

ACTS
RELATING TO
THE RELIEF OF DEBTORS

[WITH SPECIAL REFERENCE TO THE MADRAS PRESIDENCY]

BY
P. R. AIYAR, B.A., B.L.
Vakil

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PREFACE.

Those who hold, and those who are without property, have ever formed distinct interests in society. Those who are creditors and those who are debtors follow under a like discrimination. A landed or agricultural interest, a manufacturing interest, with many lesser interests, grow up of necessity in civilized nations and divide themselves into different classes, actuated by different sentiments and views. The just regulation of these various and conflicting interests forms one of the principal and hardest tasks in modern legislation.

During the past few years, owing largely to the unprecedented economic depression in all parts of the world, this problem has presented itself, for urgent solution, in one form or other, in all Countries,—both in the east and the west.

Every Province in our own Country has found it necessary to enact laws for the relief of debtors. The nature of the problem necessarily varies from place to place. The form of legislation which may be suited to one Province may not give adequate relief in another Province. Though there are variations in detail, the underlying principle of these enactments is the same, and the object aimed at also remains the same.

Of all the classes of people to whom relief is given, it has been found necessary to provide for special protection to the agricultural population of our Country.

The Madras Agriculturists' Relief Act, The Bengal Agriculturists' Debtors Act, The U. P. Agriculturists' Relief Act, The Agriculturists' Loans (Amending Acts) in Madras, U.P. and C.P.,—are all measures intended to help those who are engaged in cultivation—the basic industry of the country—from the load of debt that has been pressing them, almost for ages past.

Whatever may be said about the merits or demerits of the several provisions of these enactments, it has been universally admitted, that without some such strong measures as are aimed at in these enactments, there is not the slightest hope of our agricultural population finding themselves free from the crushing poverty and the load of debt, which, with the progress of time, only tends to become more and more burdensome.

The aim of all our Provincial Governments, at present, is to give the land-bred folk a sense of freedom, from an almost

irreconcilable bondage, and instil in them a fresh hope of finding themselves, once again, owners and toilers on unencumbered soil. How far these Acts will succeed in producing the desired effect,—it remains to be seen. It is a bold and honest effort in the right direction; and these Acts are urgently called for by the necessities of the times.

This work is a humble attempt, to collect in one small volume, all the important enactments passed in the several Provinces in India during the last few years, aimed at affording relief, of some sort or other, to debtors generally, and agricultural debtors in particular.

Most of these Acts are new; and the way in which they should be worked, in actual practice, by Courts is a matter of prime importance to the public. A knowledge of the way in which similar Acts are administered in a sister-province may afford valuable guidance to the Bench and the Bar in construing the provisions of any particular enactment.

There are more than twenty-four Acts in this small volume, and all the important decided cases are also collected under each enactment.

It is hoped that this collection of Acts with important rules and short notes of case-law will be found of use to lawyers and judges as well as the large body of the lay public.

“Ill fares the land, to hastening ills a prey,
Where wealth accumulates and men decay:
Princes and Lords may flourish or may fade;
A breath can make them, as a breath has made;
But a bold peasantry, their country's pride,
When once destroyed, can never be supplied”.

Goldsmith—*The Deserted Village*.

P. RAMANATHA IYER.

CONTENTS.

The Madras Debtors' Protection Act (VII of 1935).

SECTIONS.	PAGES.
1. Short title, extent and commencement ..	1, 22
2. Definitions ..	23
3. Duty of creditor to maintain accounts and to give receipts ..	29
4. Additional accounts to be maintained by pawn-brokers ..	35
5. Figures in accounts to be in Arabic numerals ..	40
6. Penalty for non-compliance with Sections 3 and 4 ..	41
6-A. Maximum rate of interest for secured and unsecured loans ..	44
7. Savings ..	63
8. Rules ..	63
Rules under the Act ..	64

The Madras Debt Conciliation Act, 1936.

1. Extent and Commencement ..	89
2. Definitions ..	89, 91
3. Establishment and Constitution of Boards ..	93, 94
4. Application for settlement between debtor and his creditor ..	95
5. Verification of application ..	96
6. Particulars to be stated in application ..	96, 97
7. Rejection of application ..	97
8. Procedure on application ..	97
9. Dismissal of application ..	97, 98
10. Notice calling upon creditors to submit statement of debts ..	98, 99
11. Procedure on Submission of statement of debts ..	99
12. Power of Board to decide dispute as to existence or amount of debts or assets ..	100
13. Power of Board to require attendance of persons and production of documents ..	101
14. Agreement of amicable settlement, its registration and effect ..	101
15. Properties exempt from attachment not to be taken into account ..	104

SECTIONS.	PAGES.
16. Maximum amount allowable in satisfaction of a debt ..	104
17. Power of Board to dismiss application ..	105
18. (i) Grant of certificate in respect of certain debts ..	105
(ii) Power of Court to disallow costs or interest ..	106
(iii) Decrees in Suits after registration of agreement not to be executed ..	106
19. Bar of Civil Suits ..	106
20. Avoidance of certain transfers of debtor's property ..	107
21. Alienation made with sanction of Board not to be considered as a fraudulent preference ..	108
22. Bar of appeal or revision ..	108
23. Power of Board to review its order ..	108
24. Appearance of parties before Board ..	108
25. Stay of pending suits and other proceedings ..	109
26. Report by Board regarding sums due to Government ..	109
27. Computation of period of limitation for suits and proceedings ..	109
28. Members of the Board deemed to be public servants ..	110
29. Power to make rules ..	110, 111
Rules under ..	112
Rules under the Act ..	112
The Madras Agriculturists Relief Act, 1938.	
1. Short title ..	136
2. Extent ..	138
3. Definitions ..	139, 142
4. Certain debts and liabilities not to be affected ..	149, 150
5. Special provision for undivided Hindu families, etc. ..	154
6. Sons and descendants of non-agricultural members of Hindu families to be non-agriculturists ..	154
7. Debts payable by agriculturists to be scale down ..	155
8. Provision for debts incurred before 1st October, 1932 ..	156
9. Provision for debts incurred on or after 1st October, 1932 ..	160
10. Exceptions ..	162

CONTENTS.

v

SECTIONS.	PAGES.
11. Provision as to costs in certain cases ..	166
12. Rate of interest payable by agriculturists on old loans ..	166
13. Rate of interest payable by agriculturists on new loans ..	167
14. Separation of share of debt in particular cases ..	168
15. Conditional discharge of arrears of rent ..	170
16. Landholder to be entitled to recover land-cess and costs ..	173
17. Extension of limitation for suits, etc., for rent in certain cases ..	173
18. Provision as to costs in certain cases ..	174
19. Amendment of certain decrees ..	175
20. Stay of execution proceedings ..	176
21. Adjudications in insolvency ..	176
22. Special provision in the case of certain sales of movable property ..	177
23. Sales of immovable property to be set aside in certain cases ..	178
24. Consequential provision on setting aside of sale ..	179
25. Alienations by debtor ..	179
26. District Collector to furnish information as to certain facts ..	179
27. Executive authorities of local bodies to furnish information as to certain facts ..	180
28. Power to make rules ..	180
The Usurious Loans (Madras Amendment) Act, 1936 (VIII of 1937).	
S. 1-3 ..	183, 184
The Usurious Loans Act, 1918.	
1. Short title and extent ..	184
2. Definitions ..	185
3. Re-opening of transactions ..	185
4. Insolvency proceedings ..	190
The Usurious Laws Repeal Act (XXVIII of 1855).	
1. Preamble ..	190
2. Rate of interest to be decreed by Courts ..	191
3. Rate of interest upon a judgment or decree ..	191
4. Contracts for usufruct of property in lieu of interest ..	191
5. Amount of interest to be deposited in certain	

CONTENTS.

SECTIONS.	PAGES.
cases of conditional sales under Bengal Regulations ..	192
6. Rate of interest on future adjustment of accounts ..	192
The Agriculturists' Loans (Madras Amendment) Act (XVI of 1935).	
Preamble ..	194
1. Short title and commencement ..	194
2. Local extent ..	194
3. Repeal of Act X of 1879, and Sections 4 and 5 of Act XV of 1880 ..	195
4. Power of Provincial Government to make rules ..	195
5. Recovery of loans ..	195
6. Liability of joint borrowers as among themselves ..	196
The Agency Tracts Interest and Land Transfer Act (I of 1917).	
Preamble.	
1. Short title ..	197
2. Definitions ..	197
3. Maximum interest that may be allowed as against a member of a hill-tribe ..	197
4. Transfer of immovable property by a member of a hill-tribe ..	198
5. Suits against a member of a hill-tribe to be instituted in the Agency Courts ..	198
6. Attachment of immovable property ..	198
7. Framing of rules ..	198
8. Savings ° ..	199
The Madras State Aid to Industries Act (V of 1923).	
Preamble.	
1. Short title and Definitions ..	200
2. Director of Industries ..	200
3. Board of Industries ..	201
4. No aid except in accordance with the provisions of the Act ..	201
5. Industries to be aided ..	201
6. Method of giving State Aid ..	202
7. (Omitted).	
8. Application for State Aid and procedure in dealing with applications ..	203
9. Grant of loans ..	203
10. Loans how secured ..	204

CONTENTS.

vii

SECTIONS.	PAGES.
11. Inspection and returns ..	204
12. Control of business assisted ..	204
13. Re-payment of loans ..	204
14. Guaranteeing of loans by Banks ..	205
15. Subscription for shares or debentures or guarantee of a minimum return on capital ..	205
16. Subsidy by the Provincial Government ..	205
17. Disposal of profits where condition of State aid is not fulfilled ..	206
18. Methods of recovery of money due ..	206
19. Power to make rules ..	206
20. Powers of Government as regards starting or conducting industries and giving aid of certain kinds ..	208

APPENDIX.

The Assam Money-Lenders' Act (IV of 1934) (<i>and Rules</i>) ..	i-vii
The Bengal Money-Lenders' Act (VII of 1933) ..	vii-x
The Bengal Agricultural Debtors Act, 1935 ..	x-xxxv
The Central Provinces Debt Conciliation Act (II of 1933) (<i>and Rules</i>) ..	xxxv-liv
The Usurious Loans (C.P. Amendment) Act (XI of 1934) ..	liv-lviii
The Central Provinces Money-Lenders' Act (XIII of 1934) (<i>and Rules</i>) ..	lviii-lxviii
The Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Act (V of 1936) (<i>and Rules</i>) ..	lxviii-lxxx
The Central Provinces Reduction of Interest Act (XXXII of 1936) ..	lxxx-lxxxii
The Central Provinces Protection of Debtors Act (IV of 1937) ..	lxxxii-lxxxiii
The Punjab Debtors' Protection Act (II of 1936) ..	lxxxiii-lxxxix
The Punjab Regulation of Accounts Act (I of 1930) ..	lxxxix-xcv
The Punjab Relief of Indebtedness Act (VII of 1934) (<i>and Rules</i>) ..	xcv-cxi
The Agriculturists' Loans U.P. (Amendment) Act (XII of 1934) ..	cxi
The Usurious Loans U.P (Amendment) Act (XXIII of 1934) ..	cxii-cxiii

	PAGES.
The U.P. Temporary Regulation of Execution Act, 1934 ..	cxiv-cxviii
The U.P. Encumbered Estates Act (XXV of 1934) ..	cxviii-cliii
The U.P. Regulation of Sales Act (XXVI of 1934) ..	cliii-clxi
The U.P. Agriculturists' Relief Act (XXVII of 1934) ..	clxi-cxc
The U.P. Stay of Proceedings (Revenue Court) Act (IV of 1937) ..	cxc-cxcii
The Temporary Postponement of Execution of Decrees Act (X of 1937) ..	cxcii-cxcv

THE MADRAS DEBTORS' PROTECTION ACT (1934)

Act No. VII OF 1935

[16th January, 1935; 6th March, 1935.

An Act for the protection of certain classes of debtors in the Presidency of Madras.

WHEREAS it is expedient to make provision for the protection of certain classes of debtors in the Presidency of Madras, and for that purpose to regulate the keeping of accounts by certain classes of creditors;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE MADRAS DEBTORS' PROTECTION ACT, 1934.

(2) It extends to the whole of the Presidency of Madras.

NOTES.

INTRODUCTORY.—Modern Legislation has shown the existence of two conflicting tendencies in the enactment of laws regulating dealings between the debtor and the creditor. There is a class of statesmen who are apparently opposed to the policy of the Money-lenders' Acts, which aim at the protection of debtors by legislative interference. They believe in what may be termed the older conception of the theory of

Freedom of Contract. In their view "an agreement enforceable at law" ought to be enforced in its entirety. If persons make bad bargains, they have only themselves to thank, they must put up with the consequences, and ought not to expect the Courts to re-make their agreements for them. The other school of thought lays stress on the principle that a creditor ought not to be allowed to take advantage of the necessity of the borrower and to drive an oppressive bargain. The lender ought not to be allowed to extract anything he pleases under the name of interest. The State has a right and owes a duty to interfere in such class of cases,—even if it should amount to interference with the contractual rights and obligations of parties.

A contract is essentially an affair of the will; but even when an absolute *consensus ad idem* is established the operation of such facts as mistake, fraud, misrepresentation, undue influence, and duress, upon the consent embodied in the agreement, may vitiate it wholly or create a flaw which renders it liable to be destroyed from one side.

Just as there can be no contract unless there is true *consensus*, so there can be no *consensus* unless both parties are free to contract. To a large extent, Sir Henry Maine was correct when he said that the progress of society was from status to contract. In primitive societies obligations are mainly the creatures of custom. Custom is modified, as Sir Henry Maine has shown, by three successive agents—Fiction, Equity and Legislation. By the end of the eighteenth century the golden age of equitable jurisprudence was over in England, and with the growth of Individualism, which was such a marked feature of the rise of Industrialism, legislation was chiefly occupied in removing obstructions to political and commercial progress.

In this great movement usury became involved. Bentham in his *Defence of Usury*, (1787) and Turgot in his *Memoire sur le Pret a Interet*, published in 1790, were the first to advocate the removal of all legislative restrictions upon money-lending. These writers declared that all legislative interference with the contract of loan had its origin in superstition; that money, like all other commodities, possessed its value in the market, which was determined by the relation of supply and demand; that those who had security to offer would always be able to borrow at the market rate; that those who had no

security must pay a premium in proportion to the risk; that they were the best judges of that premium, and were and ought to be at liberty to give or decline it as they thought fit, and that any attempts to protect the ignorant, inexperienced, simple or necessitous, were vain or mischievous.

It was the adoption of these views which led to the repeal of the Usury Laws in England in 1854, and in India to the passing of the Usury Laws Repeal Act, 1855, a result largely attributable to the Free Trade movement.

At the commencement of the nineteenth century in almost every country usury laws were in force restricting the legal rate of interest. As the result of the same movement these restrictions were abolished. These doctrines as to freedom of contract expounded by Bentham and his followers are good to a large extent. But they are vitiated by one vital flaw. It ignores the question "What is freedom?"

The development of the equitable doctrine, in England in connection with the origin and history of usury supplies the answer to this question "What is freedom?"

No doubt, as Bentham points out in his works, "Centuries of experience from every country on the face of the globe have demonstrated the uselessness of restrictions upon the rate of interest. No legislation which the wit of man can devise will ever prevent evasions of statutory restrictions. Nay more, such restrictions only tend to render still more onerous the terms exacted by usurers."

It is also true that, as a rule, the economic laws of supply and demand determine the rate of interest. "This is certainly the case with the well-to-do borrower, but it is far otherwise with the necessitous borrower. For him the rate of interest is fixed by the necessities of his condition and the capacity of the lender. Indeed, the more necessitous he is, the higher the rate of interest he has to pay.

Mr. Rothschild's belief expressed in 1818 in reference to small manufacturers and tradesmen has been confirmed. "I believe", he said, "that were the usury laws repealed great advantage would be taken in many cases of the necessities of such persons, by the lender demanding probably two or three times the rate of interest from them as their security as would be required in discounting bills of first or second rate houses. Therefore it appears to me that the less opulent should be protected."

Take the case of a wealthy landowner who borrows a large sum from his bankers upon gilt-edged securities, or of a prosperous city merchant, whose note of hand is readily negotiated. Here the risk is nothing: the current bank rate determines the interest. On the other hand, a poor peasant borrows just sufficient to pay the rent of his *mud hovel* or to save his scanty crop from distress, or a small mofussil tradesman wants a temporary loan to meet a bill, with which to renew his stock or to tide over a bad season's trade. Here the risk is everything. There is no competition, as in the case of the rich man, to keep down the rate of interest. Money, he must have, on some terms, and above all secrecy is a *sine qua non*. The lender may lend or not as he pleases. Competition is on his side. He may select his victim from a hundred necessitous borrowers, and long experience has taught him how to make his calculations, and how to reimburse himself for such loss as he may chance to suffer, by the extortionate rate of interest inflicted upon those who by themselves, their sureties or relatives, are ultimately made to pay.

"Do the parties to such contracts of loan", asks Mr. Justice Byles, "stand on level ground? One side bets on the risk voluntarily with his eyes open, the other is made to bet blindfold, whether he will or no, with such odds as are dictated by necessity and secrecy. Is it even a fair gaming contract? Are not the dice loaded?" (Usury Laws, P. 32.)

So far we have only considered the welfare of the individual borrower. Society is now rightly regarded as a living organism. It is not a mere collection of independent units. Just as the whole body suffers if one of its members is diseased, so society ultimately pays the penalty for the sins and misfortunes of its units. A higher conception of humanity has arisen. In primitive communities, the family, the clan, or the tribe was everything, the individual nothing. In modern society, the interests of the nation as a whole are paramount, and the individual must conform, not so much for his own sake as for the general welfare. Thus freedom of contract is limited in every direction. Exploitation of labour, the curse of modern industrialism, has been checked and held in restraint by Factory Acts, Mines Regulation Acts, Truck Acts, and countless other measures, having for their object the prevention of men and women bartering their labour for less than a living wage under insanitary and unhygienic conditions, which entail the physical and moral degeneration of the nation.

So, too, many agreements are avoided, because they are contrary to public policy or to morality. The legislature has decided that wagering and gaming contracts, agreements for "differences" in stocks and shares and other commodities, shall likewise be void, not so much because the individual gambler may be inconvenienced, but because, whether he loses or gains, his character is demoralised, and he becomes a less useful member of society. Moreover, the evil is not merely confined to the erring individual. Its consequences are far-reaching. They result in loss of honest labour, in insolvency, with its attendant loss, poverty and misery to others, and frequently in fraud and crime.

The evil consequences of money-lending at high rates of interest are precisely similar. "Whenever", wrote Mr. Justice Byles, "an impartial Parliamentary Committee shall institute a searching inquiry in the proper quarter, they will find that interest at 100, 200, 300, 500 per cent. per annum and more, is among vast multitudes paid or promised to be paid, for the use of money; they will find reckless speculation promoted, borrowers ruined, and the resources of the country misapplied and wasted; they will find in every Court the most cruel actions constantly brought to enforce these extortionate demands; actions in which the law, so far from being, as she ought to be, the hand-maid of justice, is in reality prostituted and made an accomplice in the perpetration of the most iniquitous gambling and robbery." (Usury Laws, P. 47.)

This prophecy has been more than fulfilled. Before the English Select Committee of 1897, evidence of the widespread operations of money-lenders of the most extortionate, over-reaching, and fraudulent character was forthcoming *ad nauseam*, operations which resulted not only in ruin to the borrowers themselves and their families, but in the impoverishment of their *bona fide* creditors, and the misdirection and dissipation of large portions of the national wealth. The economic results of traders carrying on business by means of capital borrowed at high rates of interest are widespread. Obviously every trader endeavours to hold up as long as possible, but when at last he is compelled to suspend payment, it is found that all his assets have been exhausted by the exorbitant interest he has been paying or are charged in favour of the money-lender.

It is with agriculture even more conspicuously than with commerce that the immediate economic and social evils of usury

are seen. The testimony from all countries is similar. Reference may well be made to the prevalence of usurious bargains between the sowcar and the ryots in India, and the resulting disastrous consequences. The following extract from the judgment of Sir Douglas Straight, delivered when sitting as Chief Justice of the High Court of the North-Western Provinces, may be usefully quoted here. "It is," he declared, "bargains of this description between the small village proprietors and the money-lenders that are gradually working the extinction of the former class in many of the country districts, and producing results which are not only a serious scandal, but a positive mischief. For it must be borne in mind that the pecuniary difficulties of the persons I have mentioned are as often as not the result of misfortunes rather than improvidence, and that bad seasons have as much to do with causing them as waste or extravagance. Whichever way it be, this is certain, that the money-lenders, as any one who sits in this Court must see, are to an alarming extent absorbing the proprietary interests in the village communities, and that the body of ex-proprietors is enormous on the increase.

In Ireland the sowcar finds his counterpart in the *gombeen* man, who is a well-known character in Irish rural districts. Into his hands are falling the peasant proprietorships; the owners either emigrating to foreign countries or remaining as "broken men" at home. To the familiar devices of the *gombeen* man may be traced much of the ruin which has fallen on the Irish homesteads. "The system of agricultural finance to which the humbler and weaker class of borrowers are obliged to recur," declares the Rev. T. A. Finlay, "is essentially vicious, a social danger, and something of a public scandal. It is the duty of all who have the interests of the agricultural class at heart, to protect them against its iniquities."

It cannot be disputed that the money-lenders of the class under consideration are social parasites, living upon the necessities of the impecunious and unfortunate members of society. They serve no useful purpose whatsoever. They are a social pest and curse. The view adopted by some advocates of the conservative theory of contract, that they should be regarded rather as philanthropists who risk their money, is entirely false."¹ (Bellot's Bargains with Money-lenders, Chap. III.)

¹ It is interesting to observe that Cicero shared the same views. Whilst recognising the danger of destroying public confidence in the

THE MADRAS DEBTORS' PROTECTION ACT, 1937.

Money-lenders of this class do not lend at haphazard. In every case before lending they make careful inquiries as to the social character and financial position of the borrower. They have their agents in every town and village, and for a trifling sum obtain the necessary information, not omitting to debit the borrower with about six times the amount of such costs under the name of an "enquiry fee." They take no risks: their business is highly remunerative. Occasionally the biter is bit, but the money-lender's cry of "bad debts" is almost wholly false. An examination of the balance-sheets of so-called money-lending banks in England showed that the undertaking of usury was highly remunerative. For instance, the Carlton Bank, Limited, according to the annual report for 1893, lent upwards of £33,000 during that year, and paid 6 per cent. on the preferred shares with a bonus of $1\frac{1}{2}$ per cent. and 25 per cent. on deferred shares with a bonus of 10 per cent. free of income-tax. Many of these institutions borrow money at 7 to 8 per cent. and then make another 10 to 12 per cent. on the money.

The Legislature whilst recognising the inequitable character of such transactions ought not to lose sight of the economic and social evils resulting therefrom.

Usury in the modern sense may be defined as "exploitation of the necessitous, resulting in a harsh and unconscionable bargain."

Modern systems of law have taken a very strong view on this matter and hold that the usurer is a social and an economic pest, serving no useful purpose whatever, that he should be discouraged, and not allowed to take advantage of obtaining high rates of interest, even from willing borrowers of full age and understanding. It is contrary to the public weal that persons should be encouraged to agree to pay extortionate rates of interest.

The Madras Debtors' Protection Act, 1935, is an enactment of limited operation intended to put down some of the mischiefs above referred to, in the case of small borrowers of amounts below Rs. 500, *at a time in any one transaction.*

The necessity for the passing of this Act has been explained as follows in the "Statement of Objects and Reasons."

inviolable character of contracts, he maintained that the legislator should take measures to prevent the contraction of liabilities by individuals to such an extent as to be harmful to the state.

STATEMENT OF OBJECTS AND REASONS.—The business of money-lending, with which is often associated the sale of jewels and articles of common use, as carried on by certain classes of money-lenders is very unsatisfactory and places the debtors who are largely drawn from the middle and working classes at the tender mercy of the money-lenders. The need, ignorance and illiteracy of the debtors are being exploited by certain classes of money-lenders to an unconscionable degree. A certain class of the money-lenders as a rule never give receipts for the monies they receive from the debtors and they keep their accounts in a language and in a form which none but themselves can decipher or understand. Again the interest charged is exorbitantly high and it is time a reasonable maximum is fixed.

The aim of this Bill therefore is to fix a reasonable maximum rate of interest, to provide for the good and safe conduct of the business of certain kinds of money-lending and "to secure as between certain classes of money-lenders and debtors an improved system of keeping accounts which will give to the latter a means of ascertaining periodically how their accounts stand and how they are composed." At the same time the Bill is cautious enough not to unnecessarily harass the lender and restrict the facilities for credit. Also by excepting certain classes of loans it expressly avoids interference with accounts connected with trade and commerce. The penalties for non-compliance with the provisions of the Bill are not hard, but reasonable, and just sufficient to meet the requirements of the case.

The Bill is practically the Punjab Regulation of Accounts Act of 1930 with a few necessary additions to suit local conditions. (Statement of Objects and Reasons appended to the Bill, published in *Fort St. George Gazette*, dated 30th August, 1932, Part IV, p. 127.)

REPORT OF SELECT COMMITTEE.—The object of the Bill as stated in the Statement of Objects and Reasons attached to the Bill is not to deal in a comprehensive manner with the business of money-lending generally, but to remedy some of the evils associated with certain classes of money-lending and especially with loans advanced by professional money-lenders on the security of jewels and other articles to small borrowers who are generally drawn from the middle and working classes. The evidence which we have heard is almost entirely unanimous to the effect that this class of small borrowers, especially borrow-

ers obtaining loans on the pledge of jewels and other articles require protection in some such manner as is provided for in this Bill. We have made it clear that the provisions of this Bill are confined to the class of money-lending against which it is directed by expressly making them applicable to borrowers of sums below Rs. 500. This has necessitated a change in the very name and Preamble of the Bill which we have now called "The Madras Debtors' Protection Bill" instead of "The Madras Money-lenders' Bill."

We have substituted the word "creditor" for the word "money-lender" and have expressly defined it as including a pawn-broker. We have also added definitions of 'pawn-broker' and 'pawner'.

For the reasons stated above, we have limited the definition of the word 'loan' to an advance in money or in kind of an amount less than Rs. 500 and have excluded from it loan for Rs. 500 and above.

The Bill as introduced contained a provision which not only made it compulsory on the part of a creditor to maintain accounts of all transactions relating to loans advanced by him but also empowered the Local Government to prescribe the forms, language, script and numerals in which such accounts had to be recorded and maintained. The bulk of the evidence recorded by us was against the enactment of a provision compelling creditors to maintain accounts in particular languages prescribed by the Local Government, and we have accordingly deleted the provision empowering the Local Government to prescribe the forms and language of creditors' accounts. We have however retained the original provision in the Bill compelling a creditor to maintain regular accounts of all transactions between him and his debtor. We have defined the particulars to be entered in the accounts so maintained by a creditor and have provided that such accounts shall include,—

in the case of all creditors—the date on which the loan is made, the amount of the principal of the loan, the rate per cent. per annum of interest charged on the loan, the amount of every payment received by the creditor in respect of the loan and the date on which such amount was received; and

in the case of a pawn-broker,—the following *additional* particulars, *viz.*, a full and detailed description of the article or of each of the articles taken in pawn, the time agreed upon

for the redemption of the pawn, and the name of the pawner and where the pawner is not the owner of the article or articles of the pawn, the name and address of such owner.

We have retained the provision in the original Bill by which the creditor is under an obligation to give a receipt to the debtor for every payment made by the latter to him.

