

**THE BOMBAY AGRICULTURAL
DEBTORS RELIEF ACT, 1939**

[As Amended by Bom. VI of 1941]

BY

Rao Bahadur PRAHLAD C. DIVANJI, M.A., LL.M.

THE BOMBAY AGRICULTURAL DEBTORS RELIEF ACT, 1939

[As Amended by Bom. VI of 1941]

AND

THE BOMBAY AGRICULTURAL DEBTORS RELIEF RULES, 1941

WITH

AN INTRODUCTION TO THE ACT

AN

EXPLANATORY & CRITICAL COMMENTARY

AND

RULES OF INTERPRETATION

BY

Rao Bahadur PRAHLAD C. DIVANJI, M. A., LL. M.

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Endowments Act, 1920 with a Commentary.*

FOREWORD BY

The Hon'ble Mr. Justice K. B. WASSODEW, B.A., LL.B.

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Dedicated

TO

The Honourable

Sir John William Fisher Beaumont,

Kt., K. C., M. A. (Cantab.)

Chief Justice,

His Majesty's High Court of Judicature at Bombay

With His Lordship's Kind Permission

AS AN HUMBLE TRIBUTE

TO

The Numerous Qualities of Head and Heart

BY WHICH

His Lordship has won the Esteem and Affection

OF

The Entire Judicial Service

AND

The People of the Province.

P R E F A C E .

I AM glad to be able at last to place before the public this result of my anxiety to direct my energy since my retirement into a useful channel. The Act commented upon herein has been intended to enable the agricultural debtors in this province to be free from their liabilities within a certain amount of time so that they can commence a new career without molestation or anxiety. How far this object can be achieved experience alone can say. However the Deccan Agriculturists' Relief Act, 1879 having been found after a long trial to have failed to achieve it, a fresh experiment towards the same end was necessary. This Act based upon the findings of the Bombay Provincial Banking Inquiry Committee upheld by the Indian Central Banking Inquiry Committee which had proceeded with the inquiry entrusted to it on the lines suggested by the Royal Commission on Agriculture, so far as it related to the finance of agriculture, embodies a scheme for the trial of such an experiment.

Its scope is limited to the extinction of the existing liabilities and the prevention of the creation of any such fresh ones as cannot be met from the current income until the object in view is achieved. In a word it is a remedial measure only. As such the prevention of a recurrence of the same mischief after some years is outside its province. The remedies therefor, as the learned Finance Minister stated when he moved the first reading of Bill No. XIII of 1939, consist of extensive economic, educational and social reforms aided by some preventive legislation. The fate of the Money-lenders Bill (VII of 1938) and the amount of opposition that this Act met with even after it was passed and the draft rules made under it were published show that this province is not yet prepared for preventive legislation of the above type. The necessary favourable atmosphere for it is, I believe, being created by the present Government with the co-operation of some benevolent institutions, co-operative societies and some enlightened individuals. The operation for two to three years of Rules 38 to 40 of the Rules made under this Act, which are based on some of the principles underlying Chapters III and IV of Bill No. VII of 1938, will also supply an object-lesson for that purpose. It is only after that is

accomplished, that the line of future legislation on this subject can be chalked out.

For the reason already stated this Act has certain novel features not found in the Act of 1879 and only dimly foreshadowed in the legislation on the same subject made in some of the provinces of India. It has also become somewhat complicated owing to many amendments having been engrafted on the original clauses of the Bill which seemed to have otherwise no chance of being passed by a majority of votes in the Assembly. It is not therefore unlikely that opinions may differ on the question of interpretation of some of the sections capable of a double construction. This book, containing the first commentary on the Act in English represents one set of views on such doubtful points. I found a somewhat different set expressed on some of them in a book in Marathi written from quite a different stand-point by Mr. Vinayak Ganesh Tikhe of Poona and published before this Act was amended in March 1941. It is possible that its revised edition and some new commentaries setting forth other views may appear in course of time. With a view therefore to enable the readers to form their own independent judgment on such points I have given rules of interpretation at several places in this work and the decisions from which they were deduced and the original clauses of the Bill, the Report of the Select Committee, the Speech of the Finance Minister, and the Cognate Legislation in the other provinces in Appendices II to V.

In order to make reference to any portion of it easy I have also appended an Index of Cases and a detailed Index of Subjects alphabetically arranged. I have also gratefully adopted the suggestion of Mr. G. N. Thakore, an Advocate of a very wide experience in the Bombay Bar, to mark the numbers and headings of the chapters and the sections dealt with on each folio-page.

I sincerely acknowledge my indebtedness to the Hon'ble the Chief Justice for having kindly permitted me to dedicate this book to him, to the Hon'ble Mr. Justice K. B. Wassoodew for having kindly taken the trouble to go through an advance copy of this work and contribute an enlightening and appreciative "Foreword" to it, to the other high Government officials entrusted with the highly responsible task of deciding whether and if so, when and how this somewhat revolutionary piece of legislation should be put into operation and to the Editor "Times of India" for having directly or indirectly encouraged me to believe that

sooner or later there was a possibility of the arrival of the day of publication of this work.

Lastly, I warmly thank the proprietor and manager of the Karnatak Printing Press for having given me such facilities as the uncertainty of the commencement of the operation of a substantial portion of the Act rendered it necessary for me to demand of them and for having made use of such types and materials as the nature of the work and the class of possible readers of the book required. Some mistakes were unfortunately left unnoticed in the last proofs as they were required to be examined expeditiously and some corrections have been necessitated by the work of printing having been commenced before the final rules were published. I have therefore added a list of corrections and hope that the readers will kindly make them before commencing to make use of or to review the book.

*Prerana, Ghodbunder Road,
Santa Cruz, December 16th, 1941.*

P. C. DWANJI.

FOREWORD

It has been rightly remarked that the science of legislation is like that of medicine at least in one respect, in that it is far more easy to point out what is doing harm than what will do good, and, there is a good deal of experimenting with supposed remedies to the detriment of the sufferers. As in the case of the doctor so of the legislator, excess of sentiment to do good is sometimes misleading in philanthropy and grows acutely dangerous when it ignores the rules of physiological process or the ordinary canons of social economy. As an instance in point rural indebtedness, it is agreed, is a cancerous growth in the body politic and retards its development particularly in an agricultural country like India ; but when devising remedies to cure the malady the legislator has experimented a good deal in the past without much success. The remedies suggested by economists are not unfamiliar to the student of political economy and the most commonplace one, the one which has been regarded as a complete solution of agricultural dependence is the compulsory settlement of debt by legislation. The basis of that recommendation is the assumption that the causes of indebtedness are rooted in unrestricted money-lending and the prevailing system of usury. * One has to peruse the history of the working of the Deccan Agriculturists' Relief Act of 1879, which was enacted principally to free the agriculturist in the Bombay Presidency, who was inextricably in debt, from the clutches of the money-lender, to be able to denounce the supposition that legislative action alone is a satisfactory cure. Even the warmest supporter of that measure will find it difficult to point to any tangible achievement to the credit of the Act. Far from reducing agricultural indebtedness, it has created a class of money-lenders who have devised counter-measures to frustrate legislative action. The universal condemnation of the Deccan Act has been based partly on the reduction of agricultural credit as a consequence of legislative interference with rural economy and partly on the defective provisions of the Act itself affording scope for evasion and

frustration. The failure was certainly in some measure due to the very, clever and sometimes dishonest devices resorted to by the money-lender to circumvent the provisions of the Act, and, to the easy exploitation of the needy and improvident agriculturist. Perhaps it has not been thoroughly realised, and even if it has been, little or no thought is paid by the advocates of legislative action to the fact that the evil is deep-rooted in social customs and is a symptom of economic depression which cannot be radically cured by ameliorative legislation or executive pronouncement. Mere legislative action, however perfect the forms of procedure may be, must end in failure unless an attempt to deal with the evil at its source in the individual is seriously made.

The legislature has had an ambitious programme chalked out for itself when enacting the Bombay Agricultural Debtors' Relief Act, 1939. As the provisions will show it is a distinct improvement on its predecessor and every attempt is made to remove the defects in the old Act which were judicially noticed. The definition of the word "Agriculturist" has been wisely improved upon to limit the scope of the Act to the really needy and to exclude such pseudo-agriculturists like large land-holding classes who had been benefited by the Deccan Act. The old Act failed on that account because it unwittingly gratified the rich land-holder to the detriment of the creditor. How far the new enactment will bring that relief which was aimed at by the statesmen responsible for the measure it is difficult to say. But the Act will have been introduced in some areas at a time when relief from debt is urgently needed. It is to be hoped that the legislator when devising new formulæ has not experimented too much in a department of law which has been framed in the interests of the less prosperous part of the community. One is attracted by the provisions designed to exclude the lawyer from certain proceedings before the tribunal. Whether the intention of the legislature was to obtain personal representation in a Court of law, or to avoid burdening the poor agriculturist with the cost of obtaining the advantage which the law offered, it is difficult to say. The help which a lawyer renders to the Court in ascertaining the true position cannot be over-estimated and it is to be hoped that in his absence the debtor will not be outwitted by the creditor in spite of the vigilance of the Court. Those who are disposed to criticise the presence of the lawyer in a litigation might perhaps pause to reflect that they are dealing with no simple problem, for however able a Judge may be and whatever his sympathy for the poor, that mood of benevolence is not in itself a sufficient equipment justifying the displacement of the lawyer. There are

other problems equally important which have been tackled by the Act in its numerous provisions. It is difficult to pronounce definitely upon their value or probable success, for nobody can survey the tremendous problem without being deeply conscious of its gravity. The Act however has the benediction from every well-wisher of the community at the time of its introduction.

It is fortunate that the new Act has found an expositor in a person who combines judicial experience of the working of the old Act and a great insight into the economic condition of the cultivator. Those who have to deal with the new provisions will find help from the Commentary which lucidly explains the scope of each section and the clauses which are difficult of interpretation, and contains wherever possible a criticism of the new enactment based on analogous provisions in other and similar enactments which have been judicially interpreted. The Introduction is informative and will be of considerable assistance to those who are uninitiated into the new measure. A Commentary without a complete Index loses much of its value. The special feature of Rao Bahadur Divanji's Book is its exhaustive Index. That is sure to be of valuable assistance to the practitioner and the Court. There is also a collection of cases apparently intended by the author to help the evolution of leading principles which may be worthy of attention.

5th Dec. 1941.

K. B. WASSODEW.

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- Page 7, line 22 : *for* Rules 37 to 39 *read* Rules 38 to 40.
- Page 10, line 10 (from below) : *for* Rule 15 *read* Rule 16.
- Page 12, line 6 (from below) : *for* Rule 26 *read* Rule 27.
- Page 13, line 16 : *for* Rule 27 *read* Rule 28.
- Page 13, line 3 (from below) : *for* Rule 28(1) *read* Rule 29(1).
- Page 14, line 17 : *for* whose special jurisdiction *read* whose jurisdiction.
- Page 15, line 17 : *for* of standing crops *read* of standing crops or produce of their land.
- Page 19, line 11 (from below) : *for* he may have been evicted *read* he or it may have been evicted.
- Page 19, line 12 (from below) : *for* he is cultivating *read* he or it is cultivating.
- Page 21, line 16 : *for* 2(20) *read* 20.
- Page 24, line 7 : *for* S. 37 *read* S. 73.
- Page 28, line 7 (from below) : *for* who were *read* who are.
- Page 30, line 5 (from below) : *for* Rule at Damdupat *read* Rule of Damdupat.
- Page 38, line 11 (from below) : *for* Rules Nos. 37 to 39 *read* Rules 38 to 40 and *for* Forms nos. 21 and 22 *read* Forms Nos. 22 to 24.
- Page 38, line 9 (from below) : *for* on S. 78 *read* on the said Rules.
- Page 40, line 9 : *for* Rule 34 *read* Rule 35.
- Page 58, line 10 : *for* Rules 37-39 *read* Rules 38-40.

The Act and Appendices.

- Page 5, f. n. 17 : *for* 3 Ad. 213 *read* 3 Ad. 210, 216.
- Page 6, f. n. 21, lines 3-4 : *for* (2 Q. B. D. 242) *read* (1897) 2 Q. B. 242.
- Page 12, f. n. 5, line 2 : *for* (I. L. R. 49 Mad. 749) *read* (A. I. R. 1926 Mad. 749).
- Page 12, f. n. 5, line 3 : *for* Baburao *read* Bapurao.
- Page 14, f. n. 10, line 1 : *for* Baburao *read* Bapurao.
- Page 21, f. n. 4, line 2 : *for* River Commissioners *read* River Wear Commissioners.
- Page 21, f. n. 4, line 3 : *for* Easter Co. v. Comptroller of Patents (1898) A. C. 576 *reqd* Eastman Photographic Materials Co. v. Comptroller of Patents, Designs and Trade-marks (1898) A. C. 571.
- Page 23, f. n. 16 : *for* Fatima.Bibi *read* Fatma Bibi.
- Page 24, f. n. 24, line 3 : *for* (1882) *read* (1880).
- Page 39, f. n. 60, line 4 : *for* Debate *read* Debates.
- Page 44, Heading (a) : *for* (a) *Technical* :— *Technical and non-technical words* :— *read* (a) *Technical and non-technical words*.—*Technical* :—
- Page 72, line 4 : *for* these *read* there.
- Page 72, f. n. 4, line 2 : *for* (10 C. B. M. S. 179) *read* (10 C. B. N. S. 179).
- Page 72, f. n. 4, line 3 : *for* Sillam *read* Sillem.
- Page 73, f. n. 10, line 7 : *for* Lah. 428 *read* Lah. 418.
- Page 76, f. n. 10, line 2 : *for* Co. *read* Society.
- Page 77, f. n. 3, line 3 : *for* Sing *read* Singh.
- Page 78, f. n. 6, line 3 : *for* of *read* at.
- Page 81, line 3 : *for* Thammanimraju *read* Thammiraju.
- Page 90, f. n. 2, line 3 : *for* De'Souza *read* De Souza.
- Page 91, line 2 (from below) : *for* of it ; to know *read* of it, to know.
- Page 92, line 8 : *for* he resides *read* he ordinarily resides.
- Page 116, f. n. 2, line 3 : *for* A. C. 576 *read* A. C. 571, 576.
- Page 125, line 17 : *for* debt-due *read* debt due.
- Page 125, last line : *for* provisional *read* provision.

- Page 141, f. n. 4, line 2 : *for* (10 C. B. M. S. 179) and Sillam *read* (10 C. B. N. S. 179) and Sillem.
- Page 141, f. n. 5, line 7 : *for* 705 *read* 706.
- Page 141, f. n. 7 : *for* Girdhar Lal *read* Girdhari Lal.
- Page 146, line 11 : *for* general popularity *read* rural population.
- Page 168, line 1 : *for* 2 I. R. 619 *read* 2 I. R. 615, 619.
- Page 171, line 16 : *for* preserving *read* reserving.
- Page 171, line 18 : *for* or *read* on.
- Page 185, line 21 : *for* the such debts *read* such debts.
- Page 199, line 18 (com.) : *for* By this section *read* By this sub-section.
- Page 206, last line : *for* wide power or to decide *read* wide power to decide.
- Page 230, line 9 : *for* in S. 50(1) *read* on S. 50(1).
- Page 230, para 2, last line : *for* in S. 54(2) (g) *read* in the provisoes to S. 54(2) (g).
- Page 232, note below r. 9, line 5 : *for* the latter *read* any of them.
- Page 252, f. n. 5, line 3 : *for* Godwin *read* Goodwin.
- Page 252, f. n. 6, line 1 : *for* Tofajaddi *read* Tufazuddi.
- Page 252, f. n. 7, line 1 : *for* Tufajaddi *read* Tofajaddi.
- Page 253, S. 85, margin line 4 : *for* XDV of 1860 *read* XVII of 1879.
- Page 253, S. 85, f. n. 8, line 3 : *for* Chingayya *read* Chengayya.
- Page 272, lines 11-12 : *Delete the words* deciding in which language the records of his Board shall be kept.
- Page 278, heading R. 27 : *for* section 41 *read* section 47.
- Page 283, line 2 : *for* Rule 28(1) *read* Rule 29(1).
- Page 326, lines 13-14 : *for* are not also available *read* are not available.
- Page 339, line 1 : *for* amount to Court-fee *read* amount of court-fee.
-

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1 (2) and (3)	1, 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33 (2), 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82, 83.	33 (1)	17, 23.
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(4) (a)	13, 14, 17, 61, 62 (1), 63, 66, 75, 83, 9.	(4)	35 (2) pro., 24, 54.
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(1) (a) and (b)	17 (3).	(5)	47 (4).
(2)	19 (1).	50	51.
(3)	17, 19 (1).	(3)	3, 50 (2).
20	17 (1).	51 (a)	50.
21	17.	(b)	50.
22 (1)	17 (1).	54 (1)	52.
(1) (e)	4.	(2) (b)	52.
(1) (i)	22 (1) (a).	(2) (c)	3.
(2)	17 (2).	(2) (d)	49.
(2) (e)	4.	(2) (f)	54 (2) (b) (c).
23 (1)	17.	(2) (g) (iii)	78.
(3)	35 (1) (a) and (b)	(2) (j)	54 (2) (e).
(4)	23 (3), 54.	(2) [h] pro.	17, 4.
(5)	23 (1), 17.	55 (1)	54 (1).
24	61.	(1) (b)	55 (1) (a).
25	4, 23, 24.	(2)	55 (1).
26	17, 23.	(3)	55 (2).
27	17, 23.	(4)	55 (2).
28	17.	56	54, 52.
29	17, 17 (4) (b).	57	54, 52.
32 (1)	17 ² , 17 (1), 23, 27, 31.	58 (2)	9.
(2)	17, 26.	59	24, 54, 55.
		60 pro.	54, 55, 37, 55.
		61 (1)	24, 54, 55.
		62 (1) (i)	9.
		(2)	62 (1).
		63	55 (3).
		64 (1)	24, 54.

TABLE OF CROSS-REFERENCES IN THE ACT

Section containing the reference.	Sections referred to	Section containing the reference.	Sections referred to.
65 (2)	24, 54.	2 (g)	33 (1), (2).
66	66.	2 (h)	34 (1).
66 pro.	17.	2 (i)	47.
68 (1)	68 (3).	2 (j)	50 (5).
69	Ch. III; 52.	2 (k)	51.
70	68.	2 (l)	54 (2), 24.
77 (1)	54 (2) (g) provisoes.		55 (2), 54 (2) (n).
77 (2)	78.	2 (m)	66.
82 (c)	77 (1).	2 (n)	76.
83 (2) (a)	19.	2 (o)	78.
	4, 4 (3) (iii), 4 (7).	84	4.
2 (b)	7, 7 (2), 9.	pro.	17.
2 (c)	18.	85 (1)	4.
2 (d)	22 (1), (2).	(2)	85 (1), 17.
2 (e)	23 (2), (3).	pro.	37.
2 (f)	31.	86 (a)	17.
			85.

INTRODUCTION

I. The Act, and its extent and commencement ; II. Object in passing it ; III. Reasons for passing it ; IV. Part played by the Congress Government in it ; V. Remedy provided by the Act ; VI. Persons to whom the remedy is available ; VII. Time-limit for availing oneself of the remedy ; VIII. Peculiar nature of the remedy ; IX. Change in law effected by this Act ; X. Similar legislation in other provinces ; XI. Distinguishing features of this legislation ; XII. Its probable effect on the conditions of rural life.

I

The *Bombay Agricultural Debtors Relief Act, 1939* is the 28th Act passed in 1939 by the Legislature of the Province of Bombay as re-constituted under the *Government of India Act, 1935*. It received the assent of the Governor-General, for which it seems to have been reserved by the Governor in the exercise of his discretion under S. 75 of that Act or because it was absolutely necessary according to S. 108 thereof as it sought to repeal the *Dekkhan Agriculturists Relief Act, 1879*, which was an Act passed by the Governor-General, on the 19th January 1940 and was published for the first time at pp. 2 to 44 of the issue of the *Bombay Government Gazette*, Part IV, dated 30th January 1940. No part of it had however commenced to operate till 29th March 1941 because S. 1(3) thereof as it originally stood had left it to the Provincial Government to appoint and notify in the said *Gazette* a date for that purpose and that Government had not appointed and notified any date for its operation till then. On the said date too it did not issue and publish a notification in the *Official Gazette* but published the *Agricultural Debtors Relief (Amendment) Act, 1941*, which is Act VI of 1941 and which substituted quite another subsection (3) of section 1. By virtue of that substitution the necessity for appointing and notifying a date for the operation of the Act ceased to exist, SS. 1, 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33(2), 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82 and 83 came into

force at once in the whole province and the Provincial Government is empowered to direct by a notification in the *Official Gazette*, that all or any of the remaining provisions of this Act shall come into force in any area to which the said provisions have been extended by S. 1(2) on such date as may be specified in the notification. By the amended sub-section (2) of that section the 26 sections above-enumerated have been extended to the whole of the Province of Bombay and the Provincial Government has been empowered to extend all or any of the remaining provisions of the Act to such area other than the City of Bombay as may be specified in the notification. The combined effect of the amendments made in the two sub-sections therefore is that the said 26 sections have already come into force in the whole of the province and that the Provincial Government has got the powers to extend and to put into force by a notification in the *Official Gazette* all or any of the remaining 60 sections in any select areas forming part of the whole province with the exception of the City of Bombay. It is remarkable that S. 1(2) as it originally stood extended the sections of the Act other than the six mentioned therein to the whole of the Province *except the town and island of Bombay* and therefore under S. 1(3) the Provincial Government had power to put them into force in the province to the exclusion of the area known as *the town and island of Bombay*. By the amended S. 1(2) the numbers of sections extending to the whole province is increased from six to twenty-six but it does not like the original provision extend the remaining provisions in a body to any specific parts of the province but only empowers the provincial Government to extend by a notification all or any of them to any *area or areas* forming part of *the Province of Bombay other than the City of Bombay*. Secondly, it is worth taking note of, that S. 4 under which the Provincial Government has power to establish a Debt Adjustment Board is not one of the twenty-six sections which have been extended to the whole province and put into operation at once and that therefore the full implication of the extent and commencement of the operation cannot be ascertained until a notification defining the area or areas of the extent and operation of all or any of the remaining provisions and establishing Boards for certain areas or for certain classes of debtors in any areas appears in the *Official Gazette*. This much however is certain that no Board can and would be appointed for the

City of Bombay and that for the present the remaining provisions of the Act are not likely to be extended all at once to the whole of the province except the said city. However persons who answer to the description of a debtor as given in S. 2(6) read with SS. 2(5), 2(13) and 20 of the Act would, even though residing in any area to which the remaining provisions of the Act are not extended and in which they may not be put into operation, be entitled to call for information from the opposite parties under S. 19, to file applications under SS. 17 and 23 before competent Boards established for the areas in which they have agricultural lands or for any class of debtors to which they belong, the Civil Courts in such excluded areas including those in the City of Bombay would also be required to transfer pending suits, applications for execution and incidental proceedings to such Boards under S. 37, the claims cognizable by such Boards though they may be against persons residing in excluded areas would be held to be void if the conditions laid down in S. 32 are fulfilled, the persons residing and properties situated in such areas would be subject to the jurisdiction of such Boards if the persons have dealings with such debtors and the properties once belonged to them as SS. 7, 31, 33(2), 34, 45 and 49 are extended to the whole province, such Boards would have jurisdiction to issue notices and call for replies from the Provincial Government, and the Local Authorities and Co-operative Societies situated in such excluded areas, any amount in excess of that held payable by a Board would not be recoverable owing to the extension of S. 53 to the whole province, alienations of and encumbrances on properties situated in such areas would be liable to be held void if falling within the scope of S. 65, the Boards would have power to order the sale under S. 66 of a part of a property even though situated in such area, if found necessary, the decrees made on awards by competent Boards would be executable as decrees of Civil Courts within such areas by virtue of S. 63, the Civil Courts in those areas would be debarred from entertaining suits and proceedings falling within the provisions of S. 73, the Boards would be competent to issue certificates when necessary and the Civil Courts in the excluded areas will have to take them into consideration under S. 76, the debtors against whom award-decrees are made would have to conform to the provisions of S. 77 in the matter of alienation of their standing crops even in fields situated in

the excluded areas, persons committing any of the offences mentioned in S. 82 would be punishable whether they do or do not reside in the areas to which the remaining provisions of the Act are extended and in which they are put into operation and lastly, the Provincial Government would be competent to frame rules under S. 83 relating to the operation in the excluded areas of the sections extended to and put into operation in the whole province.

II

The object of the Legislature of this province in passing this enactment, had been explained by the then Finance Minister of the Government of Bombay in the *Statement of Objects and Reasons* which accompanied Bill No. XIII of 1939 which with several important modifications has become this Act XXVIII of 1939. It also appears from the short title thereof given to it by the Legislature by S. 1(1) thereof for the purpose of convenient reference and also from its full title and preamble. It is "to provide for the relief of agricultural debtors in the Province of Bombay". The preamble also refers to "certain other purposes specified herein", which the Legislature had in view in passing this Act. They appear to be such as may be subsidiary to the main purpose above-mentioned and also such as may be necessary to give a character of finality to the results achieved and such as to repeal existing enactments so far as they may have been rendered superfluous such as the *Bombay Small Holders Relief Act, 1938* or so far as they become inconsistent with the policy adopted in this Act as to the method of granting statutory relief to the class of debtors which has been the special object of the attention of the Legislature for a long time past.

III

The reasons given by the Finance Minister in his *Statement of Objects and Reasons* are (1) that both the Royal Commission on Agriculture and the Indian Banking Inquiry Committee had considered the question of agricultural indebtedness to which fresh attention had been called for some time and come to the conclusions that unless each province adopted some measure of compulsory liquidation of the

debts incurred by the agriculturists there was no hope of that indebtedness being eradicated and that it was necessary to do so in the interests of the community at large because the debtors were compelled even against their wish to dispose of their annual produce at inopportune times which was one of the causes of the fall of prices of commodities in the market. Now when we turn to the Report of the Royal Commission, which was published in 1928, we find that the said Commission had come to the conclusions that the *Dekkhan Agriculturists Relief Act, 1879* was being evaded in the parts of the country to which it had been applied, that the *Usurious Loans Act, 1918* had become practically a dead letter in each province, that though in the present state of rural finance it was not possible to render the business of the village money-lender illegal, it was necessary to put salutary checks on his dishonest methods and that a remedy for the disinclination of the agricultural debtor to take advantage of the provisions of the *Provincial Insolvency Act, 1920* must be found out, that in view of such conclusions it had recommended a detailed inquiry in each province tending to determine the lines on which the agricultural class could be relieved of indebtedness, the money-lender class could be put under restraint and the rural population could be given the benefit of a law of insolvency suited to its requirements and that it also suggested the passing of an Act on the lines of the *Punjab Money-lenders Bill* then under consideration in the Punjab and the *English Money-lenders Act, 1927* and a simple law of Rural Insolvency in each province. Similarly when we turn to the Report of the Indian Banking Inquiry Committee published in 1931 we find that it had appointed Provincial Banking Inquiry Committees in all the provinces of India with a view to make a detailed inquiry in each province on certain lines laid down by it, that on receipt of their reports it had come to the conclusions that the causes of agricultural indebtedness in Madras, which it had adopted as the basis of its Majority Report, were almost the same as those in the Province of Bombay, that the consequences of such indebtedness were almost the same everywhere as in Madras and Bombay and that it was in their opinion of supreme importance from the point of view of the economic prosperity of the country as well as for the purpose of stemming the growth of discontent among a large section of the population that a serious effort should be made to find a

remedy for the chronic indebtedness of the agriculturist so far as it relates to his unproductive debt and that it had also made several specific recommendations. Out of them those pertinent to our subject were (1) steps to be taken for voluntary settlement through Co-operative Societies as far as possible, and also for compulsory settlement by legislative enactments and for declaring a debtor unable to pay his debts to be an insolvent under a special Rural Insolvency Act to be passed, (2) the business of money-lending to be brought under control by adopting a system of licensing and control by an Act on the lines of the *Punjab Regulation of Accounts Act, 1930*, making it illegal to charge more interest than is allowed by the Hindu law Rule of Damdupat and amending the *Usurious Loans Act, 1918* as may be found necessary. This being a report of an All-India Committee the recommendations made therein are of a very general nature. For recommendations particularly suited to the conditions in the Province of Bombay, we must turn to the Report of the Bombay Provincial Banking Inquiry Committee published in 1930. Doing so we find that it had made a detailed inquiry into the working of the *D. A. R. Act* besides consulting the High Court, Bombay and the Court of the Judicial Commissioner, Sind and had after examining all the *pros and cons* of the case recommended in para 238 at p. 181 of their Majority Report that "the Act should be repealed and a new Act embodying the principles which we mention in the subsequent paragraphs should be passed". The said principles as set forth in paras 240-44, briefly stated, are :—

1. The new enactment should apply only to small and genuine agriculturists, the definition of the term "agriculturist" being substantially modified for that purpose so as to confine the benefit of the Act to those who actually engage personally in agriculture and whose income is below a certain specified figure which should not be high.

2. The system of licensing of money-lenders on the lines of the *Punjab Regulation of Accounts Act, 1930* should be introduced, the *Usurious Loans Act, 1918* not being sufficiently comprehensive.

3. The provisions of the law of insolvency should be so simplified as to suit rural conditions and embodied in a special Rural Insolvency Act as suggested by the Royal Commission on Agriculture.

If we now examine the provisions of this Act in the light of these recommendations we find that the Bombay Legislature has

encouraged voluntary settlement, though not through Co-operative Societies, by enacting SS. 23 and 24, made provisions for compulsory settlement in SS. 48 to 52 which are applicable after accounts of the principal and interest are taken under SS. 38 to 46 on specific lines which include reduction of both, in the case of loans taken before 1-1-31 by 30 and 40% respectively according as the loans were taken during the course of the preceding year only or before that and that although it has not passed a special Rural Insolvency Act applicable to all rural debtors indiscriminately, it has enacted SS. 68 to 72, which constitute Chapter IV of the Act, relating to *Insolvency Proceedings* whereby the Board is required to declare a debtor whose debts have been scaled down to be an insolvent if certain conditions are fulfilled and the Court is empowered to declare an insolvent a debtor against whom an award was made but who was not able to pay a certain number of instalments. As regards the introduction of the system of licensing money-lenders, the then Government of Bombay had drafted a very thoughtful bill containing 42 sections divided into 5 chapters, in the year 1938 (Bill No. VII of 1938) but owing most probably to the opposition of the representatives of the money-lending classes and bodies, it could not get it passed into an Act till it laid down office. However a reference to Rules 37 to 39 made by the present Provincial Government with respect to the grant of authority to advance loans under S. 78 to debtors who are parties to awards made under this Act will show that for that limited purpose the said Government has acted on the principles underlying Chapters III and IV of the said Bill. Lastly, a reference to the definition of the term "debtor" as contained in S. 2(6) of this Act read with its two explanations, with SS. 2(5) and 2(13) thereof along with its two explanations and with S. 20 thereof will show that the Legislature has acted on the principle suggested by the Provincial Committee for redrafting the definition of the term "agriculturist". The two other suggestions of that Committee are only repetitions of those of the Central Committee on the points to which they relate.

IV.

It will have appeared from this short history of this piece of legislation that the main principles on which it has been drafted had been settled by the Banking

Part played by the Congress Government in it.

Inquiry Committees above-mentioned in 1930 and 1931 as recommended by the Royal Commission on Agriculture in 1928 and that therefore the credit which can be given to the Congress Government of 1937-39 in connection with this measure is that it took up the question of giving statutory relief to the agricultural debtors of this province in right earnest, made the principles laid down by the said Committees the foundation of its own policy, implemented and at places even supplemented them where necessary while investing them with a legislative garb, defended them where it could, and modified them where it was persuaded that it should while the Bill was before the Select Committee constituted of the representatives of both the money-lenders and the agriculturists and its own, adopted the same attitude when it came before the Assembly for its second reading and with the support of its unquestioned majority therein carried it through in a form so modified as to leave no ground for complaint to both the rival interests and as to withdraw all opposition at its third reading.

It has been criticised by some persons that the measure had been carried through hurriedly because the Congress Government had decided to carry it through before it laid down office, which it expected every moment to do. My study of the minutes of the Debates in the Legislative Assembly, 1939, Volumes V, VII and VIII has however convinced me that such a charge is wholly unjustified. And I have my reasons for that conviction. It appears from the minutes of the Debates in the said Assembly that the Bill had very probably been put into shape somewhere about February or March 1939, that it was placed before the Assembly for its first reading on 4th April 1939 and referred to a Select Committee constituted as above-stated after a considerable discussion on the underlying principles, that it was returned by that Committee in an appreciably modified form on 25th September 1939, that at its second reading it was discussed clause by clause and even at times sub-clause by sub-clause, hundreds of amendments to clauses, sub-clauses and even words, figures and dates were proposed, discussed and either accepted or put to the vote, that out of the latter a few were passed and the rest rejected and that the whole process had lasted for one full month ending on 25th October 1939. It is true that the Government of the day had not taken much time to get the Bill passed by the Legislative Council and that too in the same form in which

it had been sent up by the Legislative Assembly. That must however have been due to the representatives of both the parties in that Council having been satisfied that their colleagues in the Assembly had exerted themselves to the best of their capabilities to get the provisions of the Bill modified in the interest of their constituents. The facts that H. E. the Governor recommended it for assent and that H. E. the Governor-General gave it even after the Congress ministry had laid down the reins of office, is proof positive of their being satisfied that the Assembly had been given by the Provincial Government of the day sufficient time to consider all the provisions of the Bill carefully and patiently. And now that it has been placed on the Statute-book the present Provincial Government has rightly considered it its duty to give it a fair trial because it is an experiment on a line quite different from those on which the previous ones made with the same objective had been framed. This departure was necessary because the previous ones have failed in their purpose as found by the Royal Commission on Agriculture and recorded at pp. 431-43 of their Majority Report, after a careful examination of all the legislative expedients so far adopted. It is not impossible that some defects may be found in it which may not be curable by the application of the canons of construction by the Boards or the Courts concerned or by the addition of new rules which the Provincial Government has power to make from time to time under S. 83. Such defects will have to be left to be cured by an Amending Act when practical experience proves their existence.

V

The nature of the remedy provided by this Act is that creditors as well as debtors are given by S. 19 of the Act the right to call upon the other party by a notice in writing to file a statement of particulars before a competent Board as to what he believes to be due by or to him to or from the party giving the notice and to supply him with a copy of such statement. It is not necessary for this purpose to make any application to the Board itself or to incur any more expense than is absolutely required to send the notice by registered post to the party concerned and a copy thereof to the Board. Any

Remedy provided by the Act.

party availing himself of this right is not also under any legal obligation to start any proceeding under this Act after the notice has been complied with. However by availing himself of it he will be put in possession of the necessary information which would enable him to decide whether he should make overtures for an amicable settlement of the dispute, if any is found to exist between him and the other party or to make an application to the Board under S. 17(1) or (2) as the case may be, for an adjustment of the debt. If there is no dispute or if there is one but it is amicably settled by negotiations directly between the parties or through mediators, any of them may within 30 days of the settlement of terms make an application under S. 23(1) for getting it recorded and certified. The Board would thereupon make such inquiry as is necessary to satisfy it that the debtor in the application is a debtor under the Act, that the total debt due by him did not exceed Rs. 15,000 as calculated upto 1-1-39 and that the application has not been made in order to defeat or delay other creditors of the debtor, record and certify the settlement. It would then call upon the debtor to declare whether there are any other debts not included in the settlement and if it is satisfied that there are none, proceed at once to make an award under S. 54 in terms of the settlement. If it has reasons to believe that there are such other debts, it would treat the application under S. 23 as if it were one under S. 17 and proceed accordingly to adjust the other debts, leaving the settlement already recorded and certified untouched and incorporating it in the award under S. 54 which it would ultimately pass, unless it is found to be collusive.

If no settlement takes place, the party giving the notice would be entitled to file an application under S. 17(1) or (2) as the case may be, in the form prescribed by the Rule 15 of the Rules made under this Act which is either Form No. 1 or No. 2 according as the person proposing to make the application is a debtor or a creditor. The forms are so drafted as to satisfy the requirements of SS. 17, 18 and 22. Even after such an application is filed, if the parties to it, *i.e.* the debtor and all his creditors, are able to settle the difference between them amicably so as to avoid coming under the other provisions of this Act, they can inform the Board of it under S. 24 and if it is satisfied that the debtor has made it voluntarily and that it is for his benefit, it would make an award in terms thereof

on payment of a court-fee of Re. 1 only instead of that payable under S. 60 in the case of an award made under S. 54 or 55, and transmit it to the Court for registration and on the Court registering it it would be executable as a decree of the Court under S. 63.

If and so long as no such settlement is arrived at, the Board must proceed as provided in this Act. The first step it has to take is to issue notices under SS. 31 and 47 with a view to collect the necessary and reliable materials for making an award under S. 54. The notices to be issued under S. 31 are to be served on the debtor if he is not the applicant and on all his creditors or if one of them happens to be the applicant on all his other creditors including those who had advanced loans for the financing of crops after 1st January 1939. Those under S. 47 are to be served on the Provincial Government and the other claimants, if any, mentioned in S. 3 except the crop-financiers of the class above-mentioned. Those who are served under S. 31 are required to file statements in the prescribed forms which are the same as those for the statements to be filed under S. 22. As the Board has to do nothing with regard to the claims of the creditors mentioned in S. 3 on whom notices are to be served under S. 47, on receipt of replies from them, except to utilise them while determining the value of the property of the debtor and his paying capacity and making an award, we will leave them for the present and proceed to consider what it is required under the Act to do on receipt of statements from the creditors served with notices under S. 31.

The next step that it has to take on receipt of such statements is to decide the two preliminary points mentioned in S. 35. In order to enable it to do so it would have before it the statements filed under SS. 22 and 31 and it has further been invested by SS. 33 and 34 with sufficient powers to examine parties, call for books of account and other necessary documents, summon and examine witnesses and pass all the necessary orders. If it comes to the conclusion that the debtor in the application is not a debtor as defined in S. 2(6) read with its explanations, S. 2(5), S. 2(13) together with its explanations, and S. 20 or that the total amount of his debt as calculated upto 1st January 1939 exceeds Rs. 15,000, it must dismiss the application and under S. 36 refund the court-fee paid by the creditor if he is the applicant. The party aggrieved by an order of dismissal under this section has a right under S. 9(2) to

appeal to a competent Court. If he does not succeed there too, he can submit to the order or seek his remedy under the ordinary law and under S. 75 he would be entitled to exclude the period *bona fide* spent in pursuing his remedies under this Act. If on the other hand its decision on both the points is favourable, it must proceed further.

The further step it is then required to take is to take accounts as directed by S. 38 after examining parties as required by S. 39 and making an inquiry into the history and merits of the case as provided in S. 40 to which S. 41 lays down an exception in the case of a debtor making a true and voluntary admission of a claim. While making the said inquiry it is required to go behind all agreements between the parties as to the mode of making up accounts and all settlements made between them but if the transactions between them had commenced more than 20 years before the commencement of the operation of this Act any settlement of accounts which may have been arrived at before the said period of 20 years and is in writing signed by the debtor or the person, if any, through whom he may have derived his liability, that settlement must, according to the proviso to S. 40, be respected and accounts of the transactions since the date thereof only need be taken. The principal features of the mode prescribed by S. 42 are set out at length in the commentary on that section. The one that requires special emphasis here is that if on making up accounts of the principal and the interest separately, it is found that on the date of the application a larger amount of interest than that of the principal is due, it should be cut down to such an extent as to make it equal to that of the latter. The aggregate of both thus arrived at is to be taken as due on the said date.

It has been stated above that the Board has to give a notice to certain creditors under S. 47 with a view to get replies from them. They are those mentioned in clauses (i) to (iii) and (v) of S. 3. Rule 26 gives them a period of three months from the date of service of the notice on each of them respectively within which to give their replies. Hence by the time the Board has taken all the necessary steps with regard to the claims of the other creditors except the crop-financiers of the class mentioned, upto the stage of the scaling down of debts, if and in so far as necessary, replies will

have been received from the said privileged creditors. Thereout the Provincial Government through the Collector and the Co-operative Societies are expected to intimate not only what amounts are due to them but also how far they are prepared to make remissions thereout. The amounts due to the Local Authorities, if any, the said crop-financiers if any, and the maintenance decree-holders, if any, are to be held fully payable while out of those which may be due to Government and the Co-operative Societies those only are to be held payable which may be left after deducting the amounts of remission which they may have expressed their willingness to make. All these amounts are to be taken into consideration while taking the next two steps.

Those steps are the ascertainment of the value of the assets of the debtor and his paying capacity. For doing the former definite principles are laid down in S. 50 of the Act and the Provincial Government has supplemented them by Rule 27 which it had been empowered by sub-section (5) of that section to do. For doing the latter similar principles are laid down in S. 51 of the Act. And since it may be found in some cases that the debtor had under pressure passed a sale-deed with respect to a property of his on the security whereof he had borrowed some money from a money-lender who may or may not be his old creditor, S. 45 has empowered the Board to set aside such bogus sales and treat them as mortgages. It may also turn out that a debtor had made an alienation or created a bogus incumbrance in order to delay or defeat his creditors. Section 49 has therefore empowered the Board to treat such alienations and encumbrances as void and to refuse to take them into consideration while determining the value of his available assets and his paying capacity.

This is to be done with a view to see whether it is or is not necessary to scale down the debts of the debtor as provided in S. 52 read with S. 56. This scaling down once done is final according to S. 53, not only as regards any further proceeding before the Board except as provided in S. 57 but also as regards any action which may be maintainable in future in any Civil Court.

This is followed by an award under S. 54 in the form prescribed by Rule 28(1). The Board can, before taking that final step, put the creditors to the option of suffering an award for the debts as scaled down to be passed or of agreeing unanimously to submit

to a further scaling down of their debts *pro rata* so as to bring their total amount to a sum not exceeding 50% of the value of the immovable property of the debtor and to receive Government-guaranteed bonds for the respective amounts so due to them from the Bombay Provincial Co-operative Bank or any other bank which may be authorised in this behalf by the Provincial Government. If they do submit, the Board has to send the proposal for acceptance to the bank concerned and if it accepts it, to direct it to pass bonds accordingly and authorise it to recover the aggregate amount of the bonds from the debtor by passing an award in its favour under S. 55 in the form prescribed by Rule 28(2).

If any question of fact or law is required to be decided while carrying on the proceedings under this Act, upto the said last stage, the Board may decide it under the provisions of S. 6. If it entertains a doubt on any question of law or usage having the force of law that may arise, it can refer it for decision to the F. C. Subordinate Judge within the local limits of whose special jurisdiction it may have been established and on receipt of his decision make an award based upon it under S. 58.

Once an award is made it is final except as provided in S. 9 in Chapter II which allows an appeal to be filed against it to a competent Court and as provided in S. 57 which empowers a Board to re-open it if certain facts are proved. After making an award either under S. 24 or 54 or 55, the Board is required to send it for registration to the competent Court under S. 61, on recovering the necessary court-fee leviable in the case of those under SS. 54 and 55 from the party ordered to pay it. The Board thereafter becomes *functus officio* and whether the Court to which an award is transmitted registers it or not, the very fact that the Board has made it is under S. 59 sufficient to render invalid any claim on the part of a creditor to recover a larger amount than he is held by the award entitled to recover from the debtor.

The Court to which the award is transmitted is required to register it subject to the provisions of S. 62.

The effect of registration is that the award, under whichever section made, has the same legal effect as a decree of the Court registering it and is executable as such by that Court. That does not, however, restrict the rights under other laws of Government, or a Local Authority or a Co-operative Society to recover its dues in

any other manner or that of the bank concerned in the case of an award made under S. 55 to recover the amount mentioned therein in the manner provided by S. 55(3).

The execution of an award by the Court is made subject to the provisions of S. 64 which require postponement of execution to be made if Government has suspended or remitted the collection of land-revenue to the extent of one-half or more than that in any year.

The rights of creditors under the award are safeguarded by the prohibition by S. 65 of any alienation of his property by a debtor while the debts mentioned in the award remain unsatisfied, except with the permission of the Provincial Government and by introducing a system of licensing of money-lenders under S. 78 for the purpose of giving loans to such debtors for the financing of crops while their rights and those of resource societies to whom the debtors may be indebted are further safeguarded by prohibiting by S. 77 any alienation of standing crops by them without their permission and making it an offence to do so or to permit any debtor to do so. If any creditor alleges that he had suffered by the amount due in respect of the loan advanced by him to a debtor having been cut off under the provisions of this Act, the Board is directed to grant him a certificate under S. 76 which the Civil Court can take into consideration while allowing interest and instalments in a suit against that creditor.

As the Board is not concerned with execution proceedings it cannot ordinarily order a sale of the debtor's property or of any portion of it. However the provisions of S. 66 invest it with a discretionary power to order the sale of a portion of his property for the liquidation of his debt or any portion of it if it is satisfied that it is in his interest to do so. This power is exercisable at any stage of the proceeding before it. The Court before which an appeal lies against an award is also invested with the same power which it can exercise at any stage of an appeal.

One remarkable provision in the Act in connection with proceedings before the Board is that contained in S. 67 which is to the effect that no pleader, vakil or mukhtyar and no advocate or attorney of a High Court can, as of right, appear before it on behalf of any party. This prohibition is however subject to two provisos, one of which allows a Board to permit a party to appear by any of

them at his own cost, if after examining the parties, it is of opinion that it is a fit case as defined in the section for granting such permission and the other of which permits a woman exempted from personal appearance in a Civil Court under S. 132 of the *Civil Procedure Code* to appear by an agent duly appointed in that behalf, who may or may not be a member of any of the above classes. There is no prohibition in this section against the appearance of professional lawyers before the Courts which have to discharge certain duties under this Act such as the execution of award-decrees, receiving and hearing certain appeals, considering points of law or usage having the force of law referred by a Board for decision etc. It is also remarkable that this is not one of the sections which have been extended to the whole province and that therefore if any question arises under this Act in any suit or proceeding before the Court of any area to which the remaining sections are not extended and in which they are not put into force lawyers can appear before such Courts for there is not any other provision in the Act directly or indirectly prohibiting the appearance of lawyers in such cases.

Now the Board may, after the paying capacity of a debtor is determined, and his debts scaled down as provided in SS. 51 and 52, be in a position to determine whether he would or would not be able to pay up his debts by annual instalments not exceeding 25 in number which is the maximum number of instalments by which they can under S. 54 be ordered to be paid up. If it comes to the conclusion that he can, then only it has to pass an award under the said section. If its conclusion is that he cannot, it should not act under that section but under S. 68(1) which requires it to declare the debtor to be an insolvent, whether he likes it or not and whether any of the creditors does or does not pray for such a declaration being made.

Similarly the Court to which an award is transmitted for registration and execution, after the Board has made it, may find in the course of an execution proceeding that any three or two consecutive instalments out of those fixed by the award cannot be recovered by the sale of the movable property of the debtor. In such a case the Court too is authorised to pass of its own motion, if it thinks it proper to do so, an order adjudicating the debtor in the award to be an insolvent under S. 68(2).

The order of adjudication, whether made by the Board or by

the Court, operates as an order of adjudication made by a competent Court under S. 27 of the *Provincial Insolvency Act, 1920* and thereupon the other provisions of that Act so far as they are applicable and are not modified by those of Chapter IV of this Act become applicable to the case of that debtor according to S. 69 of this Act. But since all the necessary inquiries as to the liabilities and assets of the debtor must have been made before the stage at which the said order could be made either by the Board or the Court nothing remains for any of them to do except to order the sale of the debtor's property for distribution amongst his creditors. S. 68(3) accordingly provides that after making the order, the Board or the Court as the case may be shall direct that one-half of the property of the debtor liable to be attached and sold under S. 60 of the *Civil Procedure Code*, be sold free of all incumbrances and that if after its sale it is found that the debtor remains in possession of more than 6 acres of irrigated land or more than 18 acres of dry land or land assessed at more than Rs. 30, whatever its kind, whichever is greater, the Board or the Court shall further order the sale of the property in excess of that limit free of all incumbrances.

The next step after that would be that of the distribution of the net sale-proceeds amongst the creditors of the debtor. S. 70 directs the Board or the Court, as the case may be, to do that with due regard to the order of priority mentioned in the provisoes to S. 54(2) (g).

Lest there may be a conflict of jurisdictions, S. 71 prohibits any other Court from entertaining or proceeding with an application relating to the insolvency of that debtor and in order to cut the matter short, S. 72 bars appeals against orders passed by the Board or Court under this Chapter except on the ground of a non-disclosure by the debtor of any material facts relating to his assets or liabilities.

The Board frequently referred to in the above description of the remedy is the Debt Adjustment Board which may be established under S. 4 of the Act by the Provincial Government for any local area or for any class of debtors in any such area and may consist of either one individual who may be or has been an officer of Government assisted by not more than four assessors or a body or association of persons or a number of persons not less than three and not more than five in number, one of whom is to be the chair-

man and another the vice-chairman of the Board. The Board constituted in any of these manners is according to S. 15 under the control of the First Class Subordinate Judge within the local limits of whose special jurisdiction it may have been established, for administrative purposes. It is also under the judicial control of the Court of that Subordinate Judge and the District Judge or Joint Judge specially empowered under S. 17(4) to the limited extent mentioned in SS. 9, 17(4), 29, 55(4), 58(2), 62 and 72. However subject to these limitations, the Board has ample powers to grant the relief contemplated by this Act and to decide all incidental questions of law or fact or mixed law and fact that may arise in the course of the proceedings before it according to S. 6, the chairman and members thereof are "public servants" within the meaning of S. 21 of the *Indian Penal Code, 1860* according to S. 80, all the proceedings before it are, according to S. 8, "judicial proceedings" for the purposes of SS. 193 and 228 of *the said Code* and its chairman and members and other officials are according to S. 81 free from all civil and criminal liability in connection with all acts done or intended to be done by them in good faith under this Act. It has also been invested with powers by SS. 33 and 34 to summon and examine any persons whom it considers necessary to examine and to call for any documents which it considers material and any criminal offences committed in connection with orders made for such purposes are punishable under S. 82.

The "Court" referred to in the above remedy is either the Court of the First Class Subordinate Judge or the District Court. Which it is in a particular case has to be determined by a reference to S. 2(4).

VI

The above-mentioned remedy is primarily intended for the benefit of those persons who answer to the description of a "debtor" under this Act given in S. 2(6) read with its two explanations and along with S. 2(13) and its two explanations which define what is meant by the expression "to cultivate personally", which forms part of the definition of "a debtor" and with S. 20. Accordingly not only individuals but also undivided Hindu families who are indebted to others, who hold land used for agricultural purposes

Persons to whom
the remedy is
available.

and have been cultivating such land personally as defined in S. 2(13) read with its explanations from a date prior to 1st April 1937 and whose annual income from non-agricultural sources does not ordinarily exceed 20% of their total annual income or does not exceed Rs. 300, whichever is greater, in the case of individuals and does not ordinarily exceed 20% of the total annual income or does not exceed Rs. 500, whichever is greater, in the case of undivided Hindu families, are "debtors" under the Act. Not only that. The term "agriculture" includes for this purpose "horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock-breeding and grazing of cattle, sheep etc." but does not include "the leasing of land or, cutting only of grass or wood." Hence all debtors who do any of the things which are included in the term "agriculture" can count their income from such sources as income from agricultural sources. Further "to cultivate personally" does not mean merely to cultivate by one's own manual labour but also by that of a member of one's family or by servants or by hired labourers working under one's supervision or under that of a member of one's family. Widows, minors or disabled persons surviving a deceased person who was cultivating land personally and an undivided Hindu family getting land cultivated by any of its members or if there is no adult male member in it by servants or hired labourers, all get the benefit of being "debtors" under this Act. Lastly, although there is the condition that the person or family must be cultivating land used for agricultural purposes from a date prior to 1st April 1937, that condition is to be deemed to have been satisfied if the person or family had been cultivating such land on 1st April 1937 and if even though he may have been evicted from it subsequently, he is cultivating the same or any other land personally at the date of the application under S. 17 or 23.

Further, when it is said that a man may be indebted to another it is meant according to the definition of "debt" given in S. 2(5) that his liability may be either in cash or in kind, that it may be a secured one as defined in S. 2(12), or an unsecured one and that it may be due under a bond, pro-note or any informal note or only under an oral undertaking to discharge it in a particular manner and at a particular time. Hence all those persons who are indebted to others in any of those manners are included in the term "debtor" under this Act.

Lastly it is not necessary according to S. 20 that the liability in the case of a particular debt as above-mentioned should be resting on only one individual or undivided Hindu family. It may have been guaranteed by a surety who is not a debtor under this Act or it may be falling to the same extent as on the debtor, on any other person who is not a debtor under this Act. This is to say that although the debtor may be jointly and severally liable in respect of the debt along with a non-debtor who may be either a surety or a joint debtor still the debtor himself can take advantage of this Act.

Now there may be a case in which a debt may have been originally incurred by a non-debtor but somewhere before the date of an application under S. 17 or 23 it may have been transferred or assigned to one who is a debtor under this Act. For such a case S. 21 provides that if the transfer or assignment had taken place upto 1st January 1938, the debtor under the Act to whom the debt may have been transferred or assigned can make an application under any of the sections 17 and 23 but that if it had taken place after that date then he cannot.

There is one limitation applicable to all the persons who are debtors under this Act as above-explained. It is imposed by S. 26 of the Act and is to the effect that the total amount of debts due by any single debtor, whether an individual or an undivided Hindu family, must not have exceeded Rs. 15,000 on 1st January 1939.

It can thus be seen that while the definition has been made sufficiently comprehensive to extend to all those persons whose principal source of livelihood is agricultural income earned by manual labour, sufficient care has at the same time been taken to exclude from it men with very extensive liabilities, those with ample other means of livelihood and also those who resort deliberately to a camouflage in order to get the special advantage which it was the intention of the Legislature to give to *bona fide* agriculturist only.

Besides such debtors, creditors too are entitled to make applications under SS. 17 and 23 if they can be made in respect of their claims. It is obligatory also on them to do so because any debt within the said limit in respect of which no application has been made under any of the sections although it may be due by a debtor under this Act as explained above, is void under S. 32. They have therefore to be particularly vigilant and to call for the necessary

information under S. 19 in order to ascertain whether their debtors are or are not debtors under the Act and whether the total amount of debts due to each of them is or is not within the limits prescribed by S. 26. They may at the most wait for the first 12 months to see if their debtors make any applications, for in that case they can get the benefit of the proviso to S. 54(2) (1) which provides for allowing them costs if the debtors have not made any applications against them for that period.

It is remarkable that S. 2(6) does not make it an express condition of one being deemed a "debtor" under the Act that he should be actually residing within the particular areas for which Debt Adjustment Boards are established although he must have agricultural land in such an area and must be cultivating it personally within the meaning of S. 2(13). It therefore appears that even if a person answering to the description of a "debtor" under the Act as defined in S. 2(6) read with SS. 2(5), 2(13) and 2(20), together with such explanations as the first and the third have, *actually resides outside a local area* for which a Board is established *e.g.* in the City of Bombay to which S. 4 is not but SS. 1 to 3, 7, 17 and certain others are extended and applied, he can make an application under any of the said two sections.

VII

It must be particularly noted here that the remedy provided by this Act is not available to the debtors and creditors for an indefinite period. For the debtors to make an application under the provisions of S. 17(1) of the Act, it fixes a time-limit of 18 months from the date of establishment of a competent Board. By S. 17(2) it also applies the same time-limit in the case of applications under that section by creditors. Similarly the time for making an application under S. 23 is one month from the date of the alleged settlement of a debt both in the case of debtors and creditors. If there is no competent Board when it is arrived at, the limit would be one month from the date of its establishment. If there is one at that time but one month has not elapsed by then since its establishment, the applicant would get so much more time than one month as may have elapsed before the

Time-limit for availing oneself of the remedy.

date of settlement. Moreover since S. 74 extends the provisions of the *Indian Limitation Act, 1908*, to proceedings under this Act, save as otherwise provided in this Act, the Board would have the discretion to admit both the kinds of application after the lapse of the prescribed period if sufficient cause for the delay is shown within the meaning of S. 5 of the said Act.

VIII

In view of the nature of the remedy and the conditions attached to the use that can be made of it, a question arises whether it is open to a creditor who has a claim against a person who is a debtor under this Act, to ignore this remedy altogether and resort to an ordinary Civil Court for the recovery of his debt standing against such a person and to a debtor to do the same and resort to his remedy in such a Court. This question has to be answered by a reference to several sections of this Act. In the first place, there is no section in the whole of this Act prohibiting a person so inclined from doing so or prohibiting an ordinary Civil Court from taking cognizance of any suit or proceeding started by such a person under the ordinary law. It is also true that the wording of both S. 17 and S. 23 is of a permissive nature and that what S. 73(i) and (iii) prohibit a Civil Court from entertaining or proceeding with are "suits and proceedings in respect of any matter pending before the Board or the Court under this Act" and "the recovery of any debt made payable under the award". This means that if a suit or proceeding does not relate to a matter pending before the Board or the Court or to the recovery of any debt which has not been made payable under an award made under this Act, the Civil Court can take cognizance of it. True S. 32 renders void all debts in respect of which no application under S. 17 or 23 though it could have been made within the prescribed periods, has in fact been made or if made it has been subsequently withdrawn under S. 27 or an order made wherein under S. 31 has not been complied with and to that extent it is compulsory to submit to the jurisdiction of the competent Board. It is equally true that S. 37 directs all Civil Courts to transfer all pending suits and applications for execution in which the question involved is the recovery of any

debt from a person who is a debtor under this Act and even all proceedings arising in or out of such suits or applications, if such person ordinarily resides in any local area for which a Board is established under S. 4 or belongs to a class of debtors for which a Board is established under that section and if the total amount of debts due from such a debtor is not more than Rs. 15,000, to the respective Boards to which applications for the adjustment of such debts would lie. But, that section cannot be held to imply a direction to the Courts not to entertain suits or applications for execution which may not be pending at the date of coming into force of this Act provided they are otherwise maintainable. The only restriction on their maintainability is contained in S. 85. Sub-section (1) thereof lays down that from the date on which a Board is established in any local area, the *Dekkhan Agriculturists' Relief Act, 1879*, shall cease to have force in that area but this is subject to the reservation contained in sub-section (2) thereof according to which the rights acquired and liabilities incurred with respect to the debts owed by persons who are debtors under this Act and in respect of whose debts applications can be made under SS. 17 and 23 with due regard to the provisions of S. 26 are enforceable so far as their enforcement is not inconsistent with the provisions of this Act including those of S. 37 thereof. This means that if a suit or proceeding is maintainable under any law other than that contained in the D. A. R. Act, the Civil Courts are not debarred from taking cognizance thereof. On the other hand, since the reservation is so worded as to render the repealing provision unreservedly effective in the local area for which a Board is established but to leave unaffected the terms and incidents of contracts made or effected, the validity, or invalidity, effect or consequences of anything done or suffered to be done, any right, title, obligation or liability acquired, accrued or incurred, any remedy or proceeding that could be resorted to in connection with such right etc., before the date aforesaid and anything done in the course of any proceeding pending in any Court on the said date and permits of any such remedy or proceeding being enforced, instituted or continued so far as such enforcement, institution or continuance is not inconsistent with the provisions of this Act including S. 37 thereof which, directs the transfer of certain pending suits and applications for execution and incidental proceedings and extends to the whole province, it follows

that although no suit or application can be filed with respect to contracts made or any rights or obligations acquired or incurred since the said date in the above-mentioned area, any of them may be filled with respect to contracts made or rights or obligations acquired or incurred before that date and may be proceeded with in such a manner as not to contravene any of the provisions of this Act. And in spite of the provisions of S. 37 certain suits such as suits for the recovery of possession of property can even be continued because the question of recovery of a debt due from a debtor under this Act cannot be held to be involved in such suits.

The said repeal also leaves unaffected by virtue of the temporary provisions of S. 86, the rights and obligations acquired and accrued prior to the establishment of a Board in an area, of those persons who are either not debtors under this Act or the total amount of whose debts on 1-1-39 exceeded Rs. 15,000, to such an extent as to permit of the institution of suits with respect thereto within 3 years of the date of establishment of a Board for any local area and the continuance of proceedings arising in or out of suits instituted before such period, till their termination.

IX

The reference to the repeal of the *D. A. R. Act* with the said reservations, brings to the fore the question how far the passing and operation of this Act are likely to result in a change in the existing law on the matters touched by it.

Naturally the most material change that this Act is likely to effect is in the law as to the relation between a debtor belonging to the agricultural class and his creditors. It is this. The special object of protection and care under the *D. A. R. Act*, was an "agriculturist" as defined in S. 2 of that Act. That definition was found by long experience in several districts to have been so loosely-worded as to extend the benefit of that Act to persons who were not *bona fide* agriculturists but managed to be held so by taking advantage of that looseness. Nobody however denied that some of the sections of that Act had been based on very sound principles e.g. SS. 7, 10A, 12 and 13, 13A, 15A, 15B, 15C, 15D, 16, 20, 22, 68, 69, and 71A but it was almost universally recognised that both the debtors and the creditors had been resorting to dishonest practices in order to

take advantage of them and that therefore some changes tending to stop them were absolutely necessary. There was however a difference of opinion amongst the experienced men as to whether the Act should be suitably amended or whether it should be wholly repealed and replaced by quite a new enactment framed in the light of experience. The Bombay Provincial Banking Inquiry Committee considered both the views carefully and recommended its total repeal and substitution by such a new enactment. It also recommended certain broad lines on which it should be based and particularly recommended that the definition of the term "agriculturist" should be so framed as to give the benefit of the enactment to *bona fide* agriculturists whose income from any side-occupation of a non-agricultural character, if any, should not exceed a definite moderate limit. Besides the above provisions, there were some in Chapter IV of the old Act as to *Rural Insolvency* applicable to the four districts of Poona, Satara, Sholapur and Ahmednagar. Not only the said Provincial Committee but even the Royal Commission on Agriculture had found that those provisions had become practically a dead letter because they were only of an optional character and an Indian villager was averse to making use of them for fear of social opprobrium or owing to an obsession generated by religious prejudices. Both the bodies had therefore recommended that the necessity of a law of rural insolvency suitable to this province should be considered in order that the indigent agriculturist debtors can be declared to be insolvents without their consent. The Indian Banking Inquiry Committee had endorsed the view of the Commission and the Provincial Committee. Lastly, as a safeguard against the recrudescence of the chronic disease of indebtedness which had been eating into the vitals of the social and economic fabric of the rural parts of the country, the Royal Commission had also suggested an inquiry into the causes which had contributed to the failure of the *Usurious Loans Act, 1918* and had in order to establish control over the questionable practices of the professional money-lenders in each province suggested legislative action on the lines of the *English Money-lenders Act, 1927* and the then *Punjab Regulation of Accounts Bill*. By the time the Bombay Provincial Banking Inquiry Committee made the necessary inquiry in this province and drafted its report, the then Punjab Government had already got the said Bill passed and placed it on the Statute-book of the province as *Punjab Regulation*

of *Accounts Act, 1930*. It had therefore recommended action on the lines of the Punjab Act and the Central Committee had endorsed that recommendation in 1931 and ruled out the possibility of an amendment of the *Usurious Loans Act, 1918* serving the end in view.

These recommendations except that as to the repeal of the *D. A. R. Act* were of a character applicable to all the provinces of India and the Governments of several other provinces constituted under the *Government of India Act, 1919*, had taken them into consideration since 1933 and having drafted Bills suited to their respective local conditions, got them passed into Acts and put them into operation before the Governments were re-constituted under the *Government of India Act, 1935*. If and where experience proved that the provisions of some of them were defective in any material particulars, they had drafted and got passed some amending Acts also.

The Government of Bombay seems to have turned their attention seriously to the said recommendations in 1938 and as the first step towards implementing them got a temporary measure called the *Bombay Small Holders Relief Act, 1938* passed by the Legislature, hoping to replace it within a short time by a relief measure of a permanent nature. It also drafted the *Bombay Money-lenders Bill, 1938* with a view to bring the business of money-lending under control. It was a fairly long Bill containing 42 sections divided into 5 chapters and sought to introduce a system of the licensing of money-lenders whose working was intended to be watched by a Registrar and empowered the Provincial Government and the Courts to inflict penalties for the breach of any of the conditions of the license which may come to their notice. It thus sought to establish both administrative and judicial control over the money-lenders "following the lines of the *English Money-lenders Act of 1927*, with such additions as can usefully be borrowed from the different Provincial Acts in India" as the Hon'ble the Home Minister who moved its first reading, put it. The Provincial Acts drawn upon by him seem from the *Bom. L. A. Debates, 1938, Vol. II, p. 663* to be the *Punjab Regulation of Accounts Act, 1930*, *Bengal Money-lenders Act, 1933*, *Assam Money-lenders Act, 1934*, *Central Provinces Money-lenders Act, 1934* and *Madras Debtors' Protection Act, 1934*. Two private bills brought into the Bombay Legislative Council in 1933 and 1935 also appear to have been consulted. The Government of the day had not lent their support to the Bills and they had failed but the Congress Government

of 1938 seems to have made use of them as they had been framed by a popular member on the lines of the recommendations of the Royal Commission on Agriculture and the Banking Inquiry Committees and the Acts passed in the other provinces. But the Congress Government too had thought it wise to "propose to have it referred to a Select Committee which may take its own time to report" and to circulate it amongst different authorities and commercial bodies for their opinion, because "it would not be proper to place on the Statute-book a measure of this important character unless it was fully discussed by the whole province and all points of view properly and duly placed before the Select Committee." That committee had originally been given 2 months' time to make a report by a resolution dated 29th January 1938. Further extensions were granted till 15th March 1939, and since then the name of this Bill does not appear in the Reports of the Debates in the Legislative Assembly. On 4th April 1939, the Government had however introduced *Bill No. XIII of 1939*, which has now become the present *Act XXVIII of 1939*.

That Act in the areas for which Debt Adjustment Boards may be established replaces the *D. A. R. Act* as to transactions entered into by "debtors" under the Act after it comes into force, but leaves its operation unaffected as to those entered into before it to the extent mentioned and having repealed SS. 3 to 8 of the said *Bombay Small Holders Relief Act, 1938*, revives the rights, liabilities and remedies which had been suspended by S. 11 thereof for the time being, except so far as they are inconsistent with any of its provisions.

Although thus the method of business of the money-lenders has not yet been brought under administrative and judicial control and the future relations between them and the debtors whether of the agricultural or non-agricultural class are not affected by that Act, the transactions so far entered into between them and the debtors coming within the limit imposed by S. 26 and the results that would otherwise have flowed from them will be considerably affected on account of several substantial changes made by this Act regarding them. It is true that it is not an amending Act but a repealing Act and will therefore have to be construed by itself. Nevertheless, it is necessary to know what is now the law under it as compared with that which was the law under the repealed Act so far as debtors

under the Act are concerned. The points on which there is a marked difference between them are :—

(1) The *D. A. R. Act* had been passed at the instance of the Government of India as early as 1879 when there were no Provincial Legislatures and no Indian Members either in the Government of India or in the Provinces. Sections 1, 11, 56, 60 and 62 were therefore made applicable to the whole of British India but the rest of the Act was extended only to the districts of Poona, Satara, Sholapur and Ahmednagar in this province and the Provincial Government was invested with power to extend it wholly or partially to any other district therein or part thereof. The old Bombay Government had made use of this power to extend the provisions of some of its sections only to other districts step by step, but it had never done so in order to extend the whole of the Act to any other district or any part of it. Twenty-six sections of this Act on the other hand have been extended by the amended S. 1(2) to the whole province and the Provincial Government has power under the amended S. 1(2) to extend the remaining provisions of the Act to any area other than the City of Bombay.

(2) The title of the Act of 1879 was the *Dekkhan Agriculturists Relief Act* while that of the present one is the *Bombay Agricultural Debtors Relief Act*. Accordingly whereas it was necessary under the former to define the term "agriculturist" and it did so by S. 2 thereof, it was necessary under the latter to define the term "agricultural debtor" and it has done that by defining the term "debtor" in S. 2(6) and as this definition is so worded as to make it necessary to define what is a 'debt', what is meant by "agriculture" and what it is "to cultivate personally", those terms have been defined in S. 2(5), Explanation 1 to S. 2(6) and S. 2(13). The combined effect of these definitions is to extend the benefit of this legislation to many more persons than those who got the benefit of the old Act and to restrict it to those who were bona fide agriculturists which is what the Bombay Provincial Inquiry Committee recommended to be done.

(3) Chapter II of the old Act made use of the already existing machinery of the ordinary subordinate Civil Court Judges so far as disputed heavy cases were concerned and Chapter V provided for the appointment of Village Munsiffs at suitable places for the disposal of the petty cases and that of Conciliators for that of the

uncontested ones. The appointment of conciliators under that Act had been stopped since 1911 but the Subordinate Judges and Village Munsiffs had been exercising jurisdiction under it and will continue to do so so far as they are permitted by the amended SS. 85 and 86 of this Act which will have to be construed in the light of the notification issued by the Provincial Government in the exercise of its power under the amended S. 1(3) thereof. As regards the areas in which that Government will put the sections other than Nos. 1, 2, 3 &c., mentioned in S. 1(3) into operation, the said Government will establish Debt Adjustment Boards for the whole of such areas or for any classes of debtors in such areas under S. 4 of the Act. Such Boards will by virtue of the other provisions of the Act acquire a jurisdiction of a special nature which they will exercise under the supervision and control of the First Class Subordinate Judges within the special limits of whose jurisdiction they may have been established.

(4) The procedure by way of suits maintained by the old Act has been given a go-by in this Act and a new procedure by applications has been provided for therein and the applications also are to be made under it for two purposes only namely (1) adjustment of debts and (2) recording the settlement of a debt. This remedy is a very cheaper one than that of a suit because on the application under S. 17, a court-fee stamp has to be affixed on treating it as a suit for accounts and on that under S. 23 one of Re. 1 only, and only one-half of the difference between the fee already paid and that leviable on a plaint in a suit to recover the amount held due by the award is payable under S. 60 in the case of an award being passed on making the full enquiry required by Chapter III in the case of applications under SS. 17 and 23 but no more fee is payable if a settlement takes place during the course of a proceeding under S. 17 except that of Re. 1. Further if an application of a creditor is held under S. 35 not to be maintainable on any of the two grounds mentioned therein, he gets back the court-fee paid by him. In spite of such facilities an award of the Board on being registered by the Court under S. 62 becomes executable as a decree of the Court under S. 63.

(5) Under the second proviso to S. 10A of the *D. A. R. Act* only a bona fide transferee for value without notice of the real nature of the transaction or his representative holding under a registered

sale-deed executed more than 12 years before the institution of the suit against him in which the transaction is called into question is exempted from the operation of that section. But under the corresponding sub-section (2) of S. 45 of this Act all those who hold properties under sale-deeds falling under the following three categories are exempted from the operation of sub-section (1) of that section namely :—

- (a) those relating to transactions entered into before 1st January 1927 *i.e.* more than 14 years before the commencement of the operation of this Act ;
- (b) those relating to transactions which relate to properties belonging to a debtor and purchased by third persons from the transferees of a debtor on or before 15th February 1939.

Decrees of courts holding sales to be absolute are also held inviolate in this respect, as under the *D. A. R. Act* read with S. 11 of the *Civil Procedure Code*.

(6) Corresponding to SS. 12, 13, 13A and 71A of the *D. A. R. Act* there are SS. 38 to 42 and 44 of this Act. The principles that in the case of disputed claims the parties should be examined, that an inquiry should be made into the history and merits of the case, that separate accounts should be made up of the principal and the interest, that the principal should be held to have been made up of only the actual advances made from time to time including the price of goods supplied, that interest should in all cases be simple, that it should be calculated upto the date of each payment, that if a payment is made in the form of agricultural produce, or any other kind of goods, or service rendered or if the creditor has gained any other material advantage these should be assessed at their money-value and the amount thereof should first be credited towards the interest and if any surplus remains it should be credited towards the principal and further interest should be calculated on the balance thereof thus left, that both the accounts should be made up upto the date of the action, that if it is then found that the amount of interest exceeds that of the principal, both should be equalised according to the Hindu law Rule at Damdupat and that their aggregate amount should be held to be that due by the debtor to the creditor, are common to both. There is one more principle also common to both and that is that while inquiring into the history and merits of the case from the time of the commencement of dealings between the parties

all agreements as to the closing up of accounts, the method of making up accounts and as to not making up any accounts as in the case of mortgages with possession &c. are to be set aside. This Act however introduces an important exception to it namely, that it holds inviolate a settlement arrived at more than 20 years before the date of the application if it is in writing signed by the debtor or the person, if any, through whom he derives his liability. This important exception will put an end to the difficulty felt in those cases in which neither the creditor nor the debtor has any personal knowledge of any previous transactions and the books with reference thereto had been destroyed on making a settlement. Another distinction is that as to the rate of interest. In both the Acts the principle underlying the provision with respect thereto is the same namely, that if the rate agreed upon is lower than the reasonable one, it must be accepted for calculation and that it must be cut down to a reasonable one if it is higher than that. But this Act differs from the older one in this that while the latter had left it to the discretion of the Court to determine what is a reasonable rate in each case, the present Act has for all the transactions entered into prior to 1-1-31 fixed the rate of 12% for making up accounts up to the end of 1930 and 9% for making up those for the subsequent period upto the date of the application and from the very beginning for those entered into from 1-1-31 onwards. As the prices of commodities have gone down considerably and the prevailing bank-rates fluctuate between $4\frac{1}{2}$ to 3% ever since the year 1931 as the result of a great economic upheaval which sent many of the countries of Europe off the gold standard and raised the price of gold by some 90 to 100%, the above rates for the monetary transactions in the rural markets cannot be deemed to be unreasonable. This Act has also made a departure from the previous law on the subject in two other matters namely, (1) that in the case of loans taken before 1-1-31 it directs by S. 42(2) (e) (i) that interest should be calculated upto that date and that thereafter 40% deduction should be made from the amounts of both the principal and the interest if the loans had been advanced upto 1-1-30 and 30% if they had been advanced after that date and that further interest should be calculated on the balance of the principal thus left. This may seem arbitrary but the Hon'ble Finance Minister who piloted the Bill containing such a clause, defended it on the ground that the prices of agricultural produce

had fallen down by about 40% since the harvest-season of 1931, that therefore the agricultural debtors were not able to pay up the debts which they would have paid up if they had obtained a fair price for their produce and interest had gone on accumulating as a consequence thereof and (2) that although in all other respects the decrees and orders of a Court as to the amount of any claim are sacrosanct under S. 46(1), they are subjected to the above-mentioned provisions of S. 42(2) (e) (i). Lastly, though the principle that profits at a reasonable rate must be charged to a mortgagee in possession who is not able to show what he had actually received in any year, is common to both the Acts, there is this difference between the exceptions contained in S. 13A of the *D. A. R. Act* and S. 44 of *this Act*, that whereas in the former abatement is allowable on proof of failure of crops only in any year it is allowable under the latter on proof of a certain amount of suspension or remission of rent or land-revenue having been granted by Government in that year under S. 84A of the *Bombay Land Revenue Code, 1879*.

(7) In S. 15A of the *D. A. R. Act*, it is provided that the Court shall not refuse to pass a decree for redemption in favour of a mortgagor on the ground that the time for the repayment of the principal money as agreed upon has not arrived or that the mortgage-debt has not been completely discharged or both. This provision was appropriate to a remedy by way of a suit for redemption of a mortgage. It could not be imported in the same words in this Act because of the difference in the nature of the remedy by way of an application for the adjustment of all debts due by a debtor. The underlying principle has however been adopted in the proviso to s. 54(2) (i) as regards the time for the delivery of possession of a mortgaged property to a debtor.

(8) The principles on which the provisions in S. 15B(1) and (2) of the *D. A. R. Act* are based have been accepted while framing S. 54(2) (b), (e), (f), (g) and (k) of this Act. Those on which S. 15(B) (3) and (4) of the old Act are based are however nowhere acted upon in this Act because they are inconsistent with the policy of the Act.

(9) Under S. 15D (1) and (2) and S. 16 of the *D. A. R. Act* an agriculturist can file separate suits for taking accounts of his secured debts and unsecured debts due to individual creditors and under SS. 15B (3) and (4) and 17 of that Act he can get

decrees for payment passed in those very suits. Under S. 17 of this Act however he has only to make one application for an adjustment of all his debts and supply the particulars required by S. 22(1) and a common award for the payment of all his debts, secured and unsecured, to whomsoever due, would follow automatically if no settlement has been made in the meanwhile. Moreover it is at the discretion of each Judge taking cognizance of a suit under S. 15 D or S. 16 to fix the amount and number of instalments. It is therefore likely that there may be a conflict of interests between several creditors especially when the debtor's means are not sufficient to pay off all of them. Here on the other hand they are fixed subject to the limits laid down in S. 54(2) (h) in view of the total amount of the liabilities of the debtor and the total value of his property attachable under a decree and the net annual income of the productive portion thereof and consequently no difficulty is likely to arise as to recovery except in case of a failure of crops. Again in the case of unsecured debts it happens not infrequently that a debtor fraudulently alienates his attachable property. This Act by S. 65 renders any such alienation invalid unless made with the permission of the Provincial Government. The interests of resource societies and authorised persons who have advanced loans under S. 78 of this Act to a debtor against whom an award has been made for financing crops are further safeguarded by the prohibition against an alienation or encumbrance of even the standing crops or the gathered crops of the debtor's lands without their permission, contained in S. 77. Lastly, the questions whether a transaction though apparently that of a sale was really in the nature of a mortgage and whether a sale-deed should or should not be set aside as fraudulent cannot be decided in a suit under S. 15D of the *D. A. R. Act* according to the rulings in *Krishnaji v. Sadanand*¹ and *Chandabhai v. Ganpati*² but the Board before which an application under S. 17 of this Act is made has power under SS. 45 and 49 respectively read with S. 6 to decide any of those questions.

(10) There is no section in this Act corresponding to S. 20 of the *D. A. R. Act* but it was clearly unnecessary in view of the provisions of S. 54(2) (h) and in view of the fact that there is no

1. 26 Bom. L. R. 341.

2. 18 Bom. L. R. 763.

possibility of an award being made *ex parte* against a debtor under this Act.

(11) There is also no section in this Act corresponding to S. 21 of the *D. A. R. Act*. Under S. 63 an award after being registered is executable as a decree of the Court registering it and therefore the ordinary law of execution as contained in Part II (SS. 36 to 74) of and Or. XXI in Sch. I to the *Civil Procedure Code, 1908* as amended upto-date would be applicable to applications for the execution of such award-decrees so far as it is consistent with the specific provisions of this Act. That being so there is now no prohibition against the arrest and imprisonment of an agricultural debtor in execution of an award-decree. But the provisions in the *Civil Procedure Code* with respect thereto have been made very strict by the amendment of S. 51 and Or. XXI. rr. 37 and 40 thereof by Act XXI of 1936 and they will have to be complied with as well in the case of debtors under this Act as in the case of other judgment-debtors.

(12) There is also no provision in this Act corresponding to S. 22 of the *D. A. R. Act* which exempts the immovable property of all agricultural debtors from attachment and sale in execution of a decree against him unless it had been specifically mortgaged for the repayment of the debt to be recovered. On the contrary the whole of the attachable movable as well as immovable property of a debtor except such as may have been specifically mortgaged for the repayment of a particular loan, can be available to the unsecured creditors of a debtor whose claims have been awarded under this Act because S. 65 of the Act prohibits an alienation of any property of a debtor against whom an award has been made except with the sanction of the Provincial Government and as regards the claims of resource societies and authorised persons who have advanced loans for the financing of crops there is the additional prohibition against an alienation or encumbrance of the standing crops or the produce of the land of such debtor except with the permission of any of them to whom he may be indebted under the award.

(13) For the same reason the provisions of S. 22A of the *D. A. R. Act* have not been re-enacted in any part of this Act. Under SS. 68 to 72 of the *Civil Procedure Code* read with Schedule III to the Code, and the rules made thereunder the Collector has ample powers to do what he thinks proper in the case of sales of agricultural lands which are always made through him in this province. In

the case of sales of any portion of the movable property of a debtor under this Act being ordered by the Board or the Court under S. 66 of this Act, there is a provision in that section itself to get such sales made through the Collector and with respect thereto he has the same powers as under *Bombay Land Revenue Code, 1879* by virtue of Rule 29 (2) made under the said section.

(14) Chapter IV of the *D. A. R. Act* contains 10 sections relating to insolvency. It grants some special facilities to an agricultural debtor to make himself free of his liabilities in case he thinks they are unbearable. The provisions of this chapter were never subsequently extended to any part of the province and therefore they apply only to the agricultural population of the four districts of Poona, Satara, Sholapur and Ahmednagar. And as even there it is necessary for an agriculturist to make an application to the Court for being declared to be an insolvent under the said chapter, and as the rural population as a class is disinclined to make such an application under the *D. A. R. Act*, the said provisions have become a dead letter. The Royal Commission on Agriculture having been convinced of that had recommended special legislation on this subject suited to the peculiar rural conditions in each province. The Bombay Banking Inquiry Committee backed up by the Indian Banking Inquiry Committee had also recommended such legislation. The Bombay Legislature has given effect to that recommendation so far as giving insolvency relief to debtors under this Act is concerned by incorporating provisions relating to insolvency in SS. 68 to 72 which constitute Chapter IV of this Act. The debtors in those areas for which D. A. Boards will be established will get their benefit.

The points of difference between those provisions and those of Chapter IV of the *D. A. R. Act* (SS. 25 to 33) are these :—

(a) Under S. 25 of the *D. A. R. Act* an agriculturist has to make an application to the Court of the Subordinate Judge within the local limits of whose jurisdiction he may be residing and in order to be qualified to make one, he must be indebted to the extent of Rs. 50 at least. Under S. 68 of this Act it is incumbent upon the Board to which an application under s. 17 or 23 has been made to make an order of adjudication if it is convinced that the paying capacity of the debtor in the application is inadequate to pay the total amount of the debts which he is liable to pay as determined

under the provisions of Chapter III of this Act or that such amount cannot be repaid in annual instalments not exceeding 25, for any reason, and discretionary with the Court to which an award is transmitted for registration and execution to make one if it is convinced that two consecutive or any three instalments cannot be recovered by the sale of the debtor's movable property.

(b) There are no provisions in this Act as to the appointment of anybody as a receiver of the debtor's property or as to putting the Collector in management of his immovable property or as to directing him to lease out such property for the benefit of the debtor's secured or unsecured creditors as in SS. 27 and 29-30 of the *D. A. R. Act* but S. 68(3) straightway directs the Board or the Court which has made the order of adjudication to direct the sale of one-half of the attachable and saleable property of the debtor free of all encumbrances. If after the sale the debtor remains in possession of more than 6 acres of irrigated land or 18 acres of dry land or land assessed at Rs. 30, whatever its quality, the amount in excess is again to be put to sale free of all incumbrances.

(c) The proceeds of the sale are to be distributed under this Act amongst all the creditors, secured, unsecured and the preferential, according to the order of priority laid down in the proviso to S. 54(2) (g).

(15) The Village Munsiffs who are appointed under Chapter V of the *D. A. R. Act* have a very limited jurisdiction and that too for trying suits filed by individual creditors. The Debt Adjustment Boards to be appointed under S. 4 of this Act have unlimited jurisdiction and once an application is made to a competent Board under S. 17, whether by a debtor or a creditor of a debtor, every liability of his comes under its power of adjustment. Moreover special Boards competent to deal with the cases of any particular class of debtors can be appointed under the said section of this Act. There is no such provision in the *D. A. R. Act*.

(16) The whole of Chapter VI comprising SS. 38 to 49 of the *D. A. R. Act* has become practically a dead letter since the abolition in 1913 of the posts of Conciliators made under it owing to the dissatisfaction created in the minds of the people who had to deal with them. As explained under the heading *Remedy provided by this Act*, it is the policy of this Act also to encourage and help private settlements of the disputes if any between debtors

and creditors but for the cases in which attempts made in that direction fail, it has provided a special machinery for the achievement of results which the Legislature thought to be reasonable.

(17) The *D. A. R. Act* had by SS. 50 to 54 comprised in Chapter VII thereof provided for a good and effective machinery for the supervision and control of the work of the Subordinate Judges giving effect to the provisions contained in Chapters II and III of the Act, of those of the village-munsiffs working under Chapter V thereof and of that of the Conciliators so long as they were there working under Chapter VI thereof. For some years there was a special Judge working under the superintendence of the High Court. Then there were the Inspecting First Class Subordinate Judges working under the superintendence of the District Judges. After the abolition of the posts of the Conciliators and the Inspecting Subordinate Judges, the District Judges assisted by the First Class Subordinate Judges exercise control over the officers of the lower grades. Moreover all such officers have limited powers. As compared with them the Boards set up under this Act have very wide, discretionary and in several matters absolute powers. In view of that and in view of the fact that the remedy provided by the Act is an untried one, the Act should have provided for a better controlling machinery than that provided by S. 15 thereof. The First Class Subordinate Judge is in many districts an overworked official. He would further have to attend to appeals and references made under this Act. In order to assist him in the disposal of even his ordinary, special and miscellaneous work one or two Joint First Class Subordinate Judges are required to be permanently maintained at the head-quarters of the heavy districts. The work of control over the Board within the limits of his special jurisdiction is therefore likely to drift into routine work to be attended to by his office-staff and consequently the Boards are likely to feel that they are absolute masters of the situation except in this that a few of their awards, decisions and orders are liable to be appealed against. In order therefore that this new machinery may not fall into disrepute like that of the Conciliators under the old Act, steps must be taken as early as practicable, for the appointment of a special supervising officer trained in the judicial method of work.

(18) The subject-matter of Chapter VIII of the *D. A. R. Act* namely, the registration of documents made by agriculturists is out-

side the limited scope of the Act which is to provide for the means to put an end to the existing overwhelming indebtedness of the agricultural population of the province. Moreover no Village Registrars having been appointed or allowed to continue to work since 1910, that chapter has long been a dead letter. Chapter VIII A prescribes only a special mode for the registration of compulsorily registrable documents when executed by agriculturists. It is confined in its operation to the original four Deccan districts only. There could not be anything in this Act corresponding to the provisions with respect thereto for the same reason as is mentioned with respect to the provisions of Chapter VIII.

(19) The subject-matter of Chapter IX of the *D. A. R. Act*, namely "Receipts and Statements of Accounts" is also outside the limited scope of this Act. It is true that in order that the good effect produced by the operation of its provisions may not be swept away in course of time and the debtor while being freed from the clutches of one set of money-lenders may not fall into those of another, it was necessary to pass and put into operation simultaneously the *Money-lenders Bill of 1938* which had been drafted, referred to a Select Committee and circulated for opinion. This could not be done before the Provincial Legislature was suspended. The Provincial Government has however been empowered by S. 78 of this Act to authorise only a few select individuals, joint stock companies or associations to advance loans to debtors whose debts have been adjusted, and to impose conditions on the exercise of such authority. The present Government of Bombay has accordingly made Rules Nos. 37 to 39 and prescribed Forms Nos. 21 and 22 in the exercise of that power. These have been explained in details in the commentary on S. 78. Suffice it here to say that the exercise of the authority is thereby restricted to the granting of loans for productive purposes only namely, the financing of crops and that the authorised persons are required to keep accounts in a prescribed form, pass receipts or furnish pass-books, and periodical statements of accounts. Under Chapter IX of the *D. A. R. Act* it was not compulsory for creditors to keep accounts but under the said rules made under S. 78 of this Act it is. Those rules embody as far as possible the principles on which the provisions of Chapters III and IV of the *Money-lenders Bill, 1938* were based. This however leaves the debtors whose debts are adjusted without any authorised source

of monetary help for unproductive purposes, such as marriages of children, obsequies of deceased members of their families &c. It cannot be believed that such exigencies would not arise during the maximum period for which the awards would remain unsatisfied.

(20) The points of difference between the provisions of S. 68 of the *D. A. R. Act* and S. 67 of the present Act to which it corresponds have been set out in the commentary on the latter. Chapter X of the *D. A. R. Act* contains one more section namely S. 69, which authorises a Subordinate Judge trying a suit or proceeding to which an agriculturist is a party not represented by a pleader or an advocate to direct the Government pleader or any other fit person to appear on behalf of the agriculturist with his consent, to call upon the creditor to deposit the costs of engaging him and to give him credit for them in his account with the agriculturist. It would have been proper if the principle underlying this section had been accepted while drafting this Act because the Debt Adjustment Boards have very wide discretionary powers to decide important questions of law and fact.

(21) Section 70 of the *D. A. R. Act* relates to a matter outside the scope of this Act and is not therefore found re-enacted in any form in any part thereof.

(22) Section 71 of the *D. A. R. Act* exempts agriculturists from the operation of the last clause of S. 258 of the *Civil Procedure Code, 1859* which corresponds to Or. XXI. r. 2 (3) in Schedule I to the *Code of 1908*. This enables the agriculturists to prove uncertified payments in execution proceedings. It is in force throughout this province. There seems to be no such specific section or portion of a section in this Act. But since S. 42(2) (f) directs a Board to give credit for all payments made during the course of the transactions whose accounts are to be made up, it is implied that the Board must give credit for even such payments, if proved to its satisfaction. What it cannot take notice of are settlements not got registered and not certified within one month under S. 23 of this Act.

(23) Section 71A has, as already noticed, been re-enacted in a modified form in S. 42(2) (e) of this Act.

(24) Section 74 of this Act by applying the provisions of the *Indian Limitation Act, 1908* to claims cognizable under this Act,

except as otherwise provided in it, sweeps away the special provisions of S. 72 of the *D. A. R. Act* as to cases falling under this Act.

(25) Section 73 of the said Act has already been repealed and 73A goes with SS. 22 and 29 thereof corresponding to which there could be no sections in this Act consistently with its scheme.

(26) There is no section in this Act, corresponding to S. 74 of the *D. A. R. Act*. Section 7(1) of the former extends the provisions of the *Civil Procedure Code* as regards some specific matters only but Rule 34 of the Rules made under S. 83 of this Act corresponds to the said sections of the *D. A. R. Act*.

(27) S. 74A of the *D. A. R. Act* exempts Co-operative Credit Societies from the operation of the whole of the Act except SS. 2 and 21. Under the present Act they are outside the jurisdiction of the Boards only to the extent mentioned in S. 3 thereof.

(28) Corresponding to SS. 75 and 76 of the *D. A. R. Act* there is S. 83 of this Act. But there is this peculiarity in the latter that besides the general power to make rules for the purpose of carrying into effect the purposes of the Act it confers a special power to make rules for several specific purposes mentioned therein.

(29) The object of the Legislature in passing this Act being to provide a remedy for putting an end to the chronic indebtedness of the agriculturists as a whole and not merely to grant relief in individual cases it is but natural that there should be certain provisions therein for which we can find no parallels in the old Act. The matters dealt with in such provisions and the sections in which they are embodied are as under :—

- (1) Duty of every creditor and debtor to supply information on certain points on being served with a notice under S. 19.
- (2) Duty of every applicant to file along with his application under S. 17 a statement containing as full particulars as possible as to the assets and liabilities of the debtor (S. 22).
- (3) Duty of parties to get every settlement of a debt made after the establishment of a competent Board recorded and certified by it (S. 25).
- (4) Duty of the Boards to call for all the known information as to the assets and liabilities of a debtor from all his creditors if he happens to be the applicant and from him

and the other creditors if one of the latter happens to be the applicant.

- (5) Duty of parties to make applications under S. 23 or S. 17 to a competent Board on pain of the debts existing at the date of the establishment of the Board being deemed to have been discharged after particularly stated periods (S. 32).
- (6) Duty of the Civil Courts to transfer all pending suits and applications for execution and incidental proceedings to competent Boards (S. 37).
- (7) Duty of the Boards to cut down by certain percentages both the principal and the interest in the case of debts which had originated before particular dates including even those which have been subjected to a scrutiny by competent Courts and whose amounts have been held by them to be due and payable [S. 42(2) (e) and S. 46].
- (8) Duty of even the Provincial Government as represented by the Collector, the Local Authorities and Co-operative Societies to inform a judicial tribunal what amounts are due to them from a debtor and of the first and the last to inform how much remission they are prepared to give thereout (S. 47).
- (9) Duty of the Board to ascertain the value of the whole of the property of a debtor and his paying capacity according to certain prescribed rules and further to scale down debts *pro rata* according to prescribed rules (SS. 48 to 52).
- (10) Duty of the Board to pass a single consolidated award as regards the debts thus scaled down and those ascertained from Government, local bodies and others under S. 47, and to ascertain before fixing the amounts of instalments to be paid to them according to a fixed order of priority, the net annual income of the debtor according to fixed principles (S. 54).
- (11) Duty of the Board to frame a scheme and pass an award accordingly for the payment by a bank of the debts of a debtor as further reduced with the consent of the creditors in consideration of its passing Government-guaranteed bonds to them (S. 55).

