill.)*

"The Association approves of the principle underlying the Bill that debtors must be rescued from the clutches of money-lenders and that Courts should not be a party to unconscionable bargains between them. But the Association cannot support the Bill as drafted. It appears to the Association to be a hasty and ill-conceived piece of legislation.

If any amendment is required in the law as it stands, the proper method of dealing with it is to amend and alter the Usurious Loans Act.

Without wishing to criticise the Bill under consideration in detail the Association wishes to point out that section 4 of the Bill is clearly *ultra vires* of the Local Legislative Council as it seeks to deprive the High Court of jurisdiction vested in it by clause XII of the Letters Patent. It is needless to say that this can only be done by an Act of the Indian Legislature."

No. 216, dated the 19th November 1934.

From—The Honorary Joint Secretaries, the Pathare Prabhu Social Samaj, Bombay ;

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

*Re : Bill No. VII of 1934 (A Bill to regulate the money-lending business.)*

With reference to your letter No. 777 of 1934 dated the 5th September 1934 enclosing a copy of the Bill herein above referred to forwarded to our Samaj for the purpose of eliciting its opinion thereon, we have the honour to communicate to you the views of our Samaj on the said bill.

*(Views of the Pathare Prabhu Social Samaj on Bill No. VII of 1934. A Bill to regulate the money-lending business.)*

“ We are in agreement with the principles underlying the provisions and entirely approve the object of the proposed Bill.

2. We, however, consider that in Chapter I, section 5A the definition of the word ‘debtor’ is too wide and should be restricted only to the heirs and legal representatives of a debtor.

3. We are further of opinion that in cases governed by the Deccan Agriculturists’ Relief Act (Bombay Act XVII of 1879) :—

(a) that the word ‘Loan’ as defined in section 2 (7 of the proposed Bill) should be widely interpreted so as to include mortgage transaction even if it is executed prior to the present Bill coming into force as an Act ;

(b) that the provisions of Chapter II of the proposed Bill should be made applicable in so far as they are not inconsistent with the provisions of the Deccan Agriculturists’ Relief Act ;

(c) that the whole of Chapter III minus the proviso to section 7 in that chapter should be applied to all cases governed by the Deccan Agriculturists’ Relief Act.

4. We also recommend that there should be a provision analogous to section 16 of the Deccan Agriculturists’ Relief Act enabling the debtor to sue the creditor for accounts ”.

Letter No. 909, dated the 16th November 1934.

From—The Secretary, Merchants Association, Umarkot (Sind);

To—The Acting Secretary to the Legislative Council of the Governor of Bombay.

“ With reference to your memorandum No. 777 of 5th September 1934 asking us to communicate our views on the Bill No. VII of 1934 (a Bill to regulate the money-lending business) I have the honour to state on behalf of my association, for the undermentioned reasons, that this bill will prove quite harmful to all public.

*Paragraph (A).—Suits where to be instituted and tried.*

‘ That the suits for recovery of loans shall be tried in the Court jurisdiction where such defendant resides.’ The present suits are tried in the Court within whose jurisdiction either the plaintiff or the defendant resides. The proposed amendment is calculated to let very hard the plaintiff (the money-lender) as much he will have to waste his time, money, energy in running about from one Court to the other, in case there are different borrowers residing in different Court’s jurisdictions even in one transaction. Take for example the case of a person who has given debt to 10 debtors living all over Sind in 10 different Courts’ jurisdiction. The money-lender in this case will have to run from place to place to prove his cases. Imagine the time, money and the loss in business he will have to incur in thus running about. Moreover a plaintiff never gets his own fare for attending hearings which becomes heavy even in present case when he attends only one Court. By going to different Courts this fare will amount to so much as to heavy burden him and will not commensurate with the amount which a money-lender would spend.

*Paragraph 6.—Mode of taking account.*

‘ That the interest and principal account of debtor to be taken separately, will prove very inconvenient.’

*Paragraph 7.—Duty of creditor to maintain and furnish accounts.*

‘ That four times in a year the account of a debtor signed by creditor or his agent should be sent to the debtor as Local Government may prescribe.’

Your honour may be knowing that many men in villages open shops for their livelihood only and such men do not know how to write, even if they know, they can keep their

accounts in their mother-language (Wanka Language). It is rather too much to expect such people to prepare accounts and send bills to debtors four times or so as Local Government may prescribe.

It is too hard to send each debtor his account quarterly. This is possibility by appointing some servants who may think of the time and deliver the bills to each debtor, whereby working expenses will heavily increase. This will therefore be beyond the capacity of poor villagers (money-lenders).

Moreover the bills are required to be given to the debtors in one of the following languages—English, Gujarati, Sindhi, Marathi, Urdu and Hindi whichever he prefers.

It is not possible for the villagers and others to give the bills in such languages as the debtor wishes when many of the merchants (money-lenders) know their mother-language (Wanka or Hatai words). Should now the money-lenders learn those above languages for this new rule or keep men to prepare bills for them which will be rather too expensive.

To send bills to each debtor quarterly is impossible as the Thar Parkar district debtors do not live in one place all the year round inasmuch as they go about from place to place for harvest, etc. You can imagine how can the creditor find each debtor on the fixed dates.

If the creditor fails or cannot find the debtor he should lose his interest and suffer the expenses of the servants who may wander after the debtors for the bills. Under the circumstances the trade will suffer greatly and it will be almost stopped. Middle class persons will suffer the most.

It should be noted that money-lenders or zamindars do not pay the debt to debtors to earn interest, they do so in order to enable debtor Haries to carry on cultivation operations, in case they do not give the debt, no man will come to cultivate their land. Thus cultivation will suffer which in turn tell upon Government land revenue.

Now according to this rule if any debtor refuses to take bills the creditor will have to file suit immediately. This will amount to this that creditor should be ready for suits at the time he lends money to them.

The rules already in existence are favourable more than enough to the debtors.

In the objects and reasons of the bill it is shown that from 24 to 300 per cent. interest is charged from the debtors. It will

not be here out of place to state that more than 6 per cent. interest is not allowed by the Courts in any suit.

According to above and many other reasons our Association is of opinion that no good will come out of the bill and that it is calculated to do many evils inasmuch as the trade will be suppressed. The money-lenders and debtors both will suffer if this new bill will be passed and the debtors will no longer get debt to carry on their business or to pay Government dues in which their lands or things will be put to auction."

Letter, dated the 20th November 1934.

From—The Honorary Secretary, Bombay Shroff Association,  
Bombay ;

To—The Secretary, Bombay Legislative Council, Bombay.

"I am directed by the Committee of the Bombay Shroff Association, to forward hereby their views on the Bill No. VII of 1934, to regulate money-lending business in the Bombay Presidency, introduced in the last session of the Bombay Legislative Council.

My Committee have studied the statements of objects and reasons, set down by the author of the bill, explaining its various provisions and stressing its necessity. From the same, my Committee understand that the bill is introduced with a view to check the usurious malpractices of certain types of money-lenders and afford protection to the agricultural and labouring classes, who suffer at their hands. However, my Committee are constrained to observe that the bill, in its present form, is so vague and indefinite, that it will not achieve the end in view and will restrict trade and credit, covering as it does all persons and transactions. It is therefore essential that loans made against sales of goods and occasional advances should be excluded from the scope of the Bill and that it should cover loans made to agricultural, labouring, and such other classes which are sought to be protected and that it should apply to borrowers with an annual income of not more than Rs. 1,000 and loans of amounts below Rs. 500. Consequently, sub-section 5A of section 2 and section 3 should be amended on the lines suggested herein by my Committee.

Besides, there are many other objectionable features in the bill, such as the obligations laid on the creditor to institute a

suit for recovery of a loan in a court within whose jurisdiction the debtor resides, to keep accounts in a certain style and to submit the statements of accounts to the debtor every quarter. They may point out that the first one will increase the cost of recovery and the latter ones that of working, but the consequential burden shall have to be borne by the debtor. However, with regard to the third, apart from the question of increasing cost, they would submit that it will create such a burden as to be entirely unworkable in practice.

On these grounds, my Committee hope that Government would be pleased to reject the above Bill."

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Letter, dated the 20th November, 1934.

From—The Joint Honorary Secretary, Deccan Sabha, Poona ;

To—The Secretary, Bombay Legislative Council.

"With reference to your letter No. 777, dated 18th September 1934, I beg to enclose herewith six copies of a Statement of the Deccan Sabha's views on the Money-lenders Bill, introduced in the Local Council by Mr. Syed Munawar. Kindly acknowledge receipt and oblige."

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(Views of the Deccan Sabha, Poona.)

### THE MONEY-LENDERS BILL.

The following statement of the Sabha's views on the Money-lenders Bill introduced by Mr. Syed Munawar, M.L.C., in the Bombay Legislative Council, was sent to the Secretary, Bombay Legislative Council :—

The Council of the Deccan Sabha agrees generally with the object of the Bombay Money-lenders Bill (No. VII of 1934), and offers the following detailed observations and suggestions :—

*Section 2, Clause (5A), Last sentence.*—"Persons who may be dependent on a debtor shall be deemed to be debtors for the purposes of this Act". The purpose of this part of the clause is not quite clear and it is recommended that it should be dropped. It is further suggested that in the same clause Rs. 1,000 instead of Rs. 2,000 per year should be prescribed as the maximum limit of the income of debtors to whom the provisions of this Bill are to apply. It seems unnecessary to limit the application of the Bill only to loans not exceeding Rs. 1,000.



*Section 2, Clause 7, Sub-clause VII.*—It is undesirable that mortgages should be excluded from the operation of this Bill. In view of the forced and fictitious nature of many of these transactions it is recommended that this exemption should be deleted.

*Section 4.*—Requiring suits to be instituted in courts, under whose jurisdiction the debtor resides, may be found difficult to enforce and is likely to place obstacles in the way of the exercise of the legitimate privileges of the creditor and thus to destroy the credit of the borrower himself. It is recommended that the practical effect of this section should be carefully considered.

*Section 6 (C).*—The addition of unrealised interest to the amount of principal should be made generally permissible, except for the proviso that such capitalisation of interest should take place only at the end of a year, even when the interest is fixed in the contract on a monthly basis. For periods of less than a year capitalisation of interest should not be permitted.

*Section 6 (E).*—The assessment of the money equivalent of services and other advantages offered by the debtor to the creditor, contemplated by this clause, is bound to be extremely difficult and is likely to lead to false pleas.

*Section 7 (B).*—For loans of a year's duration and over, three months is too short an interval for the supply of a fresh statement by the creditor to the debtor, and it is recommended that the period should be extended to six months, actual dates being fixed with reference to the prevailing agricultural seasons in different parts. End of June and December might be suggested as suitable limits.

*Section 8.*—In view of the penalties placed on the creditor for non-supply of periodical statements of accounts to the debtors, it is suggested that independent proof of the actual supply of such statements should be ensured by the requirement that these statements should be supplied through Government officials, e.g. the village officers. It might be desirable to introduce the practice of an account book on the lines of the Postal Savings Bank Account Book. This should be maintained in the local vernacular. In the statement of the "principal" sum the original amount and amounts added on account of unrealised interest should be shown separately.

*General.*—In addition to the civil remedies suggested in this Bill it is necessary to grant protection to the debtors against besetting, annoyance and sometimes personal intimidation practised by certain classes of money-lenders.

The aims and objects of the Bill should include "the education of the debtor in the qualities of thrift, responsibility and self-help".

The Bill should provide for a maximum rate of interest to be allowed by the Courts. This rate should be the locally prevalent rate of interest for similar transactions, and it should in no case exceed by more than three per cent., the rate charged to their own members by co-operative credit societies in the locality.

Letter No. M/66, dated the 19th November 1934.

From—The Honorary General Secretary and the Members of Shree Mahyavanshi Kshatriya Hitwardhak Sabha, Bombay ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

*Re* : Bill No. VII of 1934 (A Bill to regulate the money-lending business.)

“ With reference to your letter No. 777, dated the 5th September 1934, forwarding therewith a copy of the above bill, and asking our Sabha's views on the same, we have the honour to submit the following suggestion for the consideration of the Select Committee :—

(1) While giving a loan, the Marwaris enter double or treble the amount lent in writing in the bond, and while giving the amount in cash, he deducts the interest for one month *plus* the Vataav in advance. Some provision must be provided in the bill to check this evil.

(2) Some persons are carrying on money-lending business privately, and this deprives the Government of their *bona-fide* revenue from them. What measures will the Government take to recover the losses thus incurred, by the evasion of payment of income-taxes in absence of regular accounts not being kept by such private persons, who are not professional money-lenders but who lend money to people and levy exorbitant rates of interest? In our opinion it is desirable to issue licenses to them.

(3) When loans are taken on personal securities as well as on ornaments by the borrowers, no special record of the number of ornaments is kept by the creditor or the Marwadi, nor does he enter them in regular bond or document as articles against which the money was lent. Some provision must be put down in the bill to remedy this evil.

(4) When the agriculturists want to borrow money from the village money-lenders, the money-lenders make a sale-deed of the land of the borrowers as well as of his personal property, in their own names in the bond. A provision must be put down by the Government.

(5) Whether Government servants such as Police Patels, Talatis and the Karkoons, can carry on the money-lending business, directly or indirectly with the ryots and thus deprive the poor agriculturists and the ryots of their lands

and property by their clever ways of manipulating accounts and by their influence in the local courts and with the authorities concerned. This is highly objectionable, and we request the Council to put strict measures and provisions in the Bill to check this wide-spread evil among the Government servants in village and revenue officers in the mofussil.

(6) Rates of interest should not be more than 12 per cent. per annum on personal security, 6 to 9 per cent. on security of ornaments, per annum.

We are therefore of opinion that if the Bill is passed with the sincerest object of redressing the undoubted grievances of the masses in general and the poorer classes in particular, removing the abovementioned evils, the same will be considered the first and the greatest step taken in this direction, and will be highly appreciated by this Sabha."

*Opinion of Mr. K. K. Desai, Pleader, Olpad, District Surat,  
dated the 10th October 1934, on Money-lending Bill.*

#### *Objects and reasons—*

1. It seems the Bill is intended for a particular class doing professional money-lending business. There is a class of person known as the Pathans who are professional money-lenders, and who always couple their demands with violence. In fact this class of money-lenders are not only a menace to law and order, but they are also a potential danger to Government. They have their own peculiar organization.

2. The Bill, however, is too general and affects not only the poor labourer but also the agriculturists and the ordinary Sowcar. Chapter II is already in existence as Chapter II of Dekkhan Agriculturists' Relief Act and it is almost verbatim incorporated in the present Bill.

3. The Dekkhan Agriculturists' Relief Act has not benefited the agriculturist at all. The Sowcar knows very well how to evade the provisions of the Act. What is there to prevent him from taking a bond for Rs. 100 from a borrower, while paying him only Rs. 90? How is the agriculturist to meet the Sowcar in Court when the Sowcar quietly says he has no account books, or that his account books have been destroyed by this accident or that, or that the bond was for cash when it was for balance, or that he had no previous transaction?

4. The Sowkar generally instead of immediately going to Court, quietly pays a little cash to the needy debtor and gets a sale or mortgage of his lands and houses, with a rent-note. He then files a suit for possession; it is awarded and the debtor is asked to file a suit for accounts and redemption which he is rarely able to do.

5. Compulsion to keep account books does not help the situation as it is the Sowkar who writes them; and he can manipulate his accounts at his own sweet will.

All the Courts are now agreed that the Dekkhan Agriculturists' Relief Act has not worked well.

The Bill therefore should be confined to the particular class of money-lenders, who obviously require definite checks upon their nefarious business.

The Dekkhan Agriculturists' Relief Act has unnecessarily increased the work of courts without corresponding benefit to the debtors. In fact, indebtedness is going on increasing and in the place of the indigenous agriculturist we have the sowkar agriculturist.

Co-operative Societies were meant for the improvement of agriculture. The borrower under the pretence of improvement of his lands, borrows and spends the money in other directions without being called to account. When the agriculturist finds two Sowkars to lend money to him, he becomes more reckless. No agriculturist has been known to replace one Sowkar by borrowing money from another. No wonder that the indebtedness is going on increasing.

The only way to improve the condition of the Agriculturist—in fact of the whole country—is to increase his means and capacity for larger production.”

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Letter, dated the 16th November 1934.

From—The Honorary General Secretary, the Grant Road Parsee Association, Bombay;

To—The Secretary, Home Department, Government of Bombay.

Re: Bombay Bill No. VII of 1934 (A Bill to regulate the money-lending business).

“I beg to inform you that this Association has collected a small fund to advance small amounts of loans to those poor

Parsees who may have taken loans from Pathans and Marwadis at very high rates of interest.

It was therefore with great interest that Committee have fully considered the above Bill and have decided to fully support the same."

Letter No. G.P. 10/246, dated the 17th November 1934.

From—The Honorary Secretary, Buyers and Shippers' Chamber, Karachi ;

To—The Ag. Secretary to the Legislative Council of the Governor of Bombay.

*Subject.*—Bill No. VII of 1934 to regulate the money-lending business.

“With reference to the above Bill published in the *Sind Official Gazette* of 30th August 1934, I have the honour to address you as under :

My Committee while fully endorsing the reasons necessitating the introduction of the Bill in the Legislative Council, viz. the wide-spread malpractices practised by Sawkars or professional money-lenders particularly on the illiterate, poor and labouring classes in the matter of money-lending which has admittedly assumed a menacing aspect in the Presidency, and appreciating the purpose of the Bill, viz. to exercise a legal check on unscrupulous money-lenders who are clever enough to evade the provisions of the Usurious Loans Act by ingenious manipulation of the accounts of loans, and upon reckless borrowers who habitually indulge in the delight of borrowing, are, however, of opinion that some of the sections of the Bill are so stiffly worded that it is feared the Bill, unless suitably modified, would go a very great way in discouraging the money-lending business, the due importance whereof in the present economic system cannot be under-rated without serious prejudice to a very large section of the people. While the borrower no doubt deserves a reasonable measure of protection of law from the possible highhandedness, usury and dishonesty of his creditor, the creditor too, in all fairness and justice, cannot be denied a similar measure of protection against the undue advantage that might be taken from him by the borrower under the shelter of one or the other sections of the proposed legislation.

The Bill, it is seen, is applicable to a suit, the subject-matter whereof does not exceed Rs. 1,000. In other words, the suits the subject-matter of which is over and above this amount are outside the scope of the Bill, and the ordinary law is applicable to such suits.

My Committee beg to point out that the following clauses, in their opinion, are objectionable :—

*Section 6 (c).*

The creditor is denied the right of converting into principal the accumulated interest, unless the Court for reasons to be recorded by it in writing deems such to be reasonable. The powers vested in the Court are very wide indeed, and the fair and judicious exercise of these powers depends entirely upon the good sense of the judge. No uniformity can be observed and it is feared that the proposed legislation would create much disaffection and distrust between the money-lender and the borrower, as the result whereof it would be difficult for the borrower to get money for his necessary requirements. My Committee would suggest that a time-limit be prescribed for conversion of accumulated interest into principal. In the opinion of my Committee, after lapse of one year from the date of the account, such conversion of accumulated interest into principal should be made permissible. In other words, if the amount of the interest due is not paid by the end of the one year from the date of the account, the same may be added to the principal, and a fresh account of the full amount due by the debtor may be taken.

*Section 6 (d).*

The above remarks are equally applicable to Clause (d) of Section 6, which entitles the creditor to the interest at the rate allowed by the Court. This means that the creditor is not in a position to know what rate of interest he is to get for the sum he has lent. In such circumstances, it is natural if one hesitates to lend money. My Committee therefore suggest desirability of fixing the maximum rate of interest to be allowed by the Court for the transactions under the purview of the proposed legislation.

*Section 7 (b).*

My Committee do not favour the idea of rendering account every three months. They suggest that the account should be rendered only once in six months. They further suggest

that in order that these statements of accounts to be furnished periodically be true statements of accounts between the parties, the money-lender should be compelled by law to maintain regular books of accounts.

### *Section 10.*

As for the rules to be framed under Section 10, my Committee would suggest that the opinion of the various commercial and public bodies be invited before same are put up before the Legislature.

In conclusion, I am directed to state that my Committee have made the above observations with regard to the principal sections of the Bill. Generally speaking, the Bill as at present drafted will fail to achieve the object in view. My Committee, therefore, would suggest that instead of leaving the matter to be dealt with in a private bill, the Government should bring forward their own Bill more certain and definite in its object and scope."

Letter No. Misc. A/154, dated the 22nd November 1934.

From—The Honorary Secretary, Saraswat Brahman Samaj, Bombay ;

To—The Secretary to the Legislative Council of the Government of Bombay.

"I am to refer to your letter No. 777, dated the 5th September 1934, forwarding a copy of the Bill No. VII of 1934 (Bill to regulate money-lending business) and asking for the views of the Saraswat Brahman Samaj on the same. The views of my Committee on the provisions of the said Bill are appended hereto."

*Views of the Saraswat Brahman Samaj, Bombay, on the Bill to regulate the Money-lending Business.)*

### CHAPTER I.

*Clause 2 (3).*—Add the words "and subsequent acts relating to Co-operative Societies" to include the Bombay Co-operative Societies Act of 1925.

*Clause 2 (6).*—An advance made on a promissory note is included in the definition of "loan". A promissory note is the commonest form of a document evidencing a loan. Even friendly loans evidenced by a promissory note will come under the definition of "loan" and will be subject to the disabilities created by this bill. This is not the object of the bill. It is intended to check the activities of professional

money-lenders. In Bombay Multanis advance loans on hundis, Marwaris advance monies sometimes on cheques and at times under bogus bills of sale of furniture or jewellery. This inclusion of promissory note in the definition will help the professional money-lenders, while it will penalise *bona fide* transactions of friendly loans. The scope of this clause should be restricted to the negotiable instruments without distinction of professional money-lenders.

## CHAPTER II.

*Clause 3 (1).*—This clause is too wide. By the inclusion of claim for goods sold the transactions of sale and purchase between merchants and merchants are also brought within its range, which is unnecessary and undesirable in the interests of trade. The bill should be restricted to money-lending only.

*Clause 4.*—This clause will inflict very great hardship on merchants in Bombay who despatch goods all over India. If they are forced to file suits at the places where their customers reside or do business they will hesitate to do business except on cash terms. The result will be that trade will considerably be hampered. If the scope of the Act is limited to loans of professional money-lenders only then it may be retained as it is at present in the case of the agriculturists.

*Clause 5.*—This is cumbrous and unnecessary. In its place the Courts should be empowered to go behind settled transactions in cases of hard or unfair bargains as is provided in the Usurious Loans Act.

## CHAPTER III.

*Clause 7 (b).*—Instead of three months "six months" should be substituted.

In addition to the provisions as regards accounts a provision should be made making it compulsory for professional money-lenders to get their books of account sealed or stamped by Government officers as is done in some native states to ensure genuineness of their accounts.

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Letter No. 368, dated the 20th November 1934.

From—The General Secretary, Maratha Educational Conference,  
Bombay ;

To—The Secretary to the Legislative Council of the Governor of  
Bombay.

*Re* : Bill No. VII of 1934 (A Bill to regulate  
the money-lending business).

" With reference to your letter No. 777 of the 5th September 1934, I have the honour to forward herewith the opinion of the conference on the above bill as under :—

The bill, though not exhaustive and complete in itself, goes a long way off to redress the pitiable condition of the debtors.



It attempts to improve the position of the debtors and save them from the clutches of the money-lenders as far as possible. It is no doubt a step in the right direction. However there is ample scope for further legislation. Besides it should have come from the Government rather than from a non-official member of the Legislature as in the former case it would have been more creditable to the Government and would have secured greater support from official as well as non-official quarters."

Letter No. 541/1934-35, dated the 20th November 1934.

From—The Secretary, The Marwadi Chamber of Commerce, Bombay ;

To—The Secretary, the Bombay Legislative Council.

*Subject.*—Syed Munawar's Bill to regulate money-lending business in the Bombay Presidency.

" I am directed by the Board of this Chamber to forward their following views on the above-mentioned bill.

2. My Board are not opposed generally to the principle of regulating money-lending business. On the contrary they are of opinion that unless and until the evil practices that may have crept into the profession are stopped it can neither develop and progress nor increase its usefulness to the community. They further feel that wherever unconscionably high rates of interest are prevalent some legal check is essential. Although my Board hold these views they are afraid Mr. Syed Munawar's Bill is too wide and otherwise unsuited to the furtherance of the objects aimed at.

3. A very grave defect of the Bill is that it makes no allowance for the fact that in a large number of cases individuals who do not carry on money-lending as a profession accommodate their neighbours in times of need. If the provision relating to submission of quarterly accounts is to apply to such cases also the obvious effect will be to scare away such casual lenders who are as a class more sympathetic and reasonable.

4. Besides, as stated above, the bill is too wide in scope. A safeguard can work only if it is limited in operation. For these reasons my Board are opposed to the bill in question. They would, however, be willing to support another measure with the same objects but free from the drawbacks indicated here.

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*(English translation of the Sindhi document, received from the Oriental Translator to Government with his Memo. No. 1549, dated the 10th August 1934.)*

Today a meeting of the Panchayat of the Merchants of Chachro town was held under the Chairmanship of Seth Jagrupdas, at which the following resolution was passed :

Proposed by Seth Mathradas Motiram and seconded by Seth Motiram.

That this Panchayat of merchants is opposed to the Bill to regulate the money-lending business, introduced in the Bombay Legislative Council, on the following grounds :—

(1) There is no necessity of passing this Bill, as the Dekkhan Agriculturists' Relief Act already affects the merchants and the Civil Procedure Code also contains several provisions about interest and other matters for the protection of debtors, by enforcing which the object of the Bill can be achieved.

(2) In this Bill all the responsibility has been thrown upon the shoulders of the creditors, and no provision has been made for the security of their debts. Most of the businessmen are poorly educated and do not even know how to keep their accounts properly.

(3) The most inconvenient provision of the Bill is that the creditors are required to furnish each debtor with a statement of accounts every three months, showing the amount due from such debtor at that time. But every creditor has many debtors, who do not live in one village but in several villages situated at considerable distances from each other. To go every three months to all these villages and give statements of accounts to the debtors there will put the creditor to considerable expense of time and money. In these circumstances the trade of the country will greatly suffer. Moreover, in most villages there are no post offices, and it will therefore be very difficult for a creditor to prove in a court of law that he has duly supplied the debtor with quarterly statements of accounts, if the debtor refuses to accept them and there is no post office to enable the statements being sent to him by post.

Resolved unanimously that this Bill should not be passed. But if it is passed, the provision requiring the creditor to furnish a statement of accounts to the debtor should be amended so as to compel every debtor to keep an account book, in which he should get every amount borrowed or repaid by him entered in the creditor's handwriting.

2. It is the custom in this country to settle accounts once a year, except when there is a famine, in which case such settlement is postponed. Hence whenever the account is settled, the debtor should also have this settlement of account recorded in his account book by the creditor.

3. If this Bill is passed, the credit of the debtors will be shaken and it will be difficult for them to get any loans.

Resolved further that copies of the above resolution should be submitted both to the Bombay Government and Sind Government.

Dated 13th July 1934.

(Signatures.)

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*(English translation of Sindhi petition received from the Oriental Translator to Government with his Memo. No. 1672, dated the 30th August 1934.)*

To—The Home Secretary, Government of Bombay.

This meeting of the Panchayat of Islamkote (District Thar Parkar) held on 7th August 1934 strongly protests against the Bill to regulate the money-lending business introduced in the Bombay Legislative Council on the following grounds:—

(1) The merchants of this place keep their accounts in Hindu Sindhi characters only, most of them being ignorant of the languages mentioned in sub-clause (b) of clause (i) of section 7 of the Bill. Hence if this Bill is passed, they will be put to great trouble and will have to close down their business.

(2) It will be very difficult to furnish statements of account to the debtors every three months, as required by section 8 of the Bill. In the villages each shop is managed by only one man, who besides attending to his business cooks his own food, looks after his beast of burden and does many

other things. It will therefore be impossible for such people to prepare such quarterly statements of account, specially in the prescribed form.

(3) Section 10 of the Bill is very harsh, as in the villages there are no adequate postal arrangements, and if the debtor denies the receipt of the quarterly statements of account sent to him otherwise than by post, the burden of proving the fact has been thrown upon the creditor, which is most unjustifiable. If this Bill is passed, it will result in the abovementioned and similar other difficulties. We therefore request Government not to allow it or any other similar Bill to be introduced in the Council. Otherwise trade, which is already very slack, will stop altogether, resulting in serious unemployment among merchants and agriculturists on the one hand and loss of revenue to Government on the other. The relations between the creditors and debtors will also become very much strained, in consequence of which there will be no peace in the country.

Dated 10th August 1934.

Signatures.

خدمت ۾ جناب پريزيڊنٽ صاحب ڪائونسل بمبئي جي عرض  
 عرض ته ڳوٺ سپڊر تعلقو ڇاڇرو ضلع ٿرپارڪر جي پنڃائت  
 جا (۱۶۰۰) ماڻهون جي ڪيوني آهي - ٿهراڻو ٿي ڪري ته  
 سئيد منوره جو بيش ڪيل وياجه خوري جو بل خاص هندن کي  
 مجبور ڪرڻ ۽ سڌن روزگار ڪسي ٻي روزگار بنائڻ لاءِ رٿيو ويو  
 آهي - هيٺين سببن ڪري هي بل خاص سخت تڪليف  
 ڏيندڙ آهن -

(۱) سنڌ ۾ وياجه تي هٿس ڏيندڙ سيڪڙي (۹۸)

هندو آهن

(۲) ۽ قرض وٺڻن جو وڏو انداز مسلمانن جو آهي

(۳) بن هزارن کان مٿي پيدائش سيڪڙي قرضدارن جي نه آهي

(۴) گھڻون ڪري (۹۵) سيڪڙو قرض هڪ هزار کان گھٽ آھين

(۵) سنڌه جا هندو سھرو ڪري ڪڙرن جو وهنوار والڪن اڪرن ۾ ٿا هن سي - ۳ - ۳ مهيني ڪهن، ورنيڪيولر بولي ۽ زبان ۾ حساب ڪتاب ڏيئي سگهن سو نامڪ آهي

(۶) گھڻن ۾ سواءِ والڪن اڪرن جي ڪو درلي هندو ورنيڪيولر بولي ۾ لکي پڙهي ڄاڻندو هجي پوءِ جيڪو مسلمان سنڌه ۾ اڙدو يا موهني ۾ حساب ڪتاب گهرندو ته هندو ڪهن به صورت ۾ ڏيئي نه سگهندو

(۷) زرعي پيدائش ۽ چوپايو مال اوڏر تي لڪڻ جو ڪم جو مسلمان ٿا ڪن سو ڏيئي ليني ۾ ڪيو ويو آهي

(۸) وڏو واپرن ۽ ميفر جنڪي ورثي يا انتقال ۾ قرض جو حق مليو هجي سي حساب ڪيهاڻي نه سگهندا

انهن سببن کان پٽو رد آهي ته هي بل قوم قوم ۾ پيدا ٿيو پيدا ڪرڻ ۽ خاص مسلمانن جي فائدي ۾ هندن جو روزگار ڪسڻ لاءِ رٿيو ويو جنهن مان خود مسلمانن کي نقصان آهي - جي قرض نه ملڻ ڪري روٽيون وڪنڻدا - انهي ڪري هي پنجاڻت هن بل جي سخت مخالفت ڪن -

(۱) ۽ پريسيدنت صاحب بمبئي ڪائونسل

(۲) گورنر صاحب بمبئي

(۳) ڪمشنر صاحب سنڌ

(۴) ڪالڪٽر صاحب ضلع ٿرپارڪر

(۵) ڪائونسلن جي ميمبرن

(۶) ۽ پريس

(۷) پريزيڊنٽ صاحب هندو ڀائي بند پنچائت

۽ پريزيڊنٽ صاحب ڪے اختيار تي ڏجي ته من لهرابو نقل و  
مقننبا هندن - بهجاري ڏي

فقط ۱۷ اگست سن ۱۹۳۴ع

تلسيداس هنسراج

تيڪم وانڪڊ اساهي

ديارام هنسراج برهمن

لڌو رڻڇور

سچنڀا مل جيران داس

(English translation of Sindhi petition received from the Oriental  
Translator to Government with his Memo. No. 1691, dated the  
3rd September 1934.)

Resolutions passed by the Panchayat of Chehlor, taluka Chhachhro,  
district Thar and Parkar.

(1) The merchants of this place keep their accounts in Hindu Sindhi characters only, most of them being ignorant of the languages mentioned in sub-clause (b) of clause (1) of section 7 of the Bill. Hence if this Bill is passed, they will be put to great trouble and will have to close down their business.

(2) It will be very difficult to furnish statements of account to the debtors every three months, as required by section 8

of the Bill. In the villages each shop is managed by only one man, who besides attending to his business, cooks his own food, looks after his beasts of burden and does many other things. It will therefore be impossible for such people to prepare such quarterly statements of accounts, specially in the prescribed form.

(3) Section 10 of the Bill is very harsh, as in the villages there are no adequate postal arrangements, and if the debtor denies the receipt of the quarterly statements of account sent to him otherwise than by post, the burden of proving the fact has been thrown upon the creditor, which is most unjustifiable. If this Bill is passed, it will result in the abovementioned and similar other difficulties. We therefore request Government not to allow it or any other similar Bill to be introduced in the Council. Otherwise trade, which is already very slack, will stop altogether, resulting in serious unemployment among merchants and agriculturists on the one hand and loss of revenue to Government on the other. The relations between the creditors and debtors will also become very much strained, in consequence of which there will be no peace in the country.

Dated 7th August 1934.

(Signatures.)

Memorandum No. 1988, dated the 27th October 1934.

From—The Oriental Translator to Government, Bombay.

The undersigned presents compliments to the Secretary to Government, Legal Department, and has the honour to forward the accompanying communication\* in Marathi dated 15th October 1934 from the President, the Brokers' and Commission Agents' Association, Dhulia (district West Khandesh), addressed to His Excellency the Governor-in-Council, Bombay, wherein the petitioner forwards a copy of a resolution passed unanimously at a meeting of the Association held on 14th October 1934 *anent* the Bill to regulate the money-lending business brought forward by Mr. Syed Munawar, M.L.C., condemning the said Bill as being harmful to the money-lending business, and to the creditors and debtors alike, particularly to the latter and as being adverse to the interests of the agriculturists and detrimental to the Industrial prosperity of the country in general.

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\* Not printed.

(Summarised translations of articles in Vernacular Newspapers,  
received from the Oriental Translator to Government.)

*Sudarshan*—8th October 1934.

The *Sudarshan* questions how far Syed Munawar's money-lending Bill will be successful in practice and writes :—  
“ It cannot be said that the Bill will really help the debtor. The general opinion is that the present Agriculturists' Relief Act has not brought about the least improvement as regards the indebtedness of the cultivator, and it is natural if the fear is entertained by many that this Bill also will meet with the same fate. Like that Act, this Bill contains a clause empowering courts to examine the dealings between the creditor and the debtor. This clause may be extremely important and effective, but it is likely to tempt the money-lender in most cases to fabricate evidence. The third part of this Bill, that about the money-lender giving to the debtor every three months an account of the debt position, is likely to improve the condition of the debtor, if it is properly put into effect.”

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*Pragatik*—8th October 1934.

Mr. Anant Mahadev Khambete, pleader, Jalgaon, writes in the *Pragatik* :—“ There are already Acts like the Usurious Loans Act intended to secure the same object as the present Bill. Again a document can be rendered invalid under the Evidence Act if the debtor can prove either that no amount has been paid to him, or that less amount had been paid than that shown in the document, or that undue influence had been exercised upon him. The present Bill is not, therefore, at all necessary. While a law was necessary for protecting the agriculturists, any such protection is not required for the labourers who get daily or monthly wages. It is not understood how the clause about the money-lender giving a quarterly account to the debtor can succeed in its object. For, there is the possibility of the money-lender not acknowledging payments at all or his taking from the debtor these quarterly receipts in advance. This Bill will involve a waste of the court's time and it will harass the honest money-lender along with the dishonest one. In short, there is no necessity to pass it.”



*Karnatak Vaibhav*—9th September 1934 (Bijapur).

Commenting on the Bombay Bill to regulate the money-lending business, the *Karnatak Vaibhav* writes:—  
 “The Bill empowers Government to require money-lenders to keep their accounts in English, Marathi, Gujarati, Sindhi, Urdu, Modi or Hindi. The Kanarese language is not mentioned at all. This omission must be immediately supplied. The measure will be as impracticable, harmful and defective as the Deccan Agriculturists’ Relief Act. It will be a suicidal act to consent to this measure under the false impression that it will protect borrowers. It must be represented to Government that such superficial measures cannot improve the condition of the borrowers.”

Letter No. 909, dated 18th November 1934.

From—The Honorary Secretary, The Bombay Commission Agents’ Association, Bombay ;

To—The Secretary, Bombay Legislative Council.

“I am directed by the Committee of the Bombay Commission Agents’ Association, to forward hereby their views on the Bill No. VII of 1934—to regulate the money-lending business in the Bombay Presidency, introduced in the last session of the Bombay Legislative Council.

My Committee have studied the statement of objects and reasons set down by the author of the Bill, explaining its various provisions and stressing its necessity. From the same, my Committee understand that the Bill is introduced with a view to check the usurious malpractices of certain types of money-lenders, and to afford protection to the agricultural and labouring classes, who suffer at their hands. However, my Committee are constrained to observe that the Bill, in its present form, is so vague and wide, that it will not achieve the end in view and will restrict trade and credit, covering as it does all persons and transactions. It is therefore essential that loans made against sales of goods and occasional advances should be excluded from the scope of the Bill and that it should cover loans made to agricultural, labouring and such other classes which are sought to be protected and that it should

apply to borrowers with an annual income of not more than Rs. 1,000 and loans of amounts below Rs. 500. Consequently sub-section (5) (a) of section 2 and section 3 should be amended on the lines suggested by my Committee.

My Committee further submit that there are many other objectionable and obnoxious features in the Bill. They will set down their observations on the same in detail as under :—

*Section IV.*—This section lays down that a suit for recovery of a loan shall be instituted in a court within the local limits of whose jurisdiction a debtor resides.

My Committee have to point out that the object of the Bill which is to check the usurious interest will be frustrated by such a procedure as it will enhance the cost of recovery and incidentally the rate of interest to be charged to the debtor. This section should therefore be deleted.

*Sections V and VI.*—These sections lay down the method which shall be followed by the court when deciding a case instituted by the creditor. Even though the claim be acknowledged by the borrower, they give the power to the court to go into the past history of transactions.