The original Bill made it compulsory upon every creditor to give to the debtor half-yearly statements of account in such manner, in such form and containing such details as the Local Government might prescribe. The witnesses examined by us were almost unanimous in declaring that such a provision was undesirable, and we agree with them. We consider that for enabling a debtor to ascertain periodically how his account stood with his creditor, it is sufficient if it is provided that on a requisition made by him in writing and on tender by him of a small sum for expenses of drawing up the account, the creditor shall give him a statement of account showing the transactions between him and the creditor and the balance outstanding against him on account of principal and interest respectively. We have accordingly deleted the provision for compulsory half-yearly accounts which existed in the original Bill and have substituted a provision for the furnishing of statements of account on requisition, as described above. We have added a provision making it obligatory on a pawn-broker to deliver a copy of the entries in his account to the pawner at the time of the pawn at such charge as the Local Government may prescribe.

The original Bill contained various provisions which made non-compliance with the requirements of the Bill a cognizable offence and prescribed various penalties for such non-compliance. We consider that these provisions are ill-conceived. After careful consideration, we have come to the conclusion that it is sufficient to mulct a creditor guilty of non-compliance with the provisions of the Bill with loss of interest for the period of non-compliance, and in certain cases, by depriving him of his costs of any suit or proceeding in court, relating to the loan. We have accordingly deleted the old clause and have substituted therefor another clause embodying our decisions.

The Bill as introduced fixed a maximum of 18 per cent. simple interest as the rate which could be awarded by a Court in any suit upon or relating to a loan as defined in this Bill.

The Government are not in favour of this provision and some of us are also of the same opinion. [This has now been dealt with in a separate Amending Act IV of 1936.]

The alterations made by us have necessitated various drafting and consequential changes in the Bill.¹

¹ The Select Committee have not been unanimous in their Report. There were several minutes of dissent recorded by several members, the more important of which are cited below.

MINUTES OF DISSENT.

I

We record our dissent on the following clauses of the Bill:—

Clause 4, sub-clause 1 (b).—The provision making it obligatory upon the creditor to give a receipt for every sum received by him from the debtor is unnecessary. In most cases of small borrowers, when the debtor makes a payment, the same is endorsed on the promissory note or entered in the accounts in his own hand. If, notwithstanding such record of payment, a separate receipt should be insisted upon, it will not only work a hardship upon the creditor, but also entail unnecessary charges for the debtor. We, therefore, press that in clause (b), the following words may be added: "except when the payment is endorsed on the document evidencing the loan or noted in the account by the debtor."

Clause 4, sub-clause 3.—When the Punjab Act was considered by the Legislative Council, Mr. Mukand Lall Puri, M. L. C., quoted the opinion of the High Court and Mr. Blacker, District and Sessions Judge, Montgomery, and objected to a clause of this kind. He stated that the High Court was of opinion that a clause of this kind was "one-sided and unjust. If it is made obligatory on the creditor to keep accounts in a particular manner and furnish the debtor with copies thereof on a requisition being made therefor, it is but fair that the failure of the debtor to deny its correctness within a reasonable time should raise a presumption in favour of the correctness of the accounts." Mr. Blacker observes: "The only criticism, lies in the explanation which seems too much against the money-lender, who after all serves an economic purpose. Some machinery could be devised for the debtor to register a protest in such a way that the creditor should not be able to deny its having been made and failure, etc., to register a protest within a fixed time should at least shift on to the debtor the burden of proving the incorrectness of the account."

If, for instance, the creditor has furnished a statement of account and the debtor while acknowledging the receipt of the same, does not dispute its correctness, it is possible that the creditor may assign and transfer this debt to third parties. Even after such assignment, if the correctness is challenged by the debtor, it may work a hardship on a *bona fide* assignee. The very purpose of making a provision rendering it obligatory upon the creditor to furnish a statement of account to the debtor is that at the earliest opportunity the debtor may register his protest and seek his remedies. If, notwithstanding the receipt of the account he

should keep quiet and the legislature should even under this circumstance throw the onus upon the creditor, it will be very unfair to the general class of money-lenders. For these reasons we oppose the retention of the explanation.

Clause 5, sub-clause 2.—We are of opinion that for the following words "the court shall disallow his costs," the words "the court may disallow the whole or any portion of his costs" be substituted. We consider that discretion must be given to the court in this matter. The court may feel handicapped in some cases, where the costs are enormous and disallowance of the whole amount of costs might be disproportionate to the penalty to be imposed on the creditor.

Clause 6—Interest.—There is no provision in the Punjab Act limiting the rate of interest in respect of transactions which fall within the scope of the Act and even as regards the rate of interest, the Contract Act and the Usurious Loans Act can always be availed to afford the necessary reliefs in fit and proper cases. The evidence given before the Select Committee by eminent persons who held judicial appointments was to the effect that the Usurious Loans Act was quite enough to give necessary relief. Under section 1 of the English Act, 1900, there was no statutory restriction upon the rate of interest which could be charged by a money-lender. Section 10 of the Act of 1927 provides as follows:—

"Where, in any proceedings in respect of any money lent by a money-lender after the commencement of this Act; (*i.e.*, the 1st January, 1928) "or in respect of any agreement or security made or taken after commencement of this Act in respect of money lent either before or after the commencement of this Act, it is found that the interest charged exceeds the rate of 48 per cent. per annum or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section 1 of the Money-lenders' Act, 1900, that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged, although not exceeding 48 per cent. per annum, is excessive."

Even under the English Act it is only a statutory presumption that the rate charged is excessive and the same could be rebutted. Under section 1 of the Act, 1900, the burden of proof lay on the borrower in every case to show that the rate of interest was excessive and the transaction was harsh and unconscionable. After the Act of 1927, where the rate of interest exceeds 48 per cent. per annum, the burden of proof will lie on the money-lender to show that the interest charged is not excessive and that the transaction is not harsh and unconscionable. The question whether a particular rate of interest is excessive or not, will have to be determined taking into consideration, the risk and other factors connected with the loan transaction. As was observed by Cozens-Hardy, L. J., in *Pincione v. Higgins*, "it is obviously not possible to lay down a fixed general rule as to rate of interest." Again Lord James said, "The word 'excessive' applied to interest, is, of course, a relative and elastic term impossible of absolute definition." "The circumstances of each case must be considered, including the necessities of the borrower, his

pccuniary position, the presence or absence of security, the relation in which the money-lender stood to the borrower, and the total remuneration derived by the money-lender from the whole transaction." Lord Alverstone, L. C. J., in *Blair v. Buckworth*, observes "That the rate of interest might in certain circumstances be of itself a fallacious test as to whether the transaction was harsh and unconscionable. In many circumstances one shilling interest for a week on £1 or five shillings interest on £1 for a short period, though an enormous rate of interest, ought not to be set aside."

The class of persons who regularly seek the aid of professional money-lenders are generally poor and middle-class or those employed on small salaries. Every conceivable source of raising the loan is exhausted by them before they resort to the professional money-lenders and in the generality of cases it is only a portion of the salary of the borrower that is looked upon as the means for repayment and often borrowers recklessly incur liabilities and then file their papers in insolvency leaving the money-lender to receive such sums as he could by way of dividends. If, therefore, the object of fixing the rate of interest is to be a check upon harsh and unconscionable bargains, it cannot be suggested that in the cases mentioned above any other person similarly situated as the money-lender would lend at a lower rate of interest. Evidence given before the Select Committee by some of the witnesses also tend to show that persons other than professional money-lenders charge similar high rates of interest. If, however, it should be suggested that it is necessary to fix the rate of interest for ordinary commercial transactions, it will be defeating its very object since full liberty and freedom of contract should be given to the borrower and the lender. The history of similar legislation in other countries also points to this circumstance that any attempt at fixing the rate of interest has invariably failed to secure its object. Even in England although the rate of interest is fixed at 48 per cent. it does not prohibit transactions carrying a higher rate than that. Only the onus is thrown upon the money-lender where the rate exceeds 48 per cent. to satisfy the court that the transaction is not harsh and unconscionable.

We are, therefore, opposed to any provision for fixing the rate of interest. [W. O. WRIGHT, M. A. MUTHIAH CHETTIAR, P. SUBRAHMANIAM CHETTY.]

II.

Clause 2, sub-clauses (1) and (2).—The definition of "bank" and "company," as it now remains, would exclude banks or companies incorporated or registered in Native States in India having branches and doing business in British India; for example, The Travancore National Bank, Limited, and The Quilon Bank, Limited. In the definition of bank and company the following should be added after the word "British India" "or in any of the Native States in India."

As will be found in clause 2, sub-clause (7) (ii), the Bill excludes any advance made by a bank or a company from the scope of its provisions. That being so, if the definition of bank and company should not be made to include banks and companies incorporated in Native States in India, but doing business in British India, advances made by them will

come under the scope of this Bill and there is no reason why such a discriminatory distinction should be made between banks and companies incorporated in British India, United Kingdom or the Colonies and those incorporated in Native States. The exemption contemplated in the definition of a loan is general for all banks and companies. Therefore we do not see any reason why a bank or a company just because the place of incorporation is in an Indian State should be deprived of that privilege. Such banks and companies carry on similar business and in a similar manner as those incorporated in British India, United Kingdom, or the Colonies and conform to similar requirements of company law.

Clause 2, sub-clause (5)—Definition of Creditor.—The definition of "Creditor" as adopted by the majority of the Select Committee is calculated to lead to serious complications in the working of the Act; nor is the definition warranted by the history of similar legislation in other countries. So far as the first portion of the definition is concerned, it is in order but the second portion, that a "Creditor" shall include the legal representative and successor in interest whether by inheritance, assignment or otherwise of the person who advances the loan, is certain to work a serious hardship in the working of the Act. Under the English Act, the definition of money-lender is as follows: "The expression 'money-lender' shall include every person whose business is that of money-lending or who advertises or announces himself or holds himself out in any way as carrying on that business." The said definition does not include a successor in interest or legal representative. Far from excluding the said persons, the English Act also excludes *bona fide* assignees from the definition of money-lender and section 1 of the English Money-lenders Act of 1911 since repealed and incorporated in section 17 of the English Money-lenders Act of 1927, is as follows:—

"(1) Subject as hereinafter provided, the provisions of this Act shall continue to apply as respects any debt to a money-lender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, notwithstanding that the debt or the benefit of the agreement or security may have been assigned to any assignee, and, except where the context otherwise requires, references in this Act to a money-lender shall accordingly be construed as including any such assignee as aforesaid:

Provided that—

(a) notwithstanding anything in this Act—

(i) any agreement with, or security taken by a money-lender in respect of money lent by him after the commencement of this Act shall be valid in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(ii) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise, on the faith of the validity of any such agreement or security, without notice of any such defect shall, in favour of that person, be as valid as it would have been if the agreement or security had been valid; and

(iii) the provisions of this Act limiting the time for proceedings in respect of money lent shall not apply to any proceedings in respect of any such agreement or security commenced by a *bona fide* assignee or holder for value without notice that the agreement or security was affected by the operation of this Act, or by any person deriving title under him;

but in every such case the money-lender shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section, and nothing in this proviso shall render valid an agreement or security in favour of, or apply to proceedings commenced by, an assignee or holder for value who is himself a money-lender, and

(b) for the purpose of this Act and of the Money-lenders' Act, 1900, the provisions of section 199 of the Law of Property Act, 1925, shall apply as if the expression "purchaser" included a person making any such payment or transfer as aforesaid.

(2) Nothing in this section shall render valid for any purpose any agreement, security, or other transaction which would, apart from the provisions of this Act, have been void or unenforceable.

One can easily envisage the anomalies of adhering to a definition as recommended by the Select Committee. The test for determining whether a person should be deemed to be a money-lender for the purpose of the Act, is that he should himself regularly carry on a business of money-lending. Otherwise, supposing the money-lender dies leaving *A* a minor son, *B* an adult son in Government service, *C* trustee or executor, *D* the widow, in all these cases even if the legal representatives are not carrying regularly the business of money-lending, they will nevertheless come within the definition "Creditor" as recommended by the Select Committee and if the minor or his guardian, or the adult son in the Government service, or the executor or trustee, or the widow, merely in the course of winding up, should fail to conform to the regulations prescribed under the Act, they will render themselves liable for the consequences provided under the Act. Surely it cannot be suggested that the scope of the Act is to deal with such cases. Or let us assume a case where the money-lender files his papers in bankruptcy and the estate of the money-lender vests in the hands of the Official Assignee or the Official Receiver. Under the definition as contained herein, he will be a successor in interest otherwise than by inheritance and he will come within the definition of a creditor under this Act. Or supposing it is a case where a money-lender bequeaths all his properties for the purpose of charities and constitutes trustees to administer the same, such trustees will be creditors within the definition of the Act. Besides, *bona fide* assignees also should be protected; otherwise serious consequences may follow. We therefore recommend that the definition of the English Act may be usefully adopted by providing for the latter portion of the clause 5 as follows: "and shall include the successor in interest by assignment *inter vivos*." It would also be necessary to adopt a separate clause in manner following:

"Notwithstanding anything contained in this Act—

(i) any agreement with, or security taken by a creditor in respect of money lent by him after the commencement of this Act shall be valid

in favour of any *bona fide* assignee or holder for value without notice of any defect due to the operation of this Act and of any person deriving title under him; and

(ii) any payment or transfer of money or property made *bona fide* by any person, whether acting in a fiduciary capacity or otherwise on the faith of the validity of any such defect or security, without notice of any such defect shall in favour of that person, be as valid as it would have been if the agreement or security has been valid;

but in every such case the creditor shall be liable to indemnify the borrower or any other person who is prejudiced by virtue of this section."

There seems to be an impression that a provision of this kind would be novel. As could be seen from the provisions of the English Act, extracted above, the clause like the one recommended above, is provided for in section 17 of the English Act of 1927. [M. A. MUTHIAH CHETTIAR AND P. SUBRAHMANIAM CHETTY.]

III

I am in favour of the Bill as amended by the Select Committee except with regard to the following:—

With regard to the application of the provisions of the Bill to 'loans' it need not have been restricted to loans of the value of Rs. 500. I am of opinion that no such restrictions is called for and the provisions should apply to all loans irrespective of money value. [M. A. MANICKAVELU.]

IV

Clause 2 (7).—I am unable to agree with the definition of the 'loan' as provided in the Bill. By this definition, the scope of the Bill has been considerably narrowed down to cases of loans of Rs. 500 and below. Loans in money or in kind exceeding Rs. 500 are excluded from the definition of the 'loan.' So the Bill does not give any protection to borrowers of loans of Rs. 500 and above. Only the small borrowers get protection, if any, under the Bill. In my opinion no distinction should be made between a small and a big borrower. All borrowers need and must be given protection. The Bill is named as the Debtors' Protection Bill which implies that the Bill is intended to give protection to all debtors. So the restriction in the definition of the 'loan' limiting its scope to loans in money or in kind to Rs. 500 and below is meaningless and must be removed so as to make it applicable to all classes of debtors irrespective of the sums borrowed by them. [C. INDRAIAH.]

V

This is neither fish, flesh nor good red-herring. I am in favour of recommending to the Council that the Bill may be dropped. Should this not find acceptance from my colleagues I suggest that the phrase 'or in kind' in the definition in clause 2 (7) be omitted as it deals with an entirely different category and loans neither contemplated by the Hon'ble the Mover nor well considered and fully dealt with. No maximum rate of interest need be provided as it would be safe to entrust to the courts

PROCEEDINGS IN COUNCIL.—This Act embodies a very modest endeavour to bring under some control certain kinds of money-lenders whose methods of business and of accounting are, to say the least, far from being satisfactory. It is not intended to affect the class of big money-lenders and respectable bankers. Nor is the Act directed against any money-lender who carries on his business of money-lending lawfully and honestly. This is essentially a protective measure intended to

to award such rates of interest as circumstances warrant. [SAMI VENKATACHALAM CHETTI.]

VI

This Bill as amended by the Select Committee, does not go far enough, but I am satisfied that it marks a definite advance and is capable of improvement by suitable amendments. I am thankful to the Select Committee for introducing some provisions about pawn-brokers. I wish provision was made for the safe and proper auctioning of the pledged articles. The tender of a sum of eight annas for the statement of account is too high; four annas plus the postal charges will be sufficient." [C. BASUDEV.]

VII

In my opinion there is need in this country for a Money-lenders' Act on similar lines as the one in England with necessary modification to suit conditions prevailing here. When Mr. Basu Dev introduced his Bill, I welcomed it as I thought it could be so improved by the Select Committee as to make it serve the purpose. But the Bill as it has now emerged out of the Select Committee, will not, I am afraid, cope with the situation to any great extent. In the first place, the evidence that was recorded in connexion with the Bill by the Select Committee revealed in a manner beyond question that there was great necessity for enacting a law to regulate and control the business of pawn-broking and afford protection to the borrowers on pledges and it was expected that elaborate provisions would be inserted in the Bill to achieve the object. But to my surprise the majority of the Select Committee was of a different mind. Secondly, the Bill in its present form has been restricted in its application only to loans not exceeding Rs. 500. I think this restriction of the limit of monetary transactions between creditors and borrowers has deprived a good section of the middle classes of the benefit of a legislation of this kind. This monetary limit in respect of loans is unnecessary and is due to a confusion of different ideas with regard to the nature of various kinds of credit transactions. Thirdly, there is not much effect left in the provisions which are intended to deal with non-compliance with the obligations imposed under the Act. In other words, the penalties imposed are ineffective and seem to be inadequate. While the Bill as originally introduced was itself not satisfactory, it has been made still less satisfactory by the Select Committee.

[BASHEER AHMED SAYEED.]

safeguard the interests of the unwary and unfortunate borrowers and no honest money-lender can take any reasonable objection to the modest and harmless provisions of this Act. This Act requires that money-lenders shall keep and maintain their accounts in the prescribed form and language and also furnish to the borrower every six months a statement of his debt. These two provisions are the chief features of an almost identical official Act passed in the Punjab, *viz.*, the Punjab Regulation of Accounts Act, No. I of 1930 and the penalties for non-compliance with these provisions are almost identical with those contained in the Punjab Act. The penalty for not maintaining accounts in the prescribed form and language is disallowance of the whole or portion of the interest, and the disallowance of costs; the penalty for not submitting the half-yearly statement of account is the disallowance of interest for the period or periods for which the accounts have not been submitted.

"There cannot be any two opinions as to the need for the maintenance of proper, standardized and simple accounts especially in the business of money-lending; and when we remember that the bulk of the borrowers are either illiterate or unacquainted with the business methods of the money-lenders, this becomes all the more necessary. This Bill does not afford all the protection that is necessary to the borrower, but it goes some good way and to the extent that it does it justifies itself.

"The provision in the Act with regard to the furnishing of half-yearly statement of accounts confers a three-fold advantage on the borrowers while it does not entail any undue hardship on the money-lenders. Such a statement reminds the borrower that he is in debt and acts as an impetus to him to attempt to pay it off. Secondly it would enable him to correct any mistakes or omissions which may have deliberately or otherwise crept into the account. Thirdly it would furnish a very valuable material for putting the Usurious Loans Act into operation. When this Act was passed, it raised great hopes in the borrowers and was acclaimed as a great boon to them, but unfortunately, due to the ingenuity and dishonesty of certain money-lenders, it was reduced to practical nullity. At present there is nothing in the hands of the borrowers to prove the past history of a transaction as all the accounts are kept by a certain class of money-lenders in a language and in a form which the majority of the borrowers cannot understand. There is nothing to show whether the transaction has been usurious or not. On

the other hand, this statement of account which is provided for in this Bill will be a very valuable documentary evidence in the hands of the borrower and will help the court to decide whether a transaction has been usurious or not.

"I have also added another provision, namely, that every money-lender should register his name and place of business. This was borrowed from the English Act. It is true that money-lenders in England were a small and identifiable community and registration was a practical proposition. I realize that a comprehensive definition of a money-lender is very difficult, but I think that the definition in the Bill is sufficiently wide to cover all persons who carry on the regular business of money-lending. I do not think that any great hardship would be caused by the provision regarding registration, while it is capable of yielding great good. There is another provision with regard to the maximum rate of interest that a money-lender can charge, or that a court can award. I have fixed the maximum at 18 per cent. per annum. (See now S. 6-A which fixes it at 9 per cent. and 15 per cent.) Of course the Select Committee can enhance it or reduce it. But that a maximum statutory limit to the rate of interest is necessary, I am confident everyone will readily concede. The last provision is with regard to the granting of receipts for all sums and articles received by the money-lender from the borrower. Hon. Members know that Marwaris as a rule never grant receipts for anything received by them with the result that the borrower is entirely at the mercy of the money-lender. Often-times when any item is questioned, the money-lender does not hesitate to deny any sums received by him. I have provided two saving clauses, one that all transactions entered into before the passing of this Act should not come within the purview of this Act, secondly that there shall be no presumption of correctness of account against the borrower who receives the half-yearly statement of account but does not deny the correctness of it. These are two savings which I have thought it necessary to include in the Bill.

"The provisions of the Bill are very simple and harmless and if they are put into force they will be very useful in extending a good measure of protection to the borrower. I am unable to agree with some of my Hon. Friends who told me that the protection afforded in the Bill is practically nothing. This Bill does afford protection. I would have been glad to add three or more important provisions which would tend to make the

protection afforded more complete. I thought it better to make this Bill as simple and as non-controversial a measure as possible so that it may easily be acceptable to this House and passed early into law. I do not claim credit for any originality or perfection for this measure. A similar Bill is already in operation in the Punjab under the title of the Punjab Regulation of Accounts Act. (*Speech by the Mover of the Bill on 31st October, 1932.*)

Preamble. APPLICABILITY OF THE ACT.—“PROVISION FOR THE PROTECTION OF CERTAIN CLASSES OF DEBTORS.”—The Act applies only to loans by “pawn-brokers” and persons “who in the *regular course of business* advance loans” (*see* S. 2, Cl. 5); and only in respect of certain loans of five hundred rupees or less, at a time and in one transaction.¹ (*See* S. 2, Cl. 7.)

¹ The reason for excluding big banks doing business on a large scale and loans of sums over five hundred rupees has been explained as follows:—

The comprehensive definition which the framer of the Bill originally gave to the word ‘money-lender’ gave rise to a number of objections.

If, as may be understood from the definition of ‘money-lender’, it includes the big commercial firms and other money-lending firms who do not charge exorbitant rates of interest, who keep regular accounts and whose dealings with the borrowers are fair, just and proper, then the Bill is bound to be defeated, not because any punishment will deter these big firms from committing offences under this Bill but simply because they would refuse to get themselves registered as money-lenders and subject themselves to the scrutiny of Police and other Government officers. If the word ‘money-lender’ means that petty man who plies his trade on the veranda, say, of his house, who lends money to poor people at very big rates of interest, who deducts the interest even when he gives the money and charges some other fee along with the amount which he gives to the borrower and thereby makes the amount much higher and then takes a promissory note for a bigger amount, thus adding to his fabulous rate of interest time after time, or who threatens to stand at the gates of the office in which the borrower is employed, or to report to his superior the fact of the money borrowed from him—if it is to that money-lender that this Bill apply, it will certainly relieve the distress and agony of the poor people who are every day putting themselves at the mercy of the money-lenders. The helplessness of this class of borrowers is just the reason why this legislature ought to intervene and give them sufficient support to get themselves out of the clutches of usurious money-lenders—more or less sharks who are found in every village and town.” (*Proceedings in Council, Vol. 63, P. 102.*)

There seems to be a well recognized distinction between regular

banking transaction, however high the interest may be, and transactions of the kind dealt with by this Act.

In a case under the English Money-lenders Act, Mr. Justice Channell refused to reduce the interest charged of roughly 60 per cent. upon a consideration of "all the circumstances of the case". He said "the borrower thoroughly understood the transaction and was under no pressure. It must not be forgotten that the Act is only intended to relieve the necessitous man or the man who is deceived. It will not relieve those who knowingly and under no necessity contract to pay high rates of interest. It is said that in the City numerous high-class banks lend large sums of money without security on one, two and three-days loans at rates up to 1,500 per cent. For temporary accommodation of this nature it may be worth a business man's while to pay such high rates; but no man could carry on business on capital borrowed for long periods at the ordinary money-lender's rate of 60 per cent. and more without coming to grief." (See Bellotts' Bargains with Money-lenders, p. 149; *Carrington v. Smith*, (1906) [1 K.B. 79.] Referring to this class of temporary accommodation Lord Chief Justice O'Brien however said in *Wells v. Joyce*, (1905, 2 Ir. R. 134) "the temporary relief afforded by the Money-lender to the recipient almost invariably ends in his ruin. The money-lender does not cure, he kills."

A different reason was however given for the restriction of this measure by some of the members on the floor of the House, as would be seen from the following extracts.

"The Bill as it is will help the unfortunate debtors to this extent, that they will ask for accounts being kept by the creditors. That is something done in the direction of preventing debtors being cheated from time to time. It has been possible for the money-lender to say one thing and do another. The debtors, most of them being illiterate people and not being able to keep accounts themselves, have been believing as gospel truth whatever the money-lender told them. In this state of things, the Government should see to it that the money-lenders keep their accounts properly and correctly, under fear of punishment. An important change made in the Bill is the reduction of the amount of loan to Rs. 500 every time. This will help persons who take small loans; but there are many classes of people who go in for bigger amounts and thousands of rupees. Persons who lend such big amounts are very influential in the party in power and I think that is why the Government have not found it possible to safeguard the interests of that section of debtors who go in for large amounts. Why should the Government take interest in one section of the people to the detriment of another very large section which is not vocal in this House?" (Proceedings in Council, 24th October, 1934, Vol. 73, P. 283.)

The unscrupulous practices of some of the low class money-lenders, and the urgent necessity to put them down is the main reason for the enactment of this measure.

The immediate cause that led to the introduction of this Act was explained by the mover of the bill as follows:—

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

NOTES.

The Act has been brought into force from the 15th January, 1936. (*Vide* Fort St. Geo. Gaz. Pt. I, dated 24th December, 1935.)

"The idea of a Money Lenders' Bill first struck me when I came into contact with the sad predicament of a friend of mine. He is a gentleman who was about to be promoted to an officer's rank in the Postal Audit Department. He borrowed Rs. 600 from a Gujarati money-lender and after paying about Rs. 6,000 he had to be adjudicated for a further sum of about Rs. 7,500. This surely is not a case of suffering on account of high rates of interest, however high it may be, but is a glaring case of the misery which a borrower can be put to by dishonest methods in the business of money-lending, which the provisions of this Bill can to some good extent prevent. During the Select Committee stage, the Gujarati money-lenders who came before it to give evidence, said that it was impossible for them—a very astonishing statement—to keep accounts and grant receipts. Such is the attitude of a very important section of money-lenders, with whom I am sure 90 per cent. of the employees of Government and of the Railways are very well and sadly acquainted." (Proceedings in Council, 24th October, 1934, Vol. 73, P. 288.

Referring to the objection raised by the Government member to the introduction of the Bill, Mr. Basheer Ahmed Sayeed made the following answer:—

In fact, money-lenders are to-day charging cent. per cent. or 200 per cent. and in some cases even 300 per cent. The courts every day feel the difficulty in sifting the truth as between the debtor and the creditor, and unless we are going to regulate this trade, I do not think there will be any saving of these poor ignorant people, who do not know what business is and what their contractual obligations and rights are. We must try to save them from the increasing and appalling poverty into which our people are running from day to day. It is very necessary on the one hand in the interests of the debtors that there should be some regulation of this trade. Every trade within municipal limits is being regulated by the Corporation under the law, and I do not see why there should be any objection to regulate the money-lending business or trade by calling upon the money-lender to maintain proper accounts and keep them in the language known to the borrowers, and to restrict the rate to a certain figure. Are we not interfering with the freedom of individuals, are we not trespassing into marital relationships between men and women, are we not legislating and have we not legislated upon more affectionate and more sentimental things, than the business of money-lending. I do not think there is any justification for the Government to oppose this measure. (Proceedings in Council, Vol. 63, P. 109.)