- (12) Power of the Board or the Court to order the sale of a portion of a debtor's property for the liquidation of his debt or a portion of it if it is to his interest to do so, at any stage of the proceeding before it (S. 66).
- (13) Power of the Board or the Court to declare a debtor to be an insolvent and proceed further under the provisions of the *Provincial Insolvency Act, 1920* as modified by Chapter IV of this Act although neither the debtor nor any creditor may have moved it for that purpose (S. 68).
- (14) Disability of a debtor against whom an award has been made to alienate or encumber even his unencumbered property without the permission of Government and the produce thereof, gathered or ungathered without the permission of certain classes of creditors (SS. 65 and 77).
- (15) Disability of a debtor against whom an award has been made to borrow money except from authorised persons who can advance it only on certain prescribed conditions (S. 78).
- (16) Repeal subject to reservation as to vested rights, of an old Act in specific areas made with a view to grant some measure of relief to the same class of debtors, as to transactions entered into after the date of commencement of the operation of certain sections of this Act but its temporary continuance in those areas for those entered into before it in the case of debtors who are not the object of special protection.

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It will have been seen from the above that the present Act departs considerably in the matters of the quality and quantity of the relief intended to be given to agricultural debtors from the principles on which the *Dekhan Agriculturists' Relief Act, 1879* had been originally framed and on which it had been amended from time to time prior to 1928. In that year appeared the Report of the Royal Commission on Agriculture. It suggested some reforms in legislation on provincial lines after an inquiry into the peculiar conditions of each province. That Commission was

Similar legisla-
tion in other pro-
vinces.

very soon followed by the Indian Banking Inquiry Committee the terms of whose reference were wide enough to admit of an inquiry on the above lines in connection with the conditions of agricultural finance. It accordingly appointed local sub-committees for making it individually. The reports of those sub-committees appeared between 1929-30 and that of the Central Committee in 1931. While these committees were working the *Punjab Regulation of Accounts Act, 1930* was passed. This was recommended to the other provinces for determining their lines of action. It did not however touch the problem of existing indebtedness of the rural population.

Central Provinces and Berar.

The first province to take legislative action with a view to tackle it was the Central Provinces and Berar. It took the form of the *Central Provinces Debt Conciliation Act, 1933*. Although in appearance and in its declared object it had been passed "to relieve agriculturists from indebtedness by amicable settlement between them and their creditors" there were several elements of statutory compulsion therein for, the term "debt" as defined in S. 2(e) thereof included liabilities incurred "under a decree or order of a Civil Court or otherwise",³ according to S. 8(2) every debt with respect to which no statement was submitted by a creditor within 2 months as required by a notice under S. 8(1) was to be deemed to have been discharged unless it was shown that there was a sufficient cause for non-compliance,⁴ S. 9 imposed a penalty for the non-production of a document called for by a Debt Conciliation Board, without a reasonable excuse,⁵ S. 11 made an agreement as to settlement arrived at by a debtor with his creditors representing 40% of his total liabilities binding on his other creditors, S. 15(1) authorised a Board to grant a certificate to a debtor whose offer, fair in the eye of the law, had been rejected by one or more of his creditors and S. 15(2) permitted a Civil Court to take such certificate into consideration in a subsequent suit with a view to see whether costs or interest at a rate higher than 6% should or should not be allowed to the creditor guilty of such rejection, S. (15) (3) rendered un-

3. Cf. S. 2(5) of this Act containing a definition of the same term.

4. Cf. S. 32 of this Act so far as it relates to non-compliance with the notice under S. 31 thereof.

5. The provision in S. 43 of this Act on the same point is far milder than that.

executable a decree of a Civil Court relating to a debt incurred prior to the registration of an agreement if any, arrived at in such a proceeding until the terms of the agreement had been fully complied with, S. 16 debarred the Civil Courts from entertaining suits and execution proceedings relating to matters pending before a Board,⁶ S. 17 rendered alienations of debtor's property made during the pendency of an application or the subsistence of an agreement void,⁷ S. 18 prohibited appeals and revision applications against every order of a Board,⁸ S. 20 prohibited a party from appearing before a Board by a legal practitioner,⁹ S. 21 directed the suspension of all pending suits and applications until an application under S. 4 was disposed of¹⁰ and S. 26(3) permitted the Provincial Government to make a rule which would render punishable with fine a breach of any of the rules and further authorised the Provincial Government to impose a fine of Rs. 10 per day for every continuing breach of a rule; secondly, the said definition of "debt" in S. 2(e) of the Act excluded from its connotation "land-revenue or anything recoverable as an arrear of land-revenue". Hence such of the claims of the Provincial Government and Local Authorities as were enforceable under the revenue law of the province were kept outside the purview of the Act,¹¹ S. 22 of the Act not modifying that provision; thirdly, the definition of the term "debts" given in S. 2(f) has been so worded as to debar an agriculturist who does not owe more than Rs. 150 in all from making an application under

6. That the Bombay Act is milder in this respect will appear from the commentary on S. 85(2).

7. Cf. S. 65 of this Act.

8. Contrast with this S. 9 of this Act which allows appeals against certain awards and certain decisions and orders of the Board and does not expressly prohibit revision applications.

9. Cf. S. 67 of this Act.

10. Contrast S. 37 of this Act which directs a transfer of all pending suits and applications.

11. Contrast with this SS. 3, 22(3), 47, 54(2) (g) and (h), 63 proviso (2), 66 and 68 of this Act according to which although such claims are not adjustable by the Boards, they are to be given a priority over other debts according to a fixed order and do not cease to be recoverable by the usual revenue process, the Provincial Government and Co-operative Societies are expected to make part remissions thereof and are bound by the orders if any, which the Board or the Court may pass as to the amounts of instalments payable to them and as to the necessity to sell off any portion of a debtor's property for the liquidation of any portion of his liabilities and by the decision of any of them as to whether in the particular circumstances of his case, a debtor should or should not be declared to be and be treated as an insolvent for the purpose of recoveries.

S. 4 and to allow the benefit of the provisions of the Act to all persons who can show that the income derived by them from agricultural sources is the main source of their livelihood as under S. 2 of the *D. A. R. Act*; fourthly, S. 4 not only fixes the maximum limit of the amount of the total liabilities of a debtor for the purpose of giving relief at Rs. 25,000¹² but further empowers the Provincial Government to fix even a still larger indeterminate limit for any specified local area¹³; fifthly, in case of default on the part of a debtor in paying any instalment, S. 13 gives the Deputy Commissioner power to recover it as an arrear of land-revenue or to certify that the agreement had ceased to subsist¹⁴; sixthly, if no agreement as required by S. 11 is arrived at the Board has to dismiss the application according to S. 14 and if the offer made by the debtor was fair it can further grant a certificate to him which can be used against a creditor in a subsequent suit in a Civil Court.¹⁵ This Act having been found defective in certain respects was amended by two Amending Acts passed in 1935, and one such Act passed in 1936 but the underlying principles of the Act above-mentioned have remained the same.

Punjab.

The second province to move in that direction was the Punjab. One of the Acts passed with respect thereto by the Provincial Legislature there was the *Punjab Relief of Indebtedness Act, 1934*.¹⁶ It was not confined in its operation to holders of land only for the definition of the term "debtor" contained in S. 7(2) thereof applied to an indebted person "who earns his livelihood mainly by agriculture and is either a land-owner or a tenant of agricultural land, or a servant of a land-owner or of a tenant of agricultural land" or "who

12. Contrast with this S. 26 of this Act which lays down a limit of Rs. 15,000 and does not give any discretionary power to the Provincial Government.

13. Contrast again SS. 2(6) and 26 of this Act which impose such conditions that only *bona fide* agriculturists can get the benefit of that Act.

14. Contrast S. 63 of this Act which makes an award registered by a Court under S. 62 thereof executable by it alone and as its own decree.

15. The Bombay Legislature has by SS. 19, 23, 24 and 25 encouraged purely private settlements of debts but rejected the method of conciliation and granting a certificate which had been tried under Chapter VI of the *D. A. R. Act* and found to encourage corrupt practices.

16. This Act has been amended in several material particulars by Act XII of 1940 of the same Legislature. But I am considering here only the legislation upto July 1937.

earns his livelihood as a village menial paid in cash or kind for work done in connection with agriculture" and to several more persons by virtue of a proviso and explanations added thereto. But so far as the policy followed for devising means for putting an end to indebtedness was concerned it was the same as in the Central Provinces and Berar namely, authorising the Provincial Government to set up Debt Conciliation Boards "for the purpose of amicable settlement between debtors and their creditors" for certain areas to be determined by that Government. In place of the maximum limit of Rs. 25,000 that section fixed Rs. 10,000 as the maximum but like the C. P. Legislature it empowered the Provincial Government to fix a higher one by rules. Similarly like that Legislature this too introduced elements of compulsion by providing in S. 7(1) that "debt" shall include a debt due under a Civil Court decree, in S. 13(2) that if any creditor failed to file a statement of accounts as required by sub-section (1) of that section within the prescribed period the debt due to that creditor was to be deemed to have been extinguished subject to certain exceptions, in S. 20 that the Board shall grant a certificate to a debtor whose fair offer for a settlement to which creditors representing 40% of his liabilities have agreed, has been rejected and that a Civil Court in which a subsequent suit is instituted by that creditor may disallow interest and costs to him if the certificate is produced before it, in S. 21 and 25 that no suit or proceeding relating to a claim which is the subject-matter of an application to a Board, shall be entertained by a Civil Court, and that pending suits and applications shall not be proceeded with if an application or an agreement made under an application is in force, and in S. 22 that no appeal or revision application shall lie against any order of a Board. Besides providing this special remedy by S. 3 thereof it amended S. 10(1) of the *Provincial Insolvency Act, 1920* so as to reduce the minimum debt-limit to Rs. 250 and S. 74 thereof so as to permit the adoption of a summary procedure in cases in which the value of the assets was Rs. 2000 instead of Rs. 500, and S. 3 of the *Usurious Loans Act, 1918* so as to make it more stringent and effective.¹⁷ Lastly by S. 30 it rendered illegal the allowance by any Civil Court after the commencement of

17. The Bombay Banking Inquiry Committee had ruled out the possibility of an amendment of the U. L. Act, 1918 serving any useful purpose (*Vide* its Report Vol. I, para. 241 at pp. 183-84).

this Act of more interest than is allowable under the Rule of Damdupat which was made applicable to all suits irrespective of the community of the parties, with this difference that the rule was to be applied to the amount of interest due up to the date of the commencement of the Act in the case of suits filed after it and to that due upto the date of the decree in the case of debts incurred after the commencement of the Act, by S. 33 amended S. 1(3) (a) and (b) of the *Redemption of Mortgages (Punjab) Act, 1913* and by SS. 34 to 37 introduced a more powerful check on the power of Civil Courts to order the arrest of a judgment-debtor in satisfaction of money-decree, amended S. 60(1) (c) of the *Civil Procedure Code, 1908*, repealed Or. xxi, r. 2(3) in Schedule I to *that Code* and imposed a penalty for making a false claim as to the principal of a debt. The second Act passed by the same Legislature towards the same end was the *Punjab Debtors' Protection Act, 1936* the principal features of the provisions wherein were a compulsory transfer of all execution proceedings involving an attachment of agricultural lands to the Collector for whose guidance certain rules were laid down, an appeal from his orders lying to the Commissioner only, ancestral property being exempt from all liability, standing crops also being exempt from liability to attachment and sale, certain decrees not being executable after six years except when force or fraud preventing execution is proved and a creditor being in all civil cases liable to prove the consideration for each loan unless he had a receipt in writing or had got its payment attested by a Sub-Registrar.¹⁸

Bengal.

The third province to legislate on this subject after the publication of the said Reports was Bengal. The Legislative measure there passed in 1935 was the *Bengal Agricultural Debtors Act, 1935*. In most of the essential particulars this Act has been framed on the lines partly of the *Central Provinces Debt Conciliation Act, 1933* and partly of the *Punjab Relief of Indebtedness Act, 1934*. Thus S. 3 thereof provides for the appointment by the Provincial Government of Debt Settlement Boards for specified local areas ; according

18. Most of these expedients had been tried in Bombay by the *D. A. R. Act* and had been found inadequate both as to the quantity and quality of the relief required to be given to agricultural debtors.

to S. 2(8) "debt" includes a debt payable under a decree or order of a Civil Court but does not include any debt recoverable as a public demand and a debt due to a scheduled bank under the *Reserve Bank of India Act, 1934*; proceedings before the said Boards are to be initiated according to S. 8 by an application made either by a debtor or a creditor; if a Board is specially empowered in that behalf and if creditors representing 40% of the total liabilities of a debtor consent to a settlement, the Board can, under S. 19(1) (b) impose it on the remaining creditors even without their consent; if a creditor had rejected an offer, which as tested by the principles laid down in the statute, was a fair one in the eye of the Board it can under S. 21 grant a certificate to the debtor concerned stating that fact and such a certificate would have an adverse effect on the claim of the creditor; if the debts cannot be reduced by settlement to an amount which can be repaid within 20 years, a Board specially empowered in that behalf can under S. 22(1) declare the debtor to be an insolvent and reduce his debts to such an amount and if that too is not practicable it can put all his property to sale and arrange for the payment of his debts subject to the provisions of S. 24(4); execution-sales are under S. 22(2) (3) and (4) to be conducted by a certificate officer in the manner provided by the *Bengal Public Demands Recovery Act, 1913* leaving 1/3rd of the land in the debtor's possession or at least 1 acre of land and his dwelling-house, unless specifically mortgaged, untouched; the certificate officer has under S. 28 discretion to grant extension of time in fit cases; under S. 34 suits and proceedings pending in any Civil or Revenue Court are to be stayed and must abate if the Board's decision is against the creditor; under S. 35 certain decrees and certificates which must have been framed under the *Bengal Public Demands Recovery Act, 1913*, cannot be granted with respect to claims cognizable by a Board and under S. 36 certain decrees including those obtained on documents called for but not produced before a Board are to be treated as nullities; under S. 46 legal practitioners are debarred from appearing before a Board unless specially permitted by it and under S. 47 registration of awards and certificates of discharge is to be made by the Board. This Act has however certain peculiar features namely, (1) that instead of for one year as in the case of the C. P. Act or for three years as in the case of the Punjab Act, the appointment of the Boards under S. 8(1) of

this Act is for five years, (2) that no maximum or minimum limit has been fixed for the pecuniary jurisdiction of the Boards, (3) that it contains in S. 40 provision for making appeals against the decisions of the Boards unless passed by consent to a judicial officer of experience, (4) that in S. 43 it provides for the exercise of a direct control over the work of the Board through a special officer and (5) that by S. 45 it excludes the operation of the provisions of the *Indian Evidence Act, 1872 and the Civil Procedure Code, 1908*, except as otherwise provided therein.

Madras.

The last province to take legislative action for the relief of agricultural debtors before the Provincial Governments were re-constituted under the *Government of India Act, 1935*, was Madras. The Act which it placed on its Statute-book in this connection was the *Madras Debt Conciliation Act, 1936*. It was largely modelled on the similar Act of the Central Provinces Legislature above-mentioned. That being so, the provisions as to the appointment of Debt Conciliation Boards, as to procedure by application by either party, and as to persuasion backed up by certain penalties or disabilities of a civil nature, such as the debt due to a creditor being liable to be deemed to have been discharged if he does not file a statement as required by S. 10(1), a document or a book of account or any other material piece of evidence being rendered inadmissible in any subsequent civil suit or proceeding if not produced though called for and in possession of a creditor (S. 11), an agreement arrived at with creditors representing a certain percentage of the total liabilities of a debtor being liable to be held binding on the rest without their consent (S. 14), a certificate being granted to a debtor if his offer for settlement, although fair as determined according to prescribed principles, is rejected by a creditor and its being liable to be taken into consideration by a Civil Court in a subsequent suit by that creditor while awarding interest, civil suits and execution proceedings relating to claims cognizable by a Board being barred (S. 19), pending suits and proceedings being liable to be stayed (S. 25), no appeal or revision application being allowed against an order of a Board (S. 22), appearance by a party by a legal practitioner or authorised agent being legal only if permitted by the Board (S. 24), debts due to Co-operative Societies being

excluded unless their inclusion is assented to by the Registrar (S. 15) etc. are common to both. It is however distinguishable by certain special features. They are :—

- (1) The appointment of the Board was from the very first for a period of three years instead of one.
- (2) There is not only a maximum limit of Rs. 25,000 with power to the Provincial Government to increase it in the case of a Board appointed for any particular area but there is also a minimum limit of Rs. 150 for the purpose of jurisdiction of the Board.
- (3) The percentage of debts which the creditors giving their consent to a settlement are required to represent is 50 instead of 40.
- (4) The Board is given power to decide all disputes as to the existence and amount of any debts.
- (5) The award of the Board is given the force of a decree of a Civil Court and is made executable as such.
- (6) More interest than would be equal to the principal cannot be allowed in the case of a debt incurred prior to 1-6-33.
- (7) Transfer of property made by a debtor while an application is pending or an agreement is in force is only voidable at the instance of a creditor and not void *ab initio*.

There is one more provincial Act passed before July 1937, bearing the title *The United Provinces Agriculturist Relief Act, 1934*. I have not however taken notice of it in the above survey of the Provincial legislation on the subject of agricultural indebtedness because although it did contain certain provisions intended to grant some measure of relief to that special class of debtors, it did not set up any special class of tribunals and did not prescribe a special remedy with a view to take stock of the total liabilities of an agricultural debtor and devise means for their possible extinction within a particular period.

In the above survey of the provincial legislation on the subject of agricultural indebtedness I have moreover taken notice of those Provincial Acts only as had been passed after the publication of the Report of the Indian Central Banking Inquiry Committee in 1931 and

before the commencement of the operation of the *Government of India Act, 1935* in the provinces. After the commencement of its operation but before the formation of the Congress ministry in Madras an Interim ministry had been formed. During its short regime a special remedial Act intended to give a special additional relief to the agricultural debtors in that province, namely *The Madras Agriculturists Debt Relief Act, 1938* (IV of 1938) was placed on the Statute-book of the province. It is a small Act containing 28 sections divided into four chapters, the notable one from amongst which is Chapter II comprising SS. 7 to 14. Those sections provide for the scaling down of debts, for allowing interest at specially reduced rates for old and new loans and other incidental matters. The provisions in some of those sections are far more drastic than those contained in SS. 38 to 42 of our Act to which they correspond. This Act has of late attracted considerable public attention owing to the competency of the Madras Legislature to pass a piece of legislation affecting the right to claim an amount due under the terms of a negotiable instrument such as a promissory note, which is included in the exclusive Federal Legislative List in the *Government of India Act, 1935*, having been challenged in the case of *Subrahmanyam Chettyar v. Muttuswami Goundan* before the Madras High Court, an appeal was preferred to the Federal Court against a decision of that Court holding the Act to be *intra vires*, that appeal was dismissed in December 1940 by a majority of Judges on the ground that the pith and substance of the Act cannot be deemed to be legislation with regard to negotiable instruments or promissory notes which are Central Subjects, and leave to appeal to the Privy Council against its dismissal was also refused by it by a judgment of a majority of Judges delivered in April last on the ground that the question of the competency of the Legislature did not arise in that case because the promissory note had there become merged in a decree obtained before the operation of the Madras Act and that it was the debt due under the decree, not that due under the promissory note, which had been held by the Madras High Court as liable to be scaled down under the new Act.¹⁹ The Act will consequently continue to operate completely as intended by the Legislature until

19. The first decision of the Federal Court was reported in 3 *Federal Law Journal*, at p. 157 and the second in 4 *Federal Law Journal* at p. 1.

a fresh suit on the same point goes up in appeal to that Court and its decision in the above case is overruled either by its Full Bench or by the Privy Council.

XI.

It will have been observed from the above bird's eye-view of the legislation in the other provinces of India made since the publication of the Report of the Indian Banking Inquiry Committee supplemented by those of the Provincial Sub-Committees appointed by it pursuant to the recommendation of the Royal Commission on Agriculture that the present legislation is distinguishable from that made in any other province on several fundamental grounds namely :—

(1) The definition of a debtor as meaning not only an individual but also an undivided Hindu family satisfying the certain conditions laid down in S. 2(6) read with its two explanations, with S. 2(13) along with its two explanations and S. 2(5) is peculiar to it. So is the facility granted to a joint debtor by S. 20. Such a comprehensive definition which takes note of the reality of the conditions of the rural society is likely to be a boon to that society because one single application under S. 17 made to a competent Board will open out a way of salvation to all the members of joint Hindu families at a time owing to the possibility, of their being otherwise harassed individually by applications for execution, being put an end to thereby.

(2) The Bombay Legislature has, by providing in S. 3 that certain classes of creditors including the Provincial Government, Local Authorities and Co-operative Societies who had other remedies open, are exempted from the operation of certain sections only of this Act, by compelling them by S. 47 to intimate to the Board concerned what is respectively due to them and what remission they, except the Local Authorities, would be prepared to make there-out and prohibiting them from modifying the decision once communicated to the Board, by empowering the Board by S. 54 to in-

The Madras High Court had decided the same point in the same manner even in an earlier case, namely, that of *Nagaratnam v. Seshayya*, (A. I. R. 1939. Mad. 361, 365).

clude such remitted amounts in an award and to make an order for their payment in instalments although subject to an order of priority laid down in the proviso to sub-section 2(g), by empowering the Board and the Court by S. 66 to order the sale of any portion of a debtor's property for the liquidation of his debts or a portion thereof without reference to Government or any other higher authority and by empowering them by S. 68 to declare a debtor insolvent if certain conditions are fulfilled and proceed further as if he had been declared an insolvent under S. 27 of the *Provincial Insolvency Act, 1920* so as to affect the rights of all the privileged creditors as well as those of the unprivileged ones, has gone far beyond the Legislatures of the other provinces in making a substantial sacrifice, of its own powers, and by providing by S. 24 that the parties to an application under S. 17 may come to an amicable settlement and get an award made thereon on payment of a court-fee of Re. 1 only, by S. 60 that the party ordered by a Board to pay costs shall pay only one-half of the difference between the court-fee paid on the application or plaint and that leviable under the First Schedule to the *Indian Court-fees Act, 1870* on the award made under S. 54 or 55 treated as a plaint in a money-suit and by S. 36 that a creditor whose application is dismissed under that section should be given a refund of the court-fee paid by him, has made a substantial sacrifice of revenue which no other Provincial Legislature had compelled its Government to make.

(3) It is significant that the Board whose appointment the Provincial Government has been empowered by S. 4 to make is named a Debt Adjustment Board as contrasted with a Debt Conciliation Board or Debt Settlement Board the appointment whereof the Acts of the other provinces provide for. The primary duty of the former is therefore to adjust the debts of the debtors in the exercise of the powers given by the Act not merely to persuade the parties to come to terms.

(4) The Acts in the other provinces except Bengal have placed the Boards under the control of the principal executive officer of the district, who may be the Deputy Commissioner or the Collector, and barred all appeals and even revision applications against the decisions or orders of the Board. The Bengal Act has provided for the appointment of an appellate officer of judicial experience but left him to be appointed by the Provincial Government. On the other

hand, this Act has by S. 15 placed the Boards under the administrative control of the First Class Subordinate Judges within the local limits of whose special jurisdiction they may have been established, by S. 9 provided for appeals being made to either the District Court or the First Class Subordinate Judge's Court against certain awards and certain decisions and orders of the Boards and refrained from expressly barring revision applications, which must therefore be held to lie on the well-established principle that the jurisdiction of a superior Court cannot be taken away except by a clear statutory provision in that behalf.

(5) The Acts of the other provinces have left execution work to be done wholly either by a revenue officer or a special officer called a certificate officer except that of Madras under which it is done by a Board under the supervision of the Collector. This Act has however provided by S. 63 for the execution of award decrees being done by the Court as if they were its own decrees.

(6) No portion of the legislation of any other province provides, like S. 19 of this Act, for calling for information from the other party by a notice with a view to enable one to determine whether private settlement is or is not possible, and if that is not possible to know beforehand what case one is expected to meet.

(7) Similarly none enables a debtor having a joint and several liability for a debt with another or others to claim relief from it so far as he is concerned as this Act does by S. 20.

(8) The Acts of the other provinces keep up an appearance of conciliation or voluntary settlement while empowering the Boards to use force in certain matters with a view to produce a psychological effect on the creditors. This Act on the other hand encourages private settlement, pure and simple, and provides for rendering help to the parties in enforcing it but where that is not possible it boldly comes forward with a well-considered scheme to help the needy creditors as well as debtors while still leaving the door open for a private settlement upto the last stage.

(9) Whereas all the other Acts except one fix the maximum limit of the total amount of liabilities of a debtor for the purpose of the Board's jurisdiction at Rs. 25,000 and further empower their Provincial Governments to raise it at their discretion this Act by S. 26 fixes it at Rs. 15,000 definitely so that persons with extensive

liabilities who must presumably have incurred them recklessly may not be able to take advantage of the special remedy provided by this Act.

(10) Although some of the other Acts have prescribed some stray rules to be observed by the ordinary Civil Courts while making up accounts, none of them contains such a well-thought out method of making them up as do SS. 38 to 44 of this Act. As already explained it is a modification of that contained in SS. 12 and 13 of the *D. A. R. Act* which has been in force throughout this province for well-nigh 40 years. That modification has been made in view of the experience gained during that period and in view of the change in the economic conditions throughout the world which has occurred since 1931 as stated by the Hon'ble ministers who moved Bills Nos. VII of 1938 and XIII of 1939. Madras is the only other province in which the Legislature has as noted above come forward openly to grant some relief to the producers of the raw materials against the heavy depression in their markets but Bombay is the only province which had, till the end of 1939, passed a special measure (Act XXII of 1939) in order to ensure the realisation of a fair price for the agricultural crops in future. Thus unjust though the provisions of S. 42 (2) (e) (i) requiring a compulsory reduction, of the principal and interest of a loan older than 1st January 1931, by 30 or 40% according as the loan is a year old or more, may seem to be, there is a sound economic reason behind them inasmuch as such debts would in all probability have been wiped off from the income of agricultural lands had it not been reduced abnormally since 1931.

(11) The provisions in S. 45 enabling a Board to declare an apparent sale transaction to be in the nature of a mortgage is also peculiar to Bombay. It too is a modification of that contained in S. 10A of the *D. A. R. Act* which had been specially enacted to check a growing evil and the nature of the modification has been determined by the necessity to check an abuse which had grown during the operation of the said section of the old Act.

(12) The provisions of SS. 48 to 54 are new so far at least as this province is concerned and seem to have been framed with a view to make a bold attempt to put an end to agricultural indebtedness within a reasonable period which is here fixed at 25 years. This attempt is again bolstered up by the further provisions in S. 68(1)

that if the Board finds at any time that it would not be possible to liquidate the debts even as scaled down within the said period owing to such circumstances as that the paying capacity of the debtor as determined under the prescribed principles is so low as to leave no doubt as to the debts not being payable by the debtor, it should declare him to be an insolvent and proceed under the provisions of Chapter IV of the Act instead of under SS. 54 to 61. This is not the whole attempt however. Section 68(2) further empowers a Court executing an award-decree to declare a debtor to be an insolvent if it finds that two consecutive or any three instalments cannot be recovered by the sale of his movable property alone and to proceed further under the Chapter IV instead of under SS. 62 to 64. There is this difference between the provisions of the two sub-sections of S. 68 that whereas it is compulsory for the Board to act as above if any of the above-mentioned conditions laid down in S. 68(1) is fulfilled, it is left to the discretion of the Court whether to do so or not even if any of the conditions laid down in S. 68(2) is fulfilled.

The Bengal Legislature had no doubt made some attempt of a similar nature by providing in S. 22 of its Act that if the Board finds that the debts of a debtor cannot be reduced by amicable settlement to such a figure as would enable the debtor to repay it within 20 years, and if it is specially empowered in that behalf, it can reduce the debts to such a figure and if that is not practicable it can, for reasons to be recorded, proceed to sell all the property of the debtor and arrange for the payment of all his debts subject to the provisions of S. 24(4). This provision however leaves too much to the discretion of a specially empowered Board. On the other hand the relevant portion of our Act lays down definite standards by which to determine whether any of the conditions laid down in S. 68(1) and (2) is or is not satisfied. In actual operation it is therefore likely to present less difficulty than the corresponding portion of the Bengal Act for the Boards here must have before them the total figure of the debts of the debtor on the one hand and those of his paying capacity and his net annual income on the other, all determined according to fixed uniform statutory principles supplemented by those laid down by the Rules made thereunder, while those in Bengal would have to settle such principles for themselves in each individual case.

(13) The principle underlying the provisions of S. 55 is also entirely new not only so far as the Statute-book of this province is concerned but also so far as those of the other provinces of this country are concerned. It is that if all the creditors of a debtor agree in writing to a further scaling down of their claims to a sum not exceeding half the value of the immoveable property of the debtor, the Board is to frame a scheme for its repayment by the Provincial Land Mortgage Bank or any other bank whom the Provincial Government may authorise in this behalf, on passing Government-guaranteed bonds for the payment of proportionate amounts to the creditors and if the bank approves of that scheme, to pass an award directing the bank to execute such bonds and to the debtor to pay the aggregate amount thereof to the bank in certain instalments recoverable as arrears of land-revenue. Under it the creditors have to agree in a body to make a sacrifice unless the value of one-half of the immovable property of the debtor is sufficient to discharge all his liabilities, both being determined under the relevant provisions of SS. 38 to 52. They have however an incentive to do that because regular payment to them is assured. The bank too is not likely to approve of a scheme which may be likely to mulct its share-holders in a loss. Lastly, since payment under the bonds is to be guaranteed by Government, the bank will have to consult it before approving of a scheme and it may or may not approve of the idea of the bank undertaking the risk in some cases. There are thus several conditions to be satisfied before the Board can pass an award under this section. Nevertheless the mere fact that such a provision is there is itself a great compliment to the Provincial Government for without its sympathy and active support even such a clause could not have been enacted by the Legislature.

(14) The provision in S. 66 too is of an extraordinary nature. It empowers the Board entitled to take cognizance of an application under S. 17 and the Court entitled to hear an appeal in a particular case to order the sale of a part of the property of a debtor, not exceeding that specified in S. 68(3), for the liquidation of his debts or a part thereof even though in the usual course of the proceeding before the Board or the Court the time for passing such an order may not have arrived, provided it comes to the conclusion that it is in the interest of the debtor to do so.

(15) Although the Bombay Legislature was not able to pass

the *Money-lender's Bill, 1938* which would have put an effective check on the dishonest practices of some of the petty rural money-lenders and placed the debtor in possession of materials from time to time from which he could himself ascertain what is the extent of his liabilities, with a view to determine whether he can wisely extend them further or not, S. 78 has empowered the Provincial Government to impose conditions on the grant of authority to individuals, companies and associations to lend money to debtors whose debts have been adjusted and the present Government has in the exercise of that power framed Rules 37-39 on the general principles on which the provisions of Chapters III and IV of the said Bill had been based. Therefore even without that Bill having been passed, the debtors for the liquidation of whose debts awards will be made will no longer be in danger of again drifting into a hopeless state of indebtedness.

XII.

The Legislature of this province has thus devised a somewhat novel and drastic remedy for the eradication of agricultural indebted-

ness. Its novelty alone should not however frighten anybody for every piece of legislation drafted with a view to improve the lot of any section of the population must to some extent be such and would not be adequate for the said purpose if it is of a half-hearted patch-work character like that in most of the other provinces. Nor should its drasticity, for if a disease has grown too chronic and does not yield to all the mild remedies which could so far be invented, a strong injection alone has the possibility of being effective although it may for a time disturb the equilibrium. The history of the disease of the indebtedness of the agricultural population in this province dates according to the Report of the Bombay Banking Inquiry Committee, as far back as A.D. 1852 when Col. Wingate, the then Revenue Survey Commissioner drew the attention of Government to "the curse of debt under which all the grades of the peoples were falling with the result that agricultural holdings were passing from the hands of the actual tillers of the soil to those of a small moneyed class who went on lending money to them with a view to ultimately reduce them to the position of their tenants." Being illiterate, and obsessed by false notions of social status and religious necessity

they go on borrowing money and passing documents without thinking of the consequences likely to follow from it till one day they are disillusioned to find that they had staked their all and must accept the position of being the hewers of wood and drawers of water. Their quantum well-wishers and friends then appear to them to be pouncing upon them like beasts of prey on cows, goats and lambs and therefore growing desperate they sometimes lose self-control and commit horrible crimes which instead of alleviating their sufferings aggravate them. When such a catastrophe befalls a large number of people living in a particular locality they congregate and conspire to devise violent means for putting an end to it and to its causes and consequently lawlessness rules supreme in that locality for some period. Such had actually been the case in some of the Deccan districts as far back as A.D. 1875 when a series of riots ending in the destruction of the documents, books of account, houses &c. of several money-lenders, had taken place. The British administrators then felt the necessity of making an inquiry into the causes of their occurrence in the otherwise placid atmosphere of rural life and devising means for avoiding their repetition in future. The Commission set up by the Government of India for those purposes recommended legislation of a special character on certain lines and the *Dekkan Agriculturist Relief Act, 1879* was eventually passed. Originally it applied to only the four districts of the Deccan where the necessity for such an extraordinary remedy was most urgent but subsequently some of its salutary provisions were extended to some other districts and then to others in the Presidency of Bombay as then constituted. This wide extension exposed some of the defects of the Act and it was very severely criticised by several Judges. Consequently some of its provisions were amended, the operation of some was suspended and some new ones were added in course of time after making suitable inquiries. Still some of its glaring defects were not removed and an unintended use of some of its beneficial provisions continued to be made. Complaints and criticisms did not therefore stop till A.D. 1929-30 when the Provincial Banking Inquiry Committee began its inquiry in the light of the finding of the Royal Commission on Agriculture that the said Act had failed to give the relief which the Legislature had intended to give by it. That committee consulted the High Court at Bombay and the Judicial Commissioner's Court in Sind and examined several witnesses. As the result

thereof it held that out of the two alternatives of a further suitable amendment of the Act and its total repeal and substitution by quite a new piece of legislation, the latter was the preferable one and recommending its adoption suggested certain broad lines on which the proposed new piece of legislation should be based. Before action was taken in this province, it was taken in others and so the Legislature here had before it not only the result of the experience of the working of the *D. A. R. Act, 1879* extending over a generation but also that of the working of several other provincial Acts framed on the basis of the recommendations of the Indian Commission and Committee and their respective Provincial Committees. That was the reason why Bill No. XIII drafted by the Provincial Government was considerably modified first by the Select Committee and then by Legislative Assembly in which the views of both the debtor and the creditor class were effectively represented. Such modifications have resulted in securing several benefits for both classes so far as they were not repugnant to the general principles laid down in the recommendations of the said bodies. It is possible that even so experience may reveal some unnoticed defects in the Act as placed on the Statute-book of the province. But no piece of legislation made by human beings however wise, is ever perfect and serviceable eternally and whenever and wherever it is found to contain loop-holes or to lead to undesirable results those who have made it or their successors in office can mend it. If they find it wholly unworkable they can even end it. But before they decide to take such an equally drastic step they must have ready another constructive scheme for the amelioration of the condition of the rural population. Restoration of the *D. A. R. Act* which has been universally condemned as encouraging both the creditors and the debtors to become dishonest and commit perjuries and forgeries, which more often than not go unpunished, would be a doubtful remedy in such a case. The Governor of Bombay perhaps anticipated this difficulty when before putting the Act into operation in any portion of the province he so amended SS. 1, 22, 84, 85, and 86 of the Act as to extend to the whole province and to put into immediate operation 26 sections of the Act, which include the 6 which alone were originally extended to the whole province, and to give power to the Provincial Government to put the remaining sections thereof into operation in such local areas as it may deem proper and by doing so start an

experiment for the exclusive operation of the old Act in some parts and that of the new Act in some other parts. A simultaneous operation of both would also take place automatically in the areas in which the other sections of the new Act would be put into operation because even in those areas there must be persons who may be debtors and yet not be debtors under that Act and because certain rights and liabilities of even those who fall in the latter class are excluded from the operation of the new Act.

Moreover the said Act has a very limited scope. The Legislature never expected that by its operation alone all the miseries of the rural population would come to an end. The extermination of the existing indebtedness of that population was intended to be supplemented by other remedies for some of which the help of the Legislature was necessary. The Government of the day, which got this Act passed, had therefore also got other Acts passed by the Legislature with a view to enable it to put some of the other remedies into operation either simultaneously or before or after it according as to it may seem expedient. The said other Acts are :—

(1) *The Bombay Local Boards (Amendment) Act, 1938*, (2) *The Bombay Land Revenue Code (Amendment) Act, 1939*; (3) *The Bombay Agricultural Produce Markets Act, 1939*; (4) *The Bombay Tenancy Act, 1939*. The first so alters the constitution of the District Local Boards as to do away with the nominated element altogether and give the Mahomedan population of any district the option to give up its right to elect its own representatives on communal lines. The second gives a sense of security to persons holding agricultural lands from Government and an incentive to improve such lands by assuring them that Government would continue to recover from them assessment on a fixed scale for one generation, even if they improve their lands and realise a larger income than they used to realise before such improvement. The third enables Government to create market areas for all kinds of agricultural produce and place restrictions on the profiteering tendencies of the money-lenders and the middle-men by introducing a system of licensing and control in such areas and thus ensuring a fair return to the cultivators of the soil for the fruits of their labours. The fourth by placing restrictions on the vagaries of the absentee landlords and fixing a minimum term and reasonable rent for agricultural leases gives the agricultural tenant-class a sense

of security which would encourage them to take steps to improve the lands and the quality and quantity of the crops grown therein even though they may not be the legal owners thereof. It can, I believe, be safely expected that the Provincial Government will put into operation as early as practicable such of those Acts *e.g.* the *Agricultural Produce Markets Act, 1939* as have not yet been put into operation.

And happily the Government of India has been annually allotting a substantial amount from its revenue to each province in order to enable it to improve the conditions of rural life therein. As the result thereof our province has, like others, a department of Government which concentrates its attention solely on that objective and has already been taking active steps towards that end and providing the necessary funds which would enable the district officers to improve the existing roads and construct new ones as early as possible so that the agricultural produce can be easily and quickly transported to the nearest market areas, to supply medical aid to the village folk at rates within their means, to improve the sanitary conditions of the villages, to disseminate knowledge amongst the adult inhabitants by means of radios, cinemas, magic lantern lectures &c. and to open village schools for the children of the villagers where they get the knowledge of the three R's and side by side with it such rudimentary scientific knowledge as to, the qualities of soil, season crops, plants, trees &c. that grow in each locality, the means to improve them where and when necessary, the classes of cattle, sheep, poultry &c. that they have to deal with, the diseases they are prone to contract and the remedies for their prevention and cure whenever and wherever necessary, the potentialities of co-operative action in improving the social and economic life as well of the individual as of the community in any particular village as a whole, regardless of caste or creed, &c., as would be useful to them in their day-to-day life when they grow up. In view of the fact that the present Government has in the budget for 1941-42 set apart a munificent grant of over a crore of rupees for being spent on schemes of rural development alone, and has, though compelled by judicial decisions to relax the control over foreign liquor, stuck to the policy of prohibition so far as it could not be legally challenged, and not taken steps to abolish the Urban Property Tax, though it has softened its rigour as far as possible, it can be confidently hoped that in course of time it will ex-

tend prohibition to the other rural areas in the province the inhabitants whereof are still in the clutches of the drink-devil. The result of such sincere efforts is bound to be reflected in the increasing prosperity of the agricultural classes and a diversion of the energy and resources of the money-lenders of the rural areas to the furtherance of the co-operative movement for making it possible for Government to undertake more ambitious schemes for enabling the rural parts of this province to make a solid contribution to the effort of the nation as a whole to raise its status in the eyes of the civilised world.

Prerana, Santacruz. }
Dated 1st May 1941. }

P. C. DIVANJI

BOMBAY ACT XXVIII OF 1939.

(*The Bombay Agricultural Debtors Relief Act, 1939*)
(As amended by *Bombay Act VI of 1941*).*

AN ACT TO PROVIDE FOR THE RELIEF OF AGRICULTURAL DEBTORS
IN THE PROVINCE OF BOMBAY.

[Preamble.] Whereas it is expedient to provide for the relief of agricultural debtors in the Province of Bombay and for certain other purposes specified therein; It is hereby enacted as follows:—

COMMENTARY

Bombay Act XXVIII of 1939 :—This is a short title by which this act can be conveniently referred to. It is not however the authorised "short title" of the Act. That is found in S. I(1). The number shows that this was the 28th Act passed by the Legislature of the Province of Bombay in the year 1939. The last Act passed by it in that year was the *Bombay Tenancy Act, 1939*.

Text of an Act :—A question sometimes arises as to which should be understood to be the authoritative text of an Act, especially when there is a difference between any two or more published copies of the same Act. In the case of *Rai Brindaban Prasad v. Mahabir Prasad*¹ such a question did actually arise and their Lordships of the Patna High Court ruled therein that the text of an Act published in the *Official Gazette* of the Government con-

* The Original Act having received the assent of the Governor-General on 19th January 1940 was first published on 30th January 1940 at pp. 2 to 44 of *Part IV* of the *Bombay Government Gazette* while the Amending Act having received the assent of the Governor of Bombay was first published at pp. 82 to 84 of the same part of the same *Gazette* on 29th March 1941.

1. A. I. R. 1927 Pat. 142.

cerned must be taken to be the authoritative one even though it may be found to be defective in some respects.

An Act to provide for the Relief of Agricultural Debtors in the Province of Bombay :—This is the “full title” of this Act: It mentions in a succinct form the purpose which the Legislature had in view in passing it. That purpose was to make legislative provision for relieving the debtors of the agricultural class in the Province of Bombay from the state of indebtedness into which they have fallen for a long time owing to several causes. The Royal Commission on Agriculture presided over by Lord Linlithgow had considered this problem under the heading *Agricultural Indebtedness* in para 63 of Chapter II, entitled *The Finance of Agriculture* of its Report, published in 1928 and while recognising the facts that “the problem is one of the oldest that have troubled administrators in the East and the West for generations past” and that “it had received the continuous and anxious consideration of the Government of India”², it also noticed that the *Usurious Loans Act, 1918* had not proved very successful in many of the provinces of India³ and that the *Dekkan Agriculturists Relief Act, 1879* was being evaded⁴ and suggested that an inquiry should be made into the causes of the failure to utilise the provisions of the *Usurious Loans Act, 1918*, that legislation on the lines of the *Punjab Money-lenders' Bill* (since passed as the *Punjab Regulation of Accounts Act, 1930*) and the *British Money-lenders Act of 1927* should be made and that the case for a simple Rural Insolvency Act should be examined, in all the provinces.⁵ The Central Banking Inquiry Committee which was appointed shortly thereafter, appointed Provincial Sub-Committees for making the same kind of inquiry and the Bombay Provincial Banking Inquiry Committee, which was one of them, examined the subject of agricultural indebtedness very carefully and exhaustively. Going as far back as 1852, the date of the report of Captain G. Wingate, a Revenue Survey Commissioner, in which he drew the attention of Government to the increasing indebtedness of the land-holders and warned it that if things did not alter the greater part of the property of the community

2. Main Report of the R. C. A., 1928 p. 431.

3. Op. cit. pp. 438-39.

4. Op. cit. and Abridged Report of the R. C. A. p. 49.

5. Op. cit. para. 369 at pp. 442-43.

would be transferred to a small moneyed class and the bulk of the population would be impoverished, they pathetically observe that in spite of attempts made from time to time to check this mischief the indebtedness had gone on increasing to such an extent that "the total agricultural debt of the whole province thus works out at Rs. 81,00,00,000 approximately." This they attributed to four causes namely :—(1) the existence of small and scattered holdings ; (2) the lack of subsidiary industries in the rural areas ; (3) the proverbial vagaries of the monsoon on which the greater part of the agricultural population depended and (4) the habit of the illiterate agriculturists to stick to pernicious social customs and to incur expenditure on ceremonies far beyond their means.⁶ They further proceed to examine the reasons why the indebtedness goes on increasing and how ultimately the landed properties pass from the natural tillers of the soil to the money-lenders.⁷ When they come to the question of remedies, they go into the history of the passing of the *Dekkan Agriculturist Relief Act, 1879*, refer to the inquiries made from time to time as to its working and ultimately say :— "That the Act has produced evil effects almost everywhere is admitted by most if not by all" and referring to the several opinions expressed by the Hon'ble Judges of the Bombay High Court and the Judicial Commissioners' Court in Sind as to what should be done to counteract its influence they "recommend that the Act should be repealed and a new Act embodying the principles which we mention in the subsequent paragraphs should be passed."⁸ Those principles are :—

- (1) "The new enactment should apply only to small and genuine agriculturists. . . . The definition of "agriculturist" will have therefore to be substantially modified. We do not attempt ourselves to suggest a new definition but we recommend that the benefit of the Act should be confined to those who actually engage personally in agriculture and whose income is below a certain specified figure which should not be high".⁹

6. Report of the B. P. B. I. Committee, Vol. I, paras. 49-55 at pp. 39-47.

7. Op. cit. paras. 55-60 at pp. 47-51.

8. Op. cit. paras. 237-38 at pp. 179-81.

9. Op. cit. para. 241 at p. 182.

- (2) *The Usurious Loans Act, 1918* not being sufficiently comprehensive, the new Act should contain provisions tending to check usurious practices effectively.¹⁰
- (3) Money-lenders should be compelled to take out licenses for carrying on their trade by passing an Act on the lines of the *Punjab Regulation of Accounts Act, 1930*¹¹.
- (4) The provisions of *Provincial Insolvency Act, 1920* being unsuited to the rural conditions, a special simpler Rural Insolvency Act should be passed as recommended by the Royal Commission on Agriculture.¹²

A comparison of these principles with the provisions of SS. 2(6) read with SS. 2(5) and 2(13), 20, 21, 23, 24, 26, 35, 40, 42, 44, 45, 49-53, 54, 55, 59, 64, 65, 66, 68-72 and 85-86 will show that the Bombay Legislature has made a *bona fide* attempt to give effect to the said recommendations as they had been accepted also by the Central Banking Inquiry Committee.¹³

Title as an aid to interpretation.—As the title of an Act comprises the purpose the Legislature has in view in passing it, it is natural that it may at times be called into aid when the doubtful provisions of that Act are to be construed. When such is the case the following rules deduced from the decided cases on that point would be found useful, namely :—

(1) It is legitimate to use the full title of an Act in order to throw light upon its progress and scope but it is not legitimate to use the short title for that purpose, its object being identification and not description.¹⁴

(2) The full title should not be neglected in case of a doubt as it may be some guide to the meaning sought to be ascertained.¹⁵

(3) Sole dependence should not however be placed upon it for the purpose of interpreting a section and in no case can it be

10. Op. cit. para. 241 at pp. 183-84.

11. Op. cit. paras. 242-43 at pp. 184-86.

12. Op. cit. para. 244 at pp. 187-88.

13. Majority Report of I. C. B. I. Committee, Vol. I, pp. 42-59.

14. *Debendra Narain v. Jogendra Narain*, (A. I. R. 1936 Cal. 593, 621).

15. Op. cit.

made use of to restrict, modify or enlarge the scope of its section when its wording is clear.¹⁶

[*Preamble*] :—This word has been deliberately put into brackets because there is no marginal note to the words “Whereas it is expedient &c.” which constitute the preamble of this Act. The term “preamble” has been derived from the French word “preamble” which is again derived from the Latin words “præ”, before and “ambulo”, I go and means “an introduction, or a preface or a prelude” in ordinary parlance and “the introductory part which states the reason and intent of the law” in legal language.

It will be seen on a comparison of the wording of this preamble and that of the full title above discussed that besides the purpose of “providing for the relief of agricultural debtors in the Province of Bombay” the Legislature had in view “certain other purposes” also in passing this Act and that they are not referred to in the full title. There seems to be no judicial pronouncement as to which of the two, the full title or the preamble, should be relied on in such a case. However one can easily come to the conclusion that preference must be given to the preamble because a title, even though full, is after all a convenient way of referring to an Act by mentioning the principal feature thereof and does not form part of the Act itself whereas a preamble is intended to set forth the real purpose or purposes in the mind of the Legislature while passing the enactment. As ruled in the case of *Kedar Nath v. Pearey Lal*,¹⁷ the key to the opening of every law is the reason and spirit of the law and it is the preamble more especially that should be looked to for “the reason and spirit of every statute,” which is the same thing as “the meaning of a statute” spoken of by Maxwell in his famous work.¹⁸

Preamble as an aid to interpretation.—It would be interesting and useful to know the different views expressed in judicial decisions as to the use that can be made of a preamble. The High Court at Bombay had put the matter too high when it ruled in one case that the preamble should not be referred to for the purpose of con-

16. *Abdulla Khan v. Bahram Khan*, (A. I. R. 1935 Pesh. 69).

17. A. I. R. 1932 Oudh. 152, 153, F. B. following *Brett v. Brett*, 3 Ad. 213.

18. *Interpretation of Statutes*, 7th edition, pp. 37-38. See also *Official Assignee v. Chinniram* (34 Bom. L. R. 1615, 1628) ; *Gavaramammal v. Manikkammal* (I. L. R. 57 Mad. 718).

struing a section and yet the Privy Council had in appeal confirmed that ruling.¹⁹ However what that Court must be deemed to have meant is that it is only when the language of a section is clear and unambiguous that the preamble should not be referred to, as ruled by the Madras and Calcutta High Courts. The principles that can be deduced from their rulings and those of other High Courts may be summarised thus :—

(1) It is not legitimate to refer to the preamble of an Act when the language of a section to be construed is clear and unambiguous.²⁰

(2) When the language of a section is ambiguous, it can be referred to in order to understand that language but not to restrict, modify or enlarge its scope²¹ or to create an ambiguity.²²

(3) When the language of a section is so general that it can be inferred that the Legislature must have intended to have some limitation put upon it, the preamble can be referred to in order to ascertain what particular class of cases the enactment was intended to apply to.²³

(4) When it is clear that there is a conflict between the preamble and a section of an Act, the well-established rule is that the

19. *Municipal Commissioner v. Mancherji* (I. L. R. 36 Bom. 405) ; *Abdul Rahim v. Municipal Commissioner* (I. L. R. 42 Bom. 462 P. C.).

20. *Ramireddi v. Sreeramulu* (A. I. R. 1933 Mad. 120) ; *Corporation of Calcutta v. Kumar Arun Chandra* (Appeal—A. I. R. 1954 Cal. 862) ; *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593, 620) ; *Jnanendra Nath v. Jadu Nath* (A. I. R. 1938 Cal. 211, 214).

21. *Mani Lall Singh v. Trustees for the Improvement of Calcutta* (I. L. R. 45 Cal. 343) ; *Kameshwar Singh v. Rampat Thakur* (A. I. R. 1938 Pat. 607) wherein the ruling in *Powell v. Kempton Park Race Course Co.* (2 Q. B. D. 242) has been relied on ; *Bhola Umar v. Mt. Kausilla* (A. I. R. 1932 All. 617) ; *Mt. Savitri Devi v. Dwarka Prasad* (A. I. R. 1939 All. 305) ; *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593, 620) ; *Maung Ba Thaw v. M. S. Chettyar* (A. I. R. 1935 Rang. 460, 462) ; *Mt. Rajpali v. Surju Rai* (A. I. R. 1936 All. 507 F. B.) ; *Abdulla Khan v. Bahram Khan* (A. I. R. 1935 Pesh. 69) ; *Amrut v. Mt. Thagan* (A. I. R. 1938 Nag. 134 F. B.). For the English rule on the same point see *Maxwell on the Interpretation of Statutes*, 7th edition, pp. 39-40.

22. *Jnanendra Nath v. Jadu Nath* (A. I. R. 1938 Cal. 211, 214) ; *Municipal Commissioner v. Mancherji* (I. L. R. 36 Bom. 405, 410).

23. *Kannammal v. Kanaksabai* (A. I. R. 1931 Mad. 629).

section must be given a preference²⁴ for the Courts are not concerned with what the Legislature has stated in the preamble as the reason for the legislation but what it has already done, which may be a little more than that.²⁵

(5) In no case can the language of a section be strained either way to give effect to the intention as expressed in the preamble.²⁶

Character of this legislation.—The said preamble shows that the Legislature has taken cognizance of the facts which the Royal Commission on Agriculture and Central and Provincial Banking Inquiry Committees have found to have been established, and that it has realised the necessity to grant statutory relief to the agricultural debtors in this province on the lines laid down by the Provincial Committee, and a careful scrutiny of the provisions of this Act as a whole or a determination of the “pith and substance” thereof, which according to the ruling in *Atiqa Begum v. Abdul Maghni Khan*²⁷ is the proper test for determining the nature and character of any legislative enactment, will show that the Legislature has in this Act made a sincere attempt to grant such relief without being unduly harsh to the creditor-class and with due regard to the principles of equity, justice and good conscience.

This is thus what is called a “Remedial Act”. There are certain well-established rules for the interpretation of such Acts deduced from judicial decisions. As I feel that the Boards and the Courts charged with the duty of giving effect to its provisions would in certain contingencies find them useful I state them below.

(1) A remedial Act should be so interpreted as to suppress the mischief aimed at and to advance the remedy provided by it.²⁸

(2) Accordingly the words used therein should be generally

24. *Badar Rahim v. Bad Shah Miah* (A. I. R. 1934 Cal. 741); *Rajmal v. Harnam Singh* (A. I. R. 1928 Lah. 35); see also *Maxwell on the Interpretation of Statutes*, 7th edition, pp. 39-40.

25. *Thyrammal v. Junus Chettiar* (A. I. R. 1936 Mad. 844, 848).

26. *Mahomed Husen v. Jaimini Nath* (A. I. R. 1938 Cal. 97, 101).

27. A. I. R. 1940 All. 272. 280 F. B. = 3 F(ederal) L(aw) J(ournal) 83.

28. *Diwan Singh Maftoon v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62); *Sivaramappa v. Nedavabai* (A. I. R. 1933 Bom. 272, 274).

understood in their popular and not too technical or strictly grammatical sense according to the view of the Calcutta High Court.²⁹

(3) The Bombay High Court too has expressed the same view in its judgments in the cases of *Govind v. Srinivas*³⁰ and *Bombay Namdeo Co-operative Agency Ltd. v. Virbhaval*.³¹

The mischief aimed at in this Act is the heavy indebtedness of the agricultural class in this province and the remedy¹ provided for its removal consists of a simple procedure by which all the necessary inquiries can be made, all the necessary information can be gathered and all the necessary orders can be passed for the eradication of the evil within a reasonable time. Therefore this Act must as a whole be so construed as to tend to check the indebtedness of the said class and to bring the remedy provided by it within the reach of all those agriculturists who according to a reasonable interpretation of the provisions of S. 2(6) with its explanations read with S. 2(5) and S. 2(13) with its explanations and S. 26 fall within the purview of the Act.

The particular character of the *Madras Agriculturists Relief Act* (IV of 1938) was required to be considered by the Madras High Court in the case of *Nagaratnam v. Seshayya*³² as it was contended therein that the said Act was *ultra vires* of the Madras Provincial Legislature in so far as its provisions apparently trench upon a federal subject, namely legislation affecting the liability arising from promissory notes which were usually governed by the provisions of the *Negotiable Instruments Act*, 1881. That Court held that such remedial legislation cannot be held to be *ultra vires* of the Provincial Legislature simply on that ground. Another case, in which the same question was raised, and similarly decided, was that of *Subrahmaniam Chettiar v. Muthuswami Goundan*. The creditor therein having applied for a certificate to appeal to the Federal Court, the Madras High Court granted such a certificate. But the Federal Court by a majority of 2 : 1 upheld the view of the Madras High Court and dismissed the appeal. The creditor having

29. *Soleman v. East India Company* (I. L. R. 60 Cal. 820).

30. A. I. R. 1937 Bom. 275, 278.

31. A. I. R. 1937 Bom. 266, 271.

32. A. I. R. 1939 Mad. 361, 365.

applied for a certificate to appeal to the Privy Council the Federal Court again by a similar majority refused to grant it on the ground that the decision of the Madras High Court appealed from being in a case relating to the execution of a decree, the point that had been raised did not in fact arise.³³

33. 3 F. L. J. 134, 3 F. L. J. 157 and 4 F. L. J. 1 respectively.

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Bombay Agricultural Debtors Relief Act, 1939.

(2) This section and sections 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33(2), 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82, and 83* extend to the whole of the Province of Bombay. *The Provincial Government may, by notification in the Official Gazette, extend all or any of the remaining provisions of this Act to such area other than the City of Bombay, as may be specified in the notification.†*

(3) *This section and sections 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33(2), 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82 and 83 shall come into force at once. The Provincial Government may, by notification in the Official Gazette, direct that all or any of the remaining provisions of this Act shall come into force in any area to which the said provisions have been extended under sub-section (2), on such date as may be specified in the notification.‡*

* The words and figures in italics were substituted by S. 2(a) (i) of Act VI, of 1941 for the figures and word 17, 23, 32, 37 and 73.

† The whole of this sentence in italics was substituted by S. 2(a) (ii) of Act VI of 1941 for the words *and the rest of the Act shall extend to the whole of the Province of Bombay except the town and island of Bombay.*

‡ The whole of this sub-section in italics was substituted by S. 2(b) of Act VI of 1941 for the following, namely :—

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

COMMENTARY.

Bird's eye-view of the Act:—This Act contains 86 sections divided into 5 chapters of unequal length. This seems to have been due to the division having been based, as usual, on the principle that the sections relating to the main provisions (4-72) should be separated from those relating to the preliminary (1-3) and the subsidiary or miscellaneous (73-86) ones.

Each of these chapters has a distinct heading given to it. Attempts are made at times to draw upon such a heading for ascertaining the exact import of any of the sections contained in the chapter which bears it. In such a case a question arises, for the decision of the Court before which such an attempt is made, as to what weight can legitimately be assigned to such a heading while trying to ascertain the correct interpretation of a section. In order to assist such a Court in arriving at a correct decision of that question I state below the principles established by judicial decisions.

Heading of a chapter as an aid to interpretation.—(1) The Privy Council had ruled in the case of *Abdul Rahim v. Municipal Commissioner of Bombay*¹ that these headings being in the nature of a preamble cannot control the provisions of a section if they are clear and unambiguous. The Bombay, Allahabad and Rangoon High Courts² have followed this principle. But the Madras and Patna High Courts look upon them “as affording a better key to the construction of the sections which follow than might be afforded by a mere preamble”³ and “helpful even in extending the scope of a section.”⁴

(2) Where there is an ambiguity in a section it can, according to all authorities, be legitimately cleared up with the help of the heading of the chapter in which the section occurs as it is looked

1. I. L. R. 42 Bom. 462 P. C.

2. *Ramkrishna v. Bapurao* (A. I. R. 1938 Bom. 284); *Ma. Savitri Devi v. Dwarka Prasad* (A. I. R. 1939 All. 305); *Durga Thathera v. Narain Thathera* (A. I. R. 1931 All. 597); *Maung Ba Thaw v. M. S. Chettiar* (A. I. R. 1935 Rang. 460).

3. *Bachu v. Official Receiver, Madras* (A. I. R. 1938 Mad. 449, 454).

4. *Janaki v. Jagannath* (3 Pat. L. J. 1).

upon as a key to open the mind of the makers of the Act,⁵ *i.e. to say*, as an indication of the intention of the Legislature.

(3) Where however the effect of looking upon a heading of a chapter is to assign a meaning to the section not intended by the Legislature as appearing from the other parts of the Act more weight should be given to such intention than to the one as appearing from the heading alone.⁶

Preliminary:—One of the most fundamental rules of interpretation of statutes is that the words used therein are to be understood in their plain, ordinary or popular sense.⁷ It is not rare however to find such a sense differing from the strictly grammatical or the purely etymological sense.⁸ Such is not however the case here. The word "preliminary" is derived from the French word 'preliminaire' which again is derived from the Latin words 'præ' before and 'limen' or 'liminis' a threshold. Hence the etymological meaning of the word under consideration is 'anything which precedes the main business.' When used in a literary composition it must therefore mean a preface or prelude which precedes the main discourse therein. In the case of a legal enactment it must mean the introductory provisions therein which precede the main provisions. The whole of Chapter I bears the heading 'Preliminary'. It should therefore be understood that the provisions of the sections comprised therein, namely 1 to 3, are of a prefatory or introductory nature. As a matter of fact too they are such because S. 1 relates to the short title, extent and commencement of the opera-

5. *Debi Das v. Maharaj Rup Chand* (I. L. R. 49 All. 903); *Narayan-swami v. Rangaswami* (I. L. R. 49 Mad. 749, 751); *Durga Thathera v. Narain Thathera* (A. I. R. 1931 All. 597); *Ramkrishna v. Baburao* (A. I. R. 1938 Bom. 284); *Mt. Savitri Devi v. Dwarka Prasad* (A. I. R. 1939 All. 305).

6. *Anand Lal v. Karnani Industrial Bank Ltd.* (I. L. R. 59 Cal. 528, 531-532).

7. *Anand Prakash v. Narain Das* (A. I. R. 1931 All. 162, 175-76); *Madan Mohan v. Commissioner of Income-tax, Punjab* (A. I. R. 1935 Lah. 742, 746); *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507); *Anandi Lal v. Ram Sarup* (A. I. R. 1936 All. 495); *Kidar Nath v. Bagh Singh* (A. I. R. 1937 Lah. 504); *In re Jagmandar Das and Ors.* (A. I. R. 1935 All. 378); *Fearey Lal v. Soney Lal* (A. I. R. 1936 All. 222); *Dawood v. Sahabdeen* (A. I. R. 1937 Mad. 667); *Sobharam v. Jagmohan Singh* (A. I. R. 1936 Nag. 269).

8. *Bhim Raj v. Munia Sethani* (A. I. R. 1935 Pat. 243).

tion of the Act, S. 2 is the definition or interpretation clause containing the definitions of certain words used in the subsequent sections and S. 3 is a saving-clause excluding from the operation of certain sections of the Act particular kinds of debts and liabilities.

What is a Section? :—The word ‘section’ is derived from the French word ‘section’ which is again derived from the Latin word ‘sectio’ or ‘sectionis’ meaning a cutting, both of which are derived from the Latin root ‘seco’ or ‘sectus’, I cut. A ‘section’ therefore means either “the act of cutting” or “a part cut out and separated from the rest” or “a distinct part or portion of a writing or a book or of any of the chapters therein”. In legal enactments it means “one of the distinct parts or portions into which the enactment is divided.” When they are many they are grouped together into distinct chapters. Each such section generally deals with one topic connected with the subject-matter of the chapter.

What is a sub-section :—Just as a chapter is divided into sections so a section is sub-divided into two or more sub-sections dealing with different portions of the same topic. A sub-section therefore is a sub-division of a section dealing with a particular point relating to the topic dealt with in the section as a whole.

Marginal notes :—It will have been noticed that the words “Short title, extent and commencement” on the left of the section have been printed in smaller type than the provisions of the section. These words constitute what is called a “marginal” or “side” note to the section as a whole. There are similar notes printed similarly on the left-hand side of each of the other sections of this Act. Such marginal notes are found in all enactments. The object of the publisher in putting such notes is to enable the readers to know at a glance the topics dealt with in the respective sections to which they are attached. When the publisher is not a sufficiently intelligent man, it is quite likely that the import of such notes may be somewhat different or wider or narrower than that of the section read as a whole. We will have occasions in the course of this commentary to notice such discrepancies. In such cases a question arises as to what value to attach to such notes in ascertaining the scope of the sections. Such cases are not infrequent and therefore there is a good deal of case-law on that point.

Marginal-note as an aid to interpretation :—The case-law on this point can be summarised thus :— There is no difference of opinion amongst the judges of the different High Courts, who had occasions to consider the point, as to the position that these marginal or side notes do not form part of an enactment⁹ and also as to another that they cannot be made use of in order to control the words of the statute.¹⁰ But there is a wide divergence of opinion amongst even the judges of the same Court as to whether they can be referred to at all while construing the sections to which they are prefixed. The learned judges who decided the case of *Dukhi Mulla v. Halway*,¹¹ were of opinion that they cannot be made use of as an aid to the interpretation of the sections, those who decided the cases of *Ram Saran v. Bhagwat Prasad*,¹² *Ganpatrao v. Emperor*,¹³ and *Jamnadas v. Damodardas*¹⁴ and even the learned members of the Judicial Committee of the Privy Council who decided the case of *Balraj v. Jagatpal Singh*¹⁵ held that they cannot be made use of for that purpose, those who delivered the judgments in the cases of *Abdul Hakim v. Fozu Mian*,¹⁶ *Emperor v. Mumtaz Hussein*¹⁷ and *Emperor v. Fulabhai*¹⁸ expressed and acted upon the view that these notes can be referred to for an exposition of the meaning of a section when inserted by or under the authority of the Legislature, those who decided the case of *Kameshwar Prasad v. Bhikan Narain Singh*¹⁹ assumed that the Legislature must have authorised their insertion as they were found in the state publications of the Acts while those who decided the cases of *Gajendrasingh v. Durga Kumari*,²⁰

9. *Dukhi Mulla v. Halway* (I. L. R. 23 Cal. 55).

10. *Balaji v. Gangamma* (A. I. R. 1927 Mad. 85) ; *Ramkrishna v. Baburao* (A. I. R. 1938 Bom. 284 following *Attorney-General v. Great Eastern Railway Co.* (1879) 11 Ch. 449 ; *Narayanswami v. Rangaswami* (A. I. R. 1926 Mad. 749, 751) ; *Kusum Kumari v. Bisheshwar Lal* (A. I. R. 1935 Pat. 439, 443) ; *Maung Ba Thaw v. M. S. Chettiar* (A. I. R. 1935 Rang. 460).

11. I. L. R. 23 Cal. 55.

12. A. I. R. 1929 All. 53.

13. A. I. R. 1932 Nag. 174.

14. A. I. R. 1927 Bom. 424.

15. I. L. R. 26 All. 393 P. C.

16. A. I. R. 1935 Cal. 287, 289.

17. A. I. R. 1935 Oudh. 337.

18. A. I. R. 1940 Bom. 363, 364.

19. I. L. R. 20 Cal. 609.

20. I. L. R. 47 All. 637 F. B.

Balaji v. Gangamma,²¹ *In re Natesa Mudaliar*,²² *In re A. E. Smith*,²³ *Secretary of State for India v. Municipal Corporation of Bombay*²⁴ and *Muradan Sardar v. Secretary of State for India*²⁵ admitted their usefulness in the case of a doubt or ambiguity, as showing the trend or drift of the sections as stated by Collins M. R. in his judgment in *Bushell v. Hammond*.²⁶ A similar view has been expressed by the Nagpur High Court in the case of *Chudaman Singh v. Kamta Nath*²⁷ in which there was a difference between the provisions of the new and the old Acts. In *Dharwar Urban Bank Ltd. v. Krishnarao*²⁸ Rangnekar J. of the Bombay High Court has discussed this point at some length although he has not reviewed the rulings in all the above cases and come to the conclusion that the one laid down by Collins M. R. in the above-mentioned case is the correct one and that these notes can be made use of for the purpose of construing Indian Statutes especially because the Privy Council had held so in the case of *Thakurani Balraj Kunwar v. Rae Jagatpal Singh*.²⁹ It must however be remembered that these notes cannot have a greater weight than the preamble of an Act or the headings of the chapters therein and that the advice contained in the ruling in *Maung Ba Thaw v. M. S. Chettiar*,³⁰ namely that reliance merely on a marginal note in order to construe a section is not desirable, is a sound one.

Sub-section (1) :—This sub-section contains the short title by which this Act can be conveniently referred to. It is an authoritative one because it is contained in a sub-section of the Act. As for the value to be attached to it in the matter of the interpretation of the sections of the Act vide the commentary under the heading *Title as an aid to interpretation* at pp. 4-5 *supra*.

Sub-section (2) :—Although it is stated in the full title and the

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21. A. I. R. 1927 Mad. 85.
 22. A. I. R. 1927 Mad. 156.
 23. A. I. R. 1924 Mad. 389.
 24. A. I. R. 1955 Bom. 347, 349.
 25. A. I. R. 1939 Cal. 313, 314.
 26. (1904) 2 K. B. 563.
 27. A. I. R. 1939 Nag. 230.
 28. A. I. R. 1937 Bom. 198, 202.
 29. 38 I. A. 132 = 26 All. 393 P. C.
 30. A. I. R. 1935 Rang. 460.

preamble of this Act that the object of the Legislature was to give relief to the agricultural debtors of the whole of the Province of Bombay, this sub-section defines the exact extent of the Act. For this purpose the Act has been divided into two parts, namely one comprising the 26 sections specified therein and the other the remaining 60. Those in the first part are extended to the whole of the Province of Bombay and as regards those in the second it is provided that the Provincial Government may, in its discretion, extend all or any of them to any area other than the City of Bombay, by a notification published in the *Official Gazette*.³¹ It is remarkable that the area of the City of Bombay is specifically excluded from the areas to which all or any of the remaining provisions of the Act can be extended under this sub-section by a notification and that S. 4 under which a Debt Adjustment Board can be established in any area is not one of the 26 sections which extend to the whole of the Province of Bombay. The result of this will be that if there is a person residing in Bombay answering to the description of a debtor under this Act he will be entitled to take advantage of the provisions of SS. 17, 19 and 23, which *inter alia* have been extended to that city, only if a Debt Adjustment Board is established for an area in which he holds lands used for agricultural purposes and he will have to do so only through such a Board.

Sub-section (3) :—This sub-section as it now stands authorises the Provincial Government to put into operation all or any of the sections of the second group above-mentioned in any area to which the same may be extended under the amended sub-section (2). This will enable it to try the effect of some of the new sections in one area and certain others in another area and so on.

Authoritativeness of a Government Notification :—It should be noted in the above connection that the Provincial Government is bound to issue a notification and publish it in accordance with the provisions of the statute from which it derives its authority to issue it and that therefore when, as it sometimes happens, a notification

31. It is worthy of remark that this sub-section as it originally stood did not authorise the Provincial Government to divide the Act into parts and extend one part to some area, a second to another and a third to a third, which seems to have been thought necessary in view of the remedy provided by the act being an untried one.

issued by it is in conflict with the provisions of the Act under which it purports to have been issued, the Courts would give effect to the words of the enactment and hold the notification to be *ultra vires* for as held in the case of *Laxmanrao v. Balkrishna*³² a Government notification cannot have a higher operation than a legislative enactment.

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

(1) "Award" means an award made by the Board under sections 24, 54 or 55 or as confirmed or modified by the Court under section 9.

(2) "Board" means a Debt Adjustment Board established under section 4.

(3) "Co-operative Society" means a society registered or deemed to be registered under the provisions of the *Bombay Co-operative Societies Act, 1925*.

Bom. VII of 1925.

(4) "Court" means—

(a) in sections 13, 14, 17, 61, sub-section (1) of section 62, 63, 66, 75 and 83 a District Court or a Court of the First Class Subordinate Judge to which an appeal lies against the award of a Board under section 9; and

(b) in the remaining provisions wherever the expression occurs, the Civil Court of competent jurisdiction.

(5) "Debt" means any liability in cash or kind, whether secured or unsecured, due from a debtor whether payable under a decree or order of any civil court or otherwise but does not include arrears of wages payable in respect of agricultural or manual labour.

32. I. L. R. 36 Bom. 617.

(6) "Debtor" means—

(a) an individual—

- (i) who is indebted;
- (ii) who holds land used for agricultural purposes;
- (iii) who has been cultivating such land personally from a date prior to 1st April 1937; and
- (iv) whose annual income from sources other than agriculture and manual labour does not ordinarily exceed 20 per cent. of his total annual income or does not exceed rupees 300, whichever is greater;

(b) an undivided Hindu family—

- (i) which is indebted;
- (ii) which holds land used for agricultural purposes;
- (iii) which has been cultivating such land personally from a date prior to 1st April 1937; and
- (iv) the annual income of which from sources other than agriculture and manual labour does not ordinarily exceed 20 per cent. of its total annual income or does not exceed Rs. 500, whichever is greater.

Explanation I.—For the purposes of this clause "Agriculture" includes horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock-breeding and grazing, but does not include leasing of land or cutting only of grass or wood.

Explanation II.—For the purposes of this clause, a person who personally cultivated land used for agricultu-

ral purposes on 1st April 1937, but who has been evicted from such land at any time thereafter, shall be deemed to have been cultivating such land personally, if at the date of the application under section 17 or 23 he is cultivating land personally.

(7) "Financing of crops" means advancing of loans for the raising of crops during the ploughing season or later for ploughing, sowing, harrowing, weeding, harvesting, purchase of seeds, manure or for such other purposes as may be prescribed, such loans being re-payable during the season when the crops for which the loans were advanced are harvested.

(8) "Holder" means a holder as defined in section 3(11) of the *Bombay Land Revenue Code, 1879*, and includes a holder of land held for the performance of services useful to Government or village community, which service is actually being performed but does not include—

Bom. V of
1879.

(a) a holder of any other alienated land which cannot be alienated without the sanction of Government, and

(b) a holder of any land held on behalf of a religious or charitable institution,

and the expression "to hold land" shall be construed accordingly.

(9) "Prescribed" means prescribed by rules.

(10) "Resource Society" shall have the same meaning as it has in the *Bombay Co-operative Societies Act, 1925*.

Bom. VII of
1925.

(11) "Rules" means rules made under section 83.

(12) "Secured debt" means a debt due to a creditor

from his debtor for which the creditor holds the property of the debtor or any part thereof as security.

(13) "To cultivate personally" means to cultivate by one's own labour or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanation I.—If a person who was cultivating personally dies leaving as his heir a widow or a minor or a person who is subject to physical or mental disability, such heir shall be deemed to cultivate the land personally notwithstanding the fact that the land is cultivated on behalf of such heir by servants or hired labour or by tenants.

Explanation II.—In the case of an undivided Hindu family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. If there are no adult co-parceners in such family capable of cultivating the land personally, such family shall be deemed to be cultivating the land personally if the land is cultivated on behalf of such family by servants or hired labour or by tenants.

(14) "Unsecured debt" means a debt which is not a secured debt.

(15) The expressions "District Judge", "Joint Judge", "First Class Subordinate Judge" and "Special jurisdiction" have the same meanings as are assigned to them in XIV of 1869. the *Bombay Civil Courts Act, 1869*.

(16) The words and expressions used in this Act, but not defined, have the meanings assigned to them in the V of 1908. *Code of Civil Procedure, 1908*, or the Bom. V of 1879. *Bombay Land Revenue Code, 1879*, as the case may be.

COMMENTARY

Definition-clauses.—This section constitutes what is usually known as the definition-clause or the interpretation-clause of the Act. Such a clause occurs in all legislative enactments unless they are intended merely to amend other statutes in force and the amending portion does not proceed on any new principles. The purpose of adding such a clause in all enactments as the above-mentioned class is to make it plain to all whom it may concern in what senses the particular words occurring in different parts of the statutes are to be understood, whatever may be their ordinary, grammatical or popular meanings. The Courts have no discretion in construing them and have to understand them in the given sense except when there is a clear case of repugnance arising out of the nature of the subject or the context, in which case according to the section itself they can assign another suitable meaning to the word.¹

Reference to context.—Now, questions of context and repugnance can arise in two classes of cases, namely (1) when one and the same expression which has been defined is found at several places in the same Act² and (2) when the word or expression under consideration is capable of two meanings.³ As for the former class of cases, the primary rule is that the same words or set of words occurring in different parts of the same statute must be understood in the same sense throughout in order to bring about harmony.⁴ But there are at times special reasons for assigning different meanings to the same word or expression even when it occurs in different parts

1. *Official Liquidators v. Jugal Kishore*, (A. I. R. 1939 All. 1).

2. *Commissioner of Income-tax, Madras v. Ibrahimsa* (A. I. R. 1928 Mad. 543, 544).

3. *Secretary of State v. Khand Chand* (A. I. R. 1935 Lah. 492); *Nidhusudan v. Bibhubati* (A. I. R. 1940 Cal. 395).

4. *Aghore Chandra v. Rajanandini Debi* (A. I. R. 1933 Cal. 283) in which reference is made to the rulings in the English cases of *River Commissioners v. Adamson* (1877) 2 A. C. 743 and *Easter Co. v. Comptroller of Patents* (1898) A. C. 576; *Seva Ram v. Prabhu Dayal* (A. I. R. 1935 Oudh. 313); *Someshwar v. Manilal* (34 Bom. L. R. 206) in which *Maxwell's Interpretation of Statutes*, 7th edn. pp. 2-3 and 19 are relied on; *Sat Narain v. Mahavir Prasad* (A. I. R. 1939 Pat. 392) and *Rangiah v. Appaji* (A. I. R. 1927 Mad. 163); *Narsing Das v. Choge Mul* (A. I. R. 1939 Cal. 435, 439 F. B.). See also *Spencer v. Metropolitan Board of Works* (22 Ch. D. 142); *Madan Gopal, In re the Income-tax of* (A. I. R. 1935 All. 494).

of the same statute but the desire to give effect to a supposed or speculative intention of the Legislature should not be one of them.⁵ As regards the second class of cases, the primary rule is that if the language of the section to be construed in which the word having a double meaning occurs, is clear the literal meaning of the word is to be preferred.⁶ In such cases it becomes necessary to construe more than one section together in place of the sub-sections, if any, of the same section⁷ or even the scheme of the Act as a whole⁸ in order to gather the intention of the Legislature but in doing so *a priori* considerations should not be imported,⁹ for it would be to frustrate the intention of the Legislature to create or imagine an ambiguity where in fact none exists,¹⁰ it not being the duty of the Courts to follow an intention which cannot be gathered from the plain words of a statute according to one of the rules of judicial interpretation which has been fairly well established.¹¹ Another of such rules recognised by the Privy Council is that "the words used in an Act of Parliament are presumed to have been used correctly and exactly, that the burden of proving that this rule has been broken lies heavily on those who make such an assertion and that this burden can be discharged by a reference to something in the context from which it can be inferred that the loose and inexact meaning must be preferred."¹²

Reference to subject. (1) *Other Acts not in pari materia.*—Ordinarily the meaning of a word used in a statute should be ascertained

5. *Neelikandi v. Kunhayissa* (A. I. R. 1936 Mad. 158); *Chidambora v. Rama* (A. I. R. 1937 Mad. 385 F. B.); *Ishwar Singh v. Allah Rakh* (A. I. R. 1936 Lah. 698).

6. *Musamat Uda Bai v. Ram Avatar Singh* (A. I. R. 1935 Lah. 423).

7. *Ashutosh Ganguli v. Watson* (I. L. R. 53 Cal. 929), referring to and relying on *Craies on Statute Law*, 3rd edn. p. 194.

8. *Nihal Singh v. Siri Ram* (A. I. R. 1939 Lah. 388); *Nidhusudan v. Bihabati* (A. I. R. 1940 Cal. 395). See also *Bentley v. Kimberworth Local Board of Health* (1876) 4 Ch. D. 588; *Warburton v. Loveland* (1831) 2 D. & Cl. 480.

9. *Nadar Fateh Sher v. Musamat Karam* (A. I. R. 1936 Pesh. 160).

10. *Municipal Commissioner v. Mancherji* (I. L. R. 36 Bom. 405, 410).

11. *Musamat Mohammadi v. Emperor* (A. I. R. 1932 All. 110).

12. *Borough of New Plymouth v. Taramaki Electric Power Board* (A. I. R. 1933 P. C. 216) in which the English case of *Spillers Ltd. v. Cardiff Borough Association Committee* (1931) 2 Q. B. 21 has been referred to.

without reference to any other Act unless it is in *pari materia* with it,¹⁵ nay, it is always dangerous to do so.¹⁴ It is much more so when the other Act is an Act passed by another Provincial Legislature than that which passed the one under consideration.¹⁵ Nevertheless it becomes necessary and is permissible in certain contingencies to make reference to such an Act. Such contingencies are :—

- (1) When the Act to be construed is passed by the same Legislature which had passed a *General Clauses Act* in force at the time of interpretation or when an occasion arises for reference to the *General Clauses Act, 1897* of the Indian Legislature, wherever the same is applicable.¹⁶
- (2) When it is alleged that the Legislature intended to make substantial changes in the existing law by the new enactment,¹⁷ as is the case with this Act vis-a-vis the *Deccan Agriculturists Relief Act, 1879*, the presumption in such a case however being that the Legislature did not intend any change.¹⁸
- (3) When the same words or expressions are used in a subsequent enactment¹⁹ as is the case with this Act and the *Bombay Tenancy Act, 1939*.
- (4) When the other Act deals with a somewhat, though not exactly, similar subject and the object in referring to it is to point out the difference between the two enactments²⁰

13. *Gowind Ram v. Kashi Nath* (A. I. R. 1936 All. 239) where the *Indian Stamp Act, 1899* and the *Indian Registration Act, 1908*, were not held to be in *pari materia*; *Abdul Rahim v. Syed Abu Mahamed* (A. I. R. 1928 P. C. 16); *Madhavrao v. Panna Lal* (A. I. R. 1938 Nag. 292).

14. *Nippon Yusen v. Ramjiban* (A. I. R. 1938 P. C. 152, 158); *Kameshwar Singh v. Kulada Prasad* (A. I. R. 1935 Cal. 732); *Emperor v. Aftab Mohammad Khan* (A. I. R. 1940 All. 291).

15. *Emperor v. Khin Maung* (A. I. R. 1933 Rang. 275); *Mt. Siraj Fatima v. Mohammad Ali* (A. I. R. 1932 All. 293). The ruling in the latter case disapproves of reference to judicial decisions while interpreting the words of a statute not in *pari materia* with that to be construed.

16. *Fatima Bibi v. Ganesh* (I. L. R. 31 Bom. 630).

17. *Abdul Rahim v. Syed Abu Mohammad* (A. I. R. 1928 P. C. 16).

18. *Cassim and Sons v. Sara Bibi* (A. I. R. 1936 Rang. 17).

19. *Purna Chandra v. Biswas* (A. I. R. 1936 Cal. 64, 65).

20. *G. N. Asundi v. Virappa* (A. I. R. 1939 Bom. 221).

e.g. that between the provisions of this Act and any of the Acts of the Bengal, Punjab, C. P. or Madras Legislature passed with a similar object, namely that of granting relief to heavily-indebted agriculturists.

(2) *Other Acts in pari materia*.—As regards Acts in *pari materia*, they should be construed together as one system and as explanatory of each other²¹ and all possible attempts should be made to avoid repugnance between them.²² In the case of such Acts of the same Legislature such a construction should be made on the presumption that the Legislature was aware of the state of the law when it made the new Act and that it could not have intended to alter the law which it could not affect as in the case of that contained in an Act of Parliament.²³ Further if the words or expressions used in the Act to be construed are found to have been taken bodily from another enactment in *pari materia* with it and those words or expressions had received a judicial interpretation it must be presumed that the Legislature was aware of that interpretation and intended it to be followed in the subsequent enactment.²⁴ In construing the Act thus by reference to other Acts it should however be borne in mind that it is not permissible to strain unduly the language of the statute to be construed, in order to give effect to a supposed intention of the Legislature.²⁵

(3) *Previous history of the law*.—This and the previous head are somewhat overlapping because (1) while Acts which are in *pari materia* with that, the words in which are to be construed, must include that, if any, which may have preceded it and has since been repealed or partially amended the previous history of the law on a particular subject must also include such an Act. Still, since no

21. *Mahomed Bagar v. Mahomed Kasim* (A. I. R. 1932 Nag. 210).

22. *Khan Gul v. Lakha Singh* (A. I. R. 1928 Lah. 609).

23. *Narsing Das v. Choge Mul* (A. I. R. 1939 Cal. 455, 444 F. B.) where the Act under consideration was the *Bengal Agricultural Debtors Act* (VII of 1936); see also *Nagaratnam v. Seshayya* (A. I. R. 1939 Mad. 361, 365); *Subrahmaniam Chettiar v. Muthuswami Goundan* (3 F. L. J. 157).

24. *Radha Mohan v. Abbas Ali* (A. I. R. 1951 All. 294, 299); *Nagar Damodar v. Gange* (A. I. R. 1938 Mad. 638, 640) relying on *Grievs v. Tofield* (1882) 14 Ch. D. 563; *Panchayat Board v. W. I. Matches Co.* (A. I. R. 1939 Mad. 421 F. B.).

25. *Mohammad Husen v. Jaimini Nath* (A. I. R. 1938 Cal. 97, 101).

other Act can, on the one hand, be included in the latter, the question of the legitimacy, on the other, of a reference to other Acts not included therein is a relevant subject for inquiry and (2) since while, on the one hand, many more things besides the previous state of the law, such as the preliminary inquiry or inquiries which led to the drafting of the bill, the draft bill itself, the statement of objects and reasons accompanying it, the speech of the Hon'ble Member or Members who may have moved the bill in the Legislative Body or Bodies, the report, if any, of the Select Committee appointed to revise the bill, the bill as revised by it, the minutes of the debates that may have taken place in the Legislative Body or Bodies, the bill with the changes which may have been made in the provisions of the original bill or in the bill as returned by the Select Committee, are included in the import of the expression "Previous history of the law", such things do not fall under the head "Other Acts", this head has been considered separately.

And it too must be considered under two separate sub-heads, namely (a) Previous state of the law and (b) Previous preliminary proceedings, *i.e. to say*, the proceedings ending with the passing of the Act under consideration, which comprises all the stages commencing from a preliminary inquiry and ending with the debates at the third reading of the Bill in the Legislative body or bodies. Ordinarily it is the first sub-head which is otherwise named 'Previous history of the law' but that is the result of a looseness of phraseology and the other sub-head too must, in my view, be deemed to fall under the same head.

(a) *Previous state of the law* :—The rules deducible from the judicial decisions on this point are the following :—

- (1) When the language of a section is clear and unambiguous, reference to all internal and external evidence of the intention of the Legislature, the latter of which comprises the previous state of the law, is absolutely barred, the said intention being in such a case required to be gathered from the language itself.²⁶

26. *Ishwar Singh v. Allah Rakh* (A. I. R. 1936 Lah. 698) ; *Gurudwara Nankhana v. Hira Das* (A. I. R. 1936 Lah. 298) ; *Gowind Ram v. Perumal* (A. I. R. 1927 Mad. 327) ; *Mahomed Yakub v. Mt. Aziz-un-nissa* (A. I. R. 1935 Oudh. 437) ; *Barisal Co-operative Bank v. Benay Bhushan* (A. I. R. 1934

- (2) This rule is so inflexible that even if absurdity or mischievousness,²⁷ hardship or injustice,²⁸ anomaly or defeat of the policy of the Legislature,²⁹ undesirability or even unreasonableness,³⁰ inequity,³¹ conflict with the provisions of international law giving rise to a responsibility on the part of the Government of the country to foreign powers³² is likely to result from giving effect to the provisions of the Act, the Court is bound to do so, leaving it to the Legislature to amend the Act as and when it thinks proper.
- (3) When however there is any doubt or ambiguity in the language of the enactment the question of making a reference to other evidence of the intention of the Legislature including the previous state of the law arises. There being two decisions of the Privy Council against the legitimacy

Cal. 537); *Ram Ranbijay v. Ram Giri* (A. I. R. 1935 Pat. 346); *Ram Prasad v. Emperor* (A. I. R. 1938 Pat. 403); *Hatimbhai v. Framroz* (A. I. R. 1927 Bom. 278); *Joti Prasad v. Amba Prasad* (A. I. R. 1933 All. 358); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.); *Chattar Singh v. Makhhan Singh* (A. I. R. 1936 Pesh. 20); *A. B. Neogi v. B. B. Neogi* (A. I. R. 1936 Rang. 105, 106); *H. Hagencister v. U. Po. Cho* (A. I. R. 1935 Rang. 53); *Mahomed Naim v. Mt. Murimissa* (A. I. R. 1936 Oudh. 32 F. B.); *Fateh Mahomed v. Emperor* (A. I. R. 1940 Sind 97); *Narayan Swami v. Emperor* (66 I. A. 66); *Corporation of Calcutta v. Kumar Arun Chandra* (A. I. R. 1934 Cal. 862); *Ram Lal v. Thakur Das* (A. I. R. 1938 Pat. 94).

27. *Piara Singh v. Mula Mul* (A. I. R. 1923 Lah. 655).

28. *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507); *Deputy Commissioner v. Budhu Ram* (A. I. R. 1937 Lah. 38); *Secretary of State v. Hajra* (I. L. R. 46 Cal. 199); *Diwan Chand v. Manak Chand* (A. I. R. 1934 Lah. 809); *Jageshwar Singh v. Jawahar Singh* (I. L. R. 1 All. 311, 315, F. B.).

29. *Joti Prasad v. Amba Prasad* (A. I. R. 1933 All. 358); *Ram Prasad v. Emperor* (A. I. R. 1938 Pat. 403); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.); *Narendra Nath v. Kamalbasini Debi* (I. L. R. 23 Cal. 563); *Chattar Singh v. Makhhan Singh* (A. I. R. 1936 Pesh. 20); *A. B. Neogi v. B. B. Neogi* (A. I. R. 1936 Rang. 105, 106); *Dwarka Mahatom v. Patna Municipality* (A. I. R. 1936 Pat. 282); *Biseshwar Baksh v. Bishwa Nath* (A. I. R. 1935 Oudh. 489); *Hadayat Ullah v. Gulam Mahomed* (A. I. R. 1923 Lah. 529).

30. *Emperor v. Hari* (A. I. R. 1935 Sind. 145).

31. *Nannu Mal v. Ram Chander* (I. L. R. 53 All. 334); *Bhulan v. Bachcha* (A. I. R. 1931 All. 380).

32. *Hatimbhai v. Framroz* (A. I. R. 1927 Bom. 278, 333).

of such a reference even in case of doubt or ambiguity except when it is alleged that the Legislature intended to make substantial changes in the existing law,³³ the Bombay and Lahore High Courts and the Sind Judicial Commissioner's Court³⁴ had ruled against such a reference, the Madras and Patna High Courts had ruled in favour of it³⁵ while there were conflicting decisions of the Calcutta and Allahabad High Courts and the Judicial Commissioner's Court at Nagpur.³⁶ This difference of view can now be deemed to have been set at rest by the recent decision of the Privy Council³⁷ to the effect that such a reference is legitimate when the language of an enactment is not clear but admits of a doubt.

33. *Administrator-General v. Prem Lal* (I. L. R. 22 Cal. 788 P. C.) on appeal from the same case reported in I. L. R. 21 Cal. 732; *Abdul Rahim v. Syed Abu Mahamed* (A. I. R. 1928 P. C. 16).

34. *Queen Empress v. Tilak* (I. L. R. 22 Bom. 112); *Gurdial Singh v. Central Board, Sri Durbar Sahab* (A. I. R. 1928 Lah. 337); *Khudabux v. Punjo* (A. I. R. 1930 Sind 265 F. B.); *Daily Gazette v. Karachi Municipality* (A. I. R. 1930 Sind 287); *Murli Mul v. Benarsi Das and Sons* (A. I. R. 1935 Sind 62).

35. *Kandappa v. Vengamma* (I. L. R. 37 Mad. 548, 554 F. B.); *Dwarika Mahaton v. Patna Municipality* (A. I. R. 1936 Pat. 282, 284).

36. *Calcutta High Court*

For.

Prem Lal v. Radha Ballav (A. I. R. 1931 Cal. 140); *King Emperor v. Barendra Kumar* (A. I. R. 1924 Cal. 257 F. B.); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.); *Administrator-General v. Prem Lal* (Suit—I. L. R. 21 Cal. 732).

Against.

Queen Empress v. Sri Charan (I. L. R. 22 Cal. 1017); *Debendra Narain v. Jogendra Narain* (I. L. R. 1936 Cal. 593).