My Committee have to point out that keeping of accounts on the Western Book-keeping style and the submission of statements of account every quarter will increase cost of working and incidentally the rate of interest to be charged to the Borrower. They, therefore, submit that the procedure now in vogue of keeping accounts and submitting statement of accounts every year should not be interfered with.

*Section VIII.*—This section lays down penalty on the creditor's income on non-compliance with the provisions of the Section VII. This section should be amended, in accordance with the amendments suggested in Section VII.

It is true that some restrictions are necessary to check the rapacious practices and high rates of interest of some money-lenders and that protection to ignorant and illiterate agriculturists and labourers is necessary; but the Bill as framed is vague and wide. As it does not define the limit of reasonable rate of interest, money-lender will be very loath to advance under such uncertain conditions. The Act throws the responsibility on the lender to send extracts to the debtors and default in sending such extracts will entail forfeiture of interest, but there is no obligation on the debtors to acknowledge the receipt of the extract to intimate to the creditor the correctness or otherwise of the extract.

It must not be overlooked that in most cases moneys are advanced on the personal security of the debtor, there is possibility sometimes of losing the amounts, so even if the rate be high, the risk also is very great.

As the present Bill is vague and wide and full of many objectionable features, my Committee submit that it should be rejected."

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Letter dated the 19th November 1934.

From—The Honorary Secretary, The Momin (Weavers') Association, Bombay ;

To—The Secretary, the Legislative Council, Bombay.

Re : Bill No. VII of 1934, i.e. A Bill to regulate the Money-lending Business.

" Referring to your letter No. 777 dated the 5th September 1934 forwarding therewith a copy of the abovenoted Bill I have the honour to inform you that my Jamiat after minutely going through the Bill, agrees with the Aims and Objects of the Bill and thinks the passing thereof quite essential in the interest of the Poor Public reported to be harassed now and then by the usurious Money-lenders and suggests that for the phrase ' Subject-matter of the Suit ' appearing in Proviso to section 3 of the Bill, the term ' Loan ' be substituted in order to avoid ambiguity of the said phrase."

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Letter dated the 16th November 1934.

From—The Honorary Secretary, The Bhagini Samaj, Bombay ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

" I have the honour to acknowledge receipt of your Office letter No. 777 dated the 5th September 1934 sending a copy of Bill No. 7 of 1934 (a Bill to regulate money-lending business) and asking for the views of our Samaj on the provisions of the Bill.

My Committee are in favour of the proposed Bill but in their opinion it does not go far enough. It would be better if registration and licensing of professional money-lenders were made compulsory.

It would also be desirable to make the Bill applicable at least to loans up to Rs. 2,000."

Letter dated the 22nd November 1934.

From—The Secretary, The Ahmedabad Millowners' Association,  
Ahmedabad ;

To—The Secretary, Bombay Legislative Council.

“ I have the honour to acknowledge receipt of your letter No. 777 of September 5, 1934, and to forward hereunder the opinion of my Committee on the Bill to regulate the money-lending Bill.

My Committee is in accord with the principle and purpose of the Bill for putting a legal check upon unscrupulous money-lenders and reckless borrowers. The charging of interest at unconscionably high rates ranging from 24 to 300 per cent. by money-lenders should be effectively checked by legislation but the provisions of the Bill as introduced in the Bombay Legislative Council are so wide in their scope and so very strict in their operation that an unhealthy atmosphere for the system of credit will be created and this is likely to defeat the very purpose of the Bill. The scope of the Bill should in the first instance be confined to the loans advanced to poor people who are in absolute need of such protection by legislation. The proposed method of keeping the accounts and submitting them regularly in a particular manner will be cumbrous and unsuitable. My Association would suggest that the object of the Bill will be adequately served if it is confined only to borrowers whose annual income is less than Rs. 1,000 and the loans do not exceed Rs. 500. It is necessary at present to leave aside other classes who carry on legitimate and fair transactions of borrowing as also those who grant credit by way of business dealings.

If the Bill is redrafted and sent for public opinion this legislation will prove more effective.”

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No. 615, dated the 23rd November 1934.

From—The Honorary Secretary, Bombay Provincial Board Harijan  
Sevak Sangh, Bombay ;

To—The Secretary, Bombay Legislative Council.

“ I have the honour to acknowledge receipt of your letter No. 777, dated 5th September 1934, inviting the opinion of my Board on the Bombay Money Lenders' Bill introduced in the Bombay Legislative Council by Mr. Syed Munawar, M.L.C., and to send hereby their views on the same.

My Board are in general agreement with the principles of the Bill, but would have preferred the legislation to have been introduced by the Government of Bombay themselves. The evils of unrestricted money-lending have been growing apace in recent years, both in urban and rural areas. The Royal Commission on Agriculture recommended the undertaking of legislation for the control of operations of money-lenders and the protection of growers, but it is regrettable that though seven years have elapsed since the publication of that Commission's Report, the Government of Bombay have not taken any action in that direction. This recommendation was also supported by the Bombay Provincial Banking Enquiry Committee whose report was published in 1930 and endorsed by the Indian Central Banking Enquiry Committee, whose report was issued in 1931. My Board hold that in important matters relating to the welfare of backward section of the community the responsibility for implementing recommendations of official Committees and Commissions should be shouldered by Government themselves instead of being left to be discharged by non-officials.

The Deccan Agriculturists' Relief Act and the Usurious Loans' Act do indeed grant some protection to growers against the exactions of usurious money-lenders, but experience has shown that this protection is not enough. One very useful check on usurious lending is the insistence on the maintenance of accounts of transactions by way of loans and advances in a prescribed form such as can be easily understood and verified, and on the supply of debtors of periodical statements of accounts. With the spread of literacy and the general diffusion of education, my Board believe that the introduction of these restrictions will be helpful in effecting some protection even to ignorant debtors. But beyond the direct benefit that will accrue, my Board attach weight to the educative value of such a procedure which will stimulate a zest for knowledge of figures and lead to an appreciation by debtors of their own financial position. In the interest of such education my Board would also urge the introduction of a system of pass-books as recommended by the Banking Enquiry Committee. Failing this, the legislation should provide for the grant of receipts by money-lenders to all debtors for all payments received, whether agriculturists or not, on the analogy of the provision in that behalf contained in the Deccan Agriculturists' Relief Act.

There is one more point regarding which action, in the opinion of my Board, is necessary. Any legislation that may

be enacted is likely to be ineffective in relation to lenders who adopt extra legal methods for the recovery of their dues. The Bombay Provincial Banking Enquiry Committee, in paragraph 284 of their Report, alluded to the oppression practised by Pathan money-lenders, and my Board would like to point out that the classes amongst whom their activities are carried on, viz., the *Harijans* (depressed classes) whether in the City of Bombay or outside, are particularly subjected to those harassments by money-lenders who resort to extra-legal methods. For the protection of these oppressed debtors, it is necessary that Government should agree to take action as recommended by the Central Banking Enquiry Committee in paragraph 123 (5) of their Report against those practising extra-legal methods either under the ordinary law or under section 3 of the Foreigners' Act; deporting those undesirable money-lenders outside India, if necessary. Such action should, my Board suggest, be taken by the Local Authorities, when duly constituted bodies like our Institution, or the Social Service League, bring to the notice of these Authorities the cases of harassments which have been investigated by them.

It is truism that no legislation can protect the impecunious borrowers against themselves, but my Board believe that the whole class of borrowers who are subject to harassments and unlawful exactions are not reckless in their borrowings. Often-times, it is the exactions, the piling up of interest at an unconscionable rate and the petty tyrannies that are practised by unscrupulous money-lenders who are ready to exploit the difficulties of the poor and backward classes of the community that lead to the growth of debt beyond the capacity of debtors to pay.

My Board welcome the legislation inasmuch as it will, in their opinion, impose a check on the vagaries of money-lenders and at the same time, educate and protect the debtors."

From—The Secretary, The Gujarati Hindu Stree Mandal, Bombay;

To—The Secretary to Government, Home Department, Bombay.

"With reference to your letter regarding the Bill No. VII of 1934, to regulate the money-lending business moved by Mr. Syed Munawar, M.L.C., we beg to submit as follows:—

That our Mandal is in favour of restricting the indebtedness of the agriculturist and industrial worker and agrees with the principle of the bill, but is of opinion that some of its provisions are very stringent against the money-lender. So far as the agriculturists are concerned there are the provisions of Deccan Agriculturists' Relief Act in the Bombay Presidency.

It is a matter of common knowledge that the provisions of the Deccan Agriculturists' Relief Act have been abused and dishonest defences are resorted to by the agriculturists. The innate simplicity and truthfulness of the agriculturists have to some extent disappeared and they are now encouraged to put forward false pleas, and litigation has increased by leaps and bounds. The definition of the agriculturist is so wide that persons who ought not to get the benefit under the Act are enabled to take advantage of its provisions. The result is that agriculturists have lost their credit and creditors do not advance money even on mortgage of land but insist on an out and out sale. Similarly the provisions of the proposed bill under consideration are likely to be evaded by ways which ingenuity might suggest and litigation is bound to increase. Our Mandal thinks that at the initial stage of legislation of this kind Conciliation Boards should be established in villages and taluka towns. The members of the Board should be nominated by Government on the advice of the District Judges. The amount of the subject-matter in the villages should be limited to Rs. 100 and in the towns to Rs. 500. There should be no appeal from the decision of the Conciliation Board. As regards the Bombay City the provisions of the Usurious Loans Act should be largely resorted to by the Small Causes Court. The proposed bill does not in any way deal with the increasing evil in the city and elsewhere, of Pathans and others recovering their dues by force and compulsion without having recourse to the Court of Law.

Our Mandal thinks that a comprehensive bill should be brought by Government after ascertaining the manner in which certain attempts at legislation have worked out in other provinces. It will be then possible to remove the defects and avoid the pit-falls and the resultant evils of such a piece of legislation. Otherwise the remedy may be worse than the disease."

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Letter dated the 19th November 1934.

From—The Honorary Secretary, Zoroastrian Brotherhood, Bombay;  
To—The Secretary to the Government of Bombay, Political Department, Bombay.

"I am directed by the Managing Committee of the Zoroastrian Brotherhood to submit its views as under:—

1. The Bill is a necessity in view of the hardships and humiliation to which money-lenders in India drive the poor borrowers.

2. A provision should be made in the Bill to have the money-lending business registered so that only registered money-lenders can carry on the business.

3. To prevent the malpractice of forcing borrowers to pass demand notes of higher than, or even double or treble, the value of the money actually advanced, a provision should be made to have the money advanced and the demand note passed in the presence of a mamlatdar or some other official who has to make his attestation certifying the genuineness of the transaction made and to make the infringement of the rule punishable to the lender and the borrower alike.

4. A provision should be made to make the loan returnable on a monthly instalment of 4 per cent. of the amount advanced and the interest payable at the end after the loan is paid off by monthly instalments of the similar rate of 4 per cent. of the amount advanced, the interest being calculated every month *pro rata* on the balance of the loan advanced. To take an example, for a loan of Rs. 100 advanced, the principal is to be paid off first by 25 monthly instalments of Rs. 4 each and at the end of 25 months, interest should be computed *pro rata* i.e., for 25 months on Rs. 100, for 24 months on Rs. 96 and so on and the total amount of interest should be paid off by monthly instalments of Rs. 4.

5. The maximum rate of interest for a loan ranging from Re. 1 to Rs. 100 should be fixed at 12 per cent., for a loan ranging from Rs. 100 to 500, 10 per cent. and for a loan ranging from Rs. 500 to 1,000, 9 per cent.

6. To provide against the possibility of strike by money-lenders, facility of such loans be made from the Co-operative Credit Societies in the district.

7. The clause 7 (B)—Instead of three monthly accounts the money-lenders should be made to render six-monthly accounts to the borrower and to submit yearly statements of business to the Registrar of the district.

8. The money-lenders should not be allowed to deduct any part of the amount of the loan or interest thereon at the time of advancing the loan."

Letter dated the 20th November 1934.

From—Rao Saheb S. S. Parulkar, B.A., LL.B., Pleader, Satara ;

To—The Deputy Secretary to the Government of Bombay, Legal Department, Bombay.

*Subject*—Bill No. VII of 1934 (A Bill to regulate the money-lending business).

“ Referring to your letter No. 777 of 1934, dated 5th September 1934, asking for my opinion on the bill noted



above before the Legislative Council, I have the honour to express the following views on the subject.

2. There is no doubt that the evil which the bill is out to attack exists. It is equally certain that the classes whom it purports to protect cannot, in their present social habits, customs and environments, exist without debts. Roughly there are three sources of credit open to them, viz. (1) The Banks and Co-operative Societies, (2) Professional money-lenders, (3) Amateur money-lenders. I quite agree that the first source ought to be more popular than either of the other two. But any legislation which tends to swell the custom of the second to the detriment or even ruination of the third ought to be discouraged.

3. The question is whether the measure under consideration could really help to prevent or even substantially reduce, resort to the professional money-lenders. This is the class of creditors really aimed at by the Bill. The Bill sets out to check them by placing principally three weapons in the hands of Courts of Law, viz. (1) a compulsory examination of the debtor and the creditor, (2) a reinvestigation into the transaction or transactions between them right from the beginning and (3) a particular searching method of taking accounts from the creditor. All these weapons are being handled in the interests of agriculturists under the Deccan Agriculturists' Relief Act. Have they succeeded to any material extent in giving the intended relief to the agriculturists? We find in actual practice clever artifices to circumvent all those provisions, with the result that the object is defeated oftener than not. Larger advances are admitted in writing to have been received than those actually borrowed. Sums are produced before sub-registrars and then taken back. In fact, the provisions are made a special excuse for securing larger profits, as if they were a charter for the sowcars extracting more profit. In other words, those provisions often harm, instead of helping, needy members of the class it purports to protect. There is no reason to believe that the professional money-lender would fare worse under the new measure than he does under Deccan Agriculturists' Relief Act. The co-operative movement has been in our midst, for some years now, but it has not materially affected the prosperity of private professional money-lenders. The reason lies deeper than in the reluctance of the needy to approach the co-operative institutions. Unlike the co-operative institutions, the private money-lender is not restrained by any hard and fast rules or by the need of concurrence on the part of a majority of any

committee. His favours are apparently bestowed with greater ease, on nominal or no security beyond that of his personal estimate of his client's present or potential or even vicarious solvency, and with less fuss and greater secrecy. It is clear that the co-operative movement, and, where they exist, the State credit agencies, must be worked more attractively, sympathetically and with greater imagination than they are. That is the only way to reduce the trade of these social parasites. The problem would become soluble by encouraging thrift and at the same time making credit more facile and not more difficult, and the classes concerned must be made to feel that the co-operative institutions are as much their friends in need as the private sowcars besides being better and more reliable sowcars than the latter. As it is, the Bill may add to the credit difficulties of the persons it seeks to help, without granting any of the relief needed by them.

The special provision of quarterly or other periodical submissions of accounts will only keep the ingenious sowcars alert from the beginning. He will not wait to manipulate his accounts till the moment of filing his suits, that's all. But the small money-lender, usually illiterate, may lose his legitimate interest, as he will fail to submit the statutory accounts. This will prove a damper on his neighbourly kindness, as it is this motive very often and not avarice for his advances. The professional money-lender will make the need to submit accounts and the trouble involved, a reason for adding to his profits. Thus it may discourage the amateur money-lender and finally wipe him off the way of the professional money-lender, before it becomes possible for the co-operative movement to wipe off the latter.

As for the power to reduce the rate of interest, the Usurious Loans Act is already there.

In my opinion, therefore, the Bill is not necessary and should not pass."

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Letter No. G. 24/17248, dated the 26th November 1934.

From—V. L. Mehta, Esqr., Managing Director, Bombay Provincial Co-operative Bank, Ltd., Bombay ;

To—The Secretary to the Legislative Council of the Governor of Bombay.

"I have the honour to acknowledge receipt of your letter No. 777 of the 5th September and regret the delay in replying

to the same. I have the honour to state that in my capacity as a member of the Provincial Board of the Harijan Sevak Sangh, I have looked into the memorandum submitted by that body and am in entire agreement with the views contained in it. I do not, therefore, submit a separate expression of my personal views. I may add that as a member of the Bombay Provincial Banking Inquiry Committee I fully subscribed to the proposal to enact a Money-lenders' Act on the lines contained in Mr. Syed Munawar's Bill."



The  
**Bombay Government Gazette**  
PUBLISHED BY AUTHORITY

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MONDAY, 17<sup>TH</sup> JANUARY 1938.

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Separate paging is given to this Part in order that it may be filed as a separate compilation

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**PART V**

(To be translated into Marathi, Gujarati, Kanarese and Urdu and the translations to be published in the "Bombay Government Gazette".)

The following Bill is published under rule 18 of the Bombay Legislative Assembly Rules :—

**BILL No. VII OF 1938.**

*A Bill to regulate the transactions of money-lending  
in the Province of Bombay.*

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

**CHAPTER I.**

1. (1) This Act may be called the Bombay Money-lenders Act, 1938.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of the Province of Bombay.

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

(15) "Proceedings under this Act" means proceedings under sub-section (3) of section 10, or sub-section (3) of section 15, or under section 16, 17, 35, or 36 ;

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

(17) "Register" means a register of money-lenders maintained under section 7 ;

(18) "Registrar" means the Registrar of money-lenders appointed under section 6 ;

(19) "Rules" means rules made under this Act ;

(20) "Schedule" means the schedule appended to this Act ; and

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

(a) for the recovery of a loan made after the commencement of this Act ;

(b) for the enforcement of any security taken or any agreement whether by way of 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 Act in respect of any loan made either before or after the commencement of this Act.

## CHAPTER II.

### CONSTITUTION AND POWERS OF COURTS IN PROCEEDINGS UNDER THIS ACT.

Competent  
Courts under  
the Act.

3. The Courts referred to herein as Competent Courts, having jurisdiction to entertain proceedings under this Act and to pass orders therein are :—

(a) In the City of Bombay—

(i) the Court of the Presidency Small Causes Court—in proceedings under this Act to which a money-lender (who carries on the business

of money-lending in the City and whose capital is or is intended to be, as the case may be, less than Rs. 10,000 in the year in which the proceedings are held) is a party ;

(ii) the High Court in its ordinary original jurisdiction—in proceedings under this Act to which a money-lender (who carries on the business of money-lending in the City and whose capital is or is intended to be, as the case may be, Rs. 10,000 or more in the year in which the proceedings are held) is a party ;

(b) Outside the City of Bombay—

(i) the Court of the Second Class Subordinate Judge—in proceedings under this Act to which a money-lender (who carries on or intends to carry on the business of money-lending within the local limits of such Court and whose capital is or is intended to be, as the case may be, less than Rs. 10,000 in the year in which such proceedings are held) is a party ;

(ii) the Court of the First Class Subordinate Judge—in proceedings under this Act to which a money-lender (who carries on the business of money-lending within the local limits of the jurisdiction of such Court and whose capital is or is intended to be, as the case may be, Rs. 10,000 or more in the year in which such proceedings are held) is a party.

4. Subject to the provisions of this Act, a Competent Court in regard to proceedings under this Act shall have the same powers and shall follow the same procedure as it has and follows in regard to civil suits. Procedure  
Competent  
Courts.

5. (1) Any person aggrieved by a decision or order in proceedings under this Act may appeal— Appellate  
Courts.

(a) to the High Court in its appellate jurisdiction from a decision or order passed by the High Court in its ordinary original jurisdiction or by the Court of the Presidency Small Causes Court ;

(b) to the District Court from a decision or order passed by the Court of a Second Class or First Class Subordinate Judge.

(2) Any person aggrieved by a decision or order of a District Court in appeal under sub-section (1) may, subject to the provisions of section 100 of the Code of Civil Procedure, 1908, appeal to the High Court in its appellate jurisdiction. <sup>V of 1908.</sup>

(3) (a) The period of limitation for appeals under sub-section (1) shall be 30 days and for appeals under sub-section (2) 90 days ;

(b) The provisions of the Indian Limitation Act, IX of 1908, applicable to appeals shall, so far as may be, apply to appeals under this section.

### CHAPTER III.

#### REGISTRATION AND LICENSING OF MONEY-LENDERS.

**Appointment of Registrar.** 6. The Provincial Government may appoint Registrars of money-lenders for the purposes of this Act and may define the areas within which each Registrar shall exercise his powers and perform his duties.

**Register of money-lenders.** 7. The Registrar shall maintain a register of money-lenders in such form as may be prescribed.

**Money-lender not to carry on business of money-lending except for area under licence and except in accordance with terms of licence.** 8. No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.

**Application for licences.** 9. (1) Every money-lender shall annually before such date as may be prescribed make an application in the prescribed form for the grant of a licence to the Registrar of the area within the limits of which he intends to carry on the business of money-lending.

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Such application shall contain the following particulars, viz.,—

(a) the name in which such money-lender intends to carry on business ;

(b) if the application is by or on behalf of—

(i) an individual, the name and address of such individual,

(ii) an undivided Hindu family, the names and addresses of the manager and the adult coparceners of such family,

(iii) a body corporate, the names and addresses of the director, managers or officers thereof,

(iv) an unincorporated body of individuals, the names and addresses of such individuals ;

(c) the area and the place or principal place of the business of money-lending in the Province ;

(d) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on ;

(e) whether the person signing the application has himself, or any of the adult co-parceners of an undivided Hindu family, or any member of the body corporate or unincorporated on behalf of which such application has been made has, or have carried on the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other co-parcener or any other person in the same or any other name ;

(f) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made.

(2) The application shall be in writing and shall be signed by the individual, or, if the application is made on behalf of an undivided Hindu family, by the manager and the adult co-parceners of such family, or, if the application is made by a body corporate or unincorporated by the managing director or any



other person having control of its principal place of business in British India or of its place of business in the area in which it intends to carry on the business or by an agent authorised in this behalf by the individual money-lender himself, or the family, or the body corporate or unincorporated, as the case may be.

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

(4) A money-lender may apply for the grant of a licence to the Registrars of more than one area within the limits of which he intends to carry on the business of money-lending.

(5) If during the pendency of the year for which a licence has been granted to a money-lender such money-lender intends to invest additional capital in the business of money-lending in any particular area he may apply to the Registrar for the grant of a supplementary licence.

Entry in  
Register and  
grant of  
licences.

10. (1) On the receipt of an application under section 9 and on payment in the prescribed manner of such licence duty as is specified in the Schedule, the Registrar may, subject to the provisions of section 14 and after making a summary inquiry, enter the name of such applicant in the Register and grant the applicant a licence in such form and subject to such conditions as may be prescribed.

(2) If, at any time during a year for which a licence has been granted, the Registrar has reason to believe that a money-lender has invested capital in the business of money-lending in excess of that for which he has paid the licence duty, the Registrar may, after making a summary inquiry, determine the additional amount of the licence duty which the money-lender is liable to pay and may recover the same from the money-lender.

(3) For the purpose of sub-sections (1) and (2), the Registrar shall have and may exercise the same

V of 1908. powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters :—

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

(4) The provisions of this section shall apply *mutatis mutandis* to application for a supplementary licence under sub-section (5) of section 9.

11. Every licence shall be granted annually but shall expire on the 31st day of March in each year immediately following the date on which it was granted. Licences to be annual.

12. No money-lender shall after the commencement of this Act carry on or continue to carry on the business of money-lending in any area in the Province for which he does not hold a licence. Money-lender not to carry on money-lending business for area for which he does not hold licence.

13. (1) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit to which this Act applies, and filed by a money-lender, unless the Court is satisfied that at the time when the loan or a part of the loan to which the suit relates was advanced, the money-lender held a licence which was not suspended, cancelled, or which had not expired. Stay of suits by money-lenders not holding licences.

(2) If during the trial of any such suit, the Court finds that the money-lender had not held such licence, the Court may, on the application of the money-lender, stay the hearing of the suit and may require the money-lender within a period of three months to produce a licence on payment to the Registrar of all the arrears of the licence duty payable by him

under this Act for the period commencing from the date from which he started money-lending business, or after the expiry of six months from the date on which this Act comes into force, whichever is later, together with penalty not exceeding three times the licence duty payable by the money-lender for the year in which such licence should have been obtained :

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

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

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

(5) The provisions of this section shall apply to a claim for a set off on behalf of a money-lender.

(6) Nothing in this section shall—

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

(b) affect the powers of a Court of Wards, or a manager of an estate taken under management under the Broach and Kaira Incumbered Estates Act, 1881, or the Gujrat Talukdars Act, 1888, or an Official Assignee, a receiver, or a Court under the provisions of the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, or of a liquidator under the Indian Companies Act, 1913, to realize the property of a money-lender in respect of loans advanced by such money-lender before this Act comes into force,

Bom. XXI of 1881.  
Bom. VI of 1888.  
III of 1909.  
V of 1920.  
VII of 1913.

14. Any money-lender who is required under sub-section (2) of section 13 to produce a licence shall make an application to the Registrar in the manner specified in section 9 and on receipt of such application and on payment of the arrears of licence duty and penalty, if any, directed by the Court to be paid, the Registrar may, subject to the provisions of section 15, and after making a summary inquiry in the manner specified in section 10 enter the name of the money-lender in the Register and grant him the licence in the form and subject to the conditions specified in the section.

Entry in register and grant of licence to a money-lender directed to obtain licence under section 8.

15. (1) The grant of a licence shall not be refused except on one or more of the following grounds :—

Refusal of issue of licence.

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

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

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

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

(i) knowingly participated in or connived at any fraud or dishonesty in the conduct of his business, or

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

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

(3) An appeal shall lie from the order of the Registrar refusing a licence to the Competent Court.

Application  
for cancel-  
lation of  
licence.

16. (1) Any person may file an application to the Competent Court for the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar under section 15 may refuse him the grant of a licence.

(2) On the receipt of such application, the Court shall hold an inquiry and shall ascertain whether the money-lender has been guilty of such act or conduct.

(3) Any person making an application under this section, which is frivolous or vexatious shall be liable to pay to the money-lender against whom such application has been made, compensation of such amount as shall, in the opinion of the Court, be sufficient.

Court's  
power to  
cancel or  
suspend  
licence.

17. (1) (i) The Court passing an order of conviction against a money-lender for an offence under this Act, or

(ii) the Court trying a suit to which this Act applies, or

(iii) a Competent Court in a proceeding under this Act,

if such Court is satisfied that such money-lender has committed such contravention of the provisions of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending

(a) may order that the licence held by such money-lender be suspended for such time as the Court may think fit, or cancelled ;

(b) may also, if the Court thinks fit, declare any such money-lender, or if any such money-lender is an undivided family, the manager or any adult co-parceners thereof, or if such money-lender is a body corporate, or unincorporated, any person responsible for the management of business of money-lending carried on by such money-lender be disqualified from holding a licence for such time as the Court may think fit ;

(c) shall cause the particulars of the conviction and of any order made by the Court under this section to be endorsed on the licence held by the money-lender convicted or by any other person affected by the order and shall cause copies of its order to be sent to the Registrar by whom the licence was granted for the purpose of entering such particulars in the Register :

Provided that where a licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding a licence under this section, he may, whether or not he is a person convicted, appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order ; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(2) Any licence required by a Court for endorsement in accordance with sub-section (1) shall be produced in such manner and within such time as may be directed by the Court by the person by whom it is held and any person who, without reasonable cause, makes default in producing the licence so required shall, in respect of each offence be liable on conviction, to a fine not exceeding Rs. 500 for each day for the period during which the default continues.

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

18. Any person to whom a licence has been granted shall not be entitled to any compensation for the suspension or cancellation of a licence under this Act, nor to refund of any licence duty paid or deposit made in respect thereof.

No compensation for suspension or cancellation of licence.

19. Any person whose licence has been cancelled or suspended in accordance with the provisions of this Act shall, during the period for which such order of cancellation has effect or during the period of suspension, as the case may be, be deemed to be disqualified for holding a licence.

Persons whose licence is cancelled or suspended debarred from doing business of money-lending.

Person whose licence is cancelled or suspended not to apply without giving particulars of endorsement or of disqualification.

20. No person whose licence has been endorsed under section 17 or who has been disqualified from holding a licence shall apply for, or hold a licence, without giving particulars of such endorsement or disqualification.

Licence duty recoverable as an arrear of land revenue.

21. All licence duty including the balance of such duty due on the suspension or cancellation of a licence shall be recoverable as an arrear of land revenue.

## CHAPTER IV.

### REGULATION OF ACCOUNTS.

Duty of money-lender to keep accounts.

22. (1) Every money-lender shall keep and maintain at least a cash book and a ledger in such form as may be prescribed and shall write the same in regular course of business.

(2) Every money-lender shall—

(a) deliver to the debtor within a reasonable time after a loan is made, a statement in the language in which he keeps his accounts showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged ;

(b) give to the debtor a plain and complete receipt for all payments made on account of any such loan within a reasonable time after such payments are made ;

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

23. (1) Every money-lender shall furnish every debtor every year with a legible statement of accounts signed by the money-lender or his agent of any balance or the amount that may be outstanding against such debtor and such statement shall show—

Furnishing  
of state-  
ment of  
accounts by  
money-  
lender.

(i) the amounts of the principal and interest due to the money-lender at the commencement of the year ;

(ii) the amount of any payment already received by the money-lender in respect of the loan during such year and the date on which it was made ;

(iii) the amount of every sum due to the money-lender remaining unpaid, and the date upon which it became due and the amount of interest accrued due and unpaid in respect of every such sum ;

(iv) the amount of every sum not yet due which remains outstanding and the date upon which it will become due.

The statement shall be signed by the money-lender, or his agent, and shall be in the language in which the accounts of the money-lender are ordinarily kept. It shall be in such form and shall be supplied on such date as may be prescribed.

(2) In respect of any particular loan, whether advanced before or after the commencement of this Act, the money-lender shall, on any reasonable demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand a statement in the language in which the accounts of the money-lender are ordinarily kept signed by the money-lender or his agent and showing all or any of the particulars specified in subsection (1). Such statement shall be supplied in the English language if the debtor pays the money-lender a fee of Rs. 2 or in any other recognised language of the Province if the debtor pays a fee of Rs. 4.



For the purposes of this sub-section the recognised languages of the Province mean any of the following languages, namely Gujarati, Marathi, Kanarese, Urdu, and Hindi.

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

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

Debtor not bound to admit correctness of accounts.

24. A debtor to whom a statement of accounts has been furnished under section 23 shall not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

Procedure of Court in suits regarding loans.

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

(a) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of section 22 or 23 ;

(b) if the Court finds that the provisions of section 22 or section 23 have not been complied with by the money-lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs ; or in computing the amount of interest due upon the loan, may exclude any period for which the money-lender omitted to comply with the provisions of either of the said sections :

Provided that if the money-lender has, after the time specified in the said sections, given the receipt or furnished the account, as the case may be, and he satisfies the Court that he had sufficient cause for not furnishing it earlier, the Court may, notwithstanding such omission, include any such

period or periods for the purpose of computing the interest.

*Explanation.*—A money-lender who has given the receipt or furnished a statement of accounts in the prescribed form and manner, shall be held to have complied with the provisions of section 22 or section 23, as the case may be, in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

26. Nothing in this Chapter shall apply to loans advanced by a Bank, or a Company, or any body corporate or unincorporated which the Provincial Government may by notification in the *Official Gazette* exempt from the operation of this Chapter.

Provisions of this Chapter not to apply to loans made by Bank, Company, or body corporate, or unincorporated.

## CHAPTER V.

### MISCELLANEOUS.

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

Power of the Court to limit interest recoverable in certain cases.

V of 1908. 28. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may, at any time, on application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Power of the Court to direct payment of decretal amount by instalments.

29. Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at the rate exceeding 9 per cent. per annum in the

Limitations as to rate of interest.

case of a secured loan and 12 per cent. per annum in the case of an unsecured loan shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

Prohibition of compound interest and provision as to defaulting.

**30.** Any agreement made after the commencement of this Act for the loan of money by a money-lender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest :

Provided that provision may be made in any such agreement that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest, or both, the money-lender shall, subject to the provisions of section 29, be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

Prohibition of charge for expenses on loans by money-lenders.

**31.** Any agreement between a money-lender and a debtor or intending debtor for the payment by the debtor or intending debtor to the money-lender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal and if any sum is paid to a money-lender by the debtor or intending debtor as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the debtor or intending debtor, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and the amount shall be deemed to be reduced accordingly.

*Exception.*—Nothing in this section shall debar a money-lender from recovering costs of investigating title to the property, costs of stamp, registration of documents and other usual out of pocket expenses in cases where the contract includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof; or, where such costs, charges or expenses are leviable under the

IV of 1882. provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

32. Where a loan advanced, whether before or after the commencement of this Act, or any interest of such loan or the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made

Notice and information to be given on assignment of loans.

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

(b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto,

and any person acting in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention.

33. (1) Save as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt to a money-lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and, except, where the context otherwise requires, references in this Act to a money-lender shall accordingly be construed as including any such assignee as aforesaid:

Application of Act as respects assignees.

Provided that—

(a) notwithstanding anything in this Act—

(i) any agreement with, or security taken by, a money-lender in respect of money lent by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder

for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(ii) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid.

(2) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

Reopening  
of transac-  
tions.

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

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

(b) take an account between the parties;

(c) release the debtor of all liability in respect of any excessive interest;

(d) 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:

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

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

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

*Explanation.*—For the purpose of this section

(1) In the case of a suit brought on a series of transactions, the expression “transaction” shall mean the first of such transactions.

(2) Excessive interest means the rate of interest which contravenes any of the provisions of sections 29 and 30.

35. (1) Any debtor may make an application at any time to the Competent Court whether the loan to which the suit relates has or has not become payable for taking accounts and for declaring the amount due to the money-lender. Such application shall be in the prescribed form and shall be accompanied by a prescribed fee.

Inquiry for taking accounts and declaring the amount due.

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

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

36. (1) At any time after a debtor has sent to a money-lender any sum of money due from him to the money-lender in respect of a loan by way of principal, interest or both, if the money-lender refuses to accept the sum, the debtor may apply to the Competent Court to deposit the said sum in Court to the account of the money-lender.

Deposit in Court of money due to money-lender.

(2) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and the money-lender may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the sum then due in respect of the loan, and his willingness to accept the money so deposited, receive the sum.

(3) If the money-lender withdraws the sum deposited by a debtor under sub-section (1), he shall not be bound by any statement made by the debtor in depositing the sum.

(4) When the debtor has deposited in the Court under this section the sum due in respect of the loan, if such money is in payment of the principal or any part thereof, the interest on such principal or part shall notwithstanding any agreement between the parties cease from the date of the service of notice on the money-lender under sub-section (2).

(5) Nothing in this section shall affect the operation of the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, in regard to loans to which the said provisions apply. IV of 1882.

Entry of a sum in a bond etc. greater than the loan advanced to be an offence.

37. (1) No money-lender shall obtain a decree, whether *ex parte* or by consent or otherwise or an award to which the debtor is a party, or take any power of attorney, any note, promise to pay, or security, which does not state the actual amount of the loan, or which states such amount wrongly or which does not state the time for which it is made and the rate of interest charged, or any instrument in which blanks are left to be filled after execution.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000.

(3) Notwithstanding anything in any law in force, any such decree, award, power of attorney, note, promise or security shall be void and shall not be enforceable.

Penalty for molestation.

38. (1) Whoever molests, or abets the molestation of, a debtor for the recovery of a debt owed by him to creditor shall be punishable with imprisonment of either description which may extend to three months or with fine which may extend to five hundred rupees or with both:

*Explanation.*—For the purposes of this section, a person who, with intent to cause another person

to abstain from doing or to do any act which he has a right to do or to abstain from doing—

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

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

(c) loiters or does any similar act at or near a house or other place where such other person resides or works, or carries on business, or happens to be,

all be deemed to molest such other person :

Provided that a person who attends at or near such house or place in order merely to obtain or communicate information or to make a demand for a loan due shall not be deemed to molest.

(2) Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, an offence under this section shall be cognizable offence as defined in the Code and the rest of the provisions of the Code shall have effect accordingly.

V of  
1898.

39. Whoever makes default in complying with or acts in contravention of any provision of this Act and if the money-lender is—

General  
provision  
regarding  
penalties.

(i) an individual, such individual, or

(ii) an undivided Hindu family, the manager and all adult coparceners of such family,

(iii) a body corporate, the Director, Manager or any officer of such body, or

(iv) an unincorporated body, all members of such body,

who is or are knowingly a party to such contravention, shall, if no specific penalty has been provided in this Act, be punishable—

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



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

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

Every officer to be public servant.

40. Every officer of the Crown acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV  
of  
1860.

Protection to persons acting under the Act.

41. No suit or proceeding shall lie against any officer of the Crown for anything which is in good faith done or intended to be done under this Act.

Rules.

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

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

(a) the form of the register under section 7 ;

(b) the form of the application for a licence and the further particulars to be included therein under section 9 ;

(c) the form and conditions of the licence, the manner of payment of licence duty and the procedure for a summary inquiry under section 10 ;

(d) the language, form, manner of the statement of accounts and the details to be included therein under section 23 and the sum of money to be paid for a copy of a document ;

(e) the fee and the sum of expenses to be paid under section 23 ; and

(f) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(3) Rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

*Schedule of licence duty.*

(Section 10.)

The amount of capital advanced in the previous year ending on 31st of March, immediately preceding the date of the application.	The amount of licence duty payable.
	Rs.
Not exceeding Rs. 2,000 .. .. .	1
Not exceeding Rs. 5,000 .. .. .	10
Not exceeding Rs. 10,000 .. .. .	25
Not exceeding Rs. 50,000 .. .. .	50
Not exceeding Rs. 1,00,000 .. .. .	100
Not exceeding Rs. 10,00,000 .. .. .	500
Exceeding Rs. 10,00,000 .. .. .	1,000

## STATEMENT OF OBJECTS AND REASONS.

The money-lenders at present are not regulated by any enactment. There are certain enactments such as the Dekkhan Agriculturists' Relief Act, the Usurious Loans Act, which control some aspects of the transactions of money-lenders. It has been generally recognised that there must be some legislation which will enable Government to have some control over persons who play such a large part in the economic life of the population. Government have, therefore, brought forward this Bill.

2. Broadly it is divided into five Chapters :

Chapter I deals with definitions.

Chapter II deals with power of Courts.

Chapter III deals with the registration and licensing of money-lenders.

Chapter IV deals with the regulation of accounts.

Chapter V is miscellaneous.