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

Definitions.

(1) "bank" means a company carrying on the business of banking and—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature,

(2) "company" means a company—

(a) registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the British Dominions, or in any of the Colonies or Dependencies of the United Kingdom, or in British India, or in any State in India, or

(b) incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Indian Legislature,

and includes a life assurance company to which the Indian Life Assurance Companies Act, 1912, applies;

(3) "co-operative society" means a society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932;

NOTES.

"BANK" "COMPANY" "CO-OPERATIVE SOCIETY".—The definitions of these terms are important in that the Act excludes from its operation "deposits of money in a Government Post Office Savings Bank, or in a bank, in a company or with a co-

operative Society, advances made by a bank, etc." (S. 2, Cl. 7.)

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

NOTES.

"Court".—The definition is intended to make it clear that relief under the Act can be granted even by courts exercising Insolvency jurisdiction.

(5) "creditor" means a person, including a pawnbroker, who in the regular course of business advances a loan and includes the legal representative and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan;

NOTES.

"AND INCLUDES THE LEGAL REPRESENTATIVE AND THE SUCCESSOR-IN-INTEREST, ETC."—When this portion of the section was under discussion in the council an attempt was made to exclude the "legal representative" from liability to render accounts, which was given up as the sense of the house was generally against such exclusion.¹

¹ The following extracts from the Proceedings in Council will be instructive in this connection:

Mr. M. A. MUTHIAH CHETTIAR:—"Sir. I move that—

For the words commencing with "the legal representative" and ending with "who advanced the loan" substitute the following words:—

"an assignee inter vivos."

This is a most contentious part of this Bill. Though the Select Committee did its very best to give a suitable definition, it did not completely succeed and left the definition thus:—

'Creditor' means a person including a pawn-broker who in the regular course of business advances a loan and includes the legal representative and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan."

"This definition, besides roping in a banker or money-lender who lends money, also seeks to bind, after his death, the banker's minor child or widow. In certain cases this will work a great deal of hardship. Sometimes the business may not be continued, but wound up. For no fault of the minor child or the widow of the late business man, are we to penalize them? I think not and that is why I am attempting to restrict

"REGULAR COURSE OF BUSINESS."—The regular course of business which is contemplated here is the regular course of *money-lending* business. "An advance made by any person

the scope of the word 'creditor'. I suggest that it shall be restricted to the person carrying on business during his lifetime. Sir, at the same time, I agree that any assignment made by the creditor fraudulently should not be binding on the debtor. Later on I have given notice of another amendment by which I intend to give protection to the debtor against fraudulent assignments by the creditor."

MR. SAMI VENKATACHALAM CHETTI:—"Sir, this aspect of the question was sufficiently discussed in the Select Committee. We did not find it necessary to make a distinction between a fraudulent person and a non-fraudulent person in the matter of their successors escaping or suffering from the result of their action. I do not think the suggestion made by the Kumararaja of Chettinad is satisfactory. So long as the beneficiary enjoys the benefits of the transaction, he should also be heir to the other consequences. Therefore, if we exclude the person who inherits a property from the operation of the law, we will be placing the debtor at the mercy of the legal heir of the person who fraudulently commits certain deceitful acts in order to defraud the debtor. I think in the interests of the debtor this amendment ought not to be agreed to."

MAHBOOB ALI BAIG SAHIB BAHADUR:—"Sir, I also oppose this amendment which strikes at the very root of this Bill. If really a creditor has been dishonest, there is no reason why his heir should be benefited, by the dishonest act of the creditor. It is for the purpose of protecting the debtors that this Bill has been introduced. If the creditor was dishonest at the time the debt was contracted, the debtor should surely be protected. It is common knowledge of those who know the intricacies of the law that it is very difficult to prove whether a transaction has been fraudulent or not, or whether an assignment has been fraudulent or not. If this amendment is passed, it will leave a loophole in the Act. I therefore oppose it."

MR. T. C. SRINIVASA AYYANGAR:—"Mr. President, I do not know whether the amendment will improve matters. The scheme of the Act seems to be that people who carry on money-lending business of the class contemplated in the Bill shall keep certain accounts, observe certain conditions and be responsible for certain irregularities, if any. That being so, a creditor, as defined, is a professional money-lender. But, if in the definition of 'creditor' we have to include other persons, naturally a money-lender's legal representative should come in. He will be a money-lender himself and shall be obliged to keep accounts, etc. He will inherit not only one item but the sum total of the business carried on.

"I would rather like that in a case like this the assignee of a single item of the assets of a creditor should not be visited with all the obligations which the law imposes upon him. On the other hand, I think that the legal representative who takes up the sum total of the business of the creditor should be subject to all the obligations to which the creditor

bona fide carrying on any (other) business, not having for its primary object the lending of money, if such loan is advanced

himself was subject. Therefore, to substitute for the latter portion of the definition the words 'as assignee *inter vivos*', may work hardship and may not improve matters. Particularly, the omission of the legal representatives does not appear to me to be according to the spirit of the Bill. But before we proceed any further, we should like to hear the views of the learned author of the Bill himself, so that the Council may be in a position to decide the question."

Mr. C. BASU DEV:—"Sir, I was just rising to speak when the hon. Member caught your eye and has anticipated my arguments. It was for the very reasons advanced by him that the Select Committee decided to retain the definition as it stands at present. The hon. Mover of the amendment evidently wanted to appeal to the sympathy of this House referring to a minor son or a widow of a deceased creditor and thus to canvass support for his amendment. We all have sympathy for them and for the difficult position which the death of a creditor puts them in. But, Sir, I must submit at the risk of repetition that every right has a corresponding responsibility. Does my hon. Friend, the Mover of this amendment, suggest that, even if the creditor's business is to be wound up by his legal representative, no receipt need be passed for monies received, or the debtor need not be furnished with a copy of a statement of account? How can any one wind up a business without knowing how much is due from his debtors? If the legal representative is a minor or a widow, there must surely be some one capable of winding up that business on behalf of the legal representative and he must certainly comply with the provisions of this Act. As regards an assignment *inter vivos*, I think it is already included in the definition. I, therefore, oppose the amendment."

Mr. M. A. MUTHIAH CHETTIYAR:—"I am thankful to my hon. Friend for having pointed out the difficulties in accepting my amendment. But I wish to point out that in the case of insolvencies, the Official Assignee is in charge of many estates and, if some of the estates happen to be estates of creditors coming under this Bill, the Official Assignee also will be a creditor and it will be difficult for him to comply with the provisions of this law. That is one difficulty which I wish to point out. My hon. Friend, Mr. Srinivasa Ayyangar, said that if we introduced the words 'as assignee *inter vivos*' even *bona fide* assignees would be affected. I have just given notice of another amendment—I believed it is being circulated—which will protect *bona fide* assignees. That amendment, which I will move in due course, will give ample protection to *bona fide* assignees."

The Hon. Sir K. V. REDDI:—"Sir, may I put in a word? Perhaps there is not much difference between the Mover of the amendment and those who oppose it. I think that the clause, as amended by the Select Committee, certainly protects persons who get a transfer of the interest *inter vivos*. The words "successor-in-interest" need not necessarily refer to successor after death. The successor-in-interest may include a

in the regular course of such business" is excepted from the definition of "loan" under this Act. (See S. 2, Cl. 7.)

(6) "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a creditor for or on account of costs, charges, or expenses, but save as aforesaid, includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a creditor in consideration of or otherwise in respect of a loan;

NOTES.

INTEREST.—Under this definition what are generally called "enquiry charges" and expenses incurred by the creditor in respect of the examination of the title of the debtor to the property offered as security would not come under the definition of "interest".

(7) "loan" means an advance of money or in kind at interest, being for a sum, or being of a value, of less than five hundred rupees at a time in any one transaction, and includes any transaction which the Court finds in substance to amount to such an advance, but does not include—

person to whom the interest is transferred *inter vivos*. If the main object be to impose the obligations and liabilities of the creditor on those who inherit the property or the debt from the creditor, certainly, in the interests of the debtors it is necessary to do so. Because, as has been pointed out by my hon. Friend, Mr. Srinivasa Ayyangar, certain responsibilities and liabilities are cast upon the creditor according to the terms of this Bill and it is not intended, I take it, that only the creditor should be under those responsibilities and liabilities during his lifetime and that his son who may succeed him and shall be entitled to recover the debt should not be subject to those liabilities. The successor-in-interest should maintain an account, give receipts for amounts received by him and, if he is a pawnbroker, return the jewels and other things pledged with the person from whom he inherited the business. I should think that the hon. the Mover of the amendment might be satisfied with the wording of the clause as it is. The main object of bringing in assignees *inter vivos* also is achieved, because the word 'assignment' also appears in the clause as it is." The amendment was, by leave, withdrawn. (Proceedings in Council, 1st August 1934, pp. 47-50.)

(i) a deposit of money or other property in a Government Post Office Savings Bank, or in a bank, in a company or with a co-operative society;

(ii) an advance made by a bank, a company or a co-operative society;

(iii) an advance made by Government or by any person authorized by Government to make advances in their behalf, or by any local authority;

(iv) an advance made by any person *bona fide* carrying on any business, not having for its primary object the lending of money, if such loan is advanced in the regular course of such business;

(v) an advance made by a landlord to his tenant, by a lessor to his lessee, by one partner in cultivation or co-sharer to another for the purpose of carrying on agriculture;

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

NOTES.

LOAN.—As to the reasons for limiting the definition of "loan" under this Act to Rs. 500 and less, see Notes under S. 1, *supra*.

The reasons for excluding certain classes of transactions from the operation of this Act are based partly on the well-founded presumption that there can be no unfair dealings in respect of transactions which are done under the supervision of some responsible Government Officer or conducted by respectable commercial firms and Banks on well-recognized principles of banking and the accounts of which are generally audited by responsible officers, and which are mostly open to the public for inspection. Post office Savings Banks deposits, loans made by Government or co-operative societies come under this class. Advances made by the landlord to his tenants or by a lessor to his lessee or by one co-sharer to another for purposes of cultivation are also excluded, as there is little or no chance of one

party taking undue advantage over the other. No case of hardship has arisen in this class of transactions to call for legislative interference.

Advances made on the basis of Negotiable Instruments (other than those by promissory notes) are also excluded, as it was found not desirable to unduly interfere with *bona fide* commercial transactions. It is the policy of the legislature not to hamper the progress of national trade and industry by unnecessary restrictions on borrowing and lending for *bona fide* commercial purposes. Thus transactions by bills of exchange, cheques, hundies, etc., among merchants are not affected by this Act.

(8) "pawnbroker" means a person who carries on the business of taking goods and chattels in pawn for a loan;

(9) "pawner" means a person delivering an article for pawn to a pawnbroker;

(10) "prescribed" means prescribed by rules made under this Act; and

(11) "principal" means in relation to a loan the amount actually lent to the debtor.

NOTES.

"PRINCIPAL".—This definition is intended to put down the practice of some money-lenders taking interest in advance. In such cases, only the actual amount advanced will be treated as the principal sum and interest will be calculated on that sum only. Even apart from this Act, the practice of our court has generally been, whenever such practice has been brought to its notice by the debtor in any particular case, on proof of the same, to treat only the amount actually advanced as the principal sum and calculate interest on the same.

Duty of creditor to maintain accounts and to give receipts.

3. (1) Every creditor shall—

(a) regularly record and maintain or cause to be recorded and maintained, an account showing for each debtor separately—

(i) the date of the loan, the amount of the principal of the loan, and the rate per cent. per annum of interest charged on the loan, and

(ii) the amount of every payment received by the creditor in respect of the loan, and the date of such payment;

(b) give to the debtor or his agent, a receipt for every sum paid by him, duly signed and, if necessary, stamped at the time of such payment; and

(c) on requisition in writing made by the debtor, furnish to the debtor or, if he so requires, to any person mentioned by him in that behalf in his requisition a statement of account signed by himself or his agent showing the particulars referred to in clause (a) and also the amount which remains outstanding on account of the principal and of interest and charge such sum as the Local Government may prescribe as fee therefor.

NOTES.

Maintenance of regular accounts and furnishing debtors with clear statement of accounts from time to time have always been considered as some of the safeguards against fraud. This is one of the important recommendations made by the Parliamentary Committee prior to the passing of the English Money-lenders' Act. They said:—

“A further safeguard to which your Committee attach some importance is that every person or company carrying on the business of a money-lender should be required to keep regular and strictly accurate accounts of each transaction, and to furnish to the borrower, on every date when an instalment falls due, a clear statement of his account up to date. Cases have been brought to the notice of your Committee in which borrowers have been kept in complete ignorance of the state of their accounts until they have been on the verge of ruin.” (Report of the Parliamentary Committee on Money-lending in England.)

The following are some of the extracts from the Proceedings in Council in connection with this subject:—"The main reliefs provided for by this section are the grant of receipts and the maintenance of accounts. It is a matter of every day experience that no receipts are granted now to the poor borrowers to benefit whom this Bill is intended. It was with this object that the amount has been fixed at not more than Rs. 500. The wage-earners, labourers, coolies and poor artisans are all borrowers of small sums below Rs. 500. These people now depend entirely on the accounts kept by the money-lenders. They do not know where they stand. They are at considerable disadvantage in the absence of a receipt. This has been provided for. A few months ago, two hon. Members of this House and myself proceeded to a place not far from the City to inspect a co-operative society to investigate a fraud. We found blank receipts given by two or three members of primary societies with only thumb-impressions and no entries as regards the amounts received or repaid. When that is true of a co-operative society supervised by co-operative inspectors and administered by the Registrar of Co-operative Societies, there is nothing strange in a money-lender not granting receipts and keeping the borrowers at his mercy. This has been obviated by the provision compelling the grant of receipts. The position of the borrowers has thus been safeguarded.

"Then with regard to the maintenance of accounts. At present accounts are not properly maintained. They are noted down in a crude manner in Gujarati and the borrower does not know what is contained in such accounts. Also nobody takes pains either to decipher them for him or to make them available to him. Hereafter, on account of the provisions contained in this Bill, the money-lenders will have to keep proper accounts. This is an achievement. These two main reliefs have been secured to the borrower by the present Act. (Proceedings in Council, Vol. 72, P. 236.)

"Another point was mentioned, regarding the keeping of accounts. It often happens that no accounts are kept. The money-lenders purposely do not keep accounts, or they keep them in such a way that when they are produced in court they would give great difficulties to the borrower. These people in many cases take not only the interest specified on paper, but they take something extra. If the system of keeping accounts is insisted on and the account is rendered to every debtor,

there would be a check on the interest or extra amount charged on the actual money received. That would provide some check." (Proceedings in Council, 31st October, 1932, Vol. 63, P. 100.)

It would appear that even if payments by the debtor is endorsed on the pro-note or other document evidencing the loan, the creditor has got the duty to furnish accounts and grant receipts as will be seen from the following extracts from the Proceedings in Council:—

"Creditors avoid to show the pro-notes when payments are made. Moneys are collected just on the pay day at the office doors of the some of these employees. When the employees demand the pro-notes to be produced so that they might endorse the payment they make, these money-lenders very cleverly avoid it so that when there is default in the matter of the payment of any amount, the total amount becomes the subject-matter of a suit. That is how the creditors always defraud the debtors. In order to protect these debtors against the studied negligence and avoidance of the production of the promissory notes for proper endorsement, it is necessary that the creditor should issue a receipt for every payment that he receives from the debtor. Of course it sounds very reasonable indeed, when once endorsement is made on the pro-note itself, another receipt need not be given. Having regard to the extremely disadvantageous circumstances in which the debtor is placed by persons who carry on this kind of trade, it is very desirable that even when endorsement is made on the document itself, a receipt should be given by the creditor, no doubt making note of the fact that the payment of the same amount has been endorsed on the pro-note. That would not really affect the amount that may be due to the creditor from the debtor. This would be a check on the negligence of the creditor in producing the pro-note for proper endorsement." (Proceedings in Council, 1st August, 1934, Vol. 72, P. 53.)

"Most money-lenders advance money to the people in needy circumstances on promissory notes or hypothecation bonds. On several occasions, they do not credit the amounts repaid and they go to the courts and sue for the full amounts. When they are asked to produce the account books, they dodge the courts; they say they do not keep accounts; yet the courts often are inclined to pass decrees according to the case of the plaintiff-creditors.

“There is another great disadvantage to which a debtor is subjected to in our part of the country, even in our Presidency. In Bombay and other places where the rule of damdupat prevails the creditors cannot claim more than half of the principal towards interest, but in our Presidency, the creditor can claim three or four times the actual amount lent. So, a debtor has to pay three or four times or more times the capital amount which he was obliged to borrow from the creditor. There must therefore be some safeguard for the interests of the debtors. Some of the people who are in needy circumstances are illiterate and as such they can be easily deceived by the creditors. There are a number of cases where a co-operative society and a money-lender are running a race in a village, and the co-operative movement is very often defeated. On account of several reasons very well known to us, the person who is in charge of the co-operative movement in any taluk or division, is also the biggest money-lender. He lends his money at enormous rates of interest and he gets it paid through the co-operative society. Now, the effect of not taking early steps to check this error, will be to kill the co-operative movement. I am now having in my mind a certain taluk in my district in which the arrears of the co-operative bank of which a certain money-lender is in charge amount to nearly cent. per cent. and the interest has not been collected for about six or seven years, but his own private debts have been cleared in full. So, the co-operative movement is in very great danger of being killed by these money-lenders, who throw their money broadcast, but when the time comes for payment they make use of the co-operative society. I am speaking with direct knowledge and not from mere hearsay.

“Another class of cases you have to guard against is litigation especially when young people borrow money by executing pro-notes for large amounts which the money-lenders never pay. Young people, especially, if they happen to be sons of rich miserly parents enter into such transactions, which come to light only when their sons become penitent, say after five or six years. Very often pro-notes are presented in courts of law for over a thousand rupees, whereas they would have taken only two hundred or three hundred.” (Proceedings in Council, 31st October, 1932, pp. 103, 104.)

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, a copy of the account referred to in clause (a) of sub-section (1) certified

in such manner as may be prescribed, shall be admissible in evidence in the same manner and to the same extent as the original account.

NOTES.

This clause enacts a rule of evidence by which copies of account may be produced in courts. There does not seem to be anything in the Evidence Act against the admissibility of such copies. Only, in certain cases, a few formalities may have to be gone through (as) the summoning for the original accounts, etc. This clause makes these preliminaries unnecessary and makes copies of accounts given to the borrower admissible just in the same manner and to the same extent as the original account.

(3) A person to whom a statement of account has been furnished under clause (c) of sub-section (1) and who fails to object to the correctness of the account shall not by such failure alone be deemed to have admitted the correctness of such account.

NOTES.

OMISSION TO OBJECT TO CORRECTNESS OF ACCOUNTS.—The following extracts from the Proceedings in Council are instructive in this connection:—

“Ordinarily the transactions between creditor and debtor may be reduced to writing and statements may be furnished by creditors to debtors. But they could not confirm the correctness of the statements once for all. They are subject always to errors of omissions being rectified later on. For instance, if a pass-book is sent by a bank to a person who keeps an account there and if he does not check the entries in the pass-book and write to the bank, whether those items are correct or not, that by itself does not absolve the bank or the person who keeps the account from the liabilities which may arise therefrom. Therefore the protection now given in this Act is not a special protection. It is a protection generally afforded to every person who has got any money transaction with another person. To hold any party bound by omission to protest to a statement of accounts is really a very serious curtailment of the ordinary right of a person to raise an objection to the correctness of the statement later on. It is just possible that the debtor who has received a particular statement from the creditor knowing that it contains wrong entries or that the creditor has omitted certain

items might intentionally keep quiet so that when the creditor goes to the court he may prove them against him. So it is not necessarily on account of the inability or ignorance to correct the statement that is furnished by the creditor that he stands to lose, but owing to those items which are deliberately and wrongly mentioned in the written statement that has been given. I do not think it is necessary to deny the ordinary right of any person to question the correctness of a statement by other evidence, by other proofs, in a court of law." (Proceedings in Council, 1st August, 1934, Vol. 72, P. 69.)

"The furnishing of a statement of account by the creditor is a unilateral act, and I do not see why it must be considered binding on the parties. When it is sought to be an admission, it is tantamount to an agreement between the creditor and the debtor that this amount is due. To hold that the debtor would be bound by his mere failure to object to the correctness of the copy of the accounts given to him would work very great hardship, particularly in view of the fundamental objects with which this legislation is being enacted and in view of the fact that the borrowers will be mostly illiterate and poor men. He will not be in a position to deny or admit the correctness of that statement of account within the period prescribed. As it stands the creditor is not bound to make a statement so that the debtor will be in entire ignorance. Until he gets the help of somebody he may not know what the contents are. In such a state of affairs to pin him to the statement will be the greatest hardship and I think, the fundamental object of this Bill will be defeated." (Proceedings in Council, 1st August, 1934, Vol. 72, P. 65.)

"The language of the Bill as it now stands does not preclude the courts from taking into consideration the failure of the debtor to object to the correctness of the account. All that this clause enacts is that the failure by itself shall not be deemed to be an admission of the correctness of the accounts, but anything falling short of an admission may be taken into consideration against the debtor in subsequent legal proceedings. That is not excluded or prevented by the language of the clause as it now stands." (*Ibid.*, P. 68.)

4. (1) Every pawn broker shall regularly record and maintain an account in which, in addition to the particulars referred in clause (a) of

Additional accounts
to be maintained by
pawn-brokers.

sub-section (1) of section 3, he shall record or cause to be recorded—

(a) a full and detailed description of the article or of each of the articles taken in pawn;

(b) the time agreed upon for the redemption of the pawn, and

(c) the name of the pawner and, where the pawner is not the owner of the article or of any of the articles pawned, the name and address of the owner thereof.

NOTES.

ADDITIONAL ACCOUNTS TO BE MAINTAINED BY PAWN-BROKERS.—A pawn or pledge (the names are synonymous) is a bailment of personal property as a security for some debt or other engagement. (Story on Bailments, S. 286.)

PAWN AND LIEN.—The contract of pawn is to be distinguished from a lien under which there is a mere right to retain possession by way of security.

ENGLISH LAW AS TO PAWNS AND PAWN-BROKERS—**ENGLISH PAWN-BROKER'S ACT, 1872.**—Pawns to a pawn-broker under the English Pawn-broker's Act, 1872, are regulated, as between the pawn-broker and the customer, and any one claiming under the latter (*Singer Manufacturing Co. v. Clark*, (1879) 5 Ex.D. 37) by the provisions of Act (XXXV and XXXVI Vict., c. 93).

These regulations fix the terms of the contract where the amount of the loan is not greater than 40s. Where it exceeds that amount but does not exceed £10 a special contract is permitted. The Act does not apply to loans exceeding £10 (S. 10).

“Pawn-broker” is defined as including “every person who carries on the business of taking goods and chattels in pawn”, and, to prevent evasion, the definition is extended to every keeper of a shop for the purchase or sale of goods, or for taking in goods as security, who lends or pays any sum not greater than £10 on the goods, or on an arrangement for sale and repurchase (S. 5).

A pawn-broker may have a yearly license on payment of a fixed sum for each shop (S. 37). The license is issued only

on the certificate of a stipendiary Magistrate (S. 40) or of the District Council (Local Government Act, 1894, Ss. 27, 32).

The pawn-broker is responsible for the acts of his servants done in the course of, or in relation to, his business (S. 8); must exhibit his name over the door, and keep posted up in his shop a copy of the fixed terms of contract (S. 13); must only sell pawns in accordance with the Act (Ss. 19, 23, 32); must not take any pledge from a child apparently under 12 years old, or from an intoxicated person, or employ an assistant under 16 years old to take in pledges, or carry on business on Sunday, Good Friday, Christmas Day, or any day appointed for public fast, humiliation or thanksgiving (S. 32); must not take another pawn-broker's pawn ticket as a pledge or buy it; or, within the time fixed for redemption, buy any goods pledged to himself, except at an auction or contract with the pawner or owner of such goods for the purchase or disposition of them (S. 32).

PROVISIONS OF ENGLISH ACT AS TO KEEPING REGULAR BOOKS OF ACCOUNT.—The pawn-broker is also required to keep and use the books and documents following (S. 12), *viz.*, (1) a pledge book showing the particulars of every loan; (2) pawn-tickets showing the terms of the contract—he must give a ticket to the pawner (S. 14); (3) a sale book, of pledges above 10s. which any holder of a pawn ticket has a right to inspect within three years of the auction at which his pledge is sold (S. 21); (4) form of declaration in respect of claims by the true owner of a pawn; (5) similar forms in respect of lost tickets; (6) forms of receipt; and (7) forms of special contract. All these forms are given in the schedule* to the English Act of 1872.

OTHER PROVISIONS OF THE ENGLISH ACT.—There are special prohibitions forbidding the pawn-broker knowingly to take in pawn any linen, apparel, or unfinished goods delivered to any person to wash, etc., or to finish or make up (S. 35). Search warrants may be issued in respect of such goods (S. 36.). The profit to be charged varies from ½d. per 2s. to ½d. per 2s. 6d. per calendar month, and the ticket costs a ½d. or 1d., according to the loan is for 10s. or 40s. or under, or is over 40s. (S. 15, Sch. 3, II). The pawn-broker is liable for loss by fire to the extent of 25 per cent. beyond the amount of the loan (S. 27) and compensation for any injury to the pledge occurring by the default, neglect, or wilful misconduct of the pawn-broker may be recovered from him summarily (S. 28).

A "special contract" in respect of a loan of above 40s. may be made, varying the statutory terms as to the profit chargeable and the period of the loan. It must also be in the prescribed form, and be signed by both parties.

If any one who offers a thing in pawn to a pawn-broker refuses to give a satisfactory explanation of how he became possessed of it, or gives false information, and if any one seeks to redeem a pledge without colour of title; and where the pawn-broker reasonably [*Howard v. Clarke*, (1888) 20 Q.B.D. 558] suspects that a thing offered has been stolen, or illegally or clandestinely obtained, the pawn-broker may detain the person and the thing, and deliver them to a constable (S. 34). [See the subject dealt with in full in Wood-Renton's Encyclopædia of the Laws of England, Vol. X; Halsbury's Laws of England, Vol. XXII; Turner's English Pawn-broker's Act; Attenborough's English Pawn-broker's Act; Turner on the Contract of Pawn; Robinson on Mortgage, Chap. LXIII.]

(2) A copy of the entries in such account shall be delivered by the pawn-broker to the owner at the time of the pawn on tender of such sum as the Local Government may prescribe as the charge therefor.

NOTES.

When this section was under discussion in the Council an attempt was made to construe failure of the pawner to object to entries in the account, of which a copy is given to him, as equivalent to an admission of its correctness. The amendment moved in connection with this subject was however withdrawn. But the discussion in connection with this amendment would be instructive as to the scope of sub-cl. (2). The following are the relevant extracts from the proceedings in Council.

MR. M. A. MUTHIAH CHETTIAR moved an amendment to add the following as sub-clause (3):—

"If a person to whom a copy of the entries has been supplied under clause 2 fails within one week after his receipt thereof to object to the correctness of the said entries, he shall be deemed to have admitted the correctness of the same."