Allahabad High Court

For

Official Receiver of Muradabad v. Haji Murtuza Ali (A. I. R. 1932 All. 434).

Against

Peare Lal v. Soney Lal (A. I. R. 1936 All. 222).

Nagpur J. C's. Court.

For

Diwan Singh v. Emperor (Appeal—A. I. R. 1936 Nag. 55, 61).

Against

Diwan Singh v. Emperor (Suit—A. I. R. 1935 Nag. 90).

37. *Secretary of State v. Mask & Co.* (A. I. R. 1940 P. C. 105, 109).

(b) *Previous preliminary proceedings* :—Such proceedings would include the reports if any, of the commission or committee appointed to investigate the causes of any particular evil and to suggest remedies for its removal, like those of the Royal Commission on Agriculture and the Indian Central and Provincial Banking Inquiry Committees, the terms of reference to whom included the subject of agricultural indebtedness, the draft bill which may have been the first step towards the adoption of the suggested remedy, the statement of objects and reasons which usually accompanies such a bill, the speech of the Hon'ble Member of Government who may have moved its first reading and seen it through to its end when it became an Act, the report, if any, of the Select Committee appointed to revise the bill together with the revised bill and the minutes of the Debates that may have taken place on the several clauses thereof at the meetings of the Legislative Body or Bodies as the case may be. All of them are on the same footing because none of them forms part of the Act as may have been assented to by the Governor or Governor-General, whose assent is necessary according to the Government of India Act, 1935. When attention is drawn to any of them a question arises as to what value to attach to it while interpreting a part of the Act itself. This must be done on the strength of the course of judicial decisions on the point. What can be gathered on a perusal of more than a score of them is that the Calcutta High Court had in two earlier cases³⁸ held that such proceedings can be referred to in order to gather the intention of the Legislature in passing an enactment, that when the case reported in I.L.R. 21 Calcutta at p. 732 *et. seq.* went up to the Privy Council it held that reference to them for the said purpose could not legitimately be made³⁹ and that since then except in two cases⁴⁰ the learned Judges who had occasions to decide that point did not go against that ruling of the Privy Council.⁴¹ It may there-

38. *Empress v. Kartik Chunder* (I. L. R. 14 Cal. 721) ; *Administrator-General v. Prem Lal* (Suit—I. L. R. 21 Cal. 732).

39. *Administrator-General v. Prem Lal* (Appeal—I. L. R. 22 Cal. 788 P. C.)

40. Per Fawcett J. in *Hatimbhai v. Framroz* (A. I. R. 1927 Bom. 278, 300) ; *Ramireddi v. Sreeramulu* (A. I. R. 1933 Mad. 120).

41. See for instance the rulings in *Abdul Khan v. Shikara Bibi* (A. I. R. 1928 All. 124) ; *Chandi Charan v. Rohini Kumar* (A. I. R. 1934 Cal. 119) ; *Dina Nath v. Raja Sati Prasad* (A. I. R. 1923 Cal. 74) ; *Gurdial Singh v.*

fore be taken to be a well-settled rule of the interpretation of Indian statutes that none of the proceedings above-mentioned can be looked upon as a legitimate aid in arriving at the conclusion as to the intention of the Legislature in passing an enactment. Some of the English rulings on this point do however permit of an historical investigation being made in order to clear up an ambiguity.⁴²

(4) *English law* :—It not infrequently happens that an Advocate for one of the parties, especially if he is also a Bar-at-law, cites several decisions of the English Courts in support of his interpretation of a part of an Indian statute applicable to a case which he is arguing before an Indian Court. In such cases the Court is required to determine the legal value of such decisions or of the principles of common law enunciated therein and believed to have been embodied in the Indian statute. In order therefore that the Court may be properly guided in discharging that duty it should have before it the principles on which the Judges of the Indian Courts who had previous occasions to do so have based their rulings in such cases.

Now there are two classes of cases in which such a question is likely to arise namely :—

I. When the case falls within the orbit of a positive Indian enactment ; and

II. When it does not fall within that of any such enactment.

Central Board, Sri Durbar Saheb (A. I. R. 1928 Lah. 337) referring to *Rex v. West Riding of Yorkshire County Council* (1906) 2 K. B. 676, 716 ; *Rajmal v. Harnam Singh* (A. I. R. 1928 Lah. 35) ; *Shidramappa v. Neelarabai* (A. I. R. 1933 Bom. 272, 274) ; *Ashutosh Ganguli v. Watson* (I. L. R. 53 Cal. 929) ; *Krishna Ayyangar v. Nalla Perumal* (I. L. R. 43 Mad. 550, 559 P. C.) following 22 Cal. 788 P. C. and *Craies on Statutory Law*, 2nd edn., pp. 133-34 ; *In re Lala Harkisan Lal* (A. I. R. 1937 Lah. 497) ; *Superintendent and R. L. A., Bengal v. Tarak Nath* (A. I. R. 1935 Cal. 304, 305) ; *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593) ; *Corporation of Calcutta v. Monarch Bioscope Co.* (A. I. R. 1936 Cal. 145) ; *Dewarkhand Cement Co. Ltd. v. Secretary of State* (A. I. R. 1939 Bom. 215) ; *Subrahmanya v. Sheikh Ghanna* (A. I. R. 1935 Mad. 628) ; *Rum Raubijay v. Ramgiri* (A. I. R. 1935 Pat. 346) ; *R. S. Ruikar v. Emperor* (A. I. R. 1935 Nag. 149).

42. *Bank of England v. Vagliano Bros.* (1891) A. C. 107, 144 ; *Reg. v. Bishop of London* (1889) 24 Q. B. D. 213 ; *Reg. v. Most* (1881) 7 Q. B. D. 244.

The Judges have distinguished between these two classes of cases while giving their rulings in favour of or against making use of the English decisions or the common law principles on which they are based. They are therefore considered here separately.

I. (1) As regards the first class of cases it has been repeatedly and unequivocally ruled that when a case falls under a positive Indian enactment, reference to the rules of common law deduced from the decisions of English Courts is neither necessary nor permissible because it is the duty of the Indian Courts to administer the Indian statute law as it is and because they would not be acting within their authority in engrafting such rules on the Indian statutes however wholesome they may be.⁴³

(2) This absolute prohibition was however held in one case to apply to those cases only in which there is no ambiguity in the words of the section of the Indian enactment to be construed and such rules were held to be useful in clearing up an ambiguity therein, if any, subject to the restriction that in such a case too the language of the section to be construed should not be strained in order to give effect to such rules.⁴⁴

(3) Where however it is found that there is an English Act embodying such a rule and that the provisions of that Act have been practically repeated in almost the same terms in the Indian Act, the relevant provisions in the former can, according to a ruling of the Sind Judicial Commissioner's Court, be referred to and if further they are found to have received a particular interpretation at the hands of any English Judges the Indian Legislature must

43. *Indian General Navigation and Railway Co. Ltd. v. Dekhari Tea Co. Ltd.* (A. I. R. 1924 P. C. 40); *Wilkinson v. Wilkinson* (A. I. R. 1923 Bom. 321 F. B.); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.); *Ganpat v. Sopana* (I. L. R. 52 Bom. 88, 93); *Jaisukhlal v. Mahomed Husen* (A. I. R. 1939 Bom. 522, 523); *Daily Gazette v. Karachi Municipality* (A. I. R. 1930 Sind 287); *Emperor v. Joti Prasad* (A. I. R. 1932 All. 18, 22); *Sham Sunder v. Emperor* (A. I. R. 1932 Oudh 145); *Diwan Chand v. Manak Chand* (A. I. R. 1934 Lah. 809); *Hem Raj v. Krishna Lal* (A. I. R. 1928 Lah. 361); *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507); *Emperor v. Ramanuja* (A. I. R. 1935 Mad. 528); *Abdul Rahman v. Emperor* (A. I. R. 1935 Cal. 316).

44. *Dial Singh v. Emperor* (A. I. R. 1936 Lah. 337).

be presumed to be aware of it and to have intended that it should be followed while construing the provisions in the Indian Act.⁴⁵

(4) The Court of the Judicial Commissioner at Peshawar has added a rider to this exception to the effect that even in such a case, the interpretation put by the English Courts on the words of the English statute found to have been incorporated in an Indian statute should not be followed if it is found to be contrary to the statute law of India as contained in any other enactment.⁴⁶

II. Where however there is no provision of a positive Indian statute applicable to the facts of a case such as those of a civil action for damages for defamation the relevant rules of English common law deduced from the decisions of the English Courts must be applied to that case.⁴⁷

N. B.—A ruling under an English statute law does not fall under any of the above categories. It having been based on the particular wording of an English statute is in no case a guide to the interpretation of a section of an Indian statute.⁴⁸

Definitions :—

(1) The term "Award" is, according to this definition, to be understood in the sense of an award made, by a Debt Adjustment Board duly appointed by the Provincial Government under S. 4 of the Act as provided, in S. 24, which relates to the making of an award in terms of a private settlement arrived at by the parties after an application for adjustment has been made under S. 17, or in S. 54, which relates to an award made on such an application after the whole procedure upto a scaling down of debts as provided in S. 52 has been gone through or to an award made on an application made under S. 23 for recording and certifying a private settlement arrived at independently, or in S. 55, which prescribes the mode of making an award when all the creditors of a debtor agree to a further scaling down of the debts to half the value of the property of the debtor in consideration of the Provincial Land Mortgage Bank or any other authorised Bank agreeing to issue to them bonds

45. *Official Receiver v. Mt. Parameshwari* (A. I. R. 1932 Sind 50).

46. *Alliance Bank of Simla v. Mian Feroze Shah* (A. I. R. 1936 Pesh. 57).

47. *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.).

48. *Tarachand v. Emperor* (A. I. R. 1938 Sind 116).

guaranteed by Government for the respective sums payable to them after the further scaling down is made as above-stated, or one made by the Court of the First Class Subordinate Judge having jurisdiction in the matter on appeal from the award of such Board in cases in which an appeal lies to such Court under S. 9 of the Act. For the relevant Rule and Forms see the relevant Appendix.

(2) The term "Board" wherever it occurs in the Act is to be understood in the sense of a Debt Adjustment Board duly established under the provisions of S. 4 of the Act and according to the rules made with reference thereto.

(3) The term "Co-operative Society" wherever it occurs in the Act is to be understood to mean a society registered or deemed to have been registered under the provisions of the *Bombay Co-operative Societies Act, 1925*.

In S. 5 of that Act the societies which can be registered under it are described as follows :—

5. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a Society, may be registered, under this Act, with or without limited liability :

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

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

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

This definition is found adopted in S. 2(2) of the *Bombay Tenancy Act, 1939* also.

(4) The term "Court" as used in S. 13 (Procedure in appeals), S. 14 (Finality of the order of the Court hearing the

appeal), S. 17(4) (Procedure when more than one application for adjustment of debts have been made to the same or different Boards), S. 61 (Transmission of award to the Court), S. 62(1) (Registration of an award), S. 63 (Recovery of amount due under an award), S. 66 (Sale of a part of the debtor's property for the liquidation of his debt), S. 75 (Exclusion of the period of proceeding before the Board or the Court) and S. 83 (Rules to be made by the Provincial Government) means the District Court or the Court of the First Class Subordinate Judge to which an appeal lies against the award of a Board under S. 9 of the Act and in the remaining provisions of the Act, the Civil Court of competent jurisdiction.

Under S. 9(1) of the Act, an appeal against an award lies to the Court of the First Class Subordinate Judge within whose special jurisdiction the Board may have been established if the total amount payable under it is upto Rs. 5,000 and to the District Court if it exceeds Rs. 5,000.

(5) This is a special definition of the word "Debt" for the purpose of this Act. The ordinary dictionary-meaning of the word is "anything that is owed or is due by one person to another" and hence "an obligation or liability" whatever its character and to whatever incidents it may be subject. Hence "arrears of wages payable in respect of agricultural or manual labour" are included therein according to its usual connotation. But here those arrears are specially excluded from its connotation. Moreover from the use of the word 'means' it is clear that the word is intended to include secured and unsecured liabilities, whether in cash or in kind, due from a debtor, whether such liabilities arise, under a decree or order of a Civil Court or under any instrument such as a bond, promissory note, hundi, bill of exchange, or hand-note, or in any other manner. A liability in order to be included in a "Debt" must be of an ascertained sum.

(6) The definition of the word "Debtor" is also a special one. Its special features are :—(1) It applies both to an individual and to an undivided Hindu family who fulfil the conditions laid down for them in clauses (a) and (b). The following three conditions are common to both namely :—(1) Indebtedness, (2) Holding of land used for agricultural purposes and (3) personal cultivation of

such land from a date prior to 1st April 1937. What is "personal cultivation" can be gathered from S. 2(13) read with its two explanations. What it is "to hold land" can be gathered from S. 2(8). There is a 4th condition to be fulfilled in each case. In the case of an individual it is that he or she must be one having an income from sources other than agriculture and manual labour which does not exceed 20% of his or her total annual income or which does not exceed Rs. 300, whichever is greater. In the case of an undivided Hindu family the proportion between the non-agricultural and total incomes is the same but the maximum limit of the income from non-agricultural sources is Rs. 500.

Illustration :—If an agricultural debtor has a total income of Rs. 1,250 annually, he would be held to be a debtor not only if he has been earning Rs. 250 from non-agricultural sources, but also if he has been earning more than Rs. 250 from such sources, but in that case his such income should not exceed that limit by more than Rs. 50. An undivided Hindu family even if there is only one earning member in it has the additional advantage of being entitled to be held to be a debtor under this Act, even in case its income from such sources exceeds that limit by Rs. 250 more. This is the significance of the qualifying clause "whichever is greater" added at the end of condition (iv) in sub-sections 6(a) and 6(b).

Explanation I.—The word "Agriculture" occurs in condition (IV) under both the sub-sections. So far as this Act is concerned it not only means the tilling of the soil but also means horticulture, i.e. the art of cultivating gardens, the raising of crops or garden produce with well, river or tank water, dairy farming i.e. the maintenance of a farm for keeping cows (and probably also buffaloes), growing grass for them, selling milk, curds, butter, cheese &c., poultry-farming i.e. maintaining a farm for rearing domestic fowls for making use of them in one's home or for selling their chickens, eggs, feathers &c., stock-breeding i.e. keeping of animals of both sexes for the propagation of their species and rearing up their young ones for sale &c., and grazing i.e. feeding cattle with grass while still in the ground. It does not however mean the mere leasing out of land for rent or a share of the crops and the mere cutting of grass from a field or wood from individual trees or a forest. Cf. a very

similar definition of the same word in S. 2(1) of the *Bombay Tenancy Act, 1939*.

Includes—It will be noticed that this explanation says that the term “Agriculture” for the purposes of this clause “includes” horticulture &c. and “does not include” leasing of land &c. It is not unusual to find a legislature making use of this verb in a definition. Its significance has been giving rise to controversies as to the true meaning of the word or expression in the definition whereof it occurs. The following rulings with reference thereto would I hope, be found useful when such a controversy arises :—

Inclusive definitions :—The Madras High Court has ruled in *Madras Central Urban Bank Ltd. v. Corporation of Madras*⁴⁹ that when a Legislature uses the term “includes” in a definition its intention must be either to settle a difference of opinion as to the meaning of the term sought to be defined or to bring in other matters not ordinarily connoted by that term.

Confirming that view the Patna High Court has ruled in *Bishwanath v. Official Receiver*⁵⁰ that it is implied in such a case that the term retains its ordinary meaning, whatever else it may mean.

The Bombay High Court also seems to have confirmed the second view out of the two in the Madras ruling, in the case of *In re Strauss & Co. Ltd.*⁵¹ by saying that the word “include” in a definition-clause is to be understood to be enumerative and not exhaustive and that it has an extending force and does not limit the meaning of the term to the substance of the definition. It appears however to have estimated its value more correctly when it ruled in *Babu Vithal v. Secretary of State*⁵² that when we have an inclusive definition great care is required in applying it while interpreting the word wherever it occurs, that it is a recognised principle of judicial interpretation that the inclusive meaning is not to be necessarily and indiscriminately applied to the word wherever it occurs.

49. A. I. R. 1932 Mad. 474, 481 in which the English case of *Dilworth v. Commissioner of Stamps* (1899) A. C. 99 is referred to.

50. A. I. R. 1937 Pat. 185 F. B.

51. A. I. R. 1937 Bom. 15, 16.

52. I. L. R. 56 Bom. 278, 289-90 relying on *Emperor v. B. H. De Souza* (I. L. R. 35 Bom. 412).

and that the comprehensive sense is "not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require that they should."⁵³

Scope of an explanation:—The exact effect of an explanation added to a section is sometimes not easy to ascertain. The following case-law with reference thereto would in such a difficulty be found to be useful.

The Privy Council has stated in *Krishna Ayyangar v. Nalla Perumal*⁵⁴ that the construction of an explanation must depend upon its terms and that no theory of its purpose can be entertained unless it is inferred from the language used. This is a very sound principle to be adopted for guidance, for, if the natural construction of a particular explanation does actually modify the scope of the section to which it is appended, whether it be by way of enlarging its scope or restricting it, effect must be given to it, whatever the theory established by the decisions of some of the High Courts may be. This brings us to the question of the value to be attached to such decisions while interpreting an Act.

Judicial decisions as an aid to interpretation:—The Privy Council itself has ruled in another case⁵⁵ that though they "do effectively construe the words of an Act of Parliament and establish principles and rules whereby its scope and effect may be interpreted, there is always a danger that in the course of this process attention may be diverted from what has been enacted to what has been judicially said about the enactment and the scope of the statute may be unduly extended." The Allahabad High Court too has put in a similar word of caution against giving an undue importance to such decisions in the case of *Mirza Zahid Beg v. Emperor*.⁵⁶ The

53. *Emperor v. B. H. De Souza* (I. L. R. 35 Bom. 412). For other English decisions on the significance of this word see the rulings in *Queen v. Justices of Cambridgeshire* (1838) 7 Ad. and E. 480, 491; *Meux v. Jacobs* (1875) L. R. H. L. 481, 493; and *Mayor of Portsmouth v. Smith* (1885) 10 App. Cas. 364, 375.

54. I. L. R. 43 Mad. 550 P. C.

55. *Attorney-General of Canada v. Attorney-General of Ontario* (A. I. R. 1932 P. C. 36, 40).

56. A. I. R. 1938 All 91.

Lahore High Court has however advanced the theory that an explanation to a section does not enlarge its scope but only makes it clear.⁵⁷ This may be true with regard to the particular explanation before that Court but the sound view is that of the Privy Council above-mentioned.

Explanation II :—The above remarks as to the scope of an explanation must be made use of while determining the scope of this explanation because the expression “To cultivate personally” has been further defined in S. 2(13) and that sub-section itself has two explanations. A reference to them makes it clear that Explanation II to this sub-section takes for granted that the fact required for holding whether an individual or an undivided Hindu family is or is not a debtor, namely that he, she or it must be cultivating personally, has been inquired into and that it has been found that the individual or family concerned has been cultivating personally. But in order to be placed in the class of “debtors” as defined in the present sub-section there is the further condition (iii) in both the clauses of this sub-section that the personal cultivation must have commenced from a date prior to 1st April 1937, and must be continuing till the present date, *i.e. to say*, the date of the application under S. 17. Now it may happen that an individual or undivided Hindu family who had been personally cultivating a land used for agricultural purposes upto 1st April 1937, may have been dispossessed of the land for some reason or another after or even on that date, that for some time thereafter he, she or it may have ceased to cultivate any such land personally and yet at the date of the application he, she or it may be found to be cultivating personally some land either because the same land had in the mean time been re-acquired by any means or because a different land may have been acquired in the meantime. This explanation is intended to condone such breaks in the continuity of personal cultivation and provides that where such is the case the individual or undivided Hindu family must be deemed to be a “debtor” under this Act even though according to the strict construction of condition (iii) in either sub-clause this cannot be made. It will be seen that this proves the soundness of the rule of interpretation laid down in the

57. *Kishan Singh v. Prem Singh* (A. I. R. 1937 Lah. 587, 589).

Privy Council ruling in *Krishna Ayyangar v. Nalla Perumal*.⁵⁸

(7) This sub-section defines the term "Financing of Crops" which has been used at some places in the subsequent chapters. According to this definition it comprises cases of loans being advanced as well after the usual ploughing season as during it and those advanced for all the purposes connected with the raising of crops and the harvesting thereof which include both the purchase of the necessary materials and the employment of labourers. The condition to be fulfilled in each case is that the loan must be repayable during the next harvest season which may differ according to the nature of the crops and the climatic conditions of each locality.

Besides the purposes specifically mentioned, this sub-section authorises the Provincial Government to prescribe other purposes and the present Government has done so by Rule 3. All the other purposes mentioned therein should therefore be read as forming part of this sub-section.

(8) This sub-section defines the term "Holder" and the expression "To hold land" used in the subsequent chapters. This it does, not by attempting to define it independently of all previous legislation but, by extending to this Act the definition of that term contained in S. 3(11) of the *Bom. L. R. Code, 1879* and by further providing that for the purpose of this Act it shall be deemed to include persons who hold lands on the particular tenure mentioned therein and shall not be deemed to include those who hold lands of the particular class mentioned therein or lands whose owners are not individuals but particular classes of institutions. This kind of definition therefore serves a triple purpose namely (1) it extends the definition of the same term contained in S. 3(11) of the *Bom. L. R. Code* to cases falling under this Act; (2) it includes within that term that class of watan lands in connection with which some service useful either to Government or the village community is being actually performed and (3) excludes from it the cases of (a) the holders of those Jagir lands which cannot be alienated without Government sanction such as Saranjams and (b) the holders of the Jagir lands belonging to religious or charitable institutions such as

58. I. L. R. 43 Mad. 550 P. C.

temples, mosques, churches, colleges or Pathshalas or madresas, Gausshalas, hospitals &c.

This sub-section further provides that the expression "To hold land" shall be construed accordingly. Hence that term would mean "to hold land within the meaning of S. 3(11) of the *Bom. L. R. Code, 1879*" and would include and exclude respectively the cases of the holding of the lands above-specified.

In S. 3(11) of the *Bom. L. R. Code, 1879* the term "To hold land" or "To be a landholder or holder of land" has been stated to mean "to be lawfully in possession of land, whether such possession is actual or not". Hence for the purpose of this Act the terms "Holder" and "To hold land" would respectively mean to be in lawful possession of land, whether that possession is actual or constructive subject to the limitations as to the inclusion and exclusion of the other cases above specified.

For the significance of the terms "includes" and "does not include" occurring in this sub-section see the Commentary on S. 2(6), Explanation 1.⁵⁹

(9) As illustrations of this definition see the Forms prescribed by and appended to the Rules made under S. 83 of the Act given in Appendix I.

(10) The term "Resource Society" has been defined in S. 3 (h) (1) of the *Bombay Co-operative Societies Act, 1925* as "a society formed with the object of obtaining for its members the credit, goods or services required by them."

In the Bill (XIII of 1939) as originally drafted it was a condition precedent for the adjustment of an agricultural debtor's debts that he should be a member of a "Resource Society" but the Assembly did not think it possible that as many resource societies would be founded by the time the Act was put into force as would be necessary for giving adequate relief to all the persons who deserved it. That condition was therefore deleted from S. 2(6).⁶⁰

59. Pp. 34-35 *supra*.

60. Vide the Speech of the Hon'ble Mr. Latthe who moved the first reading of the Bill in the Legislative Assembly, extracts from which are given in an Appendix and also the speech of R. B. Chitale at pp. 2437-38 of the *Bombay Legislative Assembly Debate, 1939, Vol. V, Pt. II.*

(11) The Provincial Government has been empowered by S. 83(1) of the Act to make rules generally for the purpose of giving effect to the provisions of this Act and by S. 83(2) to make them with the particular object of providing for the matters referred to in clauses (a) to (o) of that sub-section. The present Government of Bombay had made 39 rules and prescribed 22 Forms under the Revenue Department notification No. 3791/33 dated 26th November 1940 and published them at pp. 1197-1235 of the *Bombay Government Gazette, Part IV* dated 5th December 1940. The suggestions received for amendments therein were considered at an informal conference of officials and non-officials interested in the working of the Act and the Rules and Forms as finally published in the said *Gazette* are reproduced in an Appendix.

(12) It is clear from this definition of a "Secured debt" that it would include not only debts secured by the mortgage of an immovable property but also those secured by the pledge of ornaments or other articles of value because the word "property" must be deemed to have been used in the sense of both movable as well as immovable property.

(13) This definition of the expression "To cultivate personally" is a special one framed for the purpose of this Act inasmuch as ordinarily "To cultivate personally" would not mean anything more than "to cultivate by one's own personal labour." This definition however embraces within its scope, besides cultivation by one's own labour, "cultivation by the labour of any member of one's family or by servants or by hired labourers under one's personal supervision and even the supervision of the member of one's family." It is thus clear that this expression has in this Act a very wide significance. The explanations make it still wider as explained below.

Explanation I :—This explanation contemplates the case of a person, who was cultivating land used for agricultural purposes personally in the sense conveyed by the provision in the main portion of this sub-section, dying before he could have an opportunity to take advantage of the provisions of this Act, on leaving behind him as his heir either a widow or a minor or a person suffering from some physical or mental disability who may not be cultivating a land personally according to the meaning given to the expression

in the main portion of this sub-section but may be maintaining herself or himself on the produce of agricultural lands on getting them cultivated on her or his behalf by servants or hired labourers or by tenants. This explanation provides that such an heir of a deceased cultivator shall also be deemed "To cultivate personally" for the purpose of this Act. This applies to the case of an individual debtor only.

Explanation II :—This explanation contemplates the cases of two classes of undivided Hindu families, namely (1) in which there is at least one adult member of such family able to cultivate personally and actually doing so and (2) in which there is no adult member at all capable of doing so and consequently whose lands are caused to be cultivated either by servants or by hired labourers or by tenants as in the case provided for by Explanation I. As to both of them this explanation says that they must for the purpose of this Act be deemed to cultivate personally. As already explained this sub-section together with its explanations is to be read along with sub-section (6) (a) and (b) and the two Explanations appended thereto. Cf. a similar definition of the same expression contained in S. 2(11) of the *Bombay Tenancy Act, 1939*.

(14) This is a negative definition only. It is however capable of being construed easily by a reference to the definition of a "Secured debt" given in sub-section (12) *supra*. When that is done it is easily intelligible that what the Legislature meant to convey by this negative definition is any debt which is not secured by an encumbrance on the whole or a portion of the property of the debtor, *i.e. to say*, any momentary obligation incurred by him without creating a burden for its repayment on any specific property of his, whether movable or immovable, irrespective of whether he has or has not passed a writing in any form with reference thereto, is an unsecured debt.

(15) This is the fourth case in which the provisions of another Act are extended to this Act, the previous ones being those of (1) sub-section (3) where the definition of a "Co-operative Society" as contained in the *Bombay Co-operative Societies Act, 1925* is extended to this Act; (2) sub-section (10) where the definition of a "Resource Society" contained in the same Act is extended to this Act and (3) sub-section (8) where the definitions of the terms

“Holder” and “To hold land” as contained in the *Bom. L. R. Code*, 1879 are extended to this Act, although they being insufficient for the purposes of this Act have been modified by a further provision in the same sub-section. It is only when such an extension of a definition given in one enactment passed for one purpose is made, that use thereof can be made for the purpose of ascertaining the meaning of even the same word or expression contained in another Act. Otherwise all definitions given in an Act can be legitimately made use of for the purpose of construing any portion of that Act only.⁶¹ The observations made under the sub-heading *Other Acts not in pari materia* under the heading *Reference to Subject* in the earlier part of the commentary on this section will also be found helpful in this connection.⁶²

This sub-section purports to adopt the definitions of the terms “District Judge”, “Joint Judge”, “First Class Subordinate Judge” and “Special Jurisdiction” given in the *Bombay Civil Courts Act*, 1869. However in that Act there are no such definitions of these terms as such but there are certain provisions therein from which it can be gathered what they mean. Thus S. 5 of that Act provides that “There shall be in each district a District Court presided over by a Judge called the District Judge.” From this we can gather that the term “District Judge” has been therein intended to be applied to designate the Judge presiding over the District Court established in each district. Similarly S. 12 of the said Act provides that “The Provincial Government may appoint in any district a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to him by an order of the High Court.” From this we can gather that a “Joint Judge” “within the meaning of the said Act, is a Judge whom the Provincial Government may appoint in any district and invest with powers as mentioned in the section”. The significance of the term “First Class Subordinate Judge” has again to be gathered not from one section of that Act but from several sections, namely SS. 21, 22 and 24. There-

61. *Mahabaleswarappa v. Gopalaswami* (A. I. R. 1935 Mad. 673, 675).

62. See pp. 22-24 *supra*.

out S. 21 only provides that "there shall be such a number of Civil Courts in a district as may be required from time to time", S. 22 provides that "the Judges of such Courts shall be appointed" by the Provincial Government and be called Subordinate Judges and S. 24 provides *inter alia* that "the Subordinate Judges shall be of two classes" and that "the jurisdiction of a Subordinate Judge of the First Class extends to all original suits and proceedings of a civil nature." Taking the provisions of these three sections together we can gather that under the *Bom. C. C. Act, 1869*, a First Class Subordinate Judge is the Judge of a Civil Court in a district, who is not a Second Class Subordinate Judge and whose jurisdiction extends to all such original suits and proceedings of a civil nature as are not cognizable by any of the Second Class Subordinate Judges in the district. Lastly, the term, "Special jurisdiction" too has not been defined as such in the said Act but S. 25 of that Act provides that "a Subordinate Judge of the First Class shall, in addition to his ordinary jurisdiction, exercise a special jurisdiction in respect of such suits and proceedings of a civil nature as may arise within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the Second Class and wherein the subject-matter exceeds the pecuniary jurisdiction of the Subordinate Judge of the Second Class as defined by S. 24." Although the intention of the Legislature in enacting this section is to state what additional jurisdiction the First Class Subordinate Judge shall exercise, the enactment is so clear that it can easily be gathered what the Legislature meant by the term "Special jurisdiction" employed to designate that additional jurisdiction.

(16) This is an additional sub-section in S. 2 of the Act of a comprehensive nature likely to make up for any omissions to define words occurring in this section. The wording is however so general that the Boards and the Courts who will have to administer this Act will have to find out for themselves, from the *Civil Procedure Code, 1908* or the *Bombay Land Revenue Code, 1879* whether the words occurring in this Act, which have not been defined herein and whose meanings are doubtful, have or have not been defined in any of the two enactments mentioned that may be found useful for the purpose.

Construction of words not specifically defined in this section

and not covered by sub-section (16) :—In spite of the above 15 sub-sections specifically defining certain words of expressions and the 16th extending the definitions contained in the *C. P. Code, 1908* and the *Bom. L. R. Code, 1879*, wherever they are found applicable, there must remain certain words of frequent occurrence in this enactment for determining the meaning whereof no assistance can be had from the said sources. As to them the preliminary observations of a general nature made in the beginning of the commentary on this section at pp. 21-31 *supra* will, I hope, be to some extent found useful. In addition to them the following result of a study of the judicial decisions with reference to the meanings to be assigned to some of them may also be found to be of some assistance.

(a) *Technical* :—*Technical and non-technical words* :—Such words may be divided into two classes, technical and non-technical. As to when a word can be placed in the first class, the Allahabad High Court has ruled in *In re Jagmandar Das and Others*⁶³ that the words used in a statute are to be understood in their ordinary *i.e.* non-technical or popular sense unless it is shown that they are used in a special or technical sense. Hence the burden of proving that a particular word of doubtful meaning in a statute has been used therein in a technical sense will lie on the party who raises the contention that it has been so used. But there are Acts and Acts. Some of them are of a patently technical nature. As for the words used therein the Lahore High Court has ruled in the case of *Achhru Mul v. Balwant Singh*⁶⁴ that “it is to be assumed that the words and phrases of technical legislation are used in their technical sense if they have acquired any and otherwise in their ordinary sense.”

(b) *Non-technical* :—Some of the non-technical words occurring in this Act about whose judicial interpretation decisions are available are :—(1) “Proceeding”; (2) “Suits and proceedings”; (3) “May”; (4) “Other laws”; (5) “Includes”. I give them below for reference in case of necessity.

(1) A “Proceeding” has been defined in the judgment of the Lahore High Court in *Murad v. Lala Hanstaj*⁶⁵ as “a matter

63. A. I. R. 1935 All. 378.

64. A. I. R. 1937 Lah. 178.

65. A. I. R. 1937 Lah. 680.

which proceeds or is going on" and has accordingly been deemed to include an appeal if one is provided for by the statute in which it occurs.

(2) As regards the expression "Suits and proceedings" the same Court has ruled in *Kirpa Singh v. Ajaipal Singh*⁶⁶ that the expression has different meanings in different statutes and must therefore be construed with reference to the context in each case.

(3) As regards the use of the word "May" before a verb in a section or a portion of it, the Bombay High Court has expressed the view in *Tulsi v. Omkar*⁶⁷ that in certain cases it is to be taken as conveying a mandate although ordinarily it denotes a recommendation or a permission to the Court to do a thing if it thinks proper to do so in view of the circumstances of the case. One of those cases can be that in which a statute directs the doing of a particular thing for the sake of justice or the public good. In such a case before the Rangoon High Court, Otter J. held that the word "may" has the force of "shall"⁶⁸. In the same case Herald Ag. C. J. put the same proposition in a negative form when he ruled that "In enactments which confer powers and particularly in enactments which confer powers on public authorities the language of mere permission may not preclude the existence of a duty."⁶⁹ Conversely the Lahore High Court has held in *Gurdit Singh v. Committee of Management, Gurudwara*⁷⁰ that the use of the word "shall" does not necessarily mean that the provision in which it occurs is of an imperative nature.

(4) The terms "Other law" or "Other laws" occur very often in Indian enactments. Ordinarily it must mean "any law or laws other than that contained in the enactment under consideration." Still a question was raised in the case of *Bhim Raj v. Munia Sethani*⁷¹ whether the term "other laws" did not refer to the Code

66. I. L. R. 10 Lah. 165.

67. A. I. R. 1927 Bom. 299.

68. *Government of Burma v. Municipal Corporation of Rangoon* (A. I. R. 1930 Rang. 297, 306 F. B.) in which *Rex v. Barlow* (2 Salk. 609) and *Macdougall v. Paterson* (11 C. B. 755) were referred to.

69. Op. cit. p. 300.

70. A. I. R. 1940 Lah. 266, 267.

71. A. I. R. 1935 Pat. 243.

itself in which it occurred and the Court agreeably to the above view held that "it would be contrary to all the known canons of the construction of statutes that x . . . x . . . x words referring to "other laws" should be taken to refer to the Code itself."

(5) For the rulings as to the interpretation of the verb "Includes" see the Commentary on Explanation I to S. 2(6).⁷²

3. Save as otherwise expressly provided in this Act,
Savings. nothing in sections 17, 31, 32, 33, 34, 38,
 39, 40, 41, 42, 43, 44, 45, 52, 53 and 54
 shall affect the debts and liabilities of a debtor falling
 under the following heads, namely:—

- (i) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,
- (ii) any tax payable to a local authority or any other sum payable to such authority by way of loan or otherwise,
- (iii) any liability in respect of any sum due to any co-operative society,
- (iv) any liability in respect of any sum advanced after 1st January 1939 solely for the purpose of financing of crops, and
- (v) any liability under a decree or order for maintenance passed by a competent Court.

Explanation:—"Tax" means any toll, rate, cess, fee or other impost leviable by Government or any local authority.

COMMENTARY

This section limits the applicability of the sections mentioned therein to the debts and liabilities of a debtor other than those specified in clauses (i) to (v).

72. See p. 35 *supra*.

The topics dealt with in the said sections are as follows :—

- S. 17—Application for adjustment of debts.
- .. 31—Service of notice to submit statement of debts.
- .. 32—Voidness of claims relating to the debts in respect of which no application for adjustment or for recording a settlement has been made or if one was made was withdrawn or claims with respect to which a creditor had failed to comply with the requirements of S. 31 without reasonable excuse.
- .. 33—Duties of parties to attend etc.
- .. 34—Board's power to summon any person.
- .. 38—Taking of Accounts.
- .. 39—Examination of creditor and debtor.
- .. 40—Board's duty to inquire into the history and merits of the case.
- .. 41—Board's power to dispense with the inquiry in certain cases.
- .. 42—Mode of taking accounts.
- .. 43—Board's power to make a presumption against a creditor who does not produce account-books.
- .. 44—Board's power to make up accounts on charging rent in lieu of profits in certain circumstances.
- .. 45—Board's power to declare a sale to be in the nature of a mortgage in certain circumstances.
- .. 52—Scaling down of debts.
- .. 53—Non-recoverability of the amount of debts in excess of those to which they are scaled down.
- .. 54—Award.

Whatever the implication of the particular words used in those sections, they by virtue of this saving-clause are to be construed as not applicable to the debts and liabilities mentioned in the five clauses (i) to (v) of this section. But to this general proposition there is again the exception that if it is otherwise expressly provided in any of the sections of this Act, then the provisions of that section should be held applicable to the said debts and liabilities notwithstanding this saving-clause.

The propriety of excluding the debts due to Government, local authorities and Co-operative Societies was much criticised in the

Legislative Assembly when this saving-clause was put to the Assembly for being passed but the Finance Member who piloted the Bill opposed the amendments that had been proposed by some non-official members in connection therewith and the clauses in this section were ultimately passed. The minutes of the debates relating to the discussion, though not useful for the purpose of interpretation may at least be found instructive. They will be found at pp. 1286-1308 of the *Legislative Assembly Debates*, 1939, Vol. VII.

Clause (i) would include not only arrears of assessment whether payable for the current or any previous years but also those of land-improvement loans, loans advanced for irrigation purposes &c.

Clause (ii) would in the case of rural areas extend to arrears of local fund cess, village panchayat cess, and sanitary cess if any, due to Local Boards and in the case of urban areas to those of house-tax, sanitary cess, halalkhore cess &c. due to municipalities in connection with house-property in such areas, besides local fund cess etc. due to Local Boards in connection with agricultural lands.

Clause (iii) is so worded that it would be immaterial what is the purpose for which the Co-operative Society, to which the debtor is indebted was founded, what is the limit of its operation and whether its liability is limited or unlimited.

Clause (iv) relates to a special class of debts distinguished by the purpose for which they were incurred. The financing of crops as defined in S. 2(7) is a legitimate purpose for which an agriculturist is required to incur short term debts. Since the Legislature when it passed this Act must have expected that it would come into operation in the year of its passing, it has made an exception in the case of loans taken for the above purpose in that year. Now however the situation has been changed. Not only the year 1939 has run out but also the year 1940 and a portion of the year 1941. However so long as the wording of this clause remains unaltered it must be given effect to and the loans taken solely for the financing of crops after 1st January 1939 would remain outside the purview of the sections mentioned in this section.

Clause (v) seems to contain a very salutary provision. It excludes from the operation of the sections mentioned the liability of a debtor arising out of a decree or order of a Civil or Criminal

Court for the maintenance of any person, who must presumably be a widow or a minor or a disabled person or a deserted wife, whom the debtor was bound to maintain out of the income of the property in his hands. Such debts cannot justifiably be cut off under the provisions of the Act especially when a competent Court has gone into the question of their legality.

Explanation :—Whatever the ordinary dictionary or popular meaning of the word “ Tax ” may be, for the purpose of this section it must, by virtue of this explanation, be interpreted to mean any toll, rate, cess, fee or other impost leviable by Government or by any local authority such as a Local Board or a Municipality or a Village Panchayat.

It should be particularly noted that SS. 23 to 25 relating to the necessity to get settlements recorded by competent Boards are not among the sections from whose operation the said debts and liabilities are exempted.

CHAPTER II

CONSTITUTION AND POWERS OF A DEBT ADJUSTMENT BOARD AND THE POWERS OF THE COURT IN APPEAL.

4. (1) The Provincial Government may, by notification in the *Official Gazette*, establish a ^{Constitution of the Board.} Debt Adjustment Board. Such Board may be established for any local area or for any class of debtors in any local area.

(2) A notification under sub-section (1) shall also be published in the local area concerned in the regional language of that area and in such other manner as may be prescribed.

(3) (i) The Board shall consist of—

- (a) one person who holds or has held office under the Crown in India, or
- (b) a body or association of persons, or
- (c) persons not less than three and not more than five in number.

(ii) Where the Board consists of more than one person, one of such persons shall be a chairman and another a vice-chairman.

(iii) Persons constituting a Board shall have such qualifications as may be prescribed and shall be appointed by the Provincial Government.

(4) Where the Board consists of five members the quorum shall be three, and where the Board consists of four or three members, the quorum shall be two.

(5) Where the chairman and other members of the Board are unable to come to a unanimous agreement, the opinion of the majority shall prevail. Where the Board is equally divided, the chairman shall have a casting vote.

(6) During the absence of the chairman from any meeting of the Board the vice-chairman shall act as chairman. During the absence of both the chairman and vice-chairman from any meeting of the Board, any member elected by the members present shall act as chairman. The First Class Subordinate Judge, within the local limits of whose special jurisdiction the Board is established, shall also nominate one of the members of the Board to act as chairman in the absence of both the chairman and the vice-chairman and on the failure of the members to elect a chairman. The vice-chairman or the member who is so elected or nominated as chairman shall, while so acting, have the same powers as the chairman.

(7) When the Board consists of only one officer or individual, the Provincial Government may appoint, in the manner prescribed, such number of assessors not exceeding four as it thinks fit, to assist the Board in any proceeding before it under this Act. In making the award the Board shall take into consideration the opinions of such assessors.

(8) No member of the Board who has directly or indirectly, by himself or his partner, any share or interest in any transaction in any proceedings before the Board shall act as a member of the Board in respect of such proceedings.

COMMENTARY

Heading of the Chapter :—As worded, this heading conveys the idea that this chapter contains all that the Act was intended to enact in the matters of the Constitution and Powers of a Debt Adjustment Board and of the Powers of the Court in Appeal. As

a matter of fact it is so only with respect to the constitution of the D. A. Boards and their powers of such a general nature as would be useful in all the proceedings before them and those of the Courts in appeal and certain incidental matters concerning appeals.

The sections comprised therein can be grouped together in view of their contents as follows :—

- SS. 4-5 Appointment and Removal of the Board and any of its members when more than one.
- „ 6-7 Powers of the Board and Procedure before it.
- S. 8 Judicial nature of the proceedings before it.
- SS. 9-14 Appeals from the awards and decisions of the Board and incidental matters.
- „ 15 Administrative control over the Board.
- „ 16 Board's power to enlarge time.

As for the use that can be legitimately made of the headings of chapters or groups of sections while interpreting the sections under them see the case-law discussed at p. 11 *supra* under the heading *Heading of a Chapter as an aid to interpretation*.

A reference to the Subject-Index appended at the end will show what specific powers the Boards and the Courts have under this Act with respect to the numerous questions which are likely to crop up in the course of the exercise of the jurisdiction conferred on them by it.

Scope of the section and its marginal note :—This section is sub-divided into 8 parts or sub-sections, each of which deals with a separate topic connected with the constitution of the D. A. Boards which is the subject-matter of the section as a whole according to the marginal-note “Constitution of the Board”. This note is comprehensive enough. As for the case-law on the point of *Marginal note as an aid to the interpretation* of the sections to which they are appended see pp. 14-15 *supra*.

Sub-section (1) :—This sub-section confers on the Provincial Government power to establish D. A. Boards as well for any class of debtors in any local areas as for any local areas as a whole. Such classes would, for instance, be the Bhils of the Panch Mahals and West Khandesh Districts, the weavers of the Kheda district etc.

Owing to the use of the permissive expression "may establish" used in this sub-section, it would naturally be supposed that the Provincial Government may as well not use the discretion to appoint such Boards vested in it by this sub-section. But it must be borne in mind that this is a discretionary power conferred on it "for the public good" within the meaning of the ruling of Otter J. in the case of the *Government of Burma v. Municipal Corporation of Rangoon*¹ and that therefore the word *may* here has the force of *shall*. Herald Ag. C. J. who presided over the Full Bench which decided the said case has put the same view in the negative form thus :— "In enactments which confer powers on public authorities, the language of mere permission may not preclude the existence of a duty"² and supported it by the ruling in the *Bishop of Oxford's case*.³ The purport of the ruling of the Bombay High Court in *Tulsi v. Omkar*⁴ is also the same as the dictum of Otter J. above-mentioned since it is to the effect that in certain cases the word *may* is to be taken as mandatory. It must therefore be understood that the Legislature has cast a duty on the Provincial Government to establish D. A. Boards for local areas or for any class of debtors in any local areas and that it has left it to its discretion to select the local areas and classes of debtors in any local areas which it may consider suitable for the establishment of such Boards. But even there once it decides to make the appointment of such a Board it must follow the procedure laid down in this sub-section which is that the appointment should be made by a notification published in the *Official Gazette*, which is the *Bombay Government Gazette*, and that laid down in sub-section (2), which is explained below.

Sub-section (2) :—This sub-section further requires that such a notification should be published in the regional language of the local area concerned *i.e.* in the language generally spoken by the inhabitants of that area and in such other manner as may be "prescribed" which means "prescribed by rules" as provided in S. 2(9).

Sub-section (3) :—This section lays down in clause (i) in how

1. A. I. R. 1930 Rang. 297, 306 F. B.

2. Op. Cit. p. 300.

3. 5 A. C. 214.

4. A. I. R. 1927 Bom. 299.

many alternate ways a D. A. Board can be constituted. They consist of the appointment of :—

- (1) one person only who is or has ever been a Government servant ; or
- (2) a body or association of persons ;
- (3) not less than three and not more than five persons.

It further provides in clause (ii) that in the third case one of the members shall be a chairman and another a vice-chairman.

Clause (iii) provides that the Provincial Government shall have the power to establish the Boards and that in the matter of the selection of the persons necessary for their establishment it shall be guided by rules defining the qualifications deemed to be necessary, framed by itself.

The Rules framed by Government of Bombay on this point will be found in the relevant Appendix.

*Sub-section (4) :—*This sub-section provides for the contingency that where there are three to five members of a Board, all of them may not be present at every sitting thereof. In order that the Board's work may not be impeded thereby, it provides that when it consists of five members the quorum, *i.e.* the minimum number of members required for proceeding with its work, shall be three and that when it consists of four or three members, that number shall be two.

This sub-section cannot apply to the Boards constituted as provided for in S. 4(3) (i) (a) and (b), because in the case of a body or association of persons selected to constitute a Board it cannot be said that the Board constituted of any of them consists of five, four or three "members" which means individual members.

*Sub-section (5) :—*This sub-section provides for the contingency in which there are three or more than three but not more than five individual members of a Board and all of them cannot agree on any point arising for decision before them. The provision is that if in such a case the majority of views is on one side, the decision of the Board shall be given on that side and that when the members are equally divided, as might happen when there are

four members, the chairman shall have a casting vote obviously in addition to his usual vote and the decision of the Board shall be given on that side on which he prefers to give his additional vote.

Sub-section (6) :—This sub-section contemplates the possibility of the chairman of a Board being absent from any of its meetings and provides that (1) if the chairman is absent but the vice-chairman is present, he shall exercise the powers of the chairman ; (2) if both are absent, the members present shall themselves elect one of themselves as the chairman for the meeting and he shall exercise those powers ; (3) if both are absent and the members present fail to elect a chairman from amongst themselves, the F. C. Subordinate Judge, within the local limits of whose special jurisdiction the Board may have been established, shall nominate one of the members as the chairman and that member shall then exercise those powers.

In view of the facts that the F. C. Subordinate Judge of the district would be at its headquarters and that most of the Boards would be established in rural areas, it appears that when the third contingency arises, his nomination would not reach the members present at a meeting in sufficient time to enable them to continue that meeting after his nomination reaches them. Therefore if the chairman and vice-chairman are absent from any one meeting and the members present cannot agree amongst themselves to the election of any of them as the chairman for the meeting they would be well-advised to agree to adjourn the meeting to a date on which the chairman or the vice-chairman can attend it rather than make a report to the F. C. Subordinate Judge and ask him to nominate a chairman or ask the parties to go and move him for that purpose, unless the period of absence is likely to be a long one.

Subsection (7) :—This sub-section contains a very revolutionary provision so far as the method of civil administration in this Province is concerned. The Judges of the High Court and those of the Sessions Courts in some districts try certain criminal cases with the help of jurors appointed under the *Criminal Procedure Code, 1898*. The Judges of the Sessions Courts in the same districts try other criminal cases and those in the others try all with the help of assessors appointed under the same Code. No Judge at any place in the Province engaged in the exercise of civil jurisdiction is ever

required to try a case with the help of jurors or assessors. S. 4(3) (i) (a) provides that a single individual who has been holding or has held an office under the Crown in India may be appointed to exercise exclusively the powers of a Board and this sub-section provides that when the Board consists of only one officer or individual "the Provincial Government may appoint in the manner prescribed such number of assessors, not exceeding four, as it thinks fit, to assist the Board in any proceeding before it under this Act and that in making the award (therein) the Board shall take into consideration the opinions of such assessors. The language of the sub-section is apparently of a permissive character and therefore the Provincial Government may or may not take advantage of the power thus conferred. There is however room for the application of the dictum of Otter J. in the case of the *Government of Burma v. Municipal Corporation of Rangoon*⁵ that the word *may* has in some cases the force of *shall*. It is of course a mere matter of opinion. Whatever construction may be put upon it there is a further limitation in this sub-section that the appointment of assessors may be made for assisting a Board, not in all cases but in some specified case or cases coming before it. It must also be noted that the Provincial Government is left free to fix upon the number of assessors to be appointed for any particular case or cases subject to a maximum of four.

Powers of the One-man Board :—Although such a Board may be given assessors to assist it in the disposal of any particular cases, it is not necessary for it to take their opinions even in such cases while passing any other order except that relating to the making of an award. That in other cases it would have the power to make even an award without consulting anybody goes without saying.

Sub-section (8) :—This sub-section introduces a partial disqualification of the members of a Board in connection with certain proceedings before it. It would come into operation if in any of such proceedings there is involved a transaction between the parties to them in which a member of the Board has a share or interest, whether directly or indirectly, either by himself or by his partner in business. The kind of disqualification which such a share or

5. A. I. R. 1930 Rang. 297, 306 F. B.

interest could bring about is that the member concerned cannot act as a member of the Board in respect of such proceedings.

Period of appointment of the Board :—This section does not mention the period for which the appointment of the Board is to be made. Therefore unless the order of appointment contains any definite period for its duration, it must be deemed to be perpetual subject to the provisions of S. 5(1). The case of a resignation is quite different. If a Government official duly qualified is appointed to discharge the functions of a Board he cannot obviously resign the appointment without the previous permission of the Provincial Government but non-officials would be free to resign their appointments at any time. Their appointments would therefore terminate from the date of acceptance of their resignations.

5. (1) Notwithstanding anything contained in section 4, the Provincial Government may, after due enquiry at any time, by notification in the *Official Gazette*—

Removal of
Board or member.

- (a) dissolve any Board and establish in its place a fresh Board; or
- (b) remove all or any of the members of a Board and appoint in their place new members.

(2) The dissolution of a Board or the occurrence of any vacancy on the Board through death, resignation or removal of its members under sub-section (1) shall not in any way affect the validity of any proceedings pending before the Board and the said proceedings shall be continued before the said Board or before any other Board established in place of the said Board, as the case may be, as if there has been no dissolution of the Board or the occurrence of any such vacancy.

(3) Save as otherwise provided in this Act, the proceedings pending before any Board which has been dissolved under sub-section (1) and in place of which no other Board has been established shall be deemed to be

civil proceedings within the meaning of Section 14 of the *Indian Limitation Act, 1908*, and the provisions of the said section shall, so far as may be, apply to the computation of the period of limitation in regard to any suit or application which may be instituted in any civil court to enforce any claim which was the subject-matter of the proceedings pending before the Board so dissolved.

COMMENTARY

Scope of the section :—Although the marginal note to this section says that it relates to the “Removal of Board or member” the contents of the section show that that is the subject-matter of sub-section (1) of the section only and that the other two sub-sections thereof provide for the situation arising not only out of the operation of sub-section (1) but also out of natural causes, or an action on the part of any of the members. The said note is not therefore sufficiently comprehensive. As for the legitimate use that can be made of a marginal note or a side note see the Commentary at pp. 13-15 *supra*.

Sub-section (1) :—This sub-section empowers the Provincial Government (a) to dissolve a Board and establish a new one in its place and (b) to remove all or any of the members of a Board and appoint new ones in their place.

The manner prescribed by this sub-section for such dissolution or removal is by way of a notification published in the *Official Gazette*.

This sub-section further provides that before the Government takes such a serious step it must make a due inquiry. What is meant by a due inquiry is not stated anywhere and therefore that will have to be determined by the Government when a case for an inquiry under this sub-section arises. It can however be presumed that the enquiry would be made according to the principles of natural justice, *i.e. to say*, a definite charge would have to be framed and communicated to the party concerned, it would have to be proved before a quasi-judicial tribunal specially appointed for that purpose, the defence of the party concerned would have to be ascertained and he would have to be given an opportunity to cross-examine the

witnesses examined in support of this charge and to examine his own witnesses, if any, in rebuttal of the charge, before it is decided to take action under this sub-section. It is also not stated in the said sub-section what acts of commission or omission on the part of a Board or any of its members would be considered sufficient to justify the holding of an enquiry under it. There is also no rule on that point.

Sub-section (2) :—This sub-section ensures continuity being maintained in the proceedings before a Board against which or against any of whose members action is taken under sub-section (1) or before changes in whose constitution take place by reason of the death or resignation of any of its members. It provides that in spite of such changes taking place in its constitution the validity of the proceedings so far held before the Board shall remain unaffected and that the re-constituted Board shall be entitled to continue such proceedings further as if no such disturbing factors had come into being.

Sub-section (3) :—In the case of the above nature so far as it concerns a whole Board it might happen that the Provincial Government may decide not to appoint another Board in place of the dissolved one. If it so decides it would be a question for consideration what are going to be the consequences of such decision on the rights of the parties. The Legislature has assumed that in such a case the proceedings before the Board would come to an end and the parties whose rights are affected by such an event would resort to the ordinary Civil Courts for their enforcement. When they do so a question would arise as to whether the period occupied in the proceedings before the Board should or should not be excluded while computing the periods of limitation prescribed by the *Indian Limitation Act, 1908* for the enforcement of such rights. In order to clear that doubt this sub-section provides that the proceedings before the Board which may have been dissolved and in place of which no fresh one may have been established “shall be deemed to be civil proceedings within the meaning of S. 14 of the said Act”. This provision too would not by itself suffice because the words in sub-sections (1) and (3) of that section are :—“ . . . the plaintiff has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal

....” and for holding a Board to be “a Court of first instance” there is no other section in this Act. On the contrary a consideration of the wording of numerous sections such as SS. 2(2) and (4), 9, 15, 37, 58, 61, 62, 66, 68(1) and (2), 69, 73, 75 and 76 leaves no doubt as to a Board under this Act being intended to be treated as a special tribunal and not an ordinary Civil Court. S. 74 of this Act too is not likely to be serviceable for that purpose because it is so worded as to be made use of in the case of proceedings before a Board while we are considering a case arising out of the abolition of a Board. Moreover it is doubtful whether in a case like that, a Board, assuming it to be “a Court”, can be deemed to have been unable from defect of jurisdiction or other cause of a like nature to entertain a suit or application. This sub-section therefore further provides specifically that the provisions of S. 14 of the *Indian Limitation Act, 1908*,¹ shall, so far as may be, apply to the computation of the period of limitation in regard to any suit or application which may be instituted in any Civil Court to enforce a claim which was the subject-matter of a proceeding before a Board which has been dissolved. This provision shows the anxiety on the part of the Legislature to prevent any injury occurring to the rights already acquired by persons residing in an area in which for some reason or another the new machinery set up by this Act fails.

6. (1) Subject to the provisions of this Act, the Board shall have full power to decide all questions, whether of title or priority or of any nature whatsoever and whether involving matters of law or fact, which may arise

Power of Board to decide all questions arising on adjustment of debts.

1. The relevant portions of the said section are as follows:—

14(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court, which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

Sub-section (2) of that section which is intended to apply to the case of an applicant is also similarly worded except that the word ‘application’ is substituted for the word ‘suit’, the word ‘applicant’ for the word ‘plaintiff’ and so on.

in any case within the cognizance of the Board or which the Board may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete adjustment of debts in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes on all the parties and all other persons claiming through or under such persons who are parties to the proceedings in which such decision is given.

COMMENTARY

Scope of the section :—This section is intended to empower the Boards appointed under this Act to decide and decide finally all questions, whether of substantive or adjective law or of fact, that arise in the course of the proceedings before them or which they in the exercise of their discretion deem it expedient or necessary to decide in order to do complete justice or to make a complete adjustment of debts in any such proceedings. It has been sub-divided into two sub-sections.

Sub-section (1) :—Sub-section (1) thereof gives such power to the Boards in the widest possible terms so as to cover all questions of law or fact which may arise in the course of the proceedings before them and all, whether so arising or not, which they in their discretion consider it expedient or necessary for them to decide, keeping in view the fact that it is their duty to do complete justice to the parties before them and to make a complete adjustment of the debts of the debtors within their jurisdiction unhampered by petty quibblings. This power is however “subject to the provisions of this Act”. Hence if the provisions of any other section or a part of a section of this Act expressly prohibits the decision of any particular questions by them or which confer the power of deciding particular questions on a Judge of a Civil Court, the Boards cannot decide them even though they may be arising in any proceedings before them.

While exercising this wide discretionary power the Board should bear in mind that it is an established rule of law that a dis-

cretionary power given by a statute must be exercised in strict conformity with private rights¹ and that the Courts would be entitled to see that the discretion vested in them is exercised in the proper manner.²

It should also be borne in mind that there is a distinction between a discretion and a duty and that therefore whereas it would be absolutely necessary to do an act, to do which the law has cast a duty, it is optional whether to do a discretionary act or not. This is the gist of the ruling of the Privy Council in *Maqbul Ahmad v. Omkar Pratap*.³ According to it when an Act gives a statutory discretion, there can be implied in the Court even outside the limits of the Act a general discretion to dispense with its provisions. When the question therefore is one of law or usage having the force of law and is not of a simple nature the Board would be well-advised to make a reference under S. 58 to the Court having jurisdiction to decide the question.

Sub-section (2) :—This sub-section gives a finality to the decisions of the Boards on the questions referred to in sub-section (1) and further provides that they shall be binding on the parties to the proceedings in which the questions may have arisen and on all other persons claiming through or under them for all purposes, *i.e. to say*, if the same questions were to arise in the same or another proceeding before the same Board, or in another proceeding before any other Board or in the course of a suit or proceeding before any ordinary Court, the decisions of the Board on those questions would operate as *res judicata* within the meaning of S. 11 of the Civil Procedure Code, 1908. This finality and this binding character of their decisions though given “notwithstanding anything contained in any other law for the time being in force”, are nevertheless “subject to the provisions of this Act”. Hence if there is a conflict between the provisions of this sub-section and those of any other section or part of this Act, the latter must prevail over the former. Thus for instance S. 9(2) provides that an appeal shall lie under certain decisions of the Board. As against that it cannot be argued

1. *A. B. Moola v. Commissioner for the Port of Rangoon* (A. I. R. 1931 Rang. 95).

2. *Des Raj v. Emperor* (A. I. R. 1930 Lah. 781, 786).

3. A. I. R. 1935 P. C. 85, 88.

that this sub-section has declared the decisions of the Board to be final but the said specific provision should be construed as an exception to the general rule laid down in this sub-section as was ruled, for instance, in the case of *Mahomed Sabuddin v. Emperor* and *Sripad v. Tuljamanrao*.⁴

Ejusdem generis rule and its application :—This sub-section only gives effect to the well-established rule of interpretation known as the *ejusdem generis rule*, which though originally an English common law rule based on the dictum of Romilly M. R. in *Pretty v. Solly*⁵, has been admitted by the Indian High Courts as binding on the Indian Courts also.⁶ As regards the application and significance of this rule Sir John Beaumont, the learned Chief Justice of Bombay has made some remarkable observations in his judgment in *Commissioner of Income-tax v. Laxmidas*.⁷ His Lordship says :—“ The so-called *ejusdem generis* rule, which, I cannot help thinking, is sometimes misapplied, is merely a rule of construction. When you have general words following particular words the general words are limited to things which are *ejusdem generis* with the particular words. But that rule being one of construction should never be invoked when its application appears to defeat the general intent of the instrument to be construed. It has been similarly decided by the Madras High Court in the case of *Kallingal Moosa v. Secretary of State*⁸ that if the intention of the Legislature is clear from the words of the statute an occasion for the application of the said rule does not arise. Though the case there contemplated was that of a general provision following a particular one, the rule would be applicable even if the reverse is the case. Similarly it would be applicable as well to the provisions of the above nature in a statute as to those in an instrument, testamentary or non-testamentary.

4. A. I. R. 1935 Cal. 281 ; A. I. R. 1938 Bom. 372. See also *Ram Dayal v. Shea Dayal* (A. I. R. 1939 Nag. 186).

5. (1859) 26 Beav. 606, 610.

6. *Sikandar Khan v. Buland Khan* (A. I. R. 1926 Lah. 435) ; *Mulji Tribhovan v. Dakor Municipality* (A. I. R. 1922 Bom. 247) ; *Bhana Makan v. Emperor* (A. I. R. 1936 Bom. 254, 257).

7. A. I. R. 1938 Bom. 41.

8. I. L. R. 43 Mad. 65.

7. (1) Subject to the provisions of this Act and any rules, the Board shall have the same powers as are vested in civil courts under the *Code of Civil Procedure* 1908, when trying a suit and V of 1908. in particular in respect of the following matters:—

- Procedure before Board.
- (a) joining any necessary or proper parties;
 - (b) summoning and enforcing the attendance of any person and examining him on oath;
 - (c) compelling the production of documents;
 - (d) issuing commissions for the examination of witnesses; and
 - (e) proof of facts by affidavits.

(2) Subject to the provisions of this Act and any rules, the Board may direct any of its members to inspect any site, or to examine any witnesses on commission. On the inspection of such site by the members and examination of witnesses on commission, a report shall be made to the Board.

COMMENTARY

Scope of the section :—By this section the Legislature invests the Board with the powers of a civil court under certain provisions of the *Civil Procedure Code, 1908*, and with that of appointing one of its members, when the Board consists of several individuals, as a commissioner for examining a witness or for making a local investigation.

Sub-section (1) :—This sub-section extends to the proceedings before the Board the provisions in the *Civil Procedure Code, 1908* with respect to the powers of the civil courts when trying a suit generally in respect of all the necessary acts, and particularly those with respect to the acts mentioned in clauses (a) to (c) thereof, subject however, in each case, to the provisions of this Act and any rules that may be framed by the Provincial Government in connection therewith.

This is another case of a general provision having been made in the Act subject to any particular ones that may exist in other parts thereof. The provisions in the Code specifically referred to in this sub-section are those contained in the following portions thereof, namely :—

- (a) Joinder of Parties—Schedule I Order I.
- (b) (i) Summoning and attendance of witnesses—Schedule I Order XVI. These are to be applied subject to the rules made with reference to this subject for which see the relevant Appendix.
- (b) (ii) Examination of witnesses on oath—Schedule I Order XVIII.
- (c) Compelling the production of documents—Schedule I Order XIII.
- (d) Issuing of commissions for the examination of witnesses—Schedule I Order I rules 1 to 8.
- (e) Proof of acts by affidavits—Schedule I Order XIX.

*Sub-section (2) :—*This sub-section authorises the Board to issue a commission to any of its own members (when it consists of more than one) to inspect any site or examine any witnesses on commission (under rules 1 to 8, or 9 and 10 of Order XXVI of Schedule I to the *C. P. Code* which has been made applicable by sub-section (1) of this section) although a Court is not supposed to issue a commission to itself. This power too is however to be exercised subject to the provisions of this Act and any rules which may be framed with respect thereto. In this connection it should be noted that a member of a Board having directly or indirectly a share or interest in any transaction under investigation in any proceeding before the Board, whether by himself or by his partner, is disqualified by S. 4(8) from acting as a member of the Board in the course of such proceeding.

This sub-section further provides that the member authorised as above to inspect a site or examine a witness on commission shall make a report of the work done by him pursuant to the authority given to him by the Board.

8. All proceedings under this Act before the Board shall be deemed to be judicial proceedings for the purposes of sections 193 and 228 of the *Indian Penal Code*. XLV of 1850.
- Proceedings deemed to be judicial proceedings.

COMMENTARY

Scope of the section :—This section by enacting that all the proceedings before the Board under this Act shall be deemed to be judicial proceedings for the purpose of SS. 193 and 228 of the *Indian Penal Code, 1860*, confers upon the Board the dignity and solemnity of a judicial tribunal which the nature of the functions which it has to perform require. S. 193 of the said Code provides in its first part for the punishment of any person who “intentionally gives false evidence in any stage of a judicial proceeding or fabricated false evidence for the purpose of being used in any stage of a judicial proceeding.” The maximum punishment prescribed for any of those offences is “imprisonment of either description for a term which may extend to seven years” and also fine.

We are not concerned with the second part of the said section nor with Explanations 1 and 2 out of the three Explanations thereto.

Explanation 3 to that section includes within the meaning of the term “judicial proceeding”, “an investigation directed by a Court of justice according to law” and “conducted under the authority of a Court of justice”, “though that investigation may not take place before a Court of justice”. There is an illustration also below that explanation. It is :—“A, in an inquiry before an officer deputed by a Court of justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this inquiry is a state of a judicial proceeding A has given false evidence”. According to this explanation read in the light of the illustration below it, an inquiry made on the spot by a member of a Board appointed under S. 7(2) of this Act to inspect a site or examine a witness on commission in connection with a proceeding before it would be a “judicial proceeding” and any person making during the course of such an enquiry, a false statement on oath or solemn affirmation, knowing it to be false, would be guilty of the offence of perjury punishable under the above section.

The term "Judge" has been defined in S. 19 of the *I. P. Code*. So has the term "Court of Justice" in S. 20 thereof. But a "judicial proceeding" has been nowhere defined in the Code but according to Dr. Gour "it must mean a proceeding before a judge having jurisdiction in the matter."¹

Section 228 of the said Code provides for the punishment of any person "who intentionally offers any insult or causes any interruption to a public servant while such public servant is sitting in any stage of a judicial proceeding". The maximum punishment prescribed for this offence is simple imprisonment for six months or a fine of Rs. 1000 or both.

It would be well to draw the attention of those concerned to the prudent remarks of Dr. Gour with reference to the use to be made of this power. He says² :—"It is pointed out that the Courts should not be unduly sensitive about their dignity and convict persons for contempt cases in which the insult offered to the Court is not intentional e.g. where the accused let fall a coarse expression and was afterwards contrite or when the offence is technical or of a slight and trivial nature and is not calculated to prejudice the fair trial. When the Court elects to take action it is necessary that it should record the stage of judicial proceeding interrupted and the evidence that it was intentional. An omission in this respect is not curable under S. 537 of the *Criminal Procedure Code*."

Rules for the construction of penal enactments :—It would also be helpful and conducive to justice and fair play to know some of the general rules for the interpretation of all penal enactments, which have by this time been fairly established by judicial decisions. They are :—

- (1) All penal enactments, whether contained in laws specially enacted for the purpose of the suppression of crimes or in sections of a penal nature in any special piece of legislation should as a rule be very strictly construed *i.e.* against the crown and in favour of the subject.³

1. *Penal Law of India* Vol. I. Para. 2055 at pp. 679-80.

2. *Op. cit.* para 2523 at pp. 796-97.

3. *Musamat Kesar v. King Emperor* (4 Pat. L. J. 74 F. B.) ; *Sitaram v. Sukhraj Singh* (A. I. R. 1936 Oudh. 180) ; *Nathmal v. Brahmputri Com-*

- (2) All law which puts a restraint of any sort on human activity and enterprise must be construed in a reasonable and generous spirit.⁴
- (3) No court of criminal justice should dispense with the statutory requirements of the law as constituting the proof necessary to establish a guilt⁵ and the benefit of a doubt must always be given to the accused.⁶
- (4) The law as a whole is always subject to evasion in the sense that there is no obligation not to do a thing which it has not prohibited. It is not evading an Act to keep outside it.⁷

The last proposition may seem startling, especially to laymen. It is nevertheless true. Although an act may be morally culpable, the law would not take cognizance of it and punish its doer unless it comes within its four corners. That does not however mean that the law would wink at any breach thereof and therefore the proposition that follows is also equally true.

- (5) Every law is intended to be obeyed and must therefore have a sanction behind it. It must therefore be so construed as to defeat all attempts to evade it directly or indirectly and it must be understood to extend to all such circumstances.⁸

mītee (A. I. R. 1935 Nag. 242) ; *Hasan Khan v. Ahmed Khan* (A. I. R. 1935 Pesh. 30) ; *Emperor v. Kadarbhai* (A. I. R. 1927 Bom. 483) ; *Dattatray v. Emperor* (A. I. R. 1937 Bom. 28) ; *Girjaprasad v. Emperor* (A. I. R. 1935 All. 346).

4. *Kartar Singh v. Ladha Singh* (A. I. R. 1934 Lah. 777) ; *Netai Chandra v. Emperor* (A. I. R. 1936 Cal. 529).

5. *Musamat Kesar v. King Emperor* (4 Pat. L. J. 74 F. B.) ; *Bank of Chettinad v. Commissioner of Income-tax, Madras* (A. I. R. 1940 P. C. 183) ; *King v. Aung Nyam* (A. I. R. 1940 Rang. 259) ; *Dattatray v. Emperor* (A. I. R. 1937 Bom. 28) ; *Emperor v. Chatrabhuj* (A. I. R. 1936 Pat. 350) ; *Diwan Singh v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62).

6. *Gauri Dayal v. Emperor* (A. I. R. 1935 All. 121) ; *In re Khairati Ram* (A. I. R. 1931 Lah. 476) ; *Parmanand v. Emperor* (A. I. R. 1939 Lah. 81) ; *Ganpatrao v. Emperor* (A. I. R. 1932 Nag. 174).

7. *Diwan Singh v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62).

8. *Mahomed Bagor v. Mahomed Kasim* (A. I. R. 1932 Nag. 210).

This means that an act would be punishable not only if it comes within the express wording of an enactment but also if it comes within it by necessary implication.

- (6) In construing a section of a penal Act which casts upon the accused the burden of proving innocence, the court must act strictly.⁹ The same is the rule with respect to a penal provision in an Act.¹⁰
- (7) The courts must generally lean in cases of doubt against any construction of the penal law which is patently oppressive to the subject and in favour of that construction which is in accord with the general policy of the criminal law.¹¹

9 (1) Every award except an award made in terms of a settlement under sub-section (f) of section 23 or under section 24 or under section 55 shall, at the instance of any party, be subject to appeal—

Appeal to Courts.

- (a) to the District Court within the local limits of whose jurisdiction the Board may have been established, if the total amount of debts payable by the debtor under the award exceeds Rs. 5,000, and
- (b) to the Court of the First Class Subordinate Judge within the local limits of whose special jurisdiction the Board may have been established, if the total amount of such debts does not exceed Rs. 5,000.

(2) Every decision of the Board under sub-section (3) of section 23 or dismissing an application under sub-section (2) of section 35 shall at the instance of any party be subject to appeal to the Court of the Subordinate Judge

9. *Emperor v. Nathalal* (A. I. R. 1939 Bom. 339, 340).

10. *In re United Motor Finance Co.* (A. I. R. 1935 Mad. 325).

11. *A. M. Rangachariar v. Venkataswami* (A. I. R. 1935 Mad. 56); *Guranditta v. Emperor* (A. I. R. 1938 Lah. 691).

of the First Class within the local limits of whose special jurisdiction the Board may have been established.

COMMENTARY

Scope of the section :—As stated at the commencement of the commentary on S. 4, this and the following 5 sections provide for the making of appeals under this Act and incidental matters. Thereout this section confers upon the aggrieved party the right to file an appeal against certain awards and decisions of the Board. It has been sub-divided into two sub-sections each dealing with the right to appeal in a distinct class of cases.

Sub-section (1) :—This sub-section thereout contains a general provision as to the liability to be appealed from of all awards made by a Board except those specifically excluded and dividing such awards into two classes specifies the Court which would have powers to hear appeals against those falling in each class.

The particular awards that have been excluded from the operation of this provision are those made in terms of a settlement under (1) S. 23(4), (2) S. 24 and (3) S. 55. In each of those cases, the award that is made, is preceded by an agreement as to the terms thereof between the parties concerned. In the first case an award is made on an application for recording a settlement arrived at privately between a debtor and all or any of his creditors, there being no proceeding then pending before the Board to which the application is made. In the second case, a settlement is arrived at between the parties to an application made to the Board under S. 17 either by a debtor or by any of his creditors. In the last case an award is made after accounts have been taken, the paying capacity of the debtor is legally ascertained and the debts are proportionately scaled down but before an award is made as provided in S. 54 of the Act the creditors agree to a scheme being framed for the payment of their debts by a Provincial Land Mortgage Bank or any other authorised bank on their claims being further scaled down as provided in S. 55 of the Act, the bank concerned passes bonds to the creditors for the amounts respectively due to them after the process of further scaling down is gone through, payment under which is guaranteed by Government and then instead of in favour of the creditors, an award is made in favour of the Bank concerned. The exclusion of

these three classes of awards is based on the principle of estoppel contained in S. 115 of the *Indian Evidence Act, 1872*, arising out of the conduct of the creditors in giving their consent and the other party relying upon such conduct and taking a step which changes its position materially.

The division of the awards not falling in the above category for the purpose of appeals is made into two classes, namely (1) those under which the amount payable does not exceed Rs. 5,000 and (2) those under which the amount payable exceeds Rs. 5,000. Appeals against the former lie to the Court of the F. C. Subordinate Judge within the local limits of whose special jurisdiction the Board making the award may have been established and those against the latter to the Court of the District Judge within whose jurisdiction the Board may have been established.

*Sub-section (2) :—*This sub-section confers a right of appeal against the decision of a Board made under S. 23(3) and against an order of dismissal made by a Board under S. 35(2). In both the cases an appeal would lie to the Court of the F. C. Subordinate Judge within whose special jurisdiction the Board may have been established.

It should be noted that this section confers on any party concerned a right to appeal only against certain awards and certain decisions made by a Board. It therefore follows that the decisions of a Board other than those mentioned in sub-section (2) are final by virtue of S. 6(2) which should be read along with this sub-section.

*Nature of the right of appeal :—*A right of appeal has been held by the Allahabad High Court in *Alley Rasul Ali v. Balkishen*¹ and by the Lahore High Court in *Ata-ur-Rahman v. Income-tax Commissioner, Lahore*,² to be a vested right of action created by a statute. It is also called a remedial right.³ Certain rules of construction of statutes affecting such rights have been settled by judicial decisions. It would be useful to know them if, as is often the case, the statute conferring a right is subsequently amended or repealed. I therefore state them below.

1. A. I. R. 1934 All. 709.

2. A. I. R. 1934 Lah. 1013(2).

3. *Ramakrishna v. Subbaraya* (I. L. R. 38 Mad. 101).

Statutes affecting vested rights :—(1) There is a presumption that every statute is generally prospective, *i.e. to say*, that it is to be read as speaking on the date on which it is to be applied, unless these are clear words showing a contrary intention either expressly or by necessary implication.⁴

(2) The laws of procedure are an exception to this general rule.⁵

(3) Statutes affecting vested rights must be construed strictly so as not to interfere with such rights unless it is clear from the express words of the statute or it is necessarily implied by them that the Legislature intended to affect them.⁶

(4) Such statutes are either interpretative or directory, *i.e. to say*, those made with the intention of settling doubtful claims or declaratory or imperative, *i.e. to say*, those which declare certain rights for the first time. Those of the first variety are not generally retrospective in their operation⁷ while those of the second variety are.⁸ Thus Acts which change the legal capacity or status of a party and fall in the latter class generally operate to extinguish, diminish

4. *Parashram v. Emperor* (A. I. R. 1931 Lah. 145) in which the English decisions in *Midland Railway v. Pye* (10 C. B. M. S. 179) and *Attorney-General v. Sillam* (1884) 2 H and C 431 are referred to; *Shakuntala Devi v. Kausalya Devi* (A. I. R. 1936 Lah. 124); *Musamat Lahani v. Bala* (I. L. R. 1922 Nag. 227); *Nepra v. Sayar Promanik* (I. L. R. 55 Cal. 62); *Gulam Daud Khan v. Habibulla Khan* (A. I. R. 1936 Pesh. 125); *Suryamal v. Sri Ram* (A. I. R. 1939 Pat. 158, 160); *Hayatuddin v. Musamat Rahiman* (A. I. R. 1935 Sind 73, 75); *Tika Sao v. Hari Lal* (A. I. R. 1940 Pat. 385 F. B.).

5. *Sidhu Ram v. Nur Mohammad* (A. I. R. 1937 Lah. 506); *L. Liaq Ram v. Har Prasad* (A. I. R. 1934 All. 253); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1954 Lah. 1013(2)]; *Dhirendra Nath v. Ijjatali Mian* (A. I. R. 1940 Cal. 423); *Arunachellam v. Valliappa* (A. I. R. 1938 Rang. 130 F. B.).

6. *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299); *Sivayya v. Pratipad Panchayat Board* (A. I. R. 1936 Mad. 18); *Vishwanath v. Harihar* (A. I. R. 1939 Pat. 90); *Gangaram v. Punamchand* (I. L. R. 21 Bom. 822); *Bepin Chandra v. Mahim Chandra* (A. I. R. 1940 Cal. 345); *Chudaman Singh v. Kamta Nath* (A. I. R. 1939 Nag. 230).

7. *Ram Saran v. Balkisan* (A. I. R. 1940 Nag. 303); *Gurdit Singh v. Committee of Management, Gurudwara* (A. I. R. 1940 Lah. 266).

8. *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593); *Martand v. Narayan* (A. I. R. 1939 Bom. 305, 307 F. B.); *Girdharilal Son & Co. v. K. Gouder* (A. I. R. 1938 Mad. 688, 700).

or vary the extent to which a party can claim the aid or protection of the Court.⁹ But a right of action or appeal is a remedial right and is not as such affected by legislation made after its exercise.¹⁰ Consequently unless such legislation expressly affects pending suits and appeals they must be decided according to the law in force at the time of their institution.¹¹

(5) Rights acquired under judgments, like those acquired under statutes are to be deemed to have been intended to be kept inviolate¹² but if there are words in a statute pointing to an intention of the Legislature to alter existing rights an appeal court is bound to take notice of it and give effect to it even though it may have been passed after the decree of the trial Court.¹³

(6) Amending statutes are as a rule not to be given retrospective effect unless expressly provided therein otherwise.¹⁴ The same is the rule with respect to repealing statutes.¹⁵

(7) No greater effect should be given to an intention of the Legislature to give retrospective effect to a statutory provision affecting a vested right than is absolutely necessary according to the clear expression or necessary implication of the statutory provision.¹⁶

9. *Padgaya v. Baji Babaji* (I. L. R. 11 Bom. 469).

10. *Musamat Rupi v. Sadasheo* (A. I. R. 1925 Nag. 190); *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013(2)]; *Ranchhoddas v. Ranchhoddas* (I. L. R. 1 Bom. 581); *Asikunmissa Bibi v. Dwijendra Krishna* (A. I. R. 1931 Cal. 32); *King Emperor v. Indu Bhushan* (A. I. R. 1926 Cal. 819); *Alley Rasul Ali v. Balkishen* (A. I. R. 1934 Lah. 709); *Zamindara Bank v. Suba* (A. I. R. 1924 Lah. 428); *Penniselram v. Veeriah Vandayar* (A. I. R. 1931 Mad. 83); *Haider Hussein v. Puran Mul* (A. I. R. 1935 All. 706 F. B.).

11. *Gujrat Trading Co. Ltd. v. Trikamji Velji* (3 Bom. H. C. R., O. C. J. 45); *Prabhakar v. Khanderao* (10 Bom. L. R. 625).

12. *Laxmanrao v. Balkrishna* (I. L. R. 36 Bom. 617).

13. *Shantiniketan Co-operative Housing Society Ltd. v. Madhavlal* (A. I. R. 1936 Bom. 37, 41).

14. *Sukal Lakshpat Ram v. Raghu Koeri* (A. I. R. 1928 Pat. 109).

15. *Chaudhary Gursaran Das v. Parameshwari Charan* (A. I. R. 1927 Pat. 203); *Makar Ali v. Sarafuddin* (A. I. R. 1923 Cal. 85); *Chengayya v. Kottayya* (A. I. R. 1933 Mad. 57); *Kanak Kanti Roy v. Kripa Nath* (A. I. R. 1931 Cal. 321); *Shiya Janaki v. Kirtanand* (A. I. R. 1936 Pat. 173); *Penniselram v. Veeriah Vandayar* (A. I. R. 1931 Mad. 83).

16. *Secretary of State v. Bank of India Ltd.* (A. I. R. 1938 P. C. 191).

10. An appeal against a decision or award of the Board shall be filed within 60 days from the date of such decision or award:

Limitation for appeals.

Provided that in computing the period of limitation the provisions of the *Indian Limitation Act, 1908*, applicable to appeals shall, so far as may be, apply to appeals under this Act.

COMMENTARY

Scope of the section :—This section prescribes a special period of sixty days for filing an appeal as provided for in S. 9. Hence an appeal against an award under sub-section (1) of that section or against a decision under sub-section (2) thereof must be filed within sixty days from the date of the award or decision appealed from.

But there remains the question of the computation of that period because certain unavoidable delays occur at times in doing an act which is to be done within a prescribed period e.g. the delay due to obtaining a copy of the decision to be appealed from. Such delays are lawfully excusable and hence the Legislature should have by this section or another section of this Act provided for the method of computation of the said period when delays occur on account of certain specified causes. Instead of doing so the Legislature has added this proviso which extends the provisions contained in the *Indian Limitation Act, 1908* with regard to the computation of the periods of limitation for the purpose of appeals and provides further that they shall be made use of so far as they can be made applicable to appeals under this Act. These provisions are contained in Part III of that Act comprising SS. 12 to 25 thereof.

Rules as to the interpretation of the statutes of limitation :—Those provisions are so extensive that it is not convenient to copy them out here and comment upon them. However I think it useful to state the following rules as to the interpretation of such provisions deduced from decided cases.

(1) The statutes of limitation are, according to rulings of the Bombay and Nagpur High Courts,¹ intended to check the tendency

1. *Ramchandra v. Laxman* (I. L. R. 31 Bom, 162) ; *Nandu v. Bhuwanoo* (A. I. R. 1929 Nag. 74) ; *Parashram v. Rakhma* (I. L. R. 15 Bom. 299, 305).

of dilatoriness and must therefore be strictly construed. Being in derogation of common rights they cannot be extended to cases not clearly covered by them ; in other words they should be so construed as to advance rather than bar a remedy.²

(2) When any special statutes lay down any special periods for the exercise of rights conferred by them they must be strictly followed.³ They cannot be construed on equitable principles,⁴ considerations of convenience being out of place when the language is clear.⁵

3. When there is a ground for excluding certain periods under S. 14 of the *Indian Limitation Act, 1908*, in order to ascertain what is the date of the expiration of the prescribed period, the days to be excluded have to be added to what is primarily the prescribed period.⁶

Although this section and the proviso thereto have been construed together in the only way which is reasonable in view of their wording, it is not always easy to assess the effect of a proviso on the section to which it has been added. The following general rules on that point are therefore given in the hope that they will be helpful in arriving at a correct decision in such a doubtful case.

Proviso as an aid to interpretation :—(1) It is a well-settled canon of construction that a proviso shall not be construed so as to enlarge the scope of the enactment when it can fairly and properly be so construed as not to have that effect.⁷

(2) The proper way to regard a proviso is as a limitation upon the effect of the principal enactment.⁸

(3) A proviso should not however be held to be a mere implication to withdraw any part of what the main provision has enacted.⁹

2. *Balkrishna v. Baijnath* (A. I. R. 1939 Nag. 150).

3. *Venugopal v. Venkata Subbiah* (I. L. R. 39 Mad. 1196, 1199).

4. *Naurangi Lal v. Ram Charan Das* (A. I. R. 1930 Pat. 455).

5. *Anand Prakash v. Narayan Das* (A. I. R. 1931 All. 162).

6. *Maqbul Ahmad v. Omkar Pratap* (A. I. R. 1935 P. C. 85).

7. *Comilla Electric Supply Ltd. v. East Bengal Bank Ltd.* (A. I. R. 1939 Cal. 669) ; *Perichiappa v. Nachiappan* (A. I. R. 1952 Mad. 46).

8. *Musamat Raj Rani v. Dwarka Nath* (A. I. R. 1933 Oudh. 491, 500).

9. *Commissioner of Income-tax, Madras v. Suppan Chettiar* (A. I. R. 1930 Mad. 124).

(4) Arguments drawn from a proviso which seek to extend the operative effect of a substantive enactment are not legitimate unless there is a real ambiguity in the latter.¹⁰

(5) When there is a proviso to a penal clause which is capable of a double construction, one of which does and the other does not impose a penalty, the Court would favour the latter construction.¹¹

11. A memorandum of appeal shall be accompanied with court-fees at the following rates:—
Court-fees on appeals.

(a) in an appeal against the decision of the Board under sub-section (3) of section 23 or under sub-section (2) of section 35—a court-fee of Rs. 2,

(b) in an appeal against an award—on the amount in dispute at the date payable on a memorandum of appeal presented to a civil court under item 1 of Schedule I of the *Court-fees Act, 1870*, as if the award was a decree of a subordinate civil court.

VII of 1870.

COMMENTARY

Scope of the section :—This section makes provisions as to the levying of court-fees on the memoranda of the appeals provided for in S. 9. It makes a distinction between the appeals from decisions provided for in S. 9(2) and those from awards provided for in S. 9(1). With respect to the former, it prescribes by clause (a) a specially fixed fee of Rs. 2 and with respect to the latter it provides for the levying of *ad valorem* fees on the memoranda of appeals calculated in view of the amounts awarded, according to the scale prescribed in item No. 1 in Sch. I to the *Indian Court-fees Act, 1870*.

Looking to the trend of the provisions of section 9 and this section, both of which must be read together, it appears that the Act makes a distinction between an award and a decision and that while it prescribes a fixed fee of Rs. 2 for the latter it prescribes an *ad*

10. *Ram Chunder v. Gowri Nath* (A. I. R. 1926 Cal. 927) ; *West Derby Union v. Metropolitan Life Assurance Co.* (1897) A. C. 647.

11. *Khemchand v. Commissioner of Income-tax* (A. I. R. 1934 Sind, 46).

valorem fee for the former. Thereout the term "Award" has been defined in S. 2(1) as "an award made by the Board under S. 24, 54 or 55 or as confirmed or modified by the Court under S. 9." As however the question of levying court-fee is likely to arise before an appeal is decided and therefore before there is any occasion for the court to confirm or modify an award, that term must, for the purpose of this section, be taken to mean "an award made by the Board under S. 24, 54 or 55". The term "decision" has not however been defined in this Act. Nor has it been defined in the *Code of Civil Procedure, 1908*, or the *Bombay Land Revenue Code, 1879*, the definitions of words and expressions given wherein are by S. 2(16) of this Act made applicable to proceedings under this Act in connection with those words and expressions occurring in it which have not been defined therein. We must therefore understand the said word in its ordinary dictionary meaning of "a judgment".¹ Now although "an award" is also "a decision of an arbitrator on a point referred to him",² there is no cause for doubt as to what is meant by the word "decision" in S. 11(a) because there are the subsequent indicative words "of the Board under sub-section (3) of section 23 or under sub-section (2) of section 35."

This is a section containing a fiscal enactment which has the effect of taxing a subject who resorts to a Court for the redress of his grievance. There are provisions of a similar nature in SS. 24 and 60 also of this Act. It would therefore be well to bear in mind the following general rules of the interpretation of such class of enactments, enunciated in reported decisions.

Rules for the interpretation of fiscal enactments :—(1) The courts are not entitled to speculate as to the real or supposed intention of the Legislature when the language of the enactment to be construed is clear.³

1. Wharton's Law Lexicon, 1938, p. 305.

2. Op. cit., p. 103.

3. *Piara Singh v. Mula Mul* (A. I. R. 1923 Lah. 655) ; *Nannu Mul v. Ram Chander* (I. L. R. 53 All. 334) ; *Bhudan v. Bachcha* (A. I. R. 1931 All. 380) ; *Damodar Prasad v. Masudan Sing* (A. I. R. 1928 Pat. 85) following *Partington v. Attorney-General* (38 L. J. Ex. 205) ; *Shantiniketan Co-operative Housing Society Ltd. v. Madhavlal* (A. I. R. 1936 Bom. 37) ; *Bank of England v. Vagliano Bros.* (1891) A. C. 107 ; *Robinson v. Canadian Pacific Ry. Co.* (1892) (A. C. 481).

(2) But when the language thereof is not clear, taxing statutes must be construed strictly against the crown and in favour of the subject.⁴ This is a dictum of English law found in Maxwell's *Interpretation of Statutes* but adopted by Indian Judges in many cases. Barlee J. while construing an Indian statute in the case of *Commissioner of Income-tax, Bombay v. Reid* explained it as meaning that the Treasury cannot tax without the permission of the Legislature.⁵

(3) The courts should not strain the language of a fiscal enactment in order to tax a subject⁶ and no case should be held to fall within it unless it does so as the result of a reasonable construction being put upon it.⁷ If the technical language of a taxing statute is to be strained at all it must be strained in favour of the subject.⁸

(4) In such cases the court has always to look to the form of the claim in order to see how much fee is leviable. Parties may, in order to pay as much less income as possible, avail themselves of any camouflage which the law allows or does not forbid.⁹

4. *Hira Chand v. Emperor* (A. I. R. 1931 Lah. 572); *Devji Goa v. Trikamji* (A. I. R. 1935 Pat. 396); *Mahomed v. Kalibar Rehman* (A. I. R. 1932 All. 526); *Chuni Lal v. Sheo Charan Lal* (A. I. R. 1925 All. 787); *In re Har Krishna Das* (A. I. R. 1931 All. 401); *Emperor v. Kadarbhai* (A. I. R. 1927 Bom. 483); *Madras Central Urban Bank Ltd. v. Corporation of Madras* (A. I. R. 1932 Mad. 474); *Ishwar Dayal v. Amba Prasad* (A. I. R. 1935 All. 667); *Mewa Ram v. Municipal Board, Muttra* (A. I. R. 1939 All. 466); *Nek Mahomed v. Emperor* (A. I. R. 1936 All. 83); *Sharanbasappa v. Sanganbasappa* (A. I. R. 1935 Bom. 256); *Ram Chand v. Secretary of State* (A. I. R. 1936 Sind. 108); *Jatindra Nath v. Madan Mohan* (A. I. R. 1936 Cal. 813); *Mulji v. Municipal Commissioner of Bombay* (A. I. R. 1939 Bom. 471, 476); *Messrs. Lovedaie Clark Ltd. v. Chairman, Jalpaiguri Municipality* (A. I. R. 1937 Cal. 551); *Tenant v. Smith* (1892) A. C. 150.

5. I. L. R. 55 Bom. 312, 321.

6. Op. cit. per Beaumont C. J. at p. 318 and also in *Commissioner of Income-tax, Bombay v. Chunilal B. Mehta* (A. I. R. 1935 Bom. 423, 425) in which *Dock Company of Kingston-upon Hull v. Browne* (36 R. R. 459) is referred to.

7. *Dattatray v. Emperor* (A. I. R. 1937 Bom. 28); *Corporation of Madras v. Secretary of State* (A. I. R. 1940 Mad. 653).

8. *Income-tax Commissioner v. Behari Lal* (A. I. R. 1937 Oudh. 416); *Sehban Khan v. Mohamed Eusoof* (A. I. R. 1938 Rang. 141).

9. *Pathumma Umma v. Mohideen* (A. I. R. 1928 Mad. 929).

(5) A taxing statute must, no doubt on the one hand, be construed liberally and favourably to a subject but on the other equality and impartial justice in the incidence of taxation are of greater moment and the statute must be so construed as to promote equality and impartiality of justice.¹⁰

(6) The benefit of a doubt in such a case must be given to the subject provided the doubt is reasonable.¹¹

(7) In construing a fiscal enactment the court must bear it in mind that it is not concerned either with the spirit of the law or the intention of the Legislature but with the actual wording of the statute unless such considerations are permitted by its own language.¹²

12. No decision or award of the Board shall be modified or set aside in appeal except on any of the following grounds:—

Grounds of appeal.