3. *Chapter III.*—Every money-lender is required to take out a licence from a Registrar of Money-Lenders, appointed by the Provincial Government for defined areas. From the scope of the Bill are excluded, by the definition of money-lender read with that of loan, deposits of money or other property in a Government Post Office Bank, or any other Bank, or in a Company, or with a Co-operative Society. Loans advanced by or deposits with societies registered under the Act of 1860 are similarly excluded. It is proposed to enforce the Act after the expiry of six months from the commencement thereof. Money-lenders not holding a licence under the Act are precluded from getting a decree from any Court in a suit to which the Act applies. The failure to obtain a licence would not necessarily nonsuit the plaintiff money-lender; the Court may require him to produce a licence within three months and may give him more time for such production. Such licence would be obtainable on payment of all the arrears of the licence duty and penalty, subject to a maximum of three times the licence duty payable for the year. The grounds for the refusal of licence by the Registrar are limited to four cases only—

(i) when the applicant is disqualified by the Court to hold a licence ;

(ii) when the applicant has not complied with the provisions of the Act or Rules ;

(iii) when the applicant has made wilful default in complying with the requirements of this Act ;

(iv) when satisfactory evidence has been produced that the applicant has knowingly participated in fraud or dishonesty in the conduct of his business or has been guilty of an offence under Chapter XVII or section 465, 477 or 477A of the Indian Penal Code.

4. Provision has been made for any person filing an application for cancellation of a licence granted to a money-lender on any of the grounds on which a licence could have been refused as above. Power is given to Court passing an order of conviction against a money-lender to order a licence to be suspended or cancelled.

5. *Chapter IV.*—An important feature of the Bill is the requirement of keeping accounts by money-lenders. Every money-lender is to deliver to the debtor a statement of accounts ; a plain and complete receipt for every payment ; and on repayment of the loan in full he is required to mark indelibly every paper signed by the debtor indicating payment or cancellation and discharge of any mortgage, etc.

6. Provision is also made for special procedure in Courts in suits regarding loans. In every suit to which a money-lender is a party a duty is imposed upon Courts to see that the money-lender has complied with the provisions of sections 22 and 23. Where he has not, the Court has been given power to disallow the whole or any portion of the interest found due. The provisions regarding accounts are not to apply to banks, or companies, or bodies corporate or unincorporated which may be exempted by the Provincial Government.

7. *Chapter V.*—This chapter deals with general provisions. Interest exceeding in amount the principal of the original loan is prohibited. The Court is also given power to order the amount of any decree to be paid in instalments or subject to such conditions as the Court deems fit, having regard to the circumstances of the judgment-debtor and the amount of the decree.

8. The rate of interest, notwithstanding any agreement between the money-lender and debtor, is limited to 9 per cent in the case of secured loans and 12 per cent. in the case of unsecured loans. Compound interest is prohibited. Similarly charges on account of expenses incurred by money-lenders in respect of loans are prohibited. It is, however, provided that reasonable costs for the inspection of revenue and registration records including examination of title may be charged by a money-lender.

9. Where a loan is assigned the Bill provides for notice and information to be given to the assignee of the assignment of the loan, to enable the assignee to comply with the provisions of the Act regarding supply of information, copies of documents, etc. The provisions of the Act are made applicable to such assignees.

10. Power is given to the Court to reopen transactions. It is, however, provided that any agreements or adjustments shall not be reopened unless they have been entered into within three years of the date of the suit. It is also provided that the Court shall not reopen a transaction if it affects a decree of a Court.

11. A summary remedy is provided by which a debtor may apply to the Court for taking accounts and for a declaration regarding the amount due to the creditor. It is also provided that if the Court finds that the money-lender has been over-paid the Court shall order refund to the debtor of the sum so over-paid. The order is to be deemed to be a decree and shall be executable as such.

12. If a money-lender enters in a bond a sum in excess of the actual loan advanced, it is proposed that he shall be deemed to have committed an offence punishable with fine up to Rs. 1,000.

13. Another important feature of the Bill is that molestation of a debtor by a money-lender is made an offence punishable with imprisonment of either description up to three months or with fine up to Rs. 500 or with both. Molestation is defined as obstructing or using violence or intimidating or persistently following the debtor, or loitering at or near his house, so as to cause him to abstain from doing or doing any act which he has a right to do or to abstain from doing and it is made a cognizable offence.

14. When the money-lender who commits an offence under this Act is an undivided Hindu family, the manager and all adult coparceners of such family, when it is a body corporate, the director, manager or any officer of such body, and when it is an unincorporated body, all members of such body are to be deemed to have committed the offence.

(Signed) K. M. MUNSHI

15th January 1938

By order of the Governor of Bombay.

G. S. RAJADHYAKSHA,

Secretary to the Government of Bombay,

Legal Department

Bombay, 17th January 1938.

GOVERNMENT OF BIHAR  
THE BIHAR LEGISLATURE

The Bihar Money-Lenders Act, 1938

*(Passed by the Bihar Legislature.)*



PERINTENDENT, GOVERNMENT PRINTING,  
BIHAR, PATNA.  
1938.

# THE BIHAR MONEY-LENDERS ACT, 1938.

*(Passed by the Bihar Legislature.)*

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**THE BIHAR MONEY-LENDERS  
ACT, 1938.**

*(Passed by the Bihar Legislature.)*

**AN  
ACT**

**TO REGULATE MONEY-LENDING TRANSACTIONS AND TO GRANT RELIEF TO DEBTORS IN THE PROVINCE OF BIHAR.**

**Preamble.**

**WHEREAS** it is expedient to regulate money-lending transactions and to grant relief to debtors in the Province of Bihar;

It is hereby enacted as follows :—

**CHAPTER I.**

**PRELIMINARY.**

**Short title, extent  
and commencement.**

**1. (1) This Act may be called the Bihar Money-Lenders Act, 1938.**

**(2) It extends to the whole of the Province of Bihar.**

**(3) It shall come into force on such date as the Governor may, by notification, appoint, and different dates may be so appointed for different provisions.**

**Definitions.**

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

**(a) “ Court ” includes the Registrar, any person exercising the powers of the Registrar or deciding a dispute, a liquidator**

and an arbitrator under the Bihar and Orissa Co-operative Societies Act, 1935, and also includes a Certificate-officer under the Bihar and Orissa Public Demands Recovery Act, 1914;

B. & O. Act  
VI of 1935.

B. & O. Act  
IV of 1914.

- (b) "decree" includes an award and order of contribution passed under the Bihar and Orissa Co-operative Societies Act, 1935;
- (c) "decree-holder" includes a certificate-creditor under the Bihar and Orissa Public Demands Recovery Act, 1914;
- (d) "interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise;
- (e) "judgment-debtor" includes a certificate-debtor under the Bihar and Orissa Public Demands Recovery Act, 1914;
- (f) "loan" means an advance whether of money or in kind on interest made by a money-lender, and shall include a transaction on a bond bearing interest executed in respect of past liability and any transaction which, in substance, is a loan, but shall not include—
- (i) a loan advanced by the Provincial Government or by any local body authorised by the Provincial Government:

B. & O. Act  
VI of 1935.

B. & O. Act  
IV of 1914.

B. & O. Act  
IV of 1914.

- (ii) a deposit of money in a Post Office Savings Bank or a deposit of money or other property in any other Bank or in a company or with a Co-operative Society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935; B. & O.  
Act VI of  
1935.

*Explanation.*—(1) A bond bearing interest executed in respect of goods taken on credit constitutes a loan.

(2) A supply of goods on credit is not a loan.

(g) "money-lender" means a person who advances a loan and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of a person who advances a loan;

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

(i) "principal" means in relation to a loan the amount actually lent to the debtor;

(j) "registered money-lender" means a person to whom a registration certificate has been granted under section 5, and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of a registered money-lender;

(k) "secured loan" means a loan for which the money-lender holds a mortgage, charge or lien on the property of the

debtor or any part thereof as a security for that loan;

(l) "Sub-Registrar" means a Sub-Registrar appointed under the Indian Registration Act, 1908; XVI of 1908.

(m) "suit" includes any proceeding taken for the recovery of a loan before the Registrar, or any person exercising the powers of the Registrar or deciding a dispute, or a liquidator or an arbitrator under the Bihar and Orissa Co-operative Societies Act, 1935, and also includes an appeal, and B. & O. Act VI of 1935.

(n) "unsecured loan" means any loan other than a secured loan.

Power of Provincial Government to exempt any money-lender or class of money-lenders or any class of loans from provisions of this Act.

3. The Provincial Government may, by notification, for any special reason or reasons to be stated in such notification, exempt any money-lender or class of money-lenders or any class of loans in the whole or any part of the Province of Bihar from the operation of all or any of the provisions of this Act.

## CHAPTER II.

### REGISTRATION OF MONEY-LENDERS AND ACCOUNTS TO BE KEPT BY MONEY-LENDERS.

Register of money-lenders.

4. (1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872. X of 1872.

Registration of money-lenders and registration fee.

5. (1) Any person may make an application to be registered as a money-lender.

Every such application shall be in writing and shall state—

- (a) the name and address of the applicant;
- (b) the name and style under which he carries on or desires to carry on business as a money-lender;
- (c) the principal place of his business and the branches thereof, if any;
- (d) whether any certificate of registration previously granted to him under this Act has been cancelled; and
- (e) such other particulars as may be prescribed.

(2) (a) Every application made under sub-section (1) shall be accompanied by the prescribed registration fee and shall be presented to the Sub-Registrar within whose jurisdiction the principal place of business referred to in clause (c) of sub-section (1) is situate.

(b) Any such application, which is not accompanied by the prescribed registration fee or does not contain the particulars specified in sub-section (1), shall be summarily rejected.

(3) The Provincial Government may by rules prescribe for different classes of money-lenders and for different areas a registration fee not exceeding twenty-five rupees to be paid by an applicant for registration :

Provided that the Governor may, by notification, exempt any person or class of persons from the payment of the registration fee either generally or in any specified area.

(4) On receipt of an application under clause (a) of sub-section (2) the Sub-Registrar shall, except where a certificate previously granted to the applicant has been cancelled under section 19 and the order of cancellation is in force, grant a registration certificate in the prescribed form to the applicant.

Duration of registration certificate.

6. A registration certificate granted under section 5 shall, unless sooner cancelled under section 19, be in force for five years from the date on which it is granted.

Duty of registered money-lender to maintain accounts and to give receipts.

7. (1) Every registered money-lender shall, in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act,—

(a) regularly record and maintain, or cause to be recorded or maintained, an account showing for each debtor—

(i) the date of the loan, the amount of the principal of the loan and the rate per centum per annum of interest charged on the loan;

(ii) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment; and

(iii) any other terms which may be agreed on between the money-lender and the debtor;

(b) give to the debtor, or his agent, a receipt for every sum paid by, or on behalf of, the debtor, duly signed and, if necessary, stamped at the time of such payment;

- (c) deliver or send by registered-post to the debtor, or his agent, within fifteen days of advancing the loan, a copy of the entries recorded under sub-clauses (i) and (iii) of clause (a);
- (d) deliver or send by registered post to the debtor, or his agent at least once in every calendar year, a statement of account signed by himself or his agent showing the balance or amount that may be outstanding against such debtor on account of the principal and interest at the time of delivering or sending by registered post the said statement of account, and the amount of every payment received by the money-lender in respect of the loan, and the date of such payment, during the period to which the statement relates; and
- (e) give to the debtor a signed receipt for every pawned article with its general description, immediately after it is pawned, mentioning the amount for which it is pawned.

(2) A person to whom a copy of entries in an account has been delivered or sent under clause (c) of sub-section (1) or a statement of account has been delivered or sent under clause (d) of sub-section (1), and who fails to object to the correctness of the account or the statement of account shall not, by such failure alone, be deemed to have admitted the correctness of such account or such statement of account.

## CHAPTER III.

### PROVISIONS RELATING TO SUITS IN RESPECT OF LOANS AND EXECUTION OF DECREES.

Suit for recovery  
of loan only main-  
tainable by regis-  
tered money-  
lenders.

8. A money-lender shall not be entitled to institute a suit for the recovery of a loan advanced by him after the date of the commencement of this Act unless he was registered under this Act at the time when such loan was advanced :

Provided that a money-lender shall be entitled to institute a suit to recover a loan advanced by him at any time before the expiration of six months after the date of the commencement of this Act if he is granted a certificate of registration under section 5 at any time before the expiration of the said six months.

Maximum rates  
at which  
interest may  
be decreed.

9. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit brought by a money-lender in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding nine per centum per annum in the case of a secured loan and twelve per centum per annum in the case of an unsecured loan.

Agreements for  
payment of com-  
pound interests  
void.

10. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, an agreement entered into by a debtor for the payment of compound interest on loans advanced after the commencement of this Act shall be void.

Maximum  
amount of interest  
which may be  
decreed.

11. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any



suit brought by a money-lender in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realised as interest through Court or otherwise, is greater than the amount of the loan advanced, or, if the loan is based on a document, the amount of loan mentioned in the document on which the suit is based.

Power of Court to  
reopen certain  
transactions.

12. In any suit brought by a money-lender in respect of a loan advanced before the commencement of this Act, the Court may exercise all or any of the following powers:—

- (i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan;
- (ii) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan;
- (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 money-lender has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :

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

- (i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction;
- (ii) do anything which affects any decree of a Court.

**Transfer of equity of redemption of a mortgagor by sale otherwise than in execution of a decree.**

**13.** If the equity of redemption of a mortgagor is transferred by sale otherwise than in execution of a decree, and if out of the consideration money for the transfer any amount due under the mortgage in respect of interest for any period preceding the date of transfer is left in deposit with the transferee for payment to the mortgagee, the portion of the amount so left in deposit, which is in excess of the amount which would have been payable as interest at the rate of nine per centum simple per annum for such period, shall not be taken into account for the purposes of section 12 and, notwithstanding anything to the contrary contained in the said section, the mortgagee shall be entitled to recover the amount of such excess in addition to any amount which he may recover under the said section.

**Decree may order payment of amount due on mortgage instalments.**

**14.** Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan

was advanced, the Court may, at the time of passing the decree in any suit relating to a mortgage by which any loan is secured, order that payment of any amount decreed in such suit shall, subject to such conditions as the Court may impose, be made by instalments :

Provided that before fixing the instalments the Court shall take into consideration the repaying capacity of the judgment-debtor and shall satisfy itself that the judgment-debtor is in a position to pay the instalments on the due dates.

Power to direct payment of amount due in respect of a loan or on mortgage by instalments

15. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may, at any time on the application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed before or after the commencement of this Act, in respect of a loan, including any decree in a suit relating to a mortgage by which a loan is secured, shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Court to estimate the value of judgment-debtor's property.

16. (1) When an application is made for the execution of a decree passed in respect of a loan or the interest on a loan by the sale of the judgment-debtor's property, the Court executing the decree shall, notwithstanding anything to the contrary contained in any other law or in anything having the force of law, hear the parties to the decree and estimate the value of such property and of that portion of such property the proceeds of the sale of which it considers will be sufficient to satisfy the decree :

Provided that the Court may order the whole property of the judgment-debtor to be sold if it is satisfied that by reason of the nature of such property or any other special circumstances such property cannot reasonably or conveniently be sold in part.

(2) Any person aggrieved by an order passed under sub-section (1) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.

Only sufficient  
portion of judg-  
ment-debtor's  
property to be sold.

17. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan or the interest on a loan shall include only so much of the property of the judgment-debtor the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree, and such property shall not be sold at a price lower than the price specified in the said proclamation :

Provided that if the property to be sold is immovable property and the decree-holder specifies which portion of such property should be sold, the Court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold :

Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Court may sell the property for such highest amount, if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation.

Exemption of portion of holding from attachment or sale in execution of decree.

**18.** Notwithstanding anything to the contrary contained in any other law or in anything having the force of law for the time being in force, where a decree is passed for the payment by an agricultural debtor of the amount due on any loan advanced, before or after the commencement of this Act, to him by a money-lender, the Court executing the decree—

- (i) if the area of the land comprised in the holding of the judgment-debtor does not exceed three acres, shall exempt from sale one acre of such land; and
- (ii) if the area of such land exceeds three acres, shall exempt one acre, and may exempt any further portion of the holding, provided that the total area exempted from the sale does not exceed one-third of the total area of such land.

*Explanation.*—For the purposes of this section agricultural debtor means a *raiyyat*, the area of whose holding does not exceed such area as the Provincial Government may fix for the district or part of the district in which such holding is situate.

## CHAPTER IV.

### PENALTIES AND PROCEDURE.

Power of Collector to cancel registration certificate.

**19.** (1) Where in any suit brought in respect of a loan by a registered money-lender or in respect of any security taken for a loan by a registered money-lender, the Court is of opinion that the registered money-lender has been guilty of fraud, or of any contravention of the provisions of this Act, or is otherwise unfit to carry on the business of money-lending, the Court shall make a report to the Collector, and the Collector may, on receipt of such report

and after a due and proper inquiry, cancel for such period, not exceeding five years, as he thinks fit the registration certificate granted to the money-lender.

(2) When the certificate of a registered money-lender has been cancelled under sub-section (1) such money-lender shall not be entitled to make any application under section 5 during the period in which such order of cancellation remains in force.

Penalty for the contravention of the provisions of section 7.

20. (1) If any money-lender or his agent wilfully contravenes any of the provisions of clause (a) of sub-section (1) of section 7, such money-lender or agent, as the case may be, shall be punishable with imprisonment which may extend to one year or with fine not exceeding five hundred rupees, or with both.

(2) Any money-lender who contravenes any of the provisions of section 7 other than the provision of clause (a) of sub-section (1) of that section shall be punishable with fine not exceeding five hundred rupees.

Penalty for taking *salami*, *batta*, *gadiana*, etc.

21. If after the commencement of this Act, any money-lender or his agent takes from a debtor at the time of advancing a loan or deducts out of the principal of such loan any *salami*, *batta*, *gadiana* or other exactions of a similar nature by whatever name called or known, such money-lender or his agent, as the case may be, shall be punishable with fine.

## CHAPTER V.

### MISCELLANEOUS.

Powers of Court under the Usurious Loans Act, 1918, not affected by this Act.

22. Save as otherwise provided in section 12, nothing in this Act shall affect the powers of a Court under the Usurious Loans Act, 1918.

Contract for  
payment outside  
the Province  
void.

23. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, any contract entered into between a money-lender and his debtor in respect of a loan advanced after the commencement of this Act providing for the payment of the amount due on such loan at any place outside the Province of Bihar shall be void.

Power to deposit  
in Court money  
due on loan.

24. (1) When a debtor tenders to a money-lender or his agent money on account of any interest due on a loan or on account of the principal of a loan and the money-lender or his agent refuses to receive the amount tendered or refuses to grant a receipt for the same, the debtor may deposit, in any Court in which the money-lender might have instituted a suit for the recovery of such interest or such loan, to the account of the money-lender the amount tendered as aforesaid.

(2) The Court shall thereupon forthwith grant a receipt for the deposit under the seal of the Court and cause a written notice of the deposit to be served upon the money-lender.

(3) The money-lender may, at any time within three years after the date of the service upon him of the notice mentioned in sub-section (2), make an application to the Court praying for the amount deposited as aforesaid to be paid to him.

(4) If no application is made under sub-section (3) within the period mentioned in the said sub-section, the amount deposited shall be disposed of in the prescribed manner.

(5) Upon receipt of an application under sub-section (3) the Court may order such amount to be paid to the applicant upon such terms and subject

to such conditions as may be specified in the order.

Court's receipt to operate as acquittance.

**25.** A receipt given by the Court under sub-section (2) of section 24 shall operate as an acquittance for the amount deposited as aforesaid in the same manner and to the same extent as if that amount had been received by the money-lender to whose credit the deposit was made, on the date of such deposit.

Payment of loan in cash to a debtor, etc., to be made in the presence of the Sub-Registrar.

**26.** Where a loan is advanced on a registered document, the entire amount of the loan, or as much of it as may be payable in cash, shall be paid to the debtor or his duly authorised agent in the presence of the Sub-Registrar who will register the document and the said Sub-Registrar shall make an endorsement to that effect on the document.

Power to make rules.

**27.** The Provincial Government may make rules prescribing—

- (a) the form of the register mentioned in sub-section (1) of section 4 and the particulars to be contained in such register;
- (b) the form of the registration certificate mentioned in sub-section (4) of section 5;
- (c) the particulars to be contained in an application made under sub-section (1) of section 5;
- (d) the registration fee to be paid under section 5; and
- (e) the manner in which deposits made under sub-section (4) of section 24 shall be disposed of.



*The 23rd August 1938.*

**No. 5024-L.**—The following Bill, which it is proposed to introduce in the Orissa Legislative Assembly, is hereby published under rule 70 of the Orissa Legislative Assembly Rules, 1937, for general information.

This cancels notification no. 4948-L., dated the 22nd July 1938, published in the extraordinary issue of the *Orissa Gazette*, dated the 25th July 1938.

## THE ORISSA MONEY-LENDERS BILL, 1938.

### A BILL

TO REGULATE MONEY-LENDING TRANSACTIONS AND TO GRANT RELIEF TO DEBTORS IN THE PROVINCE OF ORISSA.

Preamble.

**W**HEREAS it is expedient to regulate money-lending transactions and to grant relief to debtors in the Province of Orissa;

It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

Short title,  
extent and  
commencement.

1. (1) This Act may be called the Orissa Money-Lenders Act, 1938.

(2) It extends to the whole of the Province of Orissa.

(3) All or any of the provisions of this Act shall come into force throughout the whole or any part of the Province on such date or dates as the Governor may, by notification, appoint, and different dates may be so appointed for different provisions and different areas.

Definitions.

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

(a) "bank" means a company carrying on the business of banking and—

(i) registered under any of the enactments relating to companies for the time being in force in the United Kingdom.

or in any of the British Dominions, or in any of the Colonies or Dependencies, of the United Kingdom, or in British India, or in any State in India, or

- (ii) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ;
- (b) "business of money-lending" means the business of advancing loans ;
- (c) "capital" means that which a money-lender invests in the business of money-lending whether in money or in kind ;
- (d) "Company" means a company—
- (i) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or
- (ii) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by an Act of the Indian Legislature,
- and includes a life insurance company to which the Insurance Act, 1938, will apply ;
- e) "co-operative society" means a society registered or deemed to have been registered under the Bihar and Orissa Co-operative Societies Act, 1935, the

Madras Co-operative Societies Act, 1932, or any Act of any other Provincial Legislature relating to such societies;

- (f) "Court" includes a court acting in the exercise of insolvency jurisdiction;
- (g) "decree" means a decree as defined by the Code of Civil Procedure, 1908;
- (h) "interest" means rate of interest and includes the return to be made over and above what was actually lent whether the same is charged or sought to be recovered specifically by way of interest or otherwise;
- (i) "loan" means an advance whether of money or in kind on interest made by a money-lender and shall include a transaction on a document bearing interest executed in respect of past liability and any transaction which, in substance, is a loan, but shall not include—
- (1) a loan advanced by the Provincial Government or by any local body authorised by the Provincial Government or by a co-operative society,
  - (2) a deposit of money in a Post Office Savings Bank or a deposit of money or other property in any other Bank B. & O. Act VI of 1935. or in a company or with a co-operative society;

*Explanation.*—(1) A bond bearing interest executed in respect of goods taken on credit constitutes a loan.

(2) A supply of goods on credit is

(j) "money-lender" means—

(1) except in sections 9 to 15, a person who advances a loan in the regular course of business of money-lending with a capital of more than a sum of rupees one thousand, and

(2) in sections 9 to 15, a person who advances a loan in the regular course of business of money-lending irrespective of the amount of capital invested in the said business ;

and in both cases of (1) and (2) shall include a Hindu undivided family and the legal representatives and successors and successors-in-interest, whether by inheritance, assignment or otherwise, of such a person who advances a loan ;

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

(l) "principal" means in relation to a loan the amount actually lent to the debtor ;

(m) "registered money-lender" means a person to whom a registration certificate has been granted under section 5, and shall include a Hindu undivided family and the legal representatives and successors-in-interest, whether by inheritance, assignment or otherwise, of a registered money-lender ;

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

(o) "secured loan" means a loan for which the money-lender holds a mortgage, charge, lien, or pledge

on the property of the debtor or any part thereof as a security for that loan ;

(p) "Sub-Registrar" means a Sub-Registrar appointed under the Indian Registration Act, 1908 ; XVI of 1908

(q) "suit" includes any proceeding taken for the recovery of a loan before the Registrar, or any person exercising the powers of the Registrar or deciding a dispute, or a liquidator or an arbitrator under the Bihar and Orissa Co-operative Societies Act, 1935, and also includes an appeal ; and Bihar and Orissa Act VI of 1935.

(r) "unsecured loan" means any loan other than a secured loan.

Power of Provincial Government to exempt any money-lender or class of money-lenders or any class of loans from provisions of this Act.

3. The Provincial Government may, by notification for any special reason or reasons to be stated in such notification, exempt any money lender or class of money-lenders or any class of loans in the whole or any part of the province of Orissa from the operation of all or any of the provisions of this Act.

## CHAPTER II.

### REGISTRATION OF MONEY-LENDERS AND ACCOUNTS TO BE KEPT BY MONEY-LENDERS.

Register of money-lenders.

4. (1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.

X of 1872.

Registration  
of money lenders  
and registration  
fee.

5. (1) Any person may make an application to be registered as a money-lender. Every such application shall be in writing and shall state—

- (a) the name and address of the applicant;
- (b) the name and style under which he carried on or desires to carry on business as a money-lender;
- (c) the principal place of his business and the branches thereof, if any;
- (d) whether any certificate of registration previously granted to him under this Act has been cancelled; and
- (e) such other particulars as may be prescribed.

(2) (a) Every application made under sub-section (1) shall be accompanied by the prescribed registration fee and shall be presented to the Sub-Registrar within whose jurisdiction the principal place of business referred to in clause (c) of sub-section (1) is situate.

(b) Any such application, which is not accompanied by the prescribed registration fee or does not contain the particulars specified in sub-section (1), shall be summarily rejected.

(3) The Provincial Government may by rules prescribe for different classes of money-lenders and for different areas a registration fee not exceeding twenty-five rupees to be paid by an applicant for registration:

Provided that the Governor may, by notification, exempt any person or class of persons from the payment of the registration fee either generally or in any specified area.

(4) On receipt of an application under clause (a) of sub-section (2) the Sub-Registrar shall, except where a certificate previously granted to the applicant has been cancelled under section 18 and the order of cancellation is in force, grant a registration certificate in the prescribed form to the applicant.

Duration of registration certificate.

6. A registration certificate granted under section 5 shall, unless sooner cancelled under section 18, be in force for ten years from the date on which it is granted.

Duty of registered money-lender to maintain accounts and to give receipts.

7. Every registered money-lender shall in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act—

(a) regularly record and maintain, or cause to be recorded or maintained, an account showing for each debtor—

(i) the date of the loan, the amount of the principal of the loan and the rate per cent per annum of interest charged on the loan;

(ii) the amount of every payment received by the money-lender in respect of the loan, and the date of such payment; and

(iii) any other terms which may be agreed on between the money-lender and the debtor;

(b) give to the debtor, or his agent, a receipt for every sum paid by,

or on behalf of, the debtor, duly signed and, if necessary, stamped at the time of such payment; or, within a reasonable time after it. The money-lender shall also, on demand, permit the debtor or his agent to endorse such payment on the document, if any, evidencing the loan.

- (c) give to the debtor a signed receipt for every pawned article with its general description, immediately after it is pawned, mentioning the amount for which it is pawned, the rate of interest charged per cent per annum and other particulars as may be prescribed.

### CHAPTER III.

#### PROVISIONS RELATING TO SUITS IN RESPECT OF LOANS AND EXECUTION OF DECREES.

**8.** A money-lender shall not be entitled to institute a suit for the recovery of a loan advanced by him after the date on which this section comes into force unless he was registered under this Act at the time when such loan was advanced :

Provided that a money-lender shall be entitled to institute a suit to recover a loan advanced by him at any time before the expiration of a year after the date on which this section comes into force, if he is granted a certificate of registration under section 5 at any time before the expiration of the said year.

**9.** Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit brought by a money-lender in respect of a loan advanced after the commencement

Suit for recovery of loan only maintainable by registered money-lenders.

Maximum rates at which interest may be decreed.



of this Act, pass a decree for interest at rates exceeding 9 per centum per annum in the case of a secured loan and 12 per centum per annum in the case of an unsecured loan.

Maximum amount of interest which may be decreed.

10. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract, no Court shall, in any suit brought by a money-lender in respect of a loan advanced before or after the commencement of this Act, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realised as interest through Court or otherwise, is greater than the amount of the loan advanced or if the loan is based on a document, the amount of loan mentioned in the document on which the suit is based.

Power of Court to reopen certain transactions.

11. (1) In any suit brought by a money-lender in respect of loan advanced before the commencement of this Act, the Court may exercise all or any of the following powers:—

- (i) reopen the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan;
- (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 interest, in excess of nine per centum simple per annum in the case of a secured loan and twelve per centum simple per annum in the case of an unsecured loan ;

(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 money-lender 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—

\* \* \* \*

reopen any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction.

Provided further that nothing contained in sub-section (1) shall be deemed to require the creditor to refund any sum which has been paid to him.

(2) Where a decree passed by a Court on the basis of a loan on 1st April 1936 or after and not before it remains unsatisfied in whole or in part on the date on which this Act comes into force, the Court which passed the decree may, on the application of the judgment-debtor, exercise all or any of the powers specified in sub-section (1).

Decree may order payment of amount due on mortgage by instalments.

12. Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or

in any contract between the money-lender and the person to whom the loan was advanced, the Court may at the time of passing the decree in any suit relating to a mortgage by which any loan is secured, order that payment of any amount decreed in such suit shall, subject to such conditions as the Court may impose be made by instalments :

Provided that before fixing the instalments the Court shall take into consideration the repaying capacity of judgment-debtor and shall satisfy itself that the judgment-debtor is in a position to pay the instalments on the due dates.

Power to direct payment of amount due in respect of a loan or on mortgage by instalments.

**13.** Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any contract between the money-lender and the person to whom the loan was advanced, the Court may, at any time, on the application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed before or after the commencement of this Act, in respect of a loan, including any decree in a suit relating to a mortgage by which a loan is secured, shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as, having regard to the circumstances of the judgment-debtor and the amount of the decree it considers fit.

Court to estimate the value of judgment-debtor's property.

**14. (1)** When an application is made for the execution of a decree passed in respect of a loan or the interest on a loan by the sale of the judgment-debtor's property, the Court executing the decree shall notwithstanding anything to the contrary contained in any other law or in anything having the force of law, hear the parties to the decree and estimate as prescribed the value of such property

and of that portion of such property the proceeds of the sale of which it considers will be sufficient to satisfy the decree :

Provided that the Court may order the whole property of the judgment-debtor to be sold if it is satisfied that by reason of the nature of such property or any other special circumstances such property cannot reasonably or conveniently be sold in part.

(2) Any person aggrieved by an order passed under sub-section (1) may appeal to the court to which appeals from the court executing the decree ordinarily lie.

Only sufficient portion of judgment-debtor's property to be sold.

**15.** Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, the proclamation of the intended sale of property in execution of a decree passed in respect of a loan or the interest on a loan shall include only so much of the property of the judgment-debtor, the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree, and such property shall not be sold at a price lower than the price specified in the said proclamation :

Provided that if the property to be sold is immovable property and the decree-holder specifies which portion of such property should be sold, the Court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold :

Provided further that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Court may sell the property for such highest amount, if the decree-holder consents in writing to forego so

much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation.

16. The provisions of sections 10 to 15 shall apply—

- (i) to suits brought by money-lenders in respect of loans advanced before the commencement of this Act, and pending on the date on which the said sections come into force; and
- (ii) to appeals and proceedings in execution arising out of suits brought by money-lenders in respect of loans advanced before the commencement of the said Act, whether such appeals or proceedings in execution were pending on, or instituted after, the date on which the said sections come into force.

17. Notwithstanding anything to the contrary contained in any other law or anything having the force of law or in any contract, a usufructuary mortgage, which comes into existence after the commencement of this Act, shall, unless discharged previously, be deemed to stand discharged after the expiration of fifteen years from the date of the mortgage and the mortgagee shall deliver up to the mortgagor all documents in his possession or power relating to the mortgaged property and shall, if so required, retransfer the property to the mortgagor at his cost free from the mortgage and from all encumbrances created by him or those claiming under him and shall also put the mortgagor in possession of the property.

## CHAPTER IV.

## PENALTIES AND PROCEDURE.

Power of Collector to cancel registration certificate.

18. (1) Where in any suit brought in respect of a loan by a registered money-lender, or in respect of any security taken for a loan by a registered money-lender, the Court is of opinion that the registered money-lender has been guilty of fraud, or is otherwise unfit to carry on the business of money-lending, the Court shall make a report to the Collector, and the Collector may, on receipt of such report and after a due and proper enquiry, cancel for such period, not exceeding five years as he thinks fit the registration certificate granted to the money-lender.

(2) When the certificate of a registered money-lender has been cancelled under subsection (1) such money-lender shall not be entitled to make any application under section 5 during the period in which such order of cancellation remains in force; but such cancellation shall not preclude the money-lender from instituting suits in respect of loans advanced by him before the date of the order of such cancellation.

Penalty for contravention of the provisions of section 7.

19. (1) If any money-lender or his agent wilfully contravenes any of the provisions of clause (a) of section 7, such money lender or agent, as the case may be, shall be punishable with fine not exceeding five hundred rupees.

(2) Any money-lender who contravenes any of the provisions of clause (a) or clause (b) of section 7 shall be punishable with fine not exceeding five hundred rupees.

Penalty for taking premium.

20. If after the commencement of this Act, any money-lender or his agent takes from a debtor at the time of advancing a loan or deducts out of the principal of such loan any premium or other exactions

of a similar nature by whatever name called or known, such money-lender or his agent, as the case may be, shall be punishable with fine, not exceeding twice the amount of such premium or exaction.

## CHAPTER V.

### MISCELLANEOUS.

Powers of Court under the Usurious Loans Act, 1918, not affected by this Act.

**21.** Save as otherwise provided in section 11 nothing in this Act shall affect the powers of a Court under the Usurious Loans Act, 1918.

Contract for payment outside the province void.

**22.** Notwithstanding anything to the contrary contained in any other law or in anything having the force of law, any contract entered into between a money-lender and his debtor in respect of a loan advanced after the commencement of this Act providing for the payment of the amount due on such loan at any place outside the province of Orissa shall be void.

X of 1918.

Power to deposit in Court money due on loan.

**23.** (1) When a debtor tenders to a money-lender or his agent money on account of any interest due on a loan or on account of a principal of a loan and the money-lender or his agent refuses to receive the amount tendered or refuses to grant a receipt for the same, the debtor may deposit, in any Court in which the money-lender might have instituted a suit for the recovery of such interest or such loan, to the account of the money-lender the amount tendered as aforesaid.

(2) The Court shall thereupon forthwith grant a receipt for the deposit under the seal of the Court and cause a written notice of the deposit to be served upon the money-lender.

(3) The money-lender may at any time within three years after the date of the service upon him of the notice

mentioned in sub-section (2) make an application to the Court praying for the amount deposited as aforesaid to be paid to him.

(4) If no application is made under sub-section (3) within the period mentioned in the said sub-section, the amount deposited shall be disposed of in the prescribed manner.

(5) Upon receipt of an application under sub-section (3) the Court may order such amount to be paid to the applicant upon such terms and subject to such conditions as may be specified in the order.

Court's receipt to operate as acquittance.

24. A receipt given by the Court under sub-section (2) of section 23 shall operate as an acquittance for the amount deposited as aforesaid in the same manner and to the same extent as if that amount had been received by the money-lender to whose credit the deposit was made, on the date of such deposit.

Restriction on repayment void.

25. A debtor may repay the whole or any part of the principal or interest due under a loan to the money-lender at any time and in any manner and any agreement between a money-lender and a debtor to the contrary imposing restrictions on the freedom of repayment shall be illegal and void.

*Explanation.*—An agreement entered into by a debtor prohibiting, either absolutely or conditionally, repayment of the principal or interest due under a loan until after the expiry of a certain period of time shall be void.

Payment of loan advanced on a registered document in the presence of the Sub-Registrar.

26. Where a loan is advanced on a registered document, the entire amount of the loan, or as much of it as may be payable in cash, shall be paid to the debtor or his duly authorised agent in the presence of the Sub-Registrar who will



register the document and the said Sub-Registrar shall make an endorsement to that effect on the document.

power to make rules.

27. (1) The Provincial Government may make rules for the purpose of carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Provincial Government may make rules—

- (a) prescribing the form of the register mentioned in sub-section (1) of section 4 and the particulars to be contained in such a register;
- (b) prescribing the form of the registration certificate mentioned in sub-section (1) of section 5;
- (c) prescribing the particulars to be contained in an application made under sub-section (1) of section 5;
- (d) prescribing the registration fee to be paid on the applications made under sub-section (1) of section 5;
- (e) regulating the levy of compound interest in respect of loans and the rates thereof;
- (f) providing for and regulating the supply of copies of the account mentioned in clause (a) of section 7;
- (g) providing for and regulating the grant of periodical statements of account to a debtor signed by the money-lender or his agent showing the balance or amount that might be outstanding against such debtor on

account of the principal and interest at the time of furnishing the said statement and the amount of every payment received by the money-lender in respect of the loan and the date of such payment during the period to which the statement relates ;

- (h) prescribing the particulars to be contained in a plaint in a suit by a money-lender as defined in clause (1) or clause (2) of sub-section (j) of section 2 ;
- (i) for estimating the value of the property under section 14 ; and
- (j) the manner in which deposits made under sub-section (4) of section 23 shall be disposed of.

**28.** The Madras Debtors' Protection Act, 1934, the Usurious Loans (Central Provinces Amendment) Act, 1934, and the Central Provinces Money-lenders Act, 1934, and section 3 of the Agency Tracts Interest and Land Transfer Act, 1917, in their application to the Province of Orissa, are hereby repealed.

## STATEMENT OF OBJECTS AND REASONS.

There is at present no legal enactment regulating the business of money-lending in Orissa. Very high rates of interest are current in the province, and the Usurious Loans Act, 1918, which controls certain aspects of the transactions of money-lenders, does not give adequate relief to debtors. The need for legislation is felt to be urgent to give some more relief to the large number of people who are at present compelled to pay exorbitant rates of interest. This Bill is intended to ensure that money-lenders register themselves, maintain proper accounts and charge only reasonable rates of interest. It is based on a similar measure introduced in the Bihar Legislative Assembly.

B. N. DAS,

*Member-in-charge.*

CUTTACK: 23rd August 1938.

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C. G. NAIR,

*Secretary to Government.*



**PAMPHLET**

CONTAINING

**An Explanatory Note on the  
Central Provinces Moneylenders  
Act, 1934, and the Rules framed  
thereunder**

**NAGPUR  
GOVERNMENT PRINTING, C.P.  
1935**

# The Central Provinces Moneylenders Act, 1934 (XIII of 1934), and the Rules framed there- under

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## EXPLANATORY NOTE.