"I wish to point out to the House that this is an entirely new provision from the one just now adopted by the House.

(Sec. 3, cl. 3.) This stands on a different footing. In the former case the creditor sends a copy of the accounts and even if the debtor does not acknowledge the correctness of the same, he is at liberty to question the details. There, it will be all right. But in this case, the borrower goes to the pawn-broker to pledge some jewels and then borrows. He should be expected to challenge the accuracy of the entry with regard to the weight of the jewels, etc., promptly. It is with that object that I move this amendment to the effect that the debtor should bring to the knowledge of the creditor his objections immediately. Otherwise this will have to be gone into by the advocates later on when the case goes to court. I should certainly say that at the earliest possible opportunity the debtor and creditor should clear their difficulties with regard to the jewels pawned."

Mr. SAMI VENKATACHALAM CHETTI.—"Sir, I am afraid the hon. Mover is labouring under a misapprehension. I do not think any time should be given for the person who pledges a jewel to question the correctness of the entry by the creditor. He must be satisfied on the spot. This will raise a difficulty to the pawn-broker himself. If you give a week's time, it will give rise to all sorts of difficulties. For instance, it will be open for the pawnee to say that he handed over a certain jewel, whereas the pawn-broker might say something different. I would therefore request the hon. Mover to withdraw his amendment."

Mr. C. BASU DEV.—"Sir, I rise to support the amendment. If you only remember that most of the pawnees are illiterate men and sometimes illiterate women, you will agree that it will not be possible for them to raise any objection then and there when the pledge is made. I am really very grateful to my hon. Friend, the Kumararaja, for having moved this amendment. It certainly gives time for the person pledging to go home and find out if the entry has been correctly made or not. If my hon. Friend, Mr. Sami Venkatachalam Chetti, thinks that a week's time is unnecessary, the period may be made shorter. Anyhow this amendment is absolutely necessary."

Mr. M. A. MUTHIAH CHETTIAR.—"I must certainly express my thanks to Mr. Sami Venkatachalam Chetti. While I am of opinion that, as he says, one week's time is not necessary, but that objection, if any, might be made immediately on the spot, I have no objection to withdraw my amendment. The amend-

ment was, by leave, withdrawn. (Proceedings in Council, 1st August, 1934, Vol. 72, Pp. 71-72.)

5. In the receipt to be given under clause (b) of sub-section (1) of section 3 in the statement of account to be furnished under clause (c) of that sub-section and in the copy of the entries to be delivered under sub-section (2) of section 4, the figures shall be entered only in Arabic numerals.

Figures in accounts
to be in Arabic
numerals.

NOTES.

"In the Bill, as originally introduced there was a clause whereunder the Government were to prescribe the form, the script and the numerals in which the accounts were to be kept. But in the Select Committee stage much evidence was given which disclosed that it would work great hardship if the language in which the accounts should be kept is to be prescribed. In consideration of this difficulty, the Select Committee dropped the question of language as also the form, but by oversight the question of numerals were not discussed at all. The object of this clause in the original Bill is that we should have a common medium by which both the lender and the borrower could understand the accounts. In view of the difficulty in the way of a common language as also the form, I am not pressing for them. But I wish that the figures should be in Arabic numerals, which everybody knows, and understands. There will be no hardship either to the borrower or to the lender if this Legislature should say that Arabic numerals should be used in the accounts to be kept by the creditor and the pawn-broker. The amendment only says that when copies of accounts or receipts or statement of accounts are asked for, the numerals used in them should be only Arabic numerals." [This amendment was put and carried.] (Proceedings in Council, 1st August, 1934, Vol. 72, P. 76.)

"The money-lenders do not know any language current in this province, not even a single language. They keep their accounts in the Gujarati language. Although it has been approved by the Privy Council in a certain decision, still the manner of their keeping accounts is so objectionable and the get-up of the books is so undesirable that something is necessary to be done in order to compel them to keep proper accounts

which can be believed to be true and correct, and which can be understood by the debtor. These loose sheets written in Gujarati tied up into a bundle brought before the court and taken to be true by certain judges are certainly a great handicap and present great difficulty more in the way of the debtors who have very nearly in many cases paid up the whole amount. They are not given any receipts." Hence this provision to adopt Arabic numerals.

6. (1) In any suit or proceeding relating to a loan, if the Court finds that a creditor has not maintained an account as required by clause (a) of sub-section (1) of section 3 or by sub-section (1) of section 4, he shall not be allowed his costs.

Penalty for non-compliance with sections 3 and 4.

(2) If a creditor fails to give to the debtor or his agent a receipt as required by clause (b) of sub-section (1) of section 3 or to furnish, on a requisition made under clause (c) of that sub-section, a statement of accounts as required therein within one month after such requisition has been made, or if a pawn-broker fails to deliver to the pawner, a copy of the entries as required by sub-section (2) of section 4, he shall not be entitled to any interest for the period of the default.

NOTES.

PENALTY FOR NON-COMPLIANCE WITH S. 3 OR 4.—The following extracts from the Proceedings in Council are instructive in connection with this section:—It is, absolutely necessary that the legislature should, as a disciplinary measure, penalize in some form or other the non-maintenance of accounts. In a matter like this, no discretion ought to be given to the Judge. Otherwise accounts will never be maintained; the creditor may hope to persuade the Judge to give a decree in his favour even without the maintenance of the accounts. If the creditor does not comply with the provisions of this Act in the matter of maintenance of accounts, I think our sympathy should not go to the creditor; if he does not maintain the accounts he should be penalized; only then he will maintain

the accounts. If there is any hardship to the creditor, it will not last long. If a penalty is imposed in one or two cases, creditors will be careful enough thereafter and then there will be no hardship; if there is any hardship it will be only short-lived. As a disciplinary measure this penalty must be provided in the Bill." (Proceedings in Council, 1st August, 1934, Vol. 73, P. 78.)

"The words '*the court shall disallow his costs*' (these were the words in the original Bill) are very important here. If the word 'shall' is not there, the word 'may' will have no effect at all, because as the law stands at present, costs are always at the discretion of the court. Therefore, the whole provision in the clause itself might disappear. But the whole scheme and the purpose of the law is to compel the creditors to keep accounts as a safeguard against any fraud being committed on the poor debtors." (Proceedings in Council, 1st August, 1934, Vol. 73, P. 79.)

"Only if the failure or omission is substantial or wanting in material particulars or materially affects the nature or the implication or the significance of the transaction, then and there only the courts will find that there has been a failure to perform the obligations imposed by the Act." (*Ibid.*, Vol. 73, P. 85.)

"Equity requires that an honest man should not be penalized in the same manner as a dishonest man. Supposing a creditor deliberately gives a wrong description of the jewel and does not maintain a proper record of the description of the article, should he be made to stand on the same footing as an honest man who has committed an honest mistake. It is that aspect of the question that I want hon. Members to consider. If they are going to provide for a dishonest creditor a higher penalty, then I would rather like that the disallowance of the whole costs should be inflicted on the person who commits an honest mistake. But if they are going to maintain the same standard of punishment to a dishonest man, I expect that in the case of honest persons who commit only clerical errors there should be more considerate treatment for the simple offence of not giving a correct account. I should think that the Government must, on behalf of the honest creditor, a person who does not deliberately commit a mistake, give liberty to the court to find out whether the particular mistake that has been committed by the creditor has affected the *bona fide* character of the transaction that existed between the creditor and the debtor."

It is but right that courts should recognize a gradation of punishment with regard to gradation of offences. (*Ibid.*, Vol. 73, P. 82.)

"The wording of the clause is this: 'If the court finds that a creditor has not maintained an account as required by clause (a) of sub-section (1) of that section, a statement of account as required therein within one month' The finding must be a substantial finding that the accounts have not been maintained at all. If there was some irregularity, if there was some mistake committed in the keeping of these accounts or maintaining them, that is a different matter. But the finding referred to here is a substantial finding that account contemplated in the Act is not kept at all. If such a finding is there, the lender has no right to complain of the loss of his costs. In the English Act for non-compliance of a similar provision the creditor cannot even go to court." (Proceedings in Council, 1st August, 1934, Vol. 73, Pp. 83-84.)

"Whether the mistake was due to a mere clerical error or negligence due to a dishonest intention is a question of fact, which should be gone into by the court. Evidence must be adduced on both sides, and it may be possible to make a dishonest omission appear as an honest omission. And especially in view of this provision here, if the court finds that the creditor has not maintained accounts at all, this penalty should follow. There is no place for arguing that it is an honest omission or a dishonest omission. It will involve a lot of time of the court and also the time of the parties. When the provisions of the Act have not been complied with by the creditor the question whether the omission was an honest one or a dishonest one does not arise at all. In a case where a pro-note has not been affixed with a stamp the question whether the failure to affix the stamp is due to an honest omission or a dishonest omission does not arise at all. When provision has been made that a certain procedure should be followed, then the penalty must follow, the sanction must follow. The fact that there is no sanction for such a failure on the part of the parties only ensures due obedience of the law." (*Ibid.*)

"With regard to this very sub-clause, it says: 'the court shall find.' If the court finds that a creditor has not maintained accounts as required by the foregoing clause, then he shall not be allowed his costs. The finding is always on facts and materials placed before the Court. The court does not do

it in a capricious manner. The finding ought to be proper and reasonable. The court always finds in favour of the party if there has been a substantial compliance with the provisions of the Act, it does not penalize the party who might have omitted a comma here or a dot there. The finding is always made on sound basis; and if there has been a substantial compliance with the provisions of the Act or if the transaction has not been materially affected by the omissions or its nature has not been converted by these simple omissions, then the court will not come to the conclusion that the party has not complied with the provisions of the Act. That being the case, the court always finds only on reasonable facts and grounds and where it is convinced to the contrary then only it will decide that the accounts have not been properly maintained as required by the section. (*Ibid.*)

16-A. (1) If in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors' Protection Amendment Act, 1935, it is found that the interest charged exceeds, in the case of a secured loan, nine per cent. per annum simple interest and in the case of an unsecured loan, fifteen per cent. per annum simple interest, the Court shall, until the contrary is proved, presume for the purposes of sections 3 and 4 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair.

Explanation:—In the case of any loan so advanced, if compound interest is charged and the amount claimed by the creditor by way of such interest until the date of the institution of the suit or proceeding for the recovery of the loan exceeds the amount of simple

¹ S. 6-A has been added by Madras Act IV of 1936. For analogous provisions of other Provincial Acts. See Ben. Act VII of 1933; Assam Act IV of 1934; C. P. Act XV of 1934.

When the Bill was under discussion a note of caution was sounded by the members representing the capitalistic interests that maximum rates of interest on loans ought not to be fixed by the Government too easily. "I should say that the Government should certainly wait and see

interest calculated at the rate of nine per cent. per annum or fifteen per cent. per annum, as the case may be, the Court shall draw the presumption referred to in this sub-section until the contrary is proved.

(2) The provisions contained in sub-section (1) shall be without prejudice to the powers of the Court under sections 3 and 4 of the Usurious Loans Act, 1918, in cases where the Court has reason to believe that the interest charged, though not exceeding nine per cent. per annum simple interest or fifteen per cent. per annum simple interest, as the case may be, is excessive and that the transaction was, as between the parties thereto, substantially unfair.

NOTES.

NECESSITY FOR THE ADDITION OF THIS NEW SECTION.—This section has been added by Act IV of 1936. The reason for the enactment of this new provision has been explained as follows:—"The Madras Debtors' Protection Bill, XXI of 1932,

how this Bill works for some time. After all, the Mover of this Bill has modelled it on the Punjab Regulation of Accounts Act which was passed 3 or 4 years ago; it was not put into operation for a year or two after it was passed; we have yet to know the success and the results of that Act. Therefore, I would certainly urge upon the Members of the House that they should wait and see how the Act is going to work and then consider further amendments in the shape of restrictions with regard to interest. With regard to them, however, much can be said on both sides. If any restriction that is put is not going to be very reasonable, the party that will suffer most is the debtor first and not the money-lender; that has been the experience of very many persons older than myself. Even advanced countries like England did not have any restriction with regard to interest till the year 1927 and even there the present maximum rate of interest is 48 per cent." (Proceedings in Council, 24th October, 1934, Vol. 73, P. 281.)

"Even in an advanced country like England until 1927 there was no limit to the rate of interest. It is only in 1927 a law was enacted by which 48 per cent. is the maximum rate of interest. Even now that is good law. If that is so in England, if you say in this Bill now that 9 per cent. or 15 per cent. shall be the maximum, I am sure it is going to be a dead letter. In England we find instances where banks are refusing to take money at half a per cent. per annum. The tendency for banks is

as amended by the Select Committee contained a clause providing for the maximum rates of interest payable on secured and unsecured loans coming within its scope, *viz.*, loans for less than Rs. 500. During the second reading of the Bill, the Government moved an amendment to omit the clause on the ground

to pay no interest at all for deposits. Even in India, the Imperial Bank have refused to give any interest on current account. That being the case, we should not be guided by the rate of interest that is prevailing in banking transactions. I think I have said enough to show that it will be merely futile to fix any rate of interest in this Bill, and the best thing that we, as legislators, should do to debtors and creditors is to leave the matter to the court to judge according to circumstances." (Proceedings in Council, Vol. 72, P. 253.)

In spite of this objection the Council by a large majority passed the provisions of the Act regulating the rates of interest on loans covered by this Act.

"In the course of the debate, expression was given to a feeling that pawn-brokers and money-lenders are making enormous profits. The absurdity of this notion can be explained if we analyse a concrete case. Let us take the case of a pawn-broker in a village. He usually starts with a capital of Rs. 500, or Rs. 1,000. If the rate of interest on secured loans is to be 9 per cent. as we have decided just now, the total amount earned on his capital would amount to Rs. 7-8-0. It must be remembered that, if this money had been invested in a bank, he will get about Rs. 5 or Rs. 4. Therefore, the gross profit of the pawn-broker is only Rs. 2-8-0. And out of this, as reasonable men we have to set apart a portion as insurance against risks. Certain risks have to be run in any business and money-lending is no exception. Perhaps, in money-lending, the risks are greater. It may turn out that the security on which the loan had been given, is stolen property. In that case, the money-lender loses his money. Instances are not lacking of cases where valuables taken on pawn have been found to be stolen property. A certain percentage of the gross profits will therefore have to be set-off against risks of this kind. The second point we have to consider is the personal labour of the money-lender. He has to be a very shrewd person with a keen knowledge of men and matters. If he serves in a factory or a firm, he will be getting some salary. Therefore, from out of the gross profits mentioned above, we have to set apart a portion for his labours. Without taking all these into consideration, it has been pointed out that, because the bank rate of interest is only $3\frac{1}{2}$ or 4 per cent., the money-lender can well afford to lend out at 9 per cent."

What would happen is this: If a man goes to a money-lender and asks for a loan with or without security for the purpose of agricultural operations, the money-lender will turn round and say: "It no longer pays me to lend money at the rates fixed by the Government. Therefore, I cannot lend you money." Agriculture will thus suffer, and agricultural commodities cannot be easily moved from the village to the town for being sold. I submit that thus, instead of helping the poorer classes, this measure is going to affect them adversely." (Proceedings in Council, 10th August, 1935, Vol. 73, Pp. 591-592.)

that the Government of India were considering the question of dealing with the subject by central legislation. The amendment was carried by the Council and the clause was omitted. Subsequently the Government of India intimated to the Madras Government that they did not propose to undertake central

Mr. C. BASU DEV:—“Mr. President, when my hon. Friend Mr. Arasu got up to speak, I was pleasantly surprised to find myself in agreement with the first few observations of his: it is so seldom that he and I agreed. I am in entire agreement with Mr. Arasu when he says that facilities for credit to the poor workers will be restricted on account of passing this amending Bill. But that very restriction is to be welcomed, so that co-operative societies may be started and promoted for the benefit of the poor working classes. When I said earlier this day that in the rural parts most of the money would not reach the borrowers in the co-operative societies I meant what I said and I knew it was correct. But it was only in the rural parts that the co-operative movement is not working as satisfactorily as it should. The whole Co-operative department has now become a company of liquidators. Their main concern is with the liquidating of co-operative societies and not with the starting of any new societies or for the promotion and improvement of the existing institutions. Sir, when I spoke on the amendment with regard to restricting the rate of interest, I am afraid, I was misunderstood as not being in entire sympathy with the idea of restricting the rates of interest to as low a rate as possible. I suppose the hon. lady Member from the city of Madras was trying to restrict the maximum rate to 4 and 6 per cent. If I were only actuated with any desire to play to the gallery or to impose upon the judgment of the people, I would have given notice of amendments for still lower rates of interest. But my concern is to see that something definite is done and that as early as possible. I know how great are the difficulties in promoting any social legislation in this House composed as it is of conflicting interests with the conservative and selfish elements predominating. Hon. Members have pointed out that there are hundreds of ways and means by which even the provisions of this Bill can be evaded. For that very reason, I included in the original Money-lenders' Bill provisions which have now been passed into law. The provisions in my Bill by which the money-lenders would be forced to maintain and keep proper accounts, to some extent, minimized the methods by which unscrupulous money-lenders can evade the provisions of law with regard to the rate of interest and the amounts lent. I wish only on this occasion to repeat that I am second to none in my anxiety to provide the poorer classes with credit and that at very cheap rate. In the present circumstances, where money-lenders can carry on their unscrupulous practices unchecked in spite of the legislation and where the classes have not sufficiently come forward to understand and sympathize with the needs and aspirations of the poorer working classes, I think it is not safe to force or to rush legislation to the utmost possible extent. It is in that view and in my anxiety to see this amending provisions incorporated once more in my Bill that I did not support that amendment unreservedly. I do not want that even this measure to the limited extent it affords pro-

legislation on the subject in view of the diversity of the conditions prevailing in the provinces and that the Local Government might, if they considered it necessary, initiate legislation dealing with the subject. This decision of the Government of India was mentioned at the third reading of the bill and a statement was made on behalf of the Government that a separate amending Bill would be introduced in regard to rates of interest after consulting the High Court and the Board of Revenue.

tection should be delayed on account of opposition from the Government. I was anxious that whatever may be the measure of protection that is considered feasible at present, that measure of protection should be afforded to the people at the earliest possible opportunity." (Proceedings in Council, dated 10th August, 1935, Vol. 73, Pp. 590-596.)

The following extracts from the Proceedings in Council at the time of the passing of the Amending Act IV of 1936 would throw light as to how these rates of 9 per cent. and 15 per cent. come to be fixed by the Legislature:—

SIR K. V. REDDI NAIDU:—"This Bill consists of only one section with an Explanation. The section prescribes the maximum rates of interest beyond which the Courts will presume that the transaction came within the purview of the Usurious Loans Act. Hon. Members will remember that when the original Debtors' Protection Bill was under discussion, it contained a provision fixing the maximum rates of interest on secured and unsecured loans. The Government opposed that clause, because at that time they had been informed by the Government of India that they themselves would introduce a Bill applicable to the whole of India. Later on, however, we were informed that the Government of India had dropped the idea of introducing a Bill applicable to all the Provinces and they allowed us to introduce a Bill in this Council suitable to the conditions in the Province. I accordingly introduce this Bill and move that it be taken into consideration."

DIWAN BAHADUR T. A. RAMALINGAM CHETTIAR:—"Mr. President, Sir, I am not going to take up much of the time of the House. I would only point out that the Government in bringing forward this Bill might have taken the opportunity to rectify another defect. That is this. The original Act applies only to debts up to Rs. 500. But relief is required even in cases of debts over Rs. 500. So I thought that Government would have taken this opportunity to rectify that defect. Unless the original Act is amended by deleting the maximum of Rs. 500 and making the Act applicable to all loans, the maximum rates fixed under the Act will not be strictly adhered to and various devices will be resorted to in the case of small loans to circumvent the provisions of the Act with regard to the maximum rates of interest. For instance pro-notes will be taken for larger amounts; regular entries will not be made on the back of the pro-notes whenever any part of the principal or interest is repaid. They will be entered in a diary. By such and similar means the provisions of the Bill would be got round. The next point is this. Hon. Members

This Bill, which is modelled on the lines of section 3 of the Bengal Money-lenders' Act, 1933 (Bengal Act VII of 1933), section 8 of the Assam Money-lenders' Act (Assam Act IV of 1934) and section 3 of the Usurious Loans (Central Provinces Amendment) Act, 1934 (Central Provinces Act XI of 1934), is introduced in pursuance of the undertaking mentioned above. New section 6-A provides that the court should, until the contrary is proved, presume that the interest is excessive and that they should give relief under the Usurious Loans Act, 1918 (X of 1918), where the rate of interest exceeds 12 per cent. per annum simple interest in the case of a secured loan (now fixed at 9 per cent.) and 18 per cent. per annum simple interest (now fixed at 15 per cent. in the case of an unsecured loan. The new provision has been made specifically applicable to cases where compound interest is charged. It has also been made clear that the new section does not in any way affect the jurisdiction now vested in courts under sections 3 and 4 of the Usurious Loans Act, 1918, to re-open transactions which are

will see that the prescribed maximum rates of interest could be enforced only in those cases which go to the courts and cases which go to the courts are only a very small percentage of the actual transactions which are very many. We have therefore to see that the maximum rate of interest which Government think fair is enforced in all cases. With reference to these two defects that I have pointed out, if the Government would bring forward some legislation early, the difficulty would be met. Otherwise not. With these words, I welcome the Bill."

MR. C. OBI REDDI:—"Mr. President, Sir, I beg to move the following amendment—

"In clause 2 for the words 'twelve' and 'eighteen' wherever they occur substitute the words 'nine' and 'twelve' respectively."

"The amendment proposed in the Bill to section 6-A of the original Act enunciates a rule of evidence that in cases where it is found that the rate of interest stipulated was above 12 per cent. in the case of secured debts and above 18 per cent. in the case of unsecured debts, a presumption will be drawn to the effect that the transaction was unfair or unconscionable.

"I believe that these figures have been fixed on the presumption that the prevailing rate of interest in rural areas is 12 per cent. on mortgaged debts and 18 per cent. in the case of unsecured debts. I submit, Sir, that the mamool rate that is offered for unsecured debts in the villages is 12 per cent. Even in these days of depression the village money-lender, except where he is dishonest or wants to exploit the sad and needy condition of the ryots for unsecured debts, usually charges 12 per cent. When the debt is secured by way of land being mortgaged, the rural money-lender accepts a lower rate of interest, say 9 per cent.

substantially unfair even in cases where the rate of interest charged is less than 9 per cent. simple interest or 15 per cent. simple interest, as the case may be. The Act will have no retrospective operation and will apply only to loans advanced, after it becomes law." (*Fort St. George Gazette, Pt. IV, Extra.*, dated 3rd August, 1935, Pp. 2-3.)

RATES OF INTEREST ON SECURED AND UNSECURED LOANS.— There is always a necessity for making a distinction between secured and unsecured loans based on the risk run by the lender. The Court in cases falling within the Usurious Loans Act, is empowered "to relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest and charges, as the Court, *having regard to the risk*, and all the circumstances, may adjudge to be reasonable." The element of "risk" is always an important consideration.

Where the principal sum was *bona fide* hazarded and there is the risk of the borrower's insolvency,—such things are always relevant to the rate of interest which may fairly be expected for the loan. "The value of a security is generally capable of being appraised with more or less approximate accuracy, but the solvency of a borrower, having nothing but

As one acquainted with the dealings of the ryots and money-lenders in villages, I very often see that when matters go before arbitrators for settlement between the creditor and the debtor, the creditor is oftentimes willing to accept the rate of 9 per cent. in the case of mortgaged debts, secured debts, and the rate of 12 per cent. in the case of unsecured debts. In view of the fact that this is Debtors' Protection Bill and it is intended to protect the debtor to a considerable extent, I submit that the rate of interest at 9 per cent. in the case of secured debts and 12 per cent. in the case of unsecured debts would be reasonable. I should submit that the rates of interest at 9 and 12 per cent. will go a longer way in the matter of protecting debtors. I submit that I am not moving any extraordinary figures; I think these figures will be approved by all sections of the House. The kaidash rate or the mamool rate 12 per cent. for unsecured debts has been recognized in all parts of rural areas; particularly in the Ceded districts even in these days of depression, the mamool rate has not exceeded 12 per cent. I commend my amendment for the acceptance of the House and I request hon. Members to pass it."

MR. P. V. KRISHNAYYA CHODARI:—"I feel that the interest of 9 per cent. on secured debts proposed in this amendment is pretty high, compared with the interest charged by the Imperial Bank, etc., for secured loans. When a person has got jewels and if he pledges them in the Imperial Bank of India or any Fund, loans will be available to him at the rate of 5 or 6 per cent. interest. When there is security for a loan, much interest will not be charged, especially when the Government of

his personal security to offer, must always, or at any rate nearly always, be a doubtful question. Lord Macnaghten said that "it is as easy to gauge the solvency of an individual as to estimate the financial ability of a crowd." (*Salomon v. Salomon*, (1897) A.C. 22 at P. 53.) Assurances given as to their financial position by men whose occasions are so urgent as to force them to obtain accommodation at ruinously high rates of interest are notoriously unreliable, and the sources of authentic information which are generally open to a money-lender, e.g., the Registrar's Office and Court judgments, if they contain nothing indicative of the borrower's embarrassment, are at best nothing more than purely negative in character." (Matthews' Money-lending, P. 37.)

India are floating their loans at 3 per cent. If people are going to pledge gold for their loans, they will get loans at reasonable rates. That is the reason why we say that the rate of interest on secured loans should be 9 per cent. ; this rate of interest is not small. For unsecured loans, 18 per cent. is proposed in the Bill; we say it should be 12 per cent. Even the co-operative banks in the rural parts do not charge more than 9 per cent. for unsecured loans. Judges and munsifs are using the discretion vested in them by the Usurious Loans Act for the benefit of the debtors. When the legislature approves of a certain rate of interest, this will be taken as the standard. For these reasons I feel that the rates of interest should not be 12 and 18, but 9 and 12. There are many money-lenders in the mufassal especially among the agricultural community who advance very large sums at 8 or 9 per cent. as unsecured loans. Since this Act relates only to loans for Rs. 500 and less, we have raised the percentage to 12 per cent. I hope the Hon. the Law Member who has brought forward this measure for the benefit of the ryot population will accept the rates of interest proposed, namely, 9 and 12. On this occasion I wish also to request him to bring in a separate Bill which will apply to loans above Rs. 500 so that the middle classes might be benefited. A loan up to Rs. 500 will not be sufficient for a middle class man."

MR. C. BASUDEV:—"Sir, I rise to accord my support to the amendment to reduce the rates of interest from 12 and 18 to 9 and 12 on secured and unsecured loans respectively. I wish to support the amendment with some reservation. If the Government think that they cannot accept this amendment, I will advise my friends to drop it, for the very simple reason that it is bound to retard the Act coming into force. If the Government should oppose this amendment and if the House should pass it, certainly it is bound to delay the coming into force of this Act. Perhaps it may be that His Excellency the Governor will think twice before giving assent to the Bill; he may even withhold his assent and prevent this necessary measure coming into force. My hon. Friends who moved and seconded this amendment have obviously forgotten that this Bill relates to loans of Rs. 500 and below. I am very anxious—as my hon. Friends—that the limit of Rs. 500 fixed in the Bill should very soon be removed and that the provisions of this Bill should be applicable to all loans, even

In the case of *Samuel v. Miles, Darling, J.*, said:—"I do not think the rate of interest can be said to be excessive, because I really do not know what standard to set up. If a person lends money upon no security at all I do not know what would be the normal interest—I can't find out. If I cannot find out the normal interest, I cannot find out what would be the excessive interest. I have nothing to Judge it by, therefore I cannot say that it is excessive in the circumstances. If he had asked him to lend him money at 55 per cent. and deposited with him £1,000 worth of Consols, one could easily have said: 'It is excessive, because the security is good'; but here there is no security." (See Matthews' Money-lending, P. 39 & Appendix H.)

above Rs. 500. This Bill relates to loans up to Rs. 500; therefore my hon. Friends must remember that the persons who borrow money up to this extent are drawn from the lower middle classes and the working classes.