- (a) such decision or award was improperly procured,
- (b) corruption or misconduct of the Board or any member thereof, in the conduct of the proceedings relating to such decision or award,
- (c) any illegality or irregularity in the proceedings relating to such decision or award, which has occasioned failure of justice,
- (d) any error of law or erroneous appreciation of evidence which has occasioned failure of justice.

10. *Commissioner of Income-tax, Bihar and Orissa v. Vishweshwar Singh* (A. I. R. 1935 Pat. 342); *Auriya Pay Office v. N. A. Committee, Auriya* (A. I. R. 1938 All. 302).

11. *Commissioner of Income-tax, Bihar and Orissa v. Kameshwar Singh* (A. I. R. 1934 Pat. 178).

12. *Radha Govind v. Rama Brahma* (A. I. R. 1936 Cal. 714); *Ganpatrao v. Emperor* (A. I. R. 1932 Nag. 174); *John Earnest v. Jogendra Chandra* (A. I. R. 1935 Cal. 298).

COMMENTARY

Scope of the section :—This section lays down the only grounds on which the Court, to which an appeal is made against an award or decision of the Board, can modify or set aside the same.

Ground (a) :—Thereout ground (a) is worded in such general terms that attempts are likely to be made to bring within its purview all cases not falling under any of the three succeeding grounds. It seems to have been inserted in order to cover cases of partiality which may be the result of some influence brought to bear on the Board or any members of it but which cannot be held to be instances of corruption or misconduct on the part of the Board or any of its members. It might also cover cases in which the Board and the members individually may be perfectly innocent but they may have been misguided or kept in the dark as to a material point by a member of the Board's establishment as the result of corruption or misconduct on his part or of some influence brought to bear on him. But as in a judicial matter the Court cannot go outside the record of the case, the case set up under this clause must be capable of being borne out by the record before the Court.

Ground (b) :—This ground relates to actual bribery or misconduct of the Board or any of its members while conducting the proceedings relating to the decision or award appealed from. "Misconduct" here must be understood in the same sense in which it was understood under Para. 15 of Schedule II of the *Civil Procedure Code, 1908*. Technical misconduct would therefore be deemed to have been included therein. It would not necessarily imply moral turpitude and would include neglect of duties and responsibilities and what courts of justice would expect from the Board and its members before allowing finality to their awards and decisions.¹ Violation of the principles of natural justice such as hearing evidence on one side in the absence of the other without giving the latter an opportunity of meeting and answering it,² would be considered miscon-

1. *Ganga Sahai v. Lekhraj* (I. L. R. 9 All. 253) ; *Amir Begum v. Badrudin* (I. L. R. 36 All. 336 P. C.) ; *Tyebbhai v. Abdul Husen* (25 Bom. L. R. 392).

2. *Cursetji v. Crowder* (I. L. R. 18 Bom. 299) ; *Mahomed Ajzal v. Abdul Hamid* (7 Lah. L. J. 463 = 88 I. C. 161).

duct. Proceeding with the work although there may be no quorum as prescribed by S. 4(4) would, on the principle laid down in *Thammaniraju v. Bapiraju*³ and *Nand Ram v. Fakir Chand*⁴, be held to be misconduct within the meaning of this clause. So would the making of inquiries as to matters relating to the proceedings from outside sources in the absence of the parties, according to the principle acted upon in *Abdul Hamid v. Muhammad*⁵ and *Bhaiya v. Jageshuar*.⁶ In this connection it must be borne in mind that decisions under other Acts containing the same or similar words or expressions must be made use of with great caution. The principles on which that can be done have been stated under the sub-heading *Other Acts not in pari materia* in the course of the Commentary on the expression *Reference to subject* occurring in S. 2 of this Act.⁷

Ground (c) :—Under this head will fall all cases in which there has been an illegality *i.e.* a violation of the specific provisions of law or an irregularity *i.e.* a failure to observe the rules of procedure laid down by this Act or the Rules made under it. But in order that an illegality or irregularity may entitle a party affected by it to get the award or decision modified or set-aside, it must have resulted in a failure of justice, *i.e. to say*, the award or decision must have been otherwise than it should, according to law, have been. It should be noted here that there is a distinction between the wording of ground (c) of this section and ground (c) contained in S. 115 of the *Civil Procedure Code, 1908*, as pointed out below :—

S. 12(c) of this Act.

" x x x any illegality or irregularity in the proceedings relating to such decision or award which has occasioned a failure of justice."

S. 115(c) of the C. P. Code.

" If such Subordinate Court appears x x x to have acted in the exercise of its jurisdiction illegally or with material irregularity."

Great care must therefore be exercised before applying the rulings under S. 115(c) of the *C. P. Code* to cases arising under S. 12(c) of this Act.

3. I. L. R. 12 Mad. 113.

4. I. L. R. 7 All. 523.

5. I. L. R. 8 Lah. 529.

6. I. L. R. 52 All. 938.

7. See pp. 22-24 *supra*.

Ground (d) :—This ground seems to have been intended to cover cases of a wrong view of any of the provisions of the substantive law of the province which includes both the statutory law and the personal laws of the parties concerned and of an erroneous evaluation of the evidence, oral, circumstantial or documentary, that may be on the record. Here too the error of law or erroneous appreciation of evidence in order to justify a modification or reversal of the award or decision of the Board must have resulted in a failure of justice as above-explained. The cases of errors in law, subject to the above limitation, will be similar to those which are contemplated by ground (a) in S. 100 of the *Civil Procedure Code*, and therefore cases under it, can, with due caution as above, be made use of in giving effect to the provisions of this part of ground (d) in this section. Similarly cases of erroneous appreciation of evidence resulting in a failure of justice are those contemplated by ground (c) in S. 100 of the same *Code* so far as it concerns a substantial error or defect in the procedure provided by any other law for the time being in force. Therefore cases falling under that provision of the *Code* can, with due caution, be made use of in giving effect to the provisions of this part of ground (d) in this section.

Restraint on jurisdiction :—This section puts a considerable restraint even upon the limited jurisdiction to hear appeals against the kinds of awards and decisions mentioned in S. 9 inasmuch as it confines that jurisdiction to the classes of cases specified in the four grounds mentioned therein. Therefore even if an appeal against an award or decision of a Board has been filed the Court cannot grant relief to the appellant by way of modification or reversal of the award or decision unless it is made out that the case falls under any of the specific grounds mentioned therein. In the case of such a provision of law questions of jurisdiction naturally arise. When such questions do arise the following principles of interpretation in addition to those mentioned in the commentary on S. 9 above would, it is hoped, be found useful.

Rules for the interpretation of provisions curtailing a court's jurisdiction :—(1) A Judge can amplify his jurisdiction by putting a reasonable construction on the words of a statute but he cannot strain the language thereof for that purpose. This means that he

would be within the law if he can do that without doing violence to such language.⁸

(2) A right vested in a court of law cannot be taken away by mere inferences depending on individual inclinations or interpretations.⁹ A mere creation of a special remedy and a special tribunal for its enforcement does not mean ouster of jurisdiction.¹⁰

(3) The exclusion of the jurisdiction of a civil court is not to be readily inferred. Even when it is made expressly or by necessary implication, the courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.¹¹

13. In the hearing of appeals made under this Act, the Court shall follow the procedure provided in the *Code of Civil Procedure 1908*, for the V of 1908. hearing of appeals from original decrees so far as may be applicable.

COMMENTARY

Scope of the section :—This section provides for the procedure to be followed by the Court to which an appeal has been made, in hearing it. In doing so, it does not lay down any new and independent rules but only extends those contained in the *Code of Civil Procedure, 1908* as regards the hearing of appeals from original decrees, which means what are called First Appeals. Those provisions are contained in Rules 9 to 34 of Or. XLI of Schedule I to the said *Code*. In order that an indiscriminate use thereof may not be made it adds that it shall be made so far as the procedure therein prescribed can be made applicable. The Court will thus have to use its judicial discretion while determining whether and how far any particular rule out of those above-mentioned is applicable to an appeal before it.

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8. *Khudabux v. Punjo* (A. I. R. 1930 Sind 265 F. B.).
 9. *Deputy Commissioner v. Budhu Ram* (A. I. R. 1937 Lah. 38 F. B.).
 10. *Karam Devi v. Radha Kishan* (A. I. R. 1935 Lah. 406).
 11. *Secretary of State v. Mask & Co.* (A. I. R. 1940 P. C. 105, 110).

14. Notwithstanding anything contained in any other law, no further appeal shall lie against a decision or order of the Court under this Act.
- Court's decision or order to be final. deci- sion or order to

COMMENTARY

Scope of the section :—This section contains a negative provision prohibiting an appeal against the decision or order of the Court, whether it be that of the F. C. Subordinate Judge or that of the District Judge. The effect thereof is that such decision or order will be final and no second appeal would lie against it.

Jurisdiction of Superior Courts :—This is therefore a provision affecting the jurisdiction of the superior courts, which would be that of the District Judge if the decision or order had been passed by the F. C. Subordinate Judge under S. 9(b) and that of the High Court if the decision or order had been passed by a District Judge under S. 9(a). Such a provision appears to have been necessary because unless expressly barred a second appeal would lie in such cases under the provisions of S. 100 of the *Civil Procedure Code, 1908* and because it has been ruled by several High Courts that there is no presumption as to ousting or restricting the jurisdiction of the superior courts and that an intention to do so must be in express terms.¹ What is meant by this proposition has been further made clear by the Calcutta High Court in *Narsing Das's case* by saying that it is not necessary that there should be express words for this purpose but that what is necessary is that the language used must be clear and unambiguous, showing the intention of the Legislature to take away the jurisdiction of a superior court. From the fact that what is barred is a "further appeal" only, it can legitimately be inferred that a revision application is not barred.

The expression "any other law" used in this section must be deemed to contain a reference to that contained in S. 100 of the *Civil Procedure Code*. It is the general law of procedure appli-

1. *Balwant v. Secretary of State* (7 Bom L. R. 497); *Ibrahim v. Musamat Zainab* (A. I. R. 1935 Lah. 613); *Narsing Das v. Choge Mud* (A. I. R. 1939 Cal. 435, 445, F. B.); *Musamat Ketaki Kuar v. Shea Narain* (A. I. R. 1931 All. 706, 707).

cable to all proceedings of a civil nature and an appeal to the Court of a F. C. Subordinate Judge or a District Judge under this Act would be deemed to be a proceeding of such a nature. The provisions of Rules 9 to 34 of Order XLI of Schedule I to the said *Code* have also been made applicable to such an appeal so far as they are applicable, by S. 13 of this Act. In spite of them no second appeal would lie under this Act on account of this clear provision to the contrary. The said expression cannot, as ruled in *Bhim Raj v. Munia Sethani*,² have reference to the Act itself in a section whereof it is contained nor to any provision contained in the *Dekkan Agriculturists Relief Act, 1879*, which it repeals by S. 85 from the date of the establishment of a Board in any local area, so far as that area is concerned.

15. (1) A Board shall in all proceedings under this Act be subject to the control of the Court of the First Class Subordinate Judge within the local limits of whose special jurisdiction it is established.

Control over Board.

(2) The First Class Subordinate Judge or any person authorised by him may inspect or cause to be inspected any property, books or documents in possession of or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board and may pass such orders thereon as he thinks fit.

COMMENTARY

Scope of the section :—This section places the Board under the administrative control of the F. C. Subordinate Judge within the local limits of whose special jurisdiction it may have been established, whatever the nature of the proceedings conducted before it.

Sub-section (1) :—This sub-section contains a general provision for the above purpose.

2. A. I. R. 1935 Pat. 243.

Sub-section (2) :—This sub-section further particularly provides for the inspection of the property etc. in the possession or under the control of the Board and for statements etc. being called for in the exercise of the power of administrative control conferred by sub-section (1). It is permissible under it for the F. C. Subordinate Judge concerned either to go personally to inspect the property etc. or to depute any one else bound by his orders, to do so on his behalf and make a report to him. It would also be within his discretion to call for statements, accounts, reports, copies of documents or such other information relating to any of the proceedings before, or to the duties of, the Board and pass such orders thereon as he thinks proper, instead of going out for a personal inspection or deputing any one else for that purpose and the Board concerned would be bound to carry out such orders.

16. Where any period is fixed or granted by the Board for the doing of an act prescribed or allowed by this Act, the Board may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Power of Board
to enlarge time.

COMMENTARY

Scope of the section :—This section confers on the Board a general power to extend the period fixed or granted for doing any act in relation to the proceedings before it, as and when it pleases. It is remarkable that it empowers the Board to extend the time fixed for any purpose even after that time has expired and that since it does not contain any words requiring an application being made by a party for that purpose, the Board can extend the period fixed for any purpose even *suo moto*. This is a power similar to that conferred on the civil courts with respect to references to arbitration made through them by Para. 8 of Schedule II to the *Civil Procedure Code 1908*, which gives effect to the ruling of the Allahabad High Court in the case of *Har Narain v. Bhagwant*.¹

1. I. L. R. 10 All. 137.

CHAPTER III.

PROCEDURE FOR ADJUSTMENT OF DEBTS.

17. (1) Within eighteen months from the date on which a Board is established under section 4, any debtor may make an application to the Board for the adjustment of his debts under this Act as hereinafter provided.

(2) Unless the debtor has already made an application under sub-section (1), his creditor may make an application to the Board for the adjustment of his debts within the period specified in sub-section (1).

(3) An application under this section shall be made to the Board established for any local area if the debtor or any of the debtors who is a party to the application ordinarily resides in such area, or to the Board established for the class of debtors, if the debtor or any of the debtors who is a party to the application belongs to the said class.

(4) When more than one application has been made to the same or different Boards by or in respect of the same debtor or one or more of the joint debtors,

(a) if the Boards are established within the local limits of one Court, that Court, and

(b) if the Boards are established within the local limits of more than one Court, a District Judge or a Joint Judge appointed in this behalf by the Provincial Government,

shall after holding such inquiry as it or he thinks fit, direct that all such applications shall be dealt with by any one of such Boards as may be specified in the direction:

Provided that the Board so specified shall be one of the Boards referred to in sub-section (3).

(5) No objection as to the place of presentation of the application shall be allowed by the Board or the Court, unless such objection was taken at the earliest opportunity before the Board to which the application was made and unless there has been a consequent failure of justice.

COMMENTARY

Scope of this Chapter :—With S. 17 begins the third chapter of the Act. The first chapter thereof comprising SS. 1 to 3 and bearing the heading PRELIMINARY contains provisions as to the title, extent and commencement of the Act, definitions of certain words and expressions occurring therein and a general clause applying the definitions of other words and expressions occurring in the Act but not defined in S. 2, contained in the *Code of Civil Procedure Code, 1908* and the *Bombay Land Revenue Code, 1879* so far as they may be applicable in view of the context in which the word or expression occurs and lastly a saving-clause, excluding certain kinds of debts from the operation of certain sections of the Act. The second chapter headed *Constitution and Powers of the Board and of the Court in appeal* provides for the setting up of Debt Adjustment Boards of various types according to the needs of various localities and of various classes of debtors, the general powers of the Boards in relation to the matters falling within their cognizance, for appeals being filed in certain Courts against specific awards and decisions of the Boards, for charging Court-fees and following a particular procedure &c. in connection with the appeals. These provisions too are more or less of a formal nature. The special remedy provided for in this Act for relieving the agricultural debtors of their liabilities so far as they affect individual money-lenders forms the subject-matter of Chapters III and IV of this Act. Thereout Chapter IV again which contains provisions enabling a Board or a Court to declare an agricultural debtor insolvent *suo moto* and take further proceedings as if the declaration had been made under S. 27 of the *Provincial Insolvency Act, 1920* is likely to come into operation only in certain cases if certain conditions are fulfilled. Hence it is Chapter III alone that is the most important chap-

ter of this Act as the provisions contained therein are likely to be of use in the case of all agricultural debtors seeking relief under this Act. These provisions are contained in SS. 17 to 67 of this chapter. Thereout those which concern the special remedy provided for by this Act are :—Sections 17 to 22, 26, 31 to 33, 35, 37, 38 to 46, 47, 48 to 57, 59 to 66 and 67. Sections 23, 24 and 25 relate to the settlement of debts arrived at without interference by the D. A. Boards, either before or after an application under S. 17 has been made and the legal effect of a settlement not brought to the notice of the Board as provided for. Sections 27 to 30, and 34, 36, and 58 relate to matters of procedure only. The cumulative effect of all these provisions will be found discussed under the heading *Remedy provided by the Act* in the *Introduction* to this Act.

Heading of this Chapter :—It can be readily understood that in view of the nature of the contents of this chapter its heading “Procedure for the adjustment of debts” is not sufficiently comprehensive. When such is the case the rules of interpretation relating to such headings given in the beginning of the *Commentary on Chapter I*¹ above will, I hope, be found useful.

Special tribunals and the civil courts :—From the facts that S. 4 of this Act provides for the appointment of Debt Adjustment Boards and that this section and several others in this chapter give jurisdiction to such Boards to take exclusive cognizance of proceedings started under this Act subject to the control of the First Class Subordinate Judges within the limits of whose special jurisdiction they may have been established and that S. 37 directs the ordinary civil courts to transfer to them all pending suits, applications for execution and incidental proceedings to which debtors under this Act whose total liability does not exceed Rs. 15,000, are parties, it can be inferred that this is a special piece of legislation providing for a special remedy being availed of by certain classes of persons for checking a specific mischief, and from the fact that the jurisdiction of the civil courts to entertain certain classes of suits and proceedings is ousted by S. 73 it can be further inferred that it affects the jurisdiction of such courts under the ordinary laws. This

1. Vide pp. 11-12 *supra*.

is not the first instance in which an Indian Legislature has thought fit to do so. Even apart from other evils that consisting of the heavy indebtedness of agriculturist debtors has itself been attacked in several other provinces of India by such special pieces of legislature whose principal features have been mentioned in the Introduction. An amount of case law has therefore grown up around them. Believing that the judicial principles deducible therefrom will be helpful in dealing with cases arising under this Act so far as the question of jurisdiction is concerned I give them below :—

(1) It is a cardinal principle of the construction of statutes that those which set up special tribunals ousting the jurisdiction of the ordinary civil courts, must, as a rule, be construed strictly.²

(2) There is a general presumption against an intention of the Legislature to oust the jurisdiction of the civil courts.³

(3) Such an intention can therefore be inferred from the language of the statute only if there are in it clear words for that purpose or if the words used therein are such that such an inference drawn from them can be deemed to be reasonable.⁴

(4) Ouster of jurisdiction should not be readily inferred. Even when it is made expressly or by necessary implication, the courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not

2. *Vythilinga v. Temple Committee, Tinnevely Circle* (A. I. R. 1931 Mad. 801); *Koyal v. Bhond Lal* (A. I. R. 1931 Nag. 48); *Gulamhusen v. Clara De'Souza* (I. L. R. 53 Bom. 819); *Baldeo Das v. Lal Nilmani Nath* (A. I. R. 1928 Pat. 615); *Cheta v. Baija* (I. L. R. 9 Lah. 38); *Ganesh Das v. Hiro Lal* (A. I. R. 1926 Nag. 212); *Musamat Dhanpali Kuar v. Kandhaiya Baksh* (A. I. R. 1930 Oudh. 371); *Ali Mahomed v. Hakim* (A. I. R. 1928 Lah. 121); *Muthammal v. Secretary of State* (24 M. L. J. 405); *Maung Ba Lah v. Liquidator, K. T. Co-operative Society* (A. I. R. 1933 Rang. 124); *Chan Pyu v. Chan Chor* (A. I. R. 1923 Rang. 238); *Vaikunth Bhat v. Sarvottam Rao* (A. I. R. 1936 Mad. 574); *Susai Odayar v. Swami Nath Iyer* (A. I. R. 1936 Mad. 522); *Abraham v. Musamat Zainab* (A. I. R. 1935 Lah. 613); *King Emperor v. Dahu Raut* (A. I. R. 1935 P. C. 89); *Abdul Rahman v. Abdul Wahab* (A. I. R. 1935 Nag. 120); *Gir Har Saroop v. Bhagwan Din* (A. I. R. 1935 Oudh 96).

3. *Balwant v. Secretary of State* (7 Bom. L. R. 497).

4. *Shantha Nand Gir v. Basudevanand* (A. I. R. 1930 All. 225, 230 F. B.); *Hayatuddin v. Musamat Rahiman* (A. I. R. 1935 Sind. 73, 75).

acted in conformity with the fundamental principles of judicial procedure.⁵

(5) A judge can amplify his jurisdiction by putting a reasonable construction on the words of a statute but he cannot strain the language thereof for that purpose.⁶

(6) An alteration in jurisdiction embodied in a specific enactment cannot be effected by implication in a statute which has nothing to do with that jurisdiction.⁷

Special Remedy provided by this Act :—It will further be seen that this Act provides a special remedy for reducing the indebtedness of the agricultural debtors for whereas the usual procedure is by way of a suit, this Act enables a party to get the same relief by way of an application under this section. It also provides by S. 19 for getting the preliminary information which may either lead to a settlement or to an application under this section. Lastly it also provides for making an application under S. 23 for getting a private settlement recorded under an award made in terms thereof which is a procedure differing from that provided for in para 20 of Schedule II to the *Civil Procedure Code, 1908*. In such cases one established rule of interpretation is that the special remedy provided for must be resorted to.⁸ Another is that a remedial statute must be so construed as to suppress the mischief aimed at and advance the remedy provided thereby.⁹

Scope of the section :—This section as explained above relates to the special remedy provided by this Act for the relief of agricultural debtors from their indebtedness. It is sub-divided into 5 sub-sections, out of which the first two lay down the method and period of time for taking advantage of the remedy which consists of an application to be made to a D. A. Board, the third is likely to enable the party wishing to take advantage of it ; to know which Board should be approached for that purpose, the fourth makes provision for the

5. *Secretary of State v. Mask and Co.* (A. I. R. 1940 P. C. 105, 110).

6. *Khudabux v. Punjo* (A. I. R. 1930 Sind. 265 F. B.).

7. *Dhra Dun Electric Tramway Co. Ltd. v. Nabha State Agency* (A. I. R. 1936 All. 826).

8. *Chunilal v. Ahmedabad Municipality* (I. L. R. 36 Bom. 47) ; *Joti Prasad v. Amba Prasad* (A. I. R. 1933 All. 358).

9. *Diwan Singh v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62).

regulation of business of the Boards when some complicate situation arises and the fifth lays down the limit up to which a technical objection as to the place of presentation of an application can be allowed.

Sub-section (1): Application by a debtor :—This sub-section enables a person who is a debtor according to S. 2(6) of this Act to make an application to the D. A. Board for the local area in which he resides or for the class of debtors to which he belongs, as the case may be, for the adjustment of his debts under this Act as provided in the subsequent portion of this chapter.

Limitation for that application :—The period of limitation within which he can do so according to this sub-section is 18 months from the date of the establishment of such a Board under S. 4 of this Act. But this sub-section must be read with the first proviso to S. 54(2) (1). When that is done the period of limitation for making an application under this sub-section is reduced to one year in the case of a debtor who wants to avoid paying the costs of the proceeding, which would, under that clause, become payable by him if he has neglected to make an application for a year and the creditor has subsequently made one under sub-section (2) of this section. That is however the only consequence of neglect on his part. Subject to that an application by him would continue to be maintainable even after the expiration of a year from the date of establishment of a Board for his local area or his class of debtors in such area.

Sub-section (2): Application by a creditor :—The creditor is under this sub-section entitled to make an application for the same purpose within the period of 18 months if the debtor has not done so before that.

Limitation for that application :—It must be borne in mind in this connection that a creditor who wants his costs to be paid by a debtor must according to S. 54(2) (1) wait for a period of one year after the appointment of a Board competent to entertain the application. If he is indifferent in the matter of costs he can make an application even within one year of the appointment of the Board.

Modification of these provisions by those of S. 26 :—Although both these sub-sections do not lay down any limit as to the total amount of debts for the adjustment whereof an application would

lie under them, they are controlled by S. 26 which prohibits the entertainment of any application under them for the adjustment of the debts of a debtor whose total amount exceeds Rs. 15,000 as calculated upto 1st January 1939.

*Sub-section (3) : Forum for applications under sub-sections (1) and (2) :—*The forum for making an application under either sub-section (1) or sub-section (2) is determined by the place of residence of the debtor, whatever may be the place of residence of the creditor. If one Board has been established for the local area in which the debtor resides, then an application must be made to that Board but if within such area different Boards have been established for different classes of debtors residing within that area, then an application against a debtor must be made to the particular Board established in that area for the class of debtors to which the debtor in the application belongs. Thus for instance if a Board has been established at Godhra in the Broach and Panch Mahals district for all non-Bhil debtors and another has been established in the Dohad Taluka for the debtors of the Bhil class residing in the said district, then even if a debtor resides in or near Godhra, an application by or against him must be made to the latter not the former Board.

*Sub-section (4) :—*This sub-section provides for the contingencies in which more than one application have been made to the same Board or to different Boards by or in respect of the same debtor or by or in respect of one or more of the joint debtors concerned. The provision that it contains is that an order can in such a contingency be made that all such applications shall be dealt with by any one of such Boards as may be specified in the order. The authority for passing such an order vests under this section in (a) the Court within the local limits of whose jurisdiction the Boards concerned may have been established and (b) in a District Judge or a Joint Judge appointed in this behalf by the Provincial Government, if the Boards concerned are situated within the local limits of more than one Court. The court or the Judge, whoever has jurisdiction under this sub-section, is required to pass an order as above after holding such inquiry as may be considered fit in the circumstances of the case. Since no particular mode of making an inquiry is specified here, it would be within the power of the Court or the Judge to adopt any that may be found suitable provided of course that it is consistent with the principles of natural justice.

Meaning of the word "Court" in this section :—In order to determine the meaning of the word "Court" in this sub-section, reference must be made to S. 2(4) (a). It provides that the word "Court" in S. 17 and certain other specified sections shall mean either the Court of the F. C. Subordinate Judge or of the District Judge to which an appeal would lie under S. 9. Now under that section an appeal would lie to the District Court or the F. C. Subordinate Judge's Court according as the amount payable under the award exceeds or does not exceed Rs. 5,000. Therefore so long as an award is not made, the provisions of S. 9 cannot be made use of for the purpose of determining which Court would have jurisdiction to pass an order under this sub-section. Here there is an anomaly which it is not easy to solve. One way to solve it would be to take the spirit of S. 2(4) and determine the Court having jurisdiction for the purpose of this sub-section by a reference to the total amount of debts payable by the debtor as alleged in the application although the actual wording of S. 9 which is to be made use of for this purpose would not certainly justify such an interpretation. Another way to solve the difficulty would be for the court or the Judge to refrain from making use of this sub-section and instead to make use of the power of transfer conferred by S. 29. A third way to do so would be to refer the matter for orders to the District Judge or Joint Judge specially empowered under S. 17(4) (b). Perhaps some other construction also may seem possible to others. What the Court has to do in such a case is to gather the intention of the Legislature from the language of the statute and give effect to it. On this point some rules are deducible from the decided Indian cases. If they are borne in mind, the task of the Judge would be easy. I therefore give them below—

Rules as to how to gather the intention of the Legislature and give effect to it :—(1) The court has to gather the intention of the Legislature as expressed in the words of the statute. It cannot read in the statute words which are not there or words which cannot necessarily be deemed to be impliedly there.¹⁰

10. *Kamalanjan v. Secretary of State* (A. I. R. 1938 P. C. 281) ; *Sorabji v. B. N. Ry. Co. Ltd.* (A. I. R. 1936 Pat. 393) ; *Raja of Mandasa v. Jagannayakulu* (A. I. R. 1932 Mad. 612, 619) ; *Gurdial Singh v. Central Board, Sri Durbar Saheb* (A. I. R. 1928 Lah. 337) following *Crawford v. Spooner* (6 Moore

(2) But "a Judge while construing an Act of Parliament is not a mere automaton whose only duty is to give out what he considers to be the primary meaning of the language used. A Judge must always consider the effect of any construction which he is asked to put on an Act of Parliament and if he comes to the conclusion that a particular construction leads to a result which he considers irrational or unfair, he is entitled, and indeed bound, to assume that the Legislature did not intend such a construction to be adopted and to try to find some more rational meaning to which the words are sensible¹¹"; in other words, words as an index to the intention of the Legislature must be interpreted in view of the context in which they occur.¹²

(3) It is more reasonable to assume that the Legislature expressed its intention in an unguarded manner than that a meaning should be given to its expressions which could not have been intended by it.¹³

(4) When different sections of the same statute enacted for a similar purpose are susceptible of different interpretations the one which is approved by considerations derived from the policy of the law has to be adopted on the principle of statutes *pari materia*.¹⁴

(5) The process of judicial interpretation can, in such circumstances, be carried dangerously near that of legislative enactment even by doing some violence to the language of the statute if there is no other alternative but to admit that the Act or the section to

P. C. 1) ; *Abdul Hussain v. Musamat Mohammadi* (A. I. R. 1935 Lah. 364) ; *Blagta Nand v. Sardar Mohammad* (A. I. R. 1935 Lah. 150, 153) ; *Radha Mohan v. Abbas Ali* (A. I. R. 1931 All. 294) ; *Ram Lal v. Thakur Das* (A. I. R. 1938 Pat. 94).

11. Per Beaumont C. J. in *Emperor v. Somabhai* (A. I. R. 1938 Bom. 484, 488, F. B.).

12. *Rein v. Lane* (1867) 2 Q. B. 144 ; *Eastman Photographic Materials Co. Ltd. v. Comptroller-General of Patents, Designs and Trade-marks* (1898) A. C. 571 ; *Queen v. Most* 7 Q. B. D. 244.

13. *Ram Chander v. Gouri Nath* (A. I. R. 1926 Cal. 927).

14. *Abdul Latif v. Jawahar State* (A. I. R. 1940 Bom. 172, 177) ; *C. T. Mudaliar v. Maymyo Municipal Committee* (A. I. R. 1933 Rang. 68) following *Brown v. National Provident Institution* (1921) A. C. 222.

be construed is inconsistent or unintelligible¹⁵, for a remedial statute must be so construed as to suppress the mischief aimed at and advance the remedy provided by it.¹⁶

(6) The intention of the Legislature must however in such a case be looked for within the four corners of the Act, speculation as to the probable intention not being permissible.¹⁷ The term "intention of the Legislature" is a common but very slippery phrase which properly understood may signify anything from the intention embodied in a positive enactment to the speculative opinion as to what the Legislature probably would have meant although there has been an omission to enact it.¹⁸

Proviso to the sub-section :—The whole of this sub-section is subject to the proviso that the court or the Judge must specify in his order under this sub-section such a Board only as would be one of those referred to in sub-section (3).

In case of a doubt as to the effect of this proviso on the sub-section see the Commentary under the heading *Proviso as an aid to interpretation* at pp. 75-76 *supra*.

Sub-section (5) :—This sub-section lays down two restrictions on the liberty of a party to an application under this section to raise objections as to the jurisdiction of the Board to which it has been made to entertain it. They are (1) that the objection must have been raised at the earliest opportunity before the Board concerned and (2) that the filing of the application before a wrong Board must have resulted in a failure of justice. It should be particularly noted that both the conditions must be fulfilled before such an objection can be allowed. For the rules relating to this section see the relevant Appendix.

15. Per Towney J. in *Mahomed Jiwa v. Wilson* (12 Cr. L. J. 246); See also *Jagadamba Prasad v. Mata Prasad* (A. I. R. 1935 Oudh. 427); *Vaijappa v. Emperor* (A. I. R. 1935 Bom. 402, 403).

16. *Diwan Singh v. Emperor* (Appeal—A. I. R. Nag. 55, 62).

17. *Emperor v. Chhotalal* (A. I. R. 1937 Bom. 1 F. B.); *Ramireddi v. Sreeramulu* (A. I. R. 1933 Mad. 120); *Bank of England v. Vagliano Bros.* (1891) A. C. 107; *Robinson v. Canadian Pacific Ry. Co.* (1892) A. C. 481.

18. Per Lord Watson quoted by Patkar J. in *Hatimbhai v. Framroz* (A. I. R. 1927 Bom. 278) from *Salomon v. Salomon & Co.* (1897) A. C. 22, 38. See also *Rama Avatar v. Hubrajee* (A. I. R. 1935 Rang. 123).

18. (1) Every application made under section 17 shall be in writing in the prescribed form and shall be signed and verified in the prescribed manner.

Form and verification of application.

(2) It shall be accompanied with such court-fee as may be payable under the *Court-fees Act, 1870*, as if the application was a plaint in suit for accounts.

VII of 1870.

COMMENTARY

Scope of the section :—This section provides for making rules and prescribing forms for the application to be made under the preceding section. This has been done by Rule 15.

Sub-section (1) :—This sub-section leaves it to the Provincial Government to prescribe the form in which an application under S. 17(1) and (2) should be made, provides that it shall be signed and verified but leaves it to the said Government to determine the manner of doing so.

Sub-section (2) :—In this sub-section the Legislature has provided that an application under S. 17 of this Act shall for the purpose of the court-fee payable thereon be treated as a plaint in a suit for accounts.

Court-fee on applications under S. 17(1) and (2) :—Under S. 7(4) (f) of the *Court-fees Act, 1870*, which has been made applicable by the sub-section to applications under S. 17(1) and (2) of this Act, the plaintiff is at liberty to put his own valuation on the claim in a suit for accounts and pay *ad valorem* fee according to Item No. 1 in Sch. I to the Act. The least amount at which it is permissible to value a claim for accounts under that provision is Rs. 5 and accordingly an applicant under this section can file an application on affixing a court-fee stamp of as. 6 only. It must however be borne in mind that this provision would be useful only to a debtor because a creditor must be presumed to know what the amount due to him is and must make a definite claim for it and when he does so, he must affix to his application a court-fee stamp of the value determined in view of the amount claimed by him as due to him from the debtor.

19. (1) After the coming into force of this Act, but notwithstanding the fact that any application has not been filed under section 17—

Every creditor and debtor to file a true and correct statement before Board.

- (a) every creditor, on being required to do so by a notice in writing by any of his debtors, shall, within one month from the date of the receipt of such notice, file before the Board referred to in sub-section (3) of section 17 a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and
- (b) every debtor, on being required to do so by a notice in writing by any of his creditors, shall, within two months from the date of the receipt of such notice file before the Board referred to in sub-section (3) of section 17 a true and correct statement
 - (i) of all debts owed by such debtor ;
 - (ii) whether he holds any land used for agricultural purposes and whether he has been cultivating land personally;
 - (iii) of his income from agriculture and from sources other than agriculture in the year preceding the date of the notice.

The debtor shall at the same time send a copy of such statement to such creditor.

(2) Every debtor or creditor giving a notice under sub-section (1) shall at the same time send a copy thereof to the Board.

(3) In awarding the costs of any proceeding in respect of any application made under section 17 the Board

may, on being satisfied that the statement required to be filed under sub-section (1) was, without sufficient cause, not filed within the time specified therein, direct the party in default to bear the whole or any portion of the costs of such proceeding.

COMMENTARY

Scope of the section :—At first sight this section may seem unconnected with the remedy provided in S. 17 above inasmuch as its provisions are to have effect “notwithstanding the fact that any application has not been filed under section 17”. However it is not only not quite unconnected with that remedy but provides for a preliminary step which an intending applicant can and would necessarily be required to take before making such an application because obviously a debtor of the agriculturist class, who is proverbially illiterate, could not be expected to have in his possession all the information which S. 17(1) of this Act requires him to supply, and a creditor-applicant too would stand in need of getting from his debtor such and so much information about his affairs as he is expected to supply while making an application under S. 17(2). The Legislature has therefore wisely cast by this section a duty on both of them to assist each other in seeking the assistance of the Board. In view of this it appears that the proper place of this section in this chapter was before SS. 17 and 18.

Sub-section (1) :—The section has been sub-divided into 3 sub-sections. The first thereof is again sub-divided into two clauses (a) and (b), out of which (a) is intended to be of use to the debtor in getting the necessary information from the creditor and (b) is intended to be of use to the creditor in getting such information from his debtor.

Procedure for getting the information :—In each case the party requiring information is required to give notice in writing to the other party and that party is bound under this sub-section to supply the correct information as to the points mentioned in each clause in the form of a statement filed before the Board having jurisdiction in the matter.

Time for supplying the information :—A creditor served with a notice as above is required to file such a statement within one

month of the receipt of the notice by him while a debtor is required to do so within two months of the receipt of the notice by him.

Sub-section (2) :—This sub-section requires each party served with a notice to send a copy of the statement to be filed before the Board to the party giving the notice.

Sub-section (3) :—This sub-section backs up the duty to file a statement as required and supply a copy thereof to the party giving the notice by a sanction lest the duty be disregarded. That sanction is that the Board is empowered by this sub-section to saddle the party in default with the whole or a portion of the costs of the proceeding, if any, started subsequently under S. 17. The condition precedent for the exercise of this discretionary power is that the Board must be satisfied that the default had been committed without sufficient cause. This means that the party who has failed to file a statement as required by sub-section (1) within the prescribed period would be at liberty to show that there was a sufficient cause for not complying with the requisition. As to what should be deemed to be a "sufficient cause", the Board must decide it in view of the circumstances that may have been disclosed during the course of the proceeding and the rulings under the same expression occurring in S. 5 of the *Indian Limitation Act, 1908*.

This section and S. 23 :—It is possible that the provisions contained in this section may be useful as well for making an application under S. 23 as the one under S. 17 if on the required particulars being supplied the party calling for them feels that the difference between him and the other party is capable of being adjusted amicably and arranges for its being done either directly or through common friends.

This section and sections 26 and 86 :—The provisions of this section can also be made use in order to determine whether the debtor is or is not one for the adjustment of whose debts an application under S. 17 or 23 can be made. If it is found that the total liabilities of the debtor as calculated upto 1-1-39 exceeded Rs. 15,000 none of the above applications can be made by or against him by virtue of the provisions of S. 26 and therefore advantage can be taken of the temporary provisions contained in S. 86 which allow of the remedies available under the *Deccan Agriculturists Relief Act, 1879* being made use of for a period of three years from the date

of commencement of the operation of this Act in any particular area in connection with transactions entered into before the said date.

20. If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is not a debtor, the debtor may make an application under subsection (1) of section 17 for relief in respect of such debt and the Board may after consideration of the facts and circumstances of the case proceed with the adjustment of debts under this Act so far as such applicant is concerned.

Application by debtor jointly and severally liable.

COMMENTARY

Scope of the section :—Section 17(1) of this Act contemplates the case of there being only one debtor liable for a debt and of the debt, if at all, being secured by an encumbrance on his property. This section extends the right to make an application under S. 17(1) to (1) a debtor, the payment of whose debt is guaranteed by a surety and (2) to one who is otherwise jointly and severally liable with other persons for the payment of a debt. The right is exercisable even if the surety or the co-debtor is not a person answering to the description of a “debtor” contained in S. 2(6).

Board's duty on receipt of such an application :—When an application has been made to a Board by such a debtor, its duty is to take into consideration the facts and circumstances of the case and decide whether it should or should not proceed with the adjustment of the debts so far as the applicant is concerned. In order to get the necessary facts before it, the Board may have to examine the debtor, summon the surety or other debtors as the case may be, and the creditor or creditors concerned, and examine them and make such other investigation as may be necessary. It has ample powers under this Act to do so.¹

1. See SS. 33-34 of this Act.

21. No application shall lie under section 17 for adjustment of any debt due from a debtor to whom such debt has been transferred or assigned after 1st January 1938 if such debt was originally incurred by any person who is not himself a debtor.

Assignees from non-debtor not entitled to benefit of this Act.

COMMENTARY

Scope of this section :—This section provides against a possible misuse of the provisions of S. 17 by a person who is not a *bona fide* debtor as defined in S. 2(6) of this Act by resorting to a camouflage consisting of the transfer or assignment of his own debt to one who is such a debtor. Since such a camouflage could not have been conceived prior to the idea of Government to make such legislation being known to the public and since it could not have been known till the Government of Bombay as re-constituted under the *Government of India Act, 1935* itself resolved to do so, there could be no plausible ground for suspecting the *bona fides* of a transferor or assignor of a debt who had assigned that debt prior to that resolution. As that resolution was most probably made in the early part of the year 1938, this section provides against the maintainability of an application under S. 17 by one who, though a debtor at the date of the application or even at that of the commencement of the operation of this Act within the meaning of S. 2(6), had got the particular debt incurred by a non-debtor to which the application relates transferred or assigned to himself by a non-debtor after the 1st of January of that year.

22. (1) An application made by a debtor under subsection (1) of section 17 shall contain a statement of debts, in the prescribed form, which shall include the following:—

Statement of debt to be included in application.

- (a) the name of the place where he ordinarily resides;
- (b) the names and addresses of his creditors, the total amount claimed by each creditor to be owing to him in respect of each debt, so far as it is known

to the debtor, and a note whether each such claim is admitted by the debtor;

- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;
- (d) details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety, together with the names and addresses of all such persons;
- (e) particulars of all the debtor's property, both movable and immovable, including the property situate outside the Province *or in any local area for which a Board has not been established under section 4¹* and claims, if any, due to the debtor, a specification of its value and of the places where it may be found and details of any attachment, mortgage, lien or charge subsisting thereon, together with the names and addresses of the co-sharers, if any, of the debtor;
- (f) particulars of any property as in clause (e) which has been transferred by the debtor together with the name and address of the transferee; and
- (g) a declaration that all his debts and all his properties have been included in the statement.

(2) An application made by a creditor under subsection (2) of section 17 shall contain a statement of debts, in the prescribed form, which shall include the following:--

- (a) the name of the place where the debtor ordinarily resides;
- (b) the total amount of every debt claimed by the creditor to be owing to him from the debtor;

1. The words in italics were inserted by S. 3(e) of Act VI of 1941.

- (c) the history of each such debt and the particulars of the original principal and the rate of interest chargeable;
- (d) the names and addresses of the other creditors so far as they are known to the creditor; and
- (e) particulars, so far as they are known to the creditor, of the debtor's property including the property situate outside the Province *or in any local area for which a Board has not been established under section 4.*²

(3) Notwithstanding anything contained in section 3 a statement filed under this section shall contain the amount and particulars of all debts specified in that section due by the debtor.

(4) The Board may return for amendment any application if it is not complete and in proper form.

COMMENTARY

Scope of the section :—The provisions of this section are ancillary to those of S. 17. It requires certain particulars to be given by each applicant in his application under that section in the form of a statement. Those particulars are naturally different in the case of a debtor-applicant and a creditor-applicant. This section has been sub-divided in four sub-sections. The first two thereof relate to such statements. Out of the other two sub-sections, the third explains what kinds of debts are to be shown in the statements and the fourth gives the Board concerned power to enforce the provisions of the first three.

Sub-section (1) :—This sub-section requires a debtor to append to his application a statement of debts in a prescribed form containing the particulars about them mentioned in clauses (a) to (g) thereof. For the form appropriate for this purpose see the relevant Appendix.

2. The words in italics were inserted by S. 3(b) of Act VI of 1941.

Sub-section (2) :—The creditor's application under S. 17(2) is required to be accompanied by a statement containing the particulars mentioned in clauses (a) to (e) thereof. For the form appropriate for this purpose see the relevant Appendix.

Sub-section (3) :—This sub-section is remarkable in that it requires the amount and particulars of the debts due to Government and others exempted from the operation of SS. 17 and others by S. 3 to be stated in the statement to be filed under this section. The words "Save as otherwise expressly provided in this Act" in that section had left room for such a provision as is contained in this sub-section. The object in making it seems to be that although such debts are not liable to be investigated into and scaled down, the Board should know them while determining the value of the property of the debtor and while entering the required particulars to be mentioned in the award.¹

Sub-section (4) :—This sub-section authorises the Board to return for amendment any application not containing the required particulars or not in proper form. Since it contains a reference to the form of the application also it must be held to have a reference also to S. 18 and the relevant Rules and Forms.

23. (1) If any debtor and any or all of his creditors arrive at a settlement in respect of any debt due by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement make an application for recording such settlement to the Board to which an application under section 17 lies.

(2) Every such application shall be in the prescribed form, and shall be signed and verified in the prescribed manner. It shall be accompanied with a court-fee of Re. 1.

(3) On receipt of such application the Board shall after giving a notice in the prescribed manner to the creditor or the debtor, as the case may be, and after making

Application for recording settlement.

1. See SS. 50 (2) and (3) and 54 (2) (c) (f) (g) and (h).

such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and is not made with intent to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor and that the debtor is a person who fulfils the conditions referred to in clauses (a) and (b) of sub-section (1) of section 35 record such settlement and certify the same. Every such settlement so recorded and certified shall be binding and shall not be reopened.

(4) After the Board has recorded and certified a settlement under sub-section (3), the Board shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts, the Board shall make an award under section 54 in terms of the settlement.

(5) If the Board is satisfied after recording such settlement, that there are other debts due from the debtor which are not included in the settlement, the Board shall treat the application made under sub-section (1) as an application for adjustment of debts made to it under section 17.

COMMENTARY

Scope of the section :—This section is quite unconnected with the main remedy as to the adjustment of debts and contains an independent provision for the recording of a settlement of debts arrived at without reference to the Board having jurisdiction in the matter. The settlement may be arrived at either after getting a statement from the other party under S. 19 or even without getting one. In either case the Board to which an application under S. 17 would lie, would be bound to record the settlement if the conditions laid down in this section are found to have been fulfilled. This shows that the policy of the Legislature is to encourage debtors and creditors to settle their disputes without the Board's interference.

*Sub-section (1) :—*If a settlement has been arrived at between a debtor and any of his creditors in respect of any debt or debts due to the latter, either the debtor or the creditor is entitled under this sub-section to make an application for recording it, to the Board which would have jurisdiction to entertain an application under S. 17.

*Time for making an application under this sub-section :—*One of the conditions which must be deemed to have been satisfied before the alleged settlement can be recorded is that the application for that purpose must have been made within 30 days of the date of the alleged settlement. If the date is in dispute the Board would have to ascertain it by taking evidence with respect thereto and to compute the period of thirty days from that date.

*Sub-section (2) :—*An application for the above purpose is required by this sub-section to be in a prescribed form, signed and verified in a prescribed manner and accompanied with a court-fee of Re. 1.

*This section and section 26 :—*It should be borne in mind that S. 26 prohibits the entertainment of an application as well under this section as under S. 17 if the total amount of the liabilities of the debtor concerned as calculated up to 1-1-39 exceeds Rs. 15,000. Hence the provisions of this section must be understood to be subject to those of S. 26 although it is not clearly stated so in this.

*Sub-section (3) :—*This sub-section lays down the steps to be taken and the inquiry to be made by the Board before ordering the settlement to be recorded and further provides that once such an order is made, the settlement shall be deemed to be final and binding on the parties and shall not be re-opened.

*Duties of the Board under this section :—*The first step that the Board is required to take on receipt of an application under this section is to give a notice in the prescribed form to the opponent or opponents mentioned in the application. The party on whom such a notice is served gets by such notice the necessary information as to the application filed against him and is given an opportunity to prefer objections, if any, against it on or before a particular date and informed that in case of default the application would be considered *ex parte*. The next step to be taken by the Board is to make an inquiry in order to satisfy itself (1) that the settlement is *bona*

fide and is not made with a view to defeat or delay any of the creditors of the debtor, (2) that it is in the interest of the debtor and (3) that the debtor is a person who fulfils the conditions referred to in clauses (a) and (b) of S. 35(1). Those conditions are (1) that the debtor must be one who can be held to be a debtor according to the provisions of S. 2(6) read with S. 2(13) and (2) that the total amount of debts due by him on 1st January 1939 did not exceed Rs. 15,000. The terms of the second condition make it clear that it can be deemed to have been fulfilled even if the total amount due at the date of the application exceeds the said amount provided that the excess is due to advances made subsequent to the said date or to the accumulation of interest.

Such an inquiry would have to be made in the presence of the opponent or opponents present in response to the notice and the conclusion must be arrived at on hearing his or their objections if any. No particular method has been prescribed for making it. Still it must presumably be made according to the principles of natural justice. If the Board is satisfied on the said points, it will be its duty to record and certify the settlement so as to give it finality and a binding character.

*Sub-sections (4) and (5) :—*The Board's duty does not however end with recording and certifying the settlement. This sub-section further provides that after doing so, it shall call upon the debtor to make a declaration whether there are any other debts not included in the settlement, due by him. If he makes such a declaration the Board should, according to sub-section (4), make an award in terms of the settlement as provided in S. 54 of this Act. If on the other hand, the Board is satisfied that there are other debts due by the debtor but not included in the settlement, its duty according to sub-section (5), would be to treat the application under sub-section (1) of this section as one under S. 17 and proceed accordingly, *i.e. to say*, to issue notices to the other creditors under S. 31 and take such further steps for the adjustment of all the debts of the debtor as it would in the usual course take if the alleged settlement had not been made.

Reading the two sub-sections together, as they must be owing to the inter-connection between them, one cannot help feeling that this is a case of unskilful draftsmanship because it is quite possible

that the debtor may make a declaration as required by sub-section (4) if there is collusion between him and the creditor whose debts may have been adjusted and therefore if the Board proceeds at once to make an award under S. 54 without making any inquiry as the words of the said sub-section seem to imply, there is a possibility of the provisions of this section being abused. The Legislature should, in order to guard against it, have provided that even after a debtor makes a declaration as required by sub-section (4), the Board should satisfy itself that the declaration is true as far as could be ascertained. The wording of sub-section (5) namely "If the Board is satisfied. x x x" shows that though it has not expressly provided so, it intended that the Board should act so, for there would be no ground for it to be satisfied that there are other debts of the debtor not included in the settlement, if the declaration made by him is taken at its face-value and an award is made forthwith as the express words of the enactment seem to suggest.

The wording of sub-section (5) too is not quite satisfactory, for it is not expressly stated how otherwise than by a refusal of the debtor to make the required declaration the Board is expected to be satisfied as to the existence of other debts. The Legislature had probably anticipated or at least should have anticipated that other creditors of the debtor might, on coming anyhow to know of such an application having been filed in order to defeat or defraud them, come forward with their claims by way of applications supported by affidavits &c. and oppose the making of an award even though the debtor may have made the required declaration. In such a case therefore the Board would have to make an enquiry as to the truth of the allegations made against the parties and it would be only as the result of such an enquiry that it could come to the conclusion one way or the other as to whether the alleged settlement has been made with respect to all the debts of the debtor or with respect to some only out of them. It is true that under sub-section (3) the Board is empowered to make such enquiry as it thinks fit so as to satisfy itself that the settlement is *bona fide* and has not been made in fraud of other creditors. But that is only an enabling provision and therefore its requirement can be deemed to have been completely satisfied if there being no dispute between the debtor and creditor who are parties to the settlement the Board considers it proper to make an order for recording and certifying the settlement

simply on requiring the said parties or even the debtor alone to put in affidavits on the above point. The case is however different when after such an order is passed but before an award is made, some other creditors of the debtor come forward and put up an opposition to the making of the award either by making third party-applications supported by affidavits or by making applications under S. 17. In the former case the Board must hold some sort of enquiry as to whether the opposition is or is not well-founded and if it finds that it is, it must refuse to make an award and treat the application under S. 23 as one under S. 17 as provided in sub-section (5). In the latter case the proceeding under S. 23 must be stayed for the time being, the later applications must be proceeded with and if it is found that the claims put forward therein are genuine, the settlement even if recorded must be set aside and the later applications must be consolidated under S. 28 *infra* and proceeded with as if no application under S. 23 had been made. Apparently the Legislature has not here made a clear provision which would guide the Board in the right direction so as to enable it to carry out its intention.

Can the Board act as suggested in both the cases above discussed is a question which it would not be easy for it to solve, much more so if it consists of men without legal knowledge and judicial training. If any of the contingencies arises, the Board concerned would be well-advised to refer the matter to "the Court" for its opinion under S. 58 *infra* and act upon it. "The Court" in that case would be that of the F. C. Subordinate Judge within the limits of whose special jurisdiction the Board may have been situated as S. 58 not being one of the sections mentioned in S. 2(4) (a) the case would fall under S. 2(4) (b) and on its being applied the jurisdiction therein would under S. 58 go to the civil court of competent jurisdiction which in this case would be the Court of the F. C. Subordinate Judge whose pecuniary jurisdiction is unlimited. This interpretation follows also from the wording of S. 58(2) which provides for an appeal from an award based on the Court's opinion given on a reference under S. 58(1) being made to the District Court. Such a reference would however only shift the burden of deciding the issue from the Board to the Court. The question as to what would be the proper way to decide it, whoever has got to do it, remains unanswered. The rules of construction given under the heading *Meaning of the word "Court" in this section* in the Commentary on

S. 17(4) will be found useful in getting an answer to it. The following further rules as to the duty of the courts and their power to fill up any lacunæ in an Act may also be found useful :—

Rules as to filling up lacunæ in an Act :—(1) The court has to interpret the law as it stands. It cannot proceed to introduce amendments therein which is the function of the Legislature.¹

(2) It is not concerned with the equitable side of the legislation nor with the logic of it² nor with the policy of the Legislature underlying it nor with its effect on society.³

(3) It cannot add words to a statute even in order to avoid hardship⁴ or injustice⁵ or for any other⁶ purpose.⁶

(4) The above is the rule only when the language of the statute is clear and unambiguous. If it is not and is capable of a double construction the court would adopt that which is capable of producing a beneficial result⁷ and is consistent with the intention of the Legislature.⁸

1. *Abdul Hussein v. Musamat Mohammadi* (A. I. R. 1935 Lah. 364) ; *Bhagta Nand v. Sardar Mahomed* (A. I. R. 1935 Lah. 150, 153) ; *Rajah of Mandasa v. Jaganmayakulu* (A. I. R. 1932 Mad. 612, 619) ; *Gurdial Singh v. Central Board, Sri Durbar Saheb* (A. I. R. 1928 Lah. 337) ; *Gopi Nath v. Thakurdin* (A. I. R. 1935 All. 636) ; *Manoo v. Hawabi* (A. I. R. 1936 Rang. 63) ; *Mrinalini Debi v. Harlal Roy* (A. I. R. 1936 Cal. 339) ; *H. Hagencister v. U. Po Cho* (A. I. R. 1935 Rang. 53) ; *Mahomed Naim v. Musamat Munimissa* (A. I. R. 1936 Oudh. 32 F. B.) ; *Ganga Sagar v. Reoti Prasad* (A. I. R. 1940 All. 507 F. B.).

2. *Prabhu Mal v. Chandan* (A. I. R. 1938 Lah. 638) ; *Emperor v. Jagiri Lal* (A. I. R. 1938 Lah. 251).

3. *Kidar Nath v. Bagh Singh* (A. I. R. 1937 Lah. 504) ; *Emperor v. Hari* (A. I. R. 1935 Sind. 145).

4. *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507) ; *Kidar Nath v. Bagh Singh* (A. I. R. 1937 Lah. 504).

5. *Daood v. Sahabdeen* (A. I. R. 1937 Mad. 657).

6. *Naman v. Uttam* (A. I. R. 1938 Lah. 158) ; *Govind Ram v. Perumal* (A. I. R. 1927 Mad. 327).

7. *Secretary of State v. Vacuum Oil Co.* (A. I. R. 1930 Bom. 597, 599).

8. *C. T. Mudaliar v. Maymyo Municipal Committee* (A. I. R. 1933 Rang. 63) in which *Brown v. National Provident Institution* (1921) A. C. 222 was followed.

(5) The court can in such a case also add words which are necessarily implied by the text⁹ in order to give effect to the intention of the Legislature as gathered from the entire statute.¹⁰ It would however be subversive of the accepted legal principles laid down by a host of unimpeachable authorities as a canon of construction to add to a penal or taxing statute words which are not there. Such statutes must be construed strictly and in favour of the subject sought to be affected thereby.¹¹

For the purpose of a right application of Rule 5 of the above rules it is necessary to know the principles on which provisions not expressly made in a statute can be legally deemed to have been implied. I therefore state them below.

Implied provisions in a statute :—(1) It is a well-accepted canon of interpretation that an enactment includes all the incidents and consequences necessarily resulting from it, whether there are or are not express words for that purpose therein.¹²

(2) Every law is expected to be obeyed and must therefore have a sanction behind it. It must consequently be so construed as to defeat all attempts to evade it directly or indirectly and must be understood to extend to all such circumstances.¹³

(3) The general principle that where an Act confers jurisdiction to pass certain orders it impliedly grants that of doing all that is necessary essentially for its execution,¹⁴ cannot override the more particular provisions of the Act which confer the power.¹⁵

9. *Radha Mohan v. Abbas Ali* (A. I. R. 1931 All. 294) ; *Kamalaranjan v. Secretary of State* (A. I. R. 1938 P. C. 281).

10. *Raja Kotakal v. Malabar Timber Co.* (A. I. R. 1924 Bom. 412) ; *Ram Chand v. Secretary of State* (A. I. R. 1936 Sind. 108) ; *Ram Chandra v. Ram Lal* (A. I. R. 1940 All. 500) ; *Nadirshaw v. Manekbai* (A. I. R. 1938 Bom. 218).

11. *Musamat Kesar v. King Emperor* (4 Pat. L. J. 74, 86 F. B.).

12. *Jai Indar Bahaur v. Brij Indar Kuar* (A. I. R. 1929 Oudh. 231) ; *Narayan v. Desika* (A. I. R. 1933 Mad. 689) following *National Telephone Co. Ltd. v. Postmaster-General* (1913) A. C. 546 ; *Sarala Dasi v. Calcutta Improvement Tribunal* (A. I. R. 1935 Cal. 29).

13. *Mahomed Bagar v. Mahomed Kasim* (A. I. R. 1932 Nag. 210).

14. *Narayan v. Desika* (A. I. R. 1933 Mad. 689).

15. *Ramaswami v. Hindu Religious Endowments Board* (A. I. R. 1935 Mad. 755).

(4) If a statute gives a major power a minor one must be deemed to have been included therein.¹⁶

(5) When the law vests discretion in a certain authority to do a thing the courts have an implied authority to see that the discretion is exercised in a proper manner.¹⁷

(6) There is a presumption against an overlapping of powers being contemplated by the Legislature.¹⁸

(7) When a statute creates a right not existing before, it generally creates a corresponding obligation.¹⁹

(8) In a matter which is governed by a statute which in some respects gives the court a statutory discretion there can be implied in the court outside the limits of the Act, a general discretion to dispense with its provisions.²⁰

(9) When a parent Act has been repealed all the laws passed under the Act stand repealed unless there is a saving provision in the repealed Act.²¹

24. Notwithstanding anything contained in the pre-

Settlement during the pendency of proceedings before the Board.

ceding sections, if during the pendency of proceedings before a Board a settlement is arrived at between a debtor and all his creditors and if the Board is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit, the Board may make an award in terms of such settlement. The court-fee payable on such award shall be Re. 1 and shall be payable on it before it is transmitted to the court under section 61.

16. *Ali Raza Khan v. Abdul Rauf* (A. I. R. 1935 Oudh. 457).

17. *Des Raj v. Emperor* (A. I. R. 1930 Lah. 781, 786).

18. *Madan Mohan v. Commissioner of Income-tax, Punjab* (A. I. R. 1935 Lah. 742, 753).

19. *Sripati Charan v. Kailas Chandra* (A. I. R. 1936 Cal. 331, 334).

20. *Maqbul Ahmad v. Omkar Pratap* (A. I. R. 1935 P. C. 85, 88).

21. *Atiqa Begum v. Abdul Maghni Khan* (A. I. R. 1940 All. 272, 275 F. B.).

COMMENTARY

Scope of the section :—This is another section of the Act showing that the policy of the Legislature is to encourage debtors and creditors to settle their disputes without interference from the Board as far as possible. The words “during the pendency of a proceeding before a Board” clearly show further that a private settlement of debts can be made by a debtor and his creditors even after the proceeding has advanced to any stage short of that of the award. There is nothing also in this section to justify the view that in order that such a settlement may be lawful, the Board’s previous permission should be taken. Moreover the settlement may be arrived at either by negotiations between the parties directly or through mediators informally appointed or through arbitrators formally appointed. The Board is not concerned with the way in which it is brought about. What its duty to see is (1) that it must have been agreed to voluntarily by the debtor, *i.e. to say*, without the exercise of any undue influence on him by the creditors or any of them, which they can easily do owing to their dominating position and (2) that it must be for his benefit.

If the Board is satisfied on those two points, it will be its duty to make an award in terms of the settlement. Although the provision with regard thereto is in the permissive words “may make” it has an imperative force because once the Board is satisfied on the said points, it cannot reasonably refuse to record the settlement and pass an award in accordance with its terms.

Court-fee on an award under this section :—The court-fee payable on such an award is the nominal one of Re. 1 only. This is also an additional reason for inferring that the policy of the Legislature is to encourage debtors and creditors to make up their differences amicably as far as possible because this being a distinct kind of award not referred to in the provisions of S. 60 as to charging court-fee as directed therein no such further fee would be leviable thereon.

Point of distinction between an award made under S. 23(4) and that made under this section :—The above is a very remarkable point of distinction between the award made under S. 23(4) and that made under S. 24 for, whereas the former is to be made under S. 54 and therefore S. 60, involving the payment of additional court-

fee even though that of Re. 1 may have been paid under S. 23(2), applies to it, the latter is to be made under that section itself *i.e.* S. 24 and is not mentioned in S. 60. There is also no other independent provision in the Act for charging additional court-fee on that award. On the contrary this section itself after prescribing a court-fee of Re. 1 only for that award directs that it shall be paid before the same is transmitted to the court for registration under S. 61. This shows that the omission of the award under this section from S. 60 is deliberate. Even if it were not, as it would involve the question of taxing a subject it would in the above circumstances be decided in favour of the subject.¹ For the relevant Rule and Form see Appendix I.

25. Any settlement of a debt due from a debtor to any creditor, arrived at after the establishment of a Board under section 4 for the local area in which he ordinarily resides or for the class of debtors to which he belongs shall be void and shall not be recognised by any Board or Court either as an acknowledgment or otherwise unless it is certified by the Board under section 23 or unless an award has been made in terms thereof under section 24.

Settlement to be void.

COMMENTARY

Scope of the section :—This section backs up the provisions of SS. 23 and 24 by a sanction in this form that any settlement of debts arrived at after the establishment of a Board for any local area in which the debtor concerned resides or for the class of debtors to which he belongs shall be void and shall not be recognised by a Board or Court either as an acknowledgment or for any other purpose unless it has been certified by a Board under S. 23 or unless an award in terms thereof has been made under S. 24.

This sanction is necessary in order to avoid possible mischiefs that may be played by creditors in order to avoid the provisions of this Act.

1. See Rules Nos. (2) and (3) of the *Rules for the interpretation of fiscal enactments* given in the Commentary on S. 11 at p. 78 *supra*.

It is remarkable that in the case of a settlement made before an application is filed under S. 17 voidability and non-recognisability arise only if it is not certified. It does not matter whether it is followed by an award or not. But in the case of a settlement made after an application under S. 17 is filed those disabilities arise if an award has not been made in terms thereof. Hence in a subsequent proceeding either before a Board or Court, a settlement under S. 23 certified but not followed by an award can be made use of as an acknowledgment of the debts to which it relates, but not one made under S. 24 if not followed by an award.

26. No application under section 17 or section 23 shall be entertained by the Board on behalf of or in respect of any debtor, unless the total amount of debts claimed as being due from him on 1st January 1939 is not more than Rs. 15,000.

Application under section 17 or 23 to be made only by a debtor whose debts are not more than Rs. 15,000.

COMMENTARY

Scope of the section :—This section by providing that no application shall lie under S. 17 or 23 unless the total amount of debts claimed as due from the debtor concerned on 1st January 1939 does not exceed Rs. 15,000, imposes a limit on the operation of S. 17(1) and (2) and S. 23(1) although there is no reference to it in any of them. Its proper place was as a proviso to each of the sections 17 and 23 and if repetition was to be avoided, as one of the qualifications of a debtor under this Act who has been defined in S. 2(6). However this fault of draftsmanship should not come in the way of its having its full effect inasmuch as it has a place in the body of the Act, for according to the ruling in *Ashutosh Ganguli v. Watson*¹ it makes no difference that an enactment is printed as a sub-section or a separate section, so far as its construction is concerned and according to those in *Aghore Chandra v. Rajanandini Debi*,² *Sat Narain v. Maharbir Prasad*,³ *Sewa Ram v. Prabhu*

1. I. L. R. 53 Cal. 929 relying on Craies on Statute Law, 3rd edition, p. 194.

2. A. I. R. 1933 Cal. 283 in which Guha J. refers to the rulings in *River Commissioners v. Adamson* (1877) 2 A. C. 743 and *Eastman Photographic Materials Co. v. Comptroller of Patents, Designs and Trade-marks* (1898) A. C. 576.

3. A. I. R. 1939 Pat. 392.

Dayal,⁴ *Someshwar v. Manilal*⁵ and *Rangiah v. Appaji*,⁶ the true meaning, exact scope and significance of any passage occurring in a statute may be found not merely in the words of that passage but on its comparison with other parts of the statute.

Previous history of this section :—Although so far as the question of its effect on SS. 17 and 23 is concerned, the previous history of this section is not of any practical use because its language is clear and emphatic, it would be interesting to know how the section came to be in its present form. The Bill as placed before the Assembly at its first reading contained clause 23 according to which no application under clause 17 or 21 (to which the present SS. 17 and 23 correspond) could be entertained unless the total principal amount of secured debts claimed as being due from a debtor on 1st January, 1939 as gathered from the deeds filed before the Board was not more than Rs. 15,000 and not less than Rs. 100'. When the Bill was returned by the Select Committee to which it had been referred clause 21 was re-numbered clause 22 and clause 23 was re-numbered clause 24 and the latter was so modified as to enable a Board to entertain an application under clause 17 or 22 only if the total liabilities of the debtor, whether secured or unsecured, did not exceed Rs. 15,000 or such other sum not exceeding Rs. 25,000 as the Provincial Government may decide. Thus the restriction as to a debtor having a secured debt of at least Rs. 100 was swept away, so too the maximum limit of Rs. 15,000 was made applicable to all debts generally and the Provincial Government was empowered to raise it to Rs. 25,000.⁸ When subsequently the said clause was moved before the Assembly at the second reading of the Bill, 10 amendments were proposed to be made therein. One member proposed to reduce the maximum limit to Rs. 5,000, another wanted to restore the condition as to the minimum limit, a third proposed to retain the maximum limit of Rs. 25,000 but to do away with the power of the Provincial Government to raise it in specific cases, a fourth wanted the minimum limit to be fixed at Rs. 150 and so on.

4. A. I. R. 1935 Oudh 313.

5. 34 Bom. L. R. 206.

6. A. I. R. 1927 Mad. 163.

7. *Bombay Legislative Assembly Debates*, 1939 Vol. V, Pt. II App. XII at pp. 3597-98.

8. *Bombay Legislative Assembly Debates*, 1939, Vol. VII p. 1536.

After a long discussion as to the necessity of each of them, which covers 14 pages, the clause, so amended as to fix the maximum limit of debt on 1-1-39 at Rs. 15,000, to leave no power to the Provincial Government to raise it in any case and to fix no minimum limit, was passed and became the present S. 26 of the Act.⁹

This section and section 35 :—The clause, as so worded, makes it clear that it would not matter what the total amount of the debtor's debts is at the date of the application provided it does not exceed Rs. 15,000 as calculated upto 1st January 1939. If this condition is not satisfied the Board would, under S. 35, have to dismiss the application unless the creditor or the creditors concerned remits or remit so much of his or their claim as to bring the total within the prescribed limit.

27. An application for adjustment of debts under section 17 or an application for recording
 Withdrawal of application. of a settlement under section 23 shall not be withdrawn without the leave of the Board.

COMMENTARY

Scope of this section :—This section contains a provision against the withdrawal of an application made under either S. 17 or S. 23 except with the leave of the Board before which it may have been filed. Ordinarily it is the inherent right of every applicant to decide for himself whether or not to proceed with an application filed by him. But in this case the applicant having once placed himself within the jurisdiction of the Board, invites on himself a disability not to be able to exercise his said right unless his doing so is approved of by the Board. One is naturally tempted to ask why the Legislature should have made such a provision. The probable answer is that the right to make an application under S. 17 or S. 23 is a special creation of this statute and the authority which creates a right might as well burden it with an obligation to continue to exercise it until the purpose of the Legislature in conferring it is served completely unless there are circumstances justifying the softening of its rigour approved of by the authority entrusted with the enforcement of that right. The authority would however do well to bear in

9. *Op. Cit.*, Appendix II at 2556-57.

mind the ruling of the Lahore High Court in the case of *Kartar Singh v. Ladha Singh*,¹ to the effect that "all laws which put a restraint upon human activity and enterprise must be construed in a reasonable and generous spirit."

Analogous law :—This section contains a provision which bears a very slight analogy to those contained in O. XXIII, r. 1(3) in Sch. I to the *Civil Procedure Code, 1908*. It should not be lost sight of that whereas permission given under the rule in the Code entitles a party to bring a fresh suit on the same cause of action, permission given under this section gives no such right and that in spite of it the debt to which the withdrawn application related is deemed to have been discharged according to S. 32 *infra*.

28. Where two or more applications for adjustment of debts under section 17 are presented by or against the same debtor or where such separate applications are presented against joint debtors, all such applications shall be consolidated.

Consolidation of applications.

COMMENTARY

Scope of the section :—This section contains a provision which has for its object a saving of the time and trouble as well of the parties concerned as of the Board, in that it enables the latter to consolidate, *i.e. to say*, to bundle up together and treat as one, (1) two or more applications under S. 17 made by or against the same debtor, which would be the case if a debtor files separate applications for the adjustment of the debts due by him to several creditors or if each of the creditors of a debtor files a separate application against him for the settlement of his debts without availing himself of the provisions of S. 19, and (2) two or more such applications made against the same joint debtors, which would be the case if different creditors file separate applications against each of his joint debtors.

The provisions of S. 20 may, with advantage, be read along with those of this in order to clear up any doubt that may arise with regard to sureties and other joint debtors.

1. A. I. R. 1934 Lah. 777.

29. Notwithstanding anything contained in section 17, a Subordinate Judge of the First Class or a District or Joint Judge appointed to exercise the powers under sub-section (4) (b) of that section for any local area may on the application of any person or on his own motion transfer at any stage of the proceedings any application for the adjustment of debts pending before any Board established within the local limits of such Judge to another Board within such limits.

COMMENTARY

Scope of this section and section 17(4):—Section 17(4) of this Act contains a provision for a power to be exercised by the Court or the District or Joint Judge invested with jurisdiction under S. 17(4) (b) when more than one application has been made to the same or different Boards by or in respect of the same debtor or one or more of any joint debtors. No order of transfer may have to be made if the several applications to be considered have been made to the same Board. This section however provides for a discretionary power of transfer similar to that contained in S. 24 of the *Civil Procedure Code, 1908*. Moreover the power under S. 17(4) is exercisable exclusively either by the Court or the Judge who has jurisdiction in the matter as defined in that sub-section. Here on the other hand, the jurisdiction of both the First Class Subordinate Judge and the District Judge or Joint Judge invested with power under S. 17(4) (b) is co-extensive. Thirdly, the power under S. 17(4) is supposed to be exercised by the Court or the Judge before the proceedings under the applications commence while that under this section can be exercised at any stage of the proceedings. Fourthly, the power under S. 17(4) appears to have been conferred for the saving of trouble and costs to the parties and economising the use of public time while that under this section is provided for in order to avoid the possibility of injustice to any party or to allay the fear of any party that injustice is likely to be done to him owing to the existence of circumstances not falling within the orbit of S. 4(8). Fifthly, whereas there is a proviso under S. 17(4) restricting the choice of a Board by which applications can be directed to be dealt with, there is no such proviso under this section. Lastly, whereas

there is a provision in S. 17(4) for holding an inquiry before making an order under it, although it is left to the Court or Judge to determine what method should be followed in making it, there is no such provision in this section.

30. If any party to the proceedings before the Board dies, the proceedings shall, unless the Board otherwise directs, be continued after the legal representatives of such deceased party are brought on the record.

Continuation of proceedings on death of party.

COMMENTARY

Scope of the section :—This section provides for the continuation of proceedings under S. 17 or S. 23 once they are started, even after the death of one of the parties thereto. It impliedly empowers the Board to allow the legal representatives of that party to be brought on record and the saving-clause “unless the Board otherwise directs” expressly empowers it to “direct otherwise,” *i.e. to say*, to direct that the proceeding shall not be continued. It is not stated on what grounds it can do so. Most probably this is due to bad draftsmanship.

31. On receipt of an application for adjustment of debts the Board shall in the prescribed manner—

Service of notice on creditors to submit statement of debts.

- (a) give a notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application and
- (b) publish a general notice, requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice whichever is later :

Provided that if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to

comply with the notice within the time specified therein, it may extend the period for the submission of the statement.

COMMENTARY

Scope of the section :—This section provides for the first act to be done by the Board towards the progress of the proceedings started under S. 17. That act consists of serving a personal notice and publishing a general notice. The personal notice must be given in the case of a debtor's application to every creditor of his whose name and address may have been given in the application. In the case of a creditor's application it must be given to the debtor and every other creditor of the latter whose names and addresses are known to the applying creditor and are given in his application.

Proviso :—The time fixed for compliance with this notice must as a rule be strictly observed as ruled in the case of *Venugopal v. Venkata Subbiah*.¹ The rigour of that provision is however softened by the proviso to the section which confers upon the Board a discretionary power to extend the prescribed period if good and sufficient cause is shown by any party for his inability to comply with the provision strictly. This power can be exercised by the Board when the inability of the party is brought to its notice either orally or by an application in writing.

This proviso is so worded that a motion for extension for time under it, must, if necessary, be made before the expiry of the period, for the wording thereof would have been "is or was unable" if it was intended to provide for the making of a motion under it both during the continuance of and after the expiry of the period, whereas here it is simply "is unable" which grammatically construed presupposes a continuance of the period when a motion is made.

This proviso and section 16 :—It seems necessary here to draw the attention of the reader to the provisions of S. 16 of this Act which confers on the Board a discretionary power "to enlarge from time to time the period fixed or granted for doing any act prescribed or allowed by this Act". The distinction between the power under it and that under this proviso seems to be that the former is exercis-

1. I. L. R. 39 Mad. 1196, 1199.

able in all those cases in which the periods are *fixed or granted by the Board* in the exercise of its power to direct the doing of any act prescribed or allowed by this Act within such period as the Board may think proper while this is a special one to be exercised only in the particular case of the submission of a statement in a prescribed form for doing which the period of one month has been *prescribed by the first sub-section itself*. The latter power is exercisable once only after the service of notice in the prescribed form as there are no words in it enabling the Board to extend the prescribed period from time to time. However since in case a necessity for a further extension of the period arises, the Board can make use of the general power under S. 16 for that purpose because at that stage the question would be one of the enlargement of a period granted by itself and for doing that from time to time, the Board has been given a general power by that section. There is thus no conflict between the provision contained in this proviso and that in S. 16 of the Act. This is the way in which inconsistency between the provisions of any two parts of an Act can be avoided and a harmony can be brought about between them, although apparently they may seem inconsistent and one of them may appear redundant or superfluous, which it is the duty of a court to do in such cases.

How to avoid an apparent conflict between the different parts of an Act and when to reject one of them as redundant :—There are certain well-established canons of construction as regards the duty of the courts in case of an apparent conflict between the different parts of an enactment. Assuming that they would be useful in similar cases I give them below :—

(1) Every attempt should be made to avoid inconsistency between the different provisions in an enactment relating to the same point and harmony should be secured between them as far as possible.²

(2) Some meaning must be given to every part of an enactment and no part of it should be rejected as redundant or superfluous unless the usual construction of a section leads to an absur-

2. *Atmaram v. Ganpati* (A. I. R. 1927 Nag. 132) ; *Sri Thakurji v. Dwarika Ram* (A. I. R. 1935 Pat. 492) ; *Madhavrao v. Krishnaji* (I. L. R. 46 Bom. 470) relying on *Salmon v. Duncombe* (1886) 11 App. Cas. 627 P. C.

dity³, which if connived at, would mean doing less than justice to the intelligence of the Legislature.⁴

(3) This rule must however be understood to be subject to the usual exception that the words must be capable of being construed in a reasonable manner without unduly straining the language of the section.⁵

(4) In order to avoid a conflict between any two parts of a statute the court must read them together and interpret, and where necessary, even modify the language of the one by that of the other and thus try to arrive at a reasonable and practicable construction of the language of the two sections.⁶

(5) In order that any two provisions in an Act may be called repugnant to one another they should be so contradictory that it would be impossible to carry out both of them.⁷

(6) It is however always dangerous to modify the plain meaning, if any, of a statute by what is claimed to be the result of an inference drawn from judicial rulings merely.⁸

(7) But if the manifest intention of the Legislature would be otherwise defeated the court can reject words of surplusage.⁹

(8) Such a governing intention is to be gathered from the sections of the Act and not from the rules made under them and then that part which agrees with that intention must be given effect to and the other which does not should be rejected as repugnant.¹⁰

3. *Megh Raj v. Nand Lal* (A. I. R. 1939 Lah. 558); *Barada Kant v. Sheikh Majjuddi* (I. L. R. 52 Cal. 275, 289); *Chhotey Lal v. Bansidhar* (A. I. R. 1926 All. 653); *Shiam Sunder v. Musamat Savitri* (A. I. R. 1935 All. 723); *Brahma Deo v. Haro Singh* (A. I. R. 1935 Pat. 237, 241); *Bank of Chettinad Ltd. v. Ko Tin* (A. I. R. 1936 Rang. 393); *Tekchand Gurnomal*, In re. (A. I. R. 1936 Sind. 175) relying on *Queen v. Bishop of Oxford* (1879) 48 L. J. Q. B. 609; *Nadirshaw v. Manekbai* (A. I. R. 1938 Bom. 218).

4. *Udeypal Singh v. Laxmi Chand* (A. I. R. 1935, All. 946 F. B.).

5. *Bank of Chettinad Ltd. v. Ma Ba Lo* (A. I. R. 1936 Rang. 152).

6. *Nagaratnam v. Seshzyya* (A. I. R. 1939 Mad. 361, 365).

7. *Vishwanath v. Harihar* (A. I. R. 1939 Pat. 90).

8. *Thirapatirayudu v. Secretary of State* (A. I. R. 1935 Mad. 70, 71).

9. *Bijaynagar Tea Co. Ltd. v. Indian Tea Licensing Committee* (A. I. R. 1940 Cal. 406).

10. *Narsing Das v. Choge Mul* (A. I. R. 1939 Cal. 435, 451 F. B.).

In addition to these rules those as to the application of the *ejusdem generis* rule given at p. 63 *supra* may also be referred to in his connection. For the relevant Rules and Forms see the relevant Appendix.

32. (1) Every debt due from a debtor who ordinarily resides within the local area for which a Board is established under section 4 or who belongs to a class of debtors for which a Board is established under the said section, in respect of which no application has been made under section 17 within the period specified in sub-section (1) of the said section 17, or in respect of which no application for recording a settlement is made under section 23 within the period specified in the said section 23 or in respect of which an application made to the Board is withdrawn under section 27, and every debt-due from such debtor in respect of which a statement is not submitted to the Board by the creditor in compliance with the provisions of section 31 shall be deemed to have been duly discharged, unless the Board is satisfied that for good and sufficient cause the creditor did not make an application under section 17 or was unable to comply with the provisions of section 31.

Debts in respect of which no application for adjustment or settlement is made, to be void.

(2) Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this Act and that no application under section 17 can be entertained by any Board in respect of any debt owed by such person to such creditor by reason of the provisions of section 26.

COMMENTARY

Scope of the section :—This is one of the sections of the Act containing a penal provision intended to ensure the proper observ-

ance of the provisions contained in the other sections. In case of any doubt as to its meaning and implication, which are explained below, the rules of interpretation applicable to such provisions given in the Commentary on S. 8¹ may be referred to. A reference to the provisions of Orders X and XI in Sch. I to the *Civil Procedure Code, 1908* as to the "Examination of parties" and "Discovery and Inspection" will also be found helpful, provided due attention is paid to the difference between the two enactments, both as to their wording and purpose.

Sub-section (1) :—This sub-section contains the main provision, which is to the effect that if any of the defaults specified therein is found to have occurred in connection with a debt due from a debtor that debt must be deemed to have been discharged.

Defaults specified in this sub-section :—The defaults specified in this sub-section are :—

(1) No application for the adjustment of a debt must have been made under S. 17 within the period specified in sub-section (1) of that section, *i.e. to say*, within 18 months of the establishment of a Board for the local area in which the debtor ordinarily resides or for the class of debtors in any such area to which he belongs. This is subject to the saving-clause in sub-section (1) and the provisions of sub-section (2).

(2) No application for recording the settlement of the debt must have been made under S. 23 within the period specified in sub-section (1) of that section *i.e.* within one month of the settlement having been effected.

Since such an application would lie only to the Board to which one under S. 17 would lie, the condition that there must be in existence at the time of the settlement a Board competent to entertain the latter kind of application as in the case of the first kind of default must be deemed to have been implied. Further if there is no such Board in existence at the date of the settlement but one is established within the period of one month from that date, the period of one month for the purpose of the application of this penal provision would have to be computed from the date of the establishment of the Board, by virtue of the provisions of S. 74 of this Act. Thus

1. See pp. 67-69 *supra*.

if a settlement has been effected 15 days before the establishment of a competent Board, the proper time for the filing of an application under S. 23 for recording it would be one month and fifteen days from the date on which it was effected.

It should also be borne in mind while applying the provisions of this sub-section to any of the two classes of cases above-mentioned that they would be applicable only if the total amount of the debts due by the debtor on 1st January 1939 did not exceed Rs. 15,000 as provided in S. 26 of this Act.

(3) An application may have been made under S. 17 or S. 23 but it may have been withdrawn under S. 27 even if it be with the permission of the Board to which it may have been presented.

The consequence thus of the withdrawal of an application made under S. 17 or S. 23 even though it can be made with the permission of the Board only, is that the debts for the adjustment or the recording of a settlement whereof, the application may have been made, are for all practical purposes to be deemed to have been discharged and the debtor concerned becomes a free man from the date of withdrawal.

(4) In a proceeding under an application for the adjustment of debts under S. 17 only, the creditor to whom any of the debts may be due, may have failed to file a statement as required by the provisions of S. 31 within the specified time or within the extended time if any, although he may have been served with a notice as required by that section. This is subject to the saving-clause explained below.

It must be noted that in a case like the above, the debt due to the defaulting creditor only would be liable to be held to have been discharged while the application for adjustment would have to be proceeded with as regards the other debts if any due by the debtor.

Saving-clause in this sub-section :—This sub-section would come into operation if any of the above kinds of default is found to have occurred. But in the case of Nos. 1 and 4, the rigour of the penalty is softened by the addition of the saving-clause that the penalty is to become enforceable in those cases only in which the Board is not satisfied that for good and sufficient cause the creditor

could not make an application under S. 17 or could not comply with the requirements of S. 31, *i.e. to say*, could not submit a statement of debts as required by the notice served on him under that section. It would therefore be open to a creditor whose debt is objected to on the ground that it must be deemed to have been discharged under this sub-section, to prove to the satisfaction of the Board that there was a good and sufficient cause for not making the application or for not submitting the statement as the case may be.

Sub-section (2) :—The first sub-section contains a saving-clause of a general nature in the words “unless the Board is satisfied that for good and sufficient cause etc.” applicable to both the cases above discussed (Nos. 1 and 4). This sub-section contains the express mention of one such cause which is applicable to case No. 1 only. It is that the debtor concerned, for whose benefit apparently the provision in sub-section (1) has been made, was himself guilty of a fraud consisting of having led the creditor concerned to believe by his declaration, act or omission that he was not a debtor as defined in S. 2(6) of this Act and that no application for the adjustment of his debts lay according to S. 26 thereof, as the total amount thereof exceeded Rs. 15,000 as calculated upto 1st January 1939.

Principle of estoppel in this sub-section :—This sub-section embodies the well-known principle of estoppel contained in S. 115 of the *Indian Evidence Act, 1872*. The judicial decisions under it can therefore be made use of with due regard to the express words of this sub-section in order to ascertain their meaning and import. The elements which go to make the principle of estoppel applicable are :—

(1) The person concerned must have made a representation as to a certain fact either by an express declaration or by such conduct consisting of an act or omission as is contemplated by this sub-section.

(2) The party seeking to take advantage of the principle must have believed that representation to be true and acted upon it under such a belief.

(3) The legal position of the party must have been affected thereby.

In the present case therefore the conditions which should be fulfilled in order to attract the provisions of this sub-section are :—

(1) The debtor must have made a representation to the creditor concerned either by an express declaration or by an act or omission that he was not a debtor under this Act and that no application for the adjustment of his debts lay to a Board, even though one may have been established for the local area in which the debtor ordinarily resides or for the class of debtors in any such area to which he belongs, owing to the total amount thereof being in excess of the maximum limit of Rs. 15,000 laid down in S. 26, (2) the creditor must have been led to believe such representation to be true and must have acted upon it, *i.e. to say*, refrained from making an application under S. 17 although he may have intended to do so, and (3) his having so refrained must have resulted in his being debarred from making any more application and the debt due to him being consequently liable to be deemed to have been discharged by the operation of sub-section (1).

It thus appears that the creditor concerned cannot take advantage of the provisions of sub-section (2) even if the first two conditions are fulfilled, if the occasion for doing so has arisen within the period of 18 months fixed for making applications under S. 17.

Significance of the word "omission" :—The special significance of the occurrence of the word "omission" in this sub-section seems to be that even the failure of a debtor to make an application under S. 17(1) may have the consequence laid down in this sub-section *i.e.* to raise an estoppel against him, if the other conditions laid down therein are fulfilled. But as stated above the whole of the period of 18 months after the establishment of a competent Board must have elapsed, for if it has not when the question arises, the creditor can himself make an application under S. 17(2).

33. (1) Every debtor by or against whom an application is made under section 17 or who is a party to an application made under section 23 shall produce all books of accounts and shall give such inventories of his property and such lists of his creditors and debtors and of the debts due to and from him, submit to such examina-

Duties of debtor to attend etc.

tion in respect of his property or his creditors, attend at such time before the Board and generally do all such things in relation to his property as may be required by the Board or as may be prescribed.

(2) It shall also be the duty of every creditor to produce such books of accounts, to submit to such examination and supply such information in respect of the debt due to him by the debtor, as may be required by the Board or as may be prescribed.

COMMENTARY

Scope of the section :—It may be recalled that S. 6 invests the Board with the power to decide all such questions as arise in the course of the proceedings before it and S. 7 invests it with the powers of a civil court under the provisions of some portions of the *Civil Procedure Code, 1908*. This section imposes a duty on the debtors and creditors who appear before a Board to obey such directions as it may give in order to effectually carry out the intention of the Legislature as embodied in the remedial provisions of this Act which are those mainly contained in SS. 17 and 23.

Sub-section (1) :—The duty that this sub-section imposes on the debtor who is a party to an application made under S. 17 or S. 23, whether as an applicant or as an opponent, to (1) produce all books of accounts, (2) furnish such inventories of his property and such lists of his creditors and debtors and of the debts due and from him, (3) submit to such examination in respect of his property or his creditors, (4) attend at such times before the Board and (5) generally do all such things in relation to his property, as may be required by the Board or as may be prescribed.

It must be borne in mind that the provisions as to the production of books can be made use of in the case of those debtors only who keep them, *i.e. to say*, that class of debtors who though literate have not sufficient capital on hand to carry on some side-occupation with their own money and are therefore required to borrow it from others and to become indebted to them for that reason. Such persons if fulfilling the conditions laid down in SS. 2(6) and 26 would get the benefit of this special legislation.

As regards inventories of property and lists of creditors and debts they are already required to be supplied according to the provisions of SS. 22 and 31. Still if any additional statements with respect thereto are required, they can be called for under this sub-section.

Sub-section (2) :—This sub-section casts a duty on every creditor of a debtor whether already a party to an application under S. 17 or S. 23 or not, to (1) produce such books of account, (2) submit to such examination and (3) supply such information in respect of the debt due to him by the debtor, as may be required by the Board or as may be prescribed.

With respect to this sub-section it must be noted that there is no reference in the marginal note to this section to the provision contained therein.

Analogous law :—The legal principles on which this section has been based are the same as those underlying the more formal and elaborate provisions of S. 30 and Orders X and XI in Sch. I to the *Civil Procedure Code, 1908*. They can however be referred to only for enlightenment in case of doubt, not for interpreting the provisions of this section, whose wording is quite different from that of any of them and this is a special Act designed for a special purpose.

34. (1) The Board may also on the application of the debtor or any creditor summon before it in the manner prescribed any other person known or suspected to have in his possession any property belonging to the debtor or supposed to be indebted to the debtor, or any person whom the Board may deem capable of giving information in respect of the debtor, his dealings or property; and the Board may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2) If any person so summoned refuses to come before the Board at the time appointed, or refuses to produce any document, having no lawful impediment made

The Board may summon any other person.

known to the Board and allowed by it, the Board may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Board may examine any person so brought before it concerning the debtor and his dealings and property.

COMMENTARY

Scope of the section :—This section confers a further power on the Board to take steps to get the information or materials considered necessary in connection with proceedings under S. 17 or S. 23 and backs it up with a sanction. It has been sub-divided into 3 sub-sections out of which the first and third contain the provision as to the power while the second contains an additional provision to be utilised in case of disobedience.

Sub-section (1) :—By this sub-section the Board is empowered to issue a summons in a prescribed manner to (a) any person other than a creditor or debtor who may be known or may be suspected to have in his possession any property of the debtor or (b) such a person as may be supposed to be a debtor of the debtor before the Board or (c) such a person as the Board may consider capable of giving information in respect of the debtor personally or his dealings or his property.

Sub-section (2) :—The Board is hereby invested with power to issue a warrant for the arrest of any person who though duly summoned refuses to appear before the Board at the time stated in the summons or refuses to produce a document. The liability to be arrested would not however be incurred if the person summoned is able to satisfy the Board that there was a lawful obstruction in the way of his complying with the requirement of the summons.

The verb 'refuses' used in this sub-section is somewhat vague because it would cover cases in which the person summoned may not have appeared before the Board and orally declined to give evidence or to produce a document in his possession or power or may not have written a letter to the Board communicating his unwillingness to do so and those in which the party at whose instance a summons may have been issued or a process-server who had gone

to serve it may inform the Board that the person had orally refused to do so within his hearing, although it may be not be true. It would be advisable in such cases to proceed on taking an affidavit of the person to whom the alleged refusal may have become personally known.

Sub-section (3) :—This sub-section enables the Board to examine any person brought before it by a summons or a warrant concerning the debtor personally and also concerning his dealings and his property.

Analogous law :—It seems that the Legislature has not thought fit to extend all the provisions in the *Civil Procedure Code* as to the powers of the civil courts in the matter of summoning and compelling the attendance of witnesses contained in SS. 30(b), and 31 and 32 of, and Or. XVI in Sch. I to, that Code, to the proceedings under this Act but has by this section invested the Board with certain powers in that respect. The provisions therefore are analogous to some of those on similar points in the above parts of the Code and they and the rulings under them may, in case of doubt, be referred to with due regard to the difference in the wording of the two provisions and on bearing in mind the dictum that it is always dangerous to make use of the provisions of one Act in order to interpret another Act passed by a different Legislature for quite a different purpose.¹ In order to assist the reader in making such use thereof I give below a comparative table showing the corresponding portions of the two enactments and draw his attention to the principles set forth under the heading *Reference to subject* in the Commentary on S. 2.²

THIS ACT.

CIVIL PROCEDURE CODE.

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| S. 34(1) | S. 30(b), S. 31 read with S. 27 and Or. XVI rr. 1 and 8. |
| S. 34(2) | Order XVI r. 10(3) only so far as the issuing of a warrant is concerned. |
| S. 34(3) | Order XVI r. 15. |

1. *Nippon Yusen v. Ramjiban* (A. I. R. 1938 P. C. 152, 158); *Kameshwar Singh v. Kulada Prasad* (A. I. R. 1935 Cal. 752); *Emperor v. Aftab Mohammad Khan* (A. I. R. 1940 All. 291).