The Act in the main is an educative one, the chief object being to protect the debtor from the consequences of his own ignorance. It is not intended exclusively for the benefit of the debtors belonging to the agriculturist class but the intention is that the greatest benefit from it should be derived by them. With his account periodically before him, the debtor will be more alert to the growth of his liabilities and will have an opportunity of taking stock of his position from time to time. The provisions are simple to follow and have been framed with a view to enable even the pettiest moneylender to adapt his methods of accounting to them.

2. Under section 3 (1) of the Act the moneylender has to maintain the account of each debtor separately in the usual way in which he has been keeping it, and to send to the debtor regularly every year at the time when accounts are usually closed for that year, a statement in the form given in the schedule attached to the rules framed under the Act, in the court language of the district, showing separately the various transactions entered into during the period and also the interest on each loan advanced to him separately. Government has after ascertaining the time when accounts are closed, laid down in rule 10 the time when such statements should be sent to debtors. The Act does not make it obligatory for the debtor to admit or deny the accuracy of the accounts. In order that the object of the Act should be fulfilled, it is essential that the debtor should study the statements sent to him by the creditor or have them explained to him.

3. The provisions of sections 3, 4, 5 and 6 do not apply to loans advanced before the Act came into force. But if any transaction in respect of such a loan is entered into after such date the provisions will apply to that transaction. The Act also makes the rule of "damdupat" applicable in a modified form and empowers courts to direct payment of decretal amount by instalments.

# CENTRAL PROVINCES ACT No. XIII OF 1934

## CENTRAL PROVINCES MONEYLENDERS ACT, 1934

[This Act has also been applied to Berar and shall come into force on the 1st April 1935 in the Central Provinces and Berar.]

### An Act to regulate the transactions of moneylending in the Central Provinces.

WHEREAS it is expedient to make better provision for the regulation and control of the transactions of moneylending ; Preamble.

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

It is hereby enacted as follows :—

1. (1) This Act may be called the Central Provinces Money-lenders Act, 1934. Short title, extent and commencement.
- (2) It extends to the whole of the Central Provinces.
- (3) It shall come into force on such date as the Local Government may, by notification, direct.

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

- (i) " bank " means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament, or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ;
- (ii) " company " means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament, or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, applies ;
- (iii) " co-operative society " means a society registered under the Co-operative Societies Act, 1912 ;
- (iv) " court " includes a court acting in the exercise of insolvency jurisdiction ;

- (b) if the court finds that the provisions of clause (a) of sub-section (1) of section 3 or of section 6 have not been complied with by the moneylender, it shall, if the plaintiff's claim is established in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs; and
- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the moneylender, it shall, in computing the amount of interest due upon the loan, exclude every period for which the moneylender omitted duly to furnish the account as required by that clause :

Provided that if the moneylender has, after the time prescribed in that clause, furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omissions, include any such period or periods for the purpose of computing the interest.

*Explanation.*—A moneylender who has maintained his account and furnished his annual statements of accounts in the prescribed form and manner shall be held to have complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3 in spite of any errors and omissions, if the court finds that such errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of those clauses.

8. The provisions of sections 3, 4, 5, 6 and 7 shall not apply to any loan made before this Act comes into force :

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force is made after this Act comes into force, such transaction shall be subject to the provisions of those sections.

Power of Court to limit interest recoverable in certain cases.

9. Notwithstanding anything contained in any other enactment for the time being in force, no court shall decree, in respect of any loan made before this Act comes into force, on account of arrears of interest, a sum greater than the principal of such loan, unless it is satisfied that the moneylender has reasonable grounds for not enforcing his claim earlier.

Power of court to limit interest to the extent of principal of loan. Power to direct payment of decretal amount by instalments.

10. No court shall, in respect of any loan made after this Act comes into force, decree on account of arrears of interest a sum greater than the principal of the loan.

11. The court may, at any time on the application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after this Act comes into force, in respect of a loan shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

12. (1) All rules for which provision is made in this Act shall be made by the Local Government and shall be consistent with this Act. <sup>Power to make rules.</sup>

(2) All rules shall be subject to the condition of previous publication.

(3) In particular and without prejudice to the generality of the foregoing power, the Local Government may make rules prescribing—

(a) the manner and form with numerals in which statements of accounts shall be furnished and the details to be given in such statement under clause (b) of subsection (1) of section 3; and

(b) the manner in which copies of entries in the account shall be certified under section 4.



## RULES

Government has framed the following rules under sub-sections (1) and (3) of the Central Provinces Moneylenders Act, 1934 (XIII of 1934). The rules are intended both for the Central Provinces and Berar :—

1. These rules may be called the “ Moneylenders Accounts Rules ”.

2. They shall come into force on the 1st April 1935.

3. In these rules, unless there is anything repugnant in the subject or context “ the Act ” means the Central Provinces Moneylenders Act, 1934.

4. The statement of accounts prescribed in clause (b) of sub-section (1) of section 3 of the Act, shall be furnished to the debtor in the court language of the district, in the form shown in the schedule hereto annexed.

NOTE.—Government does not assume any responsibility for supplying to creditors the forms they may require and each creditor should make his own arrangements for obtaining such forms as he may require, to enable him to send the statement of accounts to his debtor in due time.

5. The numerals to be used for the purpose of making entries in the statement shall be the same as those ordinarily used with the particular language employed.

6. The name and address of the debtor, and, in the case of joint-debtors, of each joint-debtor, shall be entered at the head of the account maintained by the creditor in accordance with sub-section (1) of section 3 of the Act.

7. In column 1 of the account will be shown so far as is possible the exact date on which the transaction took place.

8. The rate of interest as agreed on by the parties for each advance, whether in cash or kind, shall be shown in words in the column provided for the purpose in the form prescribed.

9. The value of repayments in kind and the amount appropriated from all repayments to principal and interest separately, shall be shown in the column provided in the prescribed form, on the date on which the transaction actually took place.

10. The statement shall be sent to the debtor within one month of the date or time specified below according to the area in which he resides :—

Area.	Date or time.
Nagpur civil district ..	Diwali (for cash accounts). Vaishakh Badi 30 (for grain accounts).
Wardha civil district ..	Do. do.
Jubbulpore civil district ..	Do. do.
Hoshangabad civil district ..	Do. do.
Chhindwara civil district ..	Do. do.
Nimar civil district ..	Do. do.
Raipur civil district ..	Do. do.
East Berar civil district ..	Do. ११.११.११ do.
West Berar civil district ..	Do. ११.११.११ do.

11. Every statement shall be prepared and maintained in duplicate ; one copy shall be retained by the creditor and one copy sent to the debtor in accordance with rule 10 and in the manner hereafter prescribed.

12. Entries in the statement relating to the amount and date of the loan, and the rate of interest, the appropriation of repayments, etc., shall tally with the entries made in the accounts maintained by the creditor in accordance with the provisions of the Act.

13. One copy of the statement of accounts shall be sent to the debtor at his cost in accordance with the provisions of rule 11, by sending it by registered post, acknowledgment due, to the address entered at the head of the account in accordance with rule 6.

Where there are two or more joint-debtors the statement of account shall, in the absence of any contract to the contrary be furnished to the joint-debtor who signs first in the document relating to the loan in question.

14. Certified copies of the entries in the account shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries, only when they bear a certificate, dated and countersigned by some person who has examined and compared the copy with the original, to the effect that " the copy is a true copy of the account as maintained by the creditor and communicated to the debtor under the provisions of the Act ".

The schedule above referred to—

*Loan Account of.....son of.....caste.....residence.....*

Opening balance (if any)

Principal

Interest

JAMA.						NAMA.							
Date.	Particulars of repayment, whether cash or kind, in words.	Repayment figures.		Appropriation.		Remarks.	Date.	Particulars of advance in words, whether cash or kind.	Advance in figures.		Rate of interest.	Amount of interest charged.	Remarks.
		Cash.	Kind (number and weight).	Principl.	Interest.				Cash.	Kind (number and weight).			

	Principal.	Interest.	Balance outstanding on.....19 .
<i>Add</i> opening balance as above ..	_____	_____	
Total ..	_____	_____	

(Signature) Creditor or Agent.

**CENTRAL PROVINCES ACT No. XIII OF 1936**

**THE CENTRAL PROVINCES MONEYLENDERS  
(AMENDMENT) ACT, 193**

[Published in the *Central Provinces Gazette*, dated the 1st May 1936]

**An Act to amend the Central Provinces Moneylender  
Act, 1934**

WHEREAS it is expedient to amend the Central Provinces Moneylenders Act, 1934, in the manner hereinafter appearing ;

Preamble.

C. P. Act  
XIII of  
1934.

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

It is hereby enacted as follows :—

1. (1) This Act may be called the Central Provinces Moneylenders (Amendment) Act, 1936.

Short title, commencement and duration.

(2) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf and shall remain in force for four years from that date.

2. After clause (viii) of section 2 of the Central Provinces Moneylenders Act, 1934 (hereinafter referred to as the said Act), the following clause shall be inserted, namely :—

Amendment of section 2, C. P. Act XIII of 1934.

C. P. Act  
XIII of  
1934.

“(ix) ‘Sub-Registrar’ means a Sub-Registrar appointed under the Indian Registration Act, 1908.”

XVI of  
1908.

3. After section 11 of the said Act, the following section shall be inserted, namely :—

Insertion of sections 11-B, 11-C, 11-D, 11-E and 11-F, C. P. Act XIII of 1934.

“11-A. (1) Every Sub-Registrar shall maintain a register of moneylenders in such form and containing such particulars as may be prescribed.

Register of moneylenders.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.

1 of 1872.

11-B. (1) Every moneylender shall register himself as a moneylender by an application made to the Sub-Registrar of any sub-district of the district or districts in which the principal place of business of such moneylender or a branch thereof is situate and, on such registration, the Sub-Registrar shall grant a registration certificate to the moneylender in such form as may be prescribed.

Registration of moneylenders and registration certificate.

(2) Every application made under sub-section (1) shall be in writing and shall contain such particulars as may be prescribed.

**Registration fee.** 11-C. Any person who makes an application for registration under section 11-B shall pay such registration fee, not exceeding eighteen rupees, as may be prescribed for the district in which it is granted and such fee shall be payable by means of court-fee stamps affixed to the application :

Provided that the Local Government may, by notification, exempt any class of persons from the payment of the registration fee either generally or for any specified area.

**Duration of registration certificate.** 11-D. A registration certificate granted under section 11-B shall be in force for four years from the date of the registration.

**Bar to carry out business without registration certificate.** 11-E. (1) No person, after the expiration of three months from the date on which this section is brought into force, carry on his business as moneylender in any district without obtaining a registration certificate under section 11-B for such district.

**Penalty.** (2) Whoever contravenes the provision of sub-section (1) shall be punishable with fine which may extend to fifty rupees, or, if he has previously been convicted of an offence under that sub-section, with fine which may extend to one hundred rupees.

**Composition of offences.** 11-F. (1) The Deputy Commissioner may accept from any person who has committed an offence against sub-section (1) of section 11-E a sum of money not exceeding one hundred rupees by way of composition for such offence.

(2) On payment of such sum of money, the person who has committed an offence, if in custody, shall be discharged, and no further proceedings shall be taken against him in regard to the offence so compounded."

**Amendment of section 12, C. P. Act XIII of 1934.** 4. After clause (b) of sub-section (3) of section 12 of the said Act, the following clauses shall be inserted, namely:—

(c) the form and particulars of a register under section 11-A,

(d) the form of registration certificate under section 11-B (1),

(e) the particulars of an application under section 11-B (2), and

(f) the registration fee under section 11-C."



# THE FORT ST. GEORGE GAZETTE

PUBLISHED BY AUTHORITY

No. 201 MADRAS, TUESDAY EVENING, OCTOBER 17, 1939

## Part IV—Proceedings of the Madras Legislature

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SUPPLEMENT :	
Act No. XXIII of 1939—Madras Co-operative Land Mortgage Banks (Amendment)—Telugu.	

Bill to be introduced in the Legislative Assembly  
Council  
of the Province of Madras.

Under the proviso to rule 73 of the Madras Assembly  
Council  
Rules, the following Bill, together with the Statement of Objects and Reasons, is published for general information :—

*A Bill to regulate and control the business of pawnbrokers in the Province of Madras.*

WHEREAS it is expedient to make provision for the regulation and control of the business of pawnbrokers in the Province of Madras ; It is hereby enacted as follows :—

1. (1) This Act may be called the Madras Pawn- Sho  
brokers Act, 1939. exte

(2) It extends to the whole of the Province of com  
Madras. men

(3) This section shall come into force at once, and the Provincial Government may, from time to time, by notification in the *Fort St. George Gazette*, apply the remaining provisions of this Act to the whole or any portion of the Province of Madras from such date as may be specified in the notification, and may cancel or modify any such notification.

**Definitions.**

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

(1) "City of Madras" includes all places within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Madras ;

2) "Commissioner of Police" means the Commissioner of Police for the City of Madras appointed under section 5 of the Madras City Police Act, 1888, or any person appointed by the Provincial Government to perform the duties of the Commissioner of Police, under this Act ; III of 1888.

(3) "company" means a company—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India ; or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature ;

(4) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 ; Madras Act  
VI of 1932.

(5) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a pawnbroker for or on account of charges, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a pawnbroker in consideration of or otherwise in respect of a loan ;

(6) "loan" means an advance of money or in kind at interest, and includes any transaction

which the Court finds in substance to amount to such an advance, but does not include—

- i) a deposit of money or other property in a Government Post Office Savings Bank or in a company or with a co-operative society ;
  - ii) an advance made by a company or a co-operative society ;
  - iii) an advance made by Government or by any person authorized by Government to make advances in their behalf, or by any local authority ;
  - iv) an advance made by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business ; and
  - v) an advance made by a landlord to his tenant, by a lessor to his lessee, or by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture ;
- (1) " pawnbroker " means a person who carries on the business of taking goods and chattels in pawn for a loan.

*Explanation.*—Every person who keeps a shop for the purchase or sale of goods or chattels and who purchases goods or chattels and pays or advances thereon any sum of money, with or under an agreement or understanding expressed or implied that the goods or chattels may be afterwards repurchased on any terms is a pawnbroker within the meaning of this clause ;

- (2) " pawn " means a person delivering an article for pawn to a pawnbroker ;
- (9) " pledge " means an article pawned with a pawnbroker ;
- (10) " prescribed " means prescribed by rules made under this Act ;
- (11) " principal " in relation to a loan means the amount actually lent to the pawner ;
- (12) " Superintendent of Police " means a District Superintendent of Police appointed under the Madras District Police Act, 1859, or any



person appointed by the Provincial Government to perform the duties of the Superintendent of Police for the purposes of this Act; and

(13) "year" means the financial year.

to obtain  
licence  
annually.

3. (1) No person shall, after the expiry of three months from the date on which the provisions of this Act (other than section 1) come into force in any area, carry on or continue to carry on business as a pawnbroker at any place in such area, unless he has obtained a pawnbroker's licence under this Act.

*Explanation.*—Where a pawnbroker has more than one shop or place of business, whether in the same town or village or in different towns and villages, he shall obtain a separate pawnbroker's licence in respect of each such shop or place of business.

(2) Every pawnbroker's licence granted under this Act shall expire on the last day of the year for which it was granted, but may be renewed from year to year.

warrant and  
refusal of  
licences.

4. (1) Every application for a pawnbroker's licence shall be in writing and shall be made—

(a) if the shop or place of business for which the licence is applied for is situated in the City of Madras, to the Commissioner of Police or to any of the Gazetted officers subordinate to, and authorized by, the Commissioner; and

) if such shop or place of business is situated at any place outside the City of Madras, to the Superintendent of Police of the district in which the shop or place of business is situated or to any of the Gazetted officers subordinate to, and authorized by, the Superintendent.

(2) The licence shall not be refused except on one or both of the following grounds, namely:—

(a) that the applicant has failed to produce satisfactory evidence of good character; and

(b) that the shop or place at which he intends to carry on the business of a pawnbroker or any adjacent house or shop or place, owned or occupied by him, is frequented by thieves or persons of bad character.

(3) Every licence shall be granted in such form and subject to such conditions as may be prescribed and on payment of such fee not exceeding twenty-five rupees as the Provincial Government may, from time to time by notification in the *Fort St. George Gazette* determine.

5. Every pawnbroker shall—

- (a) always keep exhibited in large characters over the outer door of his shop or place of business his name with the word Pawnbroker, in the chief language of the locality ; and
- (b) always keep placed in a conspicuous part of his shop or place of business so as to be legible to all persons resorting thereto the information required to be printed on pawn-tickets by rules made under this Act, in the chief language of the locality.

Pawnbrokers to exhibit their names over shops, etc.

6. (1) No pawnbroker shall charge interest in respect of a loan on a pledge at a rate exceeding six and a quarter per cent per annum simple interest, that is to say, at a rate exceeding one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

Interest and charges allowed to pawnbrokers.

(2) A pawnbroker may demand and take from the pawner such charges and in such cases as may be prescribed.

(3) A pawnbroker shall not demand or take from the pawner any profit, interest, charge or sum whatsoever, other than the interest due to him and the charges, if any, referred to in sub-section (2).

7. Every pawnbroker shall on taking a pledge in pawn give to the pawner a pawn-ticket in the prescribed form, and shall not take a pledge in pawn unless the pawner takes the pawn-ticket.

Pawn-ticket to be given to pawner.

8. (1) The holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and subject to the provisions of this Act, every pawnbroker shall, on payment of the principal and interest, deliver the pledge to the person producing the pawn-ticket, and he is hereby indemnified for so doing.

Person producing pawn-ticket, presumed to be entitled to redeem the pledge.

(2) Except as otherwise expressly provided in this Act, a pawnbroker shall not be bound to deliver back a pledge unless the pawn-ticket for it is delivered to him.

Protection  
of owners  
and of  
pawners not  
having  
pawna-  
tickets.

9. (1) The following provisions shall have effect, in respect of loans not exceeding two hundred and fifty rupees in each case, for the protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce :—

(a) Any person claiming to be the owner of a pledge but not holding the pawn-ticket, or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration (which shall be in the prescribed form), which the pawnbroker shall deliver to him.

(b) If the applicant delivers back to the pawnbroker the declaration duly made before any Magistrate or Judge by the applicant and by a person identifying him, the applicant shall have, as between himself and the pawnbroker, all the same rights and remedies as if he had produced the pawn-ticket :

rovided that such a declaration shall not be effectual for that purpose unless it is duly made and delivered back to the pawnbroker not later than on the third day after the day on which the form was delivered to the applicant by the pawnbroker.

c) The pawnbroker is hereby indemnified for not delivering the pledge to any person until the expiration of the period aforesaid.

d) The pawnbroker is hereby further indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has had notice within the meaning of the Transfer of Property Act, 1882, that the declaration was fraudulent or was false in any material particular.

(2) Any person making a declaration under sub-section (1), either as an applicant or as identifying an applicant, knowing the same to be false in any material particular, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

10 (1) Every pawnbroker shall—

(a) regularly record and maintain or cause to be recorded and maintained in a pledge book in the prescribed form, an account showing for each pawner separately—

Pawnbrokers  
to keep  
books, give  
receipts, &

(i) the date of the loan, the amount of the principal of the loan, and the rate of interest charged on the loan per cent per annum or per rupee per mensem or per rupee per annum ;

ii) the amount of every payment received by the pawnbroker in respect of the loan, and the date of such payment ;

(iii) a full and detailed description of the article or of each of the articles taken in pawn ;

(iv) the time agreed upon for the redemption of the pawn ; and

(v) the name and address of the pawner, and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof ;

(b) keep and use in his business the following documents and books (which shall be in the prescribed form) and enter therein from time to time, as occasion requires, in a fair and legible manner such particulars and in accordance with such directions as may be prescribed :—

(i) Pawn-ticket ;

(ii) Sale book of pledges ,

(iii) Declaration where pledge is claimed by owner ;

(iv) Declaration of pawn-ticket lost ; and

(v) Receipt on redemption of pledge ;

- (c) give to the pawner or his agent a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment ;
- (d) on requisition in writing made by the pawner furnish to the pawner or, if he so requires, to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent, showing the particulars referred to in clause (a) and also the amount which remains outstanding on account of the principal and of interest, and charge such sum as the Provincial Government may prescribe as fee therefor ; and
- e) seal every article of jewellery pawned with his own seal and with the seal, if any, produced by the pawner for the purpose, the seals being opened only in the presence of the pawner or his agent at the time of redemption of the pawn or if the pawner fails to redeem the pawn, in the presence of an Honorary Magistrate or a Government servant at the time of sale of the pawn.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in clause (a) of sub-section (1), certified in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account. 1 OF 1872.

(3) A pawner to whom a statement of account has been furnished under clause (d) of sub-section (1) and who fails to object to the correctness of the account shall not, by such failure alone, be deemed to have admitted the correctness of such account.

(4) In the pawn-ticket furnished to the pawner, in the receipt given under clause (c) of sub-section (1) and in the statement of account furnished under clause (d) of that sub-section, the figures shall be entered only in Arabic numerals.

Liability of pawnbroker in case of fire.

11. (1) Where a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable, on application made within the period during which the pledge would have been

redeemable, to pay the value of the pledge, after deducting the amount of the principal and interest, such value to be the amount of the principal and interest and twenty-five per cent on the amount of the principal.

(2) A pawnbroker shall be entitled to insure to the extent of the value so estimated.

12. If a person entitled and offering to redeem a pledge shows to the satisfaction of a Civil Court having jurisdiction to entertain a suit for such redemption that the pledge has become or has been rendered of less value than it was at the time of pawning thereof by or through the default, neglect or wilful misbehaviour of the pawnbroker, the Court may, if it thinks fit, award reasonable compensation to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker (as the case requires) in such manner as the Court directs.

Compensation for depreciation of pledge.

13. (1) Any pawnbroker who actually advances an amount less than that shown in the pawn-ticket or in his accounts or registers or who takes or receives interest or any other charge at a rate higher than that shown in the pawn-ticket or in his accounts or registers shall be punished with fine which may extend to five hundred rupees.

Pawnbroker advancing smaller amount or receiving higher interest than specified in accounts to be punishable.

(2) If a pawnbroker is convicted of an offence under sub-section (1) after having been previously convicted of such an offence, the Court convicting him may order his licence as a pawnbroker to be cancelled.

14. A pawnbroker who—

(1) takes an article in pawn from any person appearing to be under the age of fourteen years, or to be intoxicated; or

Certain other acts pawnbroker to be punishable.

(2) purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker; or

(3) employs any person under the age of sixteen years to take pledges in pawn; or

- (4) under any pretence purchases, except at a public auction, any pledge while in pawn with him ; or
- (5) suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it ; or
- (6) makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption ; or
- (7) sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as is authorized by this Act ;

shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

Certain acts  
of pawners  
to be  
punishable

15. (1) Any person who—

- (a) offers to a pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory account of the means by which he became possessed of the article ; or
- (b) wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article ; or
- (c) not being entitled to redeem, and not having any colour of title by law to redeem, a pledge, attempts or endeavours to redeem the same ;

shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

(2) In every case falling under sub-section (1), and also in any case where, on an article being offered in pawn, for sale, or otherwise, to a pawnbroker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker shall, in the absence of reasonable excuse, inquire into the name and address of the person concerned.

and seize and detain such person and the article, if any, and forthwith communicate to the nearest police station the facts of the case and shall deliver the person and the article, if any; seized to the police.

(3) To every pawnbroker licensed under this Act, a list of properties believed to have been stolen shall be delivered by the Police and it shall be the duty of such pawnbroker upon any article answering the description of any of the properties set forth in any such list being offered to him in pawn, for sale or otherwise, to proceed in accordance with the provisions of sub-section (2).

16. (1) Whoever contravenes any of the provisions of this Act or of any rule or of any terms or conditions of a licence made or granted thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punished with fine which may extend to fifty rupees and, if such person has been previously convicted whether under this section or any other provision contained in this Act, with fine which may extend to one hundred rupees.

General  
penalty for  
contraven-  
tion of Act  
etc.

(2) Any person who after having been convicted of the offence of carrying on, or continuing to carry on, the business of pawnbroker in contravention of the provisions of section 3, continues to commit the same offence in the same year, shall in addition to the fine to which he is liable under sub-section (1), be punished with a further fine which may extend to ten rupees for each day after the previous date of conviction during which he continues so to offend.

(3) Any Court convicting a pawnbroker of a contravention of the provisions of clause (c) or clause (d) of sub-section (1) of section 10, may direct him to furnish a receipt or statement of account in accordance with the provisions of that clause, and if the pawnbroker fails to comply with the direction, the Court may order his licence as a pawnbroker to be cancelled.

17. No Presidency Magistrate not being a salaried Presidency Magistrate and no other Court inferior to that of a Magistrate of the second class shall try any offence against this Act,

Jurisdiction  
to try  
offences.



Arrest with-  
out warrant.

18. Any Police officer may arrest without a warrant any person committing in his view an offence against this Act.

cts  
----- be  
void on  
account of  
offences but  
interests  
and costs  
not to be  
allowed in  
certain cases.

19. Where a pawnbroker is guilty of an offence against this Act (not being an offence against any provision of this Act relating to licences), any contract of pawn or other contract made by him, in relation to his business of pawnbroker, shall nevertheless not be void by reason only of that offence, nor shall he by reason only of that offence, lose his lien on or right to the pledge or to the loan and the interest and other charges, if any, payable in respect thereof :

Provided that if a pawnbroker fails to deliver to the pawner a pawn-ticket as required by section 7 or fails to give to the pawner or his agent a receipt as required by clause (c) of sub-section (1) of section 10 or to furnish on a requisition made under clause (d) of that sub-section, a statement of account as required therein within one month after such requisition has been made, the pawnbroker shall not be entitled to any interest for the period of his default :

Provided further that if in any suit or proceeding relating to a loan, the Court finds that a pawnbroker has not maintained accounts as required by clause (a) or clause (b) of sub-section (1) of section 10, he shall not be allowed his costs.

Power to  
make rules.

20. (1) The Provincial Government may, after previous publication, make rules to carry out the purposes of this Act.

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

- (a) all matters expressly required or allowed by this Act to be prescribed ;
- (b) the form of, and the particulars to be contained in, an application for a pawnbroker's licence under this Act ; and
- (c) the form and the language in which books, accounts and documents specified in this Act shall be recorded, maintained, kept or used.

(3) All rules made under this section shall be published in the *Fort St. George Gazette* and on such publication shall have effect as if enacted in this Act.

21. (1) In clause (2) of section 2 of the Madras Debtors' Protection Act, 1934, the words and figures "and includes a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies" shall be omitted.

(2) In any area to which the provisions of this Act have been applied by a notification under sub-section (3) of section 1, the provisions of the Madras Debtors' Protection Act, 1934, shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the following modifications, namely:—

- (i) in section 2, in clause (5), the words "including a pawnbroker" shall be omitted;
- (ii) in the same section, clauses (8) and (9) shall be omitted, and clauses (10) and (11) shall be renumbered as clauses (8) and (9) respectively;
- (iii) section 4 shall be omitted;
- (iv) in section 5, after the word and figure "section 3" the word "and" shall be inserted, and the words, brackets and figures "and in the copy of the entries to be delivered under sub-section (2) of section 4" shall be omitted;
- (v) in sub-section (1) of section 6, the words, brackets and figures "or by sub-section (1) of section 4" shall be omitted;
- (vi) in sub-section (2) of the same section, the words, brackets and figures "or if a pawnbroker fails to deliver to the pawner, a copy of the entries as required by sub-section (2) of section 4" shall be omitted;
- (vii) in sub-section (2) of section 8, the word "and" shall be inserted at the end of clause (a) and omitted from the end of clause (b);
- (viii) in the same sub-section, clause (c) shall be omitted; and

Madras Act  
VII of 1936.  
VI of 1912.

Madras Act  
VII of 1935.

Amendment  
of Madras  
Act VII of  
1935.

IX) after section 8, the following section shall be added, namely:—

“9. Nothing contained in this Act shall be deemed to apply to pawnbrokers, that is to say, to persons who carry on the business of taking goods and chattels in pawn for a loan.”

Amendment  
of Madras  
Act III of  
1888.

22. (1) If the provisions of this Act have been applied to the City of Madras by a notification under sub-section (3) of section 1, section 28 of the Madras City Police Act, 1888, shall, after the expiry of three months from the date of such application and so long as such notification is in force, have effect as if the word “pawnbroker” occurring in four places therein and the words “in pawn” were omitted.

Madras Act  
III of 1888.

(2) Nothing contained in this Act shall be deemed to exempt pawnbrokers from the operation of section 66 of the Madras City Police Act, 1888.

Madras Act  
III of 1888.

Savings.

23. Nothing contained in this Act shall apply to any loan advanced on a pledge in any area to which the provisions of this Act have been applied by a notification under sub-section (3) of section 1 before the expiry of three months from the date of such application, and notwithstanding anything contained in section 21 of this Act, the provisions of the Madras Debtors' Protection Act, 1934, as they stood before such application, shall continue to apply to any such loan.

Madras Act  
VII of 1935

#### STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to regulate and control the business of pawnbrokers in this Presidency. Many pawnbrokers, especially in urban areas, are suspected of receiving stolen property, and there is a marked reluctance on their part to reveal the sources from which property is received by them. The account books of some pawnbrokers are now written in a script not current in this Presidency, and this adds considerably to the difficulty of preventing them from making an illegitimate use of their position. The Government consider that the time has now arrived for legislation requiring pawnbrokers to take out licences and subjecting their operations to a due measure of control on the lines of the English Pawnbrokers Act, 1872 (35 and 36 Vict. Ch. 93).

2. The provisions of the Bill will extend only to such portions of the Presidency as may be notified by the Government from time to time. The Government will also have power to withdraw the provisions from any area to which they have been extended, if necessity for such withdrawal is felt subsequently.

3. No person can carry on business as a pawnbroker after a period of three months from the date on which the Bill is brought into force in any area, unless he obtains a licence from the Commissioner of Police in the City of Madras and from the District Superintendent of Police in the mufassal. The Commissioner or the District Superintendent may delegate the power of issuing licences to any Gazetted officer subordinate to him. Licences will not be issued if the applicants fail to produce satisfactory evidence of good character or if the shops or other places in which they intend to carry on business are frequented by thieves or persons of bad character. A separate licence is necessary in respect of each shop or place of business of a pawnbroker. The licence will be an annual one but may be renewed from year to year. It will be in such form and subject to such conditions as may be prescribed by the Government. A fee not exceeding Rs. 25 per annum is to be charged for the licence.

4. Advances made by the Government or any local authority, by a company or a co-operative society, by any person *bona fide* carrying on business not having for its primary object the lending of money, by a landlord to his tenant, by a lessor to his lessee, and by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture have been excluded from the scope of the Bill on the analogy of section 2 (7) of the Madras Debtors' Protection Act, 1934 (Madras Act VII of 1935).

5. The interest which may be charged by pawnbrokers is limited to 6½ per cent per annum simple interest. Pawnbrokers will also be entitled to recover charges in such cases and at such rates as may be prescribed by the Government. Power has been taken to make rules for prescribing the languages in which books, accounts and documents shall be kept.

6. In other respects, the Bill follows mainly the provisions of the English Pawnbrokers Act.

7. Suitable amendments have been made in the Madras Debtors' Protection Act, 1934, and the Madras City Police Act, 1888. These amendments will be in force in the areas to which the provisions of the Bill have been extended by notification; and so long as such notification is in force.

8. The notes on clauses explain in detail the object of the more important clauses of the Bill.

## NOTES ON CLAUSES.

*Clause 2 (1).*—This incorporates the definition of “City of Madras” contained in section 3 of the Madras City Police Act, 1888 (Madras Act III of 1888).

*Clause 2 (3).*—This is based on the definition of “company” found in section 2 (2) of the Madras Debtors’ Protection Act, 1934 (Madras Act VII of 1935). The last paragraph of that definition which refers to “a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies” has however been omitted in view of the Insurance Act, 1938 (India Act IV of 1938) which has been recently enacted.

*Clause 2 (5).*—This is based on the definition of “interest” in section 2 (6) of the Madras Debtors’ Protection Act.

*Clause 2 (7).*—The definition of “pawnbroker” follows section 2 (8) of the Madras Debtors’ Protection Act. The Explanation is modelled on section 6 of the English Pawnbrokers Act (35 and 36 Vict. Ch. 93).

*Clause 2 (8).*—This follows the definition of “pawner” contained in section 2 (9) of the Madras Debtors’ Protection Act.

*Clause 3.*—The Explanation to sub-clause (1) makes it clear that a separate pawnbroker’s licence should be obtained in respect of each shop or place of business of the pawnbroker.

*Clause 4.*—Sub-clause (2) is based on section 43 of the English Act.

*Clause 5.*—This is based on section 13 of the English Act.

*Clause 6.*—Sub-clause (1) limits the interest to be charged to  $6\frac{1}{4}$  per cent per annum simple interest. Sub-clauses (2) and (3) are based on section 15 of the English Act and prohibit the receipt of any profit except (a) interest and (b) prescribed charges.

*Clause 7.*—This provides for a pawn-ticket being given in all cases and is based on section 14 of the English Act.

*Clause 8.*—This provides that the person producing the pawn-ticket shall ordinarily be deemed to be entitled to redeem the pledge. It is based on sections 25 and 26 of the English Act.

*Clause 9.*—This makes provision for the case of owners of the property pledged and of pawners who have lost or mislaid their pawn-tickets and is based on section 29 of the English Act. The clause is limited to loans not exceeding Rs. 250 in each case.

*Clause 10 (1).*—This provides for the keeping of accounts and other books, the furnishing of receipts and statements of accounts and the sealing of articles of jewellery which are pawned. The sub-clause is based on section 12 of the English Act and the 3rd Schedule thereto and also on sections 3 (1) and 4 (1) of the Madras Debtors' Protection Act, 1934.

*Clause 10 (2), (3) and (4).*—These are based on sections 3 (2), 3 (3) and 5 respectively of the Madras Debtors' Protection Act.

*Clause 11.*—This provides for the liability of the pawnbroker in case the pledge is destroyed by fire and is based on section 27 of the English Act.

*Clause 12.*—This provides for compensation to the pawner in case the pledge becomes depreciated on account of the default or neglect of the pawnbroker and is based on section 28 of the English Act.

*Clause 13.*—This penalizes a pawnbroker who advances a smaller amount than that shown in the pawn-ticket or in his accounts or registers or who takes or receives interest or other charges at a rate higher than that shown therein. A repetition of the offence may entail the cancellation of the pawnbroker's licence. The provisions of this clause are in part based on section 38 of the English Act.

*Clause 14.*—This penalizes certain acts of the pawnbroker and is based for the most part on section 32 of the English Act.

*Clause 15.*—*Sub-clause (1)* makes certain acts of pawners punishable and is based on section 34 of the English Act.

*Sub-clause (2)* provides for the seizure by a pawnbroker of any article offered to him in pawn, for sale or otherwise, if the pawnbroker believes it to be stolen or otherwise illegally or clandestinely obtained, and also for the detention of the person offering such article. A report is to be made at the nearest police station where the person and the article seized are to be delivered to the Police.

*Sub-clause (3)* provides for the delivery of a list of stolen properties to pawnbrokers by the Police and for the pawnbroker seizing any such article, if offered to him, and detaining the person offering it, making a report to the Police, etc., as provided in sub-clause (2). This is based on section 28 of the Madras City Police Act, 1888.

*Clause 16.*—*Sub-clause (1)* provides a penalty for contraventions of the Bill for which no penalty is provided elsewhere in the Bill.

*Sub-clause (2)* provides for the imposition of an additional daily fine where a pawnbroker's business is carried on in contravention of the provisions of clause 3 of the Bill.

*Sub-clause (3)* provides for a Court which convicts a pawnbroker for failure to furnish a receipt or statement of account directing the pawnbroker to furnish such receipt or statement. If the account is not furnished, the pawnbroker's licence may be cancelled by the Court.

*Clause 17* provides that only salaried Presidency Magistrates and Courts not inferior to the Court of a Magistrate of the second-class shall try offences against the Bill.

*Clause 18* empowers police officers to arrest without warrant persons committing in their view offences against the Bill.

*Clause 19.*—This provides that the fact that a pawnbroker is guilty of an offence against the Act will not render the contract of pawn void, unless the offence is one against the provisions of the Bill relating to licences.

The two provisos are based on sections 6 (2) and 6 (1) respectively of the Madras Debtors' Protection Act, 1934, and provide that the pawnbroker shall not be entitled to interest or to costs in the cases referred to therein.

*Clause 20.*—This gives power to the Government to make rules.

*Clauses 21 and 22.*—These make consequential amendments in the Madras Debtors' Protection Act, 1934, and the Madras City Police Act, 1888, respectively.

*Clause 23.*—This makes it clear that loans advanced on pledges before the Bill comes into operation will be governed not by the Bill but by the pre-existing law.

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(By order of His Excellency the Governor)

P. APPU NAIR,  
*Secretary to Government. Local Department.*



# THE FORT ST GEORGE GAZETTE

PUBLISHED BY AUTHORITY

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No. 91 MADRAS, TUESDAY EVENING, AUGUST 13, 1940

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## PART IV-A—BILLS

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The following Bill, together with the Statement of Objects and Reasons, is published for the purpose of eliciting opinion. Notice is hereby given that the said Bill will be considered on or after the 13th September 1940 and that any objection or suggestion which may be received with respect thereto before the said date by the Secretary to the Government of Madras in the Development Department, will be considered.

*A Bill to regulate and control the business of Pawnbrokers in the Province of Madras.*

WHEREAS it is expedient to make provision for the regulation and control of the business of pawnbrokers in the Province of Madras ;

AND WHEREAS the Governor of Madras has, by a Proclamation under section 93 of the Government of India Act, 1935, assumed to himself all powers vested by or under the said Act in the Provincial Legislature ;



Now, THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:—

Short title,  
extent and  
commence-  
ment.

1. (1) This Act may be called the Madras Pawn-brokers Act, 1940.

(2) It extends to the whole of the Province of Madras.

(3) This section shall come into force at once, and the Provincial Government may, from time to time, by notification in the *Fort St. George Gazette*, apply the remaining provisions of this Act to the whole or any portion of the Province of Madras from such date as may be specified in the notification, and may cancel or modify any such notification.

Definitions.