"At the present moment it has become the policy of the Co-operative department not to promote or register any credit societies for the benefit of workers; especially so when there is legislation on the anvil of the Indian Legislative Assembly to amend the Civil Procedure Code, so as to make salaries below Rs. 100 not liable for attachment for decree-debts. For these reasons the Registrar and the whole of the Co-operative department have been very reluctant to promote and register any new co-operative societies. If co-operative societies grow in sufficient numbers, I will be the first person to say that the rate of interest should be so limited as to prevent a person with money to live in ease and idleness. I feel and maintain that money by itself ought not to be the source of livelihood and laziness of any human being. My hon. Friend from Guntur, Mr. Krishna-ayya Choudari, has made constant reference to the Bank rate. He must remember that the class of person who gives these loans below Rs. 500 is a petty marwari or petty money-lender who has himself to borrow from some big money-lender who in turn gets money from the bank. There must be some provision made for a small margin of profit for all these middlemen, for money to reach from the bank to the poor and needy worker. For these reasons I think 9 and 12 per cent. rates of interest are very reasonable. If the Government will accept this amendment, I will be very glad. If for any reason the Government do not accept it, I would urge upon my Friends not to press it."

MR. K. A. NACHIAPPA GOUNDER:—"Sir, I have great pleasure in supporting the amendment now before the House. We find that the Land Mortgage Banks are lending at the rate of 6½ per cent. and the co-operative banks are lending money at a rate between 7½ and 9 per cent. In all these cases the interest charged is not high. Therefore it is not desirable to have 12 and 18 per cent. But now owing to economic depression and since it is difficult to recover money when once lent out, people do not come forward to lend money easily.

Channel, J., in his considered judgment in *Carrington's Ltd. v. Smith*, (120 L.T.J. 131), upon the question now under consideration said:—"Harsh and unconscionable" are not easy words to construe when the rules of the Courts of Equity have been put out of consideration, but they are at any rate used to describe some conduct of the money-lender, and it may be easy enough in many cases to say whether or not his conduct can be fairly described by those epithets..... It seems that the Court is to make an adjudication as to what interest, *having regard to the risk* and all the circumstances, is reasonable. . . . This task would often be a difficult one, but amongst 'all the circumstances, which the Court is to take into consideration, surely the fact that the borrower has thoroughly understood

"When they find that there are satisfactory securities forthcoming, and the money can be realized easily the money-lenders are quite prepared to take low rates of interest. Even now, in the rural areas, the rates are only between 9 and 12 per cent. and not more; though in some cases the rate put in the document is as high as 18 or 24, yet, the actual rate realized in the end will be only between 9 and 12 per cent. I therefore request hon. Members to consider whether it is not desirable to fix the maximum rates of interest at 9 and 12, in the case of secured and unsecured loans respectively. As has been pointed out by my Friend, Mr. Ramalingam Chettiyar, there may no doubt be some difficulties, but it is the duty of the Government to see that they are got over. If these rates are fixed, the courts may be enabled to allow a fair rate easily as agreed upon by the creditor and the debtor at the beginning of the transaction; the Courts will also be saved the botheration of deciding this question. In these circumstances, Sir, I have much pleasure in supporting the amendment, and I hope it will be accepted by the House."

MR. BASHEER AHMED SAYEED:—"Sir, I rise to support the amendment moved by the Member from Anantapur. Sir, at the time the Debtor's Protection Act was enacted, the Select Committee went into an elaborate investigation and it was the general opinion of the committee that the prevailing rate was somewhere between 9 and 12. The evidence disclosed more or less that the rate was between 9 and 12, and only in very extraordinary cases it went up to 36 and more. Those cases, however, cannot really be a guide to legislation of this kind. We ought to take as our basis the rate prevailing in the generality of cases. This amendment is certainly very desirable.

"I do not think, Sir, any argument is required in these hard days to prove that 9 and 12 per cent. cannot be unreasonable. The capacity of the people who borrow such small amounts as Rs. 500 and less has now become worse and there is no knowing what it would be like in the years to come. After all, the Debtors' Protection Act is mainly intended to give relief to the small borrowers; and if you are going to say that you will fix 12 and 18 per cent. in order to give them relief under the Usurious Loans Act, you will in fact give them no relief at all. We

the transaction, and, knowing all the facts much better than the Court can possibly do, has been quite willing to pay the interest asked, is one of the circumstances which the Court must consider. Often the Court will not have that circumstance to guide it. The borrower is frequently ignorant, sometimes imposed upon; frequently in such straits that he has no alternative, but must take the money on the only terms he can get it. In those cases, the man's agreement to pay the interest asked can be no real guide to the Court. But in the case before me there is nothing, unless the Act of Parliament forbids it, to prevent my saying that the defendant knew much better than I do what it was reasonable for him to pay for the accommodation he wanted. Why should I say that he was unreasonable in what he did, when he, an intelligent man, must know his affairs better than I do?

ought to fix as low a rate as possible. In fact, I would have myself given an amendment fixing the rates at 6 and 9 per cent., but now that the amendment before us is for 9 and 12 per cent. and as I have not given notice of an amendment myself, I think the House will be well advised in carrying this amendment moved by my friend from Anantapur. The largest number of transactions in the City of Madras and in the big towns of the Province are for amounts under Rs. 500 and Rs. 1,000 and persons who borrow more than Rs. 500 or Rs. 1,000 generally pay not more than 5 or 6 per cent. There are also several Marwaris and big money-lenders who lend at 9 per cent. and even less. If this Bill is really going to serve the purpose for which it is intended, viz., that the small borrowers should be given some relief, the Government ought to accept the amendment. Sir, it may be said that we should consider the case of the money-lenders who advance money, who undergo a risk in recovering the amount, bear the cost of litigation, etc., and the risk of insolvency proceedings which are also frequently resorted to by the borrowers. I do not want that we should shut out eyes to all these contingencies; but still there are ways and methods by which clever money-lenders would try to evade the law, and minimize the loss. In fact, there have been cases where on the document the rate stipulated was at 6 per cent. while the actual rate came to 20, 40 and even 60 per cent. Those cases, however, can never be avoided by legislation; so far as the law aims at honest dealings, it is reasonable that we ought to have a maximum fixed, taking into account the capacity of the borrower, the risk involved and the loss entailed in the transaction on the money-lender. I therefore strongly urge that this House ought to accept the amendment moved by the member from Anantapur."

MR. T. S. RAMASWAMI AYYAR:—"Mr. President, Sir, I beg to move an amendment, namely:—

'that in clause 2 for the words "twelve" and "eighteen;" wherever they occur, the words "nine" and "fifteen" respectively be substituted.'"

There is perhaps, something like a market rate of interest for loans on security, but I do not see how there can be any rate for loans on a promissory note without security. Practically I think any test as to interest being ordinary or extraordinary. *Part v. Bond*, 93 L.T.R. (N.S. 49), is for the purposes of the Act out of the question, except, perhaps, in cases of loans on security. There can be no standard rate on personal loans, and where the parties are reasonably on terms of equality, a Judge cannot, I think, do better than adopt what they themselves have agreed on, although, of course, when that is not the case, he has to adjudge what is reasonable as best he can under all the circumstances. The conclusion at which I arrive

"Personally, I would agree to the amendment proposed by my hon. Friend that 9 and 12 per cent. be fixed, but as I understand that the Government are not likely to accept it, and as I feel that in a matter like this it is better to come to an agreed arrangement, I venture to propose that the rate of interest may be fixed at 9 per cent. in the case of secured loans and 15 per cent. in the case of unsecured loans. I do realize that in the case of unsecured loans 15 per cent. is too high a figure, but if we agree to it now, it may be possible, after gaining some experience, to bring in an amending Bill to reduce the rate."

THE HON. MR. C. A. SOUTER:—"Sir, there is one point which has not been mentioned by any of the speakers so far; and that is this: we must remember that legislation of this kind must be for the benefit of the borrower. There are a great many cases where borrowers who have not got sufficient security and yet are in urgent need of money might find themselves faced with difficulties in getting short-term loans from money-lenders, if you greatly cut down the rate of interest. You must remember that although this legislation is for the purpose of curtailing excessive rates of interest being charged, if we go too far, we shall probably be interfering with the borrower's powers of getting money. That is a very important point; and if you are going to fix your maximum too low, you may be doing so not in the interests of those borrowers who can borrow short-term loans although their security is not altogether good and who are quite able to repay the loans within the time during which they run. It seems to me that the margin which was proposed, *i.e.*, between 9 and 12, was a little too small to cover such a contingency. I think myself that the proposal of Mr. Ramaswami Ayyar that the rates should be 9 and 15, would probably approximate more closely to what will be convenient both to the creditor and the debtor. I therefore strongly recommend to the House not to accept 9 and 12; that margin is too small; and as I said, even in the interests of the borrowers themselves, I would recommend to the House to accept the rates of 9 and 15 per cent. That seems to me to be a much more reasonable margin."

MR. ABDUL HAMEED KHAN:—"I am glad, Sir, that the Government of Madras have brought forward this legislation which is long overdue. The people of this country, especially borrowers of small amounts, have

is that the Judge is entitled to consider amongst all the circumstances of the case, the fact that the borrower, thoroughly understood the transaction, and without any misrepresentation or any pressure other than the mere request to pay so much interest, voluntarily agreed to pay it; and I think that when the Judge finds those to be the facts he ought to find that the interest which the man so agrees to pay is reasonable, and therefore not excessive within the meaning of the Act." (Matthews' Money-lending, P. 45).

It would appear from the following further extracts that a difference has to be made between loans, secured and unsecured. "Secured loans stand upon an altogether different

been suffering on account of the fact that no maximum rate has been fixed for secured and unsecured loans. There has been a good deal of agitation in the mufassal on this account and there are a good many champions for their case, while we find no champions for the borrowers in the City of Madras. It is, here, Sir, that the small borrowers, particularly the labouring classes, are open to the attacks of the money-lenders, whether they are Marwaris or others, who not only fix very high and exorbitant rates of interest but also resort to methods which are certainly not desirable, by means of which they realize a larger rate of interest than what is actually put on paper. For the matter of that, even when this Bill becomes law, the money-lender will adopt some means or other to get more interest from the borrower than that was already agreed upon. I do not know if it will be possible for the Government to come forward with legislation to prevent such attempts on the part of money-lenders to circumvent the Acts of the Legislature. I know the difficulties of the Government to give effect to such legislation. I am sure a legislation of that character will give a reality to the legislation that is now being sought to be passed.

"The other thing is, that even the courts of law, at any rate in the City of Madras, are inclined to favour the money-lender rather than the borrower. My experience has shown that the judges have accepted much higher rates of interest than they ought to have done. If this amendment is accepted, it will be a sort of guide to the judges to sympathize with the borrowers, who are generally the labourers."

THE HON. SIR K. V. REDDI NAYUDU:—"Mr. President, Sir, I think the subject has been so very well discussed that many words are not necessary from me to point out that the proposition that the interest should be 9 per cent. in the case of secured debts and 12 per cent. in the case of unsecured debts, is not a sound one. But before I make my proposals, I should like to remove one or two misapprehensions to which expression has been given by some members; for instance, the remark that district munsifs and judges are apt to take this as a standard and therefore, instead of treating this as the maximum, they might treat it as the minimum. I should think, Sir, that our judges are entitled to better treatment than that. Occasionally a case may arise when the circum-

footing from unsecured loans. If the security given is ample and known to be so, and of a kind readily realisable in the open market, anything over nine per cent. might very well be considered "excessive" the lender's risk being practically nil. A distinction has also to be made between a good security and bad. A so-called security may be of such doubtful or contingent value, or so difficult of realisation, or so disproportionate to the amount of the loan, that it may be necessary to treat the loan as being either wholly or in a great measure unsecured. In the latter case, it might be found that the proper mode of dealing with the matter would be to treat so much of the loan as was not covered by the security as unsecured, apportioning the agreed interest accordingly and treating as "excessive" so much of the agreed interest as might be attributable to the secured part of the loan, and as it might be neces-

stances thereof may compel the judge to fix the rate of interest at a certain figure, because the facts of the case might make it impossible for the judge to take any other decision. But to say that our judges would treat this as the standard, I should certainly think, Sir, is doing injustice to our judges.

"Then, Sir, it is stated that the creditors might circumvent this legislation. For instance, a man may borrow Rs. 100 from a money-lender who may actually pay him only Rs. 80; the real interest received by the money-lender is 20 per cent. because the borrower actually gets only Rs. 80 and the Rs. 20 goes into the pocket of the creditor, whatever may be the rate of interest stated in the promissory note or other document conveying valuable security which might be placed in the hands of the money-lender by the borrower. I am afraid, Sir, it is true, but we can never prevent it; and human ingenuity is so great that whatever be the caution and whatever be the care which the legislators and the legislative bodies may take, it will find loopholes; and we must depend only on the honour of those concerned. If, on the other hand, in order to counteract or prevent such practices, we should legislate, the result will be this. For instance, if it be found that the figure mentioned in the document is not the correct figure and that the full amount is not actually received by the borrower, there will be the difficulty that false defences on the part of the debtor might equally be made and though he had received Rs. 100 in full yet he might say that the amount was not actually given to him in spite of the promissory note executed by him. How are we to detect such cases and how can we say that the defence is reliable? On the one hand, creditors will be very often strengthened on the basis of the document and will be in a better position, while the debtor will be in a weaker position. Therefore, we will have, to some extent, to depend upon the custom of the business, the market and the good intentions and character of both the creditors and the borrowers. Therefore, Sir,

sary to treat as "excessive" leaving so much as might be attributable to the unsecured part of the loan undisturbed. It is obvious that no more can be done towards laying down a rule for guidance in such cases than to insist upon the distinction between secured and unsecured loans being always kept steadily in view. Between the wholly unsecured loan and the fully and satisfactorily secured loan, there is room for an infinite variety of partially secured loans, and all that can be said is that the Judges before whom claims for relief in respect of such transactions may come must do the best they can to administer a law which leaves the matter so largely to their discretion." (Matthews' Law of Money-lending, P. 48.)

this apprehension about circumventing this law is a matter on which we need not spend much time.

"There is another point on which I should like to make my position clear. My hon. Friend, Mr. Krishnayya Choudari, and one or two others have told us that the rate of interest charged by the co-operative societies and the banks is very low and therefore for unsecured debts we may come down to 12 per cent.—I am not referring to the 9 per cent. for secured debts about which I shall presently make a statement. Well, Sir, if the banks and co-operative societies offer such low rates of interest, these borrowers can certainly join such co-operative societies and get money at that rate. In fact, this Bill is intended to protect only such people who borrow small sums of money. Take for instance, the case of the pedlars and hawkers and other small shop-keepers who sell betels, etc., who get only Rs. 30 or Rs. 40. They may ask a money-lender for a small loan of Rs. 30 at 12 per cent. per annum and the interest will come to about Rs. 3 for the whole year; and if the debtor does not return the amount, there is every risk of the lender losing the amount.

"Now, Sir, I respectfully submit that this reduction to 12 per cent. will dry up credit. I was telling, Sir, that men like pedlars, hawkers and small shop-keepers who want small sums of money for the nonce to purchase goods, sell them and get back the amount to pay the creditor, will be inconvenienced if money is not given to them. If once, credit is dried up we will be doing harm to the poor borrowers instead of doing them good. I would therefore suggest that so far as the unsecured debts are concerned, as stated by my hon. Friend, Government are prepared to accept 15 per cent. There must be certainly a margin of more than 3 per cent. between the rate of interest for secured and unsecured loans; but if the rates are to be twelve and nine, the difference will not be sufficient to induce creditors to lend money without security. I am therefore willing to accept the amendment proposed by my hon. Friend, Mr. Ramaswami Ayyar, if the others are willing; and if they are not willing I must oppose 12 per cent. in the case of unsecured debts."

The Hon. the PRESIDENT:—"I will first put Mr. Ramaswami Ayyar's amendment to the vote of the House. The question is:

Loans upon the joint or joint and several promissory note, or other personal security, of two or more persons, are not easy to classify. They may be treated as secured or unsecured according to circumstances. The Act gives no definition of what a "secured loan" is. It is submitted that the framers of the Act probably intended to treat only loans secured by pledge of moveables or mortgage of immoveable property as coming within the category of secured loans.

The question was discussed by Mr. Matthews in the fine little book on "Money-lending, Past and Present." "Should they be regarded as secured or unsecured loans? Probably this question is not capable of being answered more satisfactorily than by the suggestion that transactions of this sort range themselves alongside loans partially or not satisfactorily

"In clause 2, for the words "twelve" and "eighteen" wherever they occur, substitute the words "nine" and "fifteen" respectively." The amendment was carried.

Mr. P. V. KRISHNAYYA CHODARI:—"Mr. President, Sir, I move the amendment standing in my name, namely:—

'Add the following proviso to section 6-A:—

Provided further that if in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors' Protection (Amendment) Act, 1935, it is found that the lender has taken or appropriated any commission or discount from the loan advanced, the Court shall cause such amount or amounts to be credited towards the aggregate interest that the Court may award to the creditor.'"

"Sir, my object in moving this amendment is this: I think the Hon. the Law Member has dealt with this amendment also in a way when he spoke on the other amendment. My point is that when once you have fixed the rate of interest at 9 and 15, the creditor may give Rs. 80 and take Rs. 100; and if it is proved to the satisfaction of the court, the court should take note of it and credit that portion of the amount towards the interest that is due from the borrower. I think my amendment is a harmless one. If it is not proved, there is no question about it, but when once it is proved to the satisfaction of the court that the whole amount was not paid to the debtor, I do not find any reason for not taking account of it. Such things are done in showing accounts to income-tax officers, by which the creditor when he deducts a certain percentage he puts it in the name of some members of his family. Of course, there may be cases where the debtor can prove that the creditor has collected a certain percentage of commission. I know there are some people who collect a certain percentage of commission openly.

"The Commercial Corporation, Madras, for example, collect some commission of, say, 2 per cent. from the total value of the car. When

secured. On the one hand a sufficiency of reasonably good names affords for business purposes a practically satisfactory security, whilst on the other hand the principle laid down by Channel, J., in *Carrington, Ltd. v. Smith*, as to the only possible test in the case of parties dealing together on even terms and without any unconscionable conduct on the part of the lender, other than his driving a hard and usurious bargain, seems to apply with at least equal force to the case of two or more borrowers as to that of one only. The opportunity of conferring together which two or more intending borrowers would often have would be a circumstance of considerable weight in determining whether any given transaction was harsh and unconscionable." (Matthews' Law of Money-lending, P. 49.)

there are such firms openly collecting commissions, I am sure I shall be justified in moving this amendment. My object is to see that such commissions are credited towards the aggregate interest that the court may award to the creditor. I appeal to the Hon. the Law Member to accept the motion as it is a very harmless and reasonable one."

Mr. M. A. MUTHIAH CHETTIYAR:—"Mr. President, Sir, I do not think it is necessary to deal elaborately with the point at issue except to read out the definition of the word 'interest' in the Act:—

* * includes any amount, by whatsoever name called, in excess of the principal, paid or payable to a creditor in consideration of or otherwise in respect of a loan."

"I think it covers the point that has now been raised and I hope Mr. Krishnaya Choudari will not press his amendment."

The Hon. Sir K. V. REDDI NAYUDU:—"I think I must oppose this amendment not only for the reason that has been given but also for the fact that it is always open to the debtor to plead, when the full amount mentioned in the document has not been received, want of full consideration before the court and the court is always at liberty, if convinced of the evidence, to admit the plea. I think, therefore; that this amendment is unnecessary."

Mr. P. V. KRISHNAYYA CHOUDARI:—"Mr. President, the reason why I want to move my amendment is that the Hon. the Law Member has not met my point. It is true that, under the Civil Procedure Code, we have got the right of proving before the court that an amount less than that mentioned in the document has been received. For example, the Commercial Credit Corporation lends money on motor cars. When any person borrows money, he has to pay a commission of 2 per cent. of the value of the car though the amount of loan applied for may be only Rs. 400 or Rs. 500. If the value of the car is assessed at Rs. 3 or 4 thousand, he will have to pay down from the money borrowed, Rs. 60 or Rs. 80. By this amendment I want to safeguard the interests of the debtors. In the case of *bona fide* firms, the payment of these amounts will certainly be entered in the registers so that it is not possible for them to say that they have not received the amount. If the amendment proposed is accepted

There is no indication in the English Money-lenders' Act or the Indian Usurious Loans Act as to what is an excessive rate of interest, or as to what is harsh and unconscionable. Conduct may be harsh, and I think that the defendant's solicitors' conduct might be so termed having regard to the way in which the security was enforced. *As to the rate of interest, if it were much above 10 per cent. upon a reasonably safe security, that would be excessive*, and if it was obtained through the weakness or folly or urgent necessity, real or imaginary, of the borrower, and the lender had knowledge that it was so, the transaction might be termed harsh and unconscionable. In this case it cannot be said that there is any right to relief apart from the Act. The borrower is a lady and certainly not a wise one. On the whole I am of opinion that the rate of interest was excessive, and further that, having regard to all the circumstances, the transaction was harsh and unconscionable, and the plaintiff is entitled to relief under the Act." Per Joyce, J., in *Part v. Bond*, 21 T. L. R. 553.

DEDUCTIONS FOR EXPENSES:—The practice of making a deduction for expenses from the amount advanced is believed to have obtained much more generally formerly than it does at present. It is believed that it has been discontinued by the greater number of money-lenders. The practice is objectionable for many reasons. Where a deduction in the name of "expenses" has been made, it will often be found that such deduction exceeds the actual out-of-pocket expenses incurred, and this may be treated by the Court as a misrepresentation or at any rate as harsh and unconscionable conduct entitling the borrower to relief. Even if limited to actual out-of-pocket expenses it is objectionable in at least three respects:—(1) It

such amounts will be adjusted towards the interest. It is just to safeguard the interests of the debtor that I move this amendment and I hope the Hon. the Law Member will accept it."

Sriman M. G. PATNAIK MAHASAYO:—"Mr. President, I consider this to be a very salutary provision. When the rate of interest is to be reduced, the money-lenders will be unwilling to pay the full amount of the document but will pay only a smaller amount. It is difficult to estop the payment of a sum smaller than that mentioned in the document except by a provision of this nature. All the same there should be a provision to enable the court to go into the question. I do think the Hon. the Law Member cannot deny that there are such underhand dealings and the only way to defeat such machinations is to include this provision and to give powers to the courts to go into the case." The amendment was put and lost. (Proceedings in Council, 10th August, 1935, Vol. 73, Pp. 577-590.)

savours of harshness, in that it throws upon the borrower an expense incurred in negotiating or completing a contract presumably at least as beneficial to the money-lender as to the borrower. (2) It renders more difficult to calculate the rate of interest and makes it less easy for the borrower to thoroughly appreciate the nature and effect of his contract. (3) Where a bargain has been made for the advance of a specific sum it may amount to a withholding of a part of that which the money-lender contracted to give to the borrower as the consideration of his contract. (Matthews' Law of Money-lending, P. 63.)

DISTINCTION BETWEEN FIRST TRANSACTION AND RENEWALS—INTEREST.—This distinction does not seem as yet to have been brought by the decisions under the Act into such prominence as it deserves to occupy.

In the case of unsecured loans, in the first transaction the lender risks his money; and it is this fact, and this fact alone, which justifies him in demanding a high rate of interest. The interest which is paid for the accommodation is not merely a payment made for the use of the money, as it is in the case of loans which are adequately secured—in a great measure it is a sum which is charged by the money-lender as a premium against risk of loss of the principal. But upon a simple renewal the money-lender risks nothing. His money is fully risked, and a renewal merely amounts to giving borrower so much further time in which to pay. The money-lender certainly runs the additional risk that the position of the borrower may go from bad to worse during the period of renewal but against this he may derive benefit from the borrower being tided over a difficult time, and being in an improved position at the expiration of the renewal period. Probably, if the average of the sufficient number of instances could be taken, the one consideration would be found to practically balance the other. Laying out of account, therefore, any question of increased risk, all that a lender is fairly entitled to demand upon a renewal is a fair interest for the use of his money during the renewal period.* * * * *

Moreover, it is to be borne in mind that compound renewals frequently involve compounding the interest payable in respect of the first transaction, and it will not be denied that if it is just to interfere in any given case by cutting down the interest agreed upon, *a fortiori* it must be just to cut down interest charged upon interest. (Matthews' Law of Money-lending, P. 64.)

7. Nothing contained in this Act shall apply to any loan advanced before the commencement of this Act.

Savings.

NOTES.

The following is the explanation given by the Government Member in charge of the Bill as to the scope of this section:—

“It seems to me that the existing loans—by which I mean the loans that have been given up to the date of the Act coming into force—should be excluded in order that there may be sufficient notice to the creditors to adjust themselves to the new conditions, such as the keeping of accounts and other things to be done under sections 3 and 4. Otherwise I should think, it might work hardship in the case of small money-lenders.” (*See Proceedings in Council, 3rd August, 1934, Vol. 73, Pp. 257-259.*)

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

Rules.

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

(a) the sum which may be charged as fee for a statement of account, furnished under clause (c) of sub-section (1) of section 3,

(b) the manner in which a copy of the account shall be certified for the purpose of sub-section (2) of section 3, and

(c) the sum which may be charged for a copy of the entries in a pawn-broker's account, to be delivered by the pawn-broker to the pawnier under sub-section (2) of section 4.

NOTES.

This section enables the Local Government to frame rules for the satisfactory working of the Act.¹

¹ The following Rules have been framed under the Act:—

Rules under the Debtors' Protection Act.

Rules made under S. 8 of the Act No. 950.—In exercise of the powers conferred by section 8 of the Madras Debtors' Protection Act, 1934 (Madras Act, VII of 1935), the Governor-in-Council is hereby pleased to make the following rules:—

1. *Short title and commencement.*—(1) These rules may be called the Madras Debtors' Protection Rules, 1936.

(2) They shall come into force on and from 15th January, 1936.

2. *Definition.*—In these rules unless there is anything repugnant in the subject or context, "the Act" means the Madras Debtors' Protection Act, 1934.

3. *Maintenance of Account.*—(1) Every creditor shall keep a separate account in respect of each loan.

(2) The name and address of the debtor, and in the case of joint-debtors, of each joint-debtor shall be entered at the head of the account.

(3) Every entry in an account shall be dated with the date of the transaction to which it relates and shall, as far as possible, be made on such date.

(4) The account shall show the balance on account of the principal and interest outstanding against a debtor on the 30th June and 31st December of every year and shall also show the balance outstanding on the date of any statement of account prepared in accordance with clause (c) of sub-section (1) of section 3 of the Act.

4. The statement of account to be furnished to the debtor as well as the receipt to be given to him shall be in English or in the Chief Vernacular language of the locality.

5. *Manner of furnishing Statement of Accounts.*—(1) (a) The statement of account shall be sent to the debtor by registered post, acknowledgment due, to the address given in the requisition made by the debtor.