2. See pp. 22-24 *supra*.

35. (1) On the date fixed for the hearing of an application made under section 17, the Board shall decide the following points as preliminary issues:—

- (a) whether the person for the adjustment of whose debts the application has been made is a debtor;
- (b) whether the total amount of debts claimed as being due from such person on 1st January 1939, does not exceed Rs. 15,000.

(2) If the Board finds that such person is not a debtor or that the total amount of his debts claimed as being due from such person on 1st January 1939, is more than Rs. 15,000 the Board shall dismiss the application forthwith:

Provided that before the application is so dismissed the creditors or any of them may remit any specific portion of their claim so as to reduce the total amount of the debts of all the creditors claimed as being due from them on 1st January 1939, to a sum not exceeding Rs. 15,000. In such case the Board shall not dismiss the application but shall proceed further with the same.

(3) The debts in respect of which such portion of the claim is remitted under sub-section (2) shall for all purposes be deemed to be extinguished.

(4) The finding of the Board on the preliminary issue that the total amount of the debts due by such person on 1st January 1939, does not exceed Rs. 15,000 shall not, subject to the proviso to sub-section (2), affect the power of the Board to make an award under section 24 or 54 for any sum exceeding Rs. 15,000.

COMMENTARY

Scope of the section:—This section imposes a special duty on the Board to which an application under S. 17 has been made

to decide as preliminary issues the two points on which the maintainability of the application depends and contains some subsidiary provisions.

This is the only section in the Act containing any reference to issues as such. It too does not make it strictly compulsory on the Board to frame all the issues arising from the application, statements filed by parties, examination of parties &c. as Or. XIV in Sch. I to the *Civil Procedure Code, 1908* does or even to frame the two preliminary issues mentioned in sub-section (1) but only to *decide the points* mentioned in them as *preliminary issues*. It thus relieves the Board of the formality in that respect which is required to be observed by the civil courts in the case of suits, appeals &c. It would however be well-advised to do so in order that the parties may know what they have got to prove or disprove before the hearing is formally commenced.

Sub-section (1) :—The first duty of the Board after all the necessary materials have been brought before it in connection with an application for the adjustment of the debts of a debtor made, either by himself under S. 17(1) or under it read with SS. 20 and 21, or by a creditor under S. 17(2), is to decide as preliminary issues, *i.e.* as issues on the decision whereof the maintainability or otherwise of the application depends, the two points namely :— (a) whether the alleged debtor is a debtor under this Act as defined in S. 2(6) read together with its two explanations, S. 2(5) read with S. 2(12) and (14) and S. 2(13) together with its two explanations and (b) whether the total amount of his debts as defined in S. 2(5) read with S. 2(12) and (14) does or does not exceed the maximum limit of Rs. 15,000 as calculated upto 1st January 1939, laid down by S. 26. The decision *i.e.* the findings points must be unequivocal. If there are any doubts on any of those points, they must be cleared up from the record or if necessary by a further investigation.

Sub-section (2) :—This sub-section makes it clear what would be the further duty of the Board if in any given case its finding on any of the two points is in the negative. That duty is to dismiss the application forthwith. It cannot however be over-emphasised that the negative findings must be definite in order to justify that drastic step which would deprive the applicant of the special

remedy provided by this Act passed with the specific object adumbrated in its title and preamble.

Appeal :—It should be noted that S. 9(2) has provided that an appeal shall lie against a decision of a Board under this sub-section ending in a dismissal of an application made under S. 17.

Proviso :—The said sub-section is subject to a proviso which is applicable in the case of a negative finding on the second point. According to it, it is open to the creditors or any of them concerned to reduce the amount of their claim by such an amount as would bring the case within the maximum limit above-mentioned even after such a finding is recorded and if they or any of them does so, the Board is not to dismiss the application but to proceed further with it. It is pertinent to draw attention here to the commentary on S. 37 wherein it is explained how the maximum amount is to be ascertained.¹

Sub-section (3) :—The concession to reduce the amount of the claims while it saves the application from dismissal renders the remitted portion thereof irrecoverable and extinct for all practical purposes according to this sub-section. Hence, not only would a fresh application with respect thereto to the Board be barred but a suit to recover it would not be maintainable even in the ordinary courts ; in other words the choice once made is final for all purposes.

Analogous law :—These are provisions similar to those contained in Or. II r. 2(1) and (2) in Sch. I to the *Civil Procedure Code, 1908*. Although there is much difference between the wording of the two, which is due to that in the nature of the two enactments, the underlying principle, namely that a claim once voluntarily given up, even though it may be legally entertainable, must be deemed to have been given up for ever and for all purposes, is the same in both.

Sub-section (4) :—The provision in this sub-section only serves to clear up a possible doubt as to whether the Board after having once held that the total amount of debts due by a debtor on 1st January 1939, did not exceed Rs. 15,000 can subsequently make an award under SS. 24, 54 or 55 for an amount exceeding Rs. 15,000. It could have done that even if the sub-section were not there for

1. See pp. 144-46, *infra*.

the only limit imposed by S. 26 is as to the amount of debt due at the date mentioned therein *i.e.* on 1st January 1939, not as to that found due on the date of the application or the award, which must be more than one year distant from the said date as the Act was not put into operation for more than a year after it received the assent of the Governor-General and during that interval further interest must have accrued due and may have remained unpaid.

This is however to be understood subject to the proviso to sub-section (2). Hence if any portion of the claim had been deliberately given up in order to bring the application within the jurisdiction of the Board, the portion so given up cannot be taken into consideration at the time of making an award in spite of the maximum limit not being applicable to the amount due at the date thereof. That is so by virtue of the provision contained in sub-section (3) which has already been explained. This result can be avoided by giving up a portion of the claim as to interest only.

36. If an application made by a creditor under sub-section (2) of section 17 is dismissed under section 35 on the ground that the total amount of the debts claimed from a debtor as being due on 1st January, 1939, is more than Rs. 15,000, the Board shall direct the amount of the court-fee paid by the creditor making the application to be refunded to the creditor.

COMMENTARY

Scope of the section :—By this section the Legislature has provided for granting an equitable relief in the shape of a refund of the court-fee paid by him to a creditor-applicant whose application is dismissed under S. 35(2). It would have been a great hardship if it had not done so because the application would be dismissed under that provision only if the total amount of debt due by the applicant's debtor exceeded Rs. 15,000 on 1st January 1939, which fact may not be known to the applicant when he may have made the application but may be revealed after notice as required by S. 31 is served on other creditors of the debtor and published in the prescribed

manner and statements are filed before the Board as required by the notice.

Remedy of the creditor whose application is dismissed under S. 35 (2) :—It has already been stated in the Commentary on S. 35 (2) that an appeal would lie against the decision of the Board consisting of a negative finding on the second point mentioned in S. 35 (1). It seems that he would have an additional remedy also, namely a regular suit for the recovery of his claim because it may have been held not cognizable by the Board and such a claim would fall under S. 86(a). It must however be remembered that this is a remedial Act and that an appeal against a decision of the above nature has been provided for by S. 9(b). It is therefore a point for consideration whether a suit with respect to the claim can be resorted to before the remedy of appeal is exhausted, for when a statute creates a right not existing at common law and provides a remedy for its enforcement, that remedy must be resorted to before the common law right can be exercised.¹ A reference to S. 14 of this Act which prohibits a second appeal against a decision or award of the Board shows that it does not touch the common law right to file a suit in a civil court for the enforcement of a claim not cognizable by a Board.

The observations of Willes J. in his judgment in *Wolverhampton New Waterworks Co. v. Hawkesford*² are worth quoting here as they are likely to be of assistance in arriving at a decision in case of a doubt. They are :—“ There are three classes of cases in which a liability may be established founded upon a statute. One is where there was a liability existing at common law and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law ; there unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing

1. *Chumlat v. Ahmedabad Municipality* (I. L. R. 36 Bom. 47) in which the above dictum of Willes J. in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C. B. N. S. 336, 356 has been relied on ; *Joti Prasad v. Amba Prasad* (A. I. R. 1933 All. 358), a case under the *U. P. District Boards Act, 1922* (X of 1922), held to be a self-contained Act, in which the ruling in *Abdul Rahman v. Abdul Rahman* (A. I. R. 1925 All. 380 = I. L. R. 47 All. 513 F. B.) was relied on.

2. (1859) 6 C. B. N. S. 336, 356.

has his election to pursue either that or the statutory remedy. The second class of cases is where the statute gives the right to sue merely but provides no particular form of remedy ; there the party can only proceed by action at common law. But there is a third class viz. :—where a liability not existing at common law is created by a statute which at the same time gives a special and peculiar remedy for enforcing it. The present case falls within this latter class if any liability at all exists. The remedy provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to x. . x. . x. . .”

37. All pending suits and applications for execution before any civil court in which the question involved is the recovery of any debt from a person who is a debtor under this Act and all proceedings arising in or out of such suits or applications, if such person ordinarily resides in any local area for which a Board is established under section 4 or belongs to a class of debtors for which a Board is established under the said section shall, if the total amount of debts due from such debtor is not more than Rs. 15,000, be transferred to the Board to which an application for adjustment of debts of such person under section 17 lies. The decision of the court on the points whether such person is a debtor under this Act, and whether such amount of his debts is not more than Rs. 15,000 shall be final.

No such transfer shall be made unless notice is given to all the parties to such suit or application.

COMMENTARY

Scope of the section :—This is a very important section containing an express provision ousting the jurisdiction of the ordinary civil courts in the case of pending suits, applications for execution and proceedings incidental to any of them. The principles governing the interpretation of such a piece of legislation generally, as

Transfer of pending suits and applications to Board.

deduced from judicial decisions have been given in the commentary on S. 17 under the heading *Special tribunals and the ordinary civil courts*.¹ As a rule such legislation is not given retrospective effect so as to affect suits and proceedings falling within its purview but instituted before its coming into operation.² But there is no legal prohibition against doing so and the only legal requirement is that the provision as to ouster of jurisdiction should be in express terms. The Legislature of this province has thought it expedient to provide expressly in this section that if certain conditions are fulfilled, all the civil courts in the province including even the High Court shall transfer all pending suits, applications for execution and incidental proceedings to the competent Boards established under S. 4 of this Act. The fact whether those conditions are or are not fulfilled in a given case will have to be determined by the civil courts in which the suits etc. may be pending and their decision thereon will be final. The points to be decided by them before arriving at the conclusion whether a particular suit, application or proceeding that may be pending should or should not be transferred under this section to a Board having jurisdiction to entertain it are the same as those which are to be decided as preliminary issues by the Boards in the case of applications under S. 17 filed before them except that in the case of the second point the amount of Rs. 15,000 should be due at the date of the operation of the Act instead of on 1st January 1939. Any doubtful cases that may arise while doing so had better be decided on applying the following principles applicable to cases of vested rights generally, a right of action or a right of appeal being a vested right according to the ruling in *Rama Krishna v. Subbarayya*.³

Rules as to giving retrospective effect to statutes :—(1) There

1. See pp. 89-91 *supra*.

2. *Gujrat Trading Co. Ltd. v. Trikarnji Velji* (3 Bom. H. C. R., O. C. J. 45) ; *Durgapada v. Nrisingha* (A. I. R. 1935 Cal. 541) ; *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630 F. B.) ; *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013(2)] ; *Asikummissa Bibi v. Dwijendra Krishna* (A. I. R. 1931 Cal. 32) ; *Pramatha Nath v. Mohini Mohan* (I. L. R. 47 Cal. 1108) ; *Alley Rasul Ali v. Balkishen* (A. I. R. 1934 All. 709) ; *Abdul Rahim v. Syed Abu Mahomed* (A. I. R. 1928 P. C. 16 = 30 Bom. L. R. 774 P. C.) ; *Prabhakar v. Khanderao* (10 Bom. L. R. 625).

3. I. L. R. 38 Mad. 101.

is a presumption that every statute is generally prospective.⁴ This means that every Act is to be read as speaking in the present, *i.e. to say*, as speaking on the date on which it is to be applied and does not therefore affect acts done or rights accrued under the previous state of the law except by express words or by necessary implication.⁵

(2) When it is said that the laws of procedure or the provisions of adjective law are an exception to the above rule⁶ what is meant is that the Legislatures as a rule give retrospective effect to such legislation. The necessity for the manifestation of such an intention in every such enactment either by express words or by necessary implication can never be dispensed with.⁷

(3) Statutes interfering with vested rights should be construed strictly *i.e. to say* no greater retrospective effect should be given to their provisions than is absolutely necessary according to its wording.⁸

4. *Parashram v. Emperor* (A. I. R. 1931 Lah. 145) referring to *Midland Railway v. Pye* (10 C. B. M. S. 179) and *Attorney-General v. Sillam* (1884) 2 H. & C. 431.

5. *Suryamal v. Sriram* (A. I. R. 1939 Pat. 158, 160); *Hayatuddin v. Musamat Rahiman* (A. I. R. 1935 Sind. 73, 75); *Martand v. Narayan* (A. I. R. 1939 Bom. 305, 307 F. B.); *Musamat Lahoni v. Bala* (A. I. R. 1922 Nag. 227); *Nepra v. Sayar Pramanik* (I. L. R. 55 Cal. 67); *Gulam Daud Khan v. Habibullah Khan* (A. I. R. 1936 Pesh. 125); *Shakuntala Devi v. Kausalya Devi* (A. I. R. 1936 Lah. 124); *Haider Hussein v. Puran Mal* (A. I. R. 1935 All. 705 F. B.).

6. *Gopalswami v. Secretary of State* (A. I. R. 1933 Mad. 748); *Gangaram v. Punamchand* (I. L. R. 21 Bom. 822); *Shib Narain v. Lachmi Narain* (A. I. R. 1929 Lah. 761); *Sidhu Ram v. Nur Mohammad* (A. I. R. 1937 Lah. 506); *L. Laj Ram v. Har Prasad* (A. I. R. 1934 All. 253); *Ata-ur-Rahman v. Income-tax-Commissioner, Lahore* [A. I. R. 1934 Lah. 1013(2)]; *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299); *Sivayya v. Pratipad Panchayat Board* (A. I. R. 1936 Mad. 18) where it is said that the exception extends to a part of an Act also; *Vishvanath v. Harihar* (A. I. R. 1939 Pat. 90) a case under the *Bihar Money-lenders Act, 1938* (III of 1938).

7. *Girdhar Lal Son & Co. v. K. Gowder* (A. I. R. 1938 Mad. 688, 700).

8. *Musamat Rupi v. Sadasheo* (A. I. R. 1925 Nag. 190); *Kanak Kanti Roy v. Kripa Nath* (A. I. R. 1931 Cal. 321); *Shiya Janaki v. Kirtanand* (A. I. R. 1936 Pat. 173); *Bepin Chandra v. Mahim Chandra* (A. I. R. 1940 Cal. 345); *Secretary of State v. Bank of India Ltd.* (A. I. R. 1938 P. C. 191); *Bombay Namdeo Co-operative Agency Ltd. v. Virbhaval* (A. I. R. 1937 Bom. 266, 271).

(4) When in such a statute there is an ambiguity a presumption arises out of respect for the Legislature against its intention to interfere with such a right, whether it is acquired under a statute⁹ or under a judgment based upon it.¹⁰

Explanation 1 :—Remedial rights of action and appeal are vested rights and therefore the above rule holds good in their case.¹¹

Explanation 2 :—A status such as that of an agriculturist according to the definition given in a particular statute is not a vested right and therefore if the statute is amended while a suit based upon it is pending in a court, that suit must be decided according to the law as amended.¹²

Explanation 3 :—An amendment of the law which only changes the forum but does not take away the right to institute a proceeding or one which changes the period of limitation for instituting an action relates to procedure only and has retrospective effect.¹³

(5) Discretionary powers given by a statute to a public body must be exercised by it in strict conformity with private rights.¹⁴ The same rule applies also to acts of private persons permitted by a statute.¹⁵

(6) Declaratory statutes, *i.e. to say*, statutes which declare or create private rights, are generally retrospective in their operation but there too clear expression or necessary implication must be there

9. *Municipal Board, Fyzabad v. Musamat Vidyadhari* (22 Cr. L. J. 638)..

10. *Laxmanao v. Balkrishna* (I. L. R. 36 Bom. 617); *Zamandara Bank v. Suba* (A. I. R. 1924 Lah. 418); *Penniselvam v. Veeriah Vandayar* (A. I. R. 1931 Mad. 83); *Sripati Charan v. Kailash Chandra* (A. I. R. 1936 Cal. 331, 334); *Shantiniketan Housing Society Ltd. v. Madhavlal* (A. I. R. 1936 Bom. 37)..

11. *Rama Krishna v. Subbarayya* (I. L. R. 38 Mad. 101); *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013(2)]; *Pramatha Nath v. Mohini Mohan*. (I. L. R. 47 Cal. 1108).

12. *Padgaya v. Baji Babaji* (I. L. R. 11 Bom. 469).

13. *Gokul Prasad v. Gowind Rao* (A. I. R. 1929 Nag. 282); *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299 F. B.).

14. *A. B. Moola v. Commissioner of the Port of Rangoon* (A. I. R. 1931 Rang. 95); *Bajjnath Prasad v. Umeshwar Singh* (A. I. R. 1937 Pat. 550); *Amba Prasad v. Jugal Kishore* (A. I. R. 1936 All. 112); *Municipal Board, Benares v. Jokhum* (A. I. R. 1939 All. 394).

15. *Faiyaz Husseim v. Municipal Board, Auroha* (A. I. R. 1939 All. 280)..

as evidence of the intention of the Legislature to give them such an effect.¹⁶

(7) Acts which are merely interpretative and are introduced only with a view to settle doubts as to titles are presumed not to take away existing rights.¹⁷

Para 1, first sentence :—This section has not been divided into sub-sections like several others. It nevertheless contains 3 separate provisions in connection with the topic spoken of by the marginal note namely “Transfer of pending suits and applications to Board”. They are :—(1) transfer of pending suits and applications relating to the recovery of any debt from a person who is a debtor under the Act and all proceedings arising in or out of such suits and applications, to the Board having jurisdiction under this Act if certain conditions are fulfilled ; (2) finality of the decision of the civil court concerned as to whether the conditions necessary for their transfer are or are not fulfilled in a particular case and (3) service of notice on the parties before making the transfer. The first two provisions are contained in the first and second sentences of paragraph 1 of the section and the third in paragraph 2 thereof. I therefore consider each sentence here separately.

Conditions necessary for a transfer :—In order that a suit, application for execution or an incidental miscellaneous proceeding arising in or out of any of them can be held liable to be transferred to a Board the following conditions must be fulfilled, namely :—

(1) the question involved in the suit or application for execution must be one of the recovery of a debt as defined in S. 2(5) read with S. 2 (12) and (14) ;

(2) the person from whom such debt is sought to be recovered must be a debtor within the meaning of S. 2(6) read along with its two Explanations and S. 2(13) together with its two Explanations, and SS. 20 and 21 ;

(3) that person must further be ordinarily residing in any local area for which a Board may have been established under S. 4

16. *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593).

17. *Ram Saran v. Balkisan* (A. I. R. 1940 Nag. 303). In this case the question at issue was whether the *C. P. Money-lenders Act, 1939*, which amended an earlier Act of 1935 bearing on the same subject, affected pending suits and it was decided that it did not.

or must be belonging to a class of debtors for which a Board may have been established under the said section ;

(4) the person must also be one the total amount of debts due from whom is not more than Rs. 15,000.

It seems that the civil court before which the suit, application or proceeding may be pending can easily ascertain in almost all cases whether the first three conditions are or are not fulfilled but that it would not be in a position to come to a decision in several cases as to whether the fourth condition is fulfilled or not without making a special enquiry with regard thereto because the record of the suit or application would not from its very nature contain any *prima facie* evidence as to the total liability of the debtor. Even if the court proceeds to make an enquiry directed towards the ascertainment of that fact, it is likely to meet with a difficulty in doing so because this section does not expressly invest it with powers to call for statements of debts from the parties and to examine the parties with a view to elicit orally from them the facts necessary for basing a correct decision on this point. Here then there is a legal quibble which can be solved by making use of the rules as to the implied provisions in an Act based on judicial decisions given in the Commentary on S. 23.¹⁸ According to Rule 1 thereof when an Act gives power to a court to do a particular act or imposes on it a duty to do a particular thing it must be presumed to have given it the power to do all such subsidiary acts as may be necessary for the exercise of that power or the discharge of that duty satisfactorily.

Difference between the provisions of this section and those of SS. 26, 35 and 38 :—It has been stated above that this section, as it is worded, requires *inter alia* that the debtor in the suit, application or proceeding referred to therein must be a person the total amount of the debts due from whom must not be more than Rs. 15,000.¹⁹ There is no mention therein of any particular date up to which his liability is to be calculated. Therefore if the provision is to be read literally, it means that if the total amount of his liability at the date of the coming into operation of this Act comes to Rs. 15,000 and no more, the condition above mentioned should be deemed to have been fulfilled and if the other conditions are fulfilled in that

18. See pp. 112-13 *supra*.

19. See condition no. 4 in the Commentary on *Para. 1, first sentence*.

case, the suit, application or proceeding must be transferred to the Board having jurisdiction to entertain an application by or against the debtor under S. 17. So far so good. But a case might arise in which the total amount of the debtor's liability might somewhat exceed Rs. 15,000 as calculated upto the date of the coming into operation of this Act but it may be upto Rs. 15,000 only if calculated upto 1st January 1939, upto which the Board is required to calculate a debtor's liability under SS. 26 and 35 for proceeding to take accounts as provided in S. 38. The Board concerned would have jurisdiction in such a case to entertain an application under S. 17 by or against such a debtor according to those sections. Should the court transfer such a suit, application or proceeding to that Board or not? This is a query to which this section furnishes no answer. As to that one view is that in such a case the civil court concerned should instead of following the strict letter of the law as contained in this section only follow the spirit underlying it and give effect to the intention of the Legislature in making this provision as gathered from SS. 26 and 35, on the ground that it does not stand to reason that the Legislature could have intended to make a distinction between applications made to a Board under SS. 17 and 23 on the one hand and the suits, applications for execution and proceedings arising in or out of any of them pending before civil courts at the date of coming into force of this Act in any particular area on the other as to the total amount of liability of a debtor: Another view is that there being no apparent ambiguity in the section the civil courts would not be justified in reading into the section words which are not there and that there is no warrant for the assumption that the Legislature intended to fix the same standard for the purpose of ousting the jurisdiction of the civil courts in the matter of pending cases as it had done for fixing a limit on the pecuniary jurisdiction of the special tribunal created by this Act. While proceeding to consider which of these views should be adopted, the civil courts would find it useful to make a reference to the rules of interpretation given in the Commentary on SS. 12, 17 and 23 under the headings *Restraint on jurisdiction, Special tribunals and the civil courts* and *Rules as to filling up lacunæ in an Act*, respectively.²⁰ My own view is that the latter is the better view because in the case of the former one is

20. See pages 82-83, 89-91 and 111-112 *supra*.

required to read into the section a few words which are not there and those words if read would have the effect of encroaching upon the province of the Legislature and ousting the jurisdiction of the civil courts in a few more cases than would be the case if the section is construed as it stands and for putting such a construction there seems to be no plausible reason except that of bringing about consistency between the provisions of the section and those of SS. 26, 35 and 38 which may well have not been intended by the Legislature and bringing within the jurisdiction of the special tribunals a few more cases. The improvement in the economic condition of the general popularity aimed at by this legislation is not likely to be hampered to any appreciable extent by a few cases on the margin not being transferred to the Boards till if this view is wrong the Legislature removes the cause of doubt by adding the words required to bring this section in a line with SS. 26 and 35 by passing an amending Act.

Para 1, second sentence :—This sentence provides that the decision of the civil court on the question of the fulfilment of the 2nd and 4th conditions shall be final. This means that it will not be liable to be challenged by way of an appeal to a higher court. This provision will have the effect of preventing the raising of frivolous questions at the time when the civil court proceeds to decide the two points required to be decided before arriving at a conclusion whether a particular suit, application for execution or incidental proceeding should or should not be transferred to a competent Board. This sentence is silent as to the other points which the court may have to decide while coming to a conclusion as to any of the points to which conditions nos. 1 and 3 relate. Therefore whether an appeal would or would not lie against the decision of a court on any of such points will have to be decided as well by a reference to O. XLI in Sch. I to the *Civil Procedure Code, 1908* as to this section and Chapter II of this Act.

Para 2, third sentence :—Provision is made in this paragraph and sentence for giving notice to the parties to the suit or application before making an order of transfer under the first sentence of paragraph 1. In order that the service of notice may serve a useful purpose it must be made before the court proceeds to consider whether the conditions above-stated are or are not fulfilled and before it makes the necessary enquiry.

A glaring omission in this Act :—It is very remarkable that this Act contains no provision either in this section or in any other section thereof as to the manner in which a Board, to which a suit or application for execution or a proceeding arising in or out of any of them is transferred under the provisions of the Act, should deal with it after its transfer. It is easy to answer this query by saying that the Board should deal with the suit, application or proceeding as if it were an application made under S. 17 before it by the plaintiff or applicant as the case may be. But in the first place, such an important provision should not have been left to be inferred from the provision as to transfer only and secondly, even if it is so done, the Boards would stand in need of some specific directions as to how to deal with suits, applications and proceedings transferred to them while they are at different stages in their progress and how to bring them in a line with the remedy provided by this Act. Unless some such directions are there, diversity of practice in different districts would arise, and only when some of such cases go up to the High Court, the Boards would have some authoritative rules of guidance in such cases.

38. If the Board finds the person making the application under sub-section (1) of section 17 or the person against whom an application is made under sub-section (2) of section 17 to be a person—

Taking of accounts.

- (a) who is a debtor, and
- (b) the total amount of debts claimed as being due from whom on 1st January 1939 is not more than Rs. 15,000

the Board shall proceed to take accounts in the manner hereafter provided and determine the amount due to each of the creditors at the date of the application made under section 17 for the adjustment of debts.

COMMENTARY

Scope of the section :—The decision of the Board on the two points mentioned in S. 35(1) can either be one justifying the enter-

tainment of the application under S. 17 or one not justifying it. Sub-section (2) of that very section has provided what the Board should do in the case of its having arrived at the latter kind of decision. This section lays down what it should do if the decision is of the former kind. The provision consists of a direction to take accounts of the debts of the debtor according to the special mode provided for in the succeeding 8 sections and ascertain the exact amount due from the debtor to each of the creditors upto the date of the application. It must be noted that for the purpose of determining the question of jurisdiction of the Board, the maximum total amount of debts due from a debtor is to be ascertained with reference to 1st January 1939 according to SS. 26 and 35 but that while making up accounts for the purpose of determining the amount due to each creditor of the debtor under this section his liability is required to be 'ascertained with reference to the date of the application. It would not matter if the total amount of liabilities of a debtor' at that date amounts to more than Rs. 15,000.

39. In an application for the adjustment of debts if the amount of the creditor's claim is disputed, the Board shall, when taking accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded by it in writing, it deems it unnecessary so to do.

Examination of creditor or debtor.

COMMENTARY

Scope of the section :—The duty of the Board after it has come to the conclusion that the application for the adjustment of the debts of a debtor before it, whether as an applicant or an opponent, is to proceed to take accounts in the manner provided for in SS. 39 to 46 as directed in S. 38 and the first step towards it is an examination of the parties as witnesses under S. 39 if the creditor's claim is disputed. This duty is not avoidable in a disputed case except when there are good reasons for doing so. In case the examination of parties is dispensed with, the reasons for doing so must be recorded in writing.

Investigation as to disputed claims :—The clause " If the amount of the creditor's claim is disputed " implies that if the amount of

a creditor's claim is not disputed the Board would not be bound to examine the parties. From the fact that it is not stated clearly in this clause whether the claim should not be disputed by the debtor or even by any other creditor of the debtor, it appears that an examination of the parties cannot be dispensed with except for reasons to be recorded even if the amount claimed by one creditor of the debtor is disputed by another creditor of the debtor.

Marginal-note to this section :—The marginal note to this section is faulty because whereas the section requires an examination of both the creditor and the debtor the note says “Examination of creditor or debtor.”

Analogous law :—This provision is similar to the one contained in the first part of paragraph 1 of S. 12 of the *Deccan Agriculturists Relief Act, 1879* which so far as cases falling under this Act are concerned is repealed by S. 85 thereof with effect from its coming into operation in any particular area. The only points of distinction between the wording of the two are :—(1) that in the place of the words “In any suit of the description mentioned in section 3, clause (w) in which the defendant or any of the defendants is an agriculturist and in any suit of the descriptions mentioned in section (3), clause (y) or clause (z)” in the said section of the old Act, there are the words “In an application for the adjustment of debts” in the present section; (2) that instead of the words “the Court” in the former there are the words “the Board” in the latter; (3) that there are no words in the former corresponding to the words “when taking accounts” in the latter and (4) that in place of the words “the plaintiff and the defendant” in the former there are the words “the creditor and the debtor” in the latter. The first point of distinction is due to the nature of the proceeding in the course of which the question of examination of the parties arises, the second point is due to the nature of the tribunal seized of that proceeding. The fourth is also due to the difference in the nature of the proceeding before the two kinds of tribunals. Hence all these three points relate to unimportant formal matters. The third point of distinction too does not make any important difference between the nature of the two provisions because although the words “while taking accounts” are not found in S. 12 of the *D. A. R. Act*, the said section had been enacted only with a view to lay down a specific method of taking accounts in particular

classes of suits. It seems therefore that it is an enactment in *pari materia* with that contained in S. 39 of this Act and therefore the rules deduced as to making use of *Other Acts in pari materia* and the judicial decisions made thereunder and those deduced as to making use of the *Previous history of the law* given in the Commentary on S. 2 under the main heading *Reference to subject*¹ may with profit be referred to in case of doubt as to the meaning of any particular portion of this section which is common to both the enactments.

40. The Board shall inquire into the history and merits of the case from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the claim has arisen :

Board to inquire into history and merits.

Provided that where transactions between the parties have commenced more than 20 years before the coming into force of this Act, any settlement of accounts which has been last arrived at between the parties before the said 20 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.

COMMENTARY

Scope of the section :—This section casts a duty upon the Board to inquire into the history and merits of the case from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the claim has arisen subject to the proviso that if transactions between the parties had commenced more than 20 years prior to the coming into force of this Act, and if a settlement had been last arrived at before the said period of 20 years and is in writing signed by the debtor or by the person through whom he had derived his liability, the Board should take

1. See pp. 24-25, *supra*.

that settlement as binding on the parties and should not make an inquiry into the history and merits of the case prior to the date of such settlement.

Proviso :—It will appear from the above that in order that the Board may be justified under the proviso in not pursuing an inquiry as required by this section beyond the date of a settlement relied on by a creditor or debtor the following conditions must be fulfilled, namely :—

(1) transactions must have commenced between the parties more than 20 years prior to the date of coming into force of this Act ;

(2) the alleged settlement of accounts must have been arrived at prior to the said period of 20 years ;

(3) the alleged settlement must be in writing and must have been signed either by the debtor before the Board or by the person, if any, through whom the debtor may have derived his liability for the debt alleged to have been settled.

Analogous law :—The provision in this section is slightly similar to that contained in the second part of paragraph 1 of S. 12 of the *Deccan Agriculturists Relief Act, 1879*. I say that the similarity between the provisions in the two Acts is slight and emphasise the difference between them because the points of distinction between them are important. They are :—

(1). Whereas under the said section of the *D. A. R. Act* an inquiry into the history and merits of the case from the commencement of dealings between the parties and the persons (if any) through whom they or any of them claims, is directed to be made with two specific objects in view, namely :—(1) that of ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise and (2) that of taking an account between the parties in the manner therein provided, this section does not require the Board to keep any of those objects particularly in view, although of course, there can be no gainsaying the fact that the inquiry under it is to be made with the same object as no. 2 in the said section of the *D. A. R. Act*, that object is the ultimate one under the *D. A. R. Act* while it is the only one under this Act. Therefore an attempt on the part of the Board to start with a suspicion against the creditor and to make out a defence for the agri-

culturist debtor in case he happens to be an opponent in the application or to find out a ground of attack for him if he happens to be the applicant, would not at all be justified. This change of attitude towards the money-lending class on the part of the Legislature seems to have been the result of the finding of *The Dekkan Agriculturists Relief Act Commission* in its Report of 1912 that the operation of the *D. A. R. Act* has taught the agriculturist to repudiate his obligations and that now it is often the Sowcar who wants protection from the Legislature.¹

(2). Another very important point of distinction between the two enactments is that S. 12 of the *D. A. R. Act* does not lay down any limit to the period upto which the inquiry should be pressed backwards and consequently in several cases in which the transactions between the parties or between those through whom they claim extend over a long period broken up at places by alleged settlements, it becomes a very contentious issue as to when the dealings between the parties out of which the liability has arisen, should be deemed to have commenced and the creditor concerned has to suffer at times because although his available book may be showing that an amount has been brought forward from a previous book, that book may not be in his possession or under his control. The proviso to this section by dispensing with the necessity to pursue the inquiry directed by the section to be made beyond the date of an alleged settlement if the conditions as above-explained are fulfilled in its case has, on the one hand put an end to the possibility of such an issue being raised, and on the other extended a much-needed protection to the creditor-class by relieving it of the necessity to find evidence of a fact which may be beyond its reach or even beyond its knowledge. The limit of 20 years before the coming into force of this Act imposed by the proviso is also a wise one because that is a period for which any ordinary money-lender can be reasonably expected to preserve evidence.

Owing to these important points of distinction between the two enactments, any use to be made of the decisions under S. 12 of the *D. A. R. Act*, so far as they relate to the inquiry to be made under it for the purpose of interpreting the provisions of this section, must be made with great caution.

1. See *Gupte's edition of the D. A. R. Act, 1940*, pp. 104-05.

41. When the amount of the claim is admitted by the debtor and the Board, for reasons to be recorded by it in writing, believes that such admission is true and made voluntarily, the Board shall not be bound to inquire in the manner provided in section 40 but may do so if it thinks fit. In other cases, the Board shall be bound to inquire as aforesaid.

Board not bound to inquire, if the claim is admitted.

COMMENTARY

Scope of the section :—This section empowers the Board to dispense with an inquiry as directed by the previous section, in another case, the first being that of a settlement in writing signed by a debtor made 20 years ago. That case is that of an admission of the amount of a claim, which would of course include a part of it also, on the basis of the well-known maxim, the whole includes a part. Even in such a case the Board is required to satisfy itself that the admission is true and made voluntarily *i.e.* without the use of fraud or force or undue influence on the part of the creditor and to record the reasons for which it feels itself justified in drawing such an inference. It is possible that even in a case of the above nature the Board may have reasons to institute an inquiry as provided in S. 40. The Legislature has anticipated such a contingency and provided by the concluding words of the first sentence of this section that even in such cases the Board may make such an inquiry if it thinks fit to do so. In the second sentence it emphasises the fact that in cases not falling under the first sentence it is obligatory on the Board to make an inquiry, in order that there may be no room for doubt.

Analogous law :—A provision similar to this is to be found in paragraph 2 of S. 12 of the *D. A. R. Act*. It is not exactly in the same terms, the points of distinction between them being :—(1) The words “by the debtor” occurring in this section after the word “admitted” are not found in S. 12 of the *D. A. R. Act* (2) In place of the words “the Board” in this section there are the words “the Court” in the latter ; (3) The commas after the words “Board” and “writing” in this section are not found after the word “Court” and “writing” in the latter ; (4) In place of the words “such admis-

sion is true and made voluntarily" in this section, there are in the latter the words "such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor"; (5) Again in place of the words "the Board" there are the words "the Court" in the latter; (6) After the words "shall not be found" which are common to both, there are the words "in the manner provided in section 40" in this section and the words "so to inquire" in S. 12 of the *D. A. R. Act* and (7) There is an additional sentence as a separate paragraph in the latter as "In other cases &c." as there is in this section but therein there are the additional words "in which the amount of the claim is admitted" after the words "other cases". Out of these 7 points, the first, second, fifth and sixth are unimportant. As for the first an admission of a claim or a part of it under S. 12 of the *D. A. R. Act* can only be that of a debtor, as in a suit under that Act other creditors of his are not expected to appear, as they are in a proceeding under S. 17 of this Act and therefore the addition of the words "by the debtor" after the word "admitted" would have been superfluous there and that can be inferred also from the words "as against the creditor" in that paragraph, whereas it was necessary here owing to the possible presence of other creditors of the debtor. As regards the second and the fifth they are due to the difference in the tribunal in the two cases. The sixth is due to the provision as to making an inquiry having been contained in the same section of the *D. A. R. Act* but in the preceding section of this Act. The third, fourth and seventh however deserve special notice. I will therefore consider them *seriatim*.

Point No. 3 :—This point relates to certain commas occurring in the text of this section as published in the *Bombay Government Gazette Part IV* dated 30th January 1940, at pp. 2 to 44 thereof. The existence of such punctuation-marks in the text of a section of an Act is sometimes availed of by lawyers for the purpose of putting a particular interpretation on that section. It would therefore be well to state here what value can legitimately be attached to them as aids to interpretation.

Punctuation-marks as an aid to interpretation :—The following rules can be deduced from the decided cases as to whether punctuation-marks can or cannot be availed of for the purpose of interpreting the part of the Act in which they occur and if they can be,

what is the condition precedent which must be fulfilled before that can be done.

(1) According to the view of the Privy Council¹ and the Allahabad High Court,² punctuation-marks such as commas do not form part of a statute.

(2) According to the said High Court therefore they must be disregarded while interpreting the section in which they occur.³

(3) The Bombay High Court has however in one case⁴ expressed the view that they cannot be relied on while interpreting the section in which they occur only if the wording thereof is clear.

Even if the Bombay view is held acceptable, so far as the construction of this section is concerned, it seems to have no application here because the wording thereof seems to be clear and not capable of being construed in more ways than one.

Point No. 4 :—This point of difference is important because whereas the paragraph of S. 12 of the *D. A. R. Act* above-mentioned requires that the Court should be satisfied that the admission besides being true, must have been made by the debtor with full knowledge of his legal rights as against the creditor and would therefore require proof as to its having been made with a full consciousness of his legal rights under the *D. A. R. Act* as against the creditor such as that of insisting upon the latter establishing by cogent evidence what was the amount actually advanced by him in the case of each loan &c., the requirement of this section would be deemed to have been satisfied if the Board finds that the debtor was a free agent when he made up his mind to make the particular admission.

Point No. 7 :—The difference between the phraseology of the two enactments so far as this point is concerned is that whereas the additional sentence in this section emphasises the duty to make the inquiry directed by S. 40 in all cases in which there is not such an admission as is referred to in the first sentence of the section, that constituting the 3rd paragraph of S. 12 of the *D. A. R. Act* emphasises the duty to make such an inquiry as is directed by the

1. *Lewis Pugh v. Ashutosh Sen* (A. I. R. 1929 P. C. 69=56 I. A. 93).

2. *Niaz Ahmad v. Purshottam* (A. I. R. 1931 All. 154).

3. *Mansa v. Musamat Ancho* (A. I. R. 1933 All. 521) ; *Niaz Ahmad v. Purshottam* (A. I. R. 1931 All. 154).

4. *Indian Cotton Co. Ltd. v. Hari Poonjoo* (A. I. R. 1937 Bom. 39).

first paragraph in all cases of admission not falling in the second paragraph. Whether so emphasised or not the duty is there according to both the enactments, subject to the provision as to the power to dispense with it in the specific case of an admission of the nature described and therefore in effect the provisions of this section and those of paragraphs 2 and 3 of S. 12 of the *D. A. R. Act* must be held to be in *pari materia* except in the matter of the point of difference no. 4 above set forth. Therefore according to the principles of interpretation as to making use of such enactments and the judicial decisions thereunder, such decisions under the 2nd and 3rd paragraphs of S. 12 of the *D. A. R. Act*, except on the point of the debtor having made an admission of the claim or part of the claim of a creditor with full knowledge of his legal rights as against the latter, can be made use of in cases of doubt as to the meaning of this section or of any portion of it.

42. (1) When the Board inquires into the history and merits of a case under section 40, it shall, notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, open and take the account between the parties from the commencement of the transactions.

(2) The Board shall take the account under subsection (1) according to the following rules, namely:—

(a) Separate account of principal and interest shall be taken;

(b) In the account of the 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 the principal there shall not be debited to the debtor any sum in excess of a sum due or to accrue due under a decree which the debtor may have agreed directly or indirectly to pay in pursuance of any agreement relating to the satisfaction of the said decree;
- (d) 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;
- (e) (i) In the case of transactions which were commenced before the 1st January 1931, the Board shall take accounts in accordance with the provisions of this section upto 1st January 1931, provided that in the account of interest there shall be debited to the debtor yearly interest on the balance of the principal for the time being at 12 per cent. per annum or at the agreed rate whichever is lower. On taking such accounts the amounts found due on 1st January 1931, in respect of the principal as well as in respect of the interest shall, each separately, be reduced by 40 per cent. notwithstanding that a decree or order of a civil court has been passed in respect of any such amount or portion thereof, provided that if such transactions had commenced after 1st January 1930, the reduction in both the amount of the principal and interest found due shall be by 30 per cent. The amounts so reduced shall be taken to represent the amount due in respect of the principal and interest on 1st January 1931. Separate accounts shall

thereafter be taken of the principal and interest upto the date of the application provided that the interest shall be calculated at the rate agreed to between the parties or 9 per cent. per annum whichever is lower;

(ii) in the case of transactions which commenced on or after 1st January 1931, in the account of the interest there shall be debited to the debtor yearly interest on the balance of principal for the time being outstanding at 9 per cent. per annum or at the agreed rate whichever is lower;

(iii) if under any decree passed between the parties the rate of interest allowed on the amount of the principal found due under paragraph (i) or (ii) above is lower than that allowable under this clause, interest on such amount shall be debited at the rate allowed by such decree;

(iv) in taking accounts under this clause interest to be calculated shall be simple interest.

(f) 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 Board in its discretion 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 rate specified in clause (e), the residue of such payment shall be credited to the debtor in the account of principal;

(g) The accounts of principal and interest shall be made up to the date of the institution of the appli-

cation, 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.

COMMENTARY

Scope of the section :—This section lays down the particular method by which an account as directed by S. 38 is to be made up in the case of applications for adjustment of debts made under S. 17. It is divided into two sub-sections, the first of which requires all agreements, statements or settlements of accounts and contracts made between the parties affecting the method of making up accounts as to their dealings to be set aside and the second lays down the rules to be observed which comprise the method referred to before.

Sub-section (1) :—This sub-section lays down that while inquiring into the history and merits of the case as required by S. 40 the Board shall open up the whole course of dealings between the parties from their very commencement and take an account from there without paying any regard to the existence of (1) any agreement between the parties or the persons (if any) through whom they claim, as to (a) allowing compound interest or (b) setting off the profits of a mortgaged property without making up an account thereof in consideration of interest not being debited to the debtor or (c) determining the manner of taking the account by any other method and (2) (a) any statement or settlement of account or (b) any contract purporting to close previous dealings and create a new obligation.

It must be noted here that so far as the setting aside of settlements of account is concerned, there is the limitation contained in the proviso to S. 40.

Sub-section 2 :—This sub-section prescribes the rules which are required to be observed while taking an account as aforesaid. These

are contained in its 7 clauses marked (a) to (g). Clause (e) there-out is again sub-divided into 4 sub-clauses (i) to (iv). Clause (a) contains a general provision that separate accounts shall be made out of the principal and the interest of a debt ; clauses (b) to (d) contain directions as to how the account of the principal of the debt is to be made up ; clause (e) contains directions as to how the account of the interest of the debt is to be made up ; clause (f) prescribes what payments should be given credit for to the debtor and in which of the two accounts mentioned in clause (a) that should be done, and clause (g) directs that the said accounts shall be made up to the date of the presentation of the application under S. 17, that ordinarily the aggregate of the amounts due under the said accounts shall be held to be the amount due at the said date but that if that due under the account of interest exceeds that due under that of the principal then it should be reduced to such an extent as to equalise the two amounts and that in such a case the total of those amounts should be held to be due. Some of these clauses are required to be explained clearly. I therefore proceed to do so.

*Clauses (b) to (d) :—*As stated above these clauses direct how the separate account of the principal directed by clause (a) to be made up is to be made up, *i.e. to say*, which amounts should and which should not be taken into account while ascertaining the principal amount due, even though they may have been debited in the creditor's books and there may be legal documents executed in his favour. I state below in a tabular form the two sets of amounts.

To be debited.

1. Such amounts as may from time to time have been actually received by the debtor personally from the creditor.

Not to be debited.

1. Any amount in excess of that due or likely to accrue due under a decree which the debtor may have agreed directly or indirectly to pay pursuant to any agreement between them as to the satisfaction of the said decree.

*To be debited.**Not to be debited.*

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| <p>2. Such amounts as may from time to time have been received by others on the debtor's account from the creditor.</p> <p>3. The price of goods, if any, such as food, grains, seeds, implements, live-stock, &c., which may have been sold by the creditor to the debtor as part of the transactions between them.</p> | <p>2. Any amount of accumulated interest which may have been capitalised at any statement or settlement of accounts or as the result of any contract made between them in the course of the transactions.</p> |
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Clause (e) :—This is the single clause in this section laying down the method by which the amount of interest due from a debtor to a creditor is to be ascertained. It has however been subdivided into 4 sub-clauses (i) to (iv). Thereout sub-clause (iv) contains a general provision that simple interest alone is to be calculated while making up an account of the interest. Sub-clauses (i) and (ii) draw a distinction between transactions entered into before 1st January 1931, i.e. upto 31st December 1930 and those entered into on or after that date and sub-clause (i) further draws a distinction as amongst transactions entered into before 1st January 1931, between those which had commenced upto and after 1st January 1930. The nature of the provisions in these sub-clauses renders it necessary to consider separately the method of calculation of interest in the cases of (1) transactions entered into before 1st January 1931 and (2) transactions entered into on or after 1st January 1931. Those which fall into the first class will again have to be considered in two batches, namely (a) those which were entered into on or upto 1st January 1930 and (b) those which were entered into after 1st January 1930. The point of distinction between those falling in class (1) and class (2) is that in the former interest is to be debited at 12 per cent. per annum or at the agreed rate whichever is less and in the latter it is to be debited at 9 per cent. per annum

while the point of distinction between cases falling under class (1) (a) and class (1) (b) is that amounts of the principal and the interest calculated as above, are to be reduced by 40 per cent. in the former case and by 30 per cent. in the latter, whether they are due under accounts, bonds, pro-notes, mortgages &c. or under the decrees or orders of a civil court, and after that is done, interest at 9 per cent. per annum or at the agreed rate whichever is lower, is to be calculated on the principal amount so reduced upto the date of the application. Sub-clause (iii) which affects all the above cases provides that if a decree had been passed by a Court as to any amount out of those above referred to, and it has provided for a rate of future interest lower than that applicable to the case, interest shall be debited from the date of the decree to that of application at such lower rate.

This result is arrived at on further sub-dividing sub-clause (i) into four parts as below :—

1. "In the case of transactions which were commenced before 1st January 1931 x . x . . x . . x at 12 per cent. per annum or at the agreed rate whichever is lower ;"
2. "On taking such accounts x . . x . . x the reduction in both the cases shall be by 30 per cent" ;
3. "The amounts so reduced shall be taken to represent x . . x . . x amount due in respect of the principal and interest on 1st January 1931" ;
4. "Separate accounts shall thereafter be taken x . . x . . x at the rate agreed to between the parties or 9 per cent. per annum whichever is lower."

Thereout the first part consists of a main provision and a proviso. The main provision is that in the case of transactions which were commenced prior to 1st January 1931, the Board is first to make up accounts upto that date as provided in this section and the proviso is that while doing so (simple) interest on the balance of the principal for the time being shall be debited at 12 per cent. per annum or at the agreed rate, whichever is lower.

The second part too consists of a main provision and a proviso. The main provision is that after the amounts of principal and interest due upto 1st January 1931 are thus ascertained, each of them shall be separately reduced by 40 per cent. irrespective of the fact that in respect of any such amount or a portion thereof a civil court

may have passed a decree or an order. This provision is subject to the proviso or an exception that if the said transactions (or any of them) had commenced after 1st January 1930 the amounts of principal and interest due in respect thereof shall be reduced by 30 per cent. instead of 40 per cent.

The third part sums up the result of the application of the two parts for the purpose of the application of the fourth. It is in effect that the reduced amounts of principal and interest thus arrived at shall be taken to be the basis for further making up the accounts upto the date of the application.

The fourth part which also consists of a main provision and a proviso says that separate accounts of the principal and interest shall further be made up for the period from 2nd January 1931 to the date of the application and that while doing so interest on the principal amount due shall be debited at 9 per cent. per annum or the agreed rate whichever is lower.

The whole of this sub-clause prescribes the method of making up accounts relating to transactions which may have commenced prior to 1st January 1931, that of making up those relating to transactions which may have commenced on or after that date being prescribed exclusively by sub-clause (ii). Sub-clause (iii) is in the nature of a proviso or exception to the provision in the two preceding sub-clauses as to the rate at which interest is to be debited, in the case of those amounts with respect to which the creditor may have obtained a decree from a civil court. It is applicable only if and in so far as the decree may have provided for future interest being recoverable on the decretal amount at a rate lower, in the case of transactions entered into before 1st January 1931, than 12 per cent. per annum upto that date and in the case of those entered into on or after that date, than 9 per cent. per annum upto the date of the application.

Special features of this clause :—The special features of this clause are :—

(1) It fixes special rates of interest for loans advanced before 1st January 1931 *i.e.* upto 31st December 1930 and for those advanced on or after that date, which are 12 and 9 per cent. per annum respectively.

(2) It introduces a novel principle of the reduction of debts due upto particular dates by certain percentages, that in respect

of debts due as the result of loans advanced upto 1st January 1930 being 40 per cent. and that due as the result of those advanced from 2nd January 1930 onwards being 30 per cent.

(3) In the application of the said principle it makes no distinction even between debts already subjected to a strict scrutiny by the civil courts as is required to be done under the provisions of SS. 12 and 13 of the *D. A. R. Act, 1879* and S. 3 of the *Usurious Loans Act, 1918* and those not so subjected.

Note :—For a comparison of the power under clause (e) of sub-section (2) of this section with that under S. 45 and its contrast with that under S. 52 so far as they affect a civil court's decree see the *Commentary on SS. 46 and 52 infra*.

Clause (f) :—This clause (1) gives directions as to giving credit to the debtor for all payments made by him or on his behalf, whether in cash or in kind, for all profits received by the creditor from him, for services rendered by him to the creditor and for any other advantages received from him by the latter in the course of the dealings between them, (2) empowers the Board, wherever necessary, as it must be in the case of payments made in kind without fixing the price of grains or other agricultural produce and services rendered without fixing the remuneration to be paid, to estimate the monetary value of the items to be credited to the debtor, according to its discretion and (3) directs that such credit shall be first given towards the amount of interest due as per clause (b) till the date when the debtor became entitled to get it, and the residue, if any, towards the principal amount then due.

This provision renders it necessary that interest must be calculated upto the said date and if the amount to be given credit for exceeds that of the interest, the whole of it should be treated as paid and the amount in excess of it must be given credit for towards the principal amount due till then. The balance of the principal thus left is to be treated as the principal for the calculation of interest for the period subsequent to that of the said credit.

Clause (g) :—Lastly, this sub-clause provides that accounts as per the previous clauses of this section should be made up to the date of institution of the application under S. 17 and that the aggregate amount of principal and interest thus left unpaid should be deemed to be the amount due to the creditor upto the date of the

application. This latter provision is however subject to the proviso which embodies the well-known Hindu law Rule of Damdupat. It is in effect that if the amount of interest as calculated according to the prescribed method exceeds the amount of the principal amount then due, the amount of interest in excess of it is to be disallowed and only double the amount of the principal is to be held due on the date of the application. It should be borne in mind that this rule is to be applied only once during the process of taking accounts and that too after the amount of interest is calculated up to the date of the application from the date of the last payment, so that when it is applied the creditor gets double the balance of the principal due after the last payment is given credit for.

Owing to the complicate nature of the provisions of this section and the use intended to be made thereof by the Boards it would have been better if the Legislature had made its intention clear by giving concrete illustrations exemplifying such application which are looked upon by judges as relevant and valuable in construing the text of the statute¹ and as indicative of such intention when not inconsistent with the language of the enactment illustrated,² although it may be inconsistent with ideas derived from any other system of jurisprudence.³

Analogous law :—A comparison of the provisions of this section with those of S. 13 of the *D. A. R. Act, 1879* which they replace so far as debtors under this Act in the areas for which Boards would be established are concerned, makes it clear that the only difference between them is on the following points, namely :—

(1) In the opening part of this section there are the words “the Board” and “section 40” in place of the words “the Court” and “section 12” in the said section of the *D. A. R. Act*.

(2) The direction to take an account in this sentence is in the words “open and take the account between the parties from the commencement of the transactions” instead of in the words “open

1. Halsbury's Laws of England, 2nd ed. Vol. XXXI Para. 609 at p. 486.

2. *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.), in which the previous rulings in *Dubey Sahai v. Ganeshi Lal* (I. L. R. 1 All. 34, 36), *Queen Empress v. Fakirappa* (I. L. R. 15 Bom. 491, 496) and *Kailas Chandra v. Sanatun Chung Barooie* (I. L. R. 7 Cal. 132, 135) are referred to.

3. *Mahomed Syedol v. Yeoh Ooi Gurk* (43 I. A. 256).

the account between the parties from the commencement of the transactions and take that account x . x . x ”

(3) The section of this Act has been sub-divided into two sub-sections, the first containing the directions which have been explained while commenting upon that sub-section⁴ and the second the rules for taking the account as directed, while the above section of the *D. A. R. Act* contains no such sub-division, with the result that the rules given therein form part of the first and only sentence therein.

(4) The rules in clauses (a) and (c) of both the sections are word to word the same and so is that in clause (d) of both except that in the said clause of the section in the *D. A. R. Act*, the words “unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable” leave it to the discretion of the Court whether to make an exception of a particular case to the rule in that clause for reasons to be recorded while the corresponding clause in this section does not invest the Board with any such discretionary power however strong the reasons for its exercise may be.

(5) Clause (e) of this section is entirely different, for the reasons already explained,⁵ from the corresponding clause in S. 13 of the *D. A. R. Act* except in this respect that the provision as to debiting simple interest, not however monthly as in the *D. A. R. Act*, is re-enacted in sub-clause (iv) of clause (e) of this section.

(6) In clause (f) the word “Court” is replaced by the word “Board”, the words “or with the aid of arbitrators appointed by it” after the word “discretion” are omitted and in place of the words “due at the time it is made” there are the words “due at the rate specified in clause (e)” in our section.

(7) The only difference in clause (f) is that the words “the date of instituting the suit” are here replaced by the words “the date of institution of the application”.

It can be seen from the above that the only material points of difference are those in clauses (d) and (e) as above-explained. Therefore except for those points this section is in *pari materia* with S. 13 of the old Act and therefore the decisions under the latter can

4. See p. 159 *supra*.

5. See pp. 163-64 *supra*.

rightly be made use of for interpreting the words of this section with due regard to the said points.

43. When in the course of any proceedings under this

When books of account are not produced Court to presume that they are unfavourable to creditor.

Act the Board finds that there are reasonable grounds to believe that a creditor has in his possession or under his control any books of account or any other document which is material to any transaction in any proceedings before the Board and such

books or document is not produced by such creditor before the Board in such proceedings, the Board shall presume that such books or document if produced would be prejudicial to the interest of such creditor.

COMMENTARY

Scope of the section :—This is a provision applicable to all the proceedings that may be instituted under this Act and not confined in its scope to proceedings under S. 17 of the Act like those contained in the preceding 5 sections.

It authorises the Board to presume that any books of account or any other document called for but not produced by a creditor in the proceeding in which the order of production is made, would, if produced, be prejudicial to his interest. The conditions which must be satisfied before the drawing of such a presumption would be justified are :—(1) There must be reasonable grounds for the Board to believe that the creditor concerned has the book or books of account or other document in his possession or under his control, *i.e. to say*, in the possession of a person who is his servant or dependant or in any way so closely connected with him as to be under an obligation to act according to his bidding and (2) the book or books of account or other document, must, in the opinion of the Board, be material to any transaction in the proceedings in which the order is made.

Analogous law :—The principle underlying this provision is that embodied in the legal maxim *Omina præsumuntur contra spoliatorem*, which again is based on the decision in *Williamson v.*

Rover Cycle Co.,¹ to the effect that if a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be adopted. The Indian Legislature too has long since recognised this as a sound rule of the law of evidence to be observed by the courts in this country.²

As regards the power of a civil court to order the production of any document by any party to a suit before it see Or. XI r. 14 in Sch. I to the *Civil Procedure Code, 1908*, and as regards the consequence of the non-production by a party of a document although in his possession or power see Or. XIII r. 2 in the same schedule to the said Code. It must be borne in mind, however, that these provisions have not been extended to proceedings under this Act by any provision therein.

44. When the mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor, and the Board is unable to determine what profits have been actually received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 42:

In certain cases rent may be charged in lieu of profits.

Provided that if it be proved that in any year there was any suspension or remission of rent or land revenue of such land under section 84A of the *Bombay Land Revenue Code, 1879*, an abatement of the whole or part of such amount may be allowed for the year.

Bom. V of 1879.

COMMENTARY

Scope of the section:—This section contains a rule for the guidance of the Board in cases in which it makes up an account of the profits received by a mortgagee of a debtor which according to S. 42(f) are required to be given credit for to him. Its applica-

1. (1901) 2 I. R. 619.

2. See Illustration (g) to S. 114 of the *Indian Evidence Act, 1872* which is so generally worded as to be capable of justifying the drawing of several other kinds of presumptions, and pp. 926-27. of the Commentary on that Act by S. C. Sarkar, sixth edition (1939).

tion is therefore limited to those cases in which an account of a mortgage of a debtor's property which had remained in the possession of the mortgagee either directly or through tenants other than the mortgagor himself and it imposes a condition for its applicability that the Board must be unable from the materials at its disposal or command to determine what profits the mortgagee must be deemed to have received during a particular period which may either be the whole of that for which he was in possession of the property as above if no accounts at all are forthcoming or a portion of such period if accounts of the remaining portion thereof only are forthcoming. The power given by the rule is that of fixing a fair rent of the property for the period or a portion of it as the case may be and give credit to the debtor for the amount thereof while giving effect to the provisions of clause (f) of S. 42.

Proviso :—This rule is controlled by a proviso to the effect that if the mortgagee proves that the Provincial Government had granted any suspension or remission of rent or land revenue of such land under S. 84A of the *Bombay Land Revenue Code, 1879* in any year, the Board should allow for that year an abatement of the whole or part of the amount held chargeable.

45. (1) Notwithstanding anything contained in any law, custom or contract, whenever it is alleged during the course of the hearing of an application made under section 17 that any transaction purporting to be a sale of land belonging to a debtor was a transaction in the nature of a mortgage, the Board shall declare the transaction to be so, if the Board is satisfied that the circumstances connected with that sale-deed showed it to be in the nature of a mortgage.

Power of Board to declare transactions purporting to be a sale to be in the nature of mortgage.

(2) Nothing in this section shall apply to—

- (i) any transaction entered into before 1st January 1927;
- (ii) any transaction which has been adjudged to be a sale by a decree of a court of competent jurisdiction; and

- (iii) any property belonging to a debtor and purchased by a third person from the transferee of a debtor on or before the 15th day of February 1939.

COMMENTARY

Scope of the section :—As the marginal note to this section indicates it contains an important provision conferring on the Board the power to declare a transaction purporting to be a sale to be in the nature of a mortgage. The note is however silent as to the conditions subject to which it is capable of being exercised.

As to them it must be noted that the section has been subdivided into two sub-sections, the first of which contains the main provision and lays down the conditions in which the power must be exercised and the second exempts the 3 classes of transactions specified in clauses (i) to (iii) thereof from the operation of sub-section (1) even though the conditions laid down therein may be satisfied in their case.

Sub-section (1) :—The conditions for the exercise of the said power laid down in this sub-section are :—(1) It must have been alleged during the course of the hearing of an application made under S. 17 that a transaction purporting to be a sale of land belonging to a debtor was a transaction in the nature of a mortgage.

The implications of this condition are (1) that the allegation above-mentioned can be made at any stage of the proceeding under S. 17 for the adverb of time used therein is "whenever", which means at any time whatever so long as the hearing of the application is not finished and (2) that the person making the allegation need not necessarily be the debtor in the application because it is not specified in the sub-section by whom the allegation should be made. This being so, there seems no reason why a creditor of a debtor should not be allowed to make an allegation that a particular transaction between the debtor and another creditor of his was one in the nature of a mortgage though apparently that of a sale. This is as it should be, if the beneficial provisions of this legislation are to have their full effect, for, if a creditor not a party to such a transaction succeeds in his allegation, and if the amount of the mortgage-debt is less than the value of the land the additional portion of its

value would enure for the benefit of that creditor and of all the other unsecured creditors of the debtor in view of the provisions of SS. 48 to 54 *infra*.

(2) The Board must be satisfied that the circumstances connected with the sale-deed showed that the transaction must be one in the nature of a mortgage.

The circumstances contemplated by this sub-section may consist of :—

(a) the relation of a creditor and debtor subsisting between the parties from a date prior to that of the transaction under consideration ;

(b) the proportion which the amount of consideration bears to the probable market-value of the property at the date of the transaction ;

(c) the possession of the property continuing with the debtor even after that date under a rent note of the same date preserving an annual rent whose amount may be equal to that of simple interest at the prevailing rate of the locality or the amount of consideration ;

(d) the assessment of the land being continued to be paid by the debtor and the costs of improvement thereof also, if any made, being borne by him ;

(e) he having no other land than the one in the sale-deed or having such a piece of other land only as would not be capable of being used for agricultural purposes ;

(f) the vendee being an inhabitant of a town or another village than that in which the land is situated.

The list is not exhaustive. Each case may have its own peculiar circumstances and therefore the Board will have to exercise its own discretion while drawing the required inference. One remarkable fact about this provision is that it does not require any direct evidence, oral or documentary, in support of the allegation and thus eliminates the necessity of bringing up before the Board somehow witnesses to depose that they are aware of there being a secret contemporaneous oral agreement to treat the transaction as one of mortgage though apparently that of sale, which would have been an encouragement to perjury in cases in which the transaction is an old one and the debtor before the Board was not personally the vendor.

Sub-section (2) :—This sub-section exempts from the operation of the first sub-section three classes of the transactions namely :—

- (i) those transactions which had been entered into prior to 1st January 1927 ;
- (ii) those which have once been declared to be those of sale outright by a civil court of competent jurisdiction ; and
- (iii) those relating to properties which though originally belonging to the debtors had been purchased by persons who are not their creditors, on or before 15th February 1939, not from the debtors directly but from their transferees.

Exception (i) narrows down the scope of sub-section (1) to the cases of sale-transactions between debtors and creditors which had taken place on or after 1st January 1927. Hence an allegation as required by that sub-section would not deserve to be taken into consideration by the Board if the transaction, whatever its nature, had taken place on or after the said date. It must be noted that this is a provision favouring the creditor-class inasmuch as it makes sale-transactions entered into prior to the said date unchallengeable and makes absolute the vendees' titles to the properties to which they relate, whatever the real nature of those transactions may be.

Exception (ii) confers a sanctity on the adjudication respecting transactions between money-lenders and agriculturists made by competent civil courts. Contrast with this the provision in S. 42 (e) which renders amounts due under transactions entered into between 2-1-30 and 31-12-30 to a 30 % reduction and those due under transactions entered into upto 1-1-30 to a 40% reduction even though the creditors concerned may have obtained decrees of civil courts with respect to them. Section 46 makes this very clear. This provision too should therefore go a great way towards allaying the fears of the creditor-class that this Act is intended to crush it out of existence.

Exception (iii) is intended to perpetuate the titles of those purchasers who had purchased the properties of the debtors which answer to two kinds of descriptions, namely (1) that they had been purchased from the transferees of the debtors, not from them directly, irrespective of the nature of the original transfer and (2) that they had been purchased on or before 15-2-39. This provision gives a protection to third parties. It too should go a great way towards

removing the apprehension of persons dealing with agriculturist debtors that their titles are never secure because in the first place, it renders unchallengeable all purchases made even from the creditors of the debtor on or before 15-2-39 and does not require proof of their having been made with a *bona fide* motive, without notice and for a valuable consideration.

Section as a whole :—The relation between the two sub-sections is such that the second controls the first and particularly the first condition required by it to be fulfilled. That circumstance makes it necessary to consider the two sub-sections together or the section as a whole. That done the result is that the Board must declare any transaction to be a sale of land belonging to a debtor to be in the nature of a mortgage if the following two conditions are fulfilled namely :—(1) it must have been alleged by any person, who is interested in a proceeding under S. 17 of this Act, during the course of hearing of such an application that the said transaction, not being (a) one entered into before 1st January 1927 or (b) one which has already been adjudged to be a sale by a decree of a competent court or (c) concerning a property which though originally belonging to a debtor had been purchased by a third person from a transferee of the debtor on or before 15th February 1939, was in the nature of a mortgage ;

(2) the Board must be satisfied that the circumstances connected with the sale-deed relating to it are such that the allegation must be held to be true.

No bar of law, custom or contract to the contrary :—It must have struck the reader that the above provision is against the ordinary law as contained in sections 91 and 92 of the *Indian Evidence Act, 1872* and that while inquiring into the circumstances attending the sale the Board may have occasions to look into documents not admissible under S. 49 of the *Indian Registration Act, 1908*, and S. 35 of the *Indian Stamp Act, 1899*. This contingency seems to have been anticipated by the Legislature when it framed this section and to have been provided for by the initial words thereof namely :—“Notwithstanding anything contained in any law, custom or contract,” which mean that the Board is empowered to make the declaration mentioned in the section even though the same could not have been done according to a contrary provision in any law in force or according to any custom prevalent in a particular locality or

amongst the members of a particular community or class of persons or according to the terms of a contract entered into by the parties.

Note :—For a contrast of the power under this section with those under SS. 42 (2) (e) (i), 46 and 52 so far as they affect civil court decrees see the Commentary on SS. 46 and 52 *infra*.

Analogous law :—Anyone acquainted with the provisions of S. 10A of the *Deccan Agriculturists Relief Act, 1879* can readily see that there are some striking points of difference between the provisions of this section and those of the said section of the *D. A. R. Act*. They are :—

(1) The allegation referred to in S. 10A of that Act, must be made in a suit or proceeding to which an agriculturist as defined in S. 2 of that Act must be a party. That in this section may be made in the course of hearing of any application under S. 17 of this Act.

(2) The transaction in the former case must be one “in issue in the suit or proceeding” and must have been entered into by an agriculturist as there stated or by a person, if any, through whom he claims and the suit or proceeding must be of such a character that the rights and liabilities of the parties thereunder must be triable wholly or in part under Ch. II of the said Act. Here what one is required to prove is merely that the transaction is one purporting to be the sale of land belonging to one who is a debtor under the Act.

(3) The first proviso to S. 10A of the *D. A. R. Act* requires that the agriculturist or the person, if any, through whom he claims, was an agriculturist at the time of such transaction as well. This section does not require proof that the person to whom the land belonged would have been held to be a debtor under this Act, had this Act been in force at the time of the transaction.

(4) The second proviso to the section of the *D. A. R. Act* requires that the suit in which the question is raised must not be a suit to which a *bona fide* transferee for value without notice of the real nature of the transaction or his representative holding under a registered sale-deed executed more than twelve years before the institution of such suit, is a party. Under sub-section (2) of the present section it is immaterial who are parties to the application under S. 17 of this Act in which the question is raised and therefore such a question can be raised “in the course of hearing of any application” under S. 17 but there are limitations as to the date of the

transaction, the parties to the transaction in force at the date of the application, and the time when that transaction had taken place as above-explained. There is a further limitation as to there being a decree of a civil court declaring the transaction to be one of sale but that is based on the principle of *res judicata* embodied in S. 11 of the *Civil Procedure Code, 1908*, which is applicable to all suits and proceedings under the *D. A. R. Act*. It is only because of the special constitution of Debt Adjustment Boards and the special nature of the proceedings before them that clause (ii) of sub-section (2) of this section was required to be enacted.

(5) The said section of the *D. A. R. Act* empowers the civil court trying the suit or proceeding, in which the question arises, to determine the real nature of the transaction and decide such suit or proceeding in accordance with such determination on disregarding only the provisions of "S. 92 of the *Indian Evidence Act, 1872*, S. 49 of the *Indian Registration Act, 1908* and any other law for the time being in force" but this section authorises the board to make the required declaration "notwithstanding anything contained in any law, custom or contract."

(6) The section of the *D. A. R. Act* requires proof, oral or documentary, as to the alleged real nature of the transaction but the section of this Act under consideration empowers the Board to make the required declaration in view of "the circumstances connected with the sale-deed" alone, *i.e. to say*, in view of the circumstantial evidence alone, that may have been brought to light in the course of the proceedings before it. This simple and sane provision will, it is hoped, obviate the necessity of bringing forward direct evidence of a contemporaneous oral evidence as to the terms of the true contract between the parties to the transaction, which leads some unscrupulous agriculturists and their advisers to concoct such evidence.

46. (1) Subject to the provisions of sub-sections (2) and (3), if any decree or order is passed by a competent court in respect of any debt, the amount due under such decree in respect of both the principal and interest, shall, in taking

Decretal debts
how far binding.

accounts under section 42, be deemed to be binding between the parties.

(2) In so far as such decree or order is in respect of transactions entered into before 1st January 1931, the amount of principal and interest found due on 1st January 1931 shall be reduced by 40 per cent. as provided in paragraph (i) and the rate of interest shall be modified as provided in paragraph (iii) of clause (e) of sub-section (2) of section 42, provided that if the said transactions commenced after 1st January 1930 the reduction shall be by 30 per cent.

(3) In so far as such decree or order is in respect of any transaction entered into on or after 1st January 1931 the rate of interest awarded by such decree or order shall be modified as provided in para (ii) and paragraph (iii) of clause (e) of sub-section (2) of section 42.

COMMENTARY

Scope of the section :—This section merely lays down how decretal debts should be treated while making up accounts under S. 42. It is divided into three sub-sections. The first thereof says that if a competent court has passed a decree in respect of any debt due by a debtor whose debts are to be adjusted, the amounts due under it both as regards the principal and interest shall be held to be binding between the parties to such a decree subject to the provisions of sub-sections (2) and (3) of that section. Those sub-sections only repeat what has already been specifically stated in S. 42 (2) (e) (i) to (iii). The provisions thereof have already been explained in details. No further explanation thereof is therefore necessary. The implication of the wording of sub-section (1) however deserves to be stated clearly and I therefore do so.

Sub-section (1) :—From the fact that it is provided in this sub-section that the amounts of principal and interest due by a debtor to a creditor under a decree of a competent court obtained by the latter against the former in respect of any debt shall be binding "between the parties" it follows that it would be open to any

other creditor of the debtor to challenge the decree on the ground of collusion between the parties thereto and if any such does so while accounts are being taken under this Act, the Board would be bound to ascertain whether and if so, how far the allegation as to collusion is true. It has power to do so under S. 6 (1) of this Act.

47. (1) On the receipt of an application for the adjustment of debts the Board shall give a notice to the Collector requiring him to state to the Board within the time prescribed the amount of the debt due by the debtor to Government.

Notice to Collector, co-operative societies, Registrar and local authorities.

(2) The Board shall also give a similar notice to any co-operative society or any local authority to which or to whom any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent court. In the case of any debt due to a co-operative society the Board shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(3) On the receipt of such notice the Collector, the co-operative society or the local authority, or the person entitled to maintenance, as the case may be, shall, for the purposes of enabling the Board to determine the paying capacity of the debtor under section 51, within the time prescribed, intimate to the Board the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of such debt.

(4) The Collector and the co-operative society shall intimate to the Board the amount of remission which the Provincial Government or the co-operative society, as the case may be, is willing to give in respect of the debt.

(5) It shall not be lawful to the Provincial Govern-

ment or the co-operative society to reduce the amount of remission intimated to the Board under sub-section (4).

COMMENTARY

Scope of the section :—It may be recalled that S. 3 of this Act exempts from the operation of the remedial sections of this Act, so far as they relate to the adjustment of the debts of a debtor, *i.e. to say*, SS. 17, 31 to 34, 38 to 45 and 52 to 54, debts due from a debtor to (1) the Local Government, (2) local authorities (3) co-operative societies, (4) persons who had advanced money to him solely for the purpose of financing of crops after 1st January 1939 and (5) persons who had obtained a decree or order of maintenance against him from a competent court. The Board need not therefore know the amounts of such debts while determining the amounts due to the other creditors of the debtor according to the provisions of SS. 38 to 46. But while taking the further steps that the Board is required to take towards the liquidation of the debts so ascertained, which are provided for in SS. 48 to 54, it should be well-posted with information as to what are the liabilities of the debtor which it cannot touch and which are entitled to priority over the debts which it has to adjust. Therefore it has been provided in S. 22 (3) that the statements to be filed under sub-sections (1) and (2) of that section shall contain the amounts and particulars of all such debts as well, “notwithstanding anything contained in S. 3.” These amounts and particulars are also required to be given in the statements to be filed after notice under S. 31. The amounts and particulars supplied by the parties by those statements may or may not however be correct. Moreover the Legislature expected the Local Government and co-operative societies to whom the debtor may be indebted to make some sacrifice voluntarily as the other creditors except the local authorities and persons who had obtained decrees or orders for maintenance from competent courts were to be compelled to make by virtue of the special provisions of this Act, especially that as to the arbitrary reduction of the amounts of principal and interest due to them even after the rates of interest were cut down and even though decrees may have been passed for those amounts by competent courts on a scrutiny of the accounts according to the provisions of the law in force at the time of passing such decrees. The members of the Legislative Assembly representing the other interests, especially those

of labour and the rural population of the province, insisted upon the elimination of all the exemptions contained in S. 3 altogether.¹ But the Government of the Day would not agree to its elimination and expressed confidence in the good sense of the Government that may be in power at the time when the Act may be put into operation and the permanent local officers and the managing bodies of the co-operative societies which are under the control of the Registrar of Co-operative Societies and Rural Development Officer and prevailed upon the opposing members to agree to the section as at present worded. Thus it is that this section is found here in the Act in the present form, especially sub-sections (4) and (5) thereof.

Sub-section (1) :—This casts upon the Board a duty to give notice to the Collector of the district to inform it within the prescribed time the amount of the debt due by the debtor to Government.

Sub-section (2) :—This sub-section casts on it a duty to give a similar notice to any co-operative society or local authority to which or to whom any debt may be due by the debtor, to the person to whom he may be indebted under a maintenance-decree of a competent court and in the first case also to the Registrar of Co-operative Societies or to any other officer nominated by him in this behalf.

Sub-section (3) :—The officers and persons referred to in sub-sections (1) and (2) are by this section required to intimate to the Board within the prescribed time the total amount of debt due by the debtor to each respectively and also the recurring liability of the debtor in respect of such debt such as that of paying particular instalments from time to time.

Sub-sections (4) and (5) :—Sub-section (4) casts a duty on the Collector of the district and the co-operative societies so served with notices further to intimate to the Board how much remission the Provincial Government or the society is prepared to make out of the amount due from the debtor and sub-section (5) further provides that once the intimation is given, neither the said Government nor the society will have the power to reduce the amount of remission communicated to the Board.

1. See *Debates of the Bombay Legislative Assembly, 1939*, Vol. VII pp. 1285-1309.

It can be expected, though it is not provided, that they would make remissions on the same lines as are laid down in respect of the debts due to other creditors in S. 42(2) (e) (i) and S. 52 and that they would also apply the provisions of S. 42(2) (g) to the amount of interest, if any, due to them.

It should be noted that the local authorities and the persons who hold maintenance-decrees against the debtor are exempted from the duty to make any remission from the amounts respectively due to them and that crop-financiers, though not liable to be served with a notice under S. 47, are exempted from the operation of SS. 17 and others if they had financed crops after 1-1-39.

It should also be noted that though this section is thus placed between those for taking accounts and those relating to the determination of the paying capacity of the debtor, the Board is required to give notice as prescribed by it on receipt of an application under S. 17. This is as it should be because the Collector, and the Registrar of Co-operative Societies would require a reasonable amount of time for obtaining the orders of Government. The Boards would therefore be well-advised to issue and send for service the notices under this section along with those under S. 31 so that by the time the accounts of the other creditors are settled, replies from the officers and others served with notices under this section may be received and further delay on that account may be avoided.

48. The Board shall in the manner hereinafter provided determine:—

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|---|---|
| Board's duty to determine the particulars, value etc., of the property. | (1) the particulars of the property belonging to the debtor, |
| | (2) the value of the said property, |
| | (3) the particulars of any alienations of or incumbrances on the said property, |
| | (4) the paying capacity of the debtor. |

COMMENTARY

Scope of the section :—This section imposes in very general terms a duty on the Board to determine in the manner provided hereafter the particulars and value of the property belonging to the

debtor, the particulars of any alienations made of or incumbrances created on such property and his paying capacity. This determination is necessary for enabling the Board to decide whether the debts due by him should or should not be scaled down as provided in SS. 52 *infra* and if so, to what extent.

The provisions as to the determination of the value of the property are found in S. 50, those as to the determination of alienations or incumbrances in S. 49 and those as to the determination of the debtor's paying capacity in S. 51 *infra*. It is not however clear which provisions as to the determination of the particulars of the property are referred to in this section and what those particulars are. Such as the parties could have supplied must be before the Board as contained in the statements filed in the prescribed forms according to the provisions of SS. 22 and 31 and further necessary ones must have been gathered on examining parties and witnesses and calling for further statements, documents etc. under SS. 33 and 34. The provisions in those sections could not have been referred to in clause (1) because the direction contained in the section is "shall in the manner *hereinafter* provided determine". The said clause is therefore of doubtful import and very probably superfluous so far as I can see. Perhaps some one else may see its propriety.

49. Any alienation of property made or any incumbrance created thereon by a debtor with intent to defeat or delay any of his creditors shall be void for the purposes of this Act and shall be declared to be so by the Board.

Fraudulent alienations or incumbrances.

Nothing in this section shall impair the rights of an alienee or the holder of an incumbrance in good faith and for consideration.

COMMENTARY

Scope of the section :—This section has been enacted in order to protect the creditors against alienations made or incumbrances created with the deliberate object of defeating or delaying them. The first paragraph thereof enacts that such transfers shall be void and casts a duty upon the Board coming to know of them to declare

them to be so. It must be borne in mind that the word there being "property" it is applicable both in the case of immovable property and movable property and that no time having been specified therein, the period for which the alienation or incumbrance may be in existence would be immaterial. The second paragraph thereof declares inviolate the rights of an alienee or a holder of an incumbrance in good faith and for valuable consideration. Here it should be noted that both the conditions as to the existence of good faith and consideration must be fulfilled in order that a case may fall under the saving-clause and that the word "consideration" here is not qualified by the adjective "valuable". Hence considerations of natural love, matrimony, valuable service etc. must be deemed to satisfy the second condition. Naturally however even in such a case strict proof of good faith would be required. Hence even where there is proof of valuable or any other consideration but there is also proof of an intent to defeat or delay creditors, the case must be deemed to fall under paragraph 1 which makes no distinction between transfers for and transfer without consideration, valuable or otherwise.

Analogous law :—Although this section bears some analogy to S. 53 of the *Transfer of Property Act, 1882*, there are important points of distinction between them which deserve to be noted here. They are :—

(1) Section 53 of the *T. P. Act* relates to all kinds of "transfer" which is a wider term as defined in S. 5 of that Act while this section relates only to the specific kinds of transfer mentioned therein.

(2) That section relates to transfers of "immovable property" only while this relates to the specific kind of transfer of all kinds of "property".

(3) That section contemplates transfers made not only to defeat or delay creditors as this section does but also those made with intent to defraud prior or subsequent transferees for consideration of the property transferred, or co-owners or other persons having an interest in the property.

(4) That section makes the transfers contemplated by it only "voidable at the option of any person so defrauded or delayed" while this section declares them to be void and casts a duty on the Board coming to know of any such to declare it to be so.

(5) The second paragraph of that section contains a rule of evidence authorising the court to draw a presumption that the transfer must have been made with the kind of intention required by the first paragraph if the effect thereof is "to defraud, defeat or delay any such person" and if it is made gratuitously or for a grossly inadequate consideration whereas this section contains no such rule of evidence. The decision of the Board would therefore depend wholly on the evidence before it.

The saving-clause in both is the same except for the change necessary on account of the specific kinds of transfer declared void under this section.

(2) There is also some similarity between the provisions of this section and those of S. 53 of the *Provincial Insolvency Act, 1920* but there are points of distinction also between them. They are :—

(1) S. 53 of the *P. I. Act* is applicable to all cases of transfer but this section applies to the specific cases of transfer mentioned therein ;

(2) For the applicability of the former the transferor must have been adjudged an insolvent on a petition presented within 2 years after the date of transfer whereas for that of the latter the conditions are (a) that the transferor must be a debtor and (b) that he must have made any of the specific kinds of transfer with a view to defeat or delay any of his creditors ;

(3) Under the former the receiver has got to move the Court to exercise the power vested in it by it whereas under the latter the Board can act even *suo moto*.

(4) The former makes exceptions of the cases of a transfer made before and in consideration of marriage and that made in favour of a purchaser as an incumbrancer *in good faith and for valuable consideration* whereas this section makes an exception only of the case of an alienee or the holder of an incumbrance *in good faith and for consideration*.

50. The value of the property and other assets of

Value of property of debtor to be determined by the Board in prescribed manner.

the debtor shall for the purpose of ascertaining the paying capacity of a debtor under section 51 be determined by the Board as follows:—

(1) In determining the value of the property or assets of a debtor, the property or assets which are exempt from attachment in execution of a decree of a civil court under the *Code of Civil Procedure, 1908*, V of 1908, shall not be taken into account.

(2) In determining the value of the immovable property of a debtor which is subject to the liability of secured debts, deduction shall be made from such value in respect of the amount of the debts due to Government and to local authorities which, under any law for the time being in force, are a charge on such immovable property or are recoverable from the debtor as dues of the current year's land revenue.

(3) In determining the value of the property which is not subject to the liability of secured debts the amount of the debts mentioned in section 3 except debts due to Government and to local authorities referred to in paragraph 2 above shall be deducted.

(4) In the case of lands to which section 73A of the Bom. V of 1879. *Bombay Land Revenue Code, 1879* applies the market value of such lands shall be calculated as if the restriction on the transfer of such lands provided by the said section was not in operation:

Provided that nothing in this paragraph shall be deemed to provide that such lands shall be transferable without the permission of the Collector under the said section.

(5) Subject to the provisions of the above paragraphs the Provincial Government may by rules prescribe the manner in which the market value of the property and assets of the debtor shall be determined.

COMMENTARY

Scope of the section :—This section prescribes 4 principles which are required to be observed by the Board while determining the value of the property and assets of the debtor for the purpose of ascertaining his paying capacity as required by S. 48 and empowers the Provincial Government to prescribe rules for determining the market value of the said property and assets.

The said principles are :—(1) *Paragraph 1* :—No notice should be taken of the property and assets which are exempt from attachment in the execution of a decree of a civil court under the *Code of Civil Procedure, 1908*.

This exemption is contained in clauses (a) to (p) of the proviso to sub-section (1) of S. 60 of the Code read along with its Explanation. Thereout the clauses that are likely to be of use in the case of an agriculturist-debtor are :—(a), (b), (c), (p) and perhaps in some cases clauses (d), (e), (f) and (l) read with the Explanation thereof.

(2) *Paragraph 2* :—While fixing the value of the immovable property subject to the liability of secured debts, after the gross value is ascertained according to the prescribed rules explained hereafter, (a) the amount of debts due to Government and (b) that of the such debts due to local authorities as are, under any law for the time being in force, (a) a charge on the specific immovable property or (b) recoverable from the debtor as dues of the current year's land revenue, should be deducted therefrom and the net value thereof thus left should be taken to be the value of the property for the purpose of determining the paying capacity of the debtor.

Illustration :—Thus if the gross value of an immovable property on which there is the burden of a secured debt is Rs. 1000, and Rs. 200 in all are due to Government and Rs. 50 are due to a Local Board and is a charge on that property or is recoverable from the debtor as the current year's land revenue and Rs. 25 are due to any other local body like a Municipality or a Village Panchayat or a Sanitary Board and it too is either a charge on the property or is recoverable as the current year's land revenue, Rs. 275 in all should be deducted from Rs. 1000 and Rs. 725 should be taken to be the net value of the property for the purpose of determining the paying capacity of the debtor.

(3) *Paragraph 3* :—Similarly while fixing the value of any property, whether immovable or movable, which is not subject to the liability of secured debts, the amount of the debts mentioned in S. 3 of this Act other than those referred to in paragraph 2 above, should be deducted from the gross value arrived at according to the rules above-referred to and the balance thus left should be taken to be the value of that property for the said purpose.

Illustration :—The other debts mentioned in S. 3 are those due to (a) a co-operative society, (b) a person who had advanced a loan to the debtor after 1-1-39 solely for the financing of crops and (c) a person who had obtained against the debtor from a competent court a decree or order for maintenance.

Thus assuming that the unencumbered property is found to be worth Rs. 1000 according to the rules, and that the debtor is indebted to a co-operative society in a sum of Rs. 200, to a crop-financier who had advanced a loan in 1939 or 1940 in one of Rs. 50 and to a widow of his family who had obtained a decree from a civil court for maintenance or to a wife who had obtained an order for maintenance from the Court of a Magistrate under S. 488 of the *Criminal Procedure Code, 1898*, at the rate of Rs. 60 per annum, the net value of the property would be Rs. 1,000 less Rs. 250 and the value of the recurring liability under the decree or order which would be required to be determined in view of the probable number of years for which the widow or the wife may, in the opinion of the Board, be likely to live, as there is no definite rule on that point.

(4) *Paragraph 4* :—If the debtor happens to be the occupant of any piece of land to which S. 73A of the *Bombay Land Revenue Code, 1879* is applicable, its market value should be assessed as if that section were not applicable to it. The proviso to this paragraph makes it clear that this section should not be construed to confer the power of transfer of the land without the permission of the Collector, which is required by the said section of the *Bom. L. R. Code*.¹ This clarification has become necessary because sub-

1. The said section of the *Bom. L. R. Code, 1879* runs thus :—

73A. (1) Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section to apply, the provisions of section 73 shall not apply to any land in that tract or village.

section (2) of that section has empowered the Local Government to exempt *inter alia* "any person or class of persons from the operation of this section" and therefore it is likely that the main provision in this paragraph may be construed into an implied sanction to agriculturist debtors to transfer such lands.

*Paragraph (5) :—*This paragraph authorises the Provincial Government to prescribe the manner in which the market value of the property and assets of a debtor should be ascertained for the purpose of determining his paying capacity. It should however be noted that the said paragraph has granted the said authority subject to the provisions of the four preceding paragraphs of this section. Therefore if in practice it is found that any act proposed to be done under a rule made under this section is inconsistent with the provision of any of the preceding paragraphs of this section that act cannot be done ; in other words where there is a conflict between the provisions of any of the said paragraphs and any part of such rule the provisions of the paragraph should be given effect to in preference to the part of the rule, because the authority given to the Provincial Government by this paragraph is exercisable subject to the provisions of the preceding paragraphs. For the rule made under this paragraph see the relevant Appendix.

51. The paying capacity of the debtor, if any, shall, for the purposes of this Act, be deemed to be the aggregate amount consisting of the following items :—

- (a) if the amount of the secured debts of a debtor found due on taking account under this Act is less than 80 per cent. of the value of his immovable property as determined under section 50, but such debts are secured, the difference between the amount of such debts and 80 per cent. of the value of such property;

tion applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) Government may, by notification in the *Bombay Government Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

(b) eighty per cent. of the value of the immovable property of the debtor which is not subject to the liability of secured debts as determined under section 50;

(c) eighty per cent. of the value of other assets:

Provided that when any portion of such assets yields income but the market value of such portion cannot be determined, the value of such portion shall be the amount of the income capitalised at six per cent. per annum.

COMMENTARY

Scope of the section :—This section lays down which items are to be taken into consideration for the purpose of determining the paying capacity of the debtor which it is necessary to know for giving effect to the provisions of S. 52 *infra*. It draws a distinction on the one hand, between immoveable property subject to the liability of secured debts and that not subject to such liability and on the other, between immovable property as a whole and other assets of the debtor, which may comprise specific movable property, cash if any, and outstandings under book accounts, pro-notes, bonds, hundis, contracts oral or written, Hathcittas, or in respect of hand-loans, goods etc. and lays down the standards to be applied to each such kind of property in its three clauses, the last of which is supplemented by a proviso. Underlying all of these there is one general standard that the paying capacity of a debtor is 80% of the net value of his property and other assets.

Clause (a) :—This clause provides that if the amount of the secured debts of a debtor as ascertained on taking an account according to the foregoing provisions of this Act falls short of the value of his immovable property taken as a whole, as determined under S. 50, his paying capacity so far as such property is concerned is to be taken to be that represented by the difference between 80% of the value and the amount of the secured debts.

Illustration :—This means that if the immovable property of a debtor is found to be worth Rs. 5000 according to the provisions of S. 50 and the total amount of his secured debts as ascertained under the provisions of SS. 38 to 46 is Rs. 4000, nothing would be

left to be considered under this item because out of the aforesaid value only Rs. 4000 is to be taken into consideration but if the amount of his secured debts is Rs. 3000, then Rs. 1000 is to be put down as the measure of the man's paying capacity so far as the immovable property belonging to him but burdened with debts is concerned.

*Clause (b) :—*This clause provides that if the debtor has any immovable property not burdened with any debt or if the whole of such property of his is free from any encumbrance, then his paying capacity is to be understood to be that represented by 80% of the value of that particular property or 80% of the value of the whole of his such property as ascertained under S. 50. This is I think a simple direction and needs no further explanation.

*Clause (c) :—*The same rule as is mentioned in clause (b) is made applicable to the case of the other assets of the debtor, which term means all the other property than immovable property and comprises all the different species above-explained. In their case also the paying capacity is fixed at 80% of their value determined under the relevant rule. This clause is supplemented by a proviso to the effect that when it is found that the assets of a debtor consist of an item which yields any income but whose market-value cannot be determined according to the prescribed rule, then the value of such item shall be held to be the amount of the income capitalised at interest at six per cent. per annum.

*Illustration :—*It would be well to explain this direction by an illustration. Suppose that there is an item of income of a debtor yielding an annual income of Rs. 30 but its market-value cannot be ascertained by the Board with the evidence at its command in the exercise of its general discretionary power. In such a case this proviso will have to be made use of and the market value of that item will have to be held accordingly to be Rs. 500, which is the amount of that income capitalised at 6%, *i.e. to say*, the amount which if invested at simple interest at 6% per annum would yield an annual income of Rs. 30. On the same basis if the income is Rs. 60 p. a. the market value of the property yielding that income would be Rs. 1,000 if the income is Rs. 15 only, such value would be Rs. 250 and so on.

52. (1) Notwithstanding any law, custom, contract or decree of a court to the contrary, Debts payable by debtors to be scaled down. all debts payable by a debtor at the commencement of this Act shall be scaled down in the manner hereinafter provided.

(2) If all the debts due by a debtor are unsecured, such debts as are found due on taking accounts under this Act shall be scaled down *pro rata* to the value of the paying capacity of the debtor.

(3) If all the debts due by a debtor are secured debts, and the total amount of such debts found due on taking accounts under this Act is more than eighty per cent. of the value of the property belonging to the debtor, such debts shall be scaled down *pro rata* to eighty per cent. of the value of such property.

(4) If the debts due by a debtor are both secured and unsecured, and if the total amount of the secured debts found due on taking accounts under this Act is more than eighty per cent. of the value of the property on which such debts are secured, the secured debts shall be scaled down *pro rata* to eighty per cent. of the value of the property on which such debts are secured and the unsecured debts shall be scaled down *pro rata* to eighty per cent. of the value of the other property belonging to the debtor over which no debts are secured.