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

(1) “City of Madras” includes all places within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Madras;

(2) “Commissioner of Police” means the Commissioner of Police for the City of Madras appointed under section 5 of the Madras City Police Act, 1888, or any person appointed by the Provincial Government to perform the duties of the Commissioner of Police under this Act; Madras Act III of 1888.

(3) “company” means a company—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India; or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature;

4) “co-operative society” means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932; Madras Act VI of 1932.

- (5) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a pawnbroker for or on account of charges, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a pawnbroker in consideration of or otherwise in respect of a loan ;
- (6) "loan" means an advance of money or in kind at interest, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include—
- (i) a deposit of money or other property in a Government Post Office Savings Bank or in a company or with a co-operative society ;
  - (ii) an advance made by a company or a co-operative society ;
  - (iii) an advance made by Government or by any person authorized by Government to make advances in their behalf, or by any local authority ;
  - (iv) an advance made by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business ; and
  - (v) an advance made by a landlord to his tenant, by a lessor to his lessee, or by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture ;
- (7) "pawnbroker" means a person who carries on the business of taking goods and chattels in pawn for a loan.

*Explanation.*—Every person who keeps a shop for the purchase or sale of goods or chattels and who purchases goods or chattels and pays or advances thereon any sum of money, with or under an agreement or understanding expressed or implied that the goods or chattels may be afterwards repurchased on any terms is a pawnbroker within the meaning of this clause ;

- (8) "pawner" means a person delivering an article for pawn to a pawnbroker ;
- (9) "pledge" means an article pawned with a pawnbroker ;
- (10) "prescribed" means prescribed by rules made under this Act ;
- (11) "principal" in relation to a loan means the amount actually lent to the pawner ;
- (12) "Superintendent of Police" means a District Superintendent of Police, appointed under the Madras District Police Act, 1859, or any person appointed by the Provincial Government to perform the duties of the Superintendent of Police for the purposes of this Act ; and XXIV of 1859.
- (13) "year" means the financial year.

Pawnbrokers to obtain licence annually.

3. (1) No person shall, after the expiry of three months from the date on which the provisions of this Act (other than section 1) come into force in any area, carry on or continue to carry on business as a pawnbroker at any place in such area, unless he has obtained a pawnbroker's licence under this Act.

*Explanation.*—Where a pawnbroker has more than one shop or place of business, whether in the same town or village or in different towns and villages, he shall obtain a separate pawnbroker's licence in respect of each such shop or place of business.

(2) Every pawnbroker's licence granted under this Act shall expire on the last day of the year for which it was granted, but may be renewed from year to year.

Grant and refusal of licences.

4. (1) Every application for a pawnbroker's licence shall be in writing and shall be made—

- (a) if the shop or place of business for which the licence is applied for is situated in the City of Madras, to the Commissioner of Police or to any of the Gazetted officers subordinate to, and authorized by, the Commissioner ; and

(b) if such shop or place of business is situated at any place outside the City of Madras, to the Superintendent of Police of the district in which the shop or place of business is situated or to any of the Gazetted officers subordinate to, and authorized by, the Superintendent.

2) The licence shall not be refused except on one or both of the following grounds, namely:—

(a) that the applicant has failed to produce satisfactory evidence of good character; and

(b) that the shop or place at which he intends to carry on the business of a pawnbroker or any adjacent house or shop or place, owned or occupied by him, is frequented by thieves or persons of bad character.

(c) Every licence shall be granted in such form and subject to such conditions as may be prescribed and on payment of such fee not exceeding twenty-five rupees as the Provincial Government may, from time to time, by notification in the *Fort St. George Gazette*, determine.

5. Every pawnbroker shall—

(a) always keep exhibited in large characters over the outer door of his shop or place of business his name with the word Pawnbroker, in the chief language of the locality; and

(b) always keep placed in a conspicuous part of his shop or place of business so as to be legible to all persons resorting thereto the information required to be printed on pawn-tickets by rules made under this Act, in the chief language of the locality.

(c) No pawnbroker shall charge interest in of a loan on a pledge at a rate exceeding six quarter per cent per annum simple interest, or say, at a rate exceeding one pie per rupee per simple interest, or one anna per rupee per simple interest.

Pawnbrokers to exhibit their names over shops, etc.

Interest and charges allowed to pawnbrokers.

(2) A pawnbroker may demand and take from the pawner such charges and in such cases as may be prescribed.

(3) A pawnbroker shall not demand or take from the pawner any profit, interest, charge or sum whatsoever, other than the interest due to him and the charges, if any, referred to in sub-section (2).

pawn-ticket to be given to pawner.

7. Every pawnbroker shall on taking a pledge in pawn give to the pawner a pawn-ticket in the prescribed form, and shall not take a pledge in pawn unless the pawner takes the pawn-ticket.

Person producing pawn-ticket presumed to be entitled to redeem the pledge.

8. (1) The holder for the time being of a pawn-ticket shall be presumed to be the person entitled to redeem the pledge, and subject to the provisions of this Act, every pawnbroker shall, on payment of the principal and interest, deliver the pledge to the person producing the pawn-ticket, and he is hereby indemnified for so doing.

(2) Except as otherwise expressly provided in this Act, a pawnbroker shall not be bound to deliver back a pledge unless the pawn-ticket for it is delivered to him.

Protection of owners and of pawners not having pawn-tickets.

9. (1) The following provisions shall have effect in respect of loans not exceeding two hundred and fifty rupees in each case, for the protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce :—

(a) Any person claiming to be the owner of a pledge but not holding the pawn-ticket, or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration (which shall be in the prescribed form), which the pawnbroker shall deliver to him.

(b) If the applicant conveys back to the pawnbroker the declaration duly made before any Magistrate or Judge by the applicant and by a person identifying him, the applicant shall have, as between himself and the pawnbroker, all the same rights and remedies as if he had produced the pawn-ticket.

Provided that such a declaration shall not be effectual for that purpose unless it is duly made and delivered back to the pawnbroker not later than on the third day after the day on which the form was delivered to the applicant by the pawnbroker.

(c) The pawnbroker is hereby indemnified for not delivering the pledge to any person until the expiration of the period aforesaid.

(d) The pawnbroker is hereby further indemnified for delivering the pledge or otherwise acting in conformity with the declaration unless he has had notice within the meaning of the Transfer of Property Act, 1882, that the declaration was fraudulent or was false in any material particular.

(2) Any person making a declaration under sub-section (1), either as an applicant or as identifying an applicant, knowing the same to be false in any material particular, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both

10. (1) Every pawnbroker shall—

(a) regularly record and maintain or cause to be recorded and maintained in a pledge book in the prescribed form, an account showing for each pawner separately—

to keep books, give receipts, etc.

(i) the date of the loan, the amount of the principal of the loan, and the rate of interest charged on the loan per cent per annum or per rupee per mensem or per rupee per annum ;

(ii) the amount of every payment received by the pawnbroker in respect of the loan, and the date of such payment ;

(iii) a full and detailed description of the article or of each of the articles taken in pawn ;

(iv) the time agreed upon for the redemption of the pawn ; and

(v) the name and address of the pawner, and where the pawner is not the owner

of the article or of any of the articles pawned, the name and address of the owner thereof;

b) keep and use in his business the following documents and books (which shall be in the prescribed form) and enter therein from time to time, as occasion requires, in a fair and legible manner such particulars and in accordance with such directions as may be prescribed :—

- (i) Pawn-ticket;
- (ii) Sale book of pledges
- (iii) Declaration where pledge is claimed by owner;
- (iv) Declaration of pawn-ticket lost; and
- (v) Receipt on redemption of pledge;

and give to the pawner or his agent a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment; and

2) on requisition in writing made by the pawner furnish to the pawner or, if he so requires, to any person mentioned by him in that behalf in his requisition, a statement of account signed by himself or his agent, showing the particulars referred to in clause (a) and also the amount which remains outstanding on account of the principal and of interest, and charge such sum as the Provincial Government may prescribe as fee therefor.

2) All records or entries made in the books, accounts and documents referred to in sub-section (1) shall be either in English or in such language as may be prescribed for the locality as may be prescribed; and all such books, accounts and documents and all pledges taken by the pawnbroker shall be open to inspection at any time by any Police Officer not below the rank of Head Constable.

(3) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in clause (a) of sub-section (1), certified

in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

(4) A pawner to whom a statement of account has been furnished under clause (d) of sub-section (1) and who fails to object to the correctness of the account shall not, by such failure alone, be deemed to have admitted the correctness of such account.

(5) In the pawn-ticket furnished to the pawner, in the receipt given under clause (c) of sub-section (1) and in the statement of account furnished under clause (d) of that sub-section, the figures shall be entered only in Arabic numerals.

11. (1) Where a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable, on application made within the period during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the principal and interest, such value to be the amount of the principal and interest and twenty-five per cent on the amount of the principal.

Liability of pawnbroker in case of fire.

(2) A pawnbroker shall be entitled to insure to the extent of the value so estimated.

12. If a person entitled and offering to redeem a pledge shows to the satisfaction of a Civil Court having jurisdiction to entertain a suit for such redemption that the pledge has become or has been rendered of less value than it was at the time of pawning thereof by or through the default, neglect or wilful misbehaviour of the pawnbroker, the Court may, if it thinks fit, award reasonable compensation to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker (as the case requires) in such manner as the Court directs.

Compensation for depreciation of pledge.

13. (1) Any pawnbroker who actually advances an amount less than that shown in the pawn-ticket or in his accounts or registers or who takes or receives interest or any other charge at a rate higher than that shown in the pawn-ticket or in his accounts or registers shall be punished with fine which may extend to five hundred rupees.

Pawnbroker advancing smaller amount or receiving higher interest than that specified in accounts to be punished.



(2) If a pawnbroker is convicted of an offence under sub-section (1) after having been previously convicted of such an offence, the Court convicting him may order his licence as a pawnbroker to be cancelled.

14. A pawnbroker who—

- (1) takes an article in pawn from any person appearing to be under the age of fourteen years, or to be intoxicated; or
- (2) purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker; or
- (3) employs any person under the age of sixteen years to take pledges in pawn; or
- (4) under any pretence purchases, except at a public auction, any pledge while in pawn with him; or
- (5) suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it; or
- (6) makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption; or
- (7) sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as is authorized by this Act;

Certain other acts of pawnbroker to be punishable.

shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

15. (1) Any person who—

- (a) offers to a pawnbroker an article by way of pawn, being unable or refusing to give a satisfactory account of the means by which he became possessed of the article; or
- (b) wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article; or

Certain acts of pawnbroker to be punishable.

- (c) not being entitled to redeem, and not having any colour of title by law to redeem, a pledge, attempts or endeavours to redeem the same ;

shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred rupees or with both.

(2) In every case falling under sub-section (1), and also in any case where, on an article being offered in pawn, for sale, or otherwise, to a pawnbroker he reasonably suspects that it has been stolen or otherwise illegally or clandestinely obtained, the pawnbroker shall, in the absence of reasonable excuse, inquire into the name and address of the person concerned, and seize and detain such person and the article, if any, and forthwith communicate to the nearest police station the facts of the case and shall deliver the person and the article, if any, seized to the police.

(3) A list of properties believed to have been stolen may be delivered by the police to any pawnbroker licensed under this Act and thereupon it shall be the duty of such pawnbroker—

- (a) if any article answering the description of any of the properties set forth in any such list is offered to him in pawn, for sale, or otherwise, to proceed in accordance with the provisions of sub-section (2) ; and
- (b) if any such article is already in his possession, forthwith to communicate to the nearest police station the facts of the case (including full particulars as to the name and address of the person concerned in the delivery of the article to the pawnbroker) and also, if so required by the police, to deliver the article to them.

10. (1) Whoever contravenes any of the provisions of this Act or of any rule or of any terms or conditions of a licence made or granted thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention, be punished with fine which may extend to fifty rupees and, if such person

General  
penalty for  
contraven-  
tion of Act  
etc

has been previously convicted whether under this section or any other provision contained in this Act, with fine which may extend to one hundred rupees.

(2) Any person who after having been convicted of the offence of carrying on, or continuing to carry on, the business of pawnbroker in contravention of the provisions of section 3, continues to commit the same offence in the same year, shall in addition to the fine to which he is liable under sub-section (1), be punished with a further fine which may extend to ten rupees for each day after the previous date of conviction during which he continues so to offend.

(3) Any Court convicting a pawnbroker of a contravention of the provisions of clause (c) or clause (d) of sub-section (1) of section 10, may direct him to furnish a receipt or statement of account in accordance with the provisions of that clause, and if the pawnbroker fails to comply with the direction, the Court may order his licence as a pawnbroker to be cancelled.

Jurisdiction to try offences.

17. No Presidency Magistrate not being a salaried Presidency Magistrate and no other Court inferior to that of a Magistrate of the second class shall try any offence against this Act.

Arrest without warrant.

18. Any Police officer may arrest without a warrant any person committing in his view an offence against this Act.

Contracts not to be void on account of offences but interests and costs not to be allowed in certain cases.

19. Where a pawnbroker is guilty of an offence against this Act (not being an offence against any provision of this Act relating to licences), any contract of pawn or other contract made by him, in relation to his business of pawnbroker, shall nevertheless not be void by reason only of that offence, nor shall he by reason only of that offence, lose his lien on or right to the pledge or to the loan and the interest and other charges, if any, payable in respect thereof :

Provided that if a pawnbroker fails to deliver to the pawner a pawn-ticket as required by section 7 or fails to give to the pawner or his agent a receipt as required by clause (c) of sub-section (1) of section 10 or to furnish on a requisition made under clause (d) of that sub-section, a statement of account as required

therein within one month after such requisition has been made, the pawnbroker shall not be entitled to any interest for the period of his default :

Provided further that if in any suit or proceeding relating to a loan, the Court finds that a pawnbroker has not maintained accounts as required by clause (a) or clause (b) of sub-section (1) of section 10, he shall not be allowed his costs.

20. (1) The Provincial Government may, after previous publication, make rules to carry out the purposes of this Act. Power to make rules

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

- (a) all matters expressly required or allowed by this Act to be prescribed ;
- (b) the form of, and the particulars to be contained in, an application for a pawnbroker's licence under this Act ; and
- (c) the form in which books, accounts and documents specified in this Act shall be recorded, maintained, kept or used.

) All rules made under this section shall be published in the *Fort St. George Gazette* and on such publication shall have effect as if enacted in this Act.

21. (1) In clause (2) of section 2 of the Madras Debtors' Protection Act, 1934, the words and figures "and includes a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies" shall be omitted. Amendment of Madras Act VII of 1935.

(2) In any area to which the provisions of this Act have been applied by a notification under sub-section (3) of section 1, the provisions of the Madras Debtors' Protection Act, 1934, shall, after the expiry of three months from the date of such application and so long as such notification remains in force, have effect subject to the following modifications, namely :—

- (i) in section 2, in clause (5), the words "including a pawnbroker" shall be omitted ;

Madras Act VII of 1935.

VI of 1912.

Madras Act VII of 1935.

(ii) in the same section, clauses (8) and (9) shall be omitted, and clauses (10) and (11) shall be renumbered as clauses (8) and (9) respectively ;

i) section 4 shall be omitted ;

v) in section 5, after the word and figure "section 3" the word "and" shall be inserted, and the words, brackets and figures "and in the copy of the entries to be delivered under sub-section (2) of section 4" shall be omitted ;

(v) in sub-section (1) of section 6, the words, brackets and figures "or by sub-section (1) of section 4" shall be omitted ;

vi) in sub-section (2) of the same section, the words, brackets and figures "or if a pawnbroker fails to deliver to the pawner, a copy of the entries as required by sub-section (2) of section 4" shall be omitted ;

(vii) in sub-section (2) of section 8, the word "and" shall be inserted at the end of clause (a) and omitted from the end of clause (b) ;

viii) in the same sub-section, clause (c) shall be omitted ; and

ix) after section 8, the following section shall be added, namely :—

"9. Nothing contained in this Act shall be deemed to apply to pawnbrokers, that is to say, to persons who carry on the business of taking goods and chattels in pawn for a loan."

2. (1) If the provisions of this Act have been applied to the City of Madras by a notification under sub-section (3) of section 1, section 28 of the Madras City Police Act, 1888, shall, after the expiry of three months from the date of such application and so long as such notification is in force, have effect as if the word "pawnbroker" occurring in four places therein and the words "in pawn" were omitted.

(2) Nothing contained in this Act shall be deemed to exempt pawnbrokers from the operation of section 66 of the Madras City Police Act, 1888.

23. Nothing contained in this Act shall apply to any loan advanced on a pledge in any area to which the provisions of this Act have been applied by a notification under sub-section (3) of section 1 before the expiry of three months from the date of such application, and notwithstanding anything contained in section 21 of this Act, the provisions of the Madras Debtors' Protection Act, 1934, as they stood before such application, shall continue to apply to any such loan.

#### STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to regulate and control the business of pawnbrokers in this Presidency. Many pawnbrokers, especially in urban areas, are suspected of receiving stolen property, and there is a marked reluctance on their part to reveal the sources from which property is received by them. The account books of some pawnbrokers are now written in a script not current in this Presidency, and this adds considerably to the difficulty of preventing them from making an illegitimate use of their position. The Government consider that the time has now arrived for legislation requiring pawnbrokers to take out licences and subjecting their operations to a due measure of control on the lines of the English Pawnbrokers Act, 1872 (35 and 36 Vict. Ch. 93).

2. The provisions of the Bill will extend only to such portions of the Presidency as may be notified by the Government from time to time. The Government will also have power to withdraw the provisions from any area to which they have been extended, if necessity for such withdrawal is felt subsequently.

3. No person can carry on business as a pawnbroker after a period of three months from the date on which the Bill is brought into force in any area, unless he obtains a licence from the Commissioner of Police in the City of Madras and from the District Superintendent of Police in the mufassal. The Commissioner or the District Superintendent may delegate the power of issuing licences to any Gazetted officer subordinate to him. Licences will not be issued if the applicants fail to produce satisfactory evidence of good character or if the shops or other places in which they intend to carry on business are frequented by thieves or persons of bad character. A separate licence is necessary in respect of each shop or place of business of a pawnbroker. The licence will be

an annual one but may be renewed from year to year. It will be in such form and subject to such conditions as may be prescribed by the Government. A fee not exceeding Rs. 25 per annum is to be charged for the licence.

4. Advances made by the Government or any local authority, by a company or a co-operative society, by any person *bona fide* carrying on business not having for its primary object the lending of money, by a landlord to his tenant, by a lessor to his lessee, and by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture have been excluded from the scope of the Bill on the analogy of section 2 (7) of the Madras Debtors' Protection Act, 1934 (Madras Act VII of 1935).

5. The interest which may be charged by pawnbrokers is limited to  $6\frac{1}{4}$  per cent per annum simple interest. Pawnbrokers will also be entitled to recover charges in such cases and at such rates as may be prescribed by the Government. Pawnbrokers are required to keep all their books, accounts and documents either in English or in such language of the locality as may be prescribed.

6. In other respects, the Bill follows mainly the provisions of the English Pawnbrokers Act.

7. Suitable amendments have been made in the Madras Debtors' Protection Act, 1934, and the Madras City Police Act, 1888. These amendments will be in force in the areas to which the provisions of the Bill have been extended by notification, and so long as such notification is in force.

8. The notes on clauses explain in detail the object of the more important clauses of the Bill.

#### NOTES ON CLAUSES.

*Clause 2 (1).*—This incorporates the definition of "City of Madras" contained in section 3 of the Madras City Police Act, 1888 (Madras Act III of 1888).

*Clause 2 (3).*—This is based on the definition of "company" found in section 2 (2) of the Madras Debtors' Protection Act, 1934 (Madras Act VII of 1935). The last paragraph of that definition which refers to "a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies" has however been omitted in view of the Insurance Act, 1938 (India Act IV of 1938), which has been recently enacted.

*Clause 2 (5).*—This is based on the definition of "interest" in section 2 (6) of the Madras Debtors' Protection Act.

*Clause 2 (7).*—The definition of "pawnbroker" follows section 2 (8) of the Madras Debtors' Protection Act. The Explanation is modelled on section 6 of the English Pawnbrokers Act (35 and 36 Vict. Ch. 93).

*Clause 2 (8).*—This follows the definition of “pawner” contained in section 2 (9) of the Madras Debtors’ Protection Act.

*Clause 3.*—The Explanation to sub-clause (1) makes it clear that a separate pawnbroker’s licence should be obtained in respect of each shop or place of business of the pawnbroker.

*Clause 4.*—Sub-clause (2) is based on section 43 of the English Act.

*Clause 5.*—This is based on section 13 of the English Act.

*Clause 6.*—Sub-clause (1) limits the interest to be charged to  $6\frac{1}{2}$  per cent per annum simple interest. Sub-clauses (2) and (3) are based on section 15 of the English Act and prohibit the receipt of any profit except (a) interest and (b) prescribed charges.

*Clause 7.*—This provides for a pawn-ticket being given in all cases and is based on section 14 of the English Act.

*Clause 8.*—This provides that the person producing the pawn-ticket shall ordinarily be deemed to be entitled to redeem the pledge. It is based on sections 25 and 26 of the English Act.

*Clause 9.*—This makes provision for the case of owners of the property pledged and of pawners who have lost or mislaid their pawn-tickets and is based on section 29 of the English Act. The clause is limited to loans not exceeding Rs. 250 in each case.

*Clause 10 (1).*—This provides for keeping of accounts and other books by pawnbrokers and their furnishing receipts and statements of accounts. The sub-clause is based on section 12 of the English Act and the 3rd Schedule thereto and also on sections 3 (1) and 4 (1) of the Madras Debtors’ Protection Act, 1934.

*Clause 10 (2).*—This provides for the pawnbroker keeping his books, accounts and documents either in English or in such language of the locality as may be prescribed and for the inspection of the books, accounts and documents and the pledges taken by the pawnbroker by any Police officer not below the rank of head constable.

*Clause 10 (3), (4) and (5).*—These are based on sections 3 (2), 3 (3) and 5 respectively of the Madras Debtors’ Protection Act.

*Clause 11.*—This provides for the liability of the pawnbroker in case the pledge is destroyed by fire and is based on section 27 of the English Act.



*Clause 12.*—This provides for compensation to the pawner in case the pledge becomes depreciated on account of the default or neglect of the pawnbroker and is based on section 28 of the English Act.

*Clause 13.*—This penalizes a pawnbroker who advances a smaller amount than that shown in the pawn-ticket or in his accounts or registers or who takes or receives interest or other charges at a rate higher than that shown therein. A repetition of the offence may entail the cancellation of the pawnbroker's licence. The provisions of this clause are in part based on section 38 of the English Act.

*Clause 14.*—This penalizes certain acts of the pawnbroker and is based for the most part on section 32 of the English Act.

*Clause 15.*—*Sub-clause (1)* makes certain acts of pawners punishable and is based on section 34 of the English Act.

*Sub-clause (2)* provides for the seizure by a pawnbroker of any article offered to him in pawn, for sale or otherwise, if the pawnbroker believes it to be stolen or otherwise illegally or clandestinely obtained, and also for the detention of the person offering such article. A report is to be made at the nearest police station where the person and the article seized are to be delivered to the Police.

*Sub-clause (3)* provides for the delivery of a list of stolen properties to pawnbrokers by the Police and for the pawnbroker seizing any such article, if offered to him, and detaining the person offering it, making a report to the Police, etc., as provided in sub-clause (2). This is based on section 28 of the Madras City Police Act, 1888. In addition, provision is also made for the procedure to be followed if the stolen article is already in the possession of the pawnbroker.

*Clause 16.*—*Sub-clause (1)* provides a penalty for contraventions of the Bill for which no penalty is provided elsewhere in the Bill.

*Sub-clause (2)* provides for the imposition of an additional daily fine where a pawnbroker's business is carried on in contravention of the provisions of clause 3 of the Bill.

*Sub-clause (3)* provides for a Court which convicts a pawnbroker for failure to furnish a receipt or statement of account directing the pawnbroker to furnish such receipt or statement. If the account is not furnished, the pawnbroker's licence may be cancelled by the Court.

*Clause 17* provides that only salaried Presidency Magistrates and Courts not inferior to the Court of a Magistrate of the second class shall try offences against the Bill.

*Clause 18* empowers police officers to arrest without warrant persons committing in their view offences against the Bill.

*Clause 19.*—This provides that the fact that a pawnbroker is guilty of an offence against the Act will not render the contract of pawn void, unless the offence is one against the provisions of the Bill relating to licences.

The two provisos are based on sections 6 (2) and 6 (1) respectively of the Madras Debtors' Protection Act, 1934, and provide that the pawnbroker shall not be entitled to interest or to costs in the cases referred to therein.

*Clause 20.*—This gives power to the Government to make rules.

*Clauses 21 and 22.*—These make consequential amendments in the Madras Debtors' Protection Act, 1934, and the Madras City Police Act, 1888, respectively.

*Clause 23.*—This makes it clear that loans advanced on pledges before the Bill comes into operation will be governed not by the Bill but by the pre-existing law.

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(By order of His Excellency the Governor)

P. APPU NAIR,  
*Secretary to Government, Legal Department.*

## No. 8 of 1893.

### An Ordinance relating to Pawnbrokers.

(As amended by No. 12 of 1922.\*)

(See No. 1 of 1914.)

**W**HEREAS it is expedient to provide for the regulation of the business of pawnbrokers: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

1 This Ordinance may be cited as "The Pawnbrokers' Ordinance, 1893."

Short title.

2 In this Ordinance—

Interpretation.

"Pawnbroker" includes every person who carries on the business of taking goods in pawn.

"Pawner" means a person delivering an article for pawn to a pawnbroker.

"Pledge" means an article pawned with a pawnbroker.

"Shop" includes dwelling house and warehouse, or other place of business, or place where business is transacted.

"Unfinished goods or materials" include any goods of any manufacture or of any part or branch of any manufacture, either mixed or separate, or any materials whatever plainly intended for the composing or manufacturing of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith, and before the same are completed or finished for the purpose of wear or consumption.

3 The following persons shall be deemed to be persons carrying on business of taking goods in pawn (that is to say), every person who keeps a shop for the purchase or sale of goods, or for taking in goods by way of security for money advanced thereon, and who purchases or receives or takes in goods and pays or advances or lends thereon any sum of money not exceeding five hundred rupees, with or under an agreement or understanding expressed or implied, or to be from the nature and character of the dealing reasonably inferred that those goods may be afterwards redeemed or re-purchased on any terms; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan, respectively, within this Ordinance.

Keepers of certain shops to be deemed pawnbrokers.

4 This Ordinance shall apply only where the sum lent by a pawnbroker at any one time does not exceed five hundred rupees.

Application of Ordinance.

\* Proclaimed from November 1, 1922, by Proclamation dated October 2, 1922, in *Government Gazette* No. 7,287 of October 6, 1922.—*Edd.*

*Pawnbrokers.*

Pawnbrokers to keep books as in schedule.

5 (1) A pawnbroker shall keep and use in his business such books and documents as are described in schedule I. to this Ordinance, in the forms therein indicated, and shall from time to time, as occasion demands, enter therein in a fair and legible manner the particulars indicated in and in accordance with the directions of that schedule, and shall make all inquiries necessary for that purpose. Such books, documents, and forms may be kept and used in English, Sinhalese, or Tamil.

Name to be painted over door.

(2) A pawnbroker shall always keep exhibited in large characters over the outer door of his shop his name, with the word "Pawnbroker" affixed in the English, Sinhalese, and Tamil languages.

Hours of business.

(3) A pawnbroker shall not take any article on pawn before 8 A.M. in the morning and after 8 P.M. at night.

[§ 2 (a), 12 of 1922.]

(4) *He shall always keep placed in a conspicuous part of his shop so as to be clearly visible to and legible by every persons pawning or redeeming pledges standing at the place provided for persons pawning or redeeming pledges a board on which shall be exhibited a printed notice containing in English, Sinhalese, and Tamil the information and particulars set out in schedule II. to this Ordinance.*

Penalty.

[§ 2 (b), 12 of 1922.]

(5) If a pawnbroker fails in any respect to comply with the requisitions of this section, he shall be guilty of an offence against this Ordinance, and be liable on conviction to a fine not exceeding one hundred rupees.

Pawn tickets to be given for pledges.

6 A pawnbroker shall, on taking any article in pawn, give to the pawner a pawn ticket, and shall not take any article in pawn unless the pawner takes the pawn ticket.

Agents, servants, &c., of a pawnbroker.

7 For the purposes of this Ordinance, anything done or omitted by the servant or agent of a pawnbroker in the course of or in relation to the business of the pawnbroker shall be deemed to be done or omitted (as the case may be) by the pawnbroker, and anything by this Ordinance authorized to be done by a pawnbroker may be done by his servant or agent.

Profit and charges allowed to pawnbrokers.

8 A pawnbroker may take profit on a loan on a pledge at a rate not exceeding that specified in schedule II. to this Ordinance.

A pawnbroker may demand and take the charges specified in the same schedule, in the cases and according to the rules therein stated and prescribed.

A pawnbroker shall not, in respect of a loan on a pledge, take any profit or demand or take any charge or sum whatever other than those specified in the same schedule.

A pawnbroker shall, if required at the time of redemption, give a receipt for the amount of loan and profit paid to him; and such a receipt shall not be liable to stamp duty unless the profit amounts to twenty rupees or more.

Pledges redeemable within one year, and seven days of grace.

9 Every pledge shall be redeemable within twelve months from the day of pawning, exclusive of that day; and there shall be added to that year of redemption seven days of grace within which every pledge, if not already redeemed, shall continue to be redeemable.

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*Pawnbrokers.*

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**10** A pledge pawned for five rupees or under, if not redeemed within the year of redemption and days of grace, shall, at the end of the days of grace, become and be the pawnbroker's absolute property.

Pledges for five rupees and under not redeemed in time, forfeited.

**11** A pledge pawned for above five rupees shall further continue redeemable until it is disposed of as in this Ordinance provided, although the year of redemption and days of grace are expired.

Pledges above five rupees redeemable until sale.

**12** A pledge pawned for above five rupees shall, when disposed of by the pawnbroker, be disposed of by sale by public auction and not otherwise; and the regulations in schedule III. to this Ordinance shall be observed with reference to the sale.

Sale by auction of pledges above five rupees.

A pawnbroker may bid for and purchase at a sale by auction, made or purporting to be made under this Ordinance, a pledge pawned with him; and on such purchase he shall be deemed the absolute owner of the pledge purchased.

**13** If an auctioneer does anything in contravention of the provisions of this Ordinance relating to auctioneers, or fails to do anything which he is required by this Ordinance to do, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred rupees.

Offences by auctioneer.

**14** At any time within two years after the auction at which a pledge pawned for above five rupees is sold, the holder of the pawn ticket may inspect the entry of the sale in the pawnbroker's book and in the filled-up catalogue of the auction authenticated by the signature of the auctioneer, or in either of them. Where such pledge appears to have been sold for more than the amount of the loan and interest due at the time of the sale, the pawnbroker shall on demand pay the surplus to the holder of the pawn ticket, in case the demand is made within two years after sale deducting the necessary costs and charges of the sale.

Power to inspect sale books.

**15** If, in regard to pledges for loans of above five rupees. a pawnbroker—

Offences as to pledges above five rupees.

- (1) Does not *bona fide*, according to the direction of this Ordinance, sell a pledge pawned with him;
- (2) Enters in his book a pledge as sold for less than the sum for which it was sold, or fails duly to enter the same;
- (3) Refuses to permit any person entitled under this Ordinance to inspection of an entry of sale in the pawnbroker's book, or of a filled-up catalogue of the auction authenticated by the auctioneer's signature, to inspect the same; or
- (4) Fails without lawful excuse (proof whereof shall lie on him) to produce such a catalogue on lawful demand; or
- (5) Refuses to pay on demand the surplus to the person entitled to receive the same; or
- (6) Takes in respect of any loan or a pledge any profit or demand other than that specified in schedule II.,

he shall in every such case be guilty of an offence, and shall be liable on conviction before a Police Court to a fine not exceeding one hundred rupees.

*Pawnbrokers.*

Holder of pawn ticket entitled to redeem.

**16** The holder for the time being of a pawn ticket shall be presumed to be the person entitled to redeem the pledge, and subject to the provisions of this Ordinance the pawnbroker shall, on payment of the loan and profit, deliver the pledge to the person producing the pawn ticket, and he is hereby indemnified for so doing. Provided, however, if the pawnbroker has reason to suspect that such holder has stolen or otherwise illegally obtained possession of the pawn ticket, the pawnbroker may seize and detain the person and the ticket and deliver them as soon as may be to an officer of police or village headman who shall forthwith convey the person and the ticket before a court of competent jurisdiction to be dealt with according to law.

Liability of pawnbrokers in case of fire.

**17** When a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker shall nevertheless be liable, on demand, within the period of redemption, to pay the value of the pledge, after deducting the amount of the loan and interest.

A pawnbroker shall be entitled to insure to the extent of the value of the article pawned.

Compensation for depreciation of pledge.

**18** If a person entitled and offering to redeem a pledge shows to the satisfaction of a civil court of competent jurisdiction that the pledge has become, or has been rendered, of less value than it was at the time of the pawning thereof, by or through the default, neglect, or wilful misbehaviour of the pawnbroker, the court may, if it thinks fit, award a reasonable satisfaction to the owner of the pledge, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker in such manner as the court directs.

Protection of owners and of pawners not having pawn tickets.

**19** (1) Any person claiming to be the owner of a pledge, but not holding the ticket, or any person claiming to be entitled to hold a pawn ticket, but alleging that the same has been lost, stolen, mislaid, destroyed, or fraudulently obtained from him, who shall deliver to the pawnbroker a declaration in the form prescribed in schedule IV., duly made before a Justice of the Peace by himself and by the person identifying him, shall thereupon have, as between himself and the pawnbroker, all the same rights and remedies as if he produced the pawn ticket.

Pawnbroker indemnified when acting in conformity to declaration.

(2) The pawnbroker is hereby indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has actual or constructive notice that the declaration is fraudulent or false in any material particular.

Penalty for false declaration.

(3) If any person makes a declaration under this Ordinance either for himself or as identifying another knowing the same to be false in any material particular, he shall be guilty of an offence, and shall be liable on conviction to be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

Unlawful pawning of goods not property of pawner.

**20** If any person without lawful excuse pawns with a pawnbroker anything being the property of another person, he shall be guilty of an offence, and shall be liable on conviction to be punished with imprisonment of either

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description for a term which may extend to two years, or with fine, or with both.

**21** If any person—

- (a) Offers to a pawnbroker an article by way of pawn, but refuses or is unable to give a satisfactory account of the means by which he became possessed of it; or
- (b) Wilfully gives false information to a pawnbroker as to whether an article offered by him in pawn to the pawnbroker is his own property or not, or as to his name and address, or as to the name and address of the owner of the article; or
- (c) Attempts or endeavours to redeem a pledge, not being entitled to redeem.

Proceedings where persons offering articles in pawn do not give a good account of themselves.

he shall be guilty of an offence, and be liable on conviction to a fine not exceeding one hundred rupees.

In every such case, and also in any case where, on an article being offered in pawn, a pawnbroker has reason to suspect that it has been stolen or otherwise illegally obtained, he may seize and detain the person and the article and deliver them, as soon as may be, into the custody of an officer of police or village headman, who shall forthwith convey the person and the article before a court of competent jurisdiction to be dealt with according to law.

**22** If a pawnbroker knowingly takes in pawn any linen or apparel, or unfinished goods or materials entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up, he shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred rupees; and the pawnbroker shall also restore the pledge to the owner thereof in the presence of the court or as the court directs.

Prohibition of taking in pawn linen, clothing, unfinished goods, &c., in certain cases.

Whenever, in any proceeding under this Ordinance, it shall be made to appear to a court that any article is in the unlawful possession of any pawnbroker, it shall be competent to such court to order the production of the article and its delivery to any person named by such court, under such terms, if any, as it may think proper.

**23** If a pawnbroker does any of the following things :

- (1) Takes an article in pawn from any person appearing to be under the age of sixteen years or to be intoxicated; or takes an article in pawn without giving the pawner a pawn ticket;
- (2) Purchases, or takes in pawn or exchange, a pawn ticket issued by another pawnbroker;
- (3) Employs any servant apparently under the age of twenty-one years to take articles in pawn;
- (4) Purchases, except at public auction, any pledge while in pawn with him;
- (5) Suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it;
- (6) Agrees with any person, pawning or offering to pawn any article, for the purchase, sale, or disposition thereof within the time of redemption;
- (7) Sells or otherwise disposes of any pledge pawned with him, except at such time and in such manner as is authorized by this Ordinance;

Offences by pawnbrokers.

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(8) Seizes or detains any person under the provisions of section 16 or 21 without reasonable or probable cause;

he shall be deemed guilty of an offence, and be liable on conviction to a fine not exceeding one hundred rupees, or to imprisonment, either rigorous or simple, for a term not exceeding six months.

Yearly license.

24 Every pawnbroker shall yearly take out from the Government Agent of the province or the Assistant Government Agent of the district where the pawnbroker resides a license for carrying on his business, and such license shall be in the form contained in schedule I., and shall bear a stamp of twenty rupees. And such Government Agent and Assistant Government Agent shall forward to the Inspector-General of Police for his information a copy of each license issued.

Every license shall be dated on the day of which it is issued, and shall determine on the thirty-first day of July next ensuing.

If a person acts as a pawnbroker without a license as herein provided, he shall be liable for every such act to a fine not exceeding one hundred rupees, or to imprisonment, either rigorous or simple, for a term not exceeding six months.

Refusal of licenses.

25 A license shall not be refused except on any of the following grounds:

- (1) That the applicant has failed to produce satisfactory evidence of good character; or is an auctioneer; or has been at any time within five years from the date of such application found guilty of any acts rendered punishable under the 11th, 13th, 17th, or 18th chapters of the Penal Code, or under the provisions of this Ordinance;
- (2) That the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place possessed by him, is frequented by thieves or persons of bad character, or is used for the sale of intoxicating liquor, opium, or bhang.\*

Cesser of license on conviction.

26 If a pawnbroker is convicted of any offence under this Ordinance, or of any fraud in his business, or of receiving stolen goods knowing them to be stolen, the Government Agent shall, if he thinks fit, withdraw any such pawnbroker's license and publish notice of such withdrawal in the *Government Gazette*, and such license shall thereupon be deemed and taken to be withdrawn, and shall be of no further force or effect; and any such pawnbroker who shall carry on his business after such withdrawal shall be guilty of an offence, and be liable on conviction to six months' rigorous imprisonment.

Pawnbroker must not carry on business of auctioneer.

27 It shall not be lawful for a pawnbroker to act as or carry on the business of an auctioneer, and any pawnbroker committing a breach of this section shall be guilty of an offence and shall be liable on conviction to rigorous imprisonment for a term not exceeding six months.