(b) In the case of joint-debtors the statement of account shall, in the absence of an agreement to the contrary, be sent in the manner laid down in clause (a) to the joint-debtor named first at the head of the account.

(2) Notwithstanding anything contained in sub-rule (1) where the debtor or, in the case of joint-debtors, the joint-debtor named first at the head of the account agrees in writing to the statement being delivered personally, it shall not be necessary to send it by registered post.

(3) When a debtor or a joint-debtor takes personal delivery of the statement of account, he shall acknowledge receipt of the same in writing. The debtor or the joint-debtor, as the case may be, shall sign the acknowledgment, or if he is illiterate affix his thumb impression thereto.

(4) If the statement of account is sent by registered post, the production of the postal receipt and acknowledgment shall be sufficient proof of the sending of such statement.

(5) The postal registration and acknowledgment charges incurred under sub-rule (1) shall be entered in the account and shall be recoverable by the creditor as if such charges were included in the loan, but no interest shall be charged thereon.

(6) (a) The fee which may be charged by a creditor for a statement of account furnished by him under clause (c) of sub-section (1) of section 3 of the Act shall be as follows:—

(i) If the amount of the loan does not exceed Rs. 50	.. 0 1 0
(ii) If the amount of the loan exceeds Rs. 50 but does not exceed Rs. 100	.. 0 2 0
(iii) If the amount of the loan exceeds Rs. 100 but does not exceed Rs. 300	.. 0 3 0
(iv) If the amount of the loan exceeds Rs. 300 but is less than Rs. 500	.. 0 4 0

Explanation.—The fee shall be charged separately in respect of each loan and each requisition. Thus the fee for the statements relating to two separate loans of Rs. 120 and of Rs. 360 will be seven annas.

(b) The fees shall be recoverable by the creditor as if it were included in the loan but no interest shall be charged thereon.

6. *Person to whom the receipt is to be given in the case of a joint loan.*—Where there are two or more joint-debtors, the creditor shall, in the absence of any agreement to the contrary, give the receipt to the joint-debtor named first at the head of the account or to his agent.

7. (1) *Manner of certifying copies of accounts.*—No copy of an account shall be admissible in evidence under sub-section (2) of section 3 of the Act, unless it contains two certificates at the foot, the first by the creditor himself or his agent and the second by some other person who has compared the copy with the original.

(2) The certificate of the creditor or his agent under sub-rule (1) shall be in the following form:—

"I certify that the above is a true copy of the account maintained under section 3 (1) (a) of the Madras Debtor's Protection Act, 1934, for the loan of Rs. _____ taken by _____ on _____ (date) and that there are no alterations or erasures in the accounts (except the following)."

Signature of Creditor
or *his Agent.*

(3) The certificate of a person other than the creditor or his agent shall be in the following form:—

"I certify that I have compared the above copy with the original account in the custody of the creditor and found it to be correct.

Signature.

Designation.

Address.

"

8. *Sum chargeable for a copy of the entries in pawn-broker's account.*—The sum which may be charged by a pawn-broker for a copy of the entries in his account delivered by him to the pawner under subsection (2) of section 4 of the Act shall be one anna.

(Part 1-A of the *Fort St. George Gazette*, Page 1680,
24th December, 1935.)

The Madras Debt Conciliation Act

AND

The Madras Agriculturists Relief Act

Introductory—Principle on which these enactments are based.—The Madras Debt Conciliation Act aims to establish a third party agency to help in arriving at an equitable adjustment of the conflicting claims of the agriculturist debtor and his creditor. It is, in effect, to some extent, an interference with rights of absolute ownership and freedom of contract of individuals.

Freedom of contract is a sacred thing in law, but the existence of Society is far more sacred and is a necessity of State administration.

Ownership or a contractual right is neither absolute nor unlimited. It is subject to such limitations as result from the purpose for which it is protected by law—the social weal of the community and of the State. Therefore, the exercise of such right and the resulting inconvenience to others will be legitimate only if it does not contravene this purpose. Every individual, may, therefore, unreservedly enforce his lawful right only in a way which is normal and equitable under given circumstances.

“Since the right of ownership and the right of enforcing contractual obligations, is, as any other legal right, nothing else but a faculty granted to a man living in a society, the use, which the holder of the right may make of it, is necessarily limited by his social duties,—especially the duty not to exercise this right for any other purpose, except that for which it has been recognised by the law, to wit;—not to exercise it with the view of endangering the social structure.”

The protection of ownership and the enforcement of legal obligations are limited to their use for a reasonable and legitimate purpose. No person would be allowed to misuse his right by turning it to an ill end. The desire to harm one's neighbour, an attempt to extort an unconscious bargain by taking advantage of another's helplessness or by using unfair means or by adopting vexatious machinations, malice and

usurpation, evil scheming, acts promoted by hate, not only will not be favoured by courts, but will be restrained by injunction and may also render the wrongdoer liable in damages.

In all transactions between a borrower and a lender, the State requires such a rule of conduct as a reasonable and honest man would assume in a given case upon a fair consideration of all the circumstances. In a doubtful case, customs existing in business and social circles will aid in determining what such reasonable conduct ought to be. But they are by no means the sole controlling factors.

Though this rule of reasonableness is a general principle applying to all private transactions,¹ the law requires its observance more particularly in connection with the enforcement of contracts and performance of obligations arising out of money-lending transactions. The scope of the rule is, however, much broader; it is one of the basic principles of the general policy of every law on which many other concrete provisions of specific Statutes are based.

In the Law of Contracts and Obligations this principle of reasonableness is applied by eliminating petty claims in which the obligee has no actual interest; by compelling the parties to take into consideration the inter-relations of the interests involved in a transaction, by giving to the Courts the authority to abate a contractual penalty or reduce the rate of interest if it is out of proportion to the circumstances.

There is no right without limitation; the very conception of a right, from the view-point of legal philosophy, carries in itself the element of limitation or restriction, without which the co-existence of rights would lead only to anarchy instead of to legal order. As a matter of practical jurisprudence, private rights have never been considered sacrosanct and their exercise unrestrainable. The famous Roman maxim: "*Qui suo jure utitur nemini facit injuriam*" (he who uses his legal rights harms no one) reads as an absolute franchise to exercise legal rights, regardless of any injury that may result from such exercise. As a matter of fact, this maxim has been everywhere applied only with very material reservations (*i.e.*) only as long as the exercise of a right does not become contrary to public

¹ "There is no point on which a greater amount of decision is to be found in Courts of Law and Equity than as to what is "reasonable. It is impossible *a priori* to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable" at a particular time and under given circumstances. *Per* Lord Romilly, M. R., in *Labouchere v. Dawson* (1872) L. R. 31 Eq. Cas. 325.

policy. On the other hand, in the modern laws of all civilised countries, the exercise of rights, even though *per se* entirely lawful, has been restrained, if such exercise violated other lawfully acquired rights, or was opposed to the sound social and economic advancement of the State, or was, in any other way, improper or unreasonable.

As a legal principle, the rule of Governmental interference with freedom of contracts on grounds of public policy and State economy does not, in any way revolutionize modern law. It has appeared in one form or another, at all times, in all countries, and has found expression in almost all modern Civil Codes of progressive countries. It is only an application of an old principle to new circumstances.

From the rule of the Twelve Tables in ancient Rome prohibiting cremation and burial of dead bodies with gold in their mouth, to the recent Gold decrees making the mere possession of gold by living men a crime in the United States, punishable with heavy fines and long terms of imprisonment, every law, expressly or impliedly, avowedly or unconsciously, has always been directed to some social or economic end. In fact, every law, be it a statute or judge-made law, corresponds to some social or economic need, interest or ideal of the society. Even from the view-point of the old theory of full legal capacity to enforce contractual obligations as an inherent and inalienable right of every person, it is correct to say that this right is recognized and protected only because it is considered that thereby the interest of the society, and through it, of all of its members, is best served. No law exists for the sake of the law itself, and no right belongs to any one only for the sake of the law itself. A right, no matter how firmly it is vested and by what immemorial use it has been sanctioned, will be recognized and protected only as long as it corresponds to its useful purpose.

From time immemorial gold has been one of the most cherished possessions of humanity. Wealth, social prestige, influence, has been measured in terms of hard money-gold. No opprobrium would even remotely attach to the possession of gold physical or constructive. And still, when the administration of the most liberal and democratic country of the world arrived at the conclusion that not only hoarding, but the mere possession of gold for any purpose, by private persons, stood in contradiction to the present social and economic conditions and the interest of the State as understood by this administration, it did not hesitate to sweep aside and annul all vested rights in gold, and order its surrender to the State at its nominal value. Such however was the effect of President Roosevelt's gold decree, and, regardless of whether any individual citizen approved or criticized the measure itself nobody seriously felt that

this drastic limitation was an improper or illegal invasion of the private rights of individuals.

Acts based on ancient well-established principles.—It ought not to be supposed that these Acts are the first attempt to introduce a new rule of positive law; they only enunciate a statement of the actual purpose behind every law and right, and are all based on an old and well-established principle by which all laws are guided—"the practical requirements of the social and economic policies of a given time and place"¹.

"The theory that private rights, whether based on contract, inheritance or otherwise, are recognised only because of, and in accordance with, their value from the view-point of the social, economic or public interest, and that limitations are imposed on them likewise in the public interest, seems to be practically an axiom in all modern law. This has been emphasised by all great thinkers of modern times. "The law recognises a private right only if, and so far as, it considers the latter consistent with the public interest, as well as with the special interest of those who are affected by this right." This is the language, not of a Russian revolutionary, but of a conservative German Scholar. Phillimore sees the real reason for the modification of the right of property in the exigencies of the State in which it exists and by institutions by which it is upheld. The well-known French writer and authority of comparative law, Saleilles, in his treatise on the theory of obligations denies the owner the right to make an improper exercise of legal rights, "an abnormal exercise of such a right, an exercise contrary to the economic and social destination of the right, an exercise condemned by public conscience". Such improper exercise of legal rights is not favoured by Courts. To such exercise the protection of law is denied. The decision of the French Tribunal of Compiègne defines ownership as a "faculty" granted to a person living in a society and limited in its exercise by the social obligations of the owner, especially his duty not to use it against the purpose for which it has been recognised by the law. Observations to the same effect may be found in several judgments of famous English Judges. Lord Truro held in *Egerton v. Earl Brownlow*, 10 E.R. 359, that "the law will not uphold such (dispositions) as have a tendency prejudicial to the public weal", and Lord Hardwicke said in *Earl Chesterfield v. Janssen*, 26 E.R. 191 (224), that "the Court relieves for the sake of the publick, as a general mischief", and again in *Lawton v. Lawton*, 26 E.R. 811, that "the reasons of publick benefit and convenience weigh greatly with me". The same views concern-

¹ See: New York University Law Quarterly Review, Vol. 12, Part 3, p. 458.

ing the preponderance of social interests as against the legal protection of private rights and relations have also been supported by several eminent Modern American Legal writers. More than fifty years ago, Mr. Maine, speaking of Bentham's immense influence on English thought during the preceding thirty years, greatly commended him for, and saw the secret of his success in, the fact that he made the good of the community take precedence over every other object. And in our days such a prominent jurist as Mr. Beale wrote: "While in certain periods of civilization society has deemed it better to modify the rights of individuals against the community, this individualistic condition is always unstable and tends to fall into the more natural condition of social supremacy One interesting example of the protection of State interest is the doctrine of public policy; a doctrine by which every private right may be modified in the interest of the State It has been common to make a complete and fundamental distinction between the law which protects social interest and that which protects individual interests. It is believed, however, that no such fundamental distinction exists, but that the law deals with social interest in the same way that it deals with the interests of individuals. A precedent, no matter how well established, must yield "to the paramount demands of justice as well as the decencies of civilization"¹.

¹ Cited in New York University Law Quarterly Review, Vol. 12, Part 3, pages 458, 459 and 460.

"It is no doubt a great principle which ought to be adhered to by every Court where it can possibly do so—that is, that a man shall abide by his contracts and that a man's contracts should be enforced against him." [Per Romer, J., in *Biggs v. Hodinott*, (1898) L.R. 2 Ch.D. 313.] But the Court has also a duty to determine every case upon broad principles which will meet the common sense of mankind. [Kenyon, M.R., in *Stebbing v. Wakey*, (1786) 1 Cox Equ. Cas. 252] "Courts of Equity" make their decrees so as to arrive at the justice of the case without violating the rules of law. Lord Kenyon, C.J., in *Clayton v. Adams*, (1796) 6 T.R. 605. "Law and Equity ought to join hand in hand in moderating and restraining all extremities and hardships. They both aim at one and the same thing, which is to do right and social justice." Lord Ellesmere, *Earl of Oxford's case*, (1916) Rep. in Ch. 3, 4.

It is perfectly well known that Courts of equity have often established new principles "altered, improved and refined them from time to time". The Doctrines are progressive and are always made to secure the better administration of justice. In *re Hallet's Estate*, (1879) L.R. 13 C.D. 710.

"In a civilised society, private rights have never been and could not be, in themselves, absolute rights in the technical sense of the term, because they could not be recognised and exercised except inasmuch as they were not contradicting the organic purpose of the society". Duguit refuses to recognise the principle of autonomy of will in private transactions; he considers ownership not as a private right but as a "social function" imposing certain duties toward the society (namely to augment the general wealth and satisfy the general needs by using the capital which he

Thus, it would be seen that "the social economic purpose is the justification of private rights, and the reason for their recognition by the law, is by no means an ideological monopoly of certain legal philosophers but is well rooted on ancient principles enunciated by even conservative Judges."

"When industry is grievously hurt when producing concerns fail, when unemployment mounts, and communities dependant upon profitable production are prostrated, the wells of commerce go dry" and the stability of the social structure is endangered. Under such circumstances it is but proper that Government should interpose its high authority to control or to compel a surrender of individual right, and even individual initiative in the fields of agriculture or of industry, with heavy pains and penalties. The changed conditions, economic in character, may necessitate the extending of the special powers of the Government beyond that heretofore exercised. The broad and expansive nature of this power has always been well-recognised. Our superior Courts have on many occasions held that when conditions call for new Legislation not heretofore deemed necessary, it is no objection that the Legislation is new. In the recent case of *Attorney-General v. Attorney-General*, (1937) A.C. 405, it was held that even a Subordinate Legislature is competent and has the power by means of an enactment to create civil rights of a novel character in fields not hitherto covered by its legislation. The power lies dormant in every Government until the necessity for its exercise arises. Changed conditions call for a development of legislation to meet them. The history of the recent laws of most countries exhibit a forward movement, step by step, of the power of the Legislature to control mutual relations between individual citizens and ensure fair and equitable dealings in trade, commerce or industry.¹

Machinery for Liquidation and scaling down of debts:—
The Debtors' Protection Act, the Debt Conciliation Act, the Agriculturists Debt Relief Act, and all such enactments create a

holds) on the owner, who is socially protected only when, and so far as, he performs these duties." *New York University Law Quarterly Review*, Vol. 12, Part 3, pages 458 and 459.

¹This topic is exhaustively dealt with by expert lawyers in the recent Law Reports of the United States of America, where Governmental interference in the form of special enactments regulating agricultural production, trade and commerce has been carried to an almost dictatorial point. See Articles in *George Town Law Journal*, January, 1934, pages 207 and 229; Willoughby's *Constitution of the U. S.*, 1929, Ss. 61-63; *New York Law Quarterly Review*, 1935, March, pages 439-467; *New York Law Quarterly Review*, Vol. XII, page 165; *North Carolina Law Review*, April 1937, page 249.

machinery and provide a method by which an equitable adjustment is made between the debtor and the creditor. Relief is given against high rates of interest. Provision is made for all in prices and depression in trade. But, after all this has been done, the fact remains that the creditor has to be paid, not exactly what he bargained for or could have got under his bond, but what the law states he would justly be entitled to. And this amount has to be paid to the creditor. During the last few years, we find some of the States have offered to extend their help to the agriculturists by paying their debts, either by means of loans made directly out of Government Funds or through the agency of State Aided Banks,—at very low rates of interest, the recovery of which is spread over a fairly long period. Doubts have been expressed in some quarters whether Government aid in this respect is sound State economy. The answer is obvious. Such advances from State Funds can scarcely be looked upon as a purely business transaction, and cannot be justified on purely economic principles.

“They have to be treated on principles higher than State economy. They involve the solution of social difficulties and are necessary for the security and prosperity of the nation. Properly speaking, there cannot be much risk to the State involved in these loans; but if there are risks they should be accepted. The reform is as necessary to the State welfare and the national existence as the raising of an army or the building of a navy.

Village welfare is the basis of national prosperity:— Here, the paramount interest of the State and its needs are concerned. What all countries now require are not more town-dwellers but more land-bred folk. “They require them for defence; they require them for purposes of national help; they require them for steadfastness in the midst of the shifting developments of a neurotic age. Without an adequate supply of land-dwellers to replenish and support their city populations, peoples must deteriorate, and in due course fall. The retention of the people on the land should be the great and even the main endeavour of our Government. Nothing can make up for the loss of them, no wealth, no splendour, no temporary success or glories of any kind. At any sacrifice, at any cost, all wise statesmen should labour to attain this end. The flocking of the land-born to the cities is the writing on the wall of our civilization. They swell the half-naked dwellers in city streets, the thousands of waste mankind,—the human refuse of our towns.

Speaking generally, in the villages such folk scarcely exist. But in the cities, whether so many flock in faith and hope, they are manufactured by the hundred. For most of these, competi-

tion in towns is too fierce. They are incompetent to cope with the difficulties of high civilization. At the first touch of misfortune, of temptation, of sickness, they go down, and but too often fall, like Lucifer, to rise no more. The shelters, the jails, the hospitals, the work-house, all tell the same story. It is said that, in most of the populous cities, one out of every twelve of the inhabitants has no home, but sleeps at night in some refuge or common lodging house".

Thus, it becomes one of the primary functions of the State to do all that lies in its power to retain the people on the land on which they were born, and bred in their infancy, and on which they are working—to help in the retention of the rural population in the villages, and to work for the betterment of our present agricultural conditions.

But, what is the real position of agriculture in India to-day?—or to put the question in another way, what is the position of India economically, since the whole nation mostly depends upon agriculture for its upkeep. With us, it is not a mere side issue, but it is the breath of our nostrils. The real answer to the question is of vital importance to the whole nation. It has been the universal opinion of all thinking men that agriculture in our country does not pay. It is a sad truth that our present farming, high or low, except under exceptional circumstances of markets, soil, and locality, or other advantages, scarcely pays its way.

Properly speaking in most cases it should be paying, but the tax and cess collectors and the middlemen get the most of whatever is got from the soil. The land is staggering beneath the cost of its upkeep and the burdens that accumulate on it. It can scarcely support the owner, the tenant, and the labourer,—especially in the face of foreign competition and at the present low price of the produce. Added to all these is the heavy burden of agricultural indebtedness on a nation-wide scale. If these defects are rectified, if the debts are cleared, and the burdens are lessened, and above all if co-operation were made universal there would be a different tale to tell.¹ Any Government that does not take immediate steps for the redress of these grievances, whether on grounds of State economy or otherwise,

¹ There is a tendency at the present day to increase the financial burden on the land out of all proportion to those levied on other forms of property. No Government should try at present to place further burdens in any form on agricultural land than those already existing. To do so would be to strike a deadly blow not only at agriculture but at the welfare of the nation as a whole—seeing that this welfare is in various ways dependent upon the prosperity of the land. If the land is not prosperous it cannot rear a sufficient rural population, and without such a population our greatness will dwindle and in the end our country must fall.

would have failed to do a great and a good thing at a critical period of the history of the nation.

It is much better for the country there must be a growing, healthy and a capable race than that people should spend all their lives under the load of an unredeemable debt or out of work labourers in city streets. That the conditions of society should be arranged in such a manner that feeling of independence is retained by as many people as possible is a matter of national honour and social welfare which should not be allowed to be upset by any momentary financial considerations.

Necessity for the Debt Conciliation Act—Present conditions in this Presidency.—"On account of the unprecedented economic depression prevailing in this country and the very low level of prices reached, the position of the agriculturist has become very deplorable. The prices of agricultural produce and of lands have decreased. The fall in prices is on an average more than 50 per cent. of the original value. It is well known that most of the ryots are heavily indebted. They also want money for agricultural operations. The fall in prices makes it impossible for the ryots to discharge their debts which remain at the same old level. The result is the creditors themselves do not get their money and they are forced to go to Courts and sell the lands of the ryots. The present state of things leads to the lands being sold at very low prices in the enforced sales which even ordinarily do not bring a fair price. The creditor is anxious to get cash while the ryots cannot raise it because of the low prices ruling in the market for his property. In many cases the creditors will be very glad to forego a portion of their claim if they can get cash in lump or in a few instalments. The Land Mortgage Banks, which are being organized for the purpose of enabling the ryots to redeem their property, are unable to help as the properties have depreciated in value and cannot be sufficient security for discharging all the debts which really, taking into consideration the present prices, have appreciated in value. If there is a moderation of these debts on reasonable lines it will be possible for the Land Mortgage Banks to come in and save a large number of ryots. The ryots may also be able to sell a portion of their property and save the rest, or in some other way raise money to discharge the debts as moderated. In view of the present condition and the large number of sales of agricultural lands through Court in the ordinary way and very largely through Official Receivers and in some cases by private sales at very low rates, it is urgent that some measures are adopted to provide for the moderation of the debts and saving the ryots. It is necessary that urgent action should be taken as an emergency measure if even a consi-

derable body of ryots are to be saved, and the passing of the lands into the hands of middlemen and professional money-lenders be avoided.

The Central Provinces Government introduced a Debt Conciliation Bill as a Government measure and it was passed in the Council at the end of 1932 and received the assent of His Excellency the Viceroy in March, 1933. That Act applies only to agriculturists whose debts exceed Rs. 150. It provides for the appointment of Debt Conciliation Boards consisting of 3 to 5 members, all nominated by the Government. A creditor or a debtor who wants the intercession of the Board may apply to it. Notice is sent to all the creditors and the debtors, and they are brought face to face with each other. The Board persuades the parties to come to an amicable settlement. If the creditors to whom not less than 50 per cent. of the debts are due and the debtors agree to a settlement that is recorded by the Board and registered, and it has got the same effect as the decree of a Civil Court, then it binds even those creditors who have not agreed. In case there is no settlement, the application is dismissed but the Board may issue a certificate stating who in its opinion is the unreasonable party. In case it is of opinion that a creditor is the unreasonable party he will not get the costs of his suit when he files one in the ordinary way for recovery of his money, and from the date of such certificate he will get interest only at 6 per cent. per annum. This Act has been framed on the same lines as the Central Provinces Debt Conciliation Act; and the language of that Act has also been mostly adopted in this Act.

Scope of the Act.—The scope of the Act is very modest. It only brings into existence a machinery to bring together the creditor and the debtor (where the debtor is an agriculturist within the definition of the Act) and makes them agree and adjust their debts. It is expected that the persuasion and experience of the members of the Debt Conciliation Board would induce them to adjust their debts. It does not purport to do anything more. There will be Debt Conciliation Boards established in each district, and the Act provides that applications may be made before them by the debtor or any of the creditors requesting their intervention. The Board meets and persuades the parties to come to a settlement and if creditors to whom not less than 50 per cent. of the debts are owing enter into an amicable settlement with the debtor, such settlement is reduced to writing in the form of an agreement and given effect to.

Similar Legislation in America.—There is an enactment similar to the Madras Debt Conciliation Act in Canada working for the last three years. The long title of that Act of 1934 is "An Act to facilitate compromises and arrangements between

farmers and their creditors." The question arose whether this Act was within the jurisdiction of the Canadian Parliament to pass. It was held that it was within its jurisdiction and that the Act was not *ultra vires*. *Attorney General for British Columbia v. Attorney-General for Canada*, (1937) A.C. 391 (398).

The Farmers' Creditors Arrangement Act "provides a procedure whereby a farmer may make a proposal for a composition, extension of time or a scheme of arrangement to his creditors. If the proposal is accepted by the ordinary creditors, and the secured creditors whose rights are affected agree to it, it is submitted to the Court for approval. If it is not accepted by the ordinary creditors, or if a secured creditor whose rights are affected does not agree, there is a reference to a board of review to formulate a proposal. If a proposal is formulated by the board of review and is approved by the creditors and the debtor; or if, though not so approved, it is confirmed by the board of review, it is binding on all the creditors and the debtor."

The Supreme Court held by a majority (Cannon, J., dissenting), that the Act was *intra vires*. The Judicial Committee affirmed the judgment of the Supreme Court and dismissed the appeal, holding the Act valid as a '*genuine legislation relating to bankruptcy and insolvency*'.¹

Tendency of Courts to adjust themselves to suit the exigencies of the times.—The Courts also sooner or later adjust themselves to suit the exigencies of the times; after all they are but one of the instrumentalities through which the Government pursues its social and economic ends and upholds the supremacy of public welfare as the dominant consideration. This does not necessarily deprive precedents of their value in the administration of justice by our Courts, or the stability which is a typical attribute of justice. But where the existing precedent is and has to be greatly respected, they have to be and are in fact disregarded by the Courts when a change is consistently, urgently and unmistakably required by the necessities of social life².

¹ The Canadian Bar Review, Vol. XV. (1937), p. 411.

² See New York University Law Quarterly Review, Vol. XII, Part 3, p.465.

"A course of precedents and judicial pronouncements in Courts of Justice make the law; it would be endless to decide cases upon it. A course of practice for a few years has been held to control even an Act of Parliament". Wilmot, L.C.J. *Wilke's Case*, (1770) 19 How. St. Tr. 1130. "It is of dangerous consequences for Judges, in their judgments to rely too much on precedents that perhaps went forth through the necessity of the present times." Bramston, L.C.J., *Hampton's Case*, (1637) 3 How. St. Tr. 1245. Hence we see so many old precedents upset and not followed on

APPENDIX.

[EXTRACTS FROM THE REPORT OF THE ROYAL COMMISSION ON
AGRICULTURE RELATING TO RURAL INDEBTEDNESS.

363. *Indebtedness.*—In discussions on indebtedness, the various factors involved are not always sufficiently distinguished. The debtor may borrow because he has some need to satisfy or because he has credit and cannot resist the numerous temptations to enjoy its use. It is not borrowing, however, that leads to debt, but failure to repay, and for this there may be reasons quite distinct from those which led to the borrowing. The lender lends primarily for his own profit; the extent to which he lends depends partly upon the security of the borrower and partly upon the amount of cash he may have lying idle in his hands. Whether he presses for repayment of the principal or remains satisfied with the punctual receipt of interest ordinarily depends upon his judgment of several elements in his business. The credit of the borrower may be good or it may be deteriorating; his own usual balance may be increasing; he may know of a better investment for his money; or he may see in his client's need an opportunity for gaining a stronger hold on his assets. Or it may even be that the firm from which he has himself raised a loan is pressing for an instalment. The two factors, the importance of which is least recognised in current discussions on the subject, are that the money-lender must live by money lending and that, as his profits accumulate, he must extend his investments. The borrower only represents one side of the transaction. Throughout recorded history, he appears to have existed and to have been in need of protection from the usurer. The references best known to Christians are to be found in the Bible, to Muhammadans in the Koran and to Hindus in the Laws of Manu. The problem is thus one of the oldest that have troubled administrators in the East or the West; for generations past, it has received the continuous and anxious consideration of the Government of India. Every suggestion that has

the ground that they do not apply to the exigencies of the times. When Shylock in the Play insists on having by virtue of his bond the pound of flesh lying nearest his debtor's heart, the friend of the unfortunate merchant thus supplicates the Judge,—

“I beseech you.