COMMENTARY

Scope of the section :—The next step to be taken by the Board after the paying capacity of the debtor is ascertained is to compare it with his liabilities both secured and unsecured and to apply to them *pro rata* that principle of scaling down out of the three laid down in sub-sections (2) to (4) of this section which may be applicable to that particular case. Sub-section (1) thereof contains only a general direction for making an application of the principle which may be found suitable in each case.

Sub-section (1) :—It should be noted that the said application is required to be made in total disregard of any law, custom, contract or decree of a court to the contrary and to all debts which may be payable by the debtor on the date of the commencement of this Act, with due regard to the provisions of S. 3 thereof.

This sub-section and SS. 42(2) (e) (i), 45 and S. 46:—It should further be noted that whereas under this sub-section the Board is invested with power to disregard even the decree of a competent court as to all debts payable on the date of commencement of this Act and under S. 42(2) (e) (i) it is invested with power to reduce the amounts of principal and interest due in respect of transactions entered into before 1st January 1931 by 40% or 30% according as they had commenced on or before 1st January 1930 or after that date, even in total disregard of a decree of such a court, it is not invested with power to declare a transaction which is apparently that of a sale to be in the nature of a mortgage in disregard of such decree as is apparent from the omission of the words “or decree of a civil court of competent jurisdiction” from the provision contained in sub-section (1) of section 45 and the distinct saving-clause (ii) with regard thereto in sub-section (2) of that section. This is further made clear by S. 46(1) and (2).

Sub-section (2) :—This sub-section lays down the principle to be applied when all the debts of a debtor are unsecured. It is that they, as found on taking accounts under SS. 38 to 46, should be scaled down *pro rata*, i.e. proportionately to his paying capacity.

Illustration :—According to this principle if the value of the paying capacity of the debtor as ascertained by the use of the powers conferred by SS. 48 to 51 is found to be Rs. 4000 and the total amount of his unsecured debts is Rs. 5000 each of the debts is to be proportionately reduced to such an extent as to bring their total down to Rs. 4000. Thus suppose that the said sum of Rs. 5000 is made up of Rs. 1000 due to a creditor A, and Rs. 2000 each to two other creditors B and C, the amount payable to A is to be reduced to Rs. 800 and that payable to each of B and C to Rs. 1600 so that the total of the three amounts may come down to Rs. 4000, which represents the paying capacity of the debtor.

Sub-section (3) :—This contemplates and provides for the case of a debtor all of whose debts are secured debts and the total amount

whereof exceeds 80% of the value of the property of the debtor, *i. e. to say*, not simply the immovable property burdened with the debts or even the whole of the immovable property only but all property whatever belonging to him. The provision is that in such a case the secured debts, which in the case under consideration are the only debts of the debtor, should be so cut down proportionately as to reduce their total to an amount equal to 80% of the value of the property.

Here the percentage of reduction is the same as under sub-section (2) but the percentage to be taken is not that of the paying capacity of the debtor as determined under S. 51 but that of the value of his property as determined under S. 50.

Sub-section (4) :—But all the cases cannot be expected to be so simple as are contemplated by sub-sections (2) and (3). Therefore this sub-section contemplates and provides for such a complicated case as that of a debtor some of whose debts are secured ones and others unsecured. The provision for such a case is that if the total amount of the secured debts as found due on taking accounts under this Act, *i. e. to say*, under SS. 38 to 46 thereof, exceeds 80% of the value of the property on which such debts are secured, the secured debts should be so reduced *pro rata* as to be equal to 80% of the value of the property on which the said debts are secured and the unsecured debts should also be so reduced *pro rata* as to be equal to 80% of the value of the property of the debtor which is free from any incumbrance.

This and the two preceding sub-sections :—The points of difference between the provision in this sub-section and those in the two preceding ones are :—(1) whereas under sub-section (2) the reduction of the unsecured debts is to be so made as to bring their total down to the same level as the paying capacity of the debtor, and under sub-section (3) that of the secured debts is to be so made as to bring their total down to the same level as 80% of the value of the whole of the debtor's property in case the said total is on a higher level than that, under this sub-section the secured debts are to be reduced to 80% of the value of the property on which they are secured if their total amount exceeds 80% of that value and the unsecured debts are to be reduced to 80% of the value of the other property of the debtor on which there is no burden of any secured debt.

Illustration :—The practical application of this sub-section can be exemplified thus. Suppose that a debtor D is on taking accounts found indebted to creditors A and B in sums of Rs. 1,000 and 2,000 respectively, each secured on a specific immovable property of the debtor and that he is also indebted to two other creditors C and E in sums of Rs. 200 and 300 respectively none of which has been secured on any property of the debtor. This therefore is a case of debts both secured and unsecured being due by a debtor and therefore the provisions of this sub-section would be applicable to it. Now in order to determine whether these secured and unsecured debts are or are not liable to be scaled down and if so, to what extent, what we have got to ascertain in the case of the secured debts is whether their total amount does or does not exceed 80% of the value of the properties on which they are secured. As to that we know that the total amount of the debts due to the two secured creditors is Rs. 3,000 but we do not yet know what is the ascertained value of the properties on which they are secured. We must therefore further suppose that the value of the property mortgaged to A is Rs. 2,000 and that mortgaged to B is also Rs. 2,000. Thus “the total value of the property on which such debts are secured” is Rs. 4,000 and 80% of that is Rs. 3,200. Therefore there is no necessity to scale down the secured debts because the condition which should be satisfied before it could arise is that “the total amount of the secured debts found due on taking accounts under this Act is more than 80% of the value of the property on which such debts are secured” and that condition is not fulfilled in this case. The same result would follow if in the above case the amounts of the debts are Rs. 500 and 1,000 respectively and the values of the secured properties are Rs. 1,000 and 1,000 respectively for in that case too the total amount of the debts is not more than 80% of the total value of the two properties, which is Rs. 1,600. The result would however be otherwise if the amounts of the debts are the same as in the first case but the values of the secured properties as ascertained according to the provisions of S. 50 are found to be the same as in the second case for then 80% of Rs. 2,000 would be Rs. 1,600 while the debts are of Rs. 3,000. Hence the both secured creditors A and B are required to submit to a proportionate reduction of the amounts due to them regardless of the fact that the property mortgaged to A is sufficient for the payment of the whole amount found due to him. And such reduction in both cases must be made even if any of the secured creditors is

entitled under his deed to a personal decree against the debtor for the balance that may remain unpaid on putting to sale the property mortgaged to him and even if there is a surplus likely to be left after the payment to the unsecured creditors is provided for, as further laid down in this sub-section because there is no such provision anywhere and because on the contrary there is an express provision against it in S. 53(2) *infra*.

This is the construction which appears to me to be in accordance with the intention of the Legislature as appearing from the wording and general tenure of this section itself and of SS. 17, 22, 31, 49, 50, 51, 54 and 55. In case of doubt as to its correctness the reader may refer to the principles of interpretation set forth under the headings :—*Rules as to how to gather the intention of the Legislature and give effect to it, Rules as to filling up lacunæ in an Act, and How to avoid an apparent conflict between the different parts of an Act and when to reject one of them as redundant.*¹

In the case under consideration *i.e.* when a debtor has both secured and unsecured debts to discharge, if the total amount of the unsecured debts is less than or equal to 80% of the value of the unencumbered property then they are not to be subjected to any scaling down but if they are more than that, then they are to be so scaled down *pro rata* as to reduce their total to an amount equal to 80% of such property.

53. (1) The amount of debts so scaled down shall for the purposes of this Act be deemed to be the amount due by the debtor in respect of the said debts.

No recovery of amount in excess of debts scaled down.

(2) No sum in excess of the amount of debts so scaled down shall be recoverable from the debtor or from any property belonging to him, nor shall the debtor be liable to arrest nor shall his property be liable to be attached, sold or proceeded against in any manner in execution of any decree or order against him in so far as such decree or order is for an amount in excess of the amount scaled down under this Act.

1. See pp. 94-96, 111-12 and 123-25 *supra* respectively.

COMMENTARY

Scope of the section :—This section lays down the legal effects which are to follow from the application of the process of the scaling down of debts prescribed by the preceding section. It is divided into two sub-sections, the first of which lays down its effect so far as proceedings under this Act are concerned, and the second so far as all other civil proceedings that could be resorted to for the purpose of the recovery of the debts due from the debtor at all times under the provisions of any other law, are concerned.

Sub-section (1) :—This sub-section says that the amount of debts scaled down as provided in S. 52 shall be taken to be the amount due from the debtor in respect of the said debts for the purposes of this Act.

This means that once a Board has taken accounts as provided in SS. 38 to 46, determined the value of his property and his paying capacity, if necessary, according to the provisions of SS. 48 to 51, and if and in so far as necessary, scaled down his debts, no larger amount than that arrived at by that process shall be deemed to be due from the debtor for any of the purposes of this Act.

Sub-section (2) :—And this sub-section further provides that after the Board has proceeded so far, no matter even if an award is not made under S. 54 or if made it is not executable for any reason, no creditor of the debtor whose debt has been so scaled down shall recover any amount in excess of the amount so scaled down either from the debtor personally or from his property and that even if any occasion arises for a creditor who has obtained a decree or order against the debtor for any such debt, to execute that decree or order, the debtor shall not be liable to arrest and his property shall not be liable to be attached, sold or proceeded against in any other manner in execution of such decree or order to the extent of the amount in excess of that scaled down as above.

54. (1) After determining the amount of debts scaled down in the manner provided in section 52, the Board shall make an award.

(2) The award shall be in the prescribed form and shall include the following particulars :—

- (a) a list of the properties of the debtor both movable and immovable with particulars of any mortgage, lien or charge subsisting thereon ;
- (b) particulars of all debts secured and unsecured which have been scaled down in accordance with section 52 together with the details of the properties on which secured debts are charged :

Provided that the amount of the secured debts so scaled down shall be charged on the properties on which they may have been secured and the amount of unsecured debts shall be charged on the remaining property of the debtor :

Provided further in the case of debts in respect of which a settlement has been reached and certified, the amount of debts shall be as agreed to in the said settlement ;

- (c) particulars of all debts of the kind specified in section 3 ;
- (d) particulars of any alienation or incumbrance declared to be void under section 49 ;
- (e) the amount to be paid to each creditor for each debt due to him ;
- (f) the manner in which and the times at which the amounts referred to in clauses (b) and (c) shall be paid ;
- (g) the priority in which the debts shall be paid ;

Provided that in fixing the priority the following order shall be followed:—

- (i) debts due to Government, which are charged on the immovable property belonging to the debtor or which are recoverable as the current year's land revenue,
- (ii) debts due to local authorities, which are charged on the immovable property belong-

ing to the debtor or which are recoverable as the current year's dues,

- (iii) loans given by resource societies or by persons authorised to advance loans under section 78 for the financing of crops after the coming into force of this Act, and other loans given for financing crops after 1st January 1939 and before the date of the coming into force of this Act,
- (iv) secured debts,
- (v) debts due to Government, local authorities and other bodies including co-operative societies, and recoverable as arrears of land revenue,
- (vi) other debts due to co-operative societies,
- (vii) unsecured debts:

Provided further that in the case of debts falling under the same class their priority *inter se* shall be determined in the order of the dates on which such debts may have been incurred. If such debts are incurred on the same date, they shall be paid *pro rata* ;

(h) the instalments in which the debts shall be paid :

Provided that the total annual instalments shall not exceed 25:

Provided further that in directing in what instalments the debts shall be paid the Board shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

Explanation:—For the purposes of this clause the net annual income of the debtor shall mean the balance of his annual income after deducting such sum as may be considered necessary for the maintenance of the debtor and his dependants and the sum due by the debtor to pay the debts

due to Government and to local authorities, and to pay off loans borrowed for the purpose of financing of crops ;

- (i) the conditions subject to which the immovable property, if any, in possession of the creditor shall be delivered to the debtor :

Provided that the Board shall not refuse to pass an order for the delivery of possession merely on the ground that the time fixed for the payment of the secured debt has not arrived or on the ground that the secured debt has not been completely discharged or on both ;

- (j) the rate of interest, if any, payable on each amount referred to in clause (e) :

Provided that such rate shall not exceed the rate notified in this behalf by the Provincial Government not exceeding 6 per cent. per annum or any rate agreed between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt, whichever is lowest ;

- (k) the property of the debtor which and the conditions subject to which such property shall be liable to be sold for the recovery of any particular debt ;
- (l) costs, if any, to be paid by the parties :

Provided that, where the debtor has failed to make an application under section 17 within the period of one year from the date on which a Board is established under section 4 and the creditor has made an application after such period, the whole of the costs shall be directed to be paid by the debtor :

Provided further that, if an application is rejected in consequence of untrue or incorrect statement made or information supplied by the creditor the costs shall be directed to be paid by the creditor making such statement or giving such information ;

- (m) the parties by whom and the manner in which the court-fees due shall be paid ; and
- (n) any other matter which in the opinion of the Provincial Government may be necessary for the purpose of doing complete justice or making a complete adjustment of debts and which the Provincial Government may by rules prescribe to be included in awards.

COMMENTARY

Scope of the section :—After accounts of the dealings between the debtor and his creditors are taken as provided in SS. 38 to 46, the particulars and value of the former's property are ascertained, the fraudulent alienations made and incumbrances created, if any, by him are set aside and his paying capacity determined as required by SS. 48 to 51 and his debts, secured and unsecured are, if necessary, scaled down under S. 52, the next and the last important act to be done by the Board is the passing of an award which would have the force of a decree. This section therefore provides that as the next step after the debts are scaled down, the Board shall make an award in the prescribed form and that it shall contain certain particulars and such others as the Provincial Government may by rules prescribe. It is sub-divided into two sub-sections, the particular provisions in each of which are explained below.

Sub-section (1) :—The provision in this sub-section consists of a direction to the Board to make an award next after scaling down debts as provided in S. 52.

Sub-section (2) :—By this section the Legislature has directed that the award to be made under the preceding sub-section shall be in the form which may be prescribed and shall include the particulars specified in clauses (a) to (m) thereof and such other matters as the Provincial Government may deem necessary and may by rules prescribe in order to do complete justice between the parties and to make a complete adjustment of the debts of the debtor.

The particulars specified in clauses (a) to (m) as necessary to be included in the award relate to the following matters namely :—

- (a) properties with the burdens, if any, thereon ;

- (b) debts together with the respective properties on which they are charged subject to proviso 1 and in the case of a settlement having been effected of any of them, the amount agreed upon as required by proviso 2 ;
- (c) debts mentioned in S. 3 ;
- (d) alienations or incumbrances declared void under S. 49 ;
- (e) amount to be paid to each creditor for each debt due to him ;
- (f) manner and time of the payment of each of the amounts mentioned in (b) and (c) ;
- (g) relative priority to be observed in the case of each debt, in fixing which the order mentioned in proviso 1 is to be observed in the case of different classes of debts and the principles laid down in proviso 2 in the case of those falling in the same class ;
- (h) instalments in which the debts are to be paid subject to the maximum number laid down in proviso 1, regard being had to the standard laid down in proviso 2 as regards the amount of each instalment as to which standard there is an explanation appended to that proviso :

*Effect of the proviso and explanation read together :—*That explanation gives a special definition of “the net annual income of the debtor”, which according to that proviso is the measure of the debtor's capacity to pay any number of instalments simultaneously to several creditors. According to it such income means the balance left after deducting (1) such sum as may be reasonably required for the maintenance of the debtor himself and his dependants, if any, and (2) the amounts of the instalments payable to Government, to local authorities and to persons who may have advanced money for the purpose of financing of crops.

It is difficult to imagine what the Legislature expected to be left out of the gross income of many small agriculturist-debtors after the above deductions are made. Perhaps it had anticipated that nothing would be left in such cases and had therefore added the chapter on *Insolvency Proceedings* which follows the present one.

- (i) conditions subject to which, if any, a creditor in possession of the debtor's property is to deliver possession thereof to him, which are to be laid down on bearing in mind the proviso to this clause ;
- (j) rate at which future interest, if any, is to be paid to each creditor on the amount held payable to him in instalments, in fixing which the principles laid down in the proviso to this clause should be observed ;
- (k) property of the debtor which would be available for being sold for the recovery of each particular debt and conditions subject to which the sale should be made ;
- (l) costs, if any, to be paid by the parties in fixing the liability with regard to which the specific directions given as to two specific classes of cases in provisoes 1 and 2 are to be followed ;
- (m) names of the parties by whom and the manner in which court-fees are to be paid according to the provisions of S. 60 *infra*.

Clause (n) :—This clause gives power to the Provincial Government to require particulars as to any other matters, which it may, in its discretion, consider necessary to be mentioned in an award for the sake of doing justice between the parties and for the complete realisation of the object underlying the institution of proceedings under S. 17 of this Act.

For the Rule, Form and Schedules relating to this section see the relevant Appendix.

55. (1) Before making the award under sub-section (1) of section 54 the Board may call upon the creditors to state in writing whether they agree—

Board to prepare a scheme for adjustment of debts through the Provincial Land Mortgage Bank.

- (a) that all the debts of the debtor should be so further scaled down as to be reduced to a sum not exceeding half the value of the immovable property of the debtor ; and

(b) that they shall receive in lieu of all the debts due to them bonds issued by the Bombay Provincial Land mortgage Bank registered under the *Bombay Co-operative Societies Act, 1925*, or by such other bank as may be specified by the Provincial Government by a notification in the *Official Gazette*, such bonds being guaranteed by the Provincial Government and being equivalent in value to the sum referred to in (a).

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(2) If all the creditors agree to the aforesaid conditions, the Board shall prepare a scheme for the adjustment of the debts accordingly and shall send the same to the said bank for acceptance. If the said bank agrees to accept the proposal, the Board shall make an award in the form prescribed directing that the sum so scaled down shall be charged on all the immovable property of the debtor and the bonds for the amount referred to in sub-section (1) shall be issued to the creditors in full satisfaction of all the debts due to them from the debtor.

(3) All sums due under an award made in favour of the Bank under sub-section (2) shall be recoverable as arrears of land revenue.

(4) Notwithstanding anything contained in this Act, no appeal shall lie against an award made under sub-section (2).

COMMENTARY

Scope of the section :—This section provides for making quite a different kind of award from that explained above. It expects the creditors of a debtor as a body to make a sacrifice voluntarily in consideration of the payment of their debts as scaled down under S. 52 and as further scaled down under this section being undertaken by the Provincial Land Mortgage Bank or any other authorised bank under Government guarantee. If they and the bank agree, they would get bonds for the respective amounts scaled down as above

from the Bank and would therefore have nothing further to do with the debtor as the bank would be their debtor thenceforward and the award would be in their favour only so far as their title to bonds would be concerned and in favour of the bank so far as regards the recovery of the amount of the bonds from the debtor. The advantage to the bank in such a case would be that the whole of the amount of debts for which it passes bonds would be charged on the whole of the immovable property of the debtor and the instalments that might be fixed by the Board in consultation with it would be recoverable as arrears of land revenue which have even under the *Bombay Land Revenue Code, 1879* a priority over all other claims against the debtor.

This section is sub-divided into four sub-sections, the first two of which lay down the main provisions as to the procedure to be followed, the third sets forth the legal effect of making an award under this section and the fourth denies to the creditors the right of appeal from such an award.

Sub-section (1):—This sub-section leaves it to the discretion of the Board whether to exercise the power vested in it by this section or not. If in view of the circumstances of the case, it thinks it proper to exercise that power it must follow the procedure prescribed by the first two sub-sections. Thereout this provides that before passing an award as laid down in S. 54, *i.e. to say*, after having scaled down the debts ascertained to be due to the creditors of the debtor to whose claims S. 52 is applicable, the Board may call upon them to make a statement in writing as to whether they do or do not agree to submit to the conditions laid down in this section for making an award under it. Those conditions are:—

(1) that all the debts due to such creditors would be so further scaled down as to be reduced to a sum which should not in any case exceed 50% of the value of the immovable property of the debtor as ascertained under S. 50 of this Act, which must, I believe, be done proportionately;

(2) that for such reduced sums they would receive, in lieu of a joint award under S. 54 for the full amount found due as aforesaid, bonds issued by the Provincial Land Mortgage Bank registered under the *Bombay Co-operative Societies Act, 1925* or such other bank as may have been authorised by the Provincial Government in this behalf by a notification in the *Bombay Government Gazette*, with a

guarantee by the said Government for the fulfilment by such bank of the conditions mentioned therein.

If the creditors, one and all, agree to the said conditions the Board is to proceed further as laid down in sub-section (2).

Sub-section (2) :—The further procedure laid down in this sub-section is that the Board should prepare a scheme for the payment of the debts due to the creditors in the manner laid down in the preceding section. The scheme contemplated here would consist of a further scaling down of the debts as above-mentioned and the ascertainment of the amount for which each creditor would in that case be entitled to get a bond. That done the next step that the Board should take is to send such scheme to the bank concerned for inquiring of it whether it agrees or does not agree to the proposal. If it does communicate its assent to it, the third step which the Board should take would be to pass an award in the prescribed form which is to contain the directions (1) that the aggregate sum so scaled down shall be charged on all the immovable property of the debtor and (2) that the bonds as provided in sub-section (1) shall be issued by the bank concerned to the creditors in full satisfaction of all the debts due to them from the debtor. For the appropriate Rule and Form see the relevant Appendix.

56. If the Board making an award under section 54 is at any stage of the proceeding satisfied that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any of the other creditors the Board shall not scale down any of the debts of such debtor in the manner provided in section 52 but shall make an award for the full amount of the debts due from such debtor.

Debts not to be scaled down in case of collusion.

COMMENTARY

Scope of the section :—The provision in this section is of such a character that it could easily have been added as a proviso to S. 52. That section casts a duty upon the Board to scale down the debts due by a debtor in certain cases. That is however a special

concession which he cannot legitimately hope to get if he is dishonest. This section contemplates one of the ways in which his dishonesty would be exposed. It is that he may be found to have colluded with a bogus creditor and secured an undue advantage for himself and thereby attempted to defeat the lawful claims of his other creditors and provides that when such conduct of his is revealed, the Board shall, as a punishment to him, deprive him of the said concession and pass an award for the full amount of the debts that may be found due from him on making up accounts under SS. 38 to 46.

57. If, after an award is made under section 54, the Board finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Board when the award was made, or that any property included in the award did not belong to the debtor, the Board may, notwithstanding anything contained in this Act, re-open the award and re-adjust the debts in accordance with the provisions of this Act:

Provided that where the Board is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Board in revising the award shall not give the debtor the benefit of section 52.

COMMENTARY

Scope of the section :—This section provides for a contingency in which an award already made turns out to be wrong on any of the two grounds namely :—

- (1) that the debtor is found to own some property not brought to the knowledge of the Board till the award was made ;
- (2) that a particular property taken into consideration at the time of the determination of the value of his entire property or his paying capacity is found not to have really belonged to him.

In any of these cases it must be re-opened and revised in view of the disclosure, no matter in what manner it occurs. This the first paragraph of the section empowers the Board to do.

Now in the case of the first ground the reason for the non-disclosure of a property of the debtor may be either his ignorance or neglect of duty to make proper inquiries or a fraudulent intention on his part *i.e.* wilful suppression of the fact of the property being of his ownership with a view to save it for himself or for any of his relations. In the last case, he must forfeit the special concession which this Act provides for in S. 52, namely a scaling down of his debts to his paying capacity. The Legislature recognises this principle and has added the proviso to this section enabling the Board to deprive such a debtor of the benefit of that section while revising the award.

58. (1) Where, at the hearing of any application under this Chapter, any question of law or usage having the force of law arises, on which the Board entertains reasonable doubt, the Board may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the First Class Subordinate Judge within whose jurisdiction the Board may have been established.

(2) An appeal against an award which embodies the decision of the First Class Subordinate Judge on such reference shall lie to the District Court notwithstanding anything contained in section 9.

COMMENTARY

Scope of the section :—This section makes provision for a matter not directly connected with the advancement of the remedy specially provided by this Act. It could as well, and should better, have been placed just after S. 6 which confers on the Board a general wide power or to decide all questions, “whether of title or

of priority or of any nature whatsoever, and whether involving matters of law or fact" for the contingency provided for herein is that the Board may entertain "a reasonable doubt", "on any question of law or usage having the force of law". The section is sub-divided into two sub-sections of which the first contains the main provision and the second relates to an appeal.

Subsection (1) :—The provision in this sub-section is that in case it entertains such a doubt as to what would be the legal and proper decision of such a question it may, either of its own motion or on the application of any of the parties, draw up a statement of the facts out of which the point, on which doubt is entertained, has arisen and of what that point is, record its own opinion on such point and forward the same for decision to the First Class Subordinate Judge within whose jurisdiction the Board may have been established.

In view of the above provision being silent as to what the First Class Subordinate Judge should do on receipt of such a reference we would expect the Legislature to have added a separate sub-section giving directions as to the action to be taken by that Judge on receipt of such a reference. It has not however done so, taking it for granted that he would follow the principles of natural justice while disposing of it, *i.e. to say*, before deciding the point and sending back the reference, he would issue notices to the parties and give them an opportunity of being heard either personally or by their duly authorised agents or by pleaders. The engagement of professional lawyers before a Court in any matter arising before the Court is not barred by S. 67 *infra*.

The said sub-section is also silent as to what the Board should do on receiving back the reference with the decision of the Judge on the doubtful point and how much weight it should give to the decision. It is however clear from the words "an award which embodies the decision of the First Class Subordinate Judge on such reference" contained in sub-section (2) that the Board is expected to treat that decision as binding on it and to embody it in the award to be made by it.

Thirdly, the sub-section under consideration is also silent as to what order the Judge should make as to the costs of the reference to him, if any. That is however a matter within his discretion which he can be expected to exercise on judicial principles.

Analogous Law :—The provision in this sub-section is similar to that contained in S. 113 of the *Civil Procedure Code, 1908*, which as contemplated therein is to be read subject to the conditions and limitations prescribed in Or. XLVI in Sch. I to the *Code*, which are many and varied. The only analogy to this sub-section is to be found in r. 1 of the said rules. There is however this distinction between their wording that whereas under r. 1 of the said Order it is necessary that the suit or appeal in which the doubtful point arises must be one in which the decree must not be subject to appeal or that such a point must arise in the execution of any such decree, *i.e. to say*, a decree which is not subject to appeal, there is no such restriction in this sub-section. Hence a reference as provided for therein can be made even in a case covered by S. 9. But since the First Class Subordinate Judge would already have been committed to a particular view of the law on the point, the necessity to modify S. 9 has arisen and that is done by sub-section (2) of this section.

Sub-section (2) :—The provision in this sub-section is that an appeal against an award made by a Board on embodying the decision of the First Class Subordinate Judge on the point referred to him shall lie only to the District Court even though according to S. 9 of this Act it may ordinarily lie to the Court of the said Subordinate Judge, *i.e. to say*, even though the award may be of the class referred to in S. 9(1) (b).

59. Notwithstanding any law or custom or contract to the contrary, the amount ordered to be paid to any creditor or bank by any debtor in any award made under section 24, 54 or 55 shall be held to be the amount due from such debtor to the creditor or the bank, as the case may be, on the date of such award in any suit or proceeding to which any of the parties to the award is a party.

Amount ordered in the award to be held to be the amount due in all suits and proceedings.

COMMENTARY

Scope of the section :—It may be recalled that S. 53(2) had provided that the amounts of the debts as scaled down under S. 52

must be held due by the debtor to any of his creditors and that nothing in excess thereof shall be recoverable from him in any future litigation between him and such creditor, although an award for the payment of such amounts may not have been passed. This section similarly gives a finality to the order for payment of such amounts contained in the award made under S. 54.

That is not however the only purpose of this enactment. It further gives the same finality to the orders for payment contained in the award which the Board is authorised to make under S. 54 on an application under S. 23 for recording and certifying a private settlement between the debtor and any of his creditors, in that which may be passed on a private settlement under S. 24 and also in that in favour of the Provincial Co-operative Land Mortgage Bank or any other authorised bank on further scaling down debts as provided in S. 55.

The implication of this provision is that even though the Board established in any local area or for any class of debtors in any such area is abolished and not substituted by another, the work of adjustment of debts done by it would remain behind it and be binding on the parties who may have taken part in the proceedings before it and regulate their future relations.

60. (1) An award made under section 54 or 55 shall direct the party who has been ordered to pay the costs to pay one-half of the difference between the court-fee actually paid on the application for adjustment of debts or in the case of suits and applications for execution transferred to the Board under section 37 on the plaint in the suit or on such application and the fee which would have been payable under section 7 of *the Court-fees Act, 1870*, as if the application for adjustment of debts, or the suit or the application for execution had been a suit for money and the total amount of the debts declared due from the debtor had been the amount claimed in such suit;

Provided that where the costs are payable by any co-operative society or by any bank referred to in section 55

the amount of the court-fees payable by such society or bank shall not be directed to be recovered from such society or bank;

Provided further that where an award includes any sum in respect of which a creditor had obtained a decree of a civil court, allowance shall be made in calculating the amount of the court-fee payable in respect of the award for the court-fee already paid in respect of such decree.

(2) Notwithstanding anything contained in any law such fee shall be the first charge on the property of the party ordered to pay the costs.

COMMENTARY

Scope of the section :—Although the marginal note to this section seems to indicate that this section contains a general provision as to charging court-fees in the case of all proceedings under this Act, the contents thereof show that it contains a provision only as to charging court-fees on awards made under SS. 54 and 55 only. Attention has been drawn to the omission of S. 24 from the purview of this section and its implication has been fully discussed in the Commentary on that section.¹ As it is, it is sub-divided into two sub-sections, the first of which alone is actually concerned with the scale for charging court-fee on the said awards while the second only indicates the first source which the Government can look upto for the recovery of the fee charged according to that scale.

Sub-section (1) :—According to this sub-section the court-fee to be charged on an award made under S. 54 or S. 55 is one-half of the difference between that actually paid on the application under S. 17 or the plaint or application for execution transferred to the Board under S. 37 and the fee which would be payable on the amount for which the award is made, under S. 7 of the *Indian Court-fees Act, 1870*, it being treated for this purpose as a plaint in a suit for the recovery of the amount for which it is made. The court-fee payable on an application under S. 17 is such fee as would have to be paid on a plaint in a suit for accounts as provided in S. 18(2).

1. See p. 114 *supra*.

For further explanation of that provision see the Commentary on that section.²

The fee payable on plaints filed in civil courts is calculated *ad valorem* on the amount sought to be recovered according to the scale given in Art. 1 of Sch. I to the *Indian Court-fees Act, 1870* and that payable on applications for execution filed in the civil courts is a fixed one of annas 8 as provided in Art. 1(b) in Sch. II to the said Act. The same scale as is above-referred to in the case of the fee on plaints filed in civil courts would be the scale to be referred to for ascertaining that payable on the amount of the award treated as a plaint in a suit to recover money. The fee chargeable by the Board would be one-half of the difference between that paid in respect of the application under S. 17 or the plaint or application for execution on the one hand and the full fee payable had the applicant filed a suit in a civil court to recover the amount held due from the debtor, on the other. It appears that if after an application is made by a debtor under S. 17 any suit or application for execution filed by any of his creditors is transferred to the Board by the Court concerned, the total amount of fee paid by the applicant on his application, by his first creditor on his plaint and the second creditor on the application for execution would have to be added together in order to ascertain the figure on one side of the subtraction necessary for determining the difference, because the principle underlying this section is to charge one-half of the difference between the fee actually paid in the case of any adjustment-proceeding and that which would be payable on the amount of the award treated as a plaint in a money-suit.

Illustration :—It would be clear how this can be done if we take a concrete instance. Suppose that a debtor had filed an application under S. 17(1) on valuing the claim at Rs. 5. He must therefore have paid a court-fee of annas 6 according to Art. 1 of Sch. I to the *Indian Court-fees Act, 1870*. Suppose further that one of the creditors in the application had prior to that filed a suit in a civil court against that debtor for the recovery of the amounts due under a bond for Rs. 300 and a pro-note Rs. 200, and that the amount of interest due under the former was Rs. 100 and that due under the latter was Rs. 50. Thus the amounts sought to be re-

2. See p. 97 *supra*.

covered from the debtor in that suit were Rs. 400 under the bond and Rs. 250 under the pro-note. According to Art. 1 of Sch. I to the *Indian Court-fees Act, 1870* he must therefore have been required to pay a court-fee on Rs. 400+250, which must be Rs. 30 in the former case and Rs. 18-12 in the latter. Thus in all he must have paid Rs. 48-12. Further suppose that a second creditor of his had filed before this Act came into force an application for the execution of a decree held by him against him and that it was transferred to the Board under S. 37. On that application he must have paid annas 8 as court-fee. It seems that all these amounts of court-fee must be added together in order to get the figure on one side of the subtraction. In the above case therefore that figure would be annas 6 + Rs. 48-12 + annas 8 = Rs. 49-10. For that on the other side suppose that the debtor is held liable to pay Rs. 2,000 in all including the debts mentioned in S. 3, those debts being exempted from the operation of specific sections only, of which S. 60 is not one. According to the scale above-referred to the court-fee which would have been payable if any person had filed a suit to recover Rs. 2,000 from another person would have been Rs. 125. This being a larger amount deduct Rs. 49-10 from it. The balance that remains is Rs. 75-6. This is the difference of which one-half is to be recovered from the party held liable to pay costs. One-half of it amounts to Rs. 37-11. The said party would therefore have to pay that amount of court-fee on the award.

Proviso 1 :—The above sub-section has two provisos. Thereout the first has its application only so far as the direction as to the payment of court-fee as provided in the sub-section is concerned. The provision in the proviso is that if the Board has come to the conclusion that a co-operative society which is one of the creditors of the debtor or a bank which has agreed to issue bonds according to the provisions of S. 55, is liable to pay costs, it shall not direct the society or the bank to pay the court-fee at all.

Proviso 2 :—This proviso has reference to the actual payment side in the subtraction to be made in order to find out the required difference. It provides that if any of the creditors of a debtor had claimed a debt as due under a decree of a civil court, allowance must be made while ascertaining the difference for the amounts of court-fee which the said creditor may have paid in the suit in which he may have obtained the decree.

Illustration :—Suppose that in the above illustration, out of the amount of Rs. 2,000 found in all to be due from the debtor, Rs. 500 was claimed as due under a civil court's decree. Suppose further that this Rs. 500 was made up of Rs. 400 the decretal amount and Rs. 100 the amount of interest from the date of decree to that of the application under S. 17. He must therefore have paid Rs. 30 as court-fee in order to obtain that decree. This proviso says that if such is the case, the amount of actual payment to be deducted would be Rs. 79-10 instead of Rs. 49-10. That being deducted from the ordinary fee on a plaint to recover Rs. 2,000, namely Rs. 125, the balance comes to Rs. 45-6. One-half of that is Rs. 22-11. Therefore the party liable to pay costs would have to pay in such a case Rs. 22-11 instead of Rs. 37-11 on account of court-fee by virtue of this proviso.

Sub-section (2) :—This sub-section provides that whatever provision there may be in any other law as regards the method of recovering costs of which court-fee forms a part, the amount held payable under sub-section (1) shall be the first charge on the property of the person held liable to pay the costs of the proceeding.

61. (1) The Board shall transmit an award made under section 24, 54 or 55 to the Court :
Transmission of award to Court. Provided that before the award is so transmitted the balance of court-fees payable under the award shall be paid by the party ordered by the Board to pay the same.

(2) If the debtor fails to pay the balance of the amount of court-fees ordered to be paid by such debtor, the Board may transmit the award to the Court on the application made by any creditor if such creditor pays such amount of court-fees. Any amount so paid by the creditor shall be added by the Board to the amount payable by the debtor under the award.

COMMENTARY

Scope of the section :—This section lays down the further step to be taken by the Board after making an award either under S. 24 on an interim application for recording and certifying a private

settlement of a debt between the parties or under S. 54 after making full inquiries and scaling down debts under S. 52 on an application for adjustment of debts or under S. 54 on an application under S. 23 or under S. 55 after making full inquiries, scaling down under S. 52 and further scaling down as required by S. 55. That step is to send over the award to "the Court" which according to S. 2(4) (a) wherein S. 61 occurs, means "the District Court or the Court of the First Class Subordinate Judge to which an appeal lies against the award of the Board under S. 9." This section has been divided into two sub-sections, the first of which contains the general provision above-explained and has a proviso, and the second whereof is partly in the nature of a proviso to that proviso and contains an incidental provision also.

*Sub-section (1) :—*The general provision contained in this sub-section has been already sufficiently explained above.

*Proviso :—*That provision is controlled by the proviso which lays down a condition which must be fulfilled before the Board can transmit the award to the Court. That condition is that the party liable to pay court-fee under the award must have paid the balance thereof payable by him as determined under S. 60.

*Sub-section (2) :—*The provision in this sub-section is that if the party liable to pay the balance of court-fee is the debtor and he fails to pay it for any reason whatever, any of his creditors may make an application for transmitting the award to the Court and offer to pay the said balance and that on his doing so the Court may grant his application, accept the amount offered and transmit the award to the Court. The two intermediate steps are not specifically mentioned in the sub-section but they are necessarily implied.

The further incidental provision above-referred to is that in case the above contingency occurs the award is to be modified by adding the amount of the balance of court-fee so paid by the creditor to the amount payable by the debtor under the award to that creditor.

62. (1) The Court shall register any award transmitted by the Board—

Award to be registered.

(i) if within the period provided in this Act, no appeal is filed against the award under section 9, or

- (ii) if an appeal is filed under the said section and such appeal is dismissed, or
- (iii) if the award is modified by the Court, in such modified form, or
- (iv) if the award is transmitted to the Board for re-consideration of any points, after considering the decision of the Board on the said points and after making such modifications in the award as it thinks fit.

(2) From the date on which the award is registered under sub-section (1), it shall, in supersession of all transactions between the parties and in supersession of all previous decisions of a civil court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

COMMENTARY

Scope of the section :—The marginal note seems to convey the idea that this section contains a provision only as to the registration of the awards. But that is the purport of the first sub-section thereof only. Its second sub-section mentions the legal effect of registration.

Sub-section (1) :—The provision in this sub-section is that the Court to which any of the awards referred to in S. 61 is transmitted by the Board shall register it in the same form in which it was originally made, in two cases, namely :—

- (i) if within the period mentioned in this Act no appeal is filed against it under S. 9 ; and
- (ii) if an appeal is filed under the said section and such appeal is dismissed.

The first case would obviously require the Court to wait till the full period prescribed for making an appeal has expired and the second case would require it to wait till the appeal filed against the award is heard and its result is known. After that event too, it will have to see what the result is, for it is only if the appeal is dismissed that the case would fall under this part of the provision which relates

to the registration of an award in the same form in which it has been originally made and it cannot remain in the same form if the appeal is allowed wholly or partly.

For such a case there is the further provision in the same sub-section to the effect that the Court shall register the award in the modified form if it has modified it in appeal. This is case (iii) for which provision is made in this sub-section.

There is also a fourth case on the whole and the second one of an award being registered in a modified form. That is a case in which after the transmission of an award by the Board and after the consideration of the Board's decision on the points involved in the proceedings, the Court thinks it proper to retransmit the award to the Board for the reconsideration of its decision on certain points which may not be deemed by it to be satisfactory and the Board again transmits the award with its decision made after reconsideration. In such a case the Court must consider the fresh decision of the Board on such points and then register the award after making such modifications therein as it thinks fit.

The power of transmission of an award to the Board for re-considering its decision on any points assumed in this section is not conferred on the court by any specific section of this Act. There is of course S. 13 prescribing the same procedure for hearing appeals under this Act as is laid down in the *Civil Procedure Code, 1908* for hearing appeals from the decrees and orders of civil courts. That procedure is contained in Or. XLI in Sch. I to the said *Code* and in that Order there are Rules 23 and 25 empowering the Appellate Court to remand a case for re-trial or for trial on certain fresh issues but it is difficult to place the above case under any of the above rules because the Court would not be acting in this matter as a Court of Appeal. It seems to be similar to that contemplated by paragraph 14 of Sch. II to the *Civil Procedure Code, 1908* which has since been repealed by Sch. III to the *Indian Arbitration Act, 1940*.

Sub-section (2) :—This sub-section provides that after an award is registered as provided for in sub-section (1) it shall be so binding on the debtor and on his creditors and their successors in interest, *i.e. to say*, their heirs, executors, administrators, assigns or any other persons on whom their interests devolve, as to supersede the legal effect of all transactions entered into between them

theretofore and of all previous decisions of any civil courts with respect to the debts mentioned in the award. This means that since the date of its registration their rights and liabilities as against each other would be determinable only by a reference to it and not to any other document even if it be the decree of a civil court.

63. The award so registered shall be executable as a decree of the Court in which it is registered:

Recovery of amount due under an award.

Provided that an amount due under an award made under section 55 shall also be recoverable in the manner specified in sub-section (3) of the said section:

Provided further that nothing in this section shall affect the right of Government or a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

COMMENTARY

Scope of the section :—This section states what is the legal effect of the registration of an award by the Court under the preceding section. The provisoes to it make it clear that the said provision should not be deemed to affect the rights, if any, of certain creditors of the debtor to recover the amount declared due to them by the award by resorting to other remedies provided by any other law.

The legal effect above-referred to is that an award registered as above becomes capable of execution like a decree of the Court in which it is registered. It is not stated who has the power to execute it but it cannot be the Board because no provision in this Act confers on it the power to do so and because it can be inferred from the provision contained in S. 68(2) *infra* that the Court which registers it is expected to execute it as a decree passed by itself. Hence the Board becomes *functus officio* on transmitting an award and if a necessity arises, execution proceedings must be started in the Court which may have registered the award as if it were a decree passed by it.

Proviso (1) :—Although the main provision applies to all the three kinds of awards, this proviso leaves the bank passing bonds under S. 55 to the creditors of a debtor free to recover any amount due under an award in its favour made under that section as arrears of land revenue as provided in sub-section (3) thereof.

Proviso (2) :—Similarly this proviso leaves the Provincial Government or a local authority or a co-operative society to have recourse to any other mode of recovery to which it is entitled to have recourse under the provisions of any other law for the time being in force such as the *Bombay Land Revenue Code, 1879*, the *Bombay Borough Municipalities Act, 1925*, the *District Municipal Act, 1901* and the *Bombay Co-operative Societies Act, 1925*.

These two provisos affect only the mode of recovery not the amount due to any of the authorities mentioned in them. They will continue the same as may have been mentioned in the awards.

64. (1) Whenever from any cause the payment of one-half or more of the land revenue payable to the Provincial Government is suspended or remitted, the payment of the whole of the instalment due for that year and the full amount of the instalment due for each subsequent year under an award made under section 24 or 54 shall be postponed for one year.

Postponement of payment of instalment in case of remissions etc.

(2) Whenever from any cause the payment of any portion less than one-half of the land revenue payable to the Provincial Government is suspended or remitted one-half of the amount of the instalment for that year and the full amount of the instalment due for each subsequent year under an award made under section 24 or 54 shall be postponed for one year.

COMMENTARY

Scope of the section :—The provisions of this section relate to a question which may arise in the course of the execution of a registered award made under S. 24 or 54 read with SS. 61 to 63. The

question is that there may be a failure of crops wholly or partially in any particular year and the agriculturist-debtor may not be able to pay the instalment due in that year ; should the creditor to whom it is due be helped by the Court in recovering it by the ordinary process of law which would necessarily be applicable to the case in the absence of any specific provision in this Act to the contrary ? The Legislature having anticipated this has provided in this section that the answer to the above question will depend upon the severity of the distress which is to be measured by the way in which the Provincial Government would act in the matter of recovery of that year's assessment due from the debtor and lays down two rules by its two sub-sections for the guidance of the Court in granting relief to the debtor in such cases. The rules are :—(1) if the Provincial Government has suspended or remitted the payment of one-half or more of the land revenue payable to it in any year the creditor to whom an instalment is due shall not be entitled to recover in that year the whole of the instalment for that year but shall be entitled to recover it in the next year and that he shall recover the amount of each subsequent instalment one year later than it becomes due ; and (2) if such Government has suspended or remitted less than one-half of that year's land revenue the creditors of the debtors would be entitled to recover in that year only one-half of the instalment payable in that year, the remaining half in the next year and each of the subsequent ones one year later than it becomes due.

Illustration :—Thus suppose that in the year 1942 there is a draught and the Provincial Government suspends or remits half or two-thirds of the land revenue payable by the assesseees in a particular village in which one of the debtors against whom a Board has passed an award under S. 24 or 54 resides and the competent Court has registered it. The result of such suspension or remission on the part of Government would be that all the creditors of the debtors including even a local authority or co-operative society would not be entitled to recover the instalments due to them in that year but would be entitled to recover them in the year 1943 and the amount of each subsequent instalment one year later than the due dates, *i.e. to say*, the instalments of 1943 in 1944, those of 1944 in 1945 and so on. The same would be the result even if the Government has granted suspension or remission in the case of individual debtors. (2) If in the above case the Government suspends or re-

mits less than one-half of the land revenue recoverable by it in the year 1942 the creditors of the debtors in that village would be entitled to recover only one-half of the instalment due in that year and the other half in the subsequent year *i.e.* in 1943 and each of the remaining instalments, which falls due, one year later as under the preceding sub-section. In this case also there is no distinction between suspension or remission being granted to all the assessees in a village or to individual assessees.

65. Notwithstanding any law or contract but subject to the provisions of section 66 no alienation made by a debtor, who is a party to an award made under this Act of any property included in such award shall be valid except with the previous sanction of the Provincial Government.

No alienation by the debtor to be binding.

COMMENTARY

Scope of the section :—The provision in this section has for its object the protection of the interests of the creditors of a debtor against whom an award is made under S. 24 or S. 54 or S. 55. It renders invalid, except when made with the previous sanction of the Provincial Government, any alienation by such a debtor of any property of his which has been included in the award inspite of any provisions of any other law to the contrary and inspite of the fact that a contract for the alienation, which would be otherwise held valid by a civil court, may have been made between the contracting parties.

The fact that the alienation is declared invalid and not void *ab initio* implies that the Court must be moved by any person interested in the award to declare it as such.

The saving-clause in this section :—What is prohibited by this section is only an alienation by a debtor who is a party to an award under this Act. It leaves unaffected the power of the Board or the Court to order the sale of a part of the debtor's property for the liquidation of his debt or a part of it, if it considers it necessary in his interest to do so.

66. Notwithstanding anything contained in this Act, if the Board to which an application for adjustment of debts lies under section 17 in respect of the debts of any debtor, or the Court, before which an appeal lies against the award is at any time satisfied that it is in the interest of a debtor that any part of his property should be sold in liquidation of his debt or part thereof, such Board or Court may order the sale of such part of the property for such purpose. The property ordered to be sold under this section shall be sold by the Collector in the manner prescribed :

Board or Court may order sale of debtor's property in liquidation of his debt.

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (3) of section 68.

COMMENTARY

Scope of the section :—This section invests the Board and the Court, to which an appeal lies against an award made by the Board, with a very wide discretionary power to order the sale by the Collector in the prescribed manner of any part of the property of a debtor for the liquidation of his debt or any part thereof at any stage of a proceeding under S. 17 in the case of the Board and of an appeal in that of the Court. The condition precedent for the exercise of that power is that the Board or the Court must be satisfied that it is in the interest of the debtor to do so. If it is satisfied as to that fact no other provision in this Act can come in the way of its exercising it. There is only one limitation to its exercise imposed by the proviso to this section but it affects only the quantum of the property that can be put to sale for such a purpose and that is that it should not in any case be in excess of that which is liable to be sold under S. 68(3) *infra*.

Previous history of this section :—It appears from the *Legislative Assembly Debates, 1939 Vol. VII p. 1865* that the clause in the Bill before the Assembly which was clause 62 (originally clause 60), had been so drafted as to confer on the Board and the Court

power to order the sale of the whole of the property of a debtor at any stage of a proceeding or appeal as the case may be. But the Assembly disapproved of the proposal to invest them with such a power for in that case the debtor was likely to be deprived of all his property and so the clause was so amended as to empower them to order the sale of any part of the property of a debtor if it was found to be in the interest of the debtor to do so.

67. No pleader, vakil or mukhtyar and no advocate or attorney of a High Court, shall be entitled to appear on behalf of any party in any proceeding before the Board under this Act :

Pleaders etc. excluded from appearance (except when permitted).

Provided that if the Board after examining the parties to any proceeding before it is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow such party the assistance of any pleader, vakil or mukhtyar or advocate or attorney of a High Court the Board may allow such party at his own cost to be represented by a pleader, vakil or mukhtyar or advocate or attorney of a High Court ;

Provided further that a woman exempted from personal appearance in a court under section 132, *Code of Civil Procedure, 1908*, shall be entitled to appear in any proceeding before the Board through an agent duly appointed for the purpose.

V of 1908.

COMMENTARY

Scope of the section :—This is the last section of this the longest chapter of this Act. It enacts that no pleader, vakil or mukhtyar and no advocate or attorney of the High Court shall, as of right, appear on behalf of any party in any proceeding before the Board under this Act. The provision having been so worded there is nothing in it to prevent a party from engaging a lawyer for assisting him in getting the necessary materials for and in pre-

paring an application to be filed under S. 17 and to guide him at the subsequent stages although the pleader, vakil and others cannot claim as of right to appear, act or plead for the party. For that purpose there is proviso 1 to the section which provides that the Board may allow a party to be represented by a pleader, vakil or mukhtyar or advocate or attorney of the High Court in any proceeding before it if after an examination of the parties to that proceeding it comes to the conclusion that the party is not sufficiently competent to represent his own case and that it is necessary therefore in the interest of justice to allow him the assistance of a pleader, vakil or mukhtyar, or an advocate or attorney of a High Court. There is also a second proviso to the effect that a woman who is exempted from personal appearance in a civil court under S. 132 of the *Civil Procedure Code, 1908*, shall, as of right, be entitled to appear in any proceeding before the Board by an agent duly appointed for that purpose. Such an agent may or may not be a pleader, vakil or mukhtyar or an advocate or attorney of a High Court, for there is no restriction in this proviso as to the agent being any person other than one belonging to any of the above classes. But if he happens to be one his position in the proceeding would be that of a duly appointed agent and according to this proviso at least he would have to produce a power of attorney.

S. 132 of the *C. P. Code* exempts from personal appearance in a civil court a woman who according to the customs and manners of the country *i.e.* of the locality in which she resides, ought not to be compelled to appear in public.

It appears that the nature of the inquiry to be made under this Act is such and the majority of the agriculturist-debtors for whose benefit this special legislation has been passed is so illiterate that in 9 cases out of 10 the Board would find it necessary to grant permission to a party under proviso 1 to this section but the condition that the party in need of professional assistance must bear the costs of engaging a professional lawyer, even though he may succeed in establishing the truth of his contentions wholly or partially, would, it is apprehended, prevent many such debtors from applying for permission to engage such men.

It is significant that the section denies the right of appearance to pleaders and others before the Board only. It cannot be construed as denying to them the right to appear before any Court even

when it does any of the acts which it is authorised to do under this Act *e.g.* those under SS. 9, 29, 58, 62, 63, 66, and others.

Previous history of this section :—The corresponding clause in the Bill as placed before the Legislative Assembly did not contain the provisoes. Several members prominent amongst whom was the redoubtable Mr. Kunte from Alibag, protested against the wholesale exclusion of the professional lawyer from proceedings before the Board on the ground that many of the provisions of the Act were such that illiterate persons could not be expected to represent their own cases personally and to discharge satisfactorily all the duties that the Act lay on them. The Assembly saw the reasonableness of the protest and introduced the two provisoes.

Analogous law :—The main provision in this section is almost word to word the same as that in S. 68 of the *D. A. R. Act*, the only change being that the words “proceeding before the Board under this Act” have been substituted for the words “in any case before a conciliator or a village munsiff” which change was absolutely necessary.

The first proviso to this section is however quite different from that to S. 68 of the *D. A. R. Act*. The latter permitted the rigour of the main provision to be relaxed in suitable cases before a conciliator or a village-munsiff so far as giving assistance to the needy party was concerned but required even then that the person whose assistance could be allowed to be taken must be a relative, servant or dependant of the party, who should not however be or ever have been a pleader, vakil or mukhtyar or an advocate or attorney of a High Court. For that purpose any reasonable cause shown to the satisfaction of the conciliator or the village munsiff was sufficient and the question of costs did not of course arise when a relation, servant or dependant was allowed to assist the party. Here on the other hand, a party can be allowed to take the assistance of a member of any of the professions above-mentioned but only if the Board is of opinion that the party is not sufficiently competent to represent its own case and then too on condition that it is prepared to bear its own costs in connection with the engagement of such a man.

There is no proviso to the section of the *D. A. R. Act* corresponding to proviso 2 to our section for the benefit of women exempt-

ed from appearance in civil courts under S. 132 of the *Civil Procedure Code*.

Lastly, there is a second paragraph in the proviso to the section in the *D. A. R. Act* which requires that the relation or other person must be furnished with a power of attorney defining his powers. Under the second proviso to this section one who is not a professional man would require such a power from the woman who authorises him to appear on her behalf but a professional man would not, although he would require the usual vakalatnama signed by the woman as by Rule 35 the rules in the *Civil Procedure Code* are made applicable to proceedings under this Act in all matters not specifically provided for in any other rule.

There is no provision in this Act corresponding to S. 69 of the *D. A. R. Act* according to which a Subordinate Judge trying a suit or proceeding to which an agriculturist without sufficient means to engage a professional lawyer is a party is authorised to direct the Government pleader or any other fit person to appear on behalf of such agriculturist with his consent. This section is in force only in the four districts of Poona, Satara, Sholapur and Ahmednagar and there the practice in such cases, so far as this author is aware, is to remunerate the pleader so directed, with fee at the prescribed rate, which the creditor in such a case is called upon to deposit and authorised to add to the decretal amount.

CHAPTER IV

INSOLVENCY PROCEEDINGS.

68. (1) If at any stage of the proceedings under Chapter III the Board is satisfied that the paying capacity of the debtor is inadequate to pay the total amount of his debts as scaled down under section 52, or if for any reason the Board finds that the debts due from the debtor cannot be liquidated by annual instalments not exceeding twenty-five in number, the Board shall make an order adjudicating the debtor to be an insolvent.

Board to declare debtor insolvent in certain circumstances.

(2) If the Court to which an award is transmitted for execution finds that the two consecutive or any three instalments cannot be recovered by the sale of the movable property of the debtor, the Court may pass an order adjudicating the debtor to be an insolvent.

(3) After the debtor has been adjudicated an insolvent either by the Board or the Court, the Board or the Court, as the case may be, shall direct that one-half of the property of the debtor liable to attachment and sale under section 60 of the *Code of Civil Procedure*, 1908, shall be immediately sold free of all incumbrances in liquidation of all the debts outstanding against such debtor :

V of 1908.

Provided that if after one-half of the assets of the debtor are sold the property remaining with the debtor exceeds 6 acres of irrigated land or 18 acres of dry land or any land assessed at Rs. 30 whichever is greater then

all the excess property over and above the aforesaid land shall also be sold free of all incumbrances.

COMMENTARY

Heading of this Chapter :—This chapter consisting of only 5 sections relates to a further step in the special and bold remedy provided by this Act for putting an end as early as possible to agricultural indebtedness which has been the cause of much anxiety to Government for a long time past. The Royal Commission on Agriculture presided over by Lord Linlithgow devoted in its Report published in 1928 a special chapter to an investigation of the causes of that wide-spread social malady and to suggestions as to the possible remedies for eradicating it as far as possible. One of the remedies suggested by it was the passing of a simple piece of legislation adapted to the special conditions of the rural life of the country. The same subject was for consideration before the Central Banking Inquiry Committee also along with several others. That Committee appointed a Provincial Banking Inquiry Committee for each province of India in order that the local conditions of each province may be thoroughly brought to light and the special remedies suitable to each province may be adopted. The Committee appointed for the Province of Bombay too had the question for consideration before it and it recommended the adoption of the suggestion of the Royal Commission on Agriculture to pass a simple law of rural insolvency in addition to several other remedies for the eradication of agricultural indebtedness¹. For some 8 years the suggestion remained unattended to but when the popular Congress Government came into power it took courage in both hands and drafted Bill No. XIII of 1939 in order to relieve the agriculturists of their chronic indebtedness. This chapter on *Rural Insolvency* formed part of it as originally drafted.

Previous law on this subject :—It seems that there is a chapter in the *Dekkhan Agriculturist Relief Act, 1879* headed *Of Insolvency*, which bears the same number therein as this chapter bears in this. None of the sections in that chapter was however ever made applicable to any other district of this Province than those four, namely Poona, Satara, Sholapur and Ahmednagar, for the benefit of the

1. Report of the B. P. B. I. Committee, para. 244 at pp. 187-83.

agriculturists residing wherein only that Act had been originally passed. Even in those districts the provisions of that chapter have remained a dead letter because in practice those provisions were not found to be conducive to any appreciable benefit to the agriculturists and because they depended for their operation on the willingness of those persons themselves. The provisions of this chapter were therefore so modelled as not to depend for their operation on the willingness or unwillingness of the agricultural debtors but upon certain circumstances that may be brought to light during the course of the proceedings upto the stage of the making of an award or of those subsequent to it upto the time of the total liquidation of the debts of a debtor ordered to be paid in certain instalments. There are also some other salutary provisions in this chapter which will be explained at their proper places. It can therefore be confidently hoped that the operation of the provisions of this chapter will be productive of the beneficial results expected of them in the areas to which they may be extended and in which they may be put into force.

Scope of this section :—This section not only lays down the circumstances the existence whereof in the case of a debtor should be considered by the Board or the Court sufficient for declaring him an insolvent, as the marginal note seems to indicate but also what further step the Board or the Court should take after adjudicating the debtor an insolvent and also places a limit on the power to take that step in the interest of the debtor and his family and dependants. It does the first by sub-sections (1) and (2) and the second and third by sub-section (3) and the proviso thereto.

Sub-section (1) :—This is the sub-section which directs the Board conducting any of the proceedings under Chapter III, comprising SS. 17 to 67, to make an order adjudicating the debtor therein to be an insolvent, if any of the two conditions mentioned below is found to have been fulfilled in his case. Those conditions are :—

(1) The paying capacity of the debtor as ascertained under the provisions of S. 51 *supra* must be inadequate to pay the total amount of his debts as scaled down under S. 52 *supra*.

Illustration :—A very clear case of the fulfilment of this condition would be that in which the total amount of debts payable by a debtor as determined under the provisions of SS. 38 to 46 and

S. 52 exceeds considerably his paying capacity as determined under the provisions of S. 51 read with SS. 48 to 50.

(2) The debts due from the debtor must not be capable of being liquidated in annual instalments not exceeding 25 in number.

It appears that in order to determine whether the second condition is fulfilled or not, the Board must take into consideration the total debts including those mentioned in S. 3 payable by the debtor on the one hand and his net annual income as determinable under the second proviso to clause (h) in sub-section (2) of S. 54 read together with the Explanation appended thereto whereas in order to see whether the first condition is or is not fulfilled it would have to take into consideration only the debts which may have been scaled down under S. 52 in which those mentioned in S. 3 are not included.

If the Board is satisfied that any of the above conditions is fulfilled it is bound to make an order of adjudication under this sub-section.

*Sub-section (2) :—*It has been explained above² that the Board would become *functus officio* after transmitting an award to the Court for registration and that the Court would from that time forward be seized of the matter. This sub-section therefore further provides that if any of the two conditions laid down therein is found to have been fulfilled in the case of a particular debtor whose award may have been transmitted to the Court for execution the Court too may pass an order adjudicating the debtor to be an insolvent. It is worthy of note that whereas the phrase used in sub-section (1) with reference to the power of the Board is "shall make an order etc." that used in this sub-section with reference to the power of the Court is "may pass an order etc." In the first case the provision is mandatory, in the latter, recommendatory. There being no room for any doubt in the language of the two provisions, no reference to decided cases as to the import of the word "may" as used here, or to the rules deduced therefrom is necessary. However if any one feels the necessity of making it, he can refer to those given in the Commentary on S. 2 under the heading *Construction of words not specifically defined in this section and not covered by sub-section (16)* and the sub-heading *Non-technical*.³

2. See the Commentary on S. 63 at p. 217 *supra*.

3. See pp. 43-46 *supra*.

Sub-section (3) :—The next step after making an adjudication order to be taken by the Board or the Court, as the case may be, is to direct that one-half of the property of the debtor, both movable and immovable, which is liable to attachment and sale under S. 60 of the *Civil Procedure Code, 1908* shall be sold free of all incumbrances for the satisfaction of all the debts outstanding against him.

What property of a judgment-debtor is exempted from attachment and sale if he happens to be an agriculturist has been explained in the Commentary in S. 50(1) under the heading *Scope of the section*.⁴ The rest of his property of both kinds must be deemed attachable and saleable in execution of a decree against him under S. 60 of the *Code*. Under this sub-section the Board or the Court has to direct the sale, free of all incumbrances, of one-half of it only and the balance of the sale-proceeds thereof left after deducting the costs of sale would be available for distribution amongst all the creditors of the debtor including Government and the others mentioned in S. 3 of this Act, due regard being had to the order of priority laid down in S. 54(2) (g) as provided in S. 70 *infra*.

Proviso :—This sub-section has a proviso which relates to the quantum of the property liable to be sold. It provides that if after one-half of the property of the debtor is sold, the debtor is found to remain in possession of more than 6 acres of irrigated land or more than 18 acres of dry land *i.e.* land depending for the crops to grow on rain water only, or more than any kind of land assessed at Rs. 30, whichever is the greater of the three quantities, then his property of all kinds in excess of that quantity, *i.e. to say*, all kinds of land in excess of the above quantity, all houses if any, other than that which may be exempt from attachment and sale, all his movable property and all his outstandings if any, are to be further directed to be sold, free of all incumbrances.

This proviso seems to have been based on S. 2(2) (i) of the *Bombay Small Holders' Relief Act, 1938*, which had been passed for granting temporary relief till the passing of a measure of a more permanent nature and whose operation is being extended from year to year, the last extension for one year ending on 31st March 1942 having been made by *Bombay Act VIII of 1941*, owing to the present Provincial Government having decided to put into operation

4. See p. 185 *supra*.

the substantial portion of the present Act as an experimental measure in specific areas only and amended S. 84 thereof suitably by S. 4 of *Bombay Act VI of 1941*.

69. The order of adjudication made under section 68 whether by the Board or the Court in appeal shall be deemed to be an order made by a competent court in the exercise of its powers under section 27 of the *Provincial Insolvency Act, 1920*, and thereupon the provisions of the *Provincial Insolvency Act, 1920*, as modified by the provisions of this Chapter shall, so far as may be, apply as if the debtor was an insolvent in respect of whom an order of adjudication was made under section 27 of that Act.

COMMENTARY

Faulty wording of this section :—It must be noted that this section refers to the order of adjudication made under S. 68 of this Act as "made by the Board or the Court in appeal". As to that so far as it says that one such may have been made "by the Board" it is all right but so far as it says that it may have been made by "the Court in appeal" it is not correct for sub-section (2) of S. 68 empowers "the Court to which an award is transmitted for execution" to make an order of adjudication in the course of an execution proceeding, not in that of an appeal against an award. This is clearly a case of careless draftsmanship not noticed by anybody concerned upto the last stage and raises a conundrum whether the Legislature should be deemed to have intended to refer in S. 68(2) to the Court to which an appeal lies against an award or to have intended to refer in this section to the Court executing the award. I believe that the intention of the Legislature must be the latter and not the former because the words "the Court in appeal" have been used merely to make clear what had already been made clear by referring to the section under which the order could have been passed and when that section clearly says that a Court to which an award has been transmitted for execution may make an order of adjudication, it must be held that the additional description contained in the words "whether

made by the Board or the Court in appeal" is mistaken and that the Legislature must have intended to state "the Court to which an award is transmitted for execution". This view is strengthened by the fact that the conditions to be taken into consideration by the Court under S. 68(2) are such that only a Court executing an award-decree can determine from the materials before it whether any of them is fulfilled or not.

This opinion has been arrived at in view of the following principles of interpretation established by judicial decisions in cases in which the Courts concerned were confronted with conflicts between two sections and felt themselves compelled to bring about harmony between them.

Rules as to bringing about harmony between any two conflicting sections of an Act :—(1) If the adoption of the plain and ordinary meaning leads to a manifest anomaly and results in defeating the object of the Legislature it is open to the Court so to interpret the words of a statute as to enable it to carry out that object.¹

(2) Any construction of an enactment to be adopted by a Court must be reasonable and based on well-recognised judicial principles.²

(3) It is more reasonable to assume that the Legislature expressed its intention in an unguarded manner than that a meaning should be given to its expression which it could not have intended.³

(4) Too much importance need not be given to any particular passage or clause in a section. Clear provisions of a general character in other sections must be considered as well.⁴

(5) Different parts of a statute must be construed together in the case of an ambiguity and the true meaning of a passage is that which best harmonises as far as possible with the subject and every other part of a statute.⁵

1. *Madho Prasad v. Makhan Lal* (A. I. R. 1939 All. 328, 331).

2. *Sorabji v. B. N. Ry. Co. Ltd.* (A. I. R. 1936 Pat. 393).

3. *Ram Chunder v. Gowri Nath* (A. I. R. 1926 Cal. 927).

4. *Rangiah v. Appaji* (A. I. R. 1927 Mad. 163); *Aghore Chandra v. Rajanandini Debi* (A. I. R. 1933 Cal. 283) wherein the English cases of *River Commissioners v. Adamson* (1877) 2 A. C. 743 and *Eastman Photographic Materials Co., Ltd. v. Comptroller of Patents, Designs and Trade-marks* (1898) A. C. 571, 576 are referred to; *Someshwar v. Manilal* (34 Bom. L. R. 206).

5. *Hasan Mohammad v. Co-operative Credit Society of Jurian* (A. I. R. 1937 Lah. 912).

(6) In order to avoid a conflict between the provisions of any two sections of an Act the Court must read them together and interpret and where necessary modify the language of the one by that of the other and thus try to arrive at a reasonable practical construction of the section.⁶

(7) The intention of the Legislature must be presumed to be that which is in accord with reason, convenience, justice and legal principles.⁷

(8) If the main object and intention of the Legislature are clear an enactment should not be reduced to a nullity by the unskilfulness of the draftsman or his ignorance of the law except in case of necessity or absolute intractability of the language used.⁸

(9) Although as a rule the Court while proceeding to interpret the provisions of a statute should not go so far as to encroach upon the province of the Legislature, the process of judicial interpretation can be carried dangerously near that of legislative enactment in a case where there is no other alternative but to admit that the Act is inconsistent.⁹

If the above interpretation based on these principles is correct, the Court hearing an appeal, whether it is that of the District Judge or the F. C. Subordinate Judge, cannot be deemed to have even impliedly the power to make an order under S. 68(2) during the course of the hearing of the appeal but the latter can be deemed to have it while conducting execution proceedings.

Scope of the section :—Although this section has not been subdivided the sentence constituting it consists of two parts, namely :— (1) which gives to the order of adjudication made by the Board up to the stage of making an award or by the Court in execution the same legal effect as a similar order passed by a competent court under S. 27 of the *Provincial Insolvency Act, 1920* and (2) that which makes the provisions of the said Act, subject to those of this chapter, applicable to the case of an agricultural debtor declared an insolvent under S. 68 of the Act, in so far as the same may be applicable in view of the circumstances of the case. By virtue of

6. *Nagaratnam v. Seshayya* (A. I. R. 1939 Mad. 361, 365).

7. *Gopi Nath v. Moti Chiuwa* (A. I. R. 1934 Nag. 67).

8. *Ram Bharose v. Ganga Singh* (A. I. R. 1931 All. 727, 732) wherein the view of *Maxwell on the Interpretation of Statutes, 7th edition, p. 198* is relied on; *Maung Ba Thaw v. M. S. Chettyar* (A. I. R. 1935 Rang. 460, 463).

9. *Jagodamba Prasad v. Mata Prasad* (A. I. R. 1935 Oudh 427).

the second provision the Board or the Court would be bound to specify in the order of adjudication the period within which the debtor should apply for his discharge and would have the power to extend that period if sufficient cause is shown for doing so, as provided in S. 27 of the said Act.

While applying the other provisions of that Act to the case of a debtor declared to be an insolvent under S. 68 of this Act, it must be borne in mind that the adjudication in this case is made *suo moto* by the Board or the Court if certain conditions are found to have been fulfilled and not on an application made therefor either by a debtor or by a creditor and that the stages at which the Board or Court could make such an order are according to the provisions of S. 68(1) and (2) such that the materials for a distribution of the assets of the debtor between his creditors must be at hand before the Board or the Court. Practically therefore as soon as the property ordered to be sold under S. 68(3) read with the proviso is sold by the Collector and he has intimated what the sale-proceeds thereof are the Board or the Court has to proceed to distribute the debtor's assets as provided in S. 70 to which we now pass on.

70. The proceeds realised by the sale of the property of the insolvent under section 68 shall be distributed in the order of priority specified in the provisoes to clause (g) of sub-section (2) of section 54.

Distribution of assets of the insolvent.

COMMENTARY

Scope of the section :—This is one of the sections in this chapter modifying the provisions of the *Provincial Insolvency Act, 1920* so far as the order, in which the assets of the debtor declared an insolvent under S. 68 of this Act are to be distributed amongst his creditors including those mentioned in S. 3 thereof, is concerned. The modification is that the same priority is to be observed in this case as is laid down in the two provisoes to S. 54(2) (g). They have been sufficiently explained in the Commentary on that section.¹ For comparison and contrast, if necessary see SS. 61 to 67A on *Distribution of Property* in Part III of the *Provincial Insolvency Act, 1920*.

1. See pp. 196-97 and 200 *supra*.

71. No application or proceeding in regard to the insolvency of the debtor shall lie in or shall be dealt with by any other Court.

Bar to application in insolvency in other Courts.

COMMENTARY

Scope of the section :—This section prohibits the entertainment by any other court in the Province of an application for adjudicating the same debtor an insolvent as may have been adjudicated an insolvent either by a Board or a Court under the provisions of S. 68(1) or S. 68(2). It also goes further and prohibits any other court in the Province from dealing with an application for the same purpose which may have been already filed before such adjudication. By virtue of the latter prohibition any court in which such an application is pending would cease to have jurisdiction to proceed further with it from the date of an order under S. 68(1) or (2) of this Act. The consequence thereof would be that such a court would have to dismiss such an application. It cannot be deemed to fall under S. 37 of this Act because it would neither be a "suit" nor an "application for execution" nor a "proceeding arising out of such suit or application."

In case of any doubt as to this effect on the jurisdiction of the courts invested with jurisdiction under the *Provincial Insolvency Act, 1920*, see the rules of interpretation given under the heading *Restraint on jurisdiction* in the Commentary on S. 12, and under the heading *Special tribunals and the civil courts* and *Special Remedy provided in this Act* in the Commentary on S. 17.¹

The provisions of the *Provincial Insolvency Act, 1920*, directly or indirectly affected by this section are those contained in SS. 3 to 5 constituting Part I of that Act, SS. 6 to 44 constituting Part II thereof, SS. 45 to 68 constituting Part III thereof and S. 74 constituting Part V thereof.

72. No appeal shall lie from any order passed under this Chapter except on the ground that the insolvent has failed to disclose all the material facts relating to his assets and liabilities.

Appeals barred.

1. See pp. 82-83, 89-91 and 91 *supra*, respectively.

COMMENTARY

Scope of the section :—The provisions of the *Provincial Insolvency Act, 1920* having been made applicable to insolvency proceedings under this chapter, so far as they may be applicable, those of S. 75 constituting Part VI of that Act which provides for appeals from several orders made in the course of insolvency proceedings would be held applicable to them. The Legislature while enacting the provisions of this chapter did not however intend that the orders which a Board or a Court would pass under this chapter should be appealable to such a large extent, for in that case the proceedings would be lengthened and the object in providing this simple remedy would be defeated. It has accordingly distinctly provided in this section that except on one ground no appeal shall lie from an order passed under this chapter and that ground is that the insolvent must have failed to disclose all the material facts relating to his assets and liabilities.

CHAPTER V

MISCELLANEOUS

73. Except as otherwise provided by this Act and notwithstanding anything contained in any other law no civil court shall entertain or proceed with any suit or proceeding in respect of—

Bar of civil suits
or proceedings.

- (i) any matter pending before the Board or the Court under this Act, or
- (ii) the validity of any procedure or the legality of any award, order or decision of the Board or of the Court, or
- (iii) the recovery of any debt made payable under the award.

COMMENTARY

Heading of this chapter :—This, the fifth, is the last chapter of this Act containing 14 sections numbered 73 to 86. The heading given to it is *Miscellaneous*, which is a non-technical word derived, according to *Webster's Dictionary*, from the Latin *miscellaneous* 'mixed', *miscellaneous* fr. *miscellus* 'mixed', fr. *miscere* (which is very akin to the Sanskrit *miśra*), and meaning (1) "mixed; mingled; consisting of several diverse things; promiscuous; heterogeneous, as a *miscellaneous collection*" e.g., "A *miscellaneous* rabble." (*Milton*); (2) having various qualities; dealing with or interested in, diverse topics or subjects, as a "*miscellaneous writer*". It will appear on a superficial observation of the marginal notes to the sections in this chapter that the above heading has been given in order to convey the idea that the provisions of this chapter from its one end to the other relate to, not any particular topic like those of the preceding three chapters, but to diverse topics unconnected logically with

one another, such as limitation, granting a certificate to a creditor, prohibition of alienation of standing crops by a debtor till the debts mentioned in an award are paid up etc.

Scope of the section :—This section has been inserted (1) in order to prevent suits and proceedings being started in the ordinary civil courts with respect to (i) any matter already pending before the Board or the Court under this Act, or (ii) the validity of any procedure followed by either of them or the legality of any award, order or decision of any of them or (iii) the recovery of any debt which may have been made payable under an award, *i.e. to say*, any debt for the payment whereof provision may have been made in an award, and (2) in order to prohibit such courts from proceeding with any such suit or proceeding. The prohibition as regards both is quite absolute because it is to operate “notwithstanding anything contained in any other law”. However if there is an express contrary provision in any other part of this Act, then it cannot operate because of the initial words “Except as otherwise provided by this Act”. The contrary provisions in this Act referred to here appear to be those contained in SS. 9 to 15.

A provision of this nature is absolutely necessary in a special piece of legislation because otherwise the special tribunals invested with powers under it might be frequently and vexatiously hampered by suits and proceedings started before the ordinary civil courts, there would be no finality to the orders passed by them and the very object of the Legislature in making such legislation would be defeated.

As for the meaning to be assigned to the expression “suit or proceeding” see the reported decisions with reference to such an expression given in the Commentary on S. 2 under the main heading *Construction of words not specifically defined and not covered by sub-section (16)* and the sub-heading *Non-technical*.¹

74. Save as expressly provided in this Act the provisions of the *Indian Limitation Act, 1908* shall apply to all claims in respect of debts in the proceedings under this Act as if such proceedings were proceedings in a suit in a civil court.

Application of
Limitation Act.

IX of 1908.

1. See pp. 43-44 and 45 *supra*.

COMMENTARY

Scope of this section :—This section extends the provisions of the *Indian Limitation Act, 1908* to all the claims that may be brought forward in connection with the debts which may be the subject-matter of proceedings under this Act which for this purpose are to be treated as civil court proceedings although tribunals of a special nature are set up for conducting them but it should be noted that this extension is to be understood to have been made “Save as expressly provided in this Act”.

Effect of this extension :—The effect of this extension of the provisions of the *Indian Limitation Act, 1908*, to every claim in respect of a debt in a proceeding under this Act, is that the Board will have to examine each claim with a view to see whether it is or is not in time according to the particular article in the first Schedule to the said Act applicable to it, computed with due regard to the provisions contained in Part III (SS. 12 to 25) of that Act and that the claimant would have to be given the benefit of such of the provisions contained in Part II thereof (SS. 3 to 11) as may be applicable to his claim.

75. In computing the period of limitation for institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Board or in an appeal by the Court, the period during which the proceedings were pending before the Board or Court or the Collector in respect of such debt shall be excluded.

Period of proceeding before Board or Court to be excluded.

COMMENTARY

Scope of the section :—The provision in this section is intended for the benefit of any creditor who is required to institute a suit or a proceeding in an ordinary civil court after it has been finally decided that his debtor is not a debtor under or is not entitled to the benefit of this Act. It has reference to the provisions of S. 14 of the *Limitation Act*, which permits the exclusion of any period spent in prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against

the same defendant or party, which from defect of jurisdiction or other cause of a like nature, the Court was unable to entertain. It clears up a doubt as to whether those provisions would or would not be applicable when a creditor was required to allow the fixed period to pass away by his being engaged in resisting the contention of his debtor that he was a debtor under this Act either (1) before a competent Board in the course of an application under S. 17(1) made by the debtor or (2) before the Court to which an appeal lay against an adverse decision of the Board under S. 9, in the course of an appeal under that section or (3) before the Collector in the course of any proceeding under this Act, by providing in express terms that the period so spent shall be excluded while computing the period of limitation for the suit or proceeding that the creditor may institute subsequently in an ordinary civil court.

76. (1) If any creditor claims that for advancing the amount of any debt of a debtor he had borrowed the whole or part of the amount of such debt from another person, the Board shall grant a certificate in the form prescribed to such creditor. Such certificate shall specify the name of such creditor, the amount claimed as due by him from the debtor, the amount awarded and the rate of interest allowed thereon by the Board and the name of the person from whom the amount of such debt was claimed to have been borrowed.

(2) A certificate granted under this section may be produced in any proceeding and the Court before which such proceeding is pending may take it into consideration in awarding the claim for interest and instalments, if any, between such creditor and such person.

COMMENTARY

Scope of this section :—The provisions of this section require the Board to grant a certificate in a prescribed form to a creditor

Certificate to the creditor who borrowed sums from another for lending them to debtor.

whose debt it may have adjusted and ordered to be paid in particular instalments according to the provisions of Chapter III of this Act and who may have alleged that he had advanced the principal of that debt on borrowing the amount thereof from another person at a particular rate of interest and agreed to repay it at a particular time or in a particular manner, and authorise the Court, before which such a certificate may be produced, to take it into consideration while passing a decree against the creditor holding it, so far as it relates to interest and instalments. Each of these two provisions is embodied in a separate sub-section of this section. For the relevant Rule and the Form of the certificate prescribed by the Provincial Government see the appropriate Appendix.

Sub-section (2) :—This sub-section lays down what use can be made of the certificate granted under the preceding sub-section. According to it it is not compulsory for the civil court before which the certificate is produced to take it into consideration but equity demands that it should. It should be noted however that even after it takes the certificate into consideration, the only concessions that it can give to the holder thereof is by way of reduction of the rate of interest and a facility to repay the amount found payable in easier instalments than in ordinary cases.

77. (1) No debtor who is a party to an award under this Act and who is indebted to a resource society or any person authorised to advance loans under section 78 shall alienate or encumber the standing crops or the produce of his land without the previous permission of the society or the person, as the case may be. Any such alienation made without such permission shall be void.

Debtor not to alienate the standing crops, etc.

(2) Any debtor who alienates or incumbers the standing crop or the produce of his land in contravention of sub-section (1) or a person who knowingly permits such alienation or encumbrance to be created in his favour, shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 500.

COMMENTARY

Scope of the section :—This section prohibits and declares to be void any alienation made of or any encumbrance created on the standing crops or the produce of his land by a debtor who is a party to an award under this Act in case he happens to be indebted to a resource society or to a person authorised to advance loans under the next section, unless the same has been done with the permission of the society or the person concerned and further backs up that prohibitive provision by a penal clause making it an offence both to make such an alienation or create such an encumbrance and to permit such an alienation to be made or such encumbrance to be created in one's favour. The sub-section of this section is devoted to the prohibition and declaration, and the second to the sanction above-mentioned.

Sub-section (1) :—It should be noted that there is a prohibition in this sub-section as to making an alienation of or creating an encumbrance on standing crops or the produce of the land, after the crops are harvested, only if the debtor happens to have amongst his creditors a resource society or a person who has advanced a loan under a permission granted in exercise of the power conferred by S. 78. It is not therefore an absolute prohibition operating against all the debtors against whom awards may be made or in the interest of all the classes of creditors in whose favour awards may be made. Moreover it is not absolute in this sense also that there is no prohibition under all circumstances whatever but against doing the acts without the permission of the creditors named. However if the limited conditions laid down therein are fulfilled in any particular case, then it cannot escape from the consequence laid down, namely that the alienation or encumbrance so made shall be void and of no effect even though it may be in favour of a *bona fide* transferee for value without notice.

Sub-section (2) :—This sub-section further ensures the observance of the above conditions by laying down a sanction which prescribes a maximum punishment of imprisonment for six months or of a fine of Rs. 500, for the transferor in all cases of transgression, and for the transferee if he had knowledge of the breach of law and had still permitted its being committed for his benefit.

In case of any doubt as to the interpretation of this penal clause see the rules for the interpretation of such enactments given in the Commentary on S. 8.¹

Who can try the above kind of offenders? :—This sub-section is silent as to who would be competent to try the offenders under it and pass the adequate sentence in case of conviction. In the absence of any specific tribunal being invested with power to do so, the ordinary magisterial courts having jurisdiction in the area in which the alienation may have been made or the incumbrance may have been created in contravention of sub-section (1) of this section would be competent to take cognizance of the offence as an "offence against other laws" within the meaning of Schedule II to the *Criminal Procedure Code, 1898* by virtue of S. 4(o) thereof defining an "offence", as held in the case of *Kandasami Pillai v. Emperor*² which was a case under the *Defence of India Act* in force during the last World-War (A.D. 1914-18).

78. (1) The Provincial Government may by notification in the *Official Gazette* authorise in any local area any individual, joint stock company or other association to advance loans to debtors in respect of whose debts an adjustment has been made under this Act.

Power of Provincial Government to authorise individuals, joint stock companies or other associations to advance loans to debtors.

(2) Such authority shall be granted on such conditions as may be prescribed.

COMMENTARY

Scope of the section :—This section has been inserted in order to enable the debtors whose debts have been adjusted under Chapter III of this Act to continue their agricultural work from year to year even on borrowing money for particular seasons. In order however that such further borrowings may not render the position of the debtors irretrievable the section itself lays down certain restrictions and further empowers the Provincial Government to lay

1. See pp. 67-69 *supra*.

2. I. L. R. 42 Mad. 69, 74.

down conditions on which certain persons or bodies of persons alone may be allowed to supply the needs of such debtors. For those purposes the section has been sub-divided into two sub-sections, the first of which does the former and the second the latter.

Sub-section (1) :—This sub-section provides that for the above purpose the Provincial Government may select a few individuals, joint stock companies or other associations and grant them authority to advance loans to such debtors residing within a specified area by publishing a notification for that purpose in the *Bombay Government Gazette*, which is the *Official Gazette* for this province.

Sub-section (2) :—It is also empowered by this sub-section to impose such conditions on the authority thus granted as it may deem fit to prescribe by rules. For the Rules made on this point and the Forms prescribed thereby see the relevant Appendix.

79. The Provincial Government may by notification in the *Official Gazette* delegate to the Collector or any other officer any of the powers exercisable by it or by the Collector under this Act.

Power of Provincial Government to delegate powers to the Collector or any other officer.

COMMENTARY

Scope of the section :—This section empowers the Provincial Government to delegate any of the powers exercisable by it or by the Collector under this Act, to the Collector or any other officer, by publishing a notification in the *Bombay Government Gazette*. I believe what is meant is a delegation of any of the powers of the Provincial Government under this Act to the Collector of a district and of any of the powers of the Collector under this Act to any other officer who may or may not be his subordinate. Occasions for such delegation may arise when it is found difficult to exercise any of the statutory powers from a distance.

Before this book could be printed Government having anticipated such occasions has delegated its own powers under S. 78(1) to the Collectors by Government Notification bearing R. D. No. 3791/33 dated 4th April 1941 and published at p. 232 of Part IVB of the *Bombay Government Gazette* dated 10th April 1941.

80. The Chairman and other members of a Board shall be deemed to be public servants within the meaning of section 21 of the *Indian Penal Code*.
 Chairman and members of Board to be public servants. XLV of 1860.

COMMENTARY

Scope of the section :—This section confers on the chairman and each of the members of any Board appointed for the purposes of this Act under S. 4 thereof the status and dignity of a “public servant” within the meaning of S. 21 of the *Indian Penal Code, 1860* so that if any one commits an offence punishable under Chapter X (SS. 172-90) of that *Code* he can be prosecuted under the appropriate section in that chapter.

This provision must have been considered by the Legislature necessary in order to remove a doubt as to whether the Chairman and members of a Board appointed under this Act can or cannot be held to answer to any of the descriptions given in the clauses in S. 172 of the *Code*, there being no general definition of a “public servant” therein.

81. No suit, prosecution or legal proceeding shall lie against the Chairman or other member of a Board or against any officer of Government in respect of anything in good faith done or intended to be done under this Act.¹
 Indemnity.

COMMENTARY

Scope of the section :—As the marginal note indicates this section is intended to indemnify the Chairman and other members of a Board appointed under this Act and all other officers of Government who have to discharge any duties under it against the risk of being sued in a civil court or prosecuted before a criminal court or being proceeded against before any other judicial authority for anything done by any of them or intended to be done by any of them under this Act, provided he has done or intends doing it in good faith, *i.e. to say*, under the *bona fide* belief that he is entitled to do it.

1. A semi-colon here in the text printed in the *Official Gazette*.

But for such a provision it is likely that the Chairman and members of a Board may be harassed by vexatious proceedings by aggrieved persons.

The semi-colon at the end of the section :—It has been stated in foot-note 1 under this section that there is a semi-colon at its end in the text as printed in the *Official Gazette*. As the section ends there that punctuation-mark is clearly wrong.

In case of necessity refer to the rules as to such marks under the heading *Punctuation-marks as an aid to interpretation* in the *Commentary on S. 41*.¹

82. Whoever—

Penalty. (a) intentionally makes any false statement in any proceeding under this Act ;

(b) intentionally produces before the Board any false document ;

(c) files under section 19 a statement which is false or incorrect to his knowledge; or

(d) abets any act punishable under this section shall, on conviction, be liable to imprisonment which may extend to six months or to fine or to both.

COMMENTARY

Scope of the section :—This section may have been enacted in order to avoid a doubt as to whether the acts mentioned in clauses (a) to (c) thereof and an abetment of any of these acts, to which clause (d) relates, would or would not fall under the Chapter XI (SS. 191-329) of the *Penal Code* as to *Offences against public justice*. There does not seem to be much room for such a doubt because under S. 8 of this Act all the proceedings before the Board are “judicial proceedings” for the purposes of SS. 193 and 228 of the said *Code*. It is possible that it may have been enacted in order to prescribe limits to the amounts of punishment of imprisonment and fine or any of them that can be awarded in the cases of the specific offences mentioned herein.

1. See pp. 154-55 *supra*.

In case of doubt as to whether any particular act does or does not amount to an offence under this section, see the *Rules as to the interpretation of penal enactments* given in the Commentary on S. 8¹ and as to who would be competent to try offenders under this section see the Commentary on S. 77(2).²

*This section and S. 77(2) :—*Note that though the maximum amount of the sentence of imprisonment that can be awarded under this section has been fixed by it as in the case of an offence under S. 77(2), that of the sentence of fine that can be awarded under it has not been fixed by it as in the case of that under the other section, which is Rs. 500. Note further that whereas under that section the punishment that can be awarded is either that of imprisonment or that of fine, never both together, that awarded under this section is either of them or both at the discretion of the Magistrate, which must however be regulated by the degree of gravity of the offence as may be apparent from the facts on record.

83. (1) The Provincial Government may from
 Rules. time to time make rules for the purpose of
 carrying into effect the purposes of this
 Act.

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

(a) the manner of publication of the notification under section 4 and the qualifications of persons constituting a Board under sub-section (3) (iii) and the manner of appointment of assessors under sub-section (7) thereof ;

(b) the procedure in proceedings before the Board under section 7 including the inspection of site by members of the Board and examination of witness on commission under sub-section (2) thereof, and on appeals before Courts under section 9;

1. See pp. 67-69 *supra*.

2. See pp. 242-43 *supra*.

- (c) the form of application under section 18 and the signing and verification thereof;
- (d) the form of statement of debts under sub-sections (1) and (2) of section 22;
- (e) the form of application under sub-section (2) of section 23 and the manner of signing and verification thereof and the manner of giving notice under sub-section (3) of section 23 ;
- (f) the manner in which the notice under section 31 shall be served or published ;
- (g) the inventories of property, lists of creditors and of the debts due to and from a debtor, the examination in respect of property or creditors, the time at which the debtor shall attend before the Board and do other things in relation to property under sub-section (1) of section 33, and the books of accounts, the examination to be submitted to and the information to be supplied in respect of the debt due to a creditor by the debtor under sub-section (2) of section 33 ;
- (h) the manner of summoning persons under sub-section (1) of section 34;
- (i) the time within which the Collector or co-operative society or a local authority or holder of a decree or order for maintenance is required to intimate to the Board the amount of the debt due by the debtor under section 47;
- (j) the manner in which the market value of the property and assets of a debtor shall be determined under sub-section (5) of section 50;
- (k) the manner of determining the value of property and other assets under section 51 ;

- (l) the form of award under sub-section (2) of section 54 and under section 24 and sub-section (2) of section 55; and other particulars to be included in the award under section 24 and clause (n) of sub-section (2) of section 54;
 - (m) the manner of sale of property by the Collector under section 66;
 - (n) the form of certificate to be granted to a creditor under section 76;
 - (o) the conditions on which any individual, joint stock company or other association shall be authorised to advance loans under section 78.
- (3) The rules made under this section shall, subject to the condition of previous publication, be published in the *Official Gazette*.

COMMENTARY

Scope of the section :—This is the section conferring a rule-making power on the Provincial Government which has been referred to on several occasions while commenting on the preceding sections. It has been divided into three sub-sections, the first conferring a general power to do so in order to carry into effect the purposes of this Act and the second conferring a special one with reference to all or any of the specific purposes which have been enumerated and the third providing for the publication of such rules in the *Official Gazette*.

Sub-section (1) :—This sub-section is so worded as to make it possible for the Provincial Government to exercise the power conferred on it any number of times it thinks it necessary to do so, the only restriction imposed being that the rules which that Government may at any time make must be such as may be in accord with the intention of the Legislature as expressed in this Act, which is what is meant by the expression “for the purpose of carrying into effect the purposes of this Act.”

Sub-section (2) :—Particularly and without prejudice to the generality of the provision contained in sub-section (1) the Provin-

cial Government is authorised by this sub-section to make rules with respect to the matters specifically mentioned in clauses (a) to (o) thereof. Such Rules as the said Government has considered it necessary to make with reference thereto will be found with comments in the relevant Appendix.

Sub-section (3) :—This sub-section requires that any rules which the said Government may make either under sub-section (1) or sub-section (2) of this section, must be published in the *Official Gazette* i.e. the *Bombay Government Gazette*, “subject to the condition of previous publication”, which expression seems to mean that before being finally published in the said *Gazette*, they should have been published previously in any manner whatever presumably with a view to invite suggestions as to any desirable additions, omissions or modifications. Not only was this condition complied with in the case of the rules made under this section but even an informal Conference of Officials and Non-officials was held at Poona in order to discuss the suggestions that had been received by Government till 31st March 1941 and then again the rules were scrutinised by “experts” in the light of the criticism made at the Conference before they were finally published in the *Official Gazette* on 21st August 1941.

84. On the date on which a Board is established under section 4 for any local area, the provisions of sections 3 to 8 of the *Bombay Small Holders Relief Act*, Bom. VIII of 1938. ^{Repeal of Bom. VIII of 1938.} 1938, herein referred to as the said Act shall, notwithstanding anything contained in sub-section (3) of section 1 of the said Act, but save as provided in the provisions of section 11 of the said Act, *cease to have force in such area.*² Any right, privilege, obligation or liability or contract referred to in section 11 of the said Act shall revive and be enforceable as provided in the said section :

1. The words in italics were substituted for the words “this Act comes into force” by S. 4(a) of Bombay Act VI of 1941.

2. The words in italics here were substituted for the words “be deemed to have expired” by S. 4 (b) of the said Act.

Provided that in regard to persons who are debtors and in respect of whose debts an application under section 17 of this Act can be made, such rights, privileges, obligations and liabilities or contracts shall be enforceable in so far as the enforcement thereof is not inconsistent with the provisions of this Act.