\* The sale of bhang has been totally prohibited by section 16 of No. 5 of 1899, repealed by No. 5 of 1910. See No. 8 of 1912.—*Edd.*



*Pawnbrokers.*

28 It shall be lawful for a Police Magistrate to order a pawnbroker to attend before him on a day and hour to be named in writing, and to produce for examination all books and papers relating to his business.

Pawnbroker's book subject to examination.

If upon the receipt of such an order he fails without lawful cause to appear with his books and papers, he shall be liable on conviction to a fine not exceeding one hundred rupees.

29 It shall be lawful for any officer of police not below the rank of Inspector to enter any pawnbroker's shop or residence at any hour of the day and examine and take note of any article pledged with the pawnbroker, or any books and papers kept by him.

Inspector of Police may enter and search pawnbroker's residence.

Whoever resists such officer of police in the execution of this duty shall be liable on conviction to a fine not exceeding one hundred rupees.

30 A person charged with an offence against this Ordinance may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon may give evidence in the same manner and with the like effect and consequences as any other witness.

Accused may give evidence.

31 It shall be competent for the court before which any person has been convicted of any offence under this Ordinance and sentenced to pay a fine, to award, in default of payment of such fine, imprisonment, either rigorous or simple, for a term not exceeding six months, anything in the Ceylon Penal Code to the contrary notwithstanding.

Imprisonment in default of payment of fine.

32 This Ordinance shall have effect only within such limits as the Governor shall by Proclamation from time to time appoint; and it shall be lawful for the Governor from time to time, by Proclamation, to alter, amend, or cancel any Proclamation issued under this section.\*

Ordinance only to have effect within limits appointed by Governor.

	Date of Proclamation or Notification.	No. and Date of Gazette.
* Ordinance proclaimed for—		
Ambalangoda ...	Sept. 19, 1905 ...	6,076 Sept. 22, 1905
Badulla Local Board ...	May 3, 1902 ...	5,851 May 9, 1902
Central Province ...	Aug. 23, 1905 ...	6,071 Aug. 25, 1905
Whole of Western Province ...	April 15, 1908 ...	6,238 April 16, 1908
Galle Municipal limits and Matara Police limits ...	Nov. 26, 1894 ...	5,329 Jan. 4, 1895
Jaffna District, defined portions ...	Oct. 25, 1897 ...	5,506 Oct. 22, 1897
Kalutara Local Board ...	Feb. 21, 1903 ...	5,908 Feb. 27, 1903
Kuruaegala town ...	July 17, 1902 ...	5,864 July 18, 1902
Negumbo Local Board ...	Feb. 24, 1903 ...	5,908 Feb. 27, 1903
Kegalla Local Board ...	Mar. 13, 1908 ...	6,234 Mar. 20, 1908
Bandarawela ...	Oct. 12, 1909 ...	6,334 Oct. 15, 1909
Rainapura ...	Oct. 26, 1910 ...	6,408 Oct. 28, 1910
Puttalam and Chilaw Districts ...	Dec. 31, 1913 ...	6,601 Jan. 9, 1914
Batticaloa Local Board..	June 30, 1914 ...	6,632 July 3, 1914
Weligama Sanitary Board Town ...	Oct. 12, 1917 ...	6,903 Oct. 19, 1917
Haputale Small Town...	June 25, 1918 ...	6,953 June 28, 1918
Yatiyantota, Dehiowita, Rambukkana, Sanitary Board Towns ...	June 27, 1918 ...	6,954 July 5, 1918
Kegalla District ...	Oct. 4, 1920 ...	7,135 Oct. 15, 1920
Batnapura District ...	April 2, 1921 ...	7,167 April 8, 1921

*Pawnbrokers.*

SCHEDULE I.

1.—Form of Pledge Book.

Pledge Book of \_\_\_\_\_, Pawnbroker, of \_\_\_\_\_.

No. of Pledge in the Month.	Amount of Loan upon each Article.	Profit or Interest charged upon each Article.	Name of Pawner.	Address of Pawner.	Name of Owner, if other than Pawner.	Description of each Article pawned.	Value of each Article.	Date of Redemption.	Name and Address of Person redeeming.
	Rs. c.	Rs. c.					Rs. c.		

2.—Pawn Ticket.

No. of Ticket: \_\_\_\_\_.

Pawned with \_\_\_\_\_, Pawnbroker, residing at No. \_\_\_\_\_ of \_\_\_\_\_ street, this \_\_\_\_\_ day of \_\_\_\_\_, 18—, by \_\_\_\_\_, of \_\_\_\_\_, for \_\_\_\_\_ rupees (*name and description of articles*), valued at \_\_\_\_\_ rupees.

\_\_\_\_\_  
(Signature of Pawnbroker.)

3.—Sale Book of Pledges.

Date and Place of Sale: \_\_\_\_\_.

Name and Address of Auctioneer: \_\_\_\_\_.

Number of Pledge as in Pledge Book.	Date of Pawning.	Name of Pawner.	Amount of Loan.	Amount for which each Pledge was sold by Auctioneer.	Name and Address of Purchaser.
			Rs. c.	Rs. c.	

*Pawnbrokers.*

4.—Receipt.

		Date: _____,
Received on redemption of Pledge No. —: _____		Ra. c.
Amount of loan                    ...                    ...		
Profit or interest                 ...                    ...		
	Total ...	_____

5.—Form of License.

(Section 24.)

I, \_\_\_\_\_, Government Agent of the \_\_\_\_\_ Province (or Assistant Government Agent for the \_\_\_\_\_ District), do hereby authorize and license \_\_\_\_\_, of \_\_\_\_\_, to carry on the business of a Pawnbroker at \_\_\_\_\_, within the limits of \_\_\_\_\_, in the \_\_\_\_\_ District, under the provisions of "The Pawnbrokers' Ordinance, 1893."  
 This license will expire on July 31, 18—.

SCHEDULE II.

Profit and Charges allowed to Pawnbrokers.

*Part I.—Profit on Loan.*

A.—On a loan of twenty rupees or under :	Cents.
For any time during which the pledge remains in pawn not exceeding one month, for every rupee or fraction of a rupee lent                    ...                    ...	2
For every month after the first, including the current month in which the pledge is redeemed, although that month is not expired, for every rupee or fraction of a rupee lent                    ...                    ...	2
<i>Proviso.</i> —If the pledge is redeemed before the end of the first fourteen days after the expiration of any month, the pawnbroker shall, in respect of those fourteen days, be entitled to take half of the amount which he would be entitled to take for the whole month.	
B.—On a loan of above twenty rupees :	
For every month or part of a month, for every sum of one rupee and twenty-five cents or fraction of a sum of one rupee and twenty-five cents                    ...                    ...	2

*Part II.—Charge on Pawn Ticket.*

Where the loan is five rupees or under                    ...                    ...	2
Where the loan is above five rupees                    ...                    ...	4

SCHEDULE III.

Regulations as to Auctions of Pledges above Five Rupees.

1. The auctioneer shall cause all pledges to be exposed to public view.
2. He shall publish catalogues of the pledges, stating—
  - (1) The pawnbroker's name and place of business;
  - (2) The month in which each pledge was pawned;
  - (3) The number of each pledge as entered at the time of pawning in the pledge book.

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3. The pledges of each pawnbroker in the catalogue shall be separate from any pledges of any other pawnbroker.

4. The auctioneer shall insert in some public newspaper an advertisement giving notice of the sale, and stating—

- (1) The pawnbroker's name and place of business;
- (2) The months in which the pledges were pawned.

5. The advertisement shall be inserted on two several days in the same newspaper, and the second advertisement shall be inserted at least ten clear days before the first day of sale.

6. Where a pawnbroker bids at a sale, the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale; and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.

7. The auctioneer shall, within fourteen days after the sale, deliver to the pawnbroker a copy of the catalogue, or of so much thereof as relates to the pledges of that pawnbroker, filled up with the amount for which the several pledges of that pawnbroker were sold, and authenticated by the signature of the auctioneer.

8. The pawnbroker shall preserve every such catalogue for three years at least after the auction.

SCHEDULE IV.

Declaration where Pawn Ticket is lost, &c.

Take notice, if this declaration is false the person making it is punishable.

I, A. B., of \_\_\_\_\_, in pursuance of "The Pawnbrokers' Ordinance, 1893," do solemnly and sincerely declare that \_\_\_\_\_ pledged at the shop of \_\_\_\_\_, Pawnbroker, the article (or articles) described below, being \_\_\_\_\_, property, and received a pawn ticket for the same, which has since been \_\_\_\_\_ by \_\_\_\_\_, and that the pawn ticket has not been sold or transferred to any person by \_\_\_\_\_ or to \_\_\_\_\_ knowledge or belief.

The article (or articles) above referred to is (or are) the following: \_\_\_\_\_.

And I, C. D., of \_\_\_\_\_, in pursuance of the same Ordinance, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be A. B., of \_\_\_\_\_.

Declared before me }  
this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_. }

Justice of the Peace.

12th December, 1893.

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the paging of which has been retained.

## CEYLON.

### **No. 2 of 1918.**

#### **An Ordinance relating to Money Lending.**

[Date of Governor's assent : March 29, 1918.]

[Date of commencement : August 1, 1918.]

**W**HEREAS it is necessary that provision should be made for the better regulation of money-lending transactions : Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows :

1 This Ordinance may be cited as "The Money Lending Ordinance, No. 2 of 1918," and shall come into operation on such date as the Governor shall, by Proclamation,\* appoint.

\* Proclaimed from August 1, 1918, by Proclamation dated May 1, 1918, in *Government Gazette* No. 6,940 dated May 3, 1918.—*Edd.*

Pres

Short title.

*Money Lending.*

Re-opening of  
money-lending  
transactions.

2 (1) Where proceedings are taken in any court for the recovery of any money lent after the commencement of this Ordinance, or the enforcement of any agreement or security made or taken after the commencement of this Ordinance in respect of money lent either before or after the commencement of this Ordinance, and there is evidence which satisfies the court—

- (a) That the return to be received by the creditor over and above what was actually lent (whether the same is charged or sought to be recovered specifically by way of interest, or in respect of expenses, inquiries, fines, bonuses, premia, renewals, charges, or otherwise), having regard to any sums already paid on account, is excessive, and that the transaction was harsh and unconscionable, or, as between the parties thereto, substantially unfair; or
- (b) That the transaction was induced by undue influence, or is otherwise such that according to any recognized principle of law or equity the court would give relief; or
- (c) That the lender took as security for the loan a promissory note or other obligation in which the amount stated as due was to the knowledge of the lender fictitious, or the amount due was left blank—

the court may re-open the transaction and take an account between the lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest, and charges as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid or allowed in account by the debtor, may order the creditor to refund it; and may set aside, either wholly or in part, or revise, or alter any security given or agreement made in respect of money lent, and if the lender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any court in which proceedings might be taken for the recovery of money lent shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under the last preceding subsection, and the court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Ordinance by the borrower or surety or other person liable, notwithstanding that the time for repayment of the loan or any instalment thereof may not have arrived.

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(3) In any insolvency proceedings on any application relating to the admission or amount of a proof in respect of any money lent, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money lending.

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

3 In the exercise of its powers under the last preceding section the court shall have regard to the lapse of time, the conduct of the party praying for relief, and any other equitable considerations that the justice of the case may require to be taken into account, but the provisions of Ordinance No. 22 of 1871 shall not apply to any claim for relief under the said section.

Provided that in any case in which any amount claimed at any time to be due has been settled in account, no repayment or re-adjustment of the account shall be ordered in respect of any sum paid or allowed in account at a date exceeding six years before the date of the application to the court for relief.

4 (1) In considering whether in any case the return to be received by the creditor is excessive, the court shall have regard (amongst other things) to the reasonableness of the rate of interest charged.

Meaning of return being excessive.

(2) Any rate of interest charged above the rates following, that is to say :

Rates above which interest presumed to be unreasonable.

- (a) In the case of loans of an amount up to and including one hundred rupees, twenty per centum per annum ;
- (b) In the case of loans over one hundred rupees and up to and including two thousand five hundred rupees, eighteen per centum per annum ;
- (c) In the case of loans over two thousand five hundred rupees, fifteen per centum per annum—

shall be deemed to be unreasonable, unless the creditor, or any person claiming through the creditor, shall satisfy the court that in all the circumstances of the case the rate charged was in fact reasonable.

Provided that nothing in this section shall be deemed to preclude the court, in any case in which the above limits are not exceeded, from directing a reduction of the rate of interest charged, if the party seeking relief shall satisfy the court that in all the circumstances of the case such reduction ought to be made.

(3) In computing the rate of interest charged, the court shall take into account all payments, other than principal made by the debtor to the creditor, or charged to the debtor by the creditor in account, in respect of the loan, whether purporting to be by way of interest or otherwise (not being

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payments from which the creditor derives no benefit), and shall for the purposes of the computation, as nearly as practicable, convert all such payments into a rate per centum per annum.

Observance of rule that interest shall not exceed principal.

5 In taking the account under section 2, the court shall observe the rule that no interest shall at any time be recoverable to an amount in excess of the sum then due as principal.

Meaning of undue influence.

6 (1) A transaction is said to be induced by "undue influence," within the meaning of section 2 of this Ordinance, where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other, and uses that position to obtain an unfair advantage over the other.

(2) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of "The Ceylon Evidence Ordinance, 1895."

*Illustrations.*

(a) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A commercial firm, dealing with the owner of certain plumbago mines indebted to the firm, who is in insolvent circumstances, offers, as an alternative to obtaining an adjudication of his insolvency, to lend him a sum of money on condition of his repaying the amount in instalments at the customary rate of interest, but on the further condition of his binding himself to supply the firm during the period prescribed for the repayment of the loan, and if so required for the rest of his life, with the produce of his mines at a rate twenty per cent. below the ordinary market rate for the time being. The mine owner, having no means of contesting any action the firm may take, consents. The commercial firm employs undue influence.

(c) A, being in debt to B, a money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

Exclusion of certain classes of transactions.

7 Section 2 of this Ordinance shall not apply to transactions in the ordinary course of business by—

(a) Any mutual provident or specially authorized society registered under "The Societies Ordinance, 1891";

(b) Any society incorporated under "The Building Societies Ordinance, 1891";



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- (c) Any society registered under "The Co-operative Credit Societies Ordinance, 1911";
- (d) Any body corporate or incorporated empowered by a special Ordinance to lend money in accordance with such special Ordinance;
- (e) Any duly incorporated and registered bank or banking company;
- (f) Any person or company *bona fide* carrying on the business of insurance;
- (g) Any pawnbroker licensed under "The Pawnbrokers Ordinance, 1893."

8 (1) A person who carries on the business of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, shall keep or cause to be kept a regular account of each loan, clearly stating in plain words and numerals the items and transactions incidental to the account, and entered in a book paged and bound in such a manner as not to facilitate the elimination of pages or the interpolation or substitution of new pages.

Duty of persons carrying on money-lending business to keep accounts.

(2) If any person, subject to the obligations of this section, fails to comply with any of the requirements thereof, he shall not be entitled to enforce any claim in respect of any transaction in relation to which the default shall have been made.

Provided that in any case in which the court is satisfied—

- (a) That the default was due to inadvertence and not to any intention to evade the provisions of this section; and
- (b) That the receipt of the loan, the amount thereof, the amount of the payments on account, and the other material transactions relating thereto satisfactorily appear by other evidence—

the court may give relief against any such default on such terms as it may deem just.

9 (1) A person who carries on the business of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, shall in respect of every loan—

Duty of persons carrying on money-lending business to give copies of accounts and receipts.

- (a) On request in writing and subject to the payment of a reasonable sum for expenses, furnish the borrower from time to time with a true and certified copy of the account of the loan and any document relating to the loan or any security therefor, and shall on the like request allow him, or any person authorized by him in writing in that behalf, to compare such copy with the original; and

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*Money Lending.*

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(b) On request at the time when any payment is made by or on behalf of the borrower on account of the loan tender to the borrower or the person making the payment on his behalf a written receipt for the amount of such payment. An entry in any pass book or statement of account furnished to the borrower by the lender shall be deemed to be equivalent for the purposes of this section to the grant of a receipt for the amount so entered.

(2) If any person, subject to the obligations of this section, fails to comply with any of the requirements thereof, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred rupees.

Particulars to be set forth in negotiable instruments &c.

10 (1) In every promissory note given as security for the loan of money after the commencement of this Ordinance, there shall be separately and distinctly set forth upon the document—

- (a) The capital sum actually borrowed ;
- (b) The amount of any sum deducted or paid at or about the time of the loan as interest premium, or charges paid in advance ; and
- (c) The rate of interest per centum per annum payable in respect of such loan.

(2) Any promissory note not complying with the provisions of this section shall not be enforceable.

Provided that in any case in which the court shall be satisfied that the default was due to inadvertence and not to any intention to evade the provisions of this section, it may give relief against the effect of this sub-section on such terms as it may deem just.

(3) The setting forth of the particulars required by sub-section (1) shall not affect the negotiability of any promissory note.

(4) Any promissory note setting forth the said particulars substantially in the form given in the schedule to this Ordinance shall be deemed to be in compliance with this section.

(5) The provisions of this section shall apply to renewals of any loan, and in all such cases the amount stated as the capital sum actually borrowed shall be the amount of the original loan.

Protection of bona fide holder for value.

11 Nothing in sections 2, 8, or 10 hereof shall impair the rights of any bona fide holder for value of any promissory note given in respect of any loan, without notice of any matter affecting the enforceability of such note.

*Money Lending.*

Provided that in any case in which any borrower is prejudiced by the operation of this section, he shall be entitled to be indemnified by the lender to the extent to which he is so prejudiced.

12 If any person, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of the offence of cheating, and shall be liable on conviction to the penalties prescribed for that offence in the Ceylon Penal Code.

Penalties for  
false statements  
and  
representations.

13 Any person who shall take as security for any loan a promissory note or other obligation in which the amount stated as due is to the knowledge of the lender fictitious, or in which the amount due is left blank, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding five hundred rupees, or in the event of a second or subsequent offence, either to a fine not exceeding one thousand rupees, or to simple imprisonment for a period not exceeding six months.

Penalty for  
taking fictitious  
or blank  
promissory note  
as security.

14 A promissory note given in respect of a loan with regard to which a deduction was made or a sum paid at or about the time of the loan in respect of interest, premium, or charges payable in advance, without such deduction or payment being set forth upon the document in accordance with section 10 (unless the circumstances are such as reasonably to entitle the lender to relief under that section), and any promissory note or other obligation in respect of a loan, with regard to which at or about the time of the loan any payment was made, or any collateral transaction entered into with a view to disguising the actual amount of the sum advanced, or the rate of interest payable in respect thereof, shall be deemed to be a promissory note or obligation in which the amount stated as due is, to the knowledge of the lender, fictitious within the meaning of sections 2 and 13 of this Ordinance.

Meaning of  
"fictitious."

15 Any person carrying on the business of money lending, who, with a view to harassing or intimidating his debtor or any member of his family, either personally or by any person acting on his behalf, watches or besets the residence or place of business or employment of the debtor, or any place at which the debtor receives his wages or any other sum periodically due to him, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred rupees, or to imprisonment of either description for a period not exceeding six months.

Besetting  
residence, &c.,  
of debtor.

Provided that a person shall not be deemed to commit an offence under this section merely because, either personally or by any person acting on his behalf, he calls at reasonable intervals at such residence or place of business or employment for the purpose of demanding payment of the debt due to him.

*Money Lending.*

Loans to women or children of householders by itinerant money lenders.

16 Any person carrying on the business of money lending, who, by visiting the residence of any person, induces the wife or child of any such person to contract a loan without his written consent, shall be guilty of an offence, and liable on summary conviction to a fine not exceeding one hundred rupees, or to imprisonment of either description for a period not exceeding six months, or to both such fine and imprisonment.

Burden of proof.

17 In any proceedings taken under, or in pursuance of the provisions of, this Ordinance in which the lender in any money-lending contract is a person of the class commonly known in Ceylon as "Afghans," such person shall be presumed to be a person carrying on the business of money lending, unless the contrary is proved to the satisfaction of the court.

Save as aforesaid, if any question arises as to whether any person is a person carrying on the business of money lending, the burden of proving that such person in fact carries on such business shall lie on the party alleging it.

Protection of lenders against frivolous and vexatious pleading of the Ordinance.

18 (1) In any case in which in any civil proceeding a borrower pleads any of the provisions of this Ordinance (whether in any plaint, answer, or other pleading, or in any affidavit or application for the purpose of obtaining leave to defend any action), if the court is satisfied that such plea was not made in good faith, but was made for the purpose of delaying or harassing the lender, the court may order such borrower to pay for the benefit of the lender a sum equivalent to the amount of any stamp duty incurred by the lender in the proceeding (or such lesser sum as may be ordered by the court), and every such sum so ordered to be paid shall be added to the amount of the judgment recoverable by the lender.

Provided that no payment ordered by the court under this sub-section shall in any case exceed the amount of two hundred and fifty rupees.

(2) In any case in which in any criminal proceeding instituted against a lender for a breach of any provision of this Ordinance the court is satisfied that the charge was made maliciously, frivolously, or vexatiously, it may direct that the costs of the accused to such an amount as shall be determined by the court shall be payable by the complainant, and any amount so ordered to be paid shall be recoverable for the benefit of the accused in the same manner as a fine imposed by the court.

Particulars required by "The Money Lending Ordinance No. 2 of 1918."

1. Capital sum borrowed, Rs. \_\_\_\_\_

Interest, premium, or charges deducted or paid in advance, if any, Rs. \_\_\_\_\_

3. Rate of interest per centum per annum: \_\_\_\_\_

SCHEDULE.

Promissory Note given in respect of a Loan.

Stamp.

On demand (or \_\_\_\_\_ months after date) I promise to pay to \_\_\_\_\_, or order, the sum of Rupees \_\_\_\_\_; with interest thereon at the rate of \_\_\_\_\_ per centum per annum.

(Signature of Borrower.)

*Pawnbrokers (Amendment).***Ordinance No. 5 of 1935.****An Ordinance to amend the Pawnbrokers Ordinance, 1893.**

[Date of Governor's assent : April 30, 1935.]

[Date of commencement : April 30, 1935.]

R. E. STUBBS.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1 This Ordinance may be cited as the Pawnbrokers (Amendment) Ordinance No. 5 of 1935.

Short title.

2 Section 2 of the Pawnbrokers Ordinance, 1893 (hereinafter referred to as "the principal Ordinance") is amended by adding at the end the following :—

Amendment of section 2 of the principal Ordinance.

"Month" means a period of thirty days for the purpose of charging profit or interest.

"Sign" with its grammatical variations and cognate expressions means, in the case of a person who is unable to write his name, the impression in ink or some other suitable medium of the left thumb of that person.

3 Section 6 of the principal Ordinance is hereby repealed and the following section is substituted therefor :—

Repeal of section 6 of the principal Ordinance and substitution of a new section therefor.

6 (1) Every pawn ticket shall be executed in foil and counterfoil in the form prescribed in Schedule 1 and in accordance with the directions contained in that form.

Pawn tickets.  
e 1.

(2) No article shall be or be deemed to be taken in pawn unless and until—

- (a) the pawner has signed the counterfoil of the pawn ticket ;
- (b) the pawnbroker has signed the foil of the pawn ticket and has given the foil to the pawner ; and,
- (c) the pawner has received and accepted the foil of the pawn ticket from the pawnbroker.

**Price 10 cents.]**

*Pawnbrokers (Amendment).*

Amendment of section 8 of the principal Ordinance.

4 Section 8 of the principal Ordinance is hereby amended as follows :—

- (a) by renumbering it as Section 8 (1) ;
- (b) by the insertion of the words “, and the particulars specified in the said Schedule shall be printed in English, Sinhalese and Tamil on the back of the foil of every pawn ticket given to a pawner under Section 6 ” immediately after the word “ Ordinance ” in the third line ; and
- (c) by deleting the words “ if required ” in line 10, and by inserting the words “ preserving a copy thereof with the books and documents described in Schedule I ” between the word “ him ” in line 11 and the word “ and ” in line 12.
- (d) by the addition of the following as Section 8 (2) :—

“ (2) If, in respect of any loan on a pledge, a pawnbroker takes any profit or demands or takes any charge or sum whatever other than those specified in Schedule II to this Ordinance he shall be guilty of an offence against this Ordinance, and shall be liable on conviction to a fine not exceeding one hundred rupees.”

Amendment of section 15 of the principal Ordinance.

5 Section 15 of the principal Ordinance is amended by the repeal of paragraph (6) and the substitution of the following therefor :—

“ (6) Enters in his book as sold a pledge which is not sold, or makes any other false entry.,”.

Amendment of section 16 of the principal Ordinance.

6 Section 16 of the principal Ordinance is amended by the substitution for all the words from “ The holder for the time being ” to “ indemnified for so doing ” of the following :—

“ (1) The pawner shall be entitled to redeem a pledge if he surrenders to the pawnbroker the foil of the pawn ticket relating to that pledge and signs the foil in the presence of the pawnbroker or his agent or servant.

(2) A person other than the pawner shall be entitled to redeem a pledge if such person surrenders to the pawnbroker the foil of the pawn ticket relating to that pledge duly endorsed with the signature of the pawner and if such person signs that foil in the presence of the pawnbroker or his agent or servant.

(3) Where by reason of the death or legal disability of the pawner, the holder of the foil of the pawn ticket relating to that pledge (hereinafter in this section referred to as the “ holder ”) claims to be entitled to redeem that pledge but is unable to surrender to the pawnbroker the foil of the pawn ticket duly endorsed with the signature of the pawner, the pawnbroker shall permit the pledge to be redeemed if such holder surrenders to him the foil of the pawn ticket relating to that pledge together with a declaration in the form prescribed in Schedule IV duly made before a Justice of the Peace by such holder and by the person identifying him.

ORDINANCE No. 5 OF 1935.

*Pawnbrokers (Amendment).*

(4) Subject to the provisions of sub-sections (1), (2) and (3), the pawnbroker shall, on payment of the loan and profit, deliver the pledge to the pawner or holder as the case may be who produces the foil of the pawn ticket relating to that pledge ; and the pawnbroker is hereby indemnified in respect of such delivery of the pledge : ”.

7 The following section shall be inserted immediately after section 16 of the principal Ordinance and shall have effect as section 16A of that Ordinance :—

Insertion of new section 16A in the principal Ordinance.

16A. (1) In a case where the foil of a pawn ticket has been surrendered to the pawnbroker for the purpose of redeeming a pledge, the pawnbroker shall retain in his possession the foil and counterfoil of that pawn ticket for a period of twelve months reckoned from the date of the redemption of that pledge.

Pawn tickets to be retained by pawnbroker after redemption or sale of pledges.

(2) In a case where a pledge has been redeemed without the surrender of the foil of the pawn ticket relating to that pledge, a pawnbroker shall retain in his possession for a period of twelve months reckoned from the date of the redemption of that pledge the counterfoil of the pawn ticket relating to that pledge and the declaration delivered to him under section 19 for the purpose of such redemption.

(3) In a case where a pledge has been sold under the provisions of this Ordinance, the pawnbroker shall retain in his possession the counterfoil of the pawn ticket relating to that pledge for a period of twelve months reckoned from the date of sale.

8 Section 19 of the principal Ordinance is amended in sub-section (1) thereof as follows :—

Amendment of section 19 of the principal Ordinance.

(1) in line 2, by substituting for the words “ the ticket ” the words “ the foil of the pawn ticket ” ;

(2) in line 3, by substituting for the words “ a pawn ticket ” at the end of that sub-section the following :—

“ the foil of the pawn ticket :

Provided that for the purpose of redeeming a pledge he shall sign the counterfoil of the pawn ticket and not the foil thereof as required by section 16.”

9 Section 23 of the principal Ordinance is hereby amended by the insertion of the following paragraph immediately after paragraph (8) thereof and before the words “ he shall be deemed to be guilty of an offence ” :—

Amendment of section 23 of the principal Ordinance.

“ (9) does any act in contravention of the provisions of this Ordinance ; ”

10 Section 26 of the principal Ordinance is amended by substituting the words “ may after the first conviction and shall after the second ” for the words “ shall if he thinks fit ” in line 4.

Amendment of section 26 of the principal Ordinance.

*Pawnbrokers (Amendment).*

Amendment of section 29 of the principal Ordinance.

11 Section 29 of the principal Ordinance is hereby amended as follows :—

- (a) by the substitution of the words "Sub-Inspector and any Chief Headman" for the word "Inspector" in the second line ; and \*
- (b) by the insertion of the words "or Chief Headman" immediately after the word "police" in the sixth line.

Amendment of Schedule I of the principal Ordinance.

12 Schedule I of the principal Ordinance is amended by the repeal of the first three forms therein, and the substitution of the following therefor :—

(a) For "1—Form of Pledge Book" the following :—

1.—Form of Pledge Book.

Pledge Book of \_\_\_\_\_, Pawnbroker, of \_\_\_\_\_.

No. and date of the issue of pawn ticket.	No. of Pledge in the Month.	Amount of Loan upon each Article.	Profit or Interest charged upon each Article.	Name of Pawner.	Address of Pawner.	Name of Owner if other than pawner.	Description of each Article pawned.	Weight of Article if jewellery.	Value of each Article pawned.	Date of Redemption.	Name and address of Person redeeming.
		Rs. c.	Rs. c.						Rs. c.		

(b) For "2—Pawn Ticket." the following :—

No. 2.—Pawn Ticket.

Counterfoil. No. \_\_\_\_\_ \* Foil. No. \_\_\_\_\_  
 To be retained by Pawnbroker. \_\_\_\_\_ Date : \_\_\_\_\_  
 Date : \_\_\_\_\_ \* \_\_\_\_\_ (name and address of  
 Name and address of pawnbroker \_\_\_\_\_ \* pawner) has this day pawned with  
 I, the undersigned, \_\_\_\_\_ \* the undersigned \_\_\_\_\_ (name)  
 of (address of pawner) \_\_\_\_\_ \* and address of pawnbroker)  
 \_\_\_\_\_ worth Rs. \_\_\_\_\_ \*  
 have this day pawned with \_\_\_\_\_ \*  
 the aforesaid pawnbroker \_\_\_\_\_ \*  
 \_\_\_\_\_ worth Rs. \_\_\_\_\_ \*  
 for Rs. \_\_\_\_\_ \*  
 Signature of pawner, or left thumb impression of pawner if unable to write his name. }  
 Signature of pawnbroker or servant or agent of pawnbroker }



*Pawnbrokers (Amendment).*

(c) For "3—Sale Book of Pledges." the following :—

## 3.—Sale Book of Pledges.

Date and Place of Sale :—.

Name and Address of Auctioneer :—.

No. of Pledge as in Pledge Book.	Date of Pawning.	Name of Pawner.	Amount of Loan.	Amount of Interest due.	Amount for which each Pledge was sold by Auctioneer.	Name and Address of Purchaser.
			Rs. c.	Rs. c.	Rs. c.	

13 Schedule II of the principal Ordinance is amended by adding the following at the end of *Part I.—Profit on Loan*, viz. :—

Amendment of Schedule II of the principal Ordinance.

"C—Restriction on recovery of enhanced profit :

Where a pawnbroker is entitled to enhanced profit as from any date, such enhanced profit shall not be recoverable if the pawner shows to the satisfaction of a civil court of competent jurisdiction that he failed to redeem the pledge before such date only because the pawnbroker's shop remained closed between 8 A.M. and 8 P.M. on the day preceding that date."

Schedule IV of the principal Ordinance is amended by the addition thereto of the following Form :—

Amendment of Schedule IV. of the principal Ordinance.

Declaration where the foil of the Pawn Ticket is surrendered under section 16 without the signature of the Pawner endorsed thereon.

I, A.B. ——— of ——— in pursuance of the Pawnbrokers Ordinance, 1893, do solemnly and sincerely declare that ——— pledged at the shop of ——— Pawnbroker the article/s described below and received the foil of a Pawn Ticket for the same and that for the purpose of redeeming the pledge I am unable to surrender the foil of the Pawn Ticket to the Pawnbroker with the signature of the said ——— (pawner) duly endorsed thereon, because the said ——— (pawner) is dead/under a legal disability, to wit ——— (nature of legal disability).

The article/s above referred to is/are ———.

*Paunbrokers (Amendment)*

I, C. D. \_\_\_\_\_ in pursuance of the same Ordinance, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be A. B. \_\_\_\_\_ of \_\_\_\_\_.

Declared before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Justice of the Peace.

Signature of A. B. \_\_\_\_\_  
Signature of C. D. \_\_\_\_\_.

Passed in Council the Fourth day of April, One thousand Nine hundred and Thirty-five.

E. W. KANNANGARA,  
Clerk of the Council.

Assented to by His Excellency the Governor the Thirtieth day of April, One thousand Nine hundred and Thirty-five.

G. M. RENNIE,  
Secretary to the Governor.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA HOLKAR.

# The Indore Moneylenders Act

(Act No. V of 1938)



INDORE.

1938

[ Price 0-1-6 ]

Holkar Government Press, Indore.

# The Indore Moneylenders Act

(Act No. V of 1938).

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(Received the assent of the Government of His Highness the Maharaja Holkar on the 28th May, 1938).

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An Act to regulate the transactions of moneylending in the Holkar State.

Whereas it is expedient to make better provision for the regulation and control of the transactions of moneylending in the Holkar State; it is hereby enacted as follows:—

Preamble

1. (1) This Act may be called the Indore Moneylenders Act No. V of 1938.

Show title, extent and commencement.

(2) It extends to the whole of the Holkar State.

(3) It shall come into force on the 1st July, 1938.

(4) It shall apply in the first instance to those moneylenders only who advance a loan to an agriculturist but Government may, from time to time, extend its operation to any other moneylenders.

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

(i) "bank" means a company carrying on the business of banking and registered under any of the enactments relating to companies for the time being in force in the Holkar State;

(ii) "company" means a company registered under any of the enactments relating to companies for the time being in force in the Holkar State,

*Indore Moneylenders Act.*

(2) The Account required under clause (a) of sub-section (1) shall be so maintained that items due by way of interest shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The moneylender shall not include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new annual account:

Provided that—

(i) if the loan has, since it was originally advanced, passed by inheritance or assignment to a widow or a minor, such widow or minor shall not be bound to maintain and furnish the account under sub-section (i) for a period of two years from the date of such passing;

(ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the account under sub-section (1) in the case of a loan wherein the title to recover is sub-judice between two or more persons claiming as moneylenders adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.

Evidential value  
of copies of  
accounts.

4. Copies of entries in the account required to be maintained under clause (a) of sub-section (1) of section 3, when 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.

Receipt of re-  
payment of loan.

5. Every moneylender, who receives repayment from his debtor on account of any loan advanced to him, shall forthwith give a receipt therefor.

Procedure of  
court in suits  
regarding loans.

6. Notwithstanding anything contained in any other enactment for the time being in force, in any suit or proceeding relating to a loan—

(a) the court shall, before deciding the claim on the merits, frame and decide the issue whether the moneylender has complied with

the provisions of clauses (a) and (b) of sub-section (1) of section 3;

if the court finds that the provisions of clause (a) of sub-section (1) of section 3 have not been complied with by the moneylender it shall, if the plaintiff's claim is established in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs; and

- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the moneylender it shall, in computing the amount of interest due upon the loan, exclude every period for which the moneylender omitted duly to furnish the accounts as required by that clause:

Provided that if the moneylender has, after the time prescribed in that clause, furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

**Explanation:—**A moneylender who has maintained his account and sent his annual statements of accounts in the prescribed form and manner shall be held to have complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3 in spite of any errors and omissions if the court finds that such errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of those clauses.

7. The provisions of sections 3, 4, 5 and 6 shall not apply to any loan made before this Act comes into force:

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force is made after this Act comes into force, such transaction shall be subject to the provisions of those sections.

## *Indore Moneylenders Act.*

Power to limit interest recoverable in the case of old loans.

8. Notwithstanding anything contained in any other enactment for the time being in force, no Court shall decree, in respect of any loan made before this Act comes into force, on account of arrears of interest, a sum greater than the principal of such loan.

Power to limit interest in the case of new loans.

9. No Court shall, in respect of any loan made after this Act comes into force, decree on account of arrears of interest a sum greater than the principal of the loan.

Power to direct payment of decretal amount by instalments.

10. The Court may, at any time on the application of a judgment-debtor after hearing the decree-holder's objections, if any, direct that the amount of any decree passed against him, whether before or after this Act comes into force, in respect of a loan shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Register of moneylenders.

11. (1) Every Sub-Registrar shall maintain a register of moneylenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indore Evidence Act, 1904.

Registration of moneylenders and registration certificate.

12. (1) Every moneylender shall register himself as a moneylender by an application made to the Sub-Registrar within the limits of whose jurisdiction the principal place of business of such moneylender is situate, and on such registration, the Sub-Registrar shall grant a registration certificate to the moneylender in such form as may be prescribed.

(2) Every application made under sub-section (1) shall be in writing and shall contain such particulars as may be prescribed.

Registration fee.

13. Any person who makes an application for registration under section 12 shall pay such registration fee, not exceeding twelve rupees, as may be prescribed and such fee shall be payable by means of court fee stamps affixed to the application;

## Indore Moneylenders Act.

Provided that the Government may, by notification, exempt any person or class of persons from payment of the registration fee either generally or for any specified area.

14. (1) A registration certificate granted under section 12 shall be in force for three years from the date of the registration.

Duration and renewal of registration certificate.

(2) On the expiration of the period of three years such certificate shall be renewed from time to time by an application made to the Sub-Registrar within the limits of whose jurisdiction the principal place of business of the applicant is situate and, if renewed, shall be in force for three years from the date of renewal.

(3) Every application for renewal under sub-section (2) shall be in writing and the provisions of section 13 shall apply to such application.

15. (1) No moneylender shall, after the expiration of three months from the date on which this Act is brought into force, carry on his business as moneylender in any locality in the Holkar State without obtaining a registration certificate under section 12.

Bar to carry out business without registration certificate.

(2) Whoever contravenes the provision of sub-section (1) shall be punishable with fine which may extend to fifty rupees, or, if he has previously been convicted of an offence under that sub-section then with fine which may extend to one hundred rupees.

Penalty.

16. (1) The authority empowered to hear appeals against the Sub-Registrar appointed under this Act may accept from any person who has committed an offence against sub-section (1) of section 15 a sum of money not exceeding one hundred rupees by way of composition for such offence.

Composition of offences.

(2) On payment of such sum of money the person who has committed an offence, if in custody, shall be discharged, and no further proceedings shall be taken against him in regard to the offence so compounded.