Wrest once the law to your authority;
To do a great right, do a little wrong;
And crub this cruel devil of his will”.

What is the Judge's answer?

“It must not be;

It will be recorded as a precedent
And many an error by the same example
Will rush into the State.”

But what is the decree of this most conservative Judge, who fears to break a precedent, who dares not deviate from the strict letter of the law?—more equitable than any Court of Equity can ever venture to decide. This is the judgment of the “upright and learned Judge.”—

“Prepare thee to cut off the flesh
Shed thou no blood; nor cut thou less or more,
But just a pound of flesh: if thou takest more,
Or less, than just a pound, be it so much
As makes it light or heavy in the substance,
Or in the division of the twentieth part,
Of one poor scruple, nay, if the scale do turn,
But in the estimation of a hair,
Thou diest and all thy goods are confiscate.”

promised success has been carefully examined and many have taken concrete form in legislative or executive measures.

The predisposing causes which lead to debt are now well understood; the maintenance of law and order, the defining and recording of rights in land, the continuous reduction in the proportion borne by the land revenue demand to the produce, the rise in the value of that produce and the growth of transferable rights in land have all contributed to enhance the credit of the landholder. The rapid development of commerce and trade, the introduction of established law and permanent Civil Courts and the enactment of such measures as the Contract Act have strengthened the position of the moneylender. His capital has been swelled by the accumulating profits of his business which has been extended by his own thrift and intelligence. The general expansion of credit has provided scope for the investment of his savings and has averted that competition from his fellows which might otherwise have forced down the rate of interest. Throughout these developments, the cultivator has continued, in the main, illiterate; he keeps no accounts and makes no distinction between sums expended on the needs of his industry and those expended on the requirements of himself and his family. For generations he has been accustomed to a ceaseless struggle to extort a bare livelihood from an insufficient holding, and has been subject to disaster from drought, flood or epidemic. Causes which he seldom understands and cannot influence have endowed him with credit which he did not formerly possess, and he has found it difficult to resist the temptation to relieve present necessities by mortgaging his future income and even his capital.

There are other factors. Amongst the comparatively poor, where the habit of saving is not strong, the longer the interval between the successive receipts of the return for labour, the more difficult it becomes to avoid borrowing. If wages were paid monthly instead of weekly, only a very small portion of the working classes in the world could exist without credit; but the cultivator has to wait for half a year before he receives the return of his labour, and in far too large an area, where there is only one crop a year, the interval between successive receipts may be full twelve months.

Knowledge of rural indebtedness has steadily increased as the subject has again and again come under survey. The annual reports on co-operation have contributed much information of value; village surveys in difficult provinces have thrown light on the details, whilst, in one province, the material has been carefully collected and thoughtfully treated by Mr. M.L. Darling, I.C.S., whose book on "The Punjab Peasant in Prosperity and Debt" is deserving of wide attention. The evidence we received indicated that his general conclusions applied to an area far beyond the confines of a single province and the publication of his book renders much detailed description unnecessary.

Of the measures adopted to meet the evils of indebtedness some have aimed at removing the need for borrowing by reducing the land revenue and making its collection more elastic, or by popularising the Government system of loans to agriculturists; others have been directed against the excess of credit and have protected the property of the cultivator from attachment and sale in execution of decrees or have limited the extent to which his land can be pledged as security for loans. For some areas, even stronger measures have been considered desirable and restrictions have been imposed upon the sale and mortgage of agricultural land and on the extent to which unpledged land and its produce can be made liable for unsecured debts. More recently, the power of the money-lender has been directly attacked. The Usurious Loans Act, 1918, gives wide powers to Courts to interfere of their own motion wherever they consider that the terms of a loan are usurious, while the Co-operative Societies Act, 1912,

has facilitated the introduction of Village Credit Societies on the Raiffeisen model to replace the money-lender as a source of credit.

That the position of the money-lender should have been undermined to so small an extent by the centuries of effort to control him sufficiently illustrates the difficulty of the problem. In the present state of India he is a necessity, and that being so, his calling will not be abolished by making it illegal. He alone is in a position to provide the bulk of the capital required for the current agricultural needs and on a recurrence of severe distress, he will continue, as in the past, to support the people by timely loans. If he is ever driven from the land, it will not be by legislation, but by the growth of the co-operative movement, more especially, by the habits of thrift inculcated by that movement. Where thrift is absent, the vagaries of the monsoon drive the people to borrow and, unless the co-operative movement spreads into every village and includes every inhabitant in its fold, borrowing will continue. No one denies the services rendered by the money-lender; the charge against him is that these services are rendered at too great a price and are accompanied by practices which result in great evils. The system is usurious; the ready lending for unproductive purposes leads to poverty and economic servitude; the steady absorption of rights in land places the money-lender in a position of uncontrolled power and uncontrolled power is almost invariably abused. To a very great extent, the cultivator in India labours not for profit nor for a net return, but for subsistence. The crowding of the people on the land, the lack of alternative means of securing a living, the difficulty of finding any avenue of escape, and the early age at which a man is burdened with dependents combine to force the cultivator to grow food wherever he can and on whatever terms he can. Where his land has passed into the possession of his creditor, no legislation will serve his need; no tenancy law will protect him; for food he needs land and for land he must plead before a creditor to whom he probably already owes more than the total value of the whole of his assets. That creditor is too often a landlord of a different class who has no natural or historical connection with his estate and is only interested in the immediate exploitation of the property in his control.

However perfect the judicial system may be and however good his case, money can wear out the impoverished litigant. Every report on the administration of civil justice bears witness to the volume of unsatisfied decrees against cultivators. Of the extremes to which economic servitude can extend, where the money lender's grip is strong, two instances may be given. In Bihar and Orissa, we were told of a system known as *kamiauti* which prevails in the north of Hazaribagh district and in the Palaman district of Chota Nagpur and in some parts of Bihar, and which is practically one of cultivation by serfs. "*Kamias* are bound servants of their masters; in return for a loan received, they bind themselves to perform whatever menial services are required of them in lieu of the interest due on the loan. Landlords employing labour for the cultivation of their private land prefer to have a first call on the labourers they require, and hence the practice arose of binding the labourers by means of an advance, given conditionally upon their services remaining always to call of the landlord for the purposes of agriculture. Such labourers get a daily wage in kind for those days on which they work for their creditor, and may work for anybody else when they are not required by him. In practice, the system leads to absolute degradation of the *kamias*. In the first place, the *kamias* cannot bargain about his wages; he must accept the wage that is customary for landlords to give to his class. The wages represent only one-third of the day's wage for free labour hired, for example, by a contractor for road repair work. If the *kamia's* wife also works for his master, she receives a slightly smaller remuneration; and their joint wages are not sufficient to feed properly themselves and the normal family of children they are certain to possess. The *kamia* never sees any money,

unless it be the occasional few pice he may earn in his spare time. Consequently, he has no chance of ever repaying the principal of his debt and becoming a free man again. A *kamiauti* bond therefore involves a life sentence.

The condition becomes hereditary. Although the son is not responsible for his father's debt after his death, a new debt is always contracted on behalf of the son on the occasion of his marriage, which renders him also a *kamia* for life. Daily work is not guaranteed by the master, and no food is supplied when there is no agricultural work to be done. The result is that the master takes the *kamia's* labour at a sweated wage for most of the year, but at a time when there is no agricultural work to be done and the *kamia* has least chance of getting any daily employment elsewhere, he is left to shift for himself as best he can. He is even free to get work wherever he can, but cannot leave his village for any time in search of it, for fear that he might abscond. Actually, he is reduced to earning the most miserable existence by collecting fuel and grass for sale. The restriction of his movements renders the *kamia* nothing better than a slave. An absconding *kamia* is unable to find an asylum in any part of the area where the system is prevalent. The sale and purchase of *kamias* is by no means uncommon in north-west of the district. The price is the amount of the *kamia's* debt.

The Bihar and Orissa *Kamiauti* Agreements Act was passed in 1920 to deal with this evil. Under this Act, a *kamiauti* agreement is declared void if the period during which the labour is to be performed exceeds one year, if the agreement does not provide for the extinction of all liability after the expiry of that period in respect of any advance or debt and if it fails to provide for a fair and equitable rate of remuneration. It would, however, appear that *kamia* is too poor to set the law in motion and that the Act has proved ineffective. The Local Government announced their intention to adopt additional measures should the Act fail in its object, but so far nothing has been done.

The second example of economic servitude is taken from the small industries where artisans in certain trades work for life for capitalists to whom they are indebted. The capitalist advances raw material, lends money for food and receives the manufactured article for sale. The debt is practically irredeemable and the artisan is transferred from capitalist to capitalist in a manner which practically amounts to sale and purchase. He has thus no incentive to increase his skill or efficiency, as any increased earnings are merely set off against his debt.

The examples we have given illustrate the worst effects of unchecked money power. In both instances, the most serious factor is the hereditary element and the consequent state of helplessness to which the poorer classes are reduced when burdened with a loan of hereditary debt far beyond their power to redeem. The crushing burden of hereditary debt remains largely through ignorance of the legal position which is that no personal liability is transmitted and that no suit lies against the heirs of a deceased debtor except to the extent to which the property of the deceased has come into their hands by survivorship or succession. The experience of the co-operative movement is the same. It is that the people are so accustomed to be in debt, to take it over from their fathers and to pass it on to their sons, that they accept indebtedness as a settled fact, and a natural state of life.

So much is this the case that well-meant attempts to give them a fresh start by wholesale redemption of old debts have proved unsuccessful. Where co-operative societies have advanced enough to repay all the claims of money-lenders, the debtor fails to make the effort to pay regular instal-

ments even when they are well within his capacity, and slips back into the old state of bondage. It is now generally accepted that such attempts should not be made by co-operative societies until the debtor has learned habits of punctuality and thrift. The evidence we received from Dawson's Bank showed that the authorities of that bank had also found that, once a man has obtained more favourable terms by the transfer of his debt to a less exacting institution, the tendency is for him to default in his instalments. The idea that debt is a voluntary condition in which no man need remain is to many something of a novelty. Careful enquirers have long come to the conclusion that the main cause of the debt of to-day is the debt of yesterday and that the chief obstacle in the way of relief is the attitude of the poorer classes towards this customary feature of life.

The inevitability of indebtedness, as it seems to the people, gives the money-lender enormous power. It produces an almost fatalistic acceptance of the steady transfer of land into his possession and leaves his paramount position unchallenged. From the Punjab alone was any definite evidence forthcoming of any decline in rural money-lending business resulting from the growth of co-operative credit, and yet, although the cultivators of that province probably enjoy a higher average standard of prosperity than they do elsewhere, rural money-lending still ranks second in its yield of income-tax and super-tax.

Turning now to the future, we have no hesitation in recording our belief that the greatest hope for the salvation of the rural masses from their crushing burden of debt rests in the growth and spread of a healthy and well-organised co-operative movement based upon the careful education and systematic training of the villagers themselves. Co-operation will be dealt with at length in the next chapter but here we would state our view that, apart altogether from the question of debt, co-operative credit provides the only satisfactory means of financing agriculture on sound lines. Thrift must be encouraged by every legitimate means, for the savings resulting from the thrift of the cultivating classes form the basis of the capital they require. If the rural community is to be contented, happy and prosperous, local governments must regard the co-operative movement as deserving all the encouragement which it lies within their powers to give.

364. The importance of the co-operative movement is accentuated by the comparative failure of legislative measures designed to deal with the problem of indebtedness to achieve their objects. We received evidence in Burma that the provisions of the Civil Procedure Code exempting the cattle, implements and produce of agriculturists from sale may be ignored by the Courts. We have mentioned that the Kamiauti Agreements Act in Bihar and Orissa has proved ineffective. The provisions of the Deccan Agriculturists' Relief Act are being evaded and the Usurious Loans Act is practically a dead letter in every province in India. The working of the latter Act is discussed in the following paragraph. The history of the Deccan Agriculturists' Relief Act throws so much light on the problems discussed in this chapter that a brief description of the chief provisions of the Act, and of the results of the enquiries which have been made from time to time into its operation, since called for. The Act, which was passed by the Government of India in 1879 after severe agrarian riots had taken place in the Deccan, laid down that, in suits by or against agriculturists, it is open to the Court to examine the history of the debt and to make out an account of the money actually due. The Court, in taking an account of past transactions, can reduce unreasonable interest but is precluded from arresting in execution and from selling land unless it is specifically pledged. Land can, however, be taken for management by the Collector for a period of seven years. The Act included provisions under which an agriculturist owing over Rs. 50 could be declared an insol-

vent on his own application and also for the appointment of conciliators. Arrangements were made for the appointment of village registrars and it was prescribed that all instruments executed by agriculturists must be executed in the presence of these registrars. There were further provisions requiring creditors to furnish accounts and grant receipts and also prescribing that mortgages by agriculturists should be in writing. In the hope that litigation would be reduced, the period of limitation which, since 1859, had been for three years only was extended for suits against agriculturists to a period of twelve years if the suit was based on a registered deed, and to a period of six years if it was not. The Act, as passed, was applicable only to the four districts which constituted the Deccan tract of the Bombay Presidency. It was slightly amended in 1881 and 1882, mainly with a view to allow debtors to be declared insolvent on the motion of the court. In 1884, a special report on its working was submitted by the Government of Bombay. That Government considered that, on the whole, the Act had been successful but that there had been difficulties in executing decrees owing to the large exemptions in favour of agriculturists, that the management by Collectors, of attached land had proved a failure and that no practical use had been made of the insolvency provisions. As a result, the Act was again amended in 1886, partly with the object of rendering standing crops liable to attachment and of altering the term of limitation in some details, and partly with the object of making it possible for the local Government, with the sanction of the Government of India, to extend the operations of the Act in whole or in part throughout the Bombay Presidency. The Commission which enquired into the working of the Act in 1891-92, recommended a number of alterations not only in the Act itself but also in the Code of Civil Procedure and the Contract and Evidence Acts. It also proposed that a general Act should be prepared for the whole of India which should be based to a large extent on the provisions of the Deccan Act. The Government of India, however, rejected this advice but passed an amending Act in 1895 which carried out certain minor changes including the restoration of the exemption of standing crops from attachment, and the extension of the power to fix reasonable interest. The Act was again amended in 1907, when a provision was inserted by which wider powers were given to the courts to go behind the bond and determine the nature of the transaction independently of the provisions of the law regarding documentary evidence. Minor amendments were also effected in 1912 and 1920. Advantage has been taken of the power given by the Act of 1886 to extend its operations, and the bulk of the Act, with the exception of the insolvency provisions, is now applicable throughout the Bombay Presidency.

As to the manner in which the Act had fulfilled its objects, the Commission of 1892 held that one great effect had undoubtedly been to make professional money-lenders more cautious in advancing money except on the security of land and agriculturists more reluctant to borrow where security of land was required. The data on which this assumption was based were, however, examined by the Government of India who held it difficult to avoid the conclusion that there had been a serious increase of debt in the districts affected and that each year a larger proportion of that debt became a burden on the land. The opinion of the Famine Commission of 1900 was that the Act had done but little good and that there was positive room for holding that the transfer of property both by sale and mortgage had become more frequent in the districts to which it applied. The conclusions of the Commission which reported on the subject in 1912 were even more unfavourable. They were summarised as follows:—"It is a contest of dishonesty, in which that side is likely to gain the upper hand which is prepared to go furthest in perjury and in the production of false evidence. Witness after witness has testified to this demoralisation. Distrust has been engendered on both sides. The honest *sowcar* and

honest cultivator suffer alike, since in their dealings with one another they have to allow for the judgment of a court which will presume dishonesty on both sides. Hence it is that an Act whose main object was to put the relations between agriculturists and money-lenders on a better footing, is actually having an opposite effect."

The Commission recommended that the whole Act which would embody, with some additions and alterations, such portions of the old Act as experience had shown to be useful. The Government of Bombay approved the proposal, but the Government of India were opposed to the perpetuation, by a fresh enactment, of the principles of the Act of 1879. Another Committee was, therefore, appointed in 1920, which reported that the conditions of the agriculturists in the presidency was no longer such as to require special repeal of the Act after three years, provided the Usurious Loans Act was amended, mainly in the direction of giving the debtor the right to sue for redemption. The Act was not, however, amended in the manner proposed till 1926.

The examination of the working of the Deccan Agriculturists' Relief Act and the other legislation to which we have referred above brings out the extraordinary difficulty on attaining the objects in view by means of legislation. Quite apart from the provisions of the law, it would appear that the procedure which the civil courts have to follow is too cumbrous and expensive for debtors belonging to the cultivating classes. We have considered whether revenue courts would not be a more suitable agency than the civil courts. In paragraph 354, we have already pointed out the use which is made of revenue officers in the administration of the Punjab Redemption of Mortgages Act and the Punjab Alienation of Land Act. In the paragraph immediately following, we suggest a wider application of the Usurious Loans Act and, in paragraph 366, a Money-lenders' Act but the solution of the problem of indebtedness is only to be found in the cumulative effect of the spread of literacy and in the co-operative movement.

365. An important feature of the Usurious Loans Act of 1918 is that the court, once seized of a case may, of its own motion, re-open old transactions and enquire into the equity of the terms. As mentioned above, the Act was amended in 1926 to include cases in which either party to a mortgage seeks relief. Where the debt is unsecured, the debtor can draw the creditor into court and, therefore, into the sphere of this Act, by the simple expedient of refusing to renew his loan. The evidence we received showed conclusively that the Act is practically a dead letter in all provinces, but as we heard on evidence from civil judges, we are not in a position to offer an opinion as to the reasons why so little use has been made of its provisions. We, therefore, recommend that in every province an enquiry should be made into the causes of the failure to utilise the Act that adequate steps should be taken to ensure its application in future and that a special report on its working should be included in the annual reports on the administration of civil justice. We consider that our recommendations under this head are warranted by the potential importance of this Act. If its provisions were fully utilised, this would go far to relieve the country of some of the worst evils of uncontrolled usury and would facilitate remedial action by co-operative societies. The fact that in some provinces the rule of *damdupat* is in force has been advanced before us as an excuse for the neglect of this Act, but this ancient principle of Hindu law merely provides that, in passing a decree for principal and interest, the court shall not allow interest in excess of the amount of the principal when the claim is made. No consideration need be paid to the amount paid on account of interest during the currency of the loan, nor whether the rate is usurious, nor whether the total sum paid to the

lender does or does not represent a fair repayment of both principal and interest. It protects the interests of the Hindu debtors only, regardless of the religion of the creditor, but denies a similar protection to non-Hindu debtors, even though the creditor be a Hindu.

366. The Punjab Legislative Council recently passed a private Bill designed to control the operations of money-lenders in that province by enforcing the use of regular books of accounts and by insisting that the borrower should receive copies of all entries relating to transactions between him and the money-lender. Owing to defects in drafting, the Bill was, however, disallowed by the Governor but the Government undertook to introduce another Bill on the same lines but in an improved form. The Bill has aroused interest in other provinces but it is not possible to offer an opinion as to the manner in which it would work.

During the course of our sittings, the British Parliament has passed an Act, the Money-lenders' Act of 1927, which embodies some new factors in the battle against usury. It provides *inter alia* that all money-lenders shall take out a license, that compound interest shall be prohibited and that the money-lender shall, on demand by the borrower, supply information relating to the state of the loan and also copies of documents relating thereto. We would commend the principles underlying the Punjab Bill and the British Act to the consideration of local governments.

We do not share the common apprehension that enactments of this character will lead to so great a restriction of credit that the cultivator will be hampered in his ordinary agricultural operation. In the first place, the co-operative movement is introducing a sound system of controlled credit and, in the second, it must be remembered that the capital now invested in money-lending must find a use. The money-lender has survived more drastic measures and will survive again. His profits may diminish, his power may decline but, for many years to come, there will still remain a wide field for honest business in supplying the legitimate needs of agricultural operations. If some of the capital, now misused to finance extravagance, is diverted to the development of industries, many problems of the country-side will be brought nearer solution.

367. From the reports on the co-operative movement, as well as from other and older sources, it is clear that a serious obstacle to the clearance of indebtedness is the existence of a large volume of inherited debt. On the death of an individual, it is not the custom for his assets to be realised and to meet the debts in such proportion as may prove practicable, the remainder being thereby rendered irrevocable, but such property as he may die possessed of passes to his heirs who also shoulder his debts. In the result, accumulations of compound interests swell the total burden. We have already pointed out that, in law, the debts of a deceased person only pass to his heirs when they succeed at the death of the debtor to property and that they pass only to the extent to such property. Where no assets pass, no debts are inherited. We are informed, however, that it is a common practice for a money-lender, who has no remedy by law, to approach the son or some other relative of the deceased and, putting the matter on the grounds of legal obligation or religious duty, to induce such son or relative to execute a promissory note. The force of tradition is such that the son or relative regards the debt as a debt of honour. Having executed the promissory note, he feels himself obliged to pay and, even if the matter is taken to a civil court, will rather admit receipt of a consideration which was never received than run the risk of being thought to dishonour his father or relative. We are strongly of opinion that all who are working for the uplift of the rural community, and especially all workers in the co-operative movement, should do their best to free the poor and ignorant from this burden and, in particular, to instruct them that, in such cases, the court is empowered to give them relief.

Relief from debt, whether inherited or incurred by the individual himself, can be sought in the provisions of the Provincial Insolvency Act, but those provisions are of little benefit to agriculturists, partly because they cannot be utilised except in cases of indebtedness amounting to Rs. 500 and partly because the courts are disinclined to allow the benefits of the Act to landholders whose rights are protected from sale in execution, on the ground such persons are not insolvent within the meaning of the Act. The second point has been dealt with by the Civil Justice Committee in Chapter XIV of their Report, and we support their conclusion that the insolvency law requires special adaptation to land tenures and especially to the case of non-transferable holdings. We recognise that the question is not free from difficulty and it does not fall within our province to attempt an interpretation of the law. Two points are, however, clear. No one desires to see a wholesale resort to insolvency and no one, we trust, desires to witness a continuation of a system under which innumerable people are born in debt, live in debt and die in debt, passing on their burden to those who follow. That there are a large number of hopelessly insolvent debtors in rural areas, is generally admitted, and we cannot regard it as making for health in the body politic that they should be allowed to remain without hope and without help.

Legal technicalities must be subordinated to economic interest and, in view of the evidence before us of the unsuitability to agricultural conditions of the existing insolvency law which was primarily designed for mercantile cases, we recommend that the whole case for a simple Rural Insolvency Act should be carefully considered in every province. The main objects of such a measure would be to relieve the debtor of what he cannot pay, whilst insisting on his paying the utmost he can within a reasonable time. When a man's debts are such that the usufruct, for fifteen years, of the land not absolutely essential for maintenance is insufficient to meet them, the balance is obviously irrevocable and he is, therefore, a fit subject for insolvency law. Whether such bodies should be regarded as an alternative to an insolvency law is an open question. We consider that, in areas where debt is known to be beyond the capacity of the people to pay, conciliation bodies might be tried. It must be clearly recognised that the worst policy towards debt is to ignore it and do nothing. We are fortified in our conclusions by the remarks on the subject of insolvency in the Report of the Civil Justice Committee. As therein pointed out, so long as debtors can be committed to prison for debt at the option of their creditors, large numbers of debtors with little or no property must be put through the Insolvency Court. Just as creditors have the right to insist that all the debtors' assets should be impounded and applied towards the payment of the debts, so also the debtor who has given up all his assets should have the clear right to be allowed to earn his living if he can, and to be free to make a new start in life. The main difficulty with respect to rural insolvency was considered to be that of getting suitable persons to act as receivers, and we recommend that where the indebtedness of the rural population is notoriously heavy, there should be little hesitation in appointing officials for this duty.

368. The question of rural indebtedness is so old that its problems have become as customary as the debt itself and there is always the danger that what is accepted as a normal feature may be allowed to continue undisturbed. It is more than probable that the total rural debt has increased in the present century; whether the proportion it bears to the growing assets of the people has remained at the same level, and whether it is a heavier or lighter burden on the more prosperous cultivator than of old, are questions to which the evidence we have received does not provide an answer. In an interesting note submitted by Mr. M.L. Darling, I.C.S., formerly Commissioner of Income-tax for the Punjab, the position of the money-lender was reviewed in the light of information derived from the

statistics of the Income-tax Department. Mr. Darling points out that, in the Punjab, the village money-lender is gradually reducing his business everywhere, except in two districts, and that the main causes of this reduction are the rapid growth of the co-operative movement, the legal protection given to the peasant borrower and the rise of the agriculturist money-lender. There is also a tendency now for the village money-lender to migrate from the village to the town. In spite, however, of the reduction in his business, rural money-lending is still the most important industry in the province; and if salary earners are excluded, one out of every four income-tax payers is a rural money lender. We think it would be advantageous if such a review could be made periodically in the annual report of that department.

369. The conclusions and recommendations in this chapter may be summarised as follows:—

1. No usufructuary mortgage of agricultural land should be permitted unless provision is made for automatic redemption within a fixed period of years, of which twenty should be the maximum (paragraph 353).
2. The risk of collusive evasion must be recognised, but education and the development of character are the only specifics against this (paragraph 353).
3. The question whether the restrictions on the operation of the Punjab Redemption of Mortgage Act might be removed should be considered (paragraph 354).
4. The question whether legislation in regard to the redemption of mortgages should be enacted in other provinces is commended to the consideration of other Local Governments (paragraph 354).
5. The desirability of extending the principle of statutory restriction on the alienation of land can only be measured in the light of local conditions (paragraph 355).
6. An enquiry should be made into the extent to which the hereditary cultivating class is being expropriated by those who do not themselves cultivate the land (paragraph 355).
7. Whether existing systems of tenure or tenancy laws operate in such a way to deter landlords from investing capital in the improvement of their lands, the subject should receive careful consideration with a view to the enactment of such amendments as may be calculated to remove the difficulties (paragraph 358).
8. Action to permit the establishment by landlords of home-farms appears specially necessary (paragraph 358).
9. The working of the Land Improvement Loans Act is, on the whole, satisfactory but steps should be taken to make landholders better acquainted with the facilities it offers (paragraph 359).
10. Part of the allotment under the Land Improvement Loans Act should be placed at the disposal of Land Mortgage Banks where these are firmly established, provided that steps are taken to ensure its utilisation on objects which fall within the scope of the Act (paragraph 359).
11. The working of the Agriculturists' Loans Act is, on the whole, satisfactory (paragraph 362).
12. Where loans under this Act granted directly to cultivators are remitted, the desirability of extending similar clemency to co-operative societies and their members should be carefully considered (paragraph 362).

13. The Agriculturists' Loans Act must remain on the Statute Book until the spread of thrift or of the co-operative movement or of both renders it obsolete (paragraph 362).

14. The greatest hope for the salvation of the rural masses from their crushing burden of debt lies in the growth and spread of a healthy and well organised co-operative movement and Local Governments, should, therefore, give that movement all the encouragement possible (paragraph 363).

15. Legislative measures to deal with the problem of indebtedness have proved a comparative failure (paragraph 364).

16. In all provinces, an enquiry should be made into the causes of the failure to utilise the Usurious Loans Act (paragraph 365).

17. A special report on the working of the Usurious Loans Act should be included in the annual reports on the administration of civil justice (paragraph 365).

18. If the provisions of that Act were fully utilised, this would go far to remove the worst evils of uncontrolled usury (paragraph 365).

19. The Punjab Money-lenders' Bill and the British Money-lenders Act of 1927 are commended to the consideration of Local Governments (paragraph 366).