COMMENTARY

Scope of the section :—This section withdraws SS. 3 to 8 of the *Bombay Small Holders Relief Act, 1938*, from operation in the areas for which D. A. Boards may be established under S. 4 from the date of their establishment, subject to the reservation that if such withdrawal affects the interests of and revives rights, privileges, obligations and liabilities or contracts enforceable against persons who are debtors under this Act and for the adjustment of whose debts an application can be made under S. 17 of this Act, the enforcement thereof shall be made to the extent to which it would not be inconsistent with any of the provisions of this Act.

Bombay Small Holders Relief Act, 1938 :—This Act had been passed by the Legislature of this province in 1938 with the express purpose of giving temporary relief to holders of small agricultural plots, pending the passing of an Act giving relief to them permanently in respect of certain matters. S. 1(3) thereof was accordingly so worded as to give force to the enactment only upto 31-3-39 by which date the then Government of Bombay expected to place a permanent piece of legislation framed towards the said end on the statute book of the province. As, however, that could not be done, it got passed by the Legislature an amending Act (*Bom. Act II of 1939*) extending the operation of the original Act to 31-3-40. Before the latter date the present Act and the *Bombay Tenancy Act, 1939* (XXIX of 1939), which purport to give relief of a permanent nature in certain respects to the small holders of the Province, had been passed. They had also received the assent of the Governor-General and Governor of Bombay respectively. But owing to the resignation of the Congress Ministry in the meanwhile the administrative machinery had been disturbed and was required to be re-adjusted. The said Acts were not therefore put into operation but the life of the temporary Act was further extended to 31-3-41 by *Bombay Act V of 1940*. On 29-3-41 the present Government of Bombay got the present Act and

the *Bombay Tenancy Act, 1939* so amended as to enable it to put them partially into operation in selected areas as an experimental measure and got a third amending Act (*Bom. Act VII of 1941*) passed with a view to continue its operation in the excluded areas for a further period of one year ending on 31-3-42.

The result of these amendments is that a portion of the said temporary Act will cease to be in force in certain areas only, the remaining portion will remain in force even in those areas and the whole Act will remain in force in the remaining areas of this province.

Owing to the complicity thus arising, it is quite likely that nice questions of interpretation of the provisions of this Act and the two allied Acts would arise when the substantial sections of this Act will be put actually into operation in any areas. In order to help those who may have to deal with such questions, I refer them to the *Rules as to the interpretation of statutes affecting vested rights* given in the Commentary on S. 9³ and *Rules as to giving retrospective effect to statutes* given in the Commentary on S. 37⁴ and give below those relating to that of repealing Acts.

Rules as to the interpretation of repealing statutes :—(1) The effect of repealing a statute is to obliterate it completely from the records of Parliament as if it had never been passed. And it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.⁵

(2) If there are saving clauses therein they must be given effect to⁶; such clauses must express the intention to save any particular provisions in clear terms.⁷

3. See pp. 72-73 *supra*.

4. See pp. 140-43 *supra*.

5. *Laxmanrao v. Balkrishna* (I. L. R. 36 Bom. 617, 621-22) and *Lemm v. Mitchell* (1912) A. C. 400, 406, both following the dictum of Tindal C. J. in *Kay v. Godwin* (1830) 6 Bing. 576; See also *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630) and *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013(2)].

6. *Digambar Paul v. Tofajaddi* (A. I. R. 1934 Cal. 80) following *Watson v. Winch* (1916) 1 K. B. 688.

7. *Haripada Pal v. Tufajaddi* (I. L. R. 60 Cal. 1438); *Nepra v. Sayar Pramanik* (I. L. R. 55 Cal. 67); *Chaudhary Gursaran Das v. Parameshwari Charan* (A. I. R. 1927 Pat. 203).

(3) There is no rule of construction more firmly established than this that there is a legal presumption that the Legislature would not disturb vested rights and that therefore any intention to do so must have been expressed in clear terms.

Explanation :—Rights of action and appeal being part of the substantive law are vested rights and are therefore governed by the same rule.⁸

(4) In the case of a conflict between the provisions of any two Acts, the later one is assumed to have repealed the earlier one.⁹

(5) A repeal of a special enactment by a subsequent general one must be in clear words and whether the words are clear or not must be determined in view of their natural meaning without being influenced by the previous state of the law.¹⁰

(6) Legislation restricting or affecting substantive rights must not be extended beyond its clear terms.¹¹

(7) Exceptions to repealing enactments must also be in express terms.¹²

(8) The partial repeal of an Act must presumably be governed by the same rules as its total repeal.

85. (1) On the date on which a Board is established under Section 4 for any local area *Repeal of Act XVII of 1879.* (hereinafter referred to in this section as the aforesaid date) the *Dekkhan Agriculturists Relief Act, 1879* shall cease to have force in such area.¹ XDV of 1860.

8. *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299 F.B.); *Ibrahim v. Musamat Zainab* (A. I. R. 1935 Lah. 613); *Rama Krishna v. Subbaraya* (I. L. R. 38 Mad. 101); *Chingayya v. Kotayya* (A. I. R. 1933 Mad. 57); *Haider Hussain v. Puran Mul* (A. I. R. 1935 All. 706 F.B.); *Sivayya v. Pratipad Panchayat Board* (A. I. R. 1936 Mad. 18).

9. *Murad v. Lala Hans Raj* (A. I. R. 1937 Lah. 680).

10. *Gorind Ram v. Kashi Nath* (A. I. R. 1936 All. 239).

11. *Zamindara Bank v. Suba* (A. I. R. 1924 Lah. 418); *Penniselvam v. Veeriah Vandayar* (A. I. R. 1931 Mad. 83).

12. *Haripada Pal v. Tosajaddi* (I. L. R. 60 Cal. 1438).

1. The words in italics in this sub-section except the name of the repealed Act were substituted for the words "this Act comes into force" by S. 5(a) of Bom. Act VI of 1941.

(2) Nothing in sub-section (1) shall be deemed to affect, in regard to persons who are debtors and in respect of whose debts an application under section 17 can be made—

- (a) the terms or incidents of any contract made or effected before *the aforesaid date*² ;
 - (b) the validity, invalidity, effect or consequences of anything already done or suffered to be done before the aforesaid date ;
 - (c) any right, title, obligation or liability already acquired, accrued or incurred before the aforesaid date³ ;
 - (d) any remedy or proceeding in respect of such right, title, obligation or liability, or
 - (e) anything done in the course of any proceeding pending in any Court on the aforesaid date ;
- and any such remedy or proceeding may be enforced, instituted or continued, in so far as the enforcement, institution or continuance is not inconsistent with the provisions of this Act :

Provided that *nothing in this section shall*⁴ in any way affect the transfer under section 37 of any suits or proceedings to which such debtor was a party.

COMMENTARY

Scope of the section :—This section as amended lays down the legal effect of the establishment of a D. A. Board for a local

2. The words in italics in this clause were substituted for the words "the date on which this Act comes into force" by S. 5(b)(i) of Bom. Act VI of 1941.

3. The words in italics in this clause were substituted for the words "such date" by S. 5(b)(ii) of Bom. Act VI of 1941.

4. The words in italics in this proviso were substituted for the words "such repeal shall not" by S. 5(b)(iii) of Bom. Act VI of 1941.

area under S. 4 of this Act. It is that in such areas the *Deccan Agriculturists Relief Act, 1879*, shall cease to have force from the date of the establishment of such Boards, subject to the reservation contained in sub-section (2).

Sub-section (1) :—This sub-section contains the general repealing clause of the nature above-mentioned. The result of such a repeal and of this section not being one of the 26 extended to the whole province is that in the areas for which no Boards will be established under S. 4 of this Act the said old Act will remain in force as regards (1) debtors under this Act for the adjustment of whose debts an application can be made under S. 17 of this Act ; (2) debtors under this Act for the adjustment of whose debts no application can be made under the said section, and (3) non-debtors under the Act. It should however be borne in mind that 26 of the sections of this Act have been extended to the whole of this province and that they have been put into operation with effect from 29th March 1941. The result thereof will be that both the old and the new Acts will be simultaneously in operation in such areas.

Sub-section (2) :—As regards debtors of the first of the three classes above-mentioned in the areas for which Boards will be established the repeal is made subject to certain restrictions which are specifically mentioned in clause (a) to (e) of this sub-section. The effect of the reservation in clause (a) is that if any contract had been entered into by or with such a debtor before the date of establishment of a Board for the local area in which he ordinarily resides, the terms and incidents thereof will be deemed to have remained intact. That of the one in clause (b) is that if anything has been done or suffered to be done before such date, the validity or invalidity thereof and the effects or consequences thereof will be deemed to have remained unaffected by the repeal of the Act so far as that area is concerned. That of the one in clause (c) is that if any right, title, obligation or liability had been acquired or had accrued or had been incurred before the said date it would remain untouched by such repeal. That of the one in clause (d) is that if any remedy had been availed of or any proceeding started under the old law such remedy or proceeding would remain unaffected by the change in the law for that area. Lastly, that of the one in clause (e) is that if anything had been done under the old law in the course of any proceeding pending in any court on the said date, that

act will remain unaffected by the said repeal. The additional sentence commencing with the words "and such remedy &c." makes it clear what the Legislature meant by saying that the remedies and proceedings above-mentioned shall remain unaffected by the said repeal. It is that if any such remedy is capable of enforcement in a court of law it may be enforced, if any proceeding is capable of being started it may be started and if any is pending in any court it may be continued, so far as such enforcement, institution or continuance is not inconsistent with the other provisions of this Act.

Besides this reservation there is a proviso to the effect that the above exceptions shall operate only so far as they do not affect the transfer of certain suits and proceedings directed by S. 37 of the Act to be made. This means that if a suit or proceeding falls within the purview of S. 37, it must be transferred to the competent Board and cannot be continued in the civil court where it is pending.

In case of any doubt as to the interpretation of this section see the rules for the interpretation of amending and repealing Acts referred to and stated in the Commentary on S. 84.⁵

86. In respect of transactions entered into before the date *on which a Board is established for any local area (hereinafter referred to in this section as the aforesaid date)*¹ by or with—

Transitory provisions.

(a) debtors in respect of whose debts no application can be made under section 17 of this Act, or

(b) persons who are not debtors, the *Dekkhan Agriculturists Relief Act, XVII of 1879, 1879*, shall notwithstanding *anything contained in section 85 of this Act*, be deemed to remain in force *in such area*²—

5. See pp. 252-53 *supra*.

1. The words in italics here were substituted for the words "its repeal by" by S. 6(a) of Bom. Act VI of 1941.

2. The words in italics here were added by S. 6(b) of Bom. Act VI of 1941.

- (a) for purposes of institution of suits....³ for a period of three years from *the aforesaid date*⁴ ;
- (b) for purposes of any proceedings arising in or out of suits instituted before the expiry of the period of three years from *the aforesaid date*⁵ until such proceedings are terminated.

COMMENTARY

Scope of the section :— This section relates to the rights as regards transactions entered into before the date of establishment of the Boards in any areas with persons not affected by the provisions of the Act although they may be ordinarily residing in the areas for which D. A. Boards may be established or may be members of any class of debtors in any such areas for which such Boards may be established. It leaves them three years' period from the date on which such Boards may be established within which to file suits under the old law in respect of transactions entered into before the aforesaid date and leaves the operation of that law unaffected until the termination of the proceedings arising in or out of suits instituted within the said period.

SS. 85 and 86 considered together with reference to the previous law :—So far as the debtors of the agricultural class in this province are concerned, the ordinary law of the land as contained in the *Indian Contract Act, 1872, Indian Limitation Act, 1908, Negotiable Instruments Act, 1881, Indian Evidence Act, 1872, Transfer of Property Act, 1892, Indian Registration Act, 1908, Civil Procedure Code, 1908 and certain other Acts* had long been modified in its application to transactions entered into with such debtors by the peculiar provisions of the *Deccan Agriculturists Relief Act, 1879*, as amended from time to time upto 1928, which applied wholly to the four districts of Poona, Satara, Sholapur and Ahmednagar and some of the sections wherein containing a departure from the ordinary law of the land as contained in any of the enactments above-referred to, were made applicable to almost all the districts in this province for over a gene-

3. There is such a dotted line here in the text as printed in the *Official Gazette*.

4. The words in italics in this clause were substituted for the words "the date of coming into force of this Act" by S. 6(c) of Bom. Act VI of 1941.

5. The words in italics in this clause were substituted for the words "the coming into force of this Act" by S. 6(d) of Bom. Act VI of 1941.

ration. It has been explained at length in the section on *Reasons for passing it* in the INTRODUCTION why the Legislature of this province thought it necessary to pass the present Act superseding the old one and in that on *Change in the previous law effected by this Act* therein in what respects this Act contains a departure from the law as embodied in the Act of 1879 as amended upto 1928. Since SS. 1, 85 and 86 which contain provisions as to where and how far the said change must be deemed to have taken place have been amended by SS. 2, 5 and 6 of *Bombay Act VI of 1941* it has become necessary to explain here precisely what is the combined effect of the provisions contained in the said two sections as amended before being put into operation anywhere.

(1) The first thing that is clear is that the said sections in terms prescribe what shall be the law governing the relations between debtors of a certain class ordinarily residing in specified areas and their creditors and that therefore the old law as contained in the *D. A. R. Act, 1879* will continue to govern the relations between the debtors of the agricultural class in the areas for which no D. A. Boards may be established under S. 4 of this Act as in the case of the City of Bombay to which the said section is not and is not likely to be extended. There may be other areas in the province besides that of the said city to which the Provincial Government may not extend it although under S. 1(2) of the Act it has power to do so, either for ever or for some time. The relations between the debtors of the said class in those areas and their creditors, wherever residing will therefore, continue to be regulated by the old enactment, so far as such regulation is not inconsistent with the provisions of the 26 sections of this Act which have been extended to and put into operation in the whole of the province by S. 1(2) and (3) thereof.

(2) As regards those areas for which Boards will be established at any time, the population thereof is divided into two classes, namely :— (a) that of those who are debtors under this Act for the adjustment of whose debts an application under S. 17 lies and (b) that of those persons for the adjustment of whose debts no such application lies, either because they are not debtors under this Act or because though debtors the total amount of their debts exceeds the limit imposed by S. 26 of the Act.

(a) As regards persons of the (a) class, the Act of 1879 will cease to be in force in any particular area for which or for a class of

debtors residing in which a Board will be established under S. 4 from the date of such establishment, subject however to the reservation mentioned in clauses (a) to (e) of sub-section (2) of S. 85, which have already been sufficiently explained and to which the provisions of S. 37 constitute an exception.

(b) As regards persons falling in class (b), the old Act is to be deemed to be in force in their areas for the purpose of institution of suits in respect of transactions entered into before the date of establishment of a Board for their areas for a period of three years from the date of such establishment and for the purposes of proceedings arising in and out of suits so instituted until they are terminated.

*Policy of the law as appearing from SS. 1, 85 and 86 :—*The policy of the law appears in view of these provisions to be that the areas for which no D. A. Boards are established shall continue to be governed by the provisions of the *D. A. R. Act*, that in the case of those areas for which Boards are established, it shall cease to be in force as regards all transactions entered into after the date of establishment of a Board in those areas, that it shall continue to be in force in such areas for the limited period and purposes mentioned in S. 86 of the Act so far as debtors under the Act, for the adjustment of whose debts no application can be made under S. 17, and non-debtors are concerned and that it shall cease to be in force in those areas as regards transactions entered into by debtors, for the adjustment of whose debts an application can be made under S. 17 of this Act, before the establishment of Boards in such areas except as provided for in sub-section (2) of S. 85.

*Probable period of operation of this Act and future course of legislation on this subject :—*It follows from this that the Government of this province will have to arrange for the appointment of a Commission for making an investigation into the exclusive operation of the old and the new Acts in certain areas and the simultaneous operation of both in others for a period of 2 to 3 years from the date of establishment of Debt Adjustment Boards for certain local areas, to call for reports from the officers entrusted with such operation as to the merits and defects of this Act noticed by them and to put up for consideration before the Legislature of this province a draft of a new Bill prepared in view of the findings of the Commission, the reports of the officers and the judicial decisions reported till then.

APPENDIX I

*Rules made under section 83 of the Act.**

No. 3791|33.—In exercise of the powers conferred by section 83 of the Bombay Agricultural Debtors Relief Act, 1939 (Bom. XXVIII of 1939), the Government of Bombay is hereby pleased to make the following rules, namely :—

1. *Short title* :—These rules may be called the “Bombay Agricultural Debtors Relief Rules, 1941.”

COMMENTARY

Bird's eye-view of the Rules :—These rules comprise 40 Rules and 24 Forms prescribed by them. They have not been sub-divided into chapters like the Act itself. However in view of their contents they can be grouped together as under :—

<i>Nos. of the rules and forms.</i>	<i>Subject-matter</i>	<i>Sections of the Act to which they pertain</i>
R. 1-2.	Preliminary
.. 3.	Financing of crops.	2(7).
.. 4-8.	Constitution of the Board.	4.
.. 9-15.	Regulation of the business of the Board.	7 and 15 read with 83(1) and (2)(b).

* A draft of these rules was published by Government Notification No. R. D. 3791/33 dated 26th November 1940 and suggestions were invited with reference thereto upto 31st January 1941. Subsequently the date for the submission of suggestions was extended once to 15th March 1941 and for the second time to 31st March 1941. Those suggestions which had been received till the latter date were thereafter discussed at an informal Conference of Officials and Non-officials held at Poona on the 12th and 13th June 1941. In the light of the discussion that took place there they were again examined by experts and thereafter these rules were finally published at pp. 685-727 of Pt. IV B of the *Bombay Government Gazette* dated 21st August 1941 as required by S. 83(3) of the Act.

<i>Nos. of the rules and forms.</i>	<i>Subject-matter</i>	<i>Section of the Act to which they pertain</i>
„ 16-19 ; F. 1-5.	Applications under SS. 17 and 23 and the manner of dealing with them.	17-23.
„ 20-21 ; F. 6-7.	Notice under S. 31.	31.
„ 22-26 ; F. 8.	Summons and examination of parties and witnesses.	33-34.
„ 27.	Time for Collector and others to reply to notice.	47.
„ 28.	Determination of the market value of the debtor's property.	50(5).
„ 29 ; F. 9-10.	Award	24, 54(2), 55(2).
„ 30 ; F. 11.	Sale of part of the debtor's property.	66.
„ 31 ; F. 12.	Certificate to be granted to a creditor under S. 76.	76.
„ 32.	Bringing the legal representatives of a deceased party on record.	83(1) and 30.
„ 33.	Proceedings by or against persons under disabilities.	83(1).
„ 34.	Measure of maintenance of the debtor and his family.	„ and 54 (2) (h), Proviso 2, Explanation.
„ 35-37 ; F. 13-21.	Procedure to be followed and registers and books to be kept.	83 (1) and (2) (b).
„ 38-40 ; F. 22-24.	Conditions for authority under S. 78 and cognate matters.	78 and 83 (1).

Heading of this rule :—The expression *Short title* between the figure “1” and the actual wording of the rule constitutes its heading which is just like a marginal note to a section and has the same force.

There are such headings of all the rules stating concisely the respective points to which they relate.

Like the Act itself these rules also have a short title by which they can be conveniently referred to. They have no other long or full title. They can therefore be referred to only by the title mentioned in this rule.

Principles by which the rules would be governed :—Rules made under an Act would presumably be governed by analogy by the same principles as the Act itself. Therefore in case of any doubt as to the *Text of these rules* see the Commentary under the *Preamble* of this Act and particularly under the sub-heading *Text of an Act* thereunder,¹ for that as to the *Title of these rules*, see that under the same heading and particularly under the sub-heading *Title as an aid to interpretation* thereunder,² and for that as to the authoritativeness of the Government Notification re. these Rules see that under Chapter I, sub-heading *Authoritativeness of a Government Notification*.³ While applying these principles the distinction between an Act and the rules made under it should not be lost sight of.

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

(i) “Act” means the Bombay Agricultural Debtors Relief Act, 1939 ;

(ii) “Code” means the Code of Civil Procedure, 1908 ;

(iii) “Form” means a form appended to these rules ;

(iv) “Government” means the Government of Bombay ;

(v) “Registered Accountant” means an accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditor’s Certificate Rules, 1932, or a holder of a restricted certificate under the Restricted Certificate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue ;

(vi) “Section” means a section of the Act ;

(vii) Words and expressions used in the Act and not defined in these rules shall have the meanings assigned to them in the Act.

COMMENTARY

This rule is similar in nature to S. 2 of the Act and is worded in the same kind of phraseology. Therefore the whole of the Commentary on that section upto the place where that on the particular *Definitions*

1. See pp. 1-2 *supra*.

2. See pp. 4-5 *supra*.

3. See pp. 16-17 *supra*.

commences¹ will be found useful in case of any doubt as to the correct interpretation of this rule. While making use of it, the distinction between an Act and the rules made under it should not however be lost sight of.

The definitions given in (i) to (vi) are too simple to require any explanation. As for the general provision in (vii) it is similar to that in clause (16) of section 2 of the Act. The major portion of the Commentary thereon² is likely to be useful in gathering the meaning of any word or expression occurring in the Act but not specifically defined therein or in these rules.

3. *Financing of crops for other purposes.*—The other purposes, advancing of loans for which shall be “financing of crops” within the meaning of clause (7) of section 2, shall be—

- Labour charges.
- Transport charges.
- Purchase of fodder.
- Intercultivating.
- Threshing.
- Hire of cattle and agricultural implements.
- Maintenance of cattle and repairs to agricultural implements.
- Current expenses of running agricultural machinery, e.g. pumps or engines, including fuel charges.

Such other purpose in respect of any particular area in any particular year as may be certified by Government to be necessary for the purpose of raising or harvesting any crop in that year.

COMMENTARY

Special importance of this rule :—It may be recollected that S. 65 of the Act prohibits a debtor who is a party to an award from making an alienation of or creating an incumbrance on any property of his included in the award without the permission of Government, S. 77 prohibits him from making an alienation of or creating an incumbrance on the standing crops or the produce of his land if he is indebted to a resource society or an authorised person, unless permitted and S. 78 enables the Provincial Government to provide for his taking loans for the “financing of crops”

1. See pp. 21-31 *supra*.

2. See pp. 43-46 *supra*.

which is a technical term defined in S. 2(7) of the Act. The definition there given is so worded as to enable the Provincial Government to specify certain other purposes besides those mentioned therein. The said Government has therefore specified 8 other general purposes and has in addition to that taken power to certify any additional purpose for any particular area and for any particular year as being necessary for raising or harvesting a crop in that year. All these purposes must therefore be held to be the purposes for which a debtor against whom an award has been made can take a loan from an authorised person. As the words "for the purpose of raising or harvesting of a crop" in the last item in this rule indicate all these with the exception of one are purposes connected with either the raising of a crop or its harvesting and it is only a loan advanced for any such purpose that can be held to be a loan advanced for the financing of a crop according to the usual connotation of the expression. The second purpose herein-mentioned, namely transport charges, is not strictly speaking connected either with the raising of a crop or its harvesting. It was not one of those mentioned in this rule as originally drafted. Still it has been added here in view of the difficulty, which agricultural debtors, whose fields are far away from the nearest or best market-place, are likely to feel in disposing of their agricultural produce without extraneous financial assistance. The said difficulty was brought to the notice of Government by one non-official member at the above-mentioned Conference.

4. *Manner of publication of a notification establishing a Board.*—When a notification establishing a Board under sub-section (1) of section 4 has been published in the *Official Gazette*, the Collector shall cause to be affixed copies of such notification in the regional language of the local area concerned at his office, the office of the Mamlatdar of the Taluka or the Mahalkari of the Petha concerned, the office of the First Class Subordinate Judge within the local limits of whose special jurisdiction such local area is situated, the office of the Second Class Subordinate Judge within the local limits of whose ordinary jurisdiction such local area is situated and at the Chavdi or conspicuous place in the villages concerned. He shall also cause such notification to be proclaimed in such villages by beat of drum or by such other means as may be considered suitable by him. He shall further, within one month of the establishment of the Board, cause the substance of the notification to be published in the regional language of the local area in at least four issues of one of the daily newspapers published or having circulation in such area.

COMMENTARY

Direction in the rule :—This rule provides for giving a wide publicity to the appointment of a D. A. Board for any local area or for a class of debtors in any such area by directing that the Collector of the district in which such area is situated shall (1) cause to be affixed copies of the notification relating to the appointment of the Board in the regional language of the area (a) at his own office, (b) at that of the Mamlatdar of the Taluka or the Mahalkari of the Petha concerned, (c) at that of the F. C. Subordinate Judge within the local limits of whose special jurisdiction such area may be situated, (d) at that of the Second Class Subordinate Judge within the local limits of whose ordinary jurisdiction such area may be situated and (e) at the Chavdi or other conspicuous place in each of the villages comprised in that area ; (2) cause the notification to be proclaimed by beat of drum or such other means as he may consider suitable for the purpose and (3) cause within one month of the establishment of the Board the substance of the notification to be published in the regional language of the area in at least four issues of one of the daily newspapers published or having circulation in such area. Publication at the office of the F. C. Subordinate Judge had not been provided for in the draft-rules.

The language of this rule is so imperative that any departure from it is likely to be construed into its transgression and to render the commencement of the work of the Board before strict compliance with it, illegal. This being the duty of the Collectors of the district the Boards and the Courts are not concerned with it.

Reason of the rule :—The reason for giving such a wide publicity to the fact of the establishment of a D. A. Board for any local area or for a class of debtors in such an area obviously seems to be that neither the poor and illiterate agricultural debtors for whose benefit this Act has been passed and who become liable under S. 54(2) (1) of the Act for costs if they allow 12 months to pass away without taking the proper steps nor their creditors, whose interests are likely to be affected by the want of proper publicity of the fact owing to the strict provisions of SS. 17, 23 and 32 of the Act nor the Courts of the districts in which such areas are situated and whose jurisdiction is affected by the strict provisions of SS. 37 and 73 of the Act, may remain ignorant of the fact.

5. *Chairman and Vice-Chairman of a Board consisting of a body or association of persons or of more than one person.*—(1)

The Chairman and Vice-Chairman of a Board which consists of a body or association of persons as provided in section 4 (3) (i) (b), shall be persons appointed as Chairman and Vice-Chairman respectively of such body or association in accordance with the rules or practice of such body or association.

(2) The Chairman and the Vice-Chairman of a Board which consists of more than one person as provided in section 4 (3) (i) (c) shall be persons appointed as such by Government.

COMMENTARY

Reason of the rule :—This rule did not exist in the draft-rules. It was however absolutely necessary to draw a distinction between Boards consisting of one person only and those consisting of more than one person on the one hand and as between those constituted of more than one individual member and those constituted of bodies or associations of members which had their own organisations and managing bodies, for, whereas in the case of a one-man Board no question of the appointment of a Chairman and Vice-Chairman can arise, it would arise in the case of multiple-member Boards and as amongst the latter too no such question would arise in the case of bodies or associations *ad hoc* being appointed as Boards unless they had no organisation and no managing committees of their own. The present rule draws the latter kind of distinction and provides that in the case of bodies or associations their own Chairmen and Vice-Chairmen shall be the Chairmen and Vice-Chairmen of the respective Boards and that in the case of more than one person appointed individually, the Chairman and Vice-Chairman of the Board shall be those whom the Government appoints as such.

6. *Qualifications of the members of the Board*.—When the board consists of one person, such person shall be a person who holds or has held an office not lower in rank than that of a Second Class Subordinate Judge or a Mahalkari.

(2) When the Board consists of more than one person, the Chairman of the Board shall be a person who—

- (a) holds or has held an office not lower in rank than that of a Second Class Subordinate Judge or a Mahalkari ; or
- (b) is a legal practitioner who has practised for at least 10 years ; or
- (c) is or has been an Income-tax Officer or is a Registered Accountant of at least ten years' standing.

(3) No body or association of persons shall be appointed to constitute a Board unless such body or association is registered under the *Indian Companies Act, 1913*, the *Co-operative Societies Act, 1912*, the *Bombay Co-operative Societies Act, 1925*, or the *Societies Registration Act, 1860*.

COMMENTARY

*Effect of sub-rule (1) :—*The effect of the provision in S. 4(3)(i)(a) is that a one-man Board may consist of any person who holds or has ever held an office under the Crown in India. There is no mention therein of the nature or rank of the office the person should be holding or should have held. This rule however specifies that such person should be holding or should have held an office not lower in rank than that of a Second Class Subordinate Judge or a Mahalkari. It therefore restricts the scope of the sub-section above-referred to, so far as it relates to the establishment of a one-man Board, to only two of the departments, namely the judicial and the revenue and therein it debars the choice of officers lower in rank than those of a Second Class Subordinate Judge and a Mahalkari.

How far such a rule can be deemed to "carry into effect the purposes of the Act" for which the rule-making power has been conferred on the Provincial Government it will be for the Courts, before which such a question may arise, to decide. I only draw the attention of the readers to the effect of this sub-rule on that sub-section and refer him to the further provisions in SS. 4(3)(iii) and 83(2)(a) enabling the said Government to make rules as to the qualifications of persons constituting a Board, to the *Rules as to how to gather the intention of the Legislature and give effect to it* given in the course of the Commentary on S. 17(3)¹ and to the following rulings on the construction of the rules made under an Act, namely those in *Chand Raj v. Baba Din*,² *Model Town Co-operative Society Ltd., Lahore v. Mohammad Abu-ul-Asar*,³ *In re. Hari Krishna Lal*,⁴ *Hemandas v. Nihchaldas*,⁵ *Hirio Mal v. Hazari Singh*,⁶ *Kamisa v. Devichand*,⁷ *Madurai Pillai v. Muthu Chetty*,⁸ *In re the Election of*

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1. See pp. 94-96 *supra*.
 2. A. I. R. 1940 Oudh 301.
 3. A. I. R. 1937 Lah. 673.
 4. A. I. R. 1936 Oudh 115.
 5. A. I. R. 1934 Sind 110, 111.
 6. A. I. R. 1925 Sind 49.
 7. A. I. R. 1924 Mad. 46.
 8. I. L. R. 38 Mad. 823.

the Bar Council,⁹ *Ramanuja v. Pichu Iyengar*¹⁰ and *Lakshpat Singh v. Sat Narain Singh*¹¹.

Sub-rule (2) :—This sub-rule must be read as supplementing sub-rule (2) of rule 5. In the latter it has been laid down that when a Board consists of more than one person, its Chairman and Vice-Chairman shall be such of them as the Government may appoint. Now this sub-rule defines from amongst whom Government should make a choice for the two posts.

Clause (a) of this rule is in the same words as sub-rule (1). A legal practitioner of 10 years' standing mentioned in clause (b) is as good as a Subordinate Judge of the Second Class. But it seems very doubtful whether an Income-tax Officer or a Registered Accountant should be able to inspire confidence in the litigating public.

A very hot discussion had taken place in the Legislative Assembly as to the requisite qualifications for a membership of the Board and not less than 30 amendments (Nos. 91 to 109 and 128 to 38) had been brought forward by enthusiastic members with reference thereto. The clause relating to them was modified to a certain extent as the effect of such of them as were passed but the Assembly preferred to leave it to the Provincial Government to define the qualifications of the Chairman, Vice-Chairman and members of the Boards on making proper inquiries, on the then Finance Member having repeatedly given an assurance that only competent men and in most cases Second Class Subordinate Judges would be selected for appointment as D. A. Boards.¹²

Sub-rule (3) :—This sub-rule is quite proper for a body or association which is not constituted and registered according to the provisions of any of the enactments mentioned therein would not have any such reliable organisation as is needed according to rule 5(1) and as would inspire confidence in the litigating public.

7. List of persons suitable for appointment as assessors.—

(1) The Collector shall prepare in respect of each Board established in his district a list of persons who in his opinion are suitable for appointment as assessors and shall submit such list to government.

9. A. I. R. 1935 All. 295.

10. A. I. R. 1937 Mad. 481.

11. A. I. R. 1931 Oudh 22.

12. Bombay Legislative Assembly Debates, 1939, Vol. VII, pp. 908, 1477, 1508, 1696.

The list shall contain the name, address and occupation of every such person and shall be arranged in alphabetical order.

(2) Government may at any time remove any names from or enter new names in such list.

(3) The persons to be appointed as assessors shall be selected by Government from the persons mentioned in such list and the names of the persons so appointed shall be communicated to the Board.

COMMENTARY

Section 4(7) of the Act which relates to the appointment of assessors not exceeding four for assisting each one-man Board is silent as to the qualifications required of them. Section 83(2)(a) which provides for making a rule as to the manner of their appointment is also silent as to them. This rule too does not define them but leaves it to the Collector of each district for which Boards may be established to make out a list of those persons who in his opinion are fit to be appointed as such. The manner laid down in this rule is that the Collector is to make out a list of such persons and the Government is to make selections thereout and communicate their names &c. to the Boards concerned. It has also kept to itself the power to delete any name from it or add any to it.

8. *Powers by whom to be exercised when Board consists of one person.*—When a Board consists of one person only such person shall, save as expressly otherwise provided in these rules, exercise all the powers which are exercisable and shall perform all the duties which are to be performed by the Chairman of a Board under these rules.

COMMENTARY

This rule is simple and reasonable in view of the constitution of a one-man Board and therefore needs no explanation. It is however necessary to point out that though the Act is silent on the point covered by this rule it cannot be held to be *ultra vires* because it is clear that when the Legislature provided for the constitution of such a Board and made all the other provisions for the exercise of powers and the performance of duties in the name of the Chairman of a Board, it must have intended that the one man constituting the Board should exercise the powers and discharge the duties

of the Chairman. In case of any doubt reference may be made to the Commentary on sub-rule (1) of rule 6.¹

9. *Place of meeting.*—Every Board shall have an office at such place as may be fixed by Government in this behalf and shall ordinarily hold its meetings at such places. The Board may after due notice to the parties concerned hold its meetings at any other place within its jurisdiction with the approval of the First Class Subordinate Judge within the local limits of whose special jurisdiction it is established.

10. *Chairman to preside and regulate course of business at every meeting.*—The Chairman shall preside at every meeting of the Board and shall regulate the conduct of its business.

11. *Chairman to fix the time of meetings.*—The Board shall hold its meetings at such times as may be fixed by the Chairman from time to time.

12. *Intimation of time and place to the parties.*—The time and place at which the Board's meetings are to be held shall be intimated to the parties concerned.

13. *Process to be signed and sealed.*—The Chairman or such other person as may be authorised by the First Class Subordinate Judge within the local limits of whose special jurisdiction the Board is established shall sign, date and seal with the seal of the Board every notice, process, certificate and requisition issued or made by it.

14. *Proceedings and records to be maintained in English or in the language of the Court.*—The proceedings of the Board shall be recorded and the records of the Board shall be maintained either in English or in the language of the Court of the First Class Subordinate Judge within the local limits of whose special jurisdiction the Board is established, as it may decide.

15. *Diary of proceedings.*—Every Board shall maintain a diary or rojnama of the proceedings in each case. Such diary shall be signed by the Chairman or such other person as may be authorised by the First Class Subordinate Judge within the local limits of whose special jurisdiction the Board is established.

1. See pp. 268-69 *supra*.

COMMENTARY

Rules 9 to 15 :—These rules provide for the regulation of the business of the Board for which there seems to be no specific section in the Act. But they are very essential as without any such provisions as are therein contained there would be 'all chaos and confusion and the tenor of the provisions of SS. 7 and 15 read with S. 83(1) and (2) (b) seems to justify their insertion in these rules. The gist thereof is that in the matter of the regulation of the business of the Board the Chairman is the deciding authority but that he has to obtain the orders of the F. C. Subordinate Judge within the local limits of whose special jurisdiction his Board is established in such important matters as changing the place of meeting of the Board, deciding in which language the records of his Board shall be kept, who should be authorised to sign and seal processes, who shall sign the case-diaries etc.

16. *Applications under sub-sections (1) and (2) of section 17 and sub-section (1) of section 23.*—Applications under sub-section (1) of section 17, sub-section (2) of section 17 and sub-section (1) of section 23 shall be in Forms Nos. 1, 2 and 3 respectively and shall be presented at the office of the Board during office hours by the applicant personally or shall be sent by registered post addressed to the Board. They shall be received by the Chairman or by such person as may be authorised by the Board to receive them.

17. *Procedure to be followed on receipt of the application.*—
(1) When any such application is received, the Chairman or the person authorised to receive it shall cancel the court-fee stamp affixed to it by punching it and writing his name or initials and the date of the receipt of the application on or across the stamp.

(2) Any (? An) entry about such application shall then be made in the Case Register of applications prescribed by rule 36.

18. *List of debtors.*—(1) The Board shall put on its Notice Board every month an up-to-date list of debtors in respect of whose debts applications have been received by the Board. Such list shall be in Form No. 4.

(2) The Board shall send a copy of such list every month to such person as Government may direct.

19. *Forms of notices under sub-section (3) of section 23.*— A notice under sub-section (3) of section 23 shall be in Form No. 5.

COMMENTARY

Rules 16 to 19 prescribe the procedure to be followed, in connection with the presentation of and on receipt of, applications under S. 17(1), 17(2) and 23(1) of the Act.

Any such application can under rule 16 be either presented personally at the office of the Board during office hours to the Chairman or any other person authorised to receive the same or be sent to its address by registered post. The forms to be used for them are Nos. 1, 2 and 3 respectively.

The Chairman or the authorised person should under rule 17 cancel the court-fee stamp affixed to it by punching it and marking it with his signature or initials on or across the stamp and make an entry with respect to such application in the Case Register prescribed by rule 36. At the end of every month he should put up on the Notice Board of his office an up-to-date list of the debtors in respect of whose debts applications have been received in the office, in Form No. 4 and forward a copy of it to such person as Government may direct.

The notice to be issued to the debtors or creditors under S. 23(3) must be in Form No. 5.

Forms Nos. 1 to 5 :—These rules prescribe Forms Nos. 1 to 5 which have been appended at the end. It would, I believe, facilitate the work of those who have to fill them in, if I explain them. I therefore proceed to do so.

Form No. 1 thereout contains 5 paragraphs and a verification-clause below the last. The first and the last paragraphs are formal and simple but the three middle ones are material and elaborate. They contain 3 tabular statements which the applicants are expected to fill in before presenting or forwarding their applications, according to S. 22(1) (a) to (d). The first statement thereout embodied in paragraph 2 of the form requires certain particulars as to the debts due by the debtor-applicant. The star-mark on the heading of col. 4 of that statement draws attention to the foot-note which appears below the verification-clause, and requires some more particulars as to the debts in which capitalised interest and fresh loans are included. The second statement forming part of paragraph

3 of the statement has been sub-divided into three parts, (a), (b) and (c). Thereout the first, part (a) requires a statement of several particulars as to the immovable property of the debtor whether situated within or without the Province of Bombay. Part (b) requires a statement of specific particulars as to the movable property owned by him *including cash*. Part (c) requires a statement of particulars as to the claims, if any, which the debtor may have against other persons according to his belief. The last statement forming part of paragraph 4 requires particulars as to the property which, being claimed by the debtor as his and having been shown in any of the parts of the statement in paragraph 3, may have been transferred or burdened with a debt by the debtor. Paragraph 5 requires a declaration to be made as to the completeness of the information supplied in the said three statements.

Form No. 2 :—This Form has been intended to be used by a creditor-applicant. The points of distinction between it and Form No. 1 are that instead of 5 paragraphs and a verification-clause there are in it 3 paragraphs and a verification-clause. The first paragraph thereout is *mutatis mutandis* in the same terms as the corresponding one in Form No. 1. The verification-clause is in exactly the same terms as in that Form. The second comprises a statement, which with the necessary alterations in the headings of the columns therein, requires the same particulars about the debts due from the debtor as the corresponding statement in paragraph 2 of Form No. 1. These particulars are required to be supplied by the provisions of S. 22(2) (a) to (d). Paragraph 3 comprises (a) a statement requiring particulars as to the immovable property of the debtor so far as they are known to the creditor, (b) a similar one requiring the necessary particulars as to his movable property and (c) a similar one as to the other income of the debtor, if any. There is no paragraph in this statement corresponding to paragraph 4 in Form No. 1 which requires particulars of the debtor's transferred or encumbered property. There is also none corresponding to paragraph 5 in the said Form requiring a declaration besides the verification-clause. On the heading of col. 4 of the statement comprised in paragraph 2 there is a star-mark drawing attention to a foot-note below the verification-clause, which is in the same terms as that at the corresponding place in Form No. 1.

Form No. 3 has been prescribed by rule 16 for use in connection with an application under S. 23(1) either by the debtor or by the creditor who happens to be the applicant. It is a simple form containing only 2 paragraphs besides the usual verification-clause, the second of which com-

prises a statement in 6 columns, of which the last is as usual reserved for making any remarks if thought necessary, while the first requires the names and addresses of the debtor and creditors who are parties to the settlement, the second the amount of debt claimed by the creditors, the third the amount at which it is settled, the fourth the instalments fixed for its payment and the order of priority amongst the creditors, if any agreed upon, and the fifth particulars as to the property of the debtor out of which, if at all, the debt is agreed to be paid, together with any charges, incumbrances etc., if any, existing thereon.

Form No. 4 has been prescribed by rule 18 for the list of debtors to be put up every month on the Notice Board. It is very simple, having only 4 columns besides the last which as usual has been reserved for remarks. The first thereof requires to be stated the serial number of the debtor, the second his name and address, the third the total amount of his debts and the fourth the particulars of those debts consisting of the names of the individual creditors and the amounts owing to each of them.

Form No. 5 prescribed by rule 19 relates to the notice to be served according to S. 23(3) on the opponent debtor or creditor, as the case may be, in an application made under S. 23(1). The wording thereof is simple enough.

20. *Forms of Notices under section 31.*—Notices issued under section 31 shall be in Form No. 6 or 7, as the case may be.

21. *Service of Notices.*—A notice issued by the Board under any provision of the Act or rules shall be served through the Court of the Subordinate Judge within the local limits of whose ordinary jurisdiction the notice is to be served. The procedure laid down in rules 9 to 30 of Order V in the First Schedule to the Code for the service of summons issued under the Code shall, so far as may be, (be) applied to the service of such notices.

COMMENTARY

Rule 20 prescribes Forms Nos. 6 and 7 for use for the notices to be issued under S. 31 to the opponent debtor or creditor, as the case may be.

Form No. 6 thereof is very simple. It only informs the debtor that a particular creditor has made an application under S. 17(2) against him and calls upon him to submit within one month a statement in writing giving particulars relating to the debts owed by him and the property

owned by him as per the 2nd and 3rd paragraphs of Form No. 1, a copy whereof is expected to be attached to the notice.

Form No. 7 is so worded as to inform the creditor that a particular debtor has filed an application under S. 17(1) for the adjustment of the debt due to the said creditor, calling upon him to submit within one month a statement containing the particulars mentioned in paragraphs 2 and 3 of Form No. 2, a copy whereof is expected to be attached to the notice, and informing him that in case of non-compliance the consequence mentioned in S. 32 will follow. The reference at the top of it to Rule 26 is mistaken. It ought to be Rule 20.

Rule 21 prescribes the method of service of notices generally in accordance with the procedure laid down in rules 9 to 30 of Or. V in Sch. I to the *C. P. Code, 1908* for the service of summons, through the Court of the Second or First Class Subordinate Judge within the local limits of whose ordinary jurisdiction the service of the notice is to be effected.

22. Form of summons.—A summons issued by the Board shall be in Form No. 8.

23. Service of summonses.—A summons issued by the Board may be served—

- (a) through the Court of the Subordinate Judge within the local limits of whose ordinary jurisdiction it is to be served in accordance with the procedure laid down in rules 9 to 30 of Order V in the First Schedule to the Code for the service of summons issued under the said Code, or
- (b) by registered post, in which case an acknowledgment of receipt shall be obtained, or
- (c) if the person concerned is present before the Board, by delivering a copy of the said summons to him personally there.

24. Process fees, travelling allowance and subsistence allowance to witnesses.—Any party applying for summonses to witnesses shall pay process fee at the rate of 12 annas for the first summons and 6 annas for the summons to each additional witness in the same village if all such summonses are applied for at the same time. In other cases process fee shall be paid at the rate of 12 annas for the summons to each witness. Such fee shall be paid in the form of court-fee stamps.

(2) When a witness is to be summoned to appear before a Board, the person at whose instance he is to be summoned shall also be required to deposit in advance with the Board the amounts of subsistence allowance and travelling allowance, to be paid to the witness, at the rates prescribed by the High Court in respect of witnesses summoned to appear before the civil courts.

25. *Summons to produce documents.*—A person who is summoned to produce a document but is not required by the summons to attend in person shall be deemed to have complied with the summons if he causes such document to be produced through any person.

26. *Memorandum of evidence to be made.*—In all proceedings before the Board, the Chairman or any other person authorised by him shall make a memorandum of the substance of the evidence of every person giving evidence as the examination of such person proceeds. Such memorandum shall be signed by the Chairman and shall form part of the record.

COMMENTARY

Rules 22-24 lay down the procedure to be followed by the Board in issuing summonses and getting them served. The form prescribed for them is No. 8. It being very simple needs no detailed notice. As for the service of such summonses rule 23 prescribes three methods, the first of which is the same as for the service of notices prescribed by rule 21, the second is that of sending the summons by registered post and getting a postal acknowledgment as to its delivery to the addressee and the third is that of personal delivery to the person concerned, if he happens to be present before the Board. Rules 22, 23 and 24(1) are applicable in the case of a summons issued to a witness and also to an opponent if need be. As for the process fee leviable on summonses the general rule is that for each summons the party at whose instance it is issued should be called upon to pay in court-fee stamps a fee of As. 12. There is however an exception in the case of a party applying at the same time for the issuing of more than one witness summons to be served at the same village. That exception is that in such a case the party should be called upon to pay As. 12 for the summons to the first witness and As. 6 each for each additional witness to be served in the same village. Moreover in the case of all witness-summonses the party is to be called upon to deposit travelling allowance

and subsistence allowance for each witness at the rates prescribed by the High Court. These rates will be found in paras 60 to 66 of Chapter I of the *High Court Manual of Civil Circulars, 1940* at pp. 16 to 18.

Rule 25 defines what is sufficient compliance with a summons which requires the person to whom it is issued only to produce a document. This is in substance the same as rule 6 of Order XVI in Sch. I to the *Code*.

Rule 26 directs that as the examination of each witness, whether he is a party or not, proceeds under S. 33 or 34 of the Act, a memorandum of the substance of his deposition shall be made in the language of the Board determined as per rule 14 *supra*, that it shall be signed by the Chairman of the Board and that it shall form part of the record of the proceeding.

In appealable civil cases the deposition of each witness is taken down by a clerk under the supervision of the Judge in the language in which it is given and the Judge himself makes a memorandum of the substance thereof in English according to the provisions of rules 5 and 8 of Order XVIII in Sch. I to the *Code* and signs both. Here however the procedure is simplified by directing that only a memorandum of the substance of the deposition shall be made either by the Chairman of the Board or by any other person authorised by him and that in any case he shall sign it.

27. *The time within which the Collector, co-operative society, local authority etc., shall communicate their debts to the Board under section 41.*—The time within which the Collector, a co-operative society, a local authority or a person entitled to maintenance, as the case may be, shall communicate to the Board under section 47 the amount of the debt due from or the amount of any recurring liability against the debtor shall be three months from the date of receipt of notice from the Board.

COMMENTARY

Under S. 47(1) and (2) the Board has to give notice of an application made by a debtor or a creditor under S. 17 to the Collector and others asking for information as to the liabilities of the debtor so far as each of them respectively is concerned and S. 47(3) casts a duty on them to give the required reply within a prescribed period. This rule prescribes a period of 3 months for that purpose. The Collector and the co-operative society concerned are expected to comply with the provisions of S. 47(4) as well.

28. *Manner of determining the market value of debtor's property.*—(1) For the purposes of sub-section (5) of section 50, the market value of the debtor's property and assets shall be determined by the Board in the manner specified in sub-rule (-s) (2) and (3).

(2) *Immovable property.*—The Board shall determine the value of any immovable property by taking into consideration (1) the previous sales and leases of the property in question ; (2) the prices of similar properties sold in the neighbourhood ; (3) leases of similar properties in the neighbourhood, other than leases which provide for interest on loans or sums other than rent of the properties concerned ; and (4) such other factors as, under sections 23 and 24 of the *Land Acquisition Act, 1894*, are taken into account in determining the amount of compensation to be awarded for lands acquired under that Act.

(3) *Movable property.*—The Board shall determine the value of movable property by questioning the parties concerned and by making such other inquiries as it may think fit.

COMMENTARY

Necessity for this rule :—A reference to S. 50 of the Act will show that it lays down in the first four paragraphs what property or assets are not to be taken into consideration while determining the value of the property or assets of a debtor for the purpose of ascertaining his paying capacity, the amounts of the other burdens on his immovable properties which are to be deducted before putting down the values of such properties and how the value of the lands of a debtor to which S. 73A of the *Bom. L. R. Code, 1879* is applicable, is to be determined and by paragraph (5) it empowers the Provincial Government to prescribe the manner in which the market value of the property and assets of a debtor is to be determined. The said Government has accordingly prescribed the said manner by this rule. The kinds of evidence which can be taken into consideration for this purpose according to this rule are :—

- (1) the previous sale-deeds and leases of the property to be valued ;
- (2) the prices which similar properties in its vicinity may have fetched ;
- (3) the leases of such properties, which must not however be such as guarantee the payment of interest on loans or sums other than those of the arrears of rent of the properties concerned and

(4) such other factors as are taken into consideration under sections 23 and 24 of the *Land Acquisition Act, 1894* while determining the amount of compensation to be awarded for lands acquired under the Act.¹

1. The factors taken into consideration under S. 23(1) of the *L. A. Act, 1894* while determining the amount of compensation for lands acquired under the Act are :—

(1) the market value of the land at the date of the publication of the notification under S. 4(1) of the said Act ;

(2) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

(3) the damage, (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

(4) the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, movable and immovable, in any other manner, or his earnings ;

(5) if in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ; and

(6) the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

Since it is only the factors mentioned in the section that can be taken into consideration and the section as a whole is not made applicable to the proceedings under S. 17 of this Act, sub-section (2) of the above section of the *L. A. Act, 1894* would not be applicable and a sum of 15 per cent. on such market value would not be required to be added to such value in the case of those proceedings.

S. 24 of the said Act provides that the Court shall not take into consideration the following matters, namely :—

(1) the degree of urgency which has led to the acquisition ;

(2) any disinclination of the person interested to part with the land acquired ;

(3) any damage sustained by him which, if caused by a private person would not render such person liable to a suit ;

(4) any damage which is likely to be caused to the land acquired after the date of publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

(5) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

(6) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ; or

(7) any outlay or improvements on or disposal of, the land acquired,

The valuation of movable property is directed by sub-rule (3) to be made on putting questions to the parties concerned with a view to elicit the necessary and reliable information and on making such further enquiries with regard thereto as the Board may think fit in view of the nature of the property to be valued. This of course leaves a very wide discretion to the Board but it could not but have been given as all the varieties of movable property that may come forward from the possession of a debtor cannot be expected to be anticipated by Government while framing this rule. One contingency however has been provided for in the Proviso to S. 51(c) and hence this general sub-rule must be held to be subject to the exception contained therein.²

29. *Forms of award.*—(1) The award under section 54 shall be made in Form No. 9.

(2) In the case of an award made under section 24, the same form shall be used with such alterations as may be necessary for embodying the terms of the settlement arrived at between the debtor and all his creditors.

(3) The award under sub-section (2) of section 55 shall be made in Form No. 10.

COMMENTARY

Form No. 9 which according to sub-rule (1) above is to be used while making an award under S. 54 has really rendered the elaborate provisions of that section capable of being understood more easily than they would otherwise have been. It is in 3 paragraphs, the first of which is in the nature of a preamble of the order embodied in paragraph 2. The latter has been sub-divided into 6 sub-paragraphs each requiring a specific order as to the main points on which according to the section the Board must pass specific orders and referring wherever necessary to schedule A or schedule B appended to the Form in which specific particulars are

commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4 sub-section (1).

It is obvious from the wording of the introductory parts of the two sections that the first enumerates the factors which should be taken into consideration and the second those which should not. Under sub-rule (2) both these sets of factors will have to be borne in mind while determining the value of the debtor's property under section 50 so far as they are applicable.

2. See the Commentary on that portion of the section at p. 189 *supra* for the nature of that contingency.

to be filled in according to the clear headings and sub-headings given therein. Paragraph 3 requires a declaration to be made as to the voidness of the alienations of or encumbrances on properties which are to be deemed to be void under section 49 of the Act.

Schedule A contains 9 columns, the last of which has been reserved for any remarks that it may be considered necessary to insert while Nos. 1 to 8 have headings and sub-headings relating to the necessary particulars to be given about (1) the debtor, (2) the creditors, (3) the amount originally claimed by each creditor, (4) the amount held payable to each on being scaled down under S. 52 or agreed upon at a private settlement together with the rate at which future interest is allowed, (5) the amount of costs and the names of the parties held liable to pay them, (6) the same kinds of particulars as to court-fee, (7) the manner in which the amounts mentioned in column 4 are to be paid, *i.e. to say*, the number, amount, and year and month of payment of each instalment and the total amount payable both in words and figures and (8) the amounts which are specifically charged on any particular properties.

Schedule B is in two parts (*a*) and (*b*), the first of which relates to the immovable property and the second to the movable property of the debtor. Part (*a*) has 6 columns out of which again the last has been reserved for any necessary remarks while (1) to (5) require a statement of (1) the serial number of the property, (2) such specification thereof as may be necessary, (3) names of the villages, survey nos. etc., (4) nature of debtor's right to each property and (5) details as to encumbrances, liens, mortgages or charges, if any, subsisting on each property treated serially. Part (*b*) contains 5 columns, of which the last is again reserved for incidental necessary remarks, and Nos. (1) to (4) require particulars as follows namely :—(1) serial no., (2) description, (3) place where it can be found and (4) particulars as to burden, if any, on each of them treated serially.

One can hope that with such a clear-cut form the task of the Board and its staff of drawing up an award as required by the elaborate provisions of this section would be easy indeed. Still if any difficulty arises in construing the section and the rule and form made for use in connection therewith, the rules of interpretation given in the Commentary on sections 17, 23 and 31 and the Commentary on section 54¹ may be refer-

1. See pp. 94-96, 112-13, 123-25 and 195-01 *supra* respectively.

red to for assistance in solving it. The form and the schedules accompanying it form part of Rule 28(1).

Since this form is to be used while making an award under S. 54, it can and must be used as well while making one under S. 23(4) as while making one after the debts are scaled down under S. 52.

As for that to be made under S. 24 as the result of a settlement arrived at between the debtor in an application under S. 17 and all his creditors, sub-rule (2) says that the same form shall be used after making such alterations therein as may be necessary in order to incorporate the terms of the settlement in the award.

Form No. 10 which is to be made use of while making an award under S. 55(2), consists of 3 paragraphs and is accompanied by two schedules. The first of the paragraphs is in the nature of a preamble reciting the circumstances leading to the passing of an award in this unusual form. The second paragraph contains in its operative part 5 directions of the nature below-mentioned :—

(1) a declaration that the creditors mentioned in column 2 of schedule A shall be entitled to receive from the bank bonds guaranteed by Government of the value mentioned in column 4 of the said schedule in full satisfaction of the debts due to them ;

(2) an order to the bank to issue such bonds to the creditors ;

(3) an order to the debtor to pay the aggregate amount of the bonds to the said bank in such annual instalments as are mentioned in column 8 of the schedule with simple interest at such rate as is mentioned in column 5 thereof ;

(4) orders to the parties to pay court-fees as mentioned in columns 6 and 7 of that schedule ;

(5) a declaration of a charge on all the immovable properties of the debtor in favour of the bank for the aggregate amount of the bonds, which is to remain in force until all the instalments mentioned in column 8 are paid up in full.

The third paragraph contains a declaration similar to that in the corresponding paragraph of Form No. 9 as to the alienations of and encumbrances on specified properties being void.

Schedule A :—This like the similar schedule in Form No. 9 has 9 columns, of which the last has been reserved for such special remarks as may be found necessary while the headings and sub-headings of the rest clearly show what particulars are required to be entered therein. The heading of column 1 thereof is the same as in the previous form. That

of column 2 differs in these particulars that there is no reference in this schedule to the order of priority and to the names of the creditors mentioned in section 3. The sub-headings of the two sub-clauses therein are the same as in the other form. The same is the case with the heading of column 3. That of column 4 is quite different as it should be because the debts are further scaled down and there are no sub-columns and sub-headings under it because the creditors are to get bonds worded as may be agreed upon between them and the bank through the Board. The heading of column 5 is dissimilar because in this schedule provision is to be made for payment of interest to the bank on the amount of the bonds, while there was no necessity to make any such provision in schedule A to the previous form. Columns 6 and 7 in this schedule with their headings and sub-headings correspond to columns 5 and 6 in the schedule to the previous form. The heading of column 8 here again is quite dissimilar to that of column 7 of the schedule in the other form because here provision is to be made for the payment of instalments to the bank instead of to the creditors. The sub-headings of the 4 sub-columns under it are however the same because the particulars required in both cases are the same. Lastly there is no column in this schedule corresponding to column 8 of the schedule in the other form because the whole of the amount of the bonds being declared a charge on the whole of the immovable property of the debtor there is no necessity of a column stating with respect to which amount a charge has been declared on a particular property.

Schedule B :—This schedule differs from the similar schedule to Form No. 9 in this respect only that it is not sub-divided into two parts obviously because there is no necessity in the case of this award to give any particulars whatever of the movable property of the debtor. The headings and sub-headings of the columns here which require particulars only as to the immovable properties of the debtor are exactly the same as those of the corresponding columns of part 1 of Schedule B to Form No. 9.

The same satisfactory remark as has been made with respect to the form for an award under S. 54 is applicable to this form also, so clear-cut it is. In case of doubt as to the joint effect of the section, the rule and the form reference may be made to the rules of interpretation referred to in Schedule A above.

30. Procedure when a debtor's property is ordered to be sold under section 66.—(1) When the Board or the Court orders any property of a debtor to be sold in liquidation of his debt or part

thereof, it shall forward a copy of such order to the Collector with specific instructions as to the property to be sold by him.

(2) Every sale of such property, whether movable or immovable, shall be held by the Collector in accordance with the procedure laid down for the sale of such property under the *Bombay Land Revenue Code, 1879*.

(3) A certificate in Form No. 11 shall be issued to the purchaser of property sold by the Collector under this rule.

COMMENTARY

As is obvious from its wording this rule prescribes the procedure to be followed when the Board or the Court makes an order for the sale of a portion of the debtor's property for the liquidation of the whole or part of his debt under S. 66 of the Act. It is sub-divided into three sub-rules. The first requires the Board or the Court passing the order to forward a copy thereof to the Collector of the district with specific instructions as to the property to be sold. The second requires the Collector to follow the procedure laid down in the *Bom. L. R. Code, 1879*¹ while making the sale, whether the property is movable or immovable. The third requires the Collector to grant a certificate of sale to the purchaser of the property in Form No. 11 appended to the rules. That form is too simple to require any explanation.

31. *The Form of certificate under section 76.*—The certificate to be issued by the Board to a creditor under section 76 shall be in Form No. 12.

COMMENTARY

It may be recalled that S. 76 of the Act consists of two sub-sections, the first of which requires the Board to grant a certificate in a prescribed form containing the particulars mentioned in that sub-section and the second mentions the use which the creditor getting it can make of it and the weight which the Court before which it is produced can attach to it. This rule prescribes the form for it. It is No. 12 of the Forms appended to these rules.

Form No. 12 :—The form of this certificate is so worded as to give the Court before which it is produced a full idea as to the reason why and the circumstances in which it was granted. The tabular statement

1. For that procedure see SS. 165 to 181 of the said *Code*.

below it contains 9 columns, out of which the last is as usual reserved for remarks while the first requires to be stated the name of the debtor, the second the name and address of the creditor, the third the amount originally claimed by him, the fourth that awarded by the Board, the fifth the rate of future interest and the date from which it is to begin to run, the sixth the date of the award, the seventh and eighth the name of the person from whom the creditor alleged to have borrowed an amount for lending it to the debtor and the amount alleged to have been borrowed. The Board not being concerned with the truth or otherwise of the allegation should not be deemed to have arrived at any decision as to that. That would have to be done by the Court before which the certificate is produced for consideration.

Sub-section (1) of S. 76 and Form No. 12 :—It will appear on comparing the particulars mentioned in sub-section (1) of S. 76 as necessary to be stated in the certificate to be granted under the section with the headings of the columns in Form No. 12 that what the sub-section requires forms the subject-matter of the headings of columns 2, 3, 4, 5 and 7 only, that therefore the certificate requires the following additional particulars to be stated, namely :—the name of the debtor (col. 1), the date from which future interest is to run (col. 5), the date of the award (col. 6) and the amount borrowed (col. 8) and that though the expression used in the sub-section for the amount alleged to be due to the creditor, namely “the amount claimed as due by him from the debtor”, is not grammatically correct and does not at once give an intelligible idea as to what is meant, the heading of col. 3, namely “Amount of debt as originally claimed by the creditor”, rectifies the error and gives a clear idea as to what is to be stated in that column.

32. *Legal representatives to be brought on record on death of any party to the proceedings before Board*.—If a Board has reason to believe that any party to the proceedings before the Board has died, the Board shall take steps to bring his legal representative on the record.

33. *Proceedings against parties who are minors or persons of unsound mind*.—In any proceedings under the Act for the appointment of guardians and next friends of parties who are minors or persons of unsound mind the procedure laid down in Order XXXII of the First Schedule to the Code shall, so far as may be, be followed.

34. *Amount to be fixed for the maintenance of the debtor and his dependants.*—The amount for the maintenance of the debtor and his dependants shall be fixed by the Board with due regard to the status of the debtor, local conditions, the size of his family and the earning capacity of the debtor and the members of his family from all sources.

35. *Procedure in Code to be generally followed.*—In respect of any matter for which no provision is made in the rules, the procedure laid down in the Code shall, so far as may be, be followed by the Board in the proceedings before it.

36. *Registers and books to be maintained.*—The following registers and books shall be maintained by a Board in the forms respectively mentioned against each of them :—

- | | | |
|---|---------|----------------|
| (1) Case Register of applications | .. | (Form No. 13). |
| (2) Process Register | | (Form No. 14). |
| (3) Subsistence Allowance Register | .. | (Form No. 15). |
| (4) Register of Contingent Expenditure | | (Form No. 16). |
| (5) Receipt Book | | (Form No. 17). |
| (6) Register of Applications and Court-fees | | (Form No. 18). |
| (7) Cash Book | | (Form No. 19). |
| (8) Memo-Book for day to day work | .. | (Form No. 20). |

37. *Monthly Progress Register.*—Every Board shall maintain a Monthly Progress Register in Form No. 21 and submit a return in the same form to the First Class Subordinate Judge within the local limits of whose special jurisdiction it is established, before the 10th day of each month.

COMMENTARY

Rules 32 to 37 are such rules as cannot without fear of contradiction be stated to have been made in the exercise of any specific power conferred on the Provincial Government in that behalf. However since the matters to which they relate are all such that if they are left unprovided for, the Act would be found to be unworkable, they must be deemed to have been made in the exercise of the general power of the said Government under S. 83(1) of the Act to "make rules for the purpose of carrying into effect the purposes of the Act", although as will be pointed out

later on some of them do relate to matters dealt with in some of the sections of this Act.

Rule 32 :—This rule casts a duty in unmistakable terms on the Board to take steps to bring the legal representatives of a deceased party on record after the fact of his death comes to its knowledge in any manner whatever. This subject-matter is almost the same as that of S. 30 of the Act. That section however does not confer any power on the Provincial Government to make a rule with respect to that matter. Nor is there any clause in S. 83(2) with reference thereto. However S. 30 takes it for granted as it were that the Board will *suo moto* take steps to bring the legal representative of a deceased party on record and directs that the proceeding shall be continued after it has done so unless it otherwise directs. It seems that since rule 35 is there, this could as well have been omitted. However a specific direction is decidedly better than a general one.

Rule 33 :—The above remarks apply as well to rule 33. In its case there is not even a cognate provision in any part of the Act. It cannot however for a moment be seriously argued that the Legislature could not have intended that even if a party to a proceeding before a Board is a person under a disability, the Board should continue the proceeding without appointing a suitable next friend or guardian *ad litem* according as he is an applicant or an opponent. On the contrary the Legislature must be presumed to have intended that such an appointment should be made and that provision for it would be made in the Rules.

Rule 34 :—The case of this rule bears much resemblance to that of rule 32 because it enumerates the facts to be taken into consideration by the Board, while fixing the amount of maintenance of a debtor against whom an award is made and his dependants and the Explanation to Proviso 2 to clause (h) of sub-section (2) of S. 54 of the Act impliedly casts a duty on the Board to fix a reasonable amount for their maintenance for it defines “the net annual income” of a debtor against whom an award is made to be taken into consideration while fixing the amount of each instalment as that which would be left on deduction of *inter alia* such an amount but is silent as to the circumstances that are to be taken into consideration while discharging that duty. This rule fills up that gap and the circumstances which according to this rule are to be taken into consideration while doing so are such as would necessarily be taken into consideration on equitable grounds.

Rule 35 :—This is a general provision as regards the procedure to

be followed in the case of proceedings under this Act and can be utilised in the absence of a specific provision in those rules with respect to any matter. It is quite in accord with the intention of the Legislature for wherever it intended to treat the proceedings under this Act as of a special nature it has made specific provisions and has in certain matters treated it as an ordinary civil proceeding *e.g.* see S. 7.

Rule 36 and Forms Nos. 13 to 20 :—This rule cannot be deemed to have been made pursuant to a specific provision in the Act itself but it cannot be denied that unless the Board is directed to keep the registers and books mentioned therein in the prescribed forms there would be all chaos in its office and there would be many cases of injustice during the operation of this Act.

Now this rule provides for the maintenance of 5 kinds of registers and 3 kinds of books in the office of each Board that may be established under S. 4 of the Act. A few explanatory remarks as to the nature of each of them, the forms prescribed for them and the entries to be made in them would not be out of place here.

REGISTERS

(1) The *Case Register in Form No. 13* is intended to be filled in on receipt of each major application whether under S. 17 or S. 23. The said form has in all 12 columns. The last, the remark-column, thereout may or may not be filled up according as a necessity for making any special remark with reference to any application does or does not arise. Of the remaining ones the first four are required to be and can be filled in soon after an application is received. The remaining ones are to be filled in and can be filled in only if and after an award is made for it is then only that the particulars to be entered therein can be ascertained.

(2) The *Process Register in Form No. 14* has 8 columns, out of which the last is as usual reserved for any special remark that may be necessary in an individual case. Out of the remaining ones, the first four can and must be filled in soon after an application for issuing a process such as a summons or notice is received, the fifth after process fee to be recovered in court-fee stamps is received, the sixth when the process is issued and the seventh when it is returned. There seems to be no column therein for entering the processes returned unserved on account of wrong addresses, want of time &c. It would have been better if the heading of this column had been "Date of return" and it had been sub-divided into "After service" and "Without service".

(3) The *Subsistence Allowance Register in Form No. 15* has 8 columns besides the usual remark-column which is the last one and is intended to be made use of only when it may be necessary to make a special note in an individual case. Out of the rest the first five can and must be filled up as soon as any allowance is received along with an application and the next three after the allowance is paid and the voucher therefor obtained.

(4) The *Register of Contingent Expenditure in Form 16* relates to the expenses that may have to be incurred by the Board for the petty supplies which may have to be purchased locally. There are 6 columns in this form besides the usual remark-column. The headings thereof are simple. Entries are to be made therein from time to time as such expenses are made.

(5) The *Register of Applications and Court-fees in Form No. 18* seems to relate to miscellaneous applications presented to the Board from time to time. The said form also is a simple one having only 4 columns besides the usual one for remarks and their headings too are so clear as not to require any explanation.

This exhausts the list of registers to be kept by the Board.

BOOKS

(1) The *Receipt book in Form No. 17* is in foils and counter-foils, it being intended that the blank spaces in both are to be filled in and signed by the Chairman of the Board or the Board if consisting of one person only, that thereafter the foil is to be delivered to the person making the payment and that the counter-foil is to be retained in the office for record.

(2) The *Cash-book in Form No. 19* seems to have been intended to have in one place the accounts of all the cash receipts had and disbursements made from time to time by the Board. It has in all 14 columns numbered consecutively. But they are in two parts, each containing 7. The last in both the parts is the remark-column. The headings of the first and the sixth columns on the one hand and of the eighth and twelfth on the other are the same while those of the remaining four columns in each part differ, those in the part as to receipts being such as are required in their case and those as to payments being such as are required in their case. Their headings are too simple to require any explanation.

(3) The *Memo-Book for day-to-day work in Form No. 20* is intended to be filled in with a view to enable all concerned to know at a glance and without referring to the records (1) which of the cases have

been fixed for the return of processes (2) which for the production of statements and documents, (3) which for hearing and (4) which for giving an award. The Board not being concerned with the execution of the award-decree or even with the passing of a decree on an award, as is apparent from the provisions of SS. 61-63¹ there are no columns in this form for making entries as to cases fixed for any work subsequent to the passing of an award.

Rule 37 :—This rule provides for the maintenance of a *Monthly Progress Register* in Form No. 21 and the submission of a return in the same form to the First Class Subordinate Judge within the local limits of whose special jurisdiction the Board is established. Why this was not added in the list of Registers in rule 36 but a separate rule was made for it so far as the maintenance of the register in the Board's office is concerned cannot be gathered, though it seems reasonable that so far as the submission of a return in the same form was concerned, a separate rule was necessary. The form has 6 columns, of which the last is as usual the remark-column. The heading of the remaining 5 show that this register and return is intended to show at a glance (1) the previous arrears in the beginning of the month with particulars as to the number and the amount involved, (2) the fresh institutions during the month with particulars as to whether they have come from creditors, debtors or from other Boards and the number and the amount involved in each class of cases, (3) the cases in which awards were passed, sub-divided according as the awards were passed under S. 24, S. 54 or S. 55, (4) the applications dismissed wholly on any of the three sets of grounds mentioned with particulars as to their number and the amount involved and (5) the cases pending at the end of the month with particulars as in other cases.

It is remarkable that there is no column in this form for entering cases transferred to a Board by a civil court although it seems that a large number of suits and applications for execution and incidental proceedings would be transferred to the competent Boards under S. 37 of the Act immediately after such Boards are established under S. 4 thereof and some doubtful cases may be transferred to such Boards even after the lapse of such time as the civil courts would require for arriving at a decision on the points mentioned in S. 37. There would have been room for them in sub-column 3 of column 2 if after the word "Board" in the heading of that sub-column there had been the additional words "or a Civil Court."

1. See Pp. 213-18 *supra*.

38. *Conditions subject to which authorised persons may advance loans.*—The authority under S. 78, to any individual, a joint stock company or other association, to advance loans to debtors in respect of whose debts an adjustment has been made under the Act (hereinafter referred to in this rule as the authorised person) shall be in Form No. 22. It shall not be granted except on the following conditions :—

(i) *Purposes for which advances may be made and maximum limits of such advances.*—The authorised person shall not advance loans to any debtor except for the purpose of financing of crops nor exceeding the maximum limits which the Collector has fixed in this behalf under rule 39.

The authorised person shall not knowingly advance any loan to any debtor who had previously taken a loan from another authorised person unless such previous loan has been fully paid or unless he (the authorised person) agrees to discharge the liability of the debtor in respect of such previous loan.

(ii) *Authorised person not to withhold permission for sale of crops or produce.*—The authorised person shall not unreasonably withhold permission required by a debtor under sub-section (1) of S. 77 for sale of the standing crops or the produce of his land and if the authorised person himself buys the crops or produce he shall pay the debtor the price thereof at the market rate.

(iii) *Duty of authorised person to maintain and furnish accounts.*—(a) The authorised person shall keep regularly in Form No. 23 a separate account of each loan advanced to a debtor :

Provided that where the loans to any debtor are advanced on a current account, the authorised person may keep one account of all transactions relating to such loans.

Explanation.—For the purposes of this clause, the term “current account” includes in the case of banks, accounts relating to overdrafts, cash credits and pro-note accounts, which are maintained in the form of current accounts.

(b) The authorised person shall, within one month after the expiry of every year, supply every debtor a full and correct statement of accounts signed by him or his agent. Such statement of accounts shall show all transactions entered into during the year and the balance outstanding on account of each loan on such date

as Government may prescribe either generally or for a particular area and shall contain particulars as in Form No. 24 :

Provided that where the loans are advanced on a current account, it shall be sufficient to furnish particulars of the balance due on the whole of such account on the prescribed date. In the case of banks, the requirement of this clause shall be deemed to have been complied with if a full statement of accounts has been supplied to the debtor by means of a pass-book or otherwise from time to time throughout the year and intimation is given within one month after the expiry of the year of the amount of the balance remaining due on the prescribed date.

(c) The statement of accounts shall be furnished to the debtor by registered post and an acknowledgment obtained thereof at the cost of the authorised person.

(iv) *Rate and calculation of interest.*—(a) The authorised person shall not charge or recover interest at a rate higher than the rate notified by Government under rule 40.

(b) If any repayment is made in respect of a loan, interest on such loan shall be calculated up to the date of such repayment ; and if the loan or any part of it is still outstanding, interest shall thereafter be calculated only on the balance of the principal still outstanding.

(v) *Inspection of accounts to be allowed.*—The authorised person, unless specially exempted by Government, shall allow such officer as may be appointed in this behalf by Government to inspect the accounts maintained by him.

(vi) *Penalty for non-compliance with conditions mentioned in this rule.*—Government may in its discretion cancel the authority granted by it for breach of any of the foregoing conditions or for any other reason.

39. *Collector to fix maximum limits up to which advances may be made.*—The Collector shall, in the month of March each year, by notification in the Official Gazette, fix maximum limits up to which persons authorised under section 78 may advance loans to debtors for the financing of crops during the period between 1st April of that year and 31st March of the following year. Such limits may be fixed separately for different crops and different areas, having regard to the seasons and nature and productivity of crops.

40. *Government to fix maximum rate of interest.*—Government shall, from time to time, by notification in the *Official Gazette*, fix a rate of interest, not exceeding twelve per cent. per annum, at which loans for the financing of crops may be advanced by persons authorised under section 78.

COMMENTARY

Rules 38 to 40 and Forms Nos. 22 to 24 :—It may be recalled that sub-section (1) of section 78 of the Act has empowered the Provincial Government to authorise individuals, joint-stock companies or other associations to advance loans to debtors in respect of whose debts an adjustment has been made under the Act and sub-section (2) of that section has empowered it to impose such conditions as it thinks fit on the authority granted by it. In the exercise of those powers the said Government has made Rule 38 prescribing Form No. 22 for such authority, imposing 5 conditions on that authority and laying down by the sixth a penalty for non-compliance with any of the said conditions. It is therefore clear that it is subject to those conditions only that the authority referred to in section 78(1) would be granted. Those conditions and the remaining rules are connected together in the manner explained below.

Condition (i) and Rule 39 :—This condition is (a) that “the authorised person”, which term includes not only an individual but also a joint-stock company or other association to whom authority under this section may be granted, shall not advance money to such a debtor except for the purpose of “financing of crops,” which term has been defined in S. 2(7) of the Act supplemented by Rule 3 of these rules; (b) that the maximum amounts which each such person can advance in any year shall not exceed the limits which the Collector of each district may, by a notification published in the *Official Gazette* in the month of March each year fix for each year commencing from 1st April next separately for each kind of crops and for each specified area in his district, and (c) that no such person shall advance any loan to a debtor, knowing that he had taken a loan previously from another authorised person unless the previous loan has been fully repaid before his advance or he himself undertakes to repay that loan in full on behalf of the debtor.

Condition (iii) and Forms Nos. 23 and 24 :—This condition is subdivided into three parts (a), (b) and (c).

Part (a) requires that the authorised person shall regularly keep in Form No. 23 a separate account of each individual loan advanced to a

debtor. The said form containing 6 columns besides an additional one for any special remarks is a simple one, which if translated into the regional language of any area, any money-lender can easily fill up from time to time as occasion arises. It requires each loan to be given a serial number in col. 1, the date of each to be stated in col. 2, the amount of the fresh advance or balance of a previous one, if any, brought forward in col. 3, the rate of interest agreed upon in col. 4, the date of repayment, if any, and how appropriation thereof was made in col. 5 and the total re-payment in any year and the balance due at its end in col. 6.

This provision is modified by a proviso to the effect that where loans are advanced to a debtor on a current account the person may keep one account of all transactions relating to such loans.

The term "current account" used in this proviso has been explained to include, in the case of banks, accounts relating to overdrafts, cash credits and pro-note accounts, which are maintained in the form of current accounts.

Part (b) requires such person to supply every debtor, within one month after the expiry of every year, with a full and correct statement of accounts containing the particulars required by Form No. 24 relating to all transactions entered into during the year ending on the date to be prescribed by Government generally or for any specific areas, and the balance remaining due at that date and signed by him or his agent.

Form No. 24 is also a simple one like No. 23. It has only 6 columns, the first of which requires the serial number of the loan to be stated, the second the date thereof, the third the fresh advance or the balance of a previous one taken as the principal, the fourth the amount of interest, if any, brought forward, the fifth the amounts credited towards the principal and the interest and the sixth the balance outstanding at the end of the year out of the principal and the interest separately and the grand total of the balances outstanding on account of all the loans advanced to the debtor.

The provision in this part too has been modified by a proviso to the effect that where loans are advanced on a current account it would be sufficient if particulars of the balance due on the whole account up to the prescribed date are supplied within the prescribed period and that the banks concerned will be deemed to have discharged their duty under this clause if they supply to the debtor a full statement of accounts in the form of a pass-book or otherwise from time to time throughout the year and

give intimation to him within the prescribed period of the balance due on the prescribed date.

Part (c) requires that the statements required to be supplied by this condition shall be sent to the debtor by registered post and that an acknowledgment shall be obtained from him on each occasion at the cost of the authorised person.

Condition (iv) and Rule 40 :—This condition relates to the rate of interest chargeable and the method of its calculation.

Part (a) thereof prohibits the charging of interest at a higher rate than that which may be notified by Government under Rule 40. That rule casts a duty on it to fix from time to time a rate of interest not exceeding 12 per cent. per annum at which loans for the financing of crops may be advanced by persons authorised under this section.

Part (b) directs that if a debtor makes any repayment in respect of a loan, interest at the prescribed rate shall be calculated up to the date of repayment and if any loan or part of it remains outstanding thereafter, further interest at that rate shall be calculated on the balance of the principal that may be outstanding.

Condition (v) :—The authorised person is by this condition required to allow any officer who may be appointed by Government for that purpose to inspect from time to time the accounts which the said person is required to keep with respect to the loans advanced by him.

There does not seem to be any direct provision in any section of the Act or in any of the preceding rules for the appointment of such an Inspector of Accounts.

Condition (vi) :—This condition prescribes the penalty which an authorised person who commits a breach of any of the foregoing conditions is likely to incur. It is that Government may cancel the authority granted to him. It also reserves to Government the right to cancel it for any other reason which it may think proper.

These conditions and the provisions in Chapters III and IV Bom. Bill No. VII of 1938 :—As can be seen from its preamble and sections the present Act was passed in order to relieve agricultural debtors of their existing indebtedness as early as possible. But the conditions of rural life are such that persons so relieved would within a short time again fall into the clutches of the village money-lenders. To prohibit them absolutely from plying their trade would be to shut out an existing source of the much-needed help to the agriculturists. That cannot be done because the co-

operative movement is not yet sufficiently wide-spread to supply all their needs. Even the Majority Report of the Royal Commission on Agriculture admits that "In the present state of India he (the village money-lender) is a necessity and that being so his calling will not be abolished by making it illegal"¹ and recommends the licensing of money-lenders being made compulsory on the line adopted in the *English Money-lenders' Act of 1927* passed by the British Parliament.² The Majority Report of the Central Banking Inquiry Committee, Vol. I, Pt. I also contains suggestions for the licensing and control of money-lenders.³ The then Government of Bombay had in view of these recommendations drafted the *Bombay Money-lenders' Bill* (VII of 1938) for putting some healthy checks on their hitherto-irresponsible methods of doing business. It was a pretty long Bill containing 42 sections divided into 5 chapters. Chapters III and IV thereof related to the *Registration and Licensing of Money-lenders* and *Regulation of Accounts* respectively. For some reason or another the Bill was never placed again before the Legislature until the Congress Ministry resigned, and the Legislature was suspended shortly after that. The present Government cannot therefore put the provisions of that Bill into operation and regulate the business of money-lending, however desirable it may be for ensuring the permanency of the good effect that may once be produced by putting the present Act into operation. However taking advantage of the limited power given to it by sub-section (2) of this section to impose conditions on the authority which it is required to grant to certain persons and bodies for advancing loans for the financing of crops to debtors who are parties to awards made by the Boards established under S. 4 of this Act, it has compressed the principles underlying some of the provisions of SS. 6 to 21 and 22 to 26 comprised in Chapters III and IV of that Bill and put them into force in the form of the conditions laid down in Rule 38 so far as the persons and bodies to whom authority to advance loans may be granted under this section are concerned. The experience gained by this working will no doubt be helpful when the Legislature resumes its functions and takes up the above Bill for consideration as it must do for there are already such enactments on the statute-books of the other provinces of India such as the Punjab, Bihar, Bengal and United Provinces for several years past.

1. Main Report of the R. C. A., 1928, para. 363 at p. 433.

2. Ibid, para. 366 at p. 439.

3. See paras 117-21 at pp. 87-90 of the said Report.

FORM No. 1.

(See Rule 16.)

To

The Debt Adjustment Board,
Taluka _____, District _____

Under section 17(1) of the Bombay Agricultural Debtors Relief Act, 1939, I
son of _____, caste _____, resident of _____ taluka, age _____ and doing business as _____
hereby apply for the adjustment of my debts under the said Act.

2. The amount and particulars as required by section 22(1)(a) to (d), of all debts due from me (including those mentioned in section 3) are as follows :—

1 Serial No. of debt.	2 Full name, residence and full address of the creditor.	3 Amount of debt.				4 *History of each debt with particulars of the original principal and rate of interest chargeable.	5 Particulars of debts for which the debtor is liable as surety, joint surety or joint debtor.			6 Remarks.
		Principal.	Interest.	Total claimed by the creditor.	Amount, if any, admitted by the debtor.		Amount of debt.	Nature of Liability.	Full names and addresses of the debtor, joint sureties or joint debtors.	

3. The particulars of my property including claims due to me are as follows :—

(a) Immoveable property (including property situate outside the Province of Bombay).

1 Specification of the property with boundaries where necessary.	2 Name of the Village with Survey Nos.			3 Nature of tenure.	4 Annual income derived.	5 Market value.	6 Details of any attachment, mortgage, lien or charge subsisting thereon.	7 Full names and addresses of the co-sharers of the debtor, if any.	8 Remarks.
	Survey Nos.	Area in acres.	Government assessment.						
Lands									
Houses									

(b) Moveable property (including cash).

1 Serial No.	2 Description.	3 Estimated value.	4 Places where it may be found.	5 Details of any pledge, charge or lien thereon.	6 Remarks.

(c) Claims due.

1 Full name and address of the person from whom the claim is due.	2 Amount due.		3 Particulars of the claims including date of commencement, rate of interest, whether secured and if so, how, etc.	4 Nature of the documents evidencing the claim and in whose possession.	5 Remarks.
	Principal.	Interest.			

4. Particulars of property of the nature mentioned in paragraph 3 transferred or encumbered are as follows :—

1 Description of property.	2 Nature of transfer or encumbrance.	3 To whom transferred or mortgaged, etc. (Full name and address).	4 Date of transfer or encumbrance.	5 Remarks.

5. I hereby declare that all debts which are due, or which to my knowledge, any person claims to be due from me and all my properties have been included in the above statements.

Dated the _____ 194 . Signature of the Applicant.

Verified that the contents of paragraphs _____ of the application are true upon the personal knowledge of, and those in paragraphs _____ upon information received and believed to be true by the undersigned.

Dated the _____ 194 . Signature of the applicant.

* *Note.*—If the principal of any of the debts shown in column 3 of the statement in paragraph 2 includes any arrears of interest which have been added when a bond has been renewed or any additional loan has been taken, the following information (so far as it is known to the debtor) should be given separately with references in the margin, to the serial numbers of the debts in column 3 :—

The date when the debt was first incurred, the amount of the original principal, the approximate dates and the conditions on which the bond was renewed or the additional loan taken, the rate of interest stipulated in each bond, the amount paid from time to time and any other facts.

FORM No. 2.

(See Rule 16.)

To

The Debt Adjustment Board,

Taluka _____, District _____

Under section 17(2) of the Bombay Agricultural Debtors Relief Act, 1939, I _____ son of _____, caste _____, resident of _____, taluka _____, hereby apply for the adjustment of my claims against _____, who is my debtor.

2. The particulars required under section 22(2)(a) to (d) are as follows :—

1	2		3	4	5	6
Name and full address of the debtor.	Amount of debt claimed.		Whether secured and if so, how.	*History of each debt, with particulars of the original principal and rate of interest charged.	Names and addresses of other creditors, so far as they are known to the applicant.	Remarks.
	Princi- pal.	Interest.				

3. The particulars of the debtor's property including the property situate outside the Province of Bombay, so far as they are known to me, required under section 22(2) (e) are as follows :—

(a) Immoveable property :—

1	2	3	4	5	6
Description.	Area or extent of shares.	Assessment.	Value.	Particulars of any mortgage, lien or charge.	Remarks.

(b) Moveable property :—

1	2	3	4
Description.	Value.	Applicant's charge on the same, if any.	Remarks.

(c) Particulars of other income, if any.

Dated the 194 . Signature of the applicant.

Verified that the contents of paragraph are true upon the personal knowledge of, and those in paragraph upon information received and believed to be true by the undersigned.

Dated the 194 . Signature of the applicant.

* *Note.*—If the principal of any of the debts shown in column 2 of the statement in paragraph 2 includes any arrears of interest which have been added when a bond has been renewed or any additional loan has been taken, the following information (so far as it is known to the creditor) should be given separately with references in the margin to the debts in column 2 :—

The date when the debt was first incurred, the amount of the original principal, the approximate dates and the conditions on which the bond was renewed or the additional loan taken, the rate of interest stipulated in each bond, the amounts paid from time to time and any other facts.

FORM No. 3.
(See Rule 16.)

Form of Application by a Debtor
Creditor under section 23(1) for recording a settlement.

To

The Debt Adjustment Board,
Taluka _____, District _____

Under section 23(1) of the Bombay Agricultural Debtors Relief Act, 1939, I _____ son of
caste _____, resident of _____, taluka _____, hereby apply that the settlement in respect of my
debts
claims arrived at between the parties mentioned below be recorded and certified under section 23(3) of the said
Act.

2. The particulars regarding the settlement are as follows :—

Parties to settlement.		Amount of debt claimed due by the creditors.	Amount for which the settlement is reached.	Instalments in which the amount is to be paid and priority among the creditors, if any.	Particulars of the property of the debtor relating to the settlement with details of any charge, lien or mortgage thereon.	Remarks.
Name and address of the debtor.	Names and addresses of the creditors.					
1	2	3	4	5	6	

Dated the _____ 194 .

Signature of the applicant $\frac{\text{(Debtor)}}{\text{(Creditor)}}$.

Verified that the contents of paragraph 2, columns _____ are true upon the personal knowledge of, and those of paragraph 2, columns _____ upon information received and believed to be true by the undersigned.

Dated the _____ 194 .

Signature of the applicant $\frac{\text{(Debtor)}}{\text{(Creditor)}}$.

FORM No. 4.

(See Rule 18.)

List of Debtors.

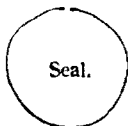
[F's. 3-4.]

RULES MADE UNDER S. 83 OF THE ACT

305

Serial No.	Name and address of the debtor.	Total amount of debts.	Names of creditors to whom the debts are owing with their respective amounts.		Remarks.
			Creditor.	Amount owing.	
1	2	3	4		5

Chairman of the Debt Adjustment Board for
The Debt Adjustment Board for



Dated the

194 .

FORM No. 5.

(See Rule 19.)

Notice under Section 23(3) of the Bombay Agricultural Debtors Relief Act, 1939, to the Debtor Creditor in the matter of recording a settlement.

To _____ Proceedings No. _____ Year _____
 son of _____, resident of _____, Taluka _____,
 District _____

Whereas an application under section 23(1) of the Bombay Agricultural Debtors Relief Act, 1939, has been made to this Board by son of _____, resident of _____, taluka _____, (debtor) (creditor) for recording and certifying the settlement arrived at between the debtor and his creditors.

You are hereby called upon to be present before the Board on _____ at _____ o'clock, when the said application will be considered by the Board and prefer objections, if any, against the recording and certifying of the settlement. If you fail to appear, the Board shall decide the application in your absence and come to such decision as it deems fit.



Chairman of the Debt Adjustment Board for

 The Debt Adjustment Board for

Dated the _____ 194 .

FORM No. 6.

(See Rule 20.)

Notice to be given to the debtor under Section 31(a) of the Bombay Agricultural Debtors Relief Act, 1939.

To _____ Proceedings No. _____ Year _____
 , resident of _____, Taluka _____,
 District _____

Whereas _____ son of _____, caste _____ of _____ taluka, creditor, has made an application under section 17 of the Bombay Agricultural Debtors Relief Act, 1939, for the adjustment of his claim against you.

You are hereby required to submit a statement in writing of the particulars relating to the debts owing by you and your property is the form set out in paragraphs 2 and 3 of Form No. 1 sent herewith within one month from the date of the service of this notice.



Chairman of the Debt Adjustment Board for

 The Debt Adjustment Board for

Dated the _____ 194 .

FORM No. 7.

(See Rule 20.*)

Form of notice under section 31 of the Bombay Agricultural Debtors Relief Act, 1939, to be given to the creditors individually and generally.

Proceedings No. . Year .

To
 resident of , Taluka , District ,
 the creditor
 the creditors

Whereas son of , Caste , Taluka
 debtor
 creditor has submitted an application under section 17 of the Bombay
 Agricultural Debtors Relief Act, 1939, for the adjustment of the debts
 (of) son of , Caste of Taluka ,

You as one of the creditors to whom the said debtor is indebted are hereby
All the creditors
 required to submit to the Board a statement in writing of the particulars
 stated in paragraphs 2 and 3 of Form No. 2 sent herewith within one month
 from the date of the service of this notice
the publication of the general notice

Attention is invited to section 32 of the said Act under which every
 debt in respect of which a statement is not submitted by a creditor to the
 Board in compliance with this notice shall be deemed to have been duly
 discharged.

The application will be heard at 11 a.m. on
 of 194 , when you should appear before the Board.

Seal

Chairman of the Debt Adjustment Board for—
 The Debt Adjustment Board for—

Dated the 194 .

* The text of this Form as printed in the *Official Gazette* contains a reference
 to Rule 26 but it should be to Rule 20 as here.

FORM No. 8.

(See Rule 22.)

Summons to a party or a witness under the Bombay Agricultural Debtors Relief Act, 1939.

Before the Debt Adjustment Board.

In the matter of Proceedings No. Year
debtor, and resident at , Taluka
resident of , creditor.
To

son of resident of
Taluka , District

You are hereby required to appear in person before this Board at
on the day of 194 , at
o'clock in the forenoon, for the purpose of giving evidence in the above
matter, and to produce before the Board the following documents, viz. :—

Given under my hand and the seal of the Board this day
of 194 .



Chairman of the Debt Adjustment Board for
The Debt Adjustment Board for

Dated the 194 .

FORM No. 9.

[See Rule 29(1)]

Award under section 54 of the Bombay Agricultural Debtors Relief Act, 1939.

Proceedings No. . Year .

Order of the Board.

Whereas, on an application made under the Bombay Agricultural Debtors Relief Act, 1939, for the adjustment of debts of the debtor described in Schedule A, this Board has determined under the provisions of the said Act, the amounts payable to the creditors described in the said Schedule A.

2. It is hereby ordered under section 54 of the said Act as under :—

(1) The debtor shall pay to each creditor concerned the amount mentioned against his name in column 4 of the Schedule A, in the manner laid down in column 7 thereof.

(2) The properties of the debtor mentioned in Schedule B and bearing serial Nos. _____ are hereby charged for the payment of the creditors described in Schedule A (bearing serial Nos. _____).