17. (1) The Government may, by notification in the Holkar Government Gazette, prohibit any class of persons

Prohibition



## NOTIFICATION.

*At Bangalore, dated the 10th  
December 1938.*

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Money Lenders' Bill is published for general information with the statement of objects and reasons.

By Order,  
A. SUNDARARAJA RAO,  
*Secretary,  
Mysore Legislative Council.*

## THE MONEY LENDERS' BILL.

Whereas it is expedient to regulate and control the transactions of money lending; it is hereby enacted as follows:

### CHAPTER I.

#### Preliminary.

(1) This Act may be called the Mysore Money Lenders' Act, 1938.

(2) The Government may, by notification in the official Gazette, apply all or any of the provisions of this Act to any local area or to any class of money lenders from such date as may be specified in the notification and may also by a like notification exclude from the operation of this Act any local area or exempt any money lender or class of money lenders or any class of loans from the operation of all or any of the provisions of this Act.

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

(1) "Court" includes a Court acting in the exercise of insolvency jurisdiction;

(2) "Interest" includes any sum by whatsoever name called in excess of the principal paid or payable to a money lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged in accordance with the provisions of this Act or any other law for the time being in force by a money lender for or on account of costs, charges or expenses:

(3) "Loan" means an advance whether of money or in kind on interest made by a money lender and includes any transaction which in the opinion of the court is in substance a loan;

(4) "Money Lender" means an individual or an undivided Hindu family or an unincorporated body of individuals or body corporate incorporated under any law in Mysore or outside Mysore, or a body which stands to any such body corporate in the relation of a subsidiary body and includes assignees and the legal representative of the money lender, who or which—

(i) carries on the business of money lending in the State; or

(ii) has his or its principal place of such business in the State;

and includes a pawn-broker;

(5) "Money lending business" or "Business of money lending" means the business of advancing loans either solely or in common with any business;

(6) "Pawn-broker" means a person who carries on the business of taking goods and chattels in pawn for a loan;

(7) "Pawnor" means a person delivering an article for pawn to a pawn-broker;

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

(9) "Principal" means in relation to a loan the amount actually lent to the debtor;

(10) "Register" means a register of money lenders maintained under section 4; and

(11) "Registrar" means the registrar of money lenders appointed under section 3.

(12) "Secured loan" means a loan for which the money lender holds a mortgage, charge or lien on the property of the debtor or any part thereof as a security for that loan;

(13) "Unsecured loan" means any loan other than a secured loan.

## CHAPTER II.

### Registration and Licensing of Money Lenders.

Appointment  
of Registrars

3. The Government may appoint registrars of money lenders for the purpose of this Act and may define

the local areas within which each registrar shall exercise his powers and perform his duties.

4. The registrar shall maintain a register of money lenders in such form as may be prescribed.

Register of money lenders.

5. Every money lender shall apply in writing to the registrar for the area in which the principal place of business of such money lender is situated or in which he intends to carry on the business of money lending, to be registered as a money lender. The application shall contain such particulars as may be prescribed. On receipt of such application the registrar shall register the name of the applicant in the register unless disqualified under section 19. Any such person ceasing to carry on the business of money lending may, on application to the said authority, get his name struck off from the register.

Application for registration.

6. A registration of a money lender shall be valid for three years from the date of registration but may be renewed from time to time. If renewed it shall have effect for three years from the date of the renewal.

Duration of registration.

7. Every money lender whose name has been registered and to whom this section is made applicable shall annually take out a licence from the registrar on payment of the prescribed fee in such form and subject to such conditions as may be prescribed for carrying on the business of money lending.

Licence.

8. A licence granted under section 7, shall, unless sooner cancelled, be in force for one year from which it is granted.

Licence to be annual.

### CHAPTER III.

#### legulation of Accounts.

9. Every money lender shall in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act, regularly record and maintain or cause to be recorded and maintained an account in such form, language, script, and numerals as the Government may prescribe.

Duty to keep accounts.

10. Every money lender shall, at the time of payment, give to the debtor or his agent for the sum paid by him or on his behalf, a receipt duly signed and if necessary stamped.

Receipt to be given.

Furnishing  
statement of  
account

11. (1) Every money lender shall, on demand made in writing by the debtor at any time during the period when the loan or any part thereof has not been repaid, on payment of the prescribed fee, furnish to the debtor or if he so requires to any person mentioned by him in that behalf, a statement of account in the prescribed form and showing the amount which remains outstanding on account of the principal and of interest :

Provided that where a money lender has complied with the demand the debtor shall not make a further demand for a statement of account in respect of the same loan within a period of six months from the date of such compliance.

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

Duty of  
pawn-brokers  
to keep  
accounts.

12. (1) Every pawn-broker shall regularly record and maintain an account in which in addition to the particulars contained in the form prescribed under section 9, the following particulars are recorded, namely :—

(a) a full and detailed description of the article or of each of the articles taken in pawn,

(b) the name of the pawnor and where the pawnor is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

(2) A true copy of the entries in such account shall be delivered by the pawn-broker to the pawnor at the time of the pawn on tender of the prescribed fee.

Inspection by  
Registrar

13. (1) The registrar may inspect or cause to be inspected by any officer subordinate to him the accounts required to be maintained by a money lender under this Act.

(2) The money lender shall be bound to produce all books of account for inspection.

(3) If from such an inspection it appears that such money lender has committed any offence under this Act, the registrar may cause proceedings to be instituted against him in the court having jurisdiction.

## CHAPTER IV.

### Provisions relating to suits in respect of loans.

14. Notwithstanding anything contained in any law for the time being in force, no court shall in any suit brought in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding 9 per centum per annum in the case of a secured loan and 12 per centum per annum in the case of an unsecured loan.

The maximum rates of interest to be decreed.

15. No money lender shall recover by suit interest of any kind at a rate exceeding 6 per centum per annum in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

Maximum rate of compound interest.

16. Where the interest charged is in excess of the rates prescribed as maximum in sections 14 and 15, the court shall presume for the purpose of section 3 of the Usurious Loans Act that the interest charged is excessive and that the transaction was substantially unfair.

What is excessive interest under Usurious Loans Act.

17. No court shall, in respect of a loan advanced before or after the commencement of this Act, decree on account of arrears of interest, a sum greater than the principal of the original loan.

Arrears of interest not to exceed principal.

18. Notwithstanding anything contained in any enactment for the time being in force, (a) if in any suit or proceeding relating to a loan the court finds that the provisions of section 9 or section 12 have not been complied with by the money lender it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs;

Penalty for non-compliance with section 9 or section 12.

(b) if the money lender to whom a demand has been made under section 11 fails without reasonable excuse to comply therewith within one month after the demand has been made, the court shall disallow interest for the period of default.

## CHAPTER V

### Penalties.

19. (1) Where in any suit brought in respect of a loan by a money lender, the court is of opinion that the

Court's power to suspend or cancel license.

money lender has been guilty of fraud or of any contravention of the provisions of this Act or of any rule made thereunder or is otherwise unfit to carry on the business of money lending, the court may order that the licence held by such money lender or his registration be suspended for such time as the court may think fit or cancelled and may also declare such money lender disqualified from obtaining a licence or being registered under this Act either permanently or for such period as it thinks fit.

(2) The court shall cause the particulars of any order made under this section to be endorsed on the licence held by the money lender against whom such order is made and shall cause copy of its order to be sent to the registrar by whom the licence was granted or the registration was made for the purpose of entering such particulars in the Register.

(3) Every holder of a licence shall, on being called upon by the court to do so, produce the licence within such time as may be directed by the court.

(4) Any person whose licence or registration has been cancelled or suspended in accordance with the provisions of this section shall, during the period for which such order of cancellation has effect or during the period of suspension, as the case may be, be disqualified from being registered or obtaining a licence.

Penalty for  
contravention  
of provisions.

20. Whoever makes default in complying with or acts in contravention of any provision of this Act shall, if no specific penalty has been provided in this Act, be punishable for the first offence with fine which may extend to Rs. 200 and for a second or subsequent offence with imprisonment of either description for a term not exceeding one month or with fine which may extend to Rs. 500 or with both and shall also be liable to have his registration and licence cancelled.

## CHAPTER VI.

### Miscellaneous.

Power to  
make rules.

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

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

(i) the form of the register mentioned in section 4;

(ii) the form of the application mentioned in section 5 and the particulars to be contained therein;

(iii) the form and conditions of the licence mentioned in section 7, the fee therefor and the manner of payment of the fees;

(iv) the form, language, script and numerals to be used in the accounts required to be kept under section 9;

the form of the statement of account to be furnished under section 11 and the details to be included therein and the fee to be paid for such statement; and

(vi) the fee to be paid for a copy of the entries in a pawn-broker's account to be furnished under section 12.

2. Nothing contained in this Act shall affect the provisions of the Mysore Agriculturists Relief Act, 1928 or the powers of a court under the Usurious Loans Act, 1928, except to the extent specified in section 16.

3. The Government may, by notification in the Official Gazette, apply all or any of the provisions of Chapters III and IV to the loan transactions of creditors other than money lenders.

### **Statement of objects and reasons.**

The question of introducing legislation for the control of money lending business in order to protect ignorant debtors against fraud and extortion has been under consideration of Government for some time past. The desirability of legislation in the matter was also being urged in the Representative Assembly and Legislative Council. Some leading non-official gentlemen were consulted by Government in 1933 with a view to decide upon the desirability and the form of the legislation. They were generally in favour of legislation and their suggestions have been adopted to the extent they were found suitable. The Royal Commission on Agriculture, the Royal Commission on Labour and the Banking Enquiry Committee

have all recommended legislation for control of money lending business. Certain of the British Indian Provinces have already taken or are taking action in the matter.

The existing Acts affecting money lending, *viz.*, the Usurious Loans Act and the Agriculturists Relief Act are not sufficient to give relief to the debtors. They touch on certain portions of the law relating to money lending and the latter affects only a certain class of debtors *viz.*, agriculturists. The present Bill will apply to money lending in general. The business of money lending as carried on by certain classes of money lenders, is defective. Regular accounts are not ordinarily kept and receipts are not some times given for money paid by the debtors. The interest charged is also high. It is therefore proposed to introduce a bill for the control of the business of money lending in the interest of many ignorant and illiterate debtors. A reasonable maximum rate of interest that may be allowed by courts is fixed. Provision is made for the safe conduct of the business by requiring proper maintenance of accounts and giving opportunities to the debtors to ascertain periodically the state of the accounts. Provision is also made for registration and licensing of money lenders. At the same time care is taken to see that the Bill does not unnecessarily harass money lenders and restrict facilities for credit.

Penalties for non-compliance of the provisions of the Bill are not hard but reasonable and just sufficient to meet the requirements of the case.



## NOTIFICATION.

No. 2593—L. C., Bangalore, dated  
17th May 1939.

Under Standing Order No. 49 of the standing orders for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Money lenders Bill together with the Bill as amended by the Select Committee and also with a note by Mr. P. Subbarama Chetty and the dissenting note of Mr. Belur Srinivasa Iyengar is published for general information.

By Order,  
B. K. RAMAKRISHNAIYA,  
For Secretary,  
Mysore Legislative Council.

### MONEY LENDERS' BILL.

#### Select Committee Report.

We, the members of the Select Committee to which the Mysore Money Lenders Bill was referred have considered the several clauses of the Bill, heard representatives of the important Money Lenders' Associations and have now the honor to submit the following report :—

*Clause 2 (5).*—We recommend that the word 'other' may be added between the words 'any' and 'business'.

*Chapter 2.*—After considerable discussion of the several clauses of this Chapter we are of opinion (Messrs. *Rajasabhabhushana Diwan Bahadur K. R. Srinivasa Iyengar, Belur Srinivasa Iyengar and G. Girimaji Rao* dissenting) that the existing provisions may be retained.

*Clause 9.*—We recommend that great caution should be observed in applying the provisions of this clause to petty money lenders in the villages.

*Clause 12.*—To make the record of the transactions more comprehensive, we recommend that the sub-clause (1) may be recast as follows :—

12 (1) Every pawn-broker shall regularly record and maintain an account in which in addition to the

particulars contained in the form prescribed under section 9, the following particulars are recorded namely :—

- (a) a full and detailed description of the article or of each of the articles taken in pawn,
- (b) the time agreed upon for the redemption of the pawn,
- (c) the name of the pawner and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

We also recommend that sub-clause (2) may be recast as follows :—

12(2). A true copy of the entries in such account signed by the pawn-broker or his duly authorised agent shall be delivered by him to the pawner at the time of the pawn on tender of the prescribed fee.

*Clause 13.*—As we consider that inspection should be made only when the accounts are suspected to be improperly kept, we recommend the substitution of the following clause for the existing one :—

13(1). If an officer specially authorised in this behalf by the Government has reason to believe that the accounts required to be maintained under this Act by a money-lender are not properly maintained by him, such officer may call upon the money-lender to produce all his books of account for inspection and such money-lender shall be bound to produce all such books.

(2) If from such inspection it appears that such money-lender has committed any offence under this Act, such officer may cause proceedings to be instituted against him in the court having jurisdiction.

*Clause 14.*—While the majority of us are of opinion that the existing provision may be retained, a few were of opinion that the maximum rates of interest should be increased in the case of small loans below a fixed amount in order to avoid strangulation of credit in rural areas.

*Clause 15.*—We recommend that the words 'with yearly rests' may be added after the word 'annum.'

We suggest to Government that clauses 14 to 17 should be made applicable to all money-lenders as defined in the Bill and no exceptional treatment should be given to Banks as regards these clauses.

*Clause 18.*—To indicate that the Courts have discretion to disallow a portion only of the costs in suitable cases, we recommend that the last three words in Clause 18 (a) may be changed to 'may disallow the whole or any portion of the costs.'

*Clause 19.*—In sub-clause (1) for the words 'or is otherwise' we recommend the substitution of the words 'and is.'

As we consider that a right of appeal should be given to a party aggrieved by an order of court under Clause 19 (1), we recommend the addition of the following as sub-clause (5):—

(5) Re-hearings of and appeals from any order under sub-section (1) may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same court within its ordinary jurisdiction. In cases cognizable by a court of small causes appeals shall lie to the principal court of original jurisdiction in the division.

*Clause 20.*—To make the punishment for contravening the provisions of this Act less drastic and to indicate that the cancellation or suspension of license is to be done by the registering officer, the court having merely to pass an order to that effect, we recommend the substitution of the following clause for the existing one:—

20. Whoever makes default in complying with or acts in contravention of any of the provisions of this Act shall, if no specific penalty has been provided in this Act, be punishable,

(a) for the first offence with fine which may extend to rupees two hundred,

(b) for the second offence with fine which may extend to rupees five hundred, and

(c) for any subsequent offence with imprisonment of either description for a term not exceeding one month or with fine which may extend to rupees five hundred or with both;

and on such conviction the court may also order that his registration or license shall be cancelled.

We consider that the Government should be given power to remove a disqualification imposed on a money lender by a court under clauses 19 or 20 and we therefore recommend the addition of the following clause.

as clause 21, the existing clause 21 being re-numbered as clause 24.

21. The Government may, at any time on application in the prescribed form accompanied by the prescribed fee, remove a disqualification imposed on a money lender by a court under Section 19 or Section 20, having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of the offence.

We also consider that prosecutions for an offence under this Act should not be belated and we therefore recommend the addition of the following clause as clause 22, the existing clause 22 being renumbered as clause 25.

22. No prosecution for an offence under this Act or any rule made thereunder shall be instituted except within one year next after the commission of such offence.

We consider that protection should be given to a debtor against molestation and we recommend the addition of the following clause as clause 23. The existing clause 23 being renumbered as clause 26.

23. Whoever molests, or abets the molestation of, a debtor for the recovery of a debt owed by him to the creditor shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

#### *Explanation.*

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

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

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

(c) loiters or does any similar act at or near a house or other place where such other person resides or works, or carries on business, or happens to be,

shall be deemed to molest such other person :

Provided that a person who attends at or near such house or place in order merely to obtain or communicate

information or to make a demand for a loan due shall not be deemed to molest.

(2) Notwithstanding anything contained in the second schedule to the Code of Criminal Procedure an offence under this section shall be a cognizable offence as defined in the Code.

*Clause 24.*—Consequent on the addition of clause 21, we recommend that the word ‘and’ at the end of (v) of sub-clause (2) may be omitted and the following words and figures added after (vi):—

and (vii) the form of the application for removal of a disqualification under section 21 and the fee therefor.

*Clause 25.*—Since the extension of the provisions of Chapters III and IV would not be effective without the extension of the provisions of Chapter V which provide for penalties, we recommend the substitution of the figures and words ‘IV and V’ for the words and figures, “and IV” in this clause.

As some additions have been made to the Bill we recommend its republication.

N. Madhava Rau, (Chairman),  
 S. Abdul Wajid,  
 B. T. Kesaviengar,  
 Mirle N. Lakshminaranappa,  
 M. Abdul Hukh,  
 M. S. Ramchendra Rao,  
 K. R. Srinivasa Iyengar,  
 Mahomed Abbas Khan,  
 R. Chennigaramiah,  
 P. Subbarama Chetty (subject  
 to a note),  
 G. Girimaji Rao,  
 Belur Srinivasa Iyengar (subject  
 to a minute of dissent),  
 T. Ramachandra.

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Mr. B. S. Puttaswamy has not intimated his approval of the report. His signature will be notified when received.

### Note by Mr. P. Subbarama Chetty.

As regards Chapter II, I am against insisting on money lenders to take license and also get their names registered. I think that registration alone will do. Licensing, in my opinion, is derogatory to the self respect of respectable money lenders. I would like to suggest that in case licensing also is insisted upon, the term must be for three years instead of one year, as in the case of registration.

Clause 13 (1) provides that the registrar may inspect or cause to be inspected by any officer subordinate to him, the accounts of a money lender. It is desirable that the officer authorised should be, under no circumstances an officer below the rank of an Assistant Commissioner, because the secrecy of the accounts is to be very strictly maintained, otherwise the credit of the person will be affected.

The rates of interest prescribed in Clause 14 of the Bill in cases of big loans over and above 1,000 are little high, so the rates may be reduced to 6 per cent and 9 per cent in cases of secured and unsecured loans, respectively. But in cases of loans exceeding Rs. 100 and not exceeding Rs. 1,000, the rates provided in the Bill are quite fair and may be retained. But in cases of small loans below Rs. 100 the rates may be raised to 12 per cent in cases of secured loans and 18 per cent in cases of unsecured loans. Where money lending is very risky, those areas may be exempted from the operation of this clause, not to deprive the people of credit facilities.

### Dissenting Note of Mr. Belur Srinivasa Iyengar.

I am of opinion—

- (a) that Sections 7 and 8 are not necessary at all,
- (b) that interest in respect of unsecured debts may be raised to a maximum of 24 per cent and 12 per cent in respect of secured debt,
- (c) that Section 12 should not be applicable to cases where the amount raised by pawning does not exceed Rs. 20,
- (d) that Section 13 is rigorous if not unnecessary,
- (e) penalty under Section 20 too severe.

## THE MONEY LENDERS' BILL

As Amended by the Select Committee.

*(Omissions are shown in square brackets and additions in Italics.)*

Whereas it is expedient to regulate and control the transactions of money lending; It is hereby enacted as follows:—

### CHAPTER I.

#### Preliminary.

1. (1) This Act may be called the Mysore Money Lenders' Act, 193 . Short Title.

(2) The Government may, by notification in the official Gazette, apply all or any of the provisions of this Act to any local area or to any class of money lenders from such date as may be specified in the notification and may also by a like notification exclude from the operation of this Act any local area or exempt any money lender or class of money lenders or any class of loans from the operation of all or any of the provisions of this Act. Application.

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

(1) "court" includes a Court acting in the exercise of insolvency jurisdiction;

(2) "interest" includes any sum by whatsoever name called in excess of the principal paid or payable to a money lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged in accordance with the provisions of this Act or any other law for the time being in force by a money lender for or on account of costs, charges or expenses;

(3) "loan" means an advance whether of money or in kind on interest made by a money lender and includes any transaction which in the opinion of the court is in substance a loan;

(4) "money lender" means an individual or an undivided Hindu family or an unincorporated body of individuals or body corporate incorporated under any law in Mysore or outside Mysore, or a body which stands to

any such body corporate in the relation of a subsidiary body and includes assignees and the legal representative of the money lender, who or which—

- (i) carries on the business of money lending in the State; or
  - (ii) has his or its principal place of such business in the State;
- and includes a pawn-broker;

(5) “money lending business” or “business of money lending” means the business of advancing loans either solely or in common with any *other* business;

(6) “pawn-broker” means a person who carries on the business of taking goods and chattels in pawn for a loan;

(7) “pawner” means a person delivering an article for pawn to a pawn-broker;

(8) “prescribed” means prescribed by rules made under this Act;

(9) “principal” means in relation to a loan the amount actually lent to the debtor;

(10) “register” means a register of money lenders maintained under section 4;

(11) “registrar” means the registrar of money lenders appointed under section 3;

(12) “secured loan” means a loan for which the money lender holds a mortgage, charge or lien on the property of the debtor or any part thereof as a security for that loan; and

(13) “unsecured loan” means any loan other than a secured loan.

## CHAPTER II.

### Registration and Licensing of Money Lenders.

3. The Government may appoint registrars of money lenders for the purpose of this Act and may define the local areas within which each registrar shall exercise his powers and perform his duties,

4. The registrar shall maintain a register of money lenders in such form as may be prescribed.

5. Every money lender shall apply in writing to the registrar for the area in which the principal place of business of such money lender is situated or in which he

Appointment  
of Registrars.

Register of  
money  
lenders.

Application  
for registra-  
tion.



intends to carry on the business of money lending, to be registered as a money lender. The application shall contain such particulars as may be prescribed. On receipt of such application the registrar shall register the name of the applicant in the register unless disqualified under section 19. Any such person ceasing to carry on the business of money lending may, on application to the said authority, get his name struck off from the register.

6. A registration of a money lender shall be valid for three years from the date of registration but may be renewed from time to time. If renewed it shall have effect for three years from the date of the renewal.

Duration of registration.

7. Every money lender whose name has been registered and to whom this section is made applicable shall annually take out a licence from the registrar on payment of the prescribed fee in such form and subject to such conditions as may be prescribed for carrying on the business of money lending.

Licence.

8. A licence granted under section 7, shall, unless sooner cancelled, be in force for one year from the date on which it is granted.

Licence to be annual

### CHAPTER III.

#### Regulation of Accounts.

9. Every money lender shall in respect of every loan advanced by him after the commencement of this Act and every transaction made by him after the commencement of this Act relating to any loan advanced by him before the commencement of this Act, regularly record and maintain or cause to be recorded and maintained an account in such form, language, script and numerals as the Government may prescribe.

Duty to keep accounts.

10. Every money lender shall, at the time of payment, give to the debtor or his agent for the sum paid by him or on his behalf, a receipt duly signed and if necessary stamped.

Receipt to be given.

11. (1) Every money lender shall, on demand made in writing by the debtor at any time during the period when the loan or any part thereof has not been repaid, on payment of the prescribed fee, furnish to the debtor or if he so requires to any person mentioned by him in that behalf, a statement of account in the prescribed form and

Furnishing statement of account.

showing the amount which remains outstanding on account of the principal and of interest :

Provided that where a money lender has complied with the demand the debtor shall not make a further demand for a statement of account in respect of the same loan within a period of six months from the date of such compliance.

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

Duty of  
pawn-brokers  
to keep  
accounts.

[12. (1) Every pawn-broker shall regularly record and maintain an account in which in addition to the particulars contained in the form prescribed under section 9, the following particulars are recorded, namely :—

(a) a full and detailed description of the article or of each of the articles taken in pawn,

(b) the name of the pawner and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

(2) A true copy of the entries in such account shall be delivered by the pawn-broker to the pawner at the time of the pawn on tender of the prescribed fee.]

*12. (1) Every pawn-broker shall regularly record and maintain an account in which in addition to the particulars contained in the form prescribed under section 9, the following particulars are recorded, namely :—*

*(a) a full and detailed description of the article or of each of the articles taken in pawn.*

*(b) the time agreed upon for the redemption of the pawn.*

*(c) the name of the pawner and where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.*

*(2) A true copy of the entries in such account signed by the pawn-broker or his duly authorised agent shall be delivered by him to the pawner at the time of the pawn on tender of the prescribed fee.*

Inspection by  
Registrar

[13. (1) The registrar may inspect or cause to be inspected by any officer subordinate to him the accounts

required to be maintained by a money lender under this Act.

(2) The money lender shall be bound to produce all books of account for inspection.

(3) If from such an inspection it appears that such money lender has committed any offence under this Act, the registrar may cause proceedings to be instituted against him in the court having jurisdiction.]

13. (1) *If an officer specially authorised in this behalf by the Government has reason to believe that the accounts required to be maintained under this Act by a money lender are not properly maintained by him, such officer may call upon the money lender to produce all his books of account for inspection and such money lender shall be bound to produce all such books.*

(2) *If from such inspection it appears that such money lender has committed any offence under this Act, such officer may cause proceedings to be instituted against him in the court having jurisdiction.*

## CHAPTER IV.

### Provisions relating to suits in respect of loans.

14. Notwithstanding anything contained in any law for the time being in force, no court shall in any suit brought in respect of a loan advanced after the commencement of this Act, pass a decree for interest at rates exceeding 9 per centum per annum in the case of a secured loan and 12 per centum per annum in the case of an unsecured loan.

The maximum rates of interest to be decreed.

15. No money lender shall recover by suit interest of any kind at a rate exceeding 6 per centum per annum with yearly rests in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

Maximum rate of compound interest.

16. Where the interest charged is in excess of the rates prescribed as maximum in sections 14 and 15, the court shall presume for the purpose of section 3 of the Usurious Loans Act that the interest charged is excessive and that the transaction was substantially unfair.

What is excessive interest under Usurious Loans Act

17. No court shall, in respect of a loan advanced before or after the commencement of this Act, decree on account of arrears of interest, a sum greater than the principal of the original loan.

Arrears of interest not to exceed principal.

Penalty for non-compliance with section 9 or section 12.

18. Notwithstanding anything contained in any enactment for the time being in force.

(a) if in any suit or proceeding relating to a loan the court finds that the provisions of section 9 or section 12 have not been complied with by the money lender it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and [may disallow costs] *may disallow the whole or any portion of the costs;*

(b) if the money lender to whom a demand has been made under section 11 fails without reasonable excuse to comply therewith within one month after the demand has been made, the court shall disallow interest for the period of default.

## CHAPTER V.

### Penalties.

Court's power to suspend or cancel licence.

19. (1) Where in any suit brought in respect of a loan by a money lender, the court is of opinion that the money lender has been guilty of fraud or of any contravention of the provisions of this Act or of any rule made thereunder [or is otherwise] *and is unfit to carry on the business of money lending, the court may order that the licence held by such money lender or his registration be suspended for such time as the court may think fit or cancelled and may also declare such money lender disqualified from obtaining a licence or being registered under this Act either permanently or for such period as it thinks fit.*

(2) The court shall cause the particulars of any order made under this section to be endorsed on the licence held by the money lender against whom such order is made and shall cause copy of its order to be sent to the registrar by whom the licence was granted or the registration was made for the purpose of entering such particulars in the Register.

(3) Every holder of a licence shall, on being called upon by the court to do so, produce the licence within such time as may be directed by the court.

(4) Any person whose licence or registration has been cancelled or suspended in accordance with the provisions of this section shall, during the period for

which such order of cancellation has effect or during the period of suspension, as the case may be, be disqualified from being registered or obtaining a license.

(5) *Re-hearings of and appeals from any order under sub-section (1) may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same court within its ordinary jurisdiction. In cases cognizable by a court of small causes appeals shall lie to the principal court of original jurisdiction in the division.*

[20. Whoever makes default in complying with or acts in contravention of any provision of this Act shall, if no specific penalty has been provided in this Act, be punishable for the first offence with fine which may extend to Rs. 200 and for a second or subsequent offence with imprisonment of either description for a term not exceeding one month or with fine which may extend to Rs. 500 or with both and shall also be liable to have his registration and licence cancelled.]

Penalty for  
contravention  
of provisions.

20. *Whoever makes default in complying with or acts in contravention of any of the provisions of this Act shall, if no specific penalty has been provided in this Act, be punishable.*

(a) *for the first offence with fine which may extend to rupees two hundred,*

(b) *for the second offence with fine which may extend to rupees five hundred, and*

(c) *for any subsequent offence with imprisonment of either description for a term not exceeding one month or with fine which may extend to rupees five hundred or with both,*

*and on such conviction the court may also order that his registration or licence shall be cancelled.*

21. *The Government may, at any time on application in the prescribed form accompanied by the prescribed fee, remove a disqualification imposed on a money lender by a court under section 19 or section 20, having regard to the time which has elapsed since the order and the circumstances under which it was made or to the time which has elapsed since the conviction and to the nature of the offence.*

22. No prosecution for an offence under this Act or any rule made thereunder shall be instituted except within one year next after the commission of such offence.

23. Whoever molests, or abets the molestation of, a debtor for the recovery of a debt owed by him to his creditor shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

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

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

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

(c) loiters or does any similar act at or near a house or other place where such other person resides or works, or carries on business, or happens to be,

shall be deemed to molest such other person :

Provided that a person who attends at or near such house or place in order merely to obtain or communicate information or to make a demand for a loan due shall not be deemed to molest.

(2) Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure an offence under this section shall be a cognizable offence as defined in the Code.

## CHAPTER VI.

### Miscellaneous.

Power to  
make rules.

[21]-24. (1) The Government may make rules for carrying out the purposes of this Act.

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

(i) the form of the register mentioned in section 4;

- (ii) the form of the application mentioned in section 5 and the particulars to be contained therein ;
- (iii) the form and conditions of the licence mentioned in section 7, the fee therefor and the manner of payment of the fees ;
- (iv) the form, language, script and numerals to be used in the accounts required to be kept under section 9 ;
- (v) the form of the statement of account to be furnished under section 11 and the details to be included therein and the fee to be paid for such statement ; [and]
- (vi) the fee to be paid for a copy of the entries in a pawn-broker's account to be furnished under section 12 ; *and*

*(vii) the form of the application for removal of a disqualification under Section 21 and the fee therefor.*

[22]-25. Nothing contained in this Act shall affect the provisions of the Mysore Agriculturists Relief Act, 1928, or the powers of a court under the Usurious Loans Act, 1923, except to the extent specified in section 16.

[23]-26. The Government may, by notification in the official Gazette, apply all or any of the provisions of Chapters III [and IV] *IV and V* to the loan transactions of creditors other than money lenders.

# Moneylenders Bill. [H.L.]

## ARRANGEMENT OF CLAUSES.

### Clause.

1. Licences to be taken out by moneylenders.
  2. Certificate required for grant of moneylender's excise licence.
  3. Courts to which proceedings on money-lending transactions are to be taken.
  4. Prohibition of money-lending circulars, &c.
  5. Names to be stated on documents.
  6. Prohibition of charge for preliminary expenses.
  7. Restriction on rate of interest to be charged.
  8. Form of loan document.
  9. Obligation of moneylender to supply information as to state of loan.
  10. Provision in case of default in payment of instalment.
  11. Proceedings in bankruptcy for moneylenders' loan not to be taken except after application to court having jurisdiction.
  12. Re-opening of transaction of moneylender at instance of trustee in bankruptcy.
  13. Restriction on loans to public officers.
  14. Restriction on proceedings by moneylenders for recovery of money lent.
  15. Prohibition of assignment of debt due to moneylender.
  16. Appropriation to principal and interest of sums payable to moneylender in respect of loan.
  17. Saving for right of bonâ fide holders for value.
  18. Application to Scotland.
  19. Short title.
- SCHEDULE.



*[The words enclosed in brackets and underlined were omitted by the Lords to avoid questions of privilege.]*

A

## B I L L

INTITULED

An Act to amend the law with respect to persons carrying on business as moneylenders. A.D. 1926.

**B**E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

[1.—(1) Every moneylender shall take out annually in respect of every place in which he carries on his business an excise licence, and there shall be charged on every such licence an excise duty of fifteen pounds, or if the licence is taken out on or after the first day of July in any year, of ten pounds.]

Licences to be taken out by money-lenders.

(2) A licence taken out under this section (in this Act referred to as "a moneylender's excise licence") shall expire on the thirty-first day of December in the year in which it is taken out.

(3) If any person—

- (a) takes out an excise licence in any name other than his own name or, in case of a firm, the names of all the partners of the firm; or
- (b) carries on business as a moneylender without having in force a proper excise licence authorising him so to do, or, being licensed as a

*Moneylenders.*

A.D. 1926.

moneylender, carries on business as such in any name other than the name under which he is licensed, or at any other place than the place in respect of which the licence is granted; or

5

(c) enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or takes any security for money in the course of his business as a moneylender, otherwise than in the name in which he is licensed;

10

he shall be liable to an excise penalty of one hundred pounds.

On a second or subsequent conviction of any person (other than a body corporate) for an offence under this subsection the court may, in lieu of or in addition to ordering the offender to pay the penalty aforesaid, order him to be imprisoned, with or without hard labour, for a term not exceeding three months, and an offender being a body corporate shall on a second or subsequent conviction be liable to an excise penalty of five hundred pounds.

15

20

(4) Section twenty-five of the Excise Licences Act, 1825 (which relates to the posting on their premises of the names and other particulars of persons carrying on businesses for which excise licences are required) shall apply with respect to moneylenders' excise licences as if those licences were licences required by that Act, and to persons taking out such licences as if they were persons required by laws of excise to make entry of their premises in order to carry on their businesses therein.

25

30

(5) The provisions of this section shall be construed as one with the Acts relating to duties of excise and the management of those duties.

Certificate  
required for  
grant of

2.—(1) A moneylender's excise licence shall not be granted except to a person who holds a certificate granted

35

A.D. 1926.

money-  
lender's  
excise  
licence.

in accordance with the provisions of this section authorising the grant of the licence to that person, and any moneylender's excise licence granted in contravention of this section shall be void.

5 (2) Certificates under this section (in this section referred to as "certificates") shall be granted by the petty sessional court having jurisdiction in the place in which the moneylender's business is to be carried on.

10 (3) No certificate shall be in force for more than one year from its date.

(4) A Secretary of State shall make rules with respect to the procedure to be followed in making applications for certificates (including the notices to be given of intention to make such an application), and  
15 certificates shall be in such form as may be prescribed by rules so made.

(5) A certificate shall not be granted to any body corporate (in this section referred to as a company) of which the name includes the word "bank" or otherwise  
20 implies that the company carries on banking business; but save as aforesaid a certificate shall not be refused except on some one or more of the following grounds—

25 (i) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company of the persons responsible for the management of the company;

30 (ii) that the applicant, or, in the case of a company, any person responsible for the management of the company, is by order of the court disqualified for holding a certificate;

35 (iii) that the applicant, or, in the case of a company, any person responsible for the management of the company, has within ten years been convicted of an offence under this Act or under the Moneylenders Acts, 1900 and 1911, or was a partner in a firm or a person responsible for the management of a company at a time when

63 & 64 Vict.  
c. 51.  
1 & 2 Geo. 5.  
c. 38.

A.D. 1926.

the firm or company was so convicted within that period ;

(iv) that the applicant has not complied with the provisions of any rules made under this section with respect to applications for certificates. 5

(6) Any person aggrieved by the refusal of a petty sessional court to grant a certificate may appeal to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts.

(7) Where any person, being the holder of a certificate, is convicted of any offence under this Act or under the Moneylenders Acts, 1900 and 1911, the court— 10

(a) may order that any certificates held by that person shall either be suspended for such time as the court thinks fit, or shall be forfeited, and also, if the court thinks fit, may declare that person and, in the case of a company, any person responsible for the management of the company to be disqualified for obtaining a certificate for such further time after the expiration of the certificates as the court thinks fit; and 15 20

(b) shall cause particulars of the conviction and of any order made by the court under this subsection to be endorsed on every certificate held by the person convicted, and shall cause a copy of those particulars to be sent to the authority by whom any certificate so endorsed was granted: 25

Provided that where upon the conviction of a company a person alleged to be responsible for the management of the company is disqualified by order of the court for obtaining a certificate, he may appeal in like manner as if he had been convicted and as if the order had been a sentence passed on his conviction. 30 35

(8) Any person convicted as aforesaid shall within a reasonable time produce for endorsement every certificate

A.D. 1926.

held by him, and if he fails so to do shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding five pounds and to a further penalty of one pound for each day during which the default continues after conviction.

(9) Where on the conviction of any person as aforesaid a certificate held by him is ordered to be suspended or to be forfeited, any moneylender's excise licences granted to that person, whether in pursuance of that or any other certificate, shall, as the case may be, be suspended during the period for which the certificate is ordered to be suspended or become void.]

3.—(1) His Majesty may by Order in Council direct that proceedings by a moneylender for the recovery of money lent by him or for enforcing any agreement or security relating to any such money, or any class of such proceedings, may be brought in any court specified in the Order, notwithstanding any limit imposed by statute on the jurisdiction of that court, and that such proceedings, or any class of such proceedings, shall be excluded from the jurisdiction of any court in which they might otherwise have been brought, and any such Order may contain such provisions as appear to His Majesty expedient with respect to the making of rules of court for regulating the procedure to be followed in the case of any such proceedings.

Courts to which proceedings on money-lending transactions are to be taken.

(2) Before any Order in Council is made under this section a draft thereof shall be laid before each House of Parliament for a period of not less than forty days during the session of Parliament, and if either House before the expiration of the said period presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new draft Order.

4.—(1) No person shall—

(a) knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request a circular or other document inviting that person—

Prohibition of money-lending circulars, &c.

(i) to borrow money from a money-lender;

A.D. 1926.

(ii) to enter into any transaction involving the borrowing of money from a moneylender;

(iii) to apply to any place with a view to obtaining information or advice as to borrowing any money from a moneylender; or

(b) insert or cause to be inserted in any newspaper or other printed paper issued periodically for public circulation an advertisement inviting any person to do any such thing as aforesaid:

Provided that nothing in the foregoing provision shall be taken to prohibit a moneylender from inserting in any newspaper or in any such paper as aforesaid an advertisement which contains, and which contains only, the following particulars, that is to say, the name under which and the place in respect of which he is licensed under this Act, a statement that he lends money with or without security and a statement of the date on which the business carried on by him was first established.

2) No moneylender or any person on his behalf employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a moneylender, and no person shall act as such agent or canvasser, or demand or receive directly or indirectly any sum by way of commission or otherwise for undertaking to introduce to a moneylender any person desiring to borrow money.

(3) Any person acting in breach of any of the provisions of this section shall be guilty of a misdemeanour and shall in respect of each offence be liable, on conviction on indictment, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and, on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(4) Where it is shown that any money-lending transaction was brought about by conduct which constitutes a contravention of any of the provisions of this

section such transaction shall notwithstanding that the moneylender was duly licensed under this Act be void. A.D. 1926.

(5) Section 16 of the Post Office Act, 1908, shall apply to circulars and documents which are forbidden to be sent by this section in the same manner as that section applies to the articles therein mentioned. 8 Edw. 7. c. 48.

5. —(1) Every advertisement, circular and other document issued by a moneylender for the purposes of his business as such shall show— Names to be stated on documents.

(a) in such manner as to be not less conspicuous than any other name, the name under which he is licensed under this Act; and

(b) any name, other than his own name, under which he was before the commencement of this Act registered as a moneylender under the Moneylenders Act, 1900. 15

(2) Any moneylender who issues any document in contravention of the provisions of this section shall be liable on summary conviction to a fine not exceeding twenty pounds in respect of each offence. 20

6. Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the moneylender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be void, and if any sum is paid to a moneylender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as money had and received to the use of the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly. 25 30 Prohibition of charge for preliminary expenses.

7.—(1) Where proceedings are taken by a moneylender for the recovery of any money lent after the commencement of this Act or for the enforcement of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, and the interest charged in respect of the sum actually 35 40 Restriction on rate of interest to be charged.

A.D. 1926. lent exceeds the rate of forty-eight per centum per annum, or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume that the interest charged is excessive and that the transaction is harsh and unconscionable within the 5  
 63 & 64 Vict. meaning of subsection (1) of section one of the Money-  
 c. 51. lenders Act, 1900.

(2) It shall be lawful for a moneylender and a proposed borrower before entering into any contract for a loan of money to apply to the registrar of the 10  
 county court to dispense with the limitation of interest mentioned in the preceding subsection, and it shall be the duty of such registrar to inquire into all the circumstances and details of the proposed loan, and thereupon he shall, if he thinks fit and that it is in the interests 15  
 of the borrower, make an order that that limitation shall not apply to the proposed loan.

(3) In no case shall compound interest be charged or allowed.

Form of  
 loan docu-  
 ment.

8.—(1) Every bill of exchange, promissory note, 20  
 bill of sale or other document given by a borrower to a moneylender after the commencement of this Act shall state the amount actually lent to the borrower and the rate of interest to be charged thereon, and where any instalment is to be paid to the moneylender in respect 25  
 of the loan shall state the amount of every such instalment and the date on which it is payable, showing what part thereof is to be appropriated to principal and what part is to be appropriated to interest in accordance with the provisions of this Act. 30

(2) No such bill of exchange, promissory note, bill of sale or other document shall be enforceable for any higher sum than the amount actually lent with interest at the rate required by this Act to be stated therein.

Obligation  
 of money-  
 lender to  
 supply in-  
 formation  
 as to state  
 of loan.

9.—(1) In respect of contracts of money-lending 35  
 entered into with a moneylender before or after the commencement of this Act the moneylender shall, on any reasonable demand being made by the borrower and on payment by the borrower of the sum of one shilling, supply to the borrower or, if the borrower so requires, 40  
 to any person specified in that behalf in the demand at any time during the continuance of the contract of



money-lending a statement signed by the moneylender or his agent showing— A.D. 1926.

(a) the amount actually lent to the borrower and the rate of interest charged thereon; and

5 (b) the amount of principal outstanding and the amount of interest accrued, due and unpaid, or, where the loan is repayable by instalments, the amount of every instalment paid and the date on which it was paid, and the amount of every  
10 instalment outstanding and the date on which it will become payable, the amount of every such instalment being apportioned between principal and interest in accordance with the provisions of this Act.

15 (2) If a moneylender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due  
20 under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default.

25 10. Where by any contract for the loan of money entered into between any person and a moneylender it is provided that the loan shall be repayable by instalments and the borrower fails to make in accordance with the terms of the contract due payment of any instalment, then notwithstanding anything in the contract the moneylender shall not be entitled to any  
30 greater sum than the amount actually lent together with interest thereon up to the date of payment at such rate as would in accordance with the provisions of this Act have been payable under the contract if no default had been made in the payment of any instalment.

Provision in case of default in payment of instalment.

35 11.—(1) No proceedings in bankruptcy shall be commenced by a moneylender in respect of money lent by him after the commencement of this Act unless the said moneylender has first applied to the court having jurisdiction for an order for payment of the debt due by such  
40 instalments as the court having jurisdiction shall think fit, and default has been made by the person against whom such order has been made in the payment of any instalment fixed by the order of the court having jurisdiction.

Proceedings in bankruptcy for money-lenders' loan not to be taken except after application to court having jurisdiction.

A.D. 1926.

4 & 5 Geo. 5.  
c. 59.

(2) Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act, 1914, relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement and dividend, be calculated at a rate not exceeding five per centum per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled. 5 10

The provisions of this subsection shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of subsection (1) of section sixty-six of the Bankruptcy Act, 1914. 15

(3) No proof of a debt due to a moneylender in respect of a loan made by him shall be admitted for any of the purposes of the Bankruptcy Act, 1914, unless the affidavit verifying the debt is accompanied by a statement showing in detail— 20.

(a) the amount of the sums actually lent to the debtor and the amount of every payment on account of the loan made by him or on his behalf and of the date on which each such payment was made; and 25

(b) the amount of the balance which, all interest in respect of the loan being calculated at a rate not exceeding five per centum per annum, remains unpaid. 30

(4) General rules may be made under section one hundred and thirty-two of the Bankruptcy Act, 1914, for the purpose of carrying into effect the objects of this section.

Re-open-  
ing of  
transaction  
of money-  
lender at  
instance of  
trustee in  
bankruptcy.

12. The power of a court under subsection (2) of section one of the Moneylenders Act, 1900 (which enables a court at the instance of the borrower, surety, or other person liable, to exercise its powers under that section with respect to the re-opening of the transactions of moneylenders, although no proceedings are taken for the recovery of the money lent, and notwithstanding that the time for repayment may not have arrived), may 40

in the event of the bankruptcy of the borrower be exercised at the instance of the trustee in bankruptcy, notwithstanding that he may not be a person liable in respect of the transaction. A.D. 1926.

5       **13.** No proceedings in bankruptcy or under the Debtors Act, 1869, shall be commenced or prosecuted in respect of money lent by a moneylender against any public officer holding a public office or employment, if the pay, salary or emolument of such person is forbidden  
 10 by law to be assigned or to be taken in execution of any debt due by such person. For the purposes of this section any person in His Majesty's naval, military or air forces shall, whether on full pay or on half pay, be deemed to be a public officer holding a public office or  
 15 employment.

Restriction on loans to public officers. 32 & 33 Vict. c. 62.

20       **14.**—(1) Where the amount of a loan made by a moneylender after the commencement of this Act, exclusive of interest, is less than three pounds, no proceedings shall lie for the recovery of the principal money lent or of any interest in respect thereof, or for the enforcement of any agreement made or security taken in respect of the loan.

Restriction on proceedings by money-lenders for recovery of money lent.

25       (2) No proceedings shall lie for the recovery by a moneylender of any money lent by him or of any interest in respect thereof, or for the enforcement of any agreement made or security taken in respect of any loan made by him unless the proceedings are begun before the expiration of six months from the date on which the cause of action accrued, or, in the case of  
 30 a cause of action accrued before the commencement of this Act, within six months from the date of the commencement of this Act :

35       Provided that if during the period of six months aforesaid or at any time within any subsequent period during which proceedings may by virtue of this proviso be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the moneylender to pay that amount, proceedings for the recovery of the amount due may be brought at any  
 40 time within a period of six months from the date of the acknowledgment and undertaking.

(3) Where proceedings do not lie or have ceased to lie for the recovery of money lent by a moneylender, any

A.D. 1926. security taken by the moneylender in respect of the loan shall on demand in writing by the borrower be delivered up to him, and if the moneylender refuses or without reasonable excuse neglects to comply with any such demand he shall in respect of each offence be liable 5  
on summary conviction to a fine not exceeding ten pounds and to a further fine of five pounds in respect of every day during which the default continues after conviction.

Prohibition of assignment of debt due to money-lender.

15.—(1) Any assignment by a moneylender of a debt due to him in respect of money lent by him or in respect of interest thereon, or the benefit of any agreement made or security taken in respect thereof, shall be void unless it is proved that the assignment was made by the moneylender bonâ fide for the purpose of transferring the whole of the business carried on by him as a moneylender or the whole of the business so carried on by him in any place in respect of which he is or has been licensed, to the assignee. 15

(2) In this section the expression "assignment" means any assignment inter vivos, other than an assignment by operation of law or an assignment made by a deed of arrangement to which the Deeds of Arrangement Act, 1914, applies, or to a trustee under or in pursuance of a composition or scheme of arrangement approved under section sixteen of the Bankruptcy Act, 1914. 20 25

Appropriation to principal and interest of sums payable to money-lender in respect of loan.

16.—(1) For the purposes of this Act the principal of a loan shall be taken to be the amount actually lent to the borrower, and any amount paid or payable to the moneylender in respect of the loan in excess of the principal shall be reckoned as interest. 30

(2) In determining for the purposes of this Act what part of any instalment paid or payable by a borrower in respect of any loan is to be appropriated to principal and what part thereof is to be appropriated to interest, the amount of any instalment shall be appropriated to principal and interest in the proportion that the sum actually lent bears to the amount by which the total sum to be paid to the lender exceeds the sum actually lent. 35 40

In this Act the expression "instalment" includes any bonus or other payment forming part of the consideration for a loan.

A.D. 1926.

17. Nothing in this Act shall affect the operation of section one of the Moneylenders Act, 1911, and that section shall have effect as though references therein to defects due to the operation of section two of the Moneylenders Act, 1900, included references to defects due to the operation of this Act.

Saving for right of bonâ fide holders for value.  
1 & 2 Geo. 5. c. 38.

18. This Act shall apply to Scotland subject to the following modifications—

Application to Scotland.

10 (1) References to the commencement of proceedings in bankruptcy or to the presentation of a bankruptcy petition shall be construed as references to the presentation of a petition for sequestration; "scheme of arrangement" shall mean deed of arrangement; references to the proving of debts or to the admission of proof of debts shall be construed as references to the ranking of claims or debts; and "affidavit" shall mean oath:

15 (2) The Bankruptcy (Scotland) Act, 1913, and section forty-eight thereof shall be substituted for the Bankruptcy Act, 1914, and subsection (1) of section sixty-six thereof respectively; for the reference to section sixteen of the last-mentioned Act there shall be substituted a reference to section thirty-seven and section one hundred and thirty-five of the said Act of 1913; and Act of Sederunt under section one hundred and ninety of that Act shall be substituted for general rules under section one hundred and thirty-two of the said Act of 1914:

3 [(3) Certificates under section two of this Act shall be granted by the burgh or police court having jurisdiction in the place in which the moneylender's business is to be carried on, or if no burgh or police court has jurisdiction in such place, by the justice of the peace court having jurisdiction therein:]

40 (4) Section six of this Act shall apply with the substitution of references to the sheriff for references to the registrar of the county court:

(5) Notwithstanding anything to the contrary in any Act contained, summary execution or diligence

A.D. 1926.

shall not be competent upon any bill of exchange or promissory note or upon any bond or obligation registered in the books of any court, where such bill, promissory note, bond or obligation has been granted to or in favour of a money- 5 lender.

Short title.

**19.**—(1) This Act may be cited as the Moneylenders Act, 1926, and shall be construed as one with the Moneylenders Act, 1900, and the Moneylenders Act, 1911, and those Acts and this Act may be cited together as the 10 Moneylenders Acts, 1900 to 1926.

(2) The enactments set out in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(3) This Act shall not extend to Northern Ireland. 15

(4) This Act shall come into force three months after the passing thereof.

SCHEDULE.

A.D. 1926.

**ENACTMENTS REPEALED.**

Session and Chapter.	Short Title.	Extent of Repeal.
5   10  15	63 & 64 Vict. c. 51.          The Moneylenders Act, 1900.	Paragraphs (a), (b) and (c) of subsection (1) of section two, in subsection (2) of the said section the words from "fails to register himself" to "address or," and the word "other," and subsection (3) of the said section; section three; in paragraph (e) of section six the words "registration under"
1 & 2 Geo. 5. c. 38.	The Moneylenders Act, 1911.	Subsection (1) of section two.

# Moneylenders. [H.L.]

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## B I L L

INTITULED

An Act to amend the law with respect  
to persons carrying on business as  
moneylenders.

*Brought from the Lords 10 March 1926.*

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*Ordered, by The House of Commons, to be Printed,  
10 March 1926.*

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# Moneylenders Bill.

## ARRANGEMENT OF CLAUSES.

### Clause.

1. Licences to be taken out by moneylenders.
2. Certificate required for grant of moneylender's excise licence.
3. Names to be stated on documents.
4. Prohibition of money-lending circulars, &c.
5. Form of moneylender's contracts.
6. Prohibition of compound interest and provision as to defaults.
7. Obligation of moneylender to supply information as to state of loan and copies of documents relating thereto.
8. Provisions as to bankruptcy proceedings for moneylender's loan.
9. Amendments of 63 & 64 Vict. c. 51. s. 1.
10. Courts to which proceedings on money-lending transactions are to be taken.
11. Prohibition of charge for preliminary expenses.
12. Limitation of time for proceedings in respect of money lent.
13. Prohibition of assignment of debt due to moneylender.
14. Special provisions as to pawnbroker's loans.
15. Interpretation, &c.
16. Saving for right of bonâ fide holders for value.
17. Application to Scotland.
18. Short title, citation, construction, repeal, extent and commencement.

### SCHEDULES.

A

# B I L L

to

Amend the Law with respect to persons carrying A.D. 1927.  
on business as Moneylenders. —

**B**E it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) *Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, an excise licence (in this Act referred to as "a moneylender's excise licence"), which shall expire on the thirty-first day of July in every year, and, subject as hereinafter provided, there shall be charged on every moneylender's excise licence an excise duty of fifteen pounds or, if the licence be taken out not more than six months before the expiration thereof, of ten pounds.* Licences to be taken out by money-lenders.

Provided that—

- (a) the duty charged on any moneylender's excise licence which will expire on the thirty-first day of July, nineteen hundred and twenty-eight, shall, notwithstanding that the licence may be taken out more than six months before the expiration thereof, be a duty of ten pounds; and
- (b) where moneylender's excise licences are taken out by two or more moneylenders in respect

A.D 1927.

of any address or addresses at which they carry on their business as partners in a firm, the Commissioners of Customs and Excise shall remit, or if the duty has been paid repay, to the firm a sum equal to the aggregate of the duties charged on such number of the licences taken out as exceeds the number of the addresses in respect of which they are taken out; and 5

- (c) where it is proved to the satisfaction of the Commissioners of Customs and Excise that there is in force a licence for carrying on the business of a pawnbroker at any premises in respect of which a moneylender's excise licence is taken out by the person carrying on the business, the Commissioners shall remit, or if the duty has been paid repay, to that person such part of the duty charged on the moneylender's excise licence as is equal to the amount of the duty paid in respect of the licence for carrying on the business of a pawnbroker, or where in any such case moneylender's excise licences are taken out by partners in a firm in respect of the premises, the remission or repayment shall be made to the firm. 10 15 20 25

(2) A moneylender's excise licence shall be taken out by a moneylender in his true name, and every such licence shall show the name under which and the address at which the moneylender is authorised by the licence to carry on business as such. 30

(3) A moneylender's excise licence shall not authorise a moneylender to carry on business at more than one address or under more than one name, or under any name which includes the word "bank" or otherwise implies that he carries on banking business, and no such licence shall authorise a moneylender to carry on business under any name, not being his true name, except— 35

- (a) the name of a firm in which he is a partner, not being a firm required by the Registration of Business Names Act, 1916, to be registered; or 40
- (b) a business name, whether of an individual or of a firm in which he is a partner, under which he or the firm has, at the passing of this

Act, been registered for not less than three years both as a moneylender under the Moneylenders Act, 1900, and under the Registration of Business Names Act, 1916. A.D. 1927.

5 (4) Any moneylender's excise licence which does not comply with the foregoing requirements of this section shall be void.

(5) If any person—

10 (a) takes out a moneylender's excise licence in any name other than his true name; or

(b) carries on business as a moneylender without having in force a proper moneylender's excise licence authorising him so to do, or, being licensed as a moneylender, carries on business as such in any name other than his authorised name, or at any other place than his authorised address or addresses; or

15 (c) enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or takes any security for money in the course of his business as a moneylender, otherwise than in his authorised name;

20 he shall be liable to an excise penalty of one hundred pounds.

On a second or subsequent conviction of any person (other than a company) for an offence under this subsection the court may, in lieu of or in addition to ordering the offender to pay the penalty aforesaid, order  
30 him to be imprisoned for a term not exceeding three months, and an offender being a company shall on a second or subsequent conviction be liable to an excise penalty of five hundred pounds.

2.—(1) A moneylender's excise licence shall not be granted except to a person who holds a certificate granted in accordance with the provisions of this section authorising the grant of the licence to that person, and any moneylender's excise licence granted in contravention of this section shall be void. Certificate required for grant of moneylender's excise licence.

40 (2) Certificates under this section (in this Act referred to as "certificates") shall be granted by the petty sessional court having jurisdiction in the petty sessional division in which the moneylender's business is to be carried on.

A.D. 1927:

(3) No certificate shall be in force for more than one year from its date.

(4) A Secretary of State shall make rules with respect to the procedure to be followed in making applications for certificates (including the notices to be given of intention to make such an application), and certificates shall be in such form as may be prescribed by rules so made. 5

(5) A certificate shall not be refused except on some one or more of the following grounds— 10

(a) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company of the persons responsible for the management thereof;

(b) that satisfactory evidence has been produced 15 that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is not a fit and proper person to hold a certificate;

that the applicant, or any person responsible or 20 proposed to be responsible for the management of his business as a moneylender, is by order of a court disqualified for holding a certificate;

(d) that the applicant has not complied with the 25 provisions of any rules made under this section with respect to applications for certificates.

(6) Any person aggrieved by the refusal of a petty sessional court to grant a certificate may appeal to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts. 30

(7) Where any person, being the holder of a certificate, is convicted of any offence under this Act or under the Moneylenders Acts, 1900 and 1911, the court—

63 & 64 Vict.  
c. 51.  
1 & 2 Geo. 5.  
c. 38.

(a) may order that any certificates held by that 35 person, or in the case of a partner in a firm by any other partner in the firm, shall either be suspended for such time as the court thinks fit, or shall be forfeited, and may also, if the court thinks fit, declare any such person, or any person responsible for the management of 40 the moneylending business carried on by the person convicted, to be disqualified for obtaining a certificate for such time as the court thinks fit; and

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(b) shall cause particulars of the conviction and of any order made by the court under this subsection to be endorsed on every certificate held by the person convicted or by any other person affected by the order, and shall cause a copy of those particulars to be sent to the authority by whom any certificate so endorsed was granted:

5 provided that where by order of a court a certificate held by any person, not being a person convicted, is suspended or forfeited, or any such person is disqualified for obtaining a certificate, he may appeal in like manner as if he had been convicted and as if the order had been a sentence passed on his conviction,

15 (8) Any certificate required by a court for endorsement in accordance with the foregoing provisions of this section shall be produced, in such manner and within such time as may be directed by the court, by the person by whom it is held, and any person who, without reasonable cause, makes default in producing any certificate so required shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding five pounds for each day during which the default continues.

25 (9) Where a certificate held by any person is ordered to be suspended or to be forfeited under the foregoing provisions of this section, any moneylender's excise licences granted to that person, whether in pursuance of that or any other certificate, shall, be suspended 30 during the period for which the certificate is ordered to be suspended or become void, as the case may be.

3.-(1) Subsection (2) of section two of the Companies (Particulars as to Directors) Act, 1917 (which requires certain particulars to be published in trade catalogues, trade circulars, show cards and business letters) shall apply with the necessary modifications to every company licensed under this Act notwithstanding that the company was registered or had established a place of business within the United Kingdom on or 40 before the twenty-second day of November, nineteen hundred and sixteen.

Names to be stated on documents.

(2) Without prejudice to the provisions of the last foregoing section and of section eighteen of the Registration of Business Names Act, 1916, a moneylender

A.D. 1927. shall not, for the purposes of his business as such, issue or publish, or cause to be issued or published, any advertisement, circular, business letter, or other document which does not show—

- (a) in such manner as to be not less conspicuous than any other name, the authorised name of the moneylender; and
- (b) except in the case of an advertisement published in a newspaper, any name, other than his authorised name, under which the moneylender, and in the case of a firm any partner therein, was before the commencement of this Act registered as a moneylender under the Moneylenders Act, 1900;

and any moneylender who acts in contravention of this subsection shall be liable on summary conviction to a fine not exceeding twenty pounds in respect of each offence.

(3) If a moneylender, for the purposes of his business as such, issues or publishes, or causes to be issued or published, any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking business, he shall on summary conviction be liable to a fine not exceeding one hundred pounds, and on a second or subsequent conviction, in lieu of or in addition to such a fine as aforesaid, to imprisonment for a term not exceeding three months, or, in the case of a second or subsequent conviction of an offender being a company, to a fine not exceeding five hundred pounds.

4.—(1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a moneylender, or containing an invitation—

- (a) to borrow money from a moneylender;
- (b) to enter into any transaction involving the borrowing of money from a moneylender;
- (c) to apply to any place with a view to obtaining information or advice as to borrowing any money from a moneylender.

Prohibition  
of money-  
lending  
circulars,  
&c.

A.D. 1927.

(2) Subject as hereinafter provided, no person shall publish or cause to be published in any newspaper or other printed paper issued periodically for public circulation or by means of any poster or placard an advertisement advertising any such particulars, or containing any such invitation, as aforesaid:

Provided that an advertisement in conformity with the requirements of this Act relating to the use of names on moneylenders' documents may be published by or on behalf of a moneylender in any newspaper or in any such paper as aforesaid or by means of a poster or placard exhibited at any authorised address of the moneylender, if it contains no addition to the particulars necessary to comply with the said requirements, except any of the following particulars, that is to say, any authorised address at which he carries on business as a moneylender and the telegraphic address and telephone number thereof, a statement that he lends money with or without security, and a statement of the date on which the business carried on by him was first established.

(3) No moneylender or any person on his behalf shall employ any agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a moneylender, and no person shall act as such agent or canvasser, or demand or receive directly or indirectly any sum by way of commission or otherwise for introducing or undertaking to introduce to a moneylender any person desiring to borrow money.

(4) Any person acting in contravention of any of the provisions of this section shall be guilty of a misdemeanour and shall in respect of each offence be liable, on conviction on indictment, to imprisonment for a term not exceeding three months or a fine not exceeding one hundred pounds, or to both such imprisonment and fine, and, on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(5) Where it is shown that a money-lending transaction was brought about by a contravention of any of the provisions of this section the transaction shall notwithstanding that the moneylender was duly licensed under this Act be void.



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Form of  
money-  
lenders  
contracts.

5.--(1) No contract for the repayment of money lent by a moneylender after the commencement of this Act shall be enforceable unless a note or memorandum in writing of the contract be made and signed personally by every party to be charged, and unless a copy thereof be delivered to the borrower at the time of the making of the contract. 5

(2) The note or memorandum aforesaid shall contain all the terms of the contract and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and where the interest charged on the loan is expressed in terms of a rate, the rate per cent. per annum of interest charged. 10

(3) Where the interest charged on a loan is not expressed in terms of a rate, the moneylender shall insert on the copy of the note or memorandum of the contract delivered to the borrower a statement showing the rate per cent. per annum represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act, and if he fails to do so he shall be liable on summary conviction to a fine not exceeding twenty pounds in respect of each offence. 15 20

Prohibition  
of com-  
pound  
interest and  
provision  
as to  
defaults.

6. Subject as hereinafter provided any contract made after the commencement of this Act for the loan of money by a moneylender shall be void in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract: 25

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the moneylender under the contract, whether in respect of principal or interest, the moneylender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default. 30 35

Obligation  
of money-  
lender to  
supply in-  
formation  
as to state

7.--(1) In respect of every contract for the repayment of money lent by a moneylender whether made before or after the commencement of this Act the moneylender shall, on any reasonable demand being made by the borrower at any time during the continuance of the 40

contract and on tender by the borrower of the sum of one shilling, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the moneylender or his agent showing—

A.D. 1927.  
—  
of loan and  
copies of  
documents  
relating  
thereto.

- (a) the date on which the loan was made, the amount of the principal of the loan and the rate per cent. per annum of interest charged; and
- (b) the amount of any payment already received by the moneylender in respect of the loan and the date on which it was made; and
- (c) the amount of every sum due to the moneylender, but unpaid, and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and
- (d) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

(2) A moneylender shall on any reasonable demand, and on tender of a reasonable sum for expenses, supply a copy of any document relating to a loan made by him or any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a moneylender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the moneylender shall be liable on summary conviction to a fine not exceeding five pounds for every day on which the default continues.

3.—(1) Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act, 1914, relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and

Provisions  
as to bank-  
ruptcy pro-  
ceedings for  
money-  
lenders' loans;  
4 & 5 Geo. 5.  
c. 59.

A.D. 1927. dividend, be calculated at a rate not exceeding five per cent. per annum, but nothing in the foregoing provision shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled. 5

The provisions of this subsection shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of subsection (1) of section sixty-six of the Bankruptcy Act, 1914. 10

(3) No proof of a debt due to a moneylender in respect of a loan made by him shall be admitted for any of the purposes of the Bankruptcy Act, 1914, unless the affidavit verifying the debt is accompanied by a statement showing in detail— 15

(a) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the moneylender in respect of the loan and the date on which every such payment was made; and 20

(b) the amount of the balance which remains unpaid distinguishing the amount of the principal from the amount of interest included therein.

(4) General rules may be made under section one hundred and thirty-two of the Bankruptcy Act, 1914, for the purpose of carrying into effect the objects of this section. 25

Amend-  
ments of  
63 & 64  
Vict. c. 51.  
s. 1.

9.—(1) Where in any proceedings in respect of any money lent by a moneylender after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, it is found that the interest charged exceeds the rate of forty-eight per cent. per annum, or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section one of the Moneylenders Act, 1900, that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding forty-eight per cent. per annum, is excessive. 30  
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(2) Where a court reopens a transaction of a money-lender under the said section one of the Moneylenders Act, 1900, the court may require the moneylender to produce any certificate granted to him in accordance with the provisions of this Act, and may cause such particulars as the court thinks desirable to be endorsed on any such certificate, and a copy of the particulars to be sent to the authority by whom the certificate was granted.

(3) The powers of a court under the said section one of the Moneylenders Act, 1900, with respect to the re-opening of the transactions of moneylenders, shall extend to any transaction effected under a special contract made in accordance with the provisions of section twenty-four of the Pawnbrokers Act, 1872, and accordingly, for the purposes of the first mentioned section the provisions of paragraph (a) of section six of the Moneylenders Act, 1900, shall not apply with respect to any such transaction.

(4) The powers of a court under subsection (2) of the said section one of the Moneylenders Act, 1900 (which enables a court at the instance of the borrower, surety, or other person liable, to exercise its powers under that section with respect to the re-opening of the transactions of moneylenders, although no proceedings are taken for the recovery of the money lent, and notwithstanding that the time for repayment may not have arrived), may in the event of the bankruptcy of the borrower be exercised at the instance of the trustee in bankruptcy, notwithstanding that he may not be a person liable in respect of the transaction.

(5) The powers of a court under the said subsection (2) of section one of the Moneylenders Act, 1900, may be exercised notwithstanding that the moneylender's right of action for the recovery of the money lent is barred.

10.—(1) His Majesty may by Order in Council direct that proceedings by a moneylender for the recovery of money lent by him or for enforcing any agreement or security relating to any such money, or any class of such proceedings, may be brought in any court specified in the Order, notwithstanding any limit imposed by statute on the jurisdiction of that court, and that such proceedings, or any class of such proceedings, shall be excluded

Courts to which proceedings on money-lending transactions are to be taken.

A.D. 1927. — from the jurisdiction of any court in which they might otherwise have been brought, and any such Order may contain such provisions as appear to His Majesty expedient with respect to the making of rules of court for regulating the procedure to be followed in the case of any such proceedings. 5

(2) Before any Order in Council is made under this section a draft thereof shall be laid before each House of Parliament for a period of not less than forty days during the session of Parliament, and if either House before the expiration of the said period presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new draft Order. 10

Prohibition of charge for preliminary expenses.

11. Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the moneylender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be void, and if any sum is paid to a moneylender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower, or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly. 15 20 25

Limitation of time for proceedings in respect of money lent.

12.—(1) No proceedings shall lie for the recovery by a moneylender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued : 30 35

Provided that—

(a) if during the period of twelve months aforesaid or at any time within any subsequent period during which proceedings may by virtue of this proviso be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the moneylender 40

to pay that amount, proceedings for the recovery of the amount due may be brought at any time within a period of twelve months from the date of the acknowledgment and undertaking;

5

(b) the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run in respect of any payments from time to time becoming due to a moneylender under a contract for the loan of money until a cause of action accrues in respect of the last payment becoming due under the contract.

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(2) Without prejudice to the powers of a court under section one of the Moneylenders Act, 1900, if at the time when proceedings are taken by a moneylender in respect of a default in the payment of any sum due to him under a contract for the loan of money, any further amount is outstanding under the contract but not yet due, the court may determine the contract and order the principal outstanding to be paid to the moneylender with such interest thereon, if any, as the court may allow up to the date of payment.

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**13.**—(1) Any assignment by a moneylender of a debt due to him in respect of money lent by him or in respect of interest thereon, or the benefit of any agreement made or security taken in respect thereof, shall be void unless it is proved that the assignment was made by the moneylender bonâ fide for the purpose of transferring to the assignee the whole of the business carried on by him as a moneylender or the whole of the business so carried on by him at any address in respect of which he is or has been licensed.

25

Prohibition of assignment of debt due to moneylender.

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(2) In this section the expression "assignment" means any assignment inter vivos, other than an assignment by operation of law or an assignment made by a deed of arrangement to which the Deeds of Arrangement Act, 1914, applies, or to a trustee under or in pursuance of a composition or scheme of arrangement approved under section sixteen of the Bankruptcy Act, 1914.

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**14.** The provisions of the three last foregoing sections of this Act shall not apply in relation to any Special provisions

A.D. 1927.  
—  
as to pawn-  
broker's  
loans.

loan by a pawnbroker on a pledge or in relation to any debt in respect of such a loan or any interest thereon, notwithstanding that the loan is not made in the course of the business carried on by the pawnbroker in accordance with the Acts for the time being in force in relation to pawnbrokers, so long as the following conditions are complied with in respect of the loan :—

- (a) the rate of interest charged shall not exceed the rate of twenty per cent. per annum ; and
- (b) subject as hereinafter provided the pawner shall not be charged any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan, except a charge for the preparation of documents relating to the loan not exceeding the sum of one shilling for every ten pounds lent, and a charge equal to the actual amount of any stamp duty paid by the pawnbroker upon any such document :

Provided that a pawnbroker shall not be deemed to have failed to comply with the foregoing condition by reason of his having made in good faith and in accordance with the terms of the contract for the loan—

- (i) a charge in respect of the storage of any pledge which is not physically delivered to him or which, although so delivered, is of such weight or size that it would not under the Post Office regulations for the time being in force, be received for transmission by parcel post ; or
- (ii) a charge for interest at a rate not exceeding twenty per cent. per annum upon any sum reasonably expended by the pawnbroker in respect of the storage, care or carriage of the pledge ; or
- (iii) a charge not exceeding five shillings for rendering an account of the sale of any pledge ; or
- (iv) a charge not exceeding one shilling in respect of any inspection of the pawnbroker's books.

**15.**—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“ Authorised name ” and “ authorised address ” mean respectively the name under which and the

Interpreta-  
tion, &c.

address at which a moneylender is authorised by A.D. 11  
a licence taken out under this Act to carry on  
business as a moneylender;

5 "Business name" means the name or style under  
which any business is carried on, whether in  
partnership or otherwise;

"Company" means any body corporate being a  
moneylender;

10 "Firm" means an unincorporate body of two or  
more individuals, or one or more individuals and  
one or more corporations, or two or more corpora-  
tions, who have entered into partnership with one  
another with a view to carrying on business for  
profit;

15 "Interest" includes any amount, by whatsoever  
name called, in excess of the principal, paid or  
payable to a moneylender in consideration of or  
otherwise in respect of a loan;

20 "Principal" means in relation to a loan the amount  
actually lent to the borrower.

(2) Where by a contract for the loan of money by a  
moneylender the interest charged on the loan is not  
expressed in terms of a rate, any amount paid or payable  
to the moneylender under the contract shall be appro-  
25 priated to principal and interest in the proportion that  
the principal bears to the total amount of the interest,  
and the rate per cent. per annum represented by the  
interest charged as calculated in accordance with the  
provisions of the First Schedule to this Act shall be  
30 deemed to be the rate of interest charged on the loan.

16. Section one of the Moneylenders Act, 1911, Saving for  
(which relates to the rights of bonâ fide holders for value right of  
under contracts with moneylenders), shall have effect as bonâ fide  
though references therein to section two of the Money- holders for  
35 lenders Act, 1900, and to defects due to the operation of value.  
that section, included references to this Act and to 1 & 2 Geo. 5.  
defects due to the operation thereof. c. 38.

17. This Act shall apply to Scotland subject to Application  
the following modifications— to Scotland.

40 (a) References to the presentation of a bankruptcy  
petition shall be construed as references to the  
presentation of a petition for sequestration;  
"scheme of arrangement" shall mean deed of



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arrangement; references to the admission of proof of debts shall be construed as references to the ranking of claims or debts; and "affidavit" shall mean oath:

- (b) The Bankruptcy (Scotland) Act, 1913, shall be substituted for the Bankruptcy Act, 1914, except where subsection (1) of section sixty-six thereof is referred to; for the reference to section sixteen of the last-mentioned Act there shall be substituted a reference to section thirty-seven and section one hundred and thirty-five of the said Act of 1913; and Act of Sederunt under section one hundred and ninety of that Act shall be substituted for general rules under section one hundred and thirty-two of the said Act of 1914: 5 10 15
- (c) Certificates under section two of this Act shall be granted by the licensing court under the Licensing (Scotland) Acts, 1903 to 1921, within whose jurisdiction the premises in which the moneylender's business is to be carried on are situated, and may be granted either at the general half-yearly meeting of such court, or at any adjournment thereof, which adjournment they may make from time to time for the purposes of this Act, or at some other meeting specially convened for that purpose, and an appeal against the refusal to grant such a certificate shall lie to the court of appeal under the said Acts: 20 25 30
- (d) The power to make rules under subsection (4) of section two of this Act shall include power to make rules with respect to the procedure to be followed in appeals under the foregoing paragraph of this section: 35
- (e) The provisions of subsection (3) of section twenty-seven of the Licensing (Scotland) Act, 1903 (which relates to the prescribing of fees), shall extend to the prescribing of fees payable to clerks of licensing courts and of courts of appeal for anything done under this Act: 40
- (f) Where decree is granted by any court in favour of a moneylender for any sum of money in respect of a loan by him the court may, either

at the time of granting such decree or at any time thereafter prior to the payment of such sum and on the application of either party, make an order that such sum shall be payable by instalments of such amount and subject to such conditions as the court shall think fit:

(g) Section ten of this Act shall not apply;

(h) Notwithstanding anything to the contrary in any Act contained, summary execution or diligence shall not be competent upon any bill of exchange or promissory note or upon any bond or obligation registered in the books of any court, where such bill, promissory note, bond or obligation has been granted to or in favour of or is held by a moneylender.

18.—(1) This Act may be cited as the Moneylenders Act, 1927, and the Moneylenders Acts, 1900 and 1911, and this Act may be cited together as the Moneylenders Acts, 1900 to 1927.

Short title,  
citation,  
construc-  
tion, repeal,  
extent and  
commence-  
ment.

(2) Except where the context otherwise requires, references in this Act to the Moneylenders Act, 1900, and to the Moneylenders Act, 1911, shall be construed as references to those Acts as amended by this Act, and this Act shall be construed as one with those Acts, and the provisions of this Act as to moneylender's excise licences and offences in relation thereto shall also be construed as one with the Acts relating to duties of excise and the management of those duties.

(3) The enactments set out in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(4) This Act shall not extend to Northern Ireland.

(5) This Act shall come into force on the first day of January, nineteen hundred and twenty-eight.

A.D. 1927.

**SCHEDULES.**

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**FIRST SCHEDULE.**

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**CALCULATION OF INTEREST WHERE THE  
INTEREST CHARGED ON A LOAN IS NOT EXPRESSED  
IN TERMS OF A RATE.**

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1. The amount of principal outstanding at any time shall be taken to be the balance remaining after deducting from the principal the total of the portions of any payments appropriated to principal in accordance with the provisions of this Act.

2. The several amounts taken to be outstanding by way of principal during the several periods ending on the dates on which payments are made shall be multiplied in each case by the number of calendar months during which those amounts were respectively outstanding, and there shall be ascertained the aggregate amount of the sum so produced.

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3. The total amount of the interest shall be divided by one-twelfth part of the aggregate amount mentioned in paragraph 2 of this Schedule, and the quotient, multiplied by one hundred, shall be taken to be the rate of interest per cent. per annum.

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4. If having regard to the intervals between successive payments it is desired so to do, the calculation of interest may be made by reference to weeks instead of months, and in such a case the foregoing paragraphs shall have effect as though in paragraph 2 the word "weeks" were substituted for the words "calendar months," and in paragraph 3 the words "one-fifty-second," were substituted for the words "one-twelfth."

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5. Where any interval between successive payments is not a number of complete weeks or complete months, the foregoing paragraphs shall have effect as though one day were one-seventh part of a week or one-thirtieth part of a month, as the case may be.

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## SECOND SCHEDULE.

A.D. 1927.

## ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
5 63 & 64 Vict. c. 51.	The Moneylenders Act, 1900.	Section two; section three; in paragraph (e) of section six the words "registration under"
10 1 & 2 Geo. 5. c. 38.	The Moneylenders Act, 1911.	Section two.

# Moneylenders.

A

## B I L L

To amend the Law with respect to  
persons carrying on business as  
Moneylenders.

*Presented by Mr. Burman,  
supported by*

*Mr. Wells, Major Glyn, Mr. Robert Hudson,  
Mr. Somerville, Mr. Skelton, Mr. Clayton,  
and Mr. Storry-Deans.*

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*Ordered, by The House of Commons, to be Printed,  
11 February 1927.*

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