(3) Properties bearing serial Nos. _____ in Schedule B now in possession of the creditor _____ shall be delivered to the debtor, subject to the conditions which are recorded at the end.

(4) Properties bearing serial Nos. _____ in Schedule B shall be liable to be sold for the recovery of debts of creditors Nos. _____ respectively in Schedule A. The conditions subject to which these shall be sold are recorded at the end.

(5) Simple interest at the rate mentioned in column 4 of Schedule A shall be allowed on the amount mentioned in that column; costs mentioned in column 5 and court-fees mentioned in column 6 of the said Schedule A shall be paid by the parties mentioned in those columns.

(6) The debts shall be paid in priority to the creditors according to the order in which their names are arranged in column 2 of Schedule A.

3. It is hereby declared by the Board under section 49 of the Act that alienations of properties bearing Nos. _____ in Schedule B and incumbrances on properties bearing Nos. _____ in the said Schedule B shall be void.



Chairman of the Debt Adjustment Board for _____
The Debt Adjustment Board for _____

Dated the _____

194

Note.—In Schedule A in column 8, the amounts in respect of which a charge is kept should be entered separately according to each serial number of the properties described in Schedule B. In Schedule B properties on which charges are kept, properties, the possession of which is ordered to be delivered, properties which are liable to be sold and properties, the alienation of and incumbrances on which, are declared to be void should be described in different serial numbers.

SCHEDULE A.

1	2		3	4	
Name and address of the debtor.	Names and addresses of the creditors, arranged in order of priority mentioned in section 54(2)(g)—first proviso—including those creditors who are mentioned in section 3.		Amount of debt (secured or unsecured) originally claimed due by the creditor.	Amount of debt as scaled down by the Board under section 52 or items of settlement under section 23 or otherwise made payable under the provisions of the Act.	
	Serial No.	Name and address of the creditor.		Amount.	Rate of interest at which further interest shall be payable.

5		6		7				8	9
Costs.		Court-fees.		Amounts in column 4 ; how payable.				Amount in respect of which further charge is kept	Remarks.
Amount.	Names of parties who have to pay.	Amount.	Names of parties who have to pay and the manner of payment.	In how many instalments.	Amount of each instalment.	When payable			
						Year.	Month.		

SCHEDULE B.

(a) *Immoveable Properties.*

1	2	3			4	5	6
Serial No.	Specification of properties with boundaries where necessary. (Lands or Houses).	Names of villages with Survey Nos., etc.			Nature of debtor's right.	Details of any encumbrance, lien, mortgage or charge already subsisting thereon.	Remarks.
		Survey No. and Pot Hissa.	Area in acres.	Assessment.			

(b) *Moveable Properties.*

1	2	3	4	5
Serial No.	Description.	Places where it may be found.	Details of any mortgage, charge, or lien already subsisting thereon.	Remarks.

FORM No. 10.
[See Rule 29 (3).]

Award under section 55(2) of the Bombay Agricultural Debtors Relief Act, 1939.

Proceedings No. _____ Year _____
Order of the Board.

Whereas, on an application made under the Bombay Agricultural Debtors Relief Act, 1939, for the adjustment of the debts of the debtor described in Schedule A, this Board has determined under the provisions of the said Act, the amounts payable to the creditors described in Schedule A.

And whereas all the creditors mentioned in Schedule A, who were called upon to intimate whether they were willing further to scale down the amount of their claims to half the value of the immovable property of the debtor and receive in lieu of these sums bonds to be issued by the Bank, Ltd. (hereinafter referred to as the said Bank), have given their consent to the proposal :

And whereas the said Bank to which the scheme for adjustment of the said debtor's debts was sent for acceptance, has accepted the same ;

2. It is hereby directed under sub-section (2) of section 55 of the said Act as under :—

(1) The creditors mentioned in column 2 of Schedule A shall be entitled to receive from the said Bank bonds guaranteed by Government of the value equivalent to the sum mentioned in column 4 of Schedule A in full satisfaction of their claims against the said debtor.

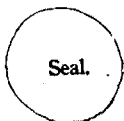
(2) The said Bank shall issue or cause to be issued to the creditors mentioned in Schedule A, bonds of the said Bank guaranteed by Government of the value equivalent to the sum mentioned in column 4.

(3) The said debtor shall pay to the said Bank the total amount of column 4 (to the extent of which the said Bank shall have issued or caused to have issued bonds to the creditors) in annual instalments mentioned in column 8 with simple interest at the rate mentioned in column 5.

(4) The costs and court-fees shall be paid as mentioned in columns 6 and 7 respectively by the parties mentioned therein.

(5) Immovable properties of the said debtor mentioned in Schedule B are hereby charged in favour of the said Bank until all the instalments as mentioned in column 8 of Schedule A are fully paid by the said debtor.

3. It is hereby declared by the Board under section 49 of the said Act that alienations of properties bearing Nos. _____ in Schedule B and incumbrances on properties bearing Nos. _____ in the said Schedule B shall be void.



Chairman of the Debt Adjustment Board for
The Debt Adjustment Board for

Dated the

SCHEDULE B.

Immoveable Properties.

1	2	3			4	5	6
Serial No.	Specification of properties with boundaries where necessary. (Lands or Houses.)	Names of villages with Survey. Nos. etc.			Nature of debtor's right.	Details of any attachment, lien, mortgage or charge already subsisting thereon.	Remarks.
		Survey No. and Pot Hissa.	Area in acres.	Assessment.			

FORM No. 11.

[See Rule 30 (3)]

Form of Certificate of Sale.

This is to certify that _____ has been declared the purchaser for Rs. _____ at a sale by public auction on the _____ day of _____ 194____ of _____ in sale conducted by the Collector in pursuance of section 66 of the Bombay Agricultural Debtors Relief Act, 1939.

Collector.

FORM No. 12.

(See Rule 31.)

Certificate under Section 76(1) of the Bombay Agricultural Debtors Relief Act, 1939.

This is to certify that during debt adjustment proceedings before the Board under the Bombay Agricultural Debtors Relief Act, 1939, the creditor mentioned in the statement given below claimed that he has borrowed the amount mentioned in column 7 of the statement from Mr. _____ for being advanced to the debtor mentioned in the statement. The amount of the original claim of the creditor against the debtor has been reduced during the proceedings before the Board to the amount mentioned in column 4 and simple interest at the rate mentioned in column 5 has been allowed by the Board on that amount.

1	2	3	4	5		6	7	8	9
Name of the debtor.	Name and address of the creditor.	Amount of debt as originally claimed by the creditor.	Amount awarded by the Board.	(1) Rate of future interest allowed by the Board.	(2) Date from which the interest should run.	Date of award.	Name of person from whom the creditor claims to have borrowed the amount for being lent to the debtor.	Amount so borrowed.	Remarks.



Dated the

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Chairman of the Debt Adjustment Board for
The Debt Adjustment Board for

FORM No. 13.

(See Rule 36.)

Case Register of applications received by the

Debt Adjustment Board.

1	2		3	4	5	6		7
Serial No.	Date of receipt of applications filed by		Name or names of the debtor or the debtors.	Name (or names) of the creditor or creditors.	Date of assessment of court-fees.	Amount of court-fees assessed upon.		Date of payment of court-fees.
	Creditor.	Debtor.				Debtor.	Each individual creditor.	
8		9		10	11	12		
Amount of fees paid by—		Amount of debt determined.		Date of the final order.	Abstract of the final order.	Remarks.		
Debtor.	Each individual creditor.	Items.	Total.					

FORM No. 14.

(See Rule 36.)

Process Register.

1	2	3	4	5	6	7	8
Serial No.	Name of the applicant.	Date of application.	Names of persons to whom processes have to be issued.	Amount of process fees (in court-fee stamp) received.	Date of issue of process.	Date of service.	Remarks.

FORM No. 15.

(See Rule 36.)

Subsistence Allowance Register.

1	2	3	4	5	6	7	8	9
Serial No.	Name of the applicant.	Date of application.	Names of witnesses for whom subsistence allowance is received.	Amount of subsistence allowance received.	Amount of allowance paid to witnesses.	Date of payment.	Number of voucher for payment.	Remarks.

FORM No. 16.

(See Rule 36.)

Register of Contingent Expenditure.

1	2	3	4	5	6	7
Serial No.	Date.	Bill No.	Voucher No.	Description of charges.	Amount.	Remarks.

FORM No. 17.

(See Rule 36.)

Receipt Book.

Debt Adjustment Board.
Receipt.

Serial No.
Date
Received from
On account of
The sum of
Date of credit in the Cash Book

Chairman of the Debt Adjustment Board for—
The Debt Adjustment Board for—

Debt Adjustment Board.
Receipt.

Serial No.
Date
Received from
On account of
The sum of

Chairman of the Debt Adjustment Board for—
The Debt Adjustment Board for—

FORM No. 18.

(See Rule 36.)

Register of Applications and Court-Fees.

1	2	3	4	5
Date and Serial No. of applications.	Under what section or rule.	Name of the applicant.	Amount of court-fees paid.	Remarks.

FORM No. 19.

(See Rule 36.)

CASH BOOK.

Receipts.

1	2	3	4	5	6	7
Date.	From whom received.	Serial No. of counterfoil in Receipt Book.	Opening Balance.	Amounts received.	Total.	Remarks.

Payments.

8	9	10	11	12	13	14
Date.	To whom paid.	No. of voucher.	Amount paid.	Total.	Closing Balance	Remarks.

FORM No. 20.

(See Rule 36.)

Memo Book for day-to-day work.

Date :—

Number of cases fixed for return of processes.	Cases fixed for production of statements and documents.	Cases fixed for hearing.	Cases fixed for giving award(-s).
1	2	3	4

FORM No. 22.

(See section 78 of the Bombay Agricultural Debtors Relief Act, 1939, and rule 38 of the Bombay Agricultural Debtors Relief Rules, 1941).

Authority to individuals, joint stock companies or other associations to advance loans to debtors.

No. —In exercise of the powers conferred by sub-section (1) of section 78 of the Bombay Agricultural Debtors Relief Act, 1939 (Bom. XXVIII of 1939), and delegated to him under Government Notification in the Revenue Department, No. 3791/93, dated the 4th April 1941, the Collector of * is hereby pleased to authorise † (hereinafter referred to as the authorised person) to advance loans to debtors in respect of whose debts an adjustment has been made under the said Act.

2. This authority shall remain in force in the following local areas :—

3. This authority shall remain in force from
to . (both days inclusive).

4. This authority is granted subject to the following conditions, namely :—

(i) *Purposes for which advances may be made and maximum limits of such advances.*—The authorised person shall not advance loans to any debtor except for the purpose of financing of crops not exceeding the maximum limits which the Collector has fixed in this behalf under rule 39.

The authorised person shall not knowingly advance any loan to any debtor who had previously taken a loan from another authorised person unless such previous loan has been fully paid or unless he (the authorised person) agrees to discharge the liability of the debtor in respect of such previous loan.

(ii) *Authorised person not to withhold permission for sale of crops or produce.*—The authorised person shall not unreasonably withhold permission required by a debtor under sub-section (1) of section 77 for sale of the standing crops or the produce of his land and if the authorised person himself buys the crops or produce he shall pay the debtor the price thereof at the market rate.

(iii) *Duty of authorised person to maintain and furnish accounts.*—

(a) The authorised person shall keep regularly in Form No. 23 a separate account of each loan advanced to a debtor :

Provided that where the loans to any debtor was advanced on a current account, the authorised person may keep one account of all transactions relating to such loans.

* To be filled in.

† Here insert the name and address of the individual, joint stock company or other association to be authorised.

Explanation.—For the purposes of this clause, the term “current account” includes, in the case of banks, accounts relating to overdrafts, cash credits and pro-note accounts, which are maintained in the form of current accounts.

- (b). The authorised person shall, within one month after the expiry of every year, supply every debtor a full and correct statement of accounts signed by him or his agent. Such statement of accounts shall show all transactions entered into during the year and the balance outstanding on account of each loan on such date as Government may prescribe either generally or for any particular area and shall contain particulars as in Form No. 24 :

Provided that where the loans are advanced on a current account, it shall be sufficient to furnish particulars of the balance due on the whole of such account on the prescribed date. In the case of banks, the requirements of this clause shall be deemed to have been complied with if a full statement of accounts has been supplied to the debtor by means of a pass-book or otherwise from time to time throughout the year and intimation is given within one month after the expiry of the year of the amount of the balance remaining due on the prescribed date.

- (c) The statement of accounts shall be furnished to the debtor by registered post and an acknowledgment obtained thereof at the cost of the authorised person.
- (iv) *Rate and calculation of interest.*—(a) The authorised person shall not charge or recover interest at a rate higher than the rate notified by Government under rule 40.
- (b) If any repayment is made in respect of a loan, interest on such loan shall be calculated up to the date of such repayment; and if the loan or any part of it is still outstanding, interest shall thereafter be calculated only on the balance of the principal still outstanding*.
- (v) *Inspection of accounts to be allowed.*—The authorised person, unless specially exempted by Government, shall allow such officer as may be appointed in this behalf by Government to inspect the accounts maintained by him.
- (vi) *Penalty for non-compliance with conditions mentioned in this rule.*—Government may in its discretion cancel the authority granted by it for breach of any of the foregoing conditions or for any other reason.

Date

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Collector.

* The colon-mark at this place and the numbers, (iv) and (v), of the two subsequent conditions in the official text appear to be wrong. The mark and figures should be as here.

FORM No. 23.

[See Rule 38(iii)(a).]

Loan account of _____, son of _____, caste _____, residence _____

Date as at which account is made up—

1	2	3	4	5	6		7
Serial No.	Date of advancing loan.	Principal or balance of principal if brought over from previous year.	Rate of interest.	Date of repayment.	Payment credited towards		Remarks.
					Principal.	Interest.	
				Total repayment towards the loan during the year.			
				Balance, if any, at the end of year.			

FORM No. 24.
[See Rule 38(iii)(b).]

Loan account of _____, son of _____, caste _____
residence _____, for the year ending on _____

Rate of interest—

1	2	3	4	5		6	
Serial No. of loan.	Date of loan.	Principal amount of loan or balance of principal if brought over from previous year.	Amount of interest, if any, brought forward.	Payment credited during the year towards		Balance outstanding at the end of the year.	
				Principal.	Interest.	Principal.	Interest.
				Total for all loans outstanding against the debtor.			

Dated the

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Signature of creditor or agent.
By order of the Governor of Bombay,
V. S. BHIDE,
Secretary to Government.

APPENDIX II

*L. A. Bill No. XIII of 1939
together with the
Statement of Objects and Reasons.*

The attention of the reader has already been drawn at several places in the Commentary on the Act to the fact that Bill No. XIII of 1939 had undergone several modifications before it became Act XXVIII of 1939, which has been commented upon in this volume. It is not however the case that all the cases of modification have been noted in the Commentary on the relevant sections of the Act. Moreover a facility to get a comprehensive idea of all and the nature of each of them at a glance is likely to be appreciated by those who will have to take their share in the satisfactory working of the Act and will therefore want to know its previous history,¹ but will not have at their disposal the requisite amount of time for referring to the issue of the *Bombay Government Gazette* in which the Bill was first published and for comparing it clause by clause with the sections of the Act. Moreover copies of the Bill are not also available even at the G. C. Press. I therefore reproduce below such of the clauses of the Bill as have undergone any modification whatever, either at the hands of the Select Committee of the Legislative Assembly or at those of the Assembly itself, without their marginal notes, which are not, in my opinion, very illuminating. For which of the modifications the said Committee was responsible, will be clear from its Report which has been reproduced *verbatim* in Appendix IV *infra*.

As published at pp. 117-52 of Pt. V of the issue of the *Bombay Government Gazette* dated 20th February 1939 the said Bill contained in all 82 clauses sub-divided as under :—

Chapter I. Cls. 1-3.
" II. " 4-16.
" III. " 17-61.

Chapter IV. Cls. 62-72.
" V. " 73-82.

The full and short titles, the preamble, the headings of the chapters

1. For the legitimate use that can be made of the previous history of any piece of legislation see the Commentary under the sub-heading *Previous history of the law* under the main heading *Referencia to subject* at pp. 24-25 *supra*.

and the clauses, mentioned below together with the corresponding sections, have remained completely unmodified. The said clauses and sections are :—

<i>Clauses of the Bill which have remained completely unmodified.</i>	<i>Corresponding sections of the Act :</i>
Chapter II. Cls. 8, 13, 14, 16.	Chapter II. Ss. 8, 13, 14, 16.
„ III. „ 18, 25, 28, 31, 36, 44, 46, 49, 56.	„ III. 18, 28, 31, 34, 39, 48, 49, 53, 62.
„ IV. „ 65,	„ IV. 71.
„ V. „ 78, 79.	„ V. 80, 81.

Some of the clauses of the Bill were entirely deleted while there are some sections in the Act which never had any corresponding clauses in the Bill. They are :—

<i>Clauses of the Bill which were entirely deleted.</i>	<i>Sections of the Act which had no corresponding clauses in the Bill.</i>
Ch. III. Cl. 58.	Ch. III. Ss. 19, 21, 24, 43, 55, 56, 64.
„ IV. Cls. 64, 66, 67, 68, 69, 70, 71.	„ IV. S. 70.
	„ V. Ss. 74, 76, 85, 86.

The clauses of the Bill which have been partially modified together with the corresponding sections of the Act are as follows :—

<i>Clauses of the Bill which have been partially modified.</i>	<i>Corresponding sections of the Act.</i>
Chapter I. Cls. 1, 2, 3.	Chapter I. Ss. 1, 2, 3.
„ II. „ 4, 5, 6, 7, 9, 10, 11, 12, 15.	„ II. „ 4, 5, 6, 7, 9, 10, 11, 12, 15.
„ III. „ 17, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 45, 47, 48, 50, 51, 52, 53, 54, 55, 57, 59, 60, 61.	„ III. „ 17, 20, 22, 23, 25, 26, 27, 29, 30, 32, 33, 35, 36, 37, 38, 40, 41, 42, 44, 45, 46, 47, 50, 51, 52, 54, 57, 58, 59, 60, 61, 63, 65, 66, 67.
„ IV. „ 62, 63, 72.	„ IV. „ 68, 69, 72.
„ V. „ 73, 74, 75, 76, 77, 80, 81, 82.	„ V. „ 73, 75, 77, 78, 79, 82, 83, 84.

I reproduce below such portions only of the clauses in the left-hand column of the last table as are necessary in order to give an idea of the nature and extent of the modifications and the entire clauses mentioned in the table preceding the last. The words in brackets are common to the clause or sub-clause and the corresponding section or sub-section, those outside them occur in the clause or sub-clause only and wherever there are two brackets side by side there are additional words in the corresponding section or sub-section.

CHAPTER I

1. (1) x x x x x x x.

(2) It shall (extend to the whole of the Province of Bombay) (except the town and island 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).²

2. x x x x x x x x.

(1) ("Award" means an award made by the Board under) section 50 or as confirmed or modified by the Court under section 9.

(2) x x x x x x x x.

(3) ("Co-operative Society" means a society registered) under the provisions of the *Bombay Co-operative Societies Act, 1925*, or a society deemed to have been registered under the said Act.

(4) ("Court" means) a court of the First Class or Second Class Subordinate Judge (to which an appeal lies against the award of a Board under section 9).

(5) ("Debt" means x x x x or otherwise).

(6) ("Debtor" means—)

(a) an individual—

(i) who holds any land used for agricultural purposes; and

(ii) who has been cultivating such land personally;

(b) an undivided Hindu family—

(i) which holds land for agricultural purposes; and

(ii) which has been cultivating such land personally.

2. Sub-clause (2) here reproduced was twice modified, once when Bom. Act XXVIII of 1939 was passed by the Legislative Assembly and a second time when Bom. Act VI of 1941 was promulgated by the Governor of Bombay. Sub-clause (3) was modified by Bom. Act VI of 1941. For the nature of those modifications see p. 10 *supra* and the foot-notes thereunder.

Explanation :—For the purposes of this clause an entry in the Record of Rights or any record maintained under the *Bombay Land Revenue Code, 1879*, or rules thereunder showing that the person has been cultivating land personally from the 1st day of January 1936 shall be deemed to be conclusive evidence of such person cultivating the land personally.

Note.—The definition of “Financing of Crops” in S. 2(7) of the Act is entirely new. The numbers of the remaining definitions (7) to (15) have accordingly been altered in the Act into (8) to (16).

- (7) (“Holder” means x x x but does not include--)
 (a) x x x x x x x x.
 (b) x x x x x x x x and
 (c) a tenant (other than a permanent tenant),
 (and the expression x x x x construed accordingly).
 (8) x x x x x x x x.
 (9) x x x x x x x x.
 (10) (“Rules” means rules) (under section) 81.
 (11) (“Secured debt” means) x x x x (as security) for the debt.
 (12) (“To cultivate personally” means x x x one’s family.)

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

Explanation II.—In the case of x x x by any member of such family).

Note.—The subsequent sentence in the corresponding Explanation in the definition in the Act commencing with the words “If there are no adult co-parceners” and ending with the words “or hired labour or by tenants” is entirely new.

- (13) x x x x x x x x.
 (14) x x x x x x x x.
 (15) x x x x x x x x.

3. Save as otherwise expressly provided in this Act, nothing in sections 17, 28, 29, 30, 31, 35, 36, 37, 38, 39, 40, 41, 48 and 49 (shall affect x x x namely :—)

- (i) x x x x x x x x.
 (ii) (any tax x x x x otherwise), and
 (iii) (any liability x x x any co-operative society).

(Explanation :—x x x x x x x).

Note.—Heads (iv) and (v) in the same section of the Act are entirely new.

CHAPTER II

4. (1) x x x x x x x.

(2) The Board shall consist of a Chairman and not less than two and not more than four other members. The Chairman and other members shall be appointed by the Provincial Government.

Note.—The above sub-clause is substituted by a new sub-section (2) in the Act, sub-section (3) of the latter is entirely new, its sub-section (4) corresponds to sub-clause (3) of the Bill, and sub-section (5) to sub-clause (4) thereof with a slight and unimportant change in phraseology.

(5) If at any time the Chairman of the Board is temporarily prevented from discharging his duties for a period not exceeding one month, he may nominate any member thereof to act for him during his absence. On failure of the Chairman to nominate such member, the members present shall elect one of their own body to act as Chairman. On failure of the members to elect a Chairman, the Court shall nominate one of them to act as Chairman. The member so nominated or elected as Chairman shall, while so acting, have the same powers as the Chairman.

(6) Notwithstanding anything contained in this section, the Provincial Government may for any local area or for any class of debtors in any local area appoint any individual or any body or association of individuals to be the Debt Adjustment Board.

Note.—These two sub-clauses have been replaced by sub-sections (6) and (7) and sub-section (8) is entirely new.

5. (1) x x x x x x x.

(2) (The dissolution of a Board) (or removal of its members under sub-section (1) shall not in any way affect the validity of proceedings x x x dissolution of the Board) or removal of any of its members.

Note.—The only change in this sub-clause is the addition of the words "the occurrence of any vacancy on the Board through death, resignation" before the words "or removal of its members etc." in the first part of the sentence and the substitution of the words "or the occurrence of any such vacancy" for the words reproduced above at its end.

6. (1) x x x x x x x.

(2) (Subject to the provisions of this Act x x x shall be final and binding for all purposes) as between the debtor and the

debtor's estate on the one hand and on claimants against him or it and all persons claiming through or under them on the other.

7. *Note.*—Section 7(1) is the same as clause 7 of the Bill with this difference that the matters mentioned in sub-clauses (a) to (d) are mentioned in the section in sub-clauses (b) to (e), that mentioned in sub-clause (a) therein being entirely new.

Sub-section (2) of the section is also entirely new.

8. x x x x x x x x.

9. (1) [Every award x x x x x sub-section (4) of section] 21 x x x x x x.

(a) to the Court of the Subordinate Judge of the First Class x x x x x x x x (and)

(b) to the Court of the Second Class Subordinate Judge x x x x x x x x.

(2) [Every decision x x x sub-section (3) of section] 21 (or under sub-section (2) of section) 32 rejecting the application on the ground that the debtor does not fulfil any of the conditions set out therein x x x x x special (jurisdiction the Board may have been established).

10. (An appeal x x x x 30 (days x x x) ; x x x x x x x x.

11. (A memorandum of appeal x x x x) :—

(a) (x x x x sub-section (3) of section) 21 (or under sub-section (2) of section) 32 x x x x x.

Note.—Sub-clause (b) in this clause is the same as the corresponding sub-clause in the section except that the dash and the words “on the amount in dispute” before the words “at the rate payable etc.” in the latter are new.

12. (No decision or award of the Board) the value of the subject-matter involved in which is less than Rs. 1000 (shall be modified or set aside x x x grounds :—)

(a) x x x x x x x x.

(b) x x x x x x x x.

(c) x x x x x x x x.

Note.—There is an additional clause (d) in the corresponding section of the Act.

13. x x x x x x x x.

14. x x x x x x x x.

15. (1) (A Board x x x within) whose local limits it is established.

Note.—Sub-clause (2) of this clause is the same as sub-clause (2) of the section in the Act with this difference that before the words “as he thinks fit” at the end the words “and may pass such orders thereon” have been inserted in the latter.

16. x x x x x x x x.

CHAPTER III

17. *Note.*—The only change made in sub-clause (1) of clause 17 is the substitution of the words “eighteen months” for the words “one year” in its first line.

Sub-clauses (2), (3) and (4) are also the same but the proviso to the last is newly added. Sub-clause (5) has also remained unmodified. Thus except for the change in the period in sub-clause (1) and the addition of the proviso in sub-clause (4) S. 17 is in the same terms as clause 17 of the Bill.

18. x x x x x x x x.

19. (1) x x x x x x x x.

(2) The adjustment of debts of such debtor under this Act shall not affect the liability of the surety or any other person who is jointly and severally liable with the debtor in respect of the whole of the debt notwithstanding the fact that such debt has been adjusted.

20. *Note.*—This clause corresponds to S. 22 of the Act as it was originally passed by the Legislative Assembly with this difference only that in sub-clause (4) the word “an” before the word “application” was substituted by the word “any”. Bom. Act VI of 1941 has however inserted in clause (e) of both the sub-sections of section 22 certain additional words which were necessary consequent on the amendment of S. 1(3) enabling the Provincial Government to put the material sections of the Act into operation only in selected areas of the province.³

21. (1) (If any debtor x x x x may, within) the period specified in sub-section (1) of section 17 (make an application x x x x x section 17 lies).

(2) (Every such application x x x x manner. It shall be accompanied with a court-fee) payable under section 7 of the *Court-fees Act, 1870*, as if the application had been a suit for money and the total amount of the debts payable by the debtor under the settlement had been the amount claimed in such suit.

3. See pp. 103-04 *supra*.

Note.—Sub-section (3) of the corresponding section 23 of the Act is the same except for the number of the section referred to therein which is changed from "32" to "35" as it ought to be. The same is the case with sub-section (4), the figure "50" therein being substituted by the figure "54".

(5) x x x x x x x x.

22. *Note.*—Sub-clause (1) is the same as S. 25 of the Act with the difference that the figure "21" therein is substituted by the figure "23" and the words "unless an award has been made in terms of section 24" have been added in view of S. 24 having been enacted.

(2) Nothing in this section shall apply to the settlement of any debts due from a debtor in respect of whose debts, a Board is not competent to entertain an application for adjustment under section 23.

23. (No application under section 17 or section) 21 (shall be entertained x x x x (unless the total) principal (amount of) secured (debts x x x x 1939) as disclosed in the deeds filed before the Board (is not more than Rs. 15,000) and not less than Rs. 100.

24. *Note.*—This clause is the same as section 27 with this difference only that in place of the figure "21", the figure "23" has been substituted.

25. x x x x x x x x.

26. (Notwithstanding x x x x) a Court or (x x x or on its or) (on his own motion) x x x x x (limits of such) Court (or Judge x x x x such limits).

27. If a debtor or a creditor by or against whom an application for adjustment of debts has been made under section 17 or who is a party to an application for recording a settlement made under section 21 dies, the proceedings in regard thereto, shall (unless the Board otherwise directs,) be continued so far as may be necessary for the adjustment of the debts due by the deceased debtor or to the deceased creditor or the recording of the settlement arrived at with him as the case may be.

28. x x x x x x x x.

29. (1) (Every debt x x x x x no application for recording a settlement is made under section) 21 within the said period, (and every debt due from such debtor in respect of which a statement x x x x section) 28 (shall be deemed x x x the creditor) had no opportunity of making (an application under section 17 x x x x x section) 28

(2) (Nothing in this x x x x) debts due from any debtor in respect of whose debts a Board is not competent to entertain an application for adjustment under section 23.

Note.—It should be noted that sub-section (2) of the corresponding section 32 of the Act proceeds on quite a different principle, namely that of introducing an exception in case of a dishonest debtor.

30. *Note.*—Sub-clause (1) contains the only change that in place of figure "21" the figure "23" was substituted.

Sub-clause (2) is word to word the same but the comma after the word "accounts" which there was in the sub-clause has been omitted, perhaps inadvertently.

31. x x x x x x x.

32. (1) (On the date x x x x x x issues :—)

(a) (Whether the person x x x x x made) holds land used for the purpose of agriculture and whether he personally cultivates land ;

(b) (Whether the total) principal (amount of) secured (debts x x x x x x 1939) as disclosed in the deeds filed before the Board is not more than (Rs. 15,000) and is not less than Rs. 100.

(2) If the Board x x x x x x) does not hold land used for the purpose of agriculture or that he does not personally cultivate the same or that the total amount of secured debts claimed as being due from such person on 1st January 1939 as disclosed in the deeds filed before the Board is more than Rs. 15,000 or is less than Rs. 100, the Board will dismiss the application forthwith.

(3) An appeal shall lie to the Court against the decision of the Board under sub-section (2).

Note.—The clause of the Bill ends here. It may be remarked that the third sub-clause was superfluous in view of the provision for an appeal contained in clause 9(2) of the Bill. It was therefore rightly omitted and that sub-sections (3) and (4) which are entirely new have been added in the corresponding section 35.

33. (If an application made by a creditor under sub-section (2) of section 17 is dismissed under section) 32 (on the ground that the total) principal (amount of) secured debts (claimed from a debtor as being due on 1st January 1939) as disclosed in the deeds filed before the Board (is more than Rs. 15,000) or is less than Rs. 100, (the Board shall direct the amount of the court-fee paid by the creditor making the application to be refunded to the creditor) and may also direct the debtor to pay all costs of proceedings to the creditor. The amount of costs so directed to be paid shall be recoverable from the debtor as an arrear of land revenue.

34. (All pending suits x x x x x under this Act) (and if such person x x x x x under the said section shall if the total) principal (amount of) secured (debts due from such debtor) as disclosed in the deeds produced before it (is not more than Rs. 15,000) and is not less than Rs. 100, (be transferred x x x x x under section 17 lies. The decision of the Court on the points whether x x x x x and whether such) principal (amount of his debts is not more than Rs. 15,000) or is not less than Rs. 100 (shall be final).

Note.—Except the addition of the incidental proceedings the changes in the first paragraph are such as are due to the amendment of clause 23 (S. 26). The second paragraph in the corresponding section 37 is entirely new.

35. (If the Board finds x x x x x to be a person—)

(a) holding land used for the purpose of agriculture,

(b) personally cultivating the land and

(c) the total principal amount of the debts claimed as being due from whom on 1st January 1939 and as disclosed in the deeds filed before the Board is not more than Rs. 15,000, and not less than Rs. 100

the Board shall proceed x x x x x x x for the adjustment of debts).

36. x x x x x x x.

37. (The Board shall inquire x x x x x unnecessary so to do).

Note.—The proviso in the corresponding section 40 is entirely new.

38. (When the amount x x x x x that such admission is true), (the Board shall not be bound x x x x x section) 37 (but x x x x x x x to inquire as aforesaid).

Note.—The only changes in this clause are the addition of the words "and made voluntarily" after the word "true" and the substitution of the figure "40" for the figure "37".

39. (1). *Note.*—The only change made in this sub-clause is the substitution of the figure "40" for the figure "37".

(2) *Note.*—Rules (a) to (d) are the same.

(c) In the account of interest there shall be debited to the debtor, yearly, simple interest on the balance of principal for the time being outstanding, at 6 per cent. per annum or the agreed rate, whichever is less, in respect of any debt incurred before the first day of January 1939 and at 9 per cent. per annum or the agreed rate whichever is less, in respect of any debt incurred after such date ;

Note.—It should be noted that there have been very material additions and alterations in the corresponding rule (e) in S. 42 (2).

(f) x x x x x x x x.

(g) x x x x x x x x.

40. *Note.*—The main provision in S. 44 is the same as that in the Bill except that the figure “42” has therein been substituted for the figure “39”.

The proviso in the section is also in the same terms except that the word “any” has therein been substituted for the article “a” before the word “suspension.”

41. (1) (Notwithstanding x x x x x contract) in the hearing of any (application made under section 17) whenever it is alleged by a debtor that any transaction though purporting to be a sale was a transaction of the nature of a mortgage the Board shall—

(a) declare the transaction to be in the nature of a mortgage, if the property to which the transaction relates was sold by him to the creditor on or after the first day of January 1927, and the consideration for the transaction was payment of any antecedent debt, wholly or in part; and

(b) unless it is proved to the contrary presume the transaction to be in the nature of a mortgage if such property was sold by the debtor after the first day of January 1927, and the person to whom it was sold is a money-lender.

(2) Nothing in this section shall apply to—

(i) any transaction which has been adjudged to be a sale by a decree of a court of competent jurisdiction; and

(ii) any property belonging to a debtor and purchased by a third person from the transferee of a debtor on or before the 15th day of February 1939.

Explanation.—For the purposes of this section, “money-lender” means a person who ordinarily carries on the business of advancing loans either solely or in common with any other business.

Note.—It can be easily seen on a comparison of this clause with the corresponding S. 45 of the Act that it has been considerably changed in form and partly in substance.

42. Nothing in sections 37 to 40 shall apply to a debt due from a debtor payable under a decree or order of a civil court. In the case of every such debt the amount due on the decree or under the order on the date of the institution of the application shall be deemed to be the amount found due from the debtor on such date for the purposes of this Act :

Provided that if any such decree was passed with the consent of the parties or in terms of an award, the Board may if it is satisfied that such decree or award was obtained or made by fraud, misrepresentation or mistake inquire and take accounts under sections 37 to 40 in respect of the debt due under the decree as if no such decree was passed, or award was made.

1) *Note.*—This clause seems to have been considerably modified both in form and substance before being given a place in the statute.

43. (1) x x x x x x.

(2) (The Board shall also give x...x...x...x by the debtor).

Note.—The words “and also to any person who is entitled to maintenance from the debtor under a decree or order passed by a competent court” which follow the word “debtor” in the corresponding sub-section (2) of S. 47 and also the additional sentence commencing with the words “In the case of any debt” are newly added.

3) (On the receipt of x x x x local authority) or the person entitled to maintenance, (as the case may be) (shall, x x x section) 47, x x x x (due by the debtor).

Note.—The words “as also any recurring liability” which follow the word “debtor” in the corresponding sub-section in the Act are new.

(4) x x x x x x x.

(5) x x x x x x x.

44. x x x x x x x.

45. * The value of the property shall be the market value of the property at the date of the application for adjustment of debts.

Note.—A comparison of this clause with the corresponding S. 50 of the Act will make it clear that in place of the general rule of the above nature, the Legislature has laid down some definite rules and further given power to the Provincial Government to prescribe the manner in which the market value of the property and assets should be determined.

46. x x x x x x x.

Note.—As between clauses 45 and 46 the order seems to have been slightly changed while giving them a place in the statute. The change is this:—

We have seen that section 47 of the Act corresponds to clause 43 and section 49 to clause 44 but the section which corresponds to clause 45 is 50 not 49 while that which corresponds to clause 46 is section 49.

47. (The paying capacity x x x x the following items:—)

(a) (if the amount x x x x of the value of the) property on which such debts are secured, (the difference x x x x such property).

(b) (eighty per cent. of the value of the) property of the debtor which is not subject to the liability of secured debts excluding such property as would be exempt from attachment in execution of a decree of a civil court under the *Code of Civil Procedure, 1908*; and

(c) the value of other assets of the debtor calculated as follows :—
The net annual income of such assets capitalized at 6 per cent.

Note.—It can be seen easily that this clause has been considerably modified both in form and substance before being given a place in the Act as section 51.

48. (1) x x x x x x x x.

(2) x x x x x x x x.

(3) (a) If the debts x x x x eighty per cent. of the value of the property) belonging to the debtor, (such debts x x x x x x of such property).

(b) The remaining portion of such secured debts after they are scaled down under clause (a) shall be deemed to be the unsecured debts of the debtor and shall be scaled down *pro rata* to eighty per cent. of the value of the paying capacity of the debtor.

(4) (If the debts x x x x x are both secured and unsecured, x x x x x *pro rata* to) the amount mentioned in clause (a) of sub-section (3) and the remaining portion of the secured debts shall be scaled down *pro rata* to the value of the paying capacity of the debtor.

Note.—Sub-clauses (3) and (4) seem to have been considerably changed before being given a place in section 52 of the Act. Sub-clause (3) (b) giving a substantial right to a second creditor seems to have been dropped altogether, with the result that sub-clause (3) (a) has become sub-section (3) in the said section.

49. x x x x x x x.

50. (1) (After determining x x x x x an award):

Provided that no such award shall be made unless the debtor is at the date of such award a member of a resource society approved by the Provincial Government. If the debtor is not a member of such society, the Board may require him to become such member within such time as may be fixed by the Board. If the debtor fails to become such member within the time so specified, the Board shall dismiss the application for the adjustment of his debts and shall require the debtor to bear his own costs and to pay all the costs of his creditors. If the application for the adjustment of debts was made by the creditor under sub-section (2) of

section 177, the amount to court-fee paid by the creditor shall be refunded to him.

Note.—This proviso seems to have been dropped altogether from the corresponding sub-section (1) of section 54 of the Act.

(2) (The award shall be x x x x x particulars :—)

(a) x x x x x x x

(b) (Particulars of all debts x x x x x section) 48 :
(Provided that x x x x debtor) so that the charge shall be created on the eighty per cent. of the aggregate property of the debtor :

(Provided further x x x x x in the said settlement ;)

(c) x x x x x x x x.

(d) (particulars of x x x x x under section) 46 ;

(e) x x x x x x x x.

(f) x x x x x x x x.

(g) (the priority x x x x x shall be followed :—) ,

[(i) debts due to Government,

(ii) debts due to local authorities]

(iii) secured debts,

iv) debts due to co-operative societies,

(v) unsecured debts :

(Provided) that the priority *inter se* in the case of secured debts shall be determined in accordance with the provisions of the IV of 1882. *Transfer of Property Act, 1882*, and that (in the case of) other (debts falling under the same class), in order of time in which the debts were incurred ;

Note.—It deserves to be noted here that in place of the 5 items in this sub-clause there are seven in the corresponding portion of the sub-section in the Act and that the provisions as to the existing items and the proviso also have been considerably modified.

(h) the instalments x x x x x paid :)

(Provided that x x x x x twenty-five ;)

Note.—The corresponding particular in the sub-section contains a second important proviso and an explanation containing a definition of an important term which does not find a place in the definition-clause.

(i) x x x x x x x.

(j) [the rate of interest x x x x x clause (e) ;]

(Provided that x x x x x originally incurred,) whichever is less.

Note.—In the corresponding proviso in this particular in the sub-section of the Act there are the words "or rate allowed by the decree in respect of such debt, whichever is lowest" after the words "originally incurred".

(k) x x x x x x.

(l) x x x x x x x.

Note.—The corresponding particular in the sub-section of this section contains two important provisos subsequently added.

(m) x x x x x x.

(n) x x x x x x x.

Note.—Sections 55 and 56 of the Act are entirely new.

51. (If after an award is made under section) 50, (the Board
x x x x x the provisions of this Act).

Note.—The corresponding section 57 of the Act contains quite a new proviso by way of an exception to the general rule contained in the section.

52. *Note.*—This clause is word to word the same as the corresponding sub-section (1) of section 58 of the Act but there is a second sub-section therein as to the Court to which an appeal would in a case falling under sub-section (1) lie.

53. (Notwithstanding any law x x x x to any creditor) (by any debtor x x x x x section) 50 (shall be held to be the amount due from such debtor to the creditor) (on the date of such award in any suit or proceeding is a party).

Note.—The changes made in this clause are that along with a creditor, a bank is mentioned at two places in view of the enactment of the new section 55 and that the figure "50" has been substituted by the figures "24, 54, or 55".

54. (1) (An award made under section) 50 (shall direct) that the debtor (shall pay) (the difference between the court-fee actually paid on the application for adjustment of debts or in case of suits and applications for execution transferred to the Board under section) 34 (on the plaint
VII of 1870. in the suit or on such application and the fee which would have been payable under section 7 of the *Court-fees Act, 1870*, as if the application for adjustment of debts, or the suit or application for execution had been a suit for money and the total amount of the debts declared due from the debtor had been the amount claimed in such suit).

(2) Such fee shall be the first charge on the property of the debtor.

Note.—The changes effected in this clause while giving it a place in the statute as section 60 are :—(1) the word "debtor" has been substituted by the word "party", (2) the figure "50" is substituted by the figures "54 or 55", (3) the figure "34" is substituted by the figure "37", (4) instead of the whole

of the difference between the two amounts of court-fee, one-half of that difference is made payable, (5) two entirely new provisos have been added in sub-clause (1) and (6) the words "Notwithstanding anything contained in any law" have been added in the beginning of sub-clause (2).

55. (1) The Board (x x x x x section) 50 (to the Court) :

(Provided that x x x x x transmitted), the debtor shall pay (the balance of court-fees payable under the award).

(2) (If the debtor x x x x court-fees) (the Board may transmit x x x x shall be) paid to him by the debtor and shall be recovered from him as an arrear of land revenue.

Note.—The changes made in sub-clause (1) while adopting it as section 62 (1) are :—(1) the substitution of the figures "24, 54 or 55" for the figure "50" in the main provision and the substitution of the word "party" for the word "debtor" in the proviso thereto.

In sub-clause (2) also the word "debtor" is substituted by the word "party" and the principle that the balance shall be recoverable as an arrear of land revenue is abrogated, with the result that it becomes recoverable as an ordinary debt by the creditor who is allowed to add it to the amount claimable by him under the award.

56. x x x x x x x.

57. (1) (The award so registered) shall be sent to the Collector for execution.

(2) If the debtor makes a default in payment of the amount due under the award, such amount shall be recoverable as an arrear of land revenue on application to the Collector made by the creditor within 30 days from the date of default.

(3) If the Collector has under sub-section (1)⁴ received any amount which was payable in accordance with the terms of the award, he shall proceed to make payments in accordance with the order stated therein.

(4) If the award directs the delivery of the possession of the property to the debtor the Collector on being satisfied that conditions, if any, subject to which such delivery is to be made are fulfilled, shall deliver the same to the debtor in the prescribed manner.

(5) If the award directs the sale of any property for the recovery of any debt, the award shall be executed by the Collector as if it was the decree of a civil court.

4. It seems that the figure here should be (2) instead of (1).

(6) The Collector may delegate any or all of the powers conferred by this section to any of his subordinates not below the grade of a Mamlatdar or Mahalkari.

(7) The Provincial Government may direct that all or any of the powers to be exercised by the Collector under this section shall in any area be exercised by such officer as may be specified.

Note.—The corresponding section 63 of the Act confers the power of executing the award on the Court registering it and that too as if it were its own decree. This means that it is executable under the law contained in the *Civil Procedure Code*. Sub-clauses (2) to (7) were therefore rendered unnecessary and have consequently been deleted. On the other hand one entirely new proviso (no. 2) has been added in order to leave unaffected the rights which the Government, local authorities and co-operative societies have under other Acts of recovering their respective dues in other ways. In addition to it there is also a new proviso (no. 1) re-iterating the right of the bank reserved by section(3) of the new section 55 of the Act.

58. If the debtor ceases to be a member of a resource society approved by the Provincial Government at any time after the award is made, the Collector to whom the award is sent for execution shall require the debtor to become a member of such society within such period as may be fixed. If the debtor fails to become such member, within the time so specified, the award shall be deemed to have been cancelled and the application for the adjustment of debts shall be deemed to have been dismissed. In such a case the Collector may order the debtor to pay such amount as he thinks fit as the costs of the proceedings and the amount so ordered to be paid shall be recoverable as an arrear of land revenue. The amount of the court-fee, if any, paid by the creditor shall be refunded to him.

Note.—The above-clause has been deleted altogether. Section 64 of the Act is entirely new.

59. (Notwithstanding any law x x x x sections) 60 and 76 (no alienation x x x x valid) until the amount of the award is fully paid by him.

Note.—It may be noted that the changes made in this clause while adopting it as S. 65 of the Act are :—(1) the substitution of the figure “66” for the figures “60 and 76”, (2) the omission of the words “until the amount of the award is fully paid by him” and (3) the softening of the rigour of the rule contained in the section by introducing an exception by the words “except with the previous sanction of the Provincial Government” at the end.

60. (Notwithstanding anything contained x x x x in the interest of a debtor that) his property or any part thereof (should

be sold x x x x x the sale of such) property (for such purpose. The property x x x x x in the manner prescribed.

Note.—The only change made in the above clause while adopting it as S. 66 of the Act was the substitution of the words “any of his property” for the words “his property or any part thereof and of “such part of the property” for the words “such property”. This change is however an important one for in no case can the whole of the property of a debtor be now ordered to be sold by the Board or the Court for the liquidation of his debt or a part thereof. In addition to that the section contains a new proviso putting a further limitation on the quantum of the property of a debtor that can be ordered to be sold under the said section.

61. (No pleader x x x x x before the Board under this Act) except with the permission of the Board.

Note.—The main provision in the corresponding section 67 of the Act is in the same terms as this clause but with the words outside the brackets omitted. The said section however contains a proviso (no. 1) conferring upon the Board the power to allow a party before it to appear by a pleader, or any of the other practitioners mentioned in the section on certain specified terms. It contains another proviso (no. 2) also conferring upon a woman exempted from personal appearance in a civil court under S. 132 of the *Civil Procedure Code, 1908*, the right to appear by an agent duly appointed for the purpose.

CHAPTER IV.

62. (1) (If at any stage x x x x x section) 48, the Board may (make an order adjudicating the debtor to be an insolvent.)

(2) If the debtor is in default in payment of (two consecutive or any three instalments) payable under the award, the Court may make (an order adjudicating the debtor to be an insolvent.)

Note.—This clause, to which section 68 of the Act corresponds, had these two sub-clauses only. The changes introduced in the first are :—(1) the substitution of the figure “52” for the figure “48”, (2) the introduction of an additional reason for which adjudication can be made, and (3) the substitution of the word “shall” for the word “may” which changes the whole force of the provision. The changes introduced in sub-clause (2) are :—(1) a change in the construction of the sentence, (2) a specific mention of “the Court” which can exercise the power conferred by it and (3) a change in the nature of the conditions any of which should be fulfilled before the power can be exercised. Sub-section (3) and the proviso under it are entirely new.

63. *Note.*—The only difference between this clause and the corresponding section 69 of the Act is that the figure “62” therein has been substituted by the figure “68”.

64. (1) In determining the debts and liabilities of the insolvent, if an award has been made regarding the adjustment of debts of the debtor

the decision of the Board in the award regarding the amount of the debts and liabilities of the debtor, the creditors to whom they are due or owed and all other particulars regarding the same shall be conclusive :—

Provided that if the debtor alleges that he has made any payment in satisfaction of any debts due by him or satisfied any of his liabilities after the date of the award, the Court shall inquire into the question and shall determine the same.

If no such award has been made, the Court shall determine the debts and liabilities of the debtor in the manner provided in sections 35 to 40 (both inclusive).

(2) The Court shall also determine the amount of any debts due by the insolvent of the nature specified in section 3.

Note.—The above clause has been deleted altogether and section 70 of the Act which takes its place is entirely new.

65. x x x x x x x x.

66. The Court shall appoint a receiver.

67. (1) No immovable property of the insolvent shall vest in the receiver ; but the Court, on application or of its own motion, may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the receiver has been appointed, any immovable property to the possession of which the insolvent is entitled, and which, in the opinion of the Court, is not required for the support of the insolvent and the members of his family dependent upon him, and subject to any rules that the Provincial Government may from time to time make in this behalf, to manage the same for the benefit of the creditors by letting it on lease or otherwise :—

Provided that, if the insolvent or his representative in interest at any time pays into Court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

(2) A Collector managing property under this section shall during the management have all the powers which the owner might as such have legally exercised, and shall receive and recover all rents and profits of such property, and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land revenue due

to the Provincial Government except the powers mentioned in the *Bombay Land Revenue Code, 1879*, section 150, clauses (b), (d) and (e).

Bom. V of 1879.

(3) Nothing in this section shall authorise the Court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by a debtor.

68. (1) The Court may also, on application or of its own motion, direct that any property belonging to the insolvent, be taken possession of by the creditors for such period not exceeding 15 years as the Court may specify for recovery and discharge of the debt due to such creditor.

(2) A creditor who takes possession of property under this section shall during the period he is in such possession have all the powers which the owner might as such have legally exercised and shall receive and recover all rents and profits of such property during such period.

69. (1) When any debt is secured on any portion of the insolvent's immovable property, the Court, on application or of its own motion, may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under the provisions of the *Code of Civil Procedure, 1908*.

(2) Where property is let under this section the premium shall be applied to the payment of the debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the receiver and thereafter to the insolvent or his representative in interest.

(3) When property is sold under this section, the sale-proceeds shall be applied, first, to the payment of the debt, and the balance, if any, shall be paid to the receiver.

70. So long as any management under section 67 or possession by creditors under section 68 or letting under section 69 continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property managed, taken possession of or let or any part thereof.

71. When the balance available for distribution among the scheduled creditors has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the right to share in the profits of any property managed by the Collector under section 67 or let by him under section 69.

Note.—Section 71 of the Act corresponds to clause 65 of the Bill while clauses 66 to 71 thereof have been entirely deleted.

72. (No appeal x x x x Chapter.)

Note.—The corresponding section 72 of the Act contains an exception to the general provision in this clause introduced by the words “except on the ground” &c. after the word “Chapter”.

CHAPTER V

73. *Note.*—The corresponding section 73 of the Act has the words “Except as otherwise provided by this Act and notwithstanding anything contained in any other law” just before the words “No Civil Court” &c. and the following matter appearing as (no. iv) in the clause has been deleted from it.

(iv) The recovery of any debt which has been deemed to have been discharged under section 71.

74. (In computing the period x x x x Court,) or in respect of which the application for adjustment is dismissed under the proviso to sub-section (1) of section 50 or is deemed to have been dismissed under section 58 (the period x x x shall be excluded).

Note.—Section 75 of the Act corresponds to the above clause, section 74 thereof being entirely new.

75. (1) (No debtor x x x x to a resource society) (shall alienate or encumber x x x x of the society). (Any such alienation x x x x shall be void).

(2) x x x x x x x x.

Note.—The section of the Act which corresponds to this clause is 77, section 76 thereof being entirely new. Such additional words as are found in section 77(1) between the words “to a resource society” and the words “shall alienate or encumber” and between the words “of the society”, and the words “Any such alienation” &c. were required to be added owing to the desire of the Legislature to place the authorised person in the same favourable position as a resource society.

76. (1) (The Provincial Government x x x any individual) or body of individuals (to advance loans x x x x x under this Act).

(2) x x x x x x x x.

(3) Nothing in section 59 or sub-section (2) of section 75 shall apply to alienation or incumbrance made in favour of individuals or bodies of individuals so authorised.

Note.—Sub-section (1) of the corresponding section 78 empowers the Provincial Government to authorise “any individual, joint stock company or other association” to advance loans to debtors. Sub-clause (3) of this clause does not appear in the section in any form.

77. (The Provincial Government x x x to the Collector)
(any of the powers x x x by it) (under this Act).

Note.—The section of the Act corresponding to this clause is 79. The additional words in that section between the words “Collector” and “any” and between the words “it” and “under” authorise the Government to delegate any of its own or the Collector’s powers under this Act to any other officer as well as to the Collector.

78. x x x x x x x x.

79. x x x x x x x x.

Note.—These clauses appear in the Act as sections 80 and 81.

80. (Whoever—(a) x x x x x x x.

(b) x x x x x x x x.

(c) fails or neglects to furnish any information required by the Board or Court (or)

(d) x x x x x x x x (shall, on conviction x x x x x to imprisonment which may extend to) two years (or to fine or to both).

Note.—Sub-clause (c) in the corresponding section 82 of the Act is entirely new. The maximum punishment of imprisonment provided in the Act is six months instead of two years.

81. (1) x x x x x x x x.

(2) (In particular x x x x namely :—)

(a) (the procedure in proceedings before the Board under section 7), (and on appeals before Courts under section 9) ;

Note.—The section of the Act to which this clause corresponds is 83. Sub-clause (1) of the Bill is the same as sub-section (1) of the Act. The introductory portion of the provision in sub-section (2) is also the same as that in the sub-clause of the Bill. But there are several modifications in the purposes enumerated therein. One of such modifications is that purpose (a) in the sub-section of the Act which has reference to the provisions of section 4 of the Act is entirely new. Consequently purpose (b) in the sub-section is purpose (a) in the Bill. Therein too several new words have been added between the words “under section 7”, and the words “and on appeals” &c.

(b) x x x x x x x x.

(c) (the form of x x x x x of section) 20 ;

(d) (the form of application x x x of section) 21 (and the manner x x x x x of section 21) ;

(e) (the manner in which notice under section) 28 (shall be served or published) ;

(f) (the inventories x x x x of section) 30 (and the books of accounts, x x x x of section 30) ;

- (g) (the manner of x x x x of section) 31 ;
 (h) (the time within which x x x x or a local authority) (is required to intimate x x x x under section) 43 ;

Note.—Purposes (b) to (h) in the sub-clause of the Bill are the same as purposes (c) to (i) in the sub-section of the Act with the modifications above indicated. Purposes (j) and (k) in the Act are entirely new.

- (i) (the form of award x x x of section) 50 ; (and other particulars to be included in the award under) (clause (n) of sub-section (2) of section) 50 ;
 (j) the manner of delivery of property to the debtor under sub-section (4) of section 57 ;

Note.—Purpose (i) in the Bill appears as purpose (l) in the Act with the modifications above-noted. Purpose (j) of the Bill appears to have been deleted altogether.

- (k) (the manner of sale x x x x under section) 60 ;

Note.—This purpose appears in the Act as purpose (m). Purpose (n) in it is entirely new. It seems to have been inserted because of the enactment of the new section 76.

- (l) (the conditions on which any individual) or body of individuals (shall be authorised x x x under section) 76.

Note.—This appears in the Act as purpose (o) with the modifications noted.

- (3) x x x x x x x x.

82. (On the date on which) this Act comes into force, (the *Bombay Small Holders Relief Act, 1938*) shall be deemed to have been repealed.

Note.—The section of the Act corresponding to this clause is 84. The clause was however considerably modified before being adopted by the Legislature while passing *Bombay Act XXVIII of 1939*. It was again further amended by S. 4 of *Bombay Act VI of 1941* promulgated by H. E. the Governor of Bombay in the exercise of the power conferred on him by S. 93 of the *Government of India Act, 1935*.

Further, sections 85 and 86 were added for the first time when the Act of 1939 was passed and they too were amended by sections 5 and 6 of the Act of 1941. For the nature and extent of those modifications see the sections of the Act and the foot-notes thereunder.⁵

5. See pp. 250, 253-54, 256-57 *supra*.

Statement of Objects and Reasons.

The question of agricultural indebtedness has been considered both by the Royal Commission on Agriculture and the Indian Central Banking Enquiry Committee. Both these bodies recommended that the Governments concerned should explore the possibilities and desirability of undertaking legislation to secure the settlement of debts on a compulsory basis.

The evils resulting from agricultural indebtedness are well-known. The cultivator's credit is low and he has to pay a high rate of interest even for current finance. The economic servitude that arises from the money-lenders' grip on the agriculturists gives rise to several evils, the chief among them being disposal of the agricultural produce at an unfavourable season and at a price detrimental to the cultivator in order that the demand of the money-lender may be satisfied. The Indian Central Banking Enquiry Committee reported that "the prosperity of the country and the successful development of its trade, industry and commerce entirely depend upon the improvement in the general economic condition and in the increase in the buying power of its population engaged in, and dependent on, agriculture." It is with a view to relieve the agriculturist from the burden of his indebtedness that the present legislative enactment is proposed.

The Act is limited in its scope. It will apply to agriculturist debtors who cultivate lands personally and whose debts on 1st January 1939 are in each case less than Rs. 15,000 and more than Rs. 100 (section 2, sub-clause (6) and section 23).⁶ Section 50⁷ puts in a further limitation that the debtor should be a member of a resource society approved by Government before his debt can be settled under the Act. This is put in as the object is to relieve those agriculturists for whom arrangements for current crop finance can be made by co-operative societies or bodies or associations approved by Government (section 76).⁸ Section 59⁹ declares alienations in respect of property included in the award to be invalid till the

6. A reference to S. 2(6) will show that the definition of a "debtor" as finally fixed embodies many alterations made after the above lines were written and a reference to S. 26 which takes the place of S. 23 of the Bill will make it clear that the minimum limit of debt here spoken of is no longer there.

7. The proviso to sub-clause (1) of clause 50 of the Bill which seems to have been referred to here does not form part of sub-section (1) of the corresponding section 54 of the Act.

8. The present section 78 of the Act.

9. This is section 65 of the Act with a slight modification.

award is fully paid up and section 75¹⁰ makes standing crops inalienable without the permission of the co-operative society. The Debt Adjustment Boards which will enquire into the history of the claims, (sections 37-41),¹¹ scale down debts in accordance with sections 47-48¹² and pass the award under section 50¹³ are put under the general control of the Court of the First Class Sub-Judge within the local limits of whose jurisdiction they may have been established (sections 9 to 15).¹⁴ The award will be registered by the Court under section 56¹⁵ and executed by the Collector under section 57.¹⁶ Provision has been made in Chapter IV¹⁷ to declare a debtor whose assets are inadequate to pay the total amount of the scaled debt to be an insolvent. The usual provision for penalties and rule-making powers has been made in sections 80 and 81.¹⁸ *The Bombay Small Holders Relief Act, 1938*, which was enacted as an interim measure pending the passing of a suitable agricultural debt relief legislation will become inoperative from the day this Act comes into force (section 82).¹⁹

I do not think it necessary to reproduce here the *Notes on Clauses*. In case of an emergency to look into any of them arising, reference may be made to pp. 154-60 of the issue of the *Bombay Government Gazette* Pt. V dated 20th February 1939.

10. This is section 77 of the Act with a similar modification.

11. The corresponding sections of the Act are 40-44 with the exception of 43 which is entirely new.

12. The numbers of the corresponding sections in the Act are 51 and 52.

13. The present section of the Act as regards such an award as is here referred to is 54.

14. The numbers of these sections remain the same in the Act.

15. The corresponding section in the Act is 62.

16. The corresponding section of the Act is 63 but it has been altered completely both in structure and substance. Under it the power to execute an award vests in the Court not in the Collector.

17. This chapter as originally made up contained 11 clauses numbered 62 to 72. The same chapter of the Act now has only 5 sections, namely 68 to 72. Thereout sections 68, 69, and 72 are clauses 62, 63 and 72 of the Bill in a modified form, section 71 is exactly the same as clause 65 and section 70 is entirely new.

18. The corresponding sections of the Act are 82 and 83 respectively which however embody some changes made subsequently.

19. The section in the Act on this subject is 84. As already explained the above clause was considerably modified when Bombay Act XXVIII of 1939 was passed and also when Bombay Act VI of 1941 was passed. The result of those modifications will be clear on a reference to p. 250 *supra*.

APPENDIX III

*Extracts from the Speech of the Hon'ble the Finance Member.**

The Honourable Mr. A. B. Latthe :—Sir, I beg to move that Bill No. XIII of 1939 (A Bill to provide for the Relief of Agricultural Debtors in the Province of Bombay) be read a first time.

x x x x x x x x

Sir, this Bill seeks to deal with a problem which has been of universal interest in this province since a very long time. Many many years ago,— I think it was about 70 years ago—the problem of agricultural indebtedness became very acute especially in the Deccan, and as a result of certain riots which took place, the *Deccan Agriculturists Relief Act* was passed by the Government. This was about two generations ago. That legislation was made applicable in the first instance to four districts in the Deccan; but later on, a substantial portion of that Act has been made applicable to the whole of the Province and the provisions of that Act are in operation in almost the whole of the Province for something like 30 years now.

I refer to these facts for the purpose of showing that the legislation which we have now to undertake is not a new attempt in the field. We have a very exhaustive, and to a certain extent, a radical measure which has been in operation in this Province for quite a long time. I call the *Deccan Agriculturists Relief Act*, which sought to give relief to the agriculturists of the Province an extraordinary Act and a radical measure because it sets aside the ordinary conceptions of law. x x x. As I said, this attempt to help the agriculturists in their indebtedness has been made for a long number of years, and we have to see what the effects of that legislation have been before we try to amend that law or to introduce a new law for the purpose of achieving the same object.¹ Were we to start entirely in conditions which have not been affected by an existing legislation our position would have been somewhat different. To-day we have agricultural indebtedness saddled with a large number of restrictions and artificialities. x x x x The Courts are very often called

* Bombay Legislative Assembly Debates, Vol. V (1939), Pt. II, pp. 2418 et seq.

1. Op. cit. p. 2418.

upon to set aside a sale-deed or interpret a sale-deed as a mortgage-deed. The Courts again are called upon on various occasions to find out whether the amount which the document purports to have been paid to the agriculturists (? agriculturist) or to the debtor is really the amount paid by (? to) him or not. x x x x x x x x x. I refer to these most glaring instances of the evil consequences which have flown from that legislation, though it was really intended to help the agriculturists. x x x. Well, all these things have taken place. I will not criticise the legislation now. It has been criticised already. Some years ago—I think it was in 1911—Government appointed a Committee to inquire into the effects of the *Deccan Agriculturists Relief Act*. The Committee reported very very strongly against that Act. I think that one of the statements they made was that the Act or the operation of the Act is a competition between two sets of perjurers—the creditor bringing a large number of witnesses to prove what was not true, the debtor also bringing a large number of witnesses to prove what was not true—and the Committee said that the litigation under that Act was a competition between two sets of perjurers. That is really a very correct description of what has taken place.² I do not say that all the creditors or all the debtors are such wicked people, but the circumstances were such, the legislation put them in such circumstances that nothing else could be done. x x x x x x. All these things took place. They have become almost the normal life between the agricultural debtor and the creditor of that agricultural debtor. x x x. The Subordinate Judge's Courts, I have no doubt, have been on the whole discharging their duties conscientiously. But when they are themselves put in such an awkward position, when they cannot find out what the real truth is, when they know that one side is trying to defeat the other by any means available, well, the Court has to do the best it can, but then that best cannot be a very satisfactory best at all. That has been the position up till now, and now we have to find out some way of giving relief in conditions which have developed in this way for the last 50 or 60 years. x x x x.³ x x x x. It is under these conditions that we have to frame a scheme of legislation, whereby we could give to our indebted agriculturist the best help that possibly can be given to him.

The first change we have made in the Bill which we are placing before the House is that the definition of "agriculturist" given in the *Deccan*

2. Op. cit. p. 2419.

3. Op. cit. p. 2420.

Agriculturists Relief Act has been very considerably changed. x x x. Here in this Bill we are restricting ourselves to persons who cultivate their lands themselves personally. They must be holders of lands; they must cultivate their lands personally and their secured debts⁴ must not exceed Rs. 15,000. x x x x x x x x x.⁵

It has been also said that we should have tried to deal with those who are mere tenants, who do not hold any land. Our definition here, in this Bill, requires that the man must hold some land. We do not say that he must hold so many acres of land. It may be half or even a quarter of an acre but he must be a holder of some land. The reason why we could not in this Bill deal with those who are mere tenants, who do not own any land at all, is this. The agriculturist who owns a land is a man who offers some security for the loans which he has taken and our object is to protect the man who is a permanent tiller of the soil. x x x. Those who have rights of permanent tenancy are included and they are treated as agriculturists x x x x. The tenant class which do not possess any properties of their own may deserve our fullest sympathy. But x x x x they must be treated on a different footing and that is why we confine ourselves in this Bill to this class of debtors.

The next step is that within one year⁶ of the creation of a Board under this Act, every debtor and, if the debtor does not apply, every creditor must come before the Board and must apply for the adjustment of the debts by that Board. x x x. After that is done the Board is required to take accounts of the indebtedness practically in accordance with the provisions of the *Deccan Agriculturists Relief Act*. x x x. In addition, what we provide is that if the debt has been contracted before 1st January 1931, then the interest which is allowable to the creditor on the debt contracted before the 1st January 1931 will be only at 6⁷ per cent.⁸ If anything more has been paid on those loans, that will be deducted from the loan which has been given to the agriculturist. In the case of the debts which have been incurred after that debt the interest

4. In the Act as passed, the limit of Rs. 15,000 is applied to all kinds of debts of a debtor not to secured debts only. (*Vide* S. 26.)

5. B. L. A. D. Vol. V (1939), Pt. II, p. 2421.

6. This period is now left for the debtor alone to apply and the creditor is given a further period of 6 months within which to apply if the debtor has not done so. (*Vide* S. 17.)

7. This has been raised to 12% or the agreed rate whichever is lower [See S. 42 (2) (c) (i)].

8. B. L. A. D. Vol. V (1939), Pt. II, p. 2422.

to be allowed is 9 per cent. and any excess which has been paid over and above 9 per cent. will be deducted from the principal. Why is this difference made? The difference is made for the purpose of giving concessions to the debtor on account of the fall in prices of agricultural produce which occurred by about the 1st January 1931. x x x. The fall began a little earlier, but the depression was quite definite about January 1931, or November and December 1930. x x x. So after making all these deductions, after finding out what the real debt is, the Board will try to find out what the paying capacity of the man is. That will be the next question, and that paying capacity has to be found for the purpose of scaling down the debt to the paying capacity of the man. x x x. On the side of the creditors it may be said that this is really an unjust measure. This is expropriating the creditor. x x x. But my answer x x x is that if you really bring down the debt to the paying capacity of the man, the creditor really loses nothing. x x x. The greedy money-lender⁹ x x x x will say "why do you make us lose x x x 20 per cent. of the property of the debtor?" Well, I appeal to the sense of justice, to the sense of compassion of the creditor and say that this is a very little margin. x x x. The champions of the debtor are sure to find it very inadequate and therefore the creditor class ought not to grumble if we fix the paying capacity of the debtor at 80 per cent. of the present value of the property which he holds.

Then, the next clause 48¹⁰ deals with the duty of the Board to scale down debts to their paying capacity. x x x x x x x x x x x x. After this is done, the repayment will still be by instalments. x x x x x. The Board will try to find out what instalment the man can pay. The only limit we have fixed is that the instalments should not exceed 25. The idea is that in the course of 25 years, the debt should be repaid. The interest that will be charged in future will not exceed 6 per cent. We wish we could reduce the interest even further. But the difficulty¹¹ x x x x x is that even the Land Mortgage Bank x x x x x cannot give loans at less than 5½ or 6 per cent. That is the present rate. Government propose to take power to reduce the rate still further. x x x x x. I hope it will not be more than even 4½ per cent.

9. Op. cit. p. 2423.

10. The corresponding section of the Act is 52.

11. B. L. A. D. (1939), Vol. V, Pt. II, p. 2424.

The Land Mortgage Bank comes in only if the responsibility of paying of the debt to the creditor is taken over by it ; it will then be entitled to recover the instalments. It will be for the creditor to see whether he takes the instalments himself or he wants to take the whole adjusted amount in a lump sum from the Land Mortgage Bank and then it will be for the Land Mortgage Bank x x x x x to see whether the security which remains x x x x is sufficient. As honourable members are aware, at present the Land Mortgage Bank wants a margin of 50 per cent. But in future that margin may not be available in the case of people whose debts have been scaled down to 80 per cent. of the value of their property. Then it will be a matter of negotiation between the creditor who wants the amount to be returned to him in one lump sum rather than in instalments and the Land Mortgage Bank which will have to pay him off, as to what proportions the Land Mortgage Bank will be willing to pay¹² x x x x. In that way we could free the creditor from the trouble of waiting for 25 years to¹³ receive the full amount and the debtor will have the advantage of having a further reduction in the liabilities to which he will remain subject for some time.

x x x x x x x x

Another feature of the Bill is that when a debtor is brought under the operation of this Bill his properties will be absolutely inalienable and unencumberable during the time that the instalments remain due. The proposals in this Bill are that no money-lender should give a loan on the security of any property of the agriculturist concerned, during the period of 20 or 25 years during which the instalments remain due. The object is to see that by the time the burden is a little reduced, the agriculturist should not be tempted to incur fresh debts. In view of the steps taken, in five years the debt will be reduced to some extent, and then it may be that he will be tempted to go in for a fresh loan to the extent of the relief that he has obtained by paying off few instalments. We do not want that he should be able to do that. Therefore we have provided

12. Section 55 (1)(a) does not leave it to be settled by negotiation as stated by the learned Finance member but fixes the proportion at 50 per cent. of the value of the property of debtor. Thus a further reduction of 30 per cent. would take place automatically if the creditors agree to that course in consideration of getting guaranteed bonds from the bank concerned. It is worthy of note that the said section does not correspond to any clause in the Bill as printed at pp. 3589-3622 of Vol. V, Pt. II of the B. L. A. D. 1939.

13. B. L. A. D. Vol. V (1939), Pt. II, p. 2425.

that the property will be unencumberable during the time that the instalments remain due.

The next question that naturally arises is, if he cannot take any loans from anybody, what about the needs that may arise, especially with reference to his own agricultural operations or any calamities that may befall or any urgent essential necessities that may arise? In order to provide against that, what we say is that before the Board passes its final award, it shall require that the debtor becomes, if he is not already, a member of a resource co-operative society.¹⁴ x x x x x.¹⁵ Then we have also provided that where a co-operative society may not come into existence or may not be available, we may allow licensed creditors, under the restrictions which we will lay down, to give short term credit, on the security, not of the immovable property but the next year's crop x x x x x. And that has been provided for in order to secure another object that we have in view and that object is that the sale of such portion of the produce as will be unnecessary for the maintenance of the agriculturist, such portion of the produce as has got to be sold in the ordinary course, will be sold through the agency of the co-operative society of which the man is a member. He cannot sell it independently.¹⁶ And if a man gives a loan on the security of the crop in spite of this legislation, he will be punished for taking possession of that crop on any account whatever. x x x x x. That is the provision that we have made in order that the man may get the necessary finance, and may sell all his produce in the best possible way. And there will be no further indebtedness of the agriculturist at least during the time that he owes an instalment of the adjusted amount.

As the honourable members will see, it is quite a long Bill and necessarily it had to deal with various points of procedure as well as of sub-

14. Clause 58 of the Bill which contained such a provision was not approved of by the Select Committee. There is therefore no such provision in the Act. There is however S. 78 under which authorised persons and bodies can advance loans to debtors against whom award decrees are standing subject to conditions to be imposed by the Provincial Government. This provision is referred to in the next paragraph of this speech.

15. B. L. A. D., Vol. V (1939), Pt. II, p. 2426

16. This policy seems to have been changed a little and instead of a provision in this respect there is now an independent Act called the *Agricultural Produce Markets Act, 1939* (XXII of 1939) for this purpose and under S. 77(1) of this Act the debtor has to obtain the permission of either the resource society or the authorised person to which or to whom he is indebted.

stantive law. Therefore, I cannot hope to touch every point that has been dealt with in this Bill. I hope I have explained to the House the main features of the Bill. I know that there will be some criticism from both sides; there will be criticism from the creditor class and there will be criticism¹⁷ from the debtor class also. Our object has been to see that such relief as is possible is given to the debtor, but he is not to be free from the sense of responsibility to repay a reasonable amount within his paying capacity. Our object is not to see that all debts are wiped out, no matter what those debts may be and for what purpose they may have been taken. That is not the object we seek to achieve; we wish only to reduce the burden so as to bring it within the capacity of the agriculturist with ordinary intelligence and ordinary habits of industry to repay. We have also tried to provide for the future and see that the man is not compelled to incur future debts. I do not claim that as a result of this Bill alone the agriculturist will be placed in such a position that all his needs would be met out of the income which he may have. That is not the claim which I put forward. As I have repeatedly stated in this House, the root-cause of the indebtedness of the agriculturist is that the pressure on land has been too great; the incomes which our agriculturists get to-day are too insufficient for their own livelihood, and therefore in many cases they have to run into debt. That is a problem which has got to be solved, and no debt legislation alone can solve it. Even if we were to wipe off all the indebtedness existing to-day by a stroke of the pen, the very next year, under the conditions which I have described, the agriculturists will have again to go into debts. That problem has to be solved by other means.

This bill does not seek to solve the problems of increasing productiveness or of saving the waste that may be at present one of the causes of the increasing indebtedness. So far as legislation could serve the purpose, this legislation, I think, will place the agriculturists in a position in which, by ordinary efforts, they will be able to save themselves and to reach an economic condition in which at least they will not be driven to the position of those who have to pass any deeds, those who have to accept any conditions imposed upon them. By pursuing other methods Government hope that the chronic necessity—the root-cause of the indebtedness—will be reduced as far as it is possible to do so. But this legislation will prepare the ground, will free the man of the danger of his

17. *Op. Cit.* p. 2427.

being deprived of the little land that he holds, of his being dragged into court, of his being dispossessed ; that danger will disappear, and he can safely say that the instalment that he has to pay has been reduced to a magnitude which will be within his paying capacity and that those instalments will be stayed when land revenue is stayed on failure of crops. So long as in ordinary normal conditions the man is prepared to pay his liability and the liabilities are reduced to the necessary extent, we hope that the agriculturist will pursue other means which will improve his economic condition still further.

I hope the house will pass the first reading of the Bill.

x x x x x x x.¹⁸

18. *Op. Cit.* p. 2428.

APPENDIX IV

*Report of the Select Committee.**

We, the members of the Select Committee appointed to consider Bill No. XIII of 1939 (A Bill to provide for the Relief of Agricultural Debtors in the Provinces of Bombay), have the honour to report as follows :—

We have carefully considered the Bill and have made certain changes therein. The reasons for the principal changes are given below against the clauses in which they occur :—

Clause 2, sub-clause (6).—In the definition of “Debtor”, we include—

(a) individuals whose income from non-agricultural sources is less than 20 per cent. of their total income¹ but not others, and

(b) joint families whose income from non-agricultural sources is less than 20 per cent. of the total income, or less than Rs. 500, whichever is greater. For the purposes of this definition, we define the term “Agriculture” in Explanation I. We do not think that the mere leasing of land should be included in agriculture. In our opinion, income derived from the leasing of land should not be deemed to be agricultural income for the purpose of this definition. Explanation II is so modified that entries in village records will have presumptive evidentiary value.²

Sub-clause (7).—In defining “holder” we delete the original sub-clause (c) and thus now include tenant-holders as well for the purpose of this Act.

Sub-clause (12).—We have re-drafted the Explanations to the sub-clause so as to clarify that the widow or a minor heir of a person cultivating personally shall be deemed to cultivate personally notwithstanding the fact that such heir does not cultivate the land by his own labour or under his own supervision.

* This Report was published at pp. 335-41 of Part V of the issue of the *Bombay Government Gazette* dated 25th July 1939. The Bill as amended by the Committee was published at pp. 342-89 of the same Part of the issue of the same *Gazette* of the same date.

1. The corresponding sub-section of section 2 of the Act contains a maximum limit of Rs. 300 as well.

2. The corresponding Explanation in section 2(6) of the Act contains no such provision.

Clause 3.—We class, along with the dues of Government and of local authorities and co-operative societies, for the purpose of excluding application of the material sections of this Act specified in clause 3, liabilities due under a decree or order for maintenance passed by a competent court. Clauses 45, 84(j), etc. are accordingly amended.

Clause 4, sub-clause (2).—This is newly added in order to secure adequate publication of the notification establishing Debt Adjustment Boards.

Sub-clause 3.—We have provided that the qualifications of members and Chairmen of the Boards shall be prescribed by rules. In sub-clause (8), however, we provide that none interested in the particular transaction should act as a member on the Board adjusting that transaction.

Clause 12.—We provide for an appeal to lie on the grounds mentioned in that clause in all cases irrespective of the amount of the award.

Clause 17, sub-clause (1).—We extend the time for application to 18 months, so that on failure of a debtor to apply within a year, the creditor may apply within the next six months. [See Clause 52(1)].

Clause 18, sub-clause (3) and clause 22, sub-clause (2).—The court-fee where a transaction is settled by parties is fixed at Re. 1.

Clause 19.—This is a new clause providing that on notice by the other party, a creditor or debtor, as the case may be, must file before the Board a true and correct statement of the claims or debts, as the case may be, and supply a copy of the statement to the other party. Failure so to file a statement and knowingly filing a false or incorrect statement are made offences punishable under clause 83(d).

Clause 20.—The original sub-clause (2) is deleted so as to make the sureties' liability co-extensive with that of the principal debtor.

Clause 24.—For purposes of adjustment of debts under this Act, we have retained the upper limits (? limit) of Rs. 15,000 for the total amount of debts claimed as being due from the debtor on the 1st January 1939, but have done away with the distinction between secured and unsecured debts and also with the lower limit of Rs. 100. Even as regards the upper limit, we believe that in certain areas or class of cases, such as irrigated tracts, it may be necessary to extend the benefits of the Act to cases in which the total debts exceed Rs. 15,000. We, therefore, provide for power of the Provincial Government to extend the benefit by raising the limit. At the same time, we control this power by fixing Rs. 25,000

as the maximum up to which the Provincial Government can raise the limit.³

Clause 33, proviso to sub-clause (2), and sub-clause (3).—We here provide that at any stage prior to the dismissal of the application on the ground that the debts exceed the limit named in clause 24, all the creditors may remit part of their claims so as to get the benefit of the Act. Debts so remitted shall be extinguished for all purposes.

Clause 34.—We omit the last part of the original clause which required the debtor to pay costs to the creditor even when the creditor's application was dismissed.

Clause 40, proviso to sub-clause (2)(e).—We have provided that if the rate of interest allowed by a decree is lower than the rate which is allowed under this clause, the interest will be calculated at the rate provided in the decree.

Clause 41.—This is new and provides, in addition to the presumption against the creditor for non-production of existing accounts, a penalty by way of reduction of his claim by the Board.

Clause 43.—The original clause required sale transactions to be deemed mortgages, if the consideration was an antecedent debt, for transactions before 1927, and if the creditor was a money-lender for transactions entered into after 1927. We now require that all transactions of sales shall be deemed as mortgages when the debtor retains possession for over a year immediately after the transaction and the surrounding circumstances point to the transaction being a mortgage.⁴

Clause 49.—The old clause 45 is deleted, and by this clause we provide for the manner of determining the value of property to be prescribed by rules.

Clause 52, sub-clause (1) (Proviso) and Clause 58.—We delete the proviso, and do away with the compulsion that in order to get the full benefits of this Act the debtor must be a member of a resource society.

3. The Legislative Assembly did not pass this provision and accordingly section 26 which corresponds to clause 24 (original clause 23) of the Bill does not contain any provision empowering the Provincial Government to raise the maximum limit in any area or class of cases.

4. This clause was considerably modified by the Legislative Assembly. There is consequently a marked difference in this clause as re-drafted by the Select Committee and S. 45 of the Act which corresponds to it.

Clause 52, proviso to sub-clause (2) (g).—We have recast the order of priority. We give priority to loans advanced for the purpose of crop finance. We also give the next priority to such of the co-operative societies' dues as are already recoverable under the *Co-operative Societies Act* as arrears of land revenue.

Clause 52, sub-clause (2) (h).—Instead of fixing 25 as the maximum number of annual instalments for the re-payment of debts we make the amount of instalment depend on the annual paying capacity of the debtor.⁵

Clause 52, sub-clause (2) (1) (? 1).—We provide that where the creditor has to apply for debt adjustment on account of the apathy of the debtor, the debtor shall pay the costs; furthermore, that the creditor shall bear the costs when his application is rejected for untruth or incorrectness.

Clause 53.—This is a new provision. We provide that if before the award is made, the creditors scale down the aggregate debts to half the value of the debtor's immovable property and remit the rest, they may be paid out accordingly by the issue to them of bonds guaranteed by the Provincial Government, and issued by the Provincial Land Mortgage Bank or other specifically notified Bank. The amount of the bonds will then be charged on the immovable property of the debtor, and will be recoverable in favour of the Bank as an arrear of land revenue. On such settlement, the debts will be extinguished, and there will be no appeal.⁶

Clause 54, proviso.—We provide that fraudulent non-disclosure by the debtor of his properties will deprive him of the benefits of the Act.⁷

Clause 60.—This clause, as amended, provides that except in the case of Banks under clause 53, sub-clause (3) the award will be executable as a decree of the Court in which it is registered.⁸

Clause 64, sub-clause (2).—Where the debtor intentionally defaults, we require his immovable property to be sold instead of declaring him insolvent. In other cases, that is, where the debtor's movable property is insufficient to meet two consecutive or three instalments, he will be declared insolvent.

5. A reference to S. 54 2(h) proviso 1 will make it clear that this maximum limit to the number of instalments that can be fixed by an award for the payment of the debts of a debtor has been again imposed by the Legislature and that to proviso 2 thereto will show that the Board is required to pay due regard to the net annual income of the debtor as defined in the Explanation to the clause while fixing instalments.

6. This is section 55 of the Act.

7. This is section 56 of the Act.

8. This is section 62 of the Act.

Clause 70.—We reduce the limit of 15 years to 10 years for the creditor's possession and enjoyment of the insolvent debtor's property in cases of the debtor's unprofitable management.

Clause 73.—When the land is restored to the insolvent debtor after outside management it will be held by him on restricted tenure.⁹

Clauses 85-87.—We have made provision for the expiry of the *Small Holders' Relief Act*. In the case of all future transactions, and of all past transactions where the present *Debtors Relief Act* applies, we provide that the *Deccan Agriculturists Relief Act* should not apply. In all other cases we provide that suits under the *Deccan Agriculturists Relief Act*, if not already instituted, must be instituted within three years from the coming into force of this Act. Proceedings arising in and out of suits thus permitted under the *Deccan Agriculturists' Relief Act*, will of course, be completed under that Act. The *Deccan Agriculturists' Relief Act* is, by consensus of opinion, most unsatisfactory and most abused. Hence, by the provision of clause 85, we hope that that Act will come to an early termination in all cases.¹⁰

(Signed) A. B. LATHE, MORARJI DESAI
and others.

(Minute of Dissent by Mr. P. W. Wagh, M.L.A.).

I have signed the Report of the Select Committee subject to the following minute of dissent.

I regret very much that owing to unavoidable circumstances I was not able to attend any meeting of the Select Committee.

I believe it necessary that provision should be made under old clause 61 and new clause 63¹¹ enabling the creditor to appear before the Board by a legal practitioner. I have no objection to its being provided that fees paid to such legal practitioner shall not be included in the costs of

9. Clauses 70 and 73 were not passed by the Legislature. There are therefore no corresponding sections in the Act.

10. The corresponding sections of the Act are 84-86. They have since the passing of the Act of 1939 been modified by sections 4, 5 and 6 of Bom. Act VI of 1941. For the nature, extent and effect of the modifications see the said sections and the Commentary thereon at pp. 250-59 *supra*.

11. The corresponding section of the Act is 67. The clause seems to have been modified by adding proviso 1 but it is worded in such general terms that even a debtor can get permission under it only on the condition above-mentioned.

the award. A money lender does not often know the nature of certain transactions himself either because he has only inherited the business or because he has transactions at so many places that he has to act through a Mukhtyar or a pleader. In such cases it will work a hardship to prevent the creditor from being represented by the person who really knows the affairs. This is a purely practical consideration and ought to receive proper treatment.

Old clause 63 and new clause 65 refer to "an order of adjudication by the Court in appeal" but there is no provision made for such appeal. I suggest that suitable provision should be made by adding a clause in the old clause 62 and new clause 64 or by adding suitable words in clause 9.¹²

Old clause 77 and new clause 80 provide for the delegation of powers by the Provincial Government. I think that certain powers ought to be excluded from the operation of this clause. The powers vested in the Provincial Government under clauses 4, 5, 17 and new clause 24 are powers which cannot be allowed to be delegated. Such exclusion ought to be incorporated in the Bill itself and ought not to be left to be presumed.

Bombay, 17th July 1939.

(Signed) P. W. WAGH.

NOTE

The following alternative draft for incorporation in substitution of clause 53 in the L. A. Bill No. XIII of 1939 was circulated for opinion to the members of the Select Committee, as directed by the Chairman; none of the present signatories have objected to it. The opinions of others are awaited :—

"53. (1) Before making the award under sub-section (1) of section 52, the Board may call upon each creditor¹³ to state in writing whether he agrees—

(a) that the debts due to him shall be further scaled down to a

12. Section 72 of the Act does now provide for an appeal on one ground but the expression to which Mr. Wagh has drawn attention is out of place in the corresponding section 69 of the Act as explained in the Commentary on that section. (See pp. 231-32 *supra*).

13. The section of the Act corresponding to the clause above-mentioned is section 55. Its wording shows that the Assembly did not pass the clause based on the principle of getting the consent of the creditors individually as in this Note but passed it as based on the principle of the joint consent of all the creditors as given at p. 375 of the Gazette.

sum to which they bear the same proportion which the aggregate amount of the debts found due from the debtor under section 50 bears to half the value of the immovable property of the debtor, and

(b) that he shall receive in lieu of all the debts due to him, bonds issued by the Bombay Provincial Land Mortgage Bank registered under the *Bombay Co-operative Societies Act, 1925* or by such other bank as may be specified by the Provincial Government by a notification in the *Official Gazette*, such bonds being guaranteed by the Provincial Government and being equivalent in value to the sum referred to in (a).

(2) If any creditor agrees to the aforesaid conditions, the Board shall prepare a scheme for the adjustment of the debts of that creditor accordingly, and shall send the scheme to the said bank for acceptance. If the said bank agrees to accept the proposal, the Board shall make an award in favour of the said bank in the form prescribed, and directing that the sum referred to in (a) shall be recoverable by the said bank from the debtor and shall be charged on such portion of the debtor's immovable property as the Board may determine. The portion of the property so charged shall not be charged for debts adjusted in an award under section 52 against the same debtor. The bonds referred to in clause (b) of sub-section (1) shall then be issued by the bank through the Board to the creditor concerned in full satisfaction of all the debts due to him from the debtor.

(3) All sums due under an award made in favour of the bank under sub-section (2) shall be recoverable as arrears of land revenue.

(4) Notwithstanding anything contained in this Act no appeal shall lie from an award made under sub-section (2)."

APPENDIX V

Cognate Legislation in the Other Provinces.

I have already drawn the attention of the reader¹ to the legislative measures passed by the Legislatures of the Provinces of (1) the Central Provinces and Berar, (2) the Punjab, (3) Bengal and (4) Madras with a view to give effect to the recommendations of the Royal Commission on Agriculture and Central Indian Banking Enquiry Committee and of the respective Provincial Banking Enquiry Committees appointed by the latter in order to get the local conditions in each province investigated more thoroughly than an All-India Committee could do, for giving relief to the agriculturist-debtors in their respective provinces from their existing indebtedness. I have also pointed out how and why the provisions contained in the Acts passed in the other provinces till July 1937 differ in certain material respects from those in this Act. Lastly, I have also referred to the provisions of two of the chapters of Bombay Bill No. VII of 1938 and stated that some of the principles underlying them have been adopted while framing the conditions which the Provincial Government is empowered to impose on the authority to be granted by it to certain individuals, joint stock companies and other associations under the provisions of section 78(1) of this Act, although the Bill as a whole was never placed again before the Legislative Assembly after it was referred to the Select Committee appointed to examine it.² In this Appendix I propose to give in one place all the remedial and preventive measures passed by the several Provincial Legislatures both with a view to relieve the agricultural debtors in their respective provinces of their existing indebtedness and so to regulate the business of money-lending as to minimise the possibility of their again drifting into a state of indebtedness. Owing to the difficulty of getting the necessary reference-works as to the Provincial Acts in force in the other provinces, I do not claim that the list is exhaustive although I have made all possible attempts to make it such.

1. See Section X of the INTRODUCTION at pp. 42-52 thereof.

2. See Feature No. (15) in Section XI of the INTRODUCTION on *Distinguishing features of this legislation* at pp. 57-58 thereof and the Commentary on Rules 38 to 40 in Appendix I at pp. 296-97 *supra*.

REMEDIAL MEASURES

Central Provinces and Berar.

1. Central Provinces Debt Conciliation Act, 1933.
2. Central Provinces Debt Conciliation (1st Amendment) Act, 1935.
3. Central Provinces Debt Conciliation (2nd Amendment) Act, 1935.
4. Central Provinces Debt Conciliation (Amendment) Act, 1936.

Punjab.

1. Punjab Relief of Indebtedness Act, 1934.
2. Punjab Debtors' Protection Act, 1936.
3. Punjab Relief of Indebtedness (Amendment) Act, 1940.

Bengal.

1. Bengal Agricultural Debtors Act, 1935.
2. Bengal Agricultural Debtors (Amendment) Act, 1940.

Madras.

1. Madras Debtors Protection Act, 1934.
2. Madras Debtors Protection (Amendment) Act, 1934.
3. Madras Debt Conciliation Act, 1936.
4. Madras Agriculturists Debt Relief Act, 1938.

United Provinces.

1. United Provinces Agriculturist Relief Act, 1934.
2. United Provinces Agriculturist Relief (Amendment) Act, 1935.

Sind.

1. Sind Agriculturists Relief Act, 1940.
2. Sind Agriculturists Relief (Amendment) Act, 1941.

Orissa.

1. Orissa Small Holders Relief Act, 1938.

PREVENTIVE MEASURES

Punjab.

1. Punjab Regulation of Accounts Act, 1930.

Bengal.

1. Bengal Money-lenders Act, 1933.
2. Bengal Money-lenders Act, 1940.

Assam.

1. Assam Money-lenders Act, 1934.

THE BOMBAY AGRICULTURAL DEBTORS RELIEF ACT [Remarks].

Central Provinces and Berar.

1. Central Provinces Money-lenders Act, 1934.
2. Central Provinces Money-lenders (Amendment) Act, 1936.
3. Central Provinces Money-lenders (1st Amendment) Act, 1937.
4. Central Provinces Money-lenders (2nd Amendment) Act, 1937.

Bihar.

1. Bihar Money-lenders Act, 1938.
2. Bihar Money-lenders (Amendment and Application to Pending Suits and Proceedings) Act, 1938.
3. Bihar Money-lenders (Regulation of Transactions) Act, 1939.

On comparing the contents of Section X of the INTRODUCTION the reader will realise that whereas in the matter of remedial measures our province has gone considerably ahead of the other provinces, it is considerably behind them in the matter of preventive measures. Experience of a generation of the application of some of the sections of the *D. A. R. Act* to almost all the districts thereof has proved beyond cavil that without an Act for regulating and controlling the business of money-lending throughout the province, the insidious germs of the disease of agricultural indebtedness cannot be exterminated and the foundation of a sound economic structure in the rural areas cannot be laid. I therefore repeat here what I have stated in the Commentary on rules 38 to 40,³ namely that it is highly desirable that after the operation of those rules has been watched for some time, the Provincial Government should seriously consider the expediency of getting legislative sanction for Bombay Bill No. VII of 1938 which is awaiting its attention for nearly three years.

3. Appendix, pp. 296-97 *supra*.

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- Brahma Deo *v.* Haro Singh (A. I. R. 1935 Pat. 237) 124.
- Brett *v.* Brett (3 Ad. 210) 5.
- Brown *v.* National Provident Institution [1921] A. C. 222] 95, 111.
- Bushell *v.* Hammond [(1904) 2 K. B. 563] 15.
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Abbreviations.—P. G. = Provincial Government ; R. C. A. = Royal Commission on Agriculture ; I. C. B. I. C. = Indian Central Banking Inquiry Committee ; B. P. B. I. C. = Bombay Provincial Banking Inquiry Committee ; P. L. M. Bank = Provincial Land Mortgage Bank.

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