20. The case for a simple Rural Insolvency Act should be carefully considered in all provinces (paragraph 367).

21. Conciliation bodies might be tried in certain areas (paragraph 367).

22. Where the indebtedness of the rural population is very heavy, and it is difficult in insolvency cases to find suitable persons to act as receivers, officials should be appointed for this duty (paragraph 367).

23. The position of the money-lender should be periodically reviewed by the Income-tax Department (paragraph 368).

The Madras Debt Conciliation Act (XI of 1936).

[29th February, 1936; 5th April, 1936.]

An Act to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness.

WHEREAS it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title, extent and commencement. **1.** (1) This Act may be called
THE MADRAS DEBT CONCILIATION
ACT, 1936.

(2) It extends to the whole of the Presidency of Madras.

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

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

(a) 'landholder' means a person holding land under a Sanad-i-Milkiyat-i-istimrar, a zamindar, shrotriyamdar, jagirdar or inamdar, a person farming the land revenue under Government, and a holder of

any land under ryotwari settlement or in any way subject to the payment of revenue direct to Government;

(b) 'tenant' means a ryot having a permanent right of occupancy in his holding and includes a kanomdar in Malabar and a 'Mulgeni' tenant in South Kanara;

(c) 'agriculture' includes horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, sericulture and the growing of fruits, vegetables and the like;

(d) 'board' means a Debt Conciliation Board established under sub-section (1) of section 3;

(e) 'creditor' means a person to whom a debt is owing and includes a co-operative society;

(f) 'debt' means all liabilities owing to a creditor, in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, rent as defined in the Madras Estates Land Act, 1908, or any money for the recovery of which a suit is barred by limitation;

(g) 'debtor' means a person—

(i) who earns his livelihood mainly by agriculture or who is an occupancy tenant or landholder whether he cultivates the land personally or otherwise: and

(ii) whose debts exceed one hundred rupees;

(h) 'prescribed' means prescribed by rules made under this Act;

(i) 'secured debt' includes mortgage debt or any debt for which there is security, lien or charge on immovable property created by deed, statute or otherwise;

(j) 'secured creditor' means a creditor who holds for his debt a security by way of mortgage, lien or charge on immovable property created by a deed, statute or otherwise.

NOTES.

S. 2 (a) 'LANDHOLDER'.—The definition of the term has been taken from the Madras Revenue Recovery Act (II of 1864).

Sanad-i-Milkiyat-i-istimrar.—This is a deed of permanent property granted by the British Government to a Zamindar or proprietor of land under S. 3 of The Madras Permanent Settlement Regulation (XXV of 1802), and in which the conditions and articles of the tenure are entered. The forms of these Sanads have been slightly varied from time to time. As to the forms of Sanads issued before 1870, between 1870 and 1903, in 1904, and from 1905, see Boards Standing Orders, Vol. II, Appx. XLIV.

S. 2 (b) 'TENANT'.—The definition of this term would apparently exclude cultivators of private lands in estates, and tenants under ryotwari landholders, as it requires of a tenant to possess a permanent right of occupancy in his holding. This definition has been adopted from the Madras Estates Land Act.

S. 2 (c) 'AGRICULTURE'.—The definition of this term is wider in scope than that contained in the Madras Estates Land Act which states merely "Agriculture, with its grammatical variations and cognate expressions shall include horticulture." It was pointed out by *Reilly, J.*, in 54 M. 900=1931 M. 659=61 M.L.J. 648, that the term 'agriculture' cannot be defined by the nature of the products cultivated but should be defined rather by the circumstances in which the cultivation is carried on; and it was held that casuarina plantation was not for an agricultural purpose. The definition in this section will include such plantation also.

S. 2 (f) "RECOVERABLE AS AN ARREAR OF LAND REVENUE."—There are several enactments in which provision is made for the realization of amounts payable by persons under them as an arrear of land revenue, *e.g.*, see S. 19, The Madras Survey and Boundaries Act (VIII of 1923). Such amounts would not fall under the definition of 'debts' in this Act.

"RENT AS DEFINED IN THE MADRAS ESTATES LAND ACT, 1908."—The definition of the term 'rent' in Madras Estates Land Act, S. 3 (11) is as follows:—"Rent" means whatever is lawfully payable in money or in kind or in both to a landholder by a ryot

for the use or occupation of land for the purpose of agriculture and includes whatever is lawfully payable on account of water supplied by the landholder or taken without his permission for cultivation of land where the charge for water has not been consolidated with the charge for the use or occupation of the land. For the purposes of Ss. 5, 27, 28, 59 to 72, 77 to 135, 136, 145 to 148, 165, 210 and 211 and the Schedule, rent includes also (a) any local tax, cess, fee or sum lawfully payable to a landholder by a ryot as such in addition to the rent due according to law or usage having the force of law and also money recoverable under any enactment for the time being in force as if it was rent; and (b) sums lawfully payable to a landholder by a ryot as such on account of pasturage fees and fishery rents.

'Rent' was not excluded from the definition of 'debt' either in the original Bill or in the Bill as it emanated from the Select Committee. The Government introduced the exclusion by proposing an amendment to that effect and by having it successfully carried out. The main grounds that were urged for this exclusion were, that there was no distinction in principle between the land revenue due to the Government and the rent due to the Zamindars; that it would be illogical to exclude land revenue without excluding rent; that it would be difficult for the Zamindars to pay the *peshkush* due to the Government if any obstacles should be placed in the way of their realizing the rents due to them; and that if at all any restrictions are required to be placed in the matter of rent, the proper course would be to have some suitable provision introduced in the Madras Estates Land Act, 1908, which was mainly enacted to regulate the relationship and dealings between tenants and landlords in Estates. The proposal of the Government was strenuously opposed, on the grounds, *viz.*, that there is no distinction in principle between the arrears of rent due to the Zamindar and the debt due to any Sowcar; that in either case it is on account of the extraordinary fall in the price of agricultural products, that the rents as well as debts have fallen into arrears; that if rent should be excluded from the category of debt, the Act would be made practically inapplicable to all the Zamindari tenants who number very many and who deserve the benefits of this Act; and that in any event it would not seriously harm the Zamindars, inasmuch as rent would come under the category of 'secured debt' in respect of which considerable freedom of action has been reserved to the creditor under this Act. Ultimately, the amendment was carried.

'RENT'.—"This term would include also any arrears of rent whether it is in the shape of mere rent or of a decree". (See *Proceedings in Council*).

S. 2 (g) (i) 'WHETHER HE CULTIVATES THE LANDS PERSONALLY OR OTHERWISE'.—An amendment was sought to be introduced for excluding these words from the definition, but it failed. It was pointed out in support of the amendment that the original Bill was designed to bring relief to real agriculturists, *i.e.*, to persons who are occupancy tenants or landowners who are cultivating the lands personally, and that the character of the Bill was completely altered by the Select Committee so as to relieve any debtor worthy or not; that these words would bring under the scope of the Bill, even cases where one Zamindar has lent to another Zamindar any large sum such as Rs. 50,000, and that could not evidently be the object of the Act. It was argued on behalf of the opposition that there were a large number of ryotwari landholders who lease out their lands, and also a large number of Zamindars having very slender incomes, and that these were practically in no better circumstances than pure agriculturists, and that they would be excluded from the benefit of this Act if the amendment should be carried out. Eventually, the amendment was lost.

S. 2 (g) (ii) 'ONE HUNDRED RUPEES'.—An amendment was sought to be introduced for reducing the amount to Rs. 10. The object of the amendment was explained to be for enabling small debtors also to have the benefit of this Act. On the other hand it was pointed out that it would be increasing the work of the Board enormously and that it would not be of any practical advantage either to the debtor or the creditor in respect of such petty sums to be appearing before the Board several times to have their assets and liabilities proved before it, and to involve themselves to all the inevitable trouble and delay likely to be caused in the proceedings before the Board. The proposed amendment was ultimately withdrawn.

S. 2 (i) 'ON IMMOVABLE PROPERTY'.—These words were not in the original Bill. They were subsequently introduced by way of amendment, so as to make it clear that lien or charge on movable property as in the case of pledge of jewels, etc., should not fall under the term 'secured debt.'

3. (1) The Provincial Government may establish a Debt Conciliation Board for any district or part of a district. Such board shall consist of a chairman and two members appointed by the Government. The chairman shall be a person who holds or has held an office not lower in rank than that of a Subordinate Judge or a Deputy Collector. One at least

Establishment and constitution of boards.

of the members shall be a non-official. The Provincial Government may, for reasons to be recorded in writing, cancel the appointment of the chairman or any member of the board or dissolve any board and from the date of such dissolution the board shall cease to exist.

(2) The chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

(3) A board shall have such quorum as may be prescribed.

(4) Where the chairman and members of a board are unable to agree, the opinion of the majority shall prevail. Where the board is equally divided, the chairman shall have a casting vote.

(5) When a board is dissolved or otherwise ceases to exist, the Provincial Government may, at any time, establish another board for the area for which the former board was established and may declare the board newly established to be the successor in office of the board which has ceased to exist and such board shall exercise all the powers under the Act.

NOTES

LEGISLATIVE CHANGES.—For the word 'Local' in sub-ss. (1) and (5), the word 'Provincial' was substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

S. 3 (1) "WHO HOLDS OR HAS HELD AN OFFICE NOT LOWER IN RANK THAN A SUBORDINATE JUDGE OR A DEPUTY COLLECTOR".—The object of the Act is that the Chairman of the Board should be some person who holds or has held a high rank in Government service. Where the services of any retired Subordinate Judge or retired Deputy Collector could be procured, the policy of the Act is to have him appointed as an honorary chairman or as a chairman on a small allowance. Preference would be given to officers who have had judicial experience, for it may be necessary in certain cases to shut out irrelevant evidence or to allow conflicting evidence that may be brought in, for instance, false documents may be created and one of the par-

ties may contend that the documents are *bona fide* and the other party may contend that they are not. In such cases the presence of a judicial officer may be necessary in the Board to appreciate the contentions of the parties. The words 'who holds' have been inserted so as to make provision for cases where such retired officials are not procurable in respect of any particular Board.

Sub-S. (3) The quorum necessary for the transaction of business at a meeting of a Board shall be two, of whom one shall be the chairman. (*Vide* R. 3 noted in Appx. A.)

Sub-S. (4) As to the procedure to be adopted when the chairman may be a party or personally interested in any application before the Board, *see* R. 4 noted in Appx. A.

4. (1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no board has been established for that local area, to the board established for any local area in which he holds immovable property, if any, but he shall not apply to more than one board.

(2) Unless the debtor has already made an application under sub-section (1), any of his creditors may make an application to a board to which the debtor might have applied under that sub-section.

(3) If applications for the settlement of the debts of the same debtor are made to more than one board, such applications shall, in accordance with rules made under this Act, be transferred to and dealt with by one board as one single application.

NOTES.

The application should be in writing and in the form noted in Appendix I to the Rules. (*See* Appx. A.) It should be presented either in person by the applicant or by an agent duly authorized by him in writing at the office of the Board during office hours, either to the chairman or in his absence to the persons authorized by him to receive it on his behalf. Every application shall be stamped with a court-fee stamp of the value of twelve annas. (*Vide* Rules noted in Appx. A.)

5. Every application to the board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

Verification of application.

NOTES.

The provisions of the Civil Procedure Code relating to the signing and verification of plaints are as follow:—

CIVIL PROCEDURE CODE, O. VI, R. 14.—“Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.”

CIVIL PROCEDURE CODE, O. VI, R. 15.—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.”

6. (1) Every application made by a debtor to a board shall contain the following particulars, namely:—

(a) a statement that the debtor is unable to pay his debts;

(b) the place where he resides;

(c) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to or can by the exercise of reasonable care and diligence be ascertained by him; and

(d) particulars of the debtor's property, both movable and immovable (including claims due to him), a specification of the value thereof and of the

places where the same may be found and details of any mortgage, lien or charge subsisting thereon.

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

(a) the place where the debtor resides; and

(b) the amount and particulars of his claim against such debtor.

7. The application shall be rejected if it does not comply with any of the requirements mentioned in sections 5 and 6.

Rejection of application.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

NOTES.

Cf. Civil Procedure Code, O. VII, Rr. 11 and 13 relating to rejection of plaint, and reservation of right to present a fresh plaint in respect of the same cause of action.

8. (1) On receipt of an application under section 4 the board shall unless it rejects the application under section 7 pass an order fixing a date and place for hearing the application.

Procedure on application.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtors and creditors.

(3) If the application is made by a creditor, the debtor shall, on his appearance, furnish the particulars mentioned in sub-section (1) of section 6 and notice shall be sent to all the creditors specified by him.

NOTES.

As to form of notice, *see* Appx. I to the Rules. (*Vide* Appx. A.)

9. An application under section 4 may be dismissed by the board at any stage of the proceedings—

Dismissal of application.

(a) if, for reasons to be stated in writing, the board does not consider it desirable or practicable to effect a settlement of debts; or

(b) if, in the opinion of the board, the applicant fails to pursue his application with due diligence:

Provided that, when such applicant is a creditor, the board, instead of dismissing such application, may substitute the debtor or any other creditor, who shall thereafter be deemed to be the applicant for the purposes of this Act; or

(c) if the application includes a claim which, in the opinion of the board, is collusive and intended to defraud any creditor.

10. (1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying claims and shall be submitted to the board within two months from the date of service or publication of the notice as the case may be:

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

(2) Subject to the provisions of sub-section (3) every debt of which a statement is not submitted to the board in compliance with the provisions of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged.

(3) If a creditor proves to the satisfaction of the board or a civil court that the notice was not

served on him or that he had no knowledge of the publication thereof or that for some other sufficient reason, he was unable to submit the statement, the board or court may revive the debt, if the creditor files an application in that behalf within two months after he becomes aware of the proceedings taken under this section:

Provided that a creditor shall not be entitled to apply under this sub-section to the board and to a civil court simultaneously or to apply to either the board or a civil court after having applied to the other.

NOTES.

As to form of notices, *see* Appx. I to the Rules. (*Vide* Appx. A.) As to service of notices to creditors and other necessary publications thereof, *see* R. 14. (*Vide* Appx. A.)

11. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 10 shall furnish, along with such statement full particulars of all such debts and shall at the same time produce all documents, including entries in books of account on which he relies to support his claims, together with a true copy of every such document.

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

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1) the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him for the recovery of the debt:

Provided the board or the court shall have power to excuse for valid reasons any default or delay in producing the document and to grant reasonable time for producing the same in any proceeding pending before it.

NOTES.

Cl. (3)—‘FOR THE RECOVERY OF THE DEBT.’—These words have been inserted by an amendment, with a view to make it clear that the exclusion of the documents should be only with reference to suits *filed for the recovery of the debt*, and not with reference to suits where the question relating to the debt may be a mere collateral issue, or where the question may have no direct bearing at all on the suit (*e.g.*, an inheritance suit) where the documents may be necessary to be produced as collateral evidence.

PROVISO:—‘THE BOARD OR THE COURT’.—Power is given not only to the Board but also to the Court to permit documents being produced later, when there are valid reasons for such late production. Under the original Bill, provision was made only for the Board to grant such permission, but the power was extended to the Court also by way of an amendment.

Power of board to decide dispute as to the existence or amount of debts or assets.

12. (1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

(2) If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor the board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board:

Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

NOTES.

The proceedings of the Board shall be recorded in English. The Board may examine any party or any other person supposed to be acquainted with the matter under inquiry, and the chairman should reduce into writing the substance of such examination, and these shall form part of the records along with the written statements filed by the parties. (Rules 10 to 12, *Vide* Appx. A.)

13. (1) Subject to rules made under this Act, a board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a civil court by the Code of Civil Procedure, 1908.

(2) Any person present may be required by a board to furnish any information or to produce any document then and there in his possession or power.

NOTES.

As to manner of issuing summons and the agency for their service, as to the modes of service, as to procedure to be followed when witness summoned is a public officer or servant of a Railway Company or local authority, as to examination of witness by a person deputed by the Board when the witness is unable to attend before the Board owing to sickness or infirmity; and as to the process fees and subsistence allowed to be paid for summoning witnesses. (*See* rr. 15 to 20, *Vide* rules under the Act.

As to powers of Court under the C. P. Code connected with

(a) summoning of parties, *see* O. VIII, C. P. Code.

(b) summoning of witnesses, *see* O. XVI, C. P. Code.

(c) examining parties and witnesses, *see* O. XVIII, C. P. Code.

(d) production of documents, *see* O. XIII, C. P. Code.

14. (1) If the creditors to whom more than fifty per cent. of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which, the assets from which and the times at which, they are to be paid. Such agreement if considered equitable by the board shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties who have agreed to the amicable settlement:

Provided that, when a co-operative society is one of such creditors no settlement, in so far as it

affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies:

Provided further that when a secured creditor does not agree to the settlement, such settlement shall not affect his rights to proceed against the secured property.

(2) An agreement made under sub-section (1) shall, within thirty days from the date of the making thereof, be registered under the Indian Registration Act, 1908, by the chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a Civil Court and be executable as such.

(3) For the purpose of the registration of an agreement under sub-section (2), the chairman of the board shall be deemed to be an officer of the Government empowered to execute such agreement within the meaning of section 88 of the Indian Registration Act, 1908.

(4) If, after the making of an agreement under sub-section (1), any debt is revived by the board or a civil court under sub-section (3) of section 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled; the application under section 4 shall be deemed to have been received in the office of the board on the date of such revival, and all the provisions of this Act shall apply in respect of the application accordingly.

NOTES.

The stamp duty on an agreement drawn up under sub-s. (2) should be paid by the debtor, and the registration charges should be paid by the creditors in proportion to the compounded debt of each of them. If any creditor commits default in paying his share, the same may be recovered from him as an arrear of land revenue. (*See R. 21, Vide Rules under the Act.*)

“CREDITORS TO WHOM IS OWING.”—For the application of the section majority in the number of creditors is not essential and all that is necessary is that the total amount of the debts owing to the creditors who agree to a settlement should be

more than 50 per cent. of the total amount of the entire debts of the debtor. The original percentage fixed in the Bill was 50 per cent. and it was changed to "not less than 40 per cent." by the Select Committee. Several amendments were proposed in the Council some to reduce the percentage and some to increase the percentage, but finally "more than 50 per cent." was carried.

"PAYABLE TO SUCH CREDITORS."—This section does not authorize the Board either to determine the exact amounts payable to the other creditors who do not agree to the settlement or to make any binding order as to the manner in which, the assets from which and the times at which they are to be paid. The record and registration of the settlement is only with reference to the creditors who have agreed to the settlement, and it would be binding only on them and not on the other creditors. Where the agreement is recorded and registered, it has the effect of a decree of a Civil Court and becomes executable as such. Some amendments were sought to be introduced so as to enable the Board to make such agreement binding on all the creditors, inclusive of those who have not joined in the agreement, and to have the amounts due to such creditors also calculated on the same principle as those which were applied to the creditors who were parties to the agreement. These amendments were after a thorough discussion thrown out as introducing an element of compulsion which would be quite foreign to the object and scope of this enactment.

"IF CONSIDERED EQUITABLE BY THE BOARD."—The Board is given discretion to accept or not the agreement arrived at by the creditors to whom more than 50 per cent. of the debtor's debts is due; and it will be accepted only when it would be equitable to do so.

SECURED CREDITOR—'SUCH SETTLEMENT SHALL NOT AFFECT HIS RIGHTS TO PROCEED AGAINST THE SECURED PROPERTY'.—An amendment was brought to substitute for the 2nd clause of the proviso the following—"Provided further that when a secured creditor does not agree to the settlement he shall be entitled to proceed against the secured property only to the extent calculated on the basis of the value of the said property on the date of the issue of the loan.

Explanation.—The value of the property referred to above may be determined by rules framed by the Local Government under this Act." This amendment was not accepted chiefly on the ground that it would be against the provisions of Ss. 58, 67, 68 and 70-A of the T. P. Act, which is a Central Act and which could not be altered by any Provincial Legislature under S. 80-A sub-s. (3), Government of India Act, 1935.

15. In any scheme of debt conciliation under this Act such properties as are exempt from attachment under the Code of Civil Procedure, 1908, shall not be taken into account and shall be left to the judgment-debtor free from any liability for his debts.

Properties exempt from attachment not to be taken into account.

NOTES.

'PROPERTIES AS ARE EXEMPT FROM ATTACHMENT UNDER C.P. CODE, 1908'.—As to such properties, see Ss. 60 and 61, C. P. Code, 1908.

16. In any scheme of debt conciliation under this Act, no creditor shall be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal and if the debt was incurred before the first day of June, 1933, twice the amount due on the said date.

Maximum amount allowable in satisfaction of a debt.

NOTES.

'SHALL BE ALLOWED'.—"When the creditor puts his application before the Debt Conciliation Board or sends in his statement, if he has lent Rs. 100 and if the interest should come to Rs. 125 his total claim is Rs. 225. I have a doubt whether the Conciliation Board will disallow the extra 25 at the initial stage itself or take into consideration the whole amount till the award is made. If the principle is accepted that the total debt to be paid should not be more than twice the principal amount, it should be made clear how it will be worked out in practice. The word 'allowed' leads to some doubtful interpretation" (*Proceedings in Council.*)

'TWICE THE AMOUNT OF THE PRINCIPAL'.—This section introduces the rule of *damdupat* in respect of matters before the Board. An amendment was sought to be introduced to the effect that in any suit for debt brought after the commencement of this Act, no Court should pass a decree for a larger sum than twice the amount of the principal; but this was not accepted as this Act and the legislature could deal only with the procedure of the Board and could not lawfully regulate the procedure of law Courts in suits.

Also another amendment was sought to be introduced to the effect that in cases where any debt was renewed, the amount of the renewed debt should be the amount of the principal. This amendment also was not carried out, on the ground

that such an amendment would be subversive of the very object of the Bill to afford relief to debtors, that what would be done is that every six months there will be a renewed pro-note and interest will be added on to the principal, and the result will be that the rule which is supposed to apply to the benefit of the debtor will apply only to his detriment as every creditor will try to take new pro-notes.

17. If no amicable settlement is arrived at under sub-section (1) of section 14 within twelve months from the date of the application under section 4, the board shall dismiss the application.

Power of board to dismiss application.

18. (1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed in respect of the debts owed by him to such creditor.

Grant of certificate in respect of certain debts.

The board, in coming to a decision whether the offer made is fair or not, may take into consideration—

- (i) the fall or rise in the value of land and its produce, in the locality;
- (ii) the amount of consideration actually received;
- (iii) the reasonableness of the rates of interest;
- (iv) the onerous conditions, if any, subject to which the loan was granted;
- (v) whether at any time, the creditor or the debtor was offered settlement of the debt in full or part and if so what the terms were; and
- (vi) any other particulars which the board thinks it desirable to take into account.

(2) Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at 6 per cent. per annum on the principal amount due on the date of such certificate.

(3) Where after the registration of an agreement under sub-section (2) of section 14, any unsecured creditor sues for the recovery of a debt (other than a debt incurred subsequent to such agreement) in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, not be executed as against the assets, if any, set apart in the agreement for the satisfaction of the agreed debts until all amounts recorded as payable under such agreement have been paid.

NOTES.

The provision in this sub-s. (2) applies both to secured and unsecured creditors, and also the latter clause of sub-s. (3).

As to the computation of the period of limitation for any proceeding suspended under this sub-section, *see* S. 27, *infra*.

19. No civil court shall entertain—

- (a) any suit in respect of—
- (1) any matter pending before a board, or
 - (2) the validity of any procedure or the legality of any agreement made under this Act, or
 - (3) the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of section 14 from any person who, as a debtor, was party to such agreement; or

(4) the recovery of any debt which has been deemed to have been duly discharged under sub-section (2) of section 10, except a debt which is revived under sub-section (3) of that section; or

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 18.

NOTES.

'CIVIL COURT'—'SUIT'.—This section has not debarred expressly proceedings in Insolvency Courts; and it is doubtful whether insolvency proceedings could not be started by or against any debtor in respect of matters pending before a Board, and whether any determination of the Board would be binding on the Insolvency Court.

20. Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a board under section 4 and until the agreement registered in pursuance of such application has been fully carried out shall be voidable by order of the board on application by the creditors so defeated or delayed.

Avoidance of certain transfers of debtor's property.

NOTES.

Cf., Transfer of Property Act, Ss. 52 and 53; Provincial Insolvency Act, Ss. 53 and 54; Presidency Towns Insolvency Act, Ss. 55 and 56. This section introduces something in the nature of the provision in the Transfer of Property Act relating to *lis pendens*. Transfer of Property Act will apply only where immovable properties are in suit, and in this Act, it is the *persons* that come and *not property*, and hence the Transfer of Property Act would not apply. So, this provision has become necessary. (*Diwan Bahadur T. A. Ramalinga Chettiar's Speech in Council.*) This section is for the purpose of this Act alone. It will not affect the Transfer of Property Act nor the Provincial or the Presidency Towns Insolvency Act. This has been intended only for the purpose of removing difficulties that may arise in the course of the proceedings before the Board. For instance, if a debtor should, while the proceedings are pending before the Board, transfer his properties and thereby create difficulties for the Board in its attempt to settle the debt and make arrangements for its discharge, this clause will apply. (*The Hon. Sir K. V. Reddi Nayudu's Speech in Council.*)

21. Any alienation of land for a fair price made with the sanction of the board in pursuance of or to carry out the agreement mentioned in section 14 shall not be considered as a fraudulent preference under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, nor shall such alienation be voidable under section 53 of the Transfer of Property Act, 1882.

Alienation made with sanction of board not to be considered as a fraudulent preference.

NOTES.

Reference is to S. 54, Provincial Insolvency Act, and S. 56, Presidency Towns Insolvency Act.

Three things are essential for the operation of this section *viz*:—

- (i) Fair price,
- (ii) Sanction of the Board,
- (iii) In pursuance of or to carry out the agreement settled.

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

Bar of appeal or revision.

23. A board may, on application from any person interested made within ninety days of the passing of an order, or on its own motion at any time review any order passed by it and pass such order in reference thereto as it thinks fit:

Power of board to review its order.

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

24. In any proceedings before a board any party may appear in person or with the permission of the board by a legal practitioner or an agent authorized in writing.

Appearance of parties before board.

NOTES.

‘WITH THE PERMISSION OF THE BOARD’.—For the appearance of any legal practitioner or an agent authorized in writing

on behalf of any party in the proceedings before the Board, the permission of the Board is necessary. There was a great deal of debate as to whether legal practitioners should be allowed at all to appear on behalf of any party in respect of proceedings before the Board. The chief arguments that ultimately weighed with the Council were, that it may be possible that one of the parties in the proceedings before the Board may happen to be a legal practitioner and that in that case the other party may be possibly handicapped very much if legal assistance should be denied to him; and that some complicated points of law or intricacies in respect of facts may arise, and the Board itself may feel the necessity for legal assistance. With a view to provide for such cases, this section has provided for the qualified appearance of legal practitioners.

25. When an application has been made to a board under section 4, any suit or other proceedings then pending before a civil court in respect of any debt for the settlement of which application has been made shall not be proceeded with until the board has dismissed the application.

Stay of pending suits or other proceedings.

NOTES,

"OTHER PROCEEDINGS."—Whether this term will include insolvency proceedings also? Possibly not.

26. Where in the course of an enquiry into an application made under section 4 a board finds that there is any sum owing to Government on account of loans advanced under the Agriculturists' Loans Act, 1884, or the Land Improvements Loans Act, 1883, or otherwise, the board shall report this fact to the Collector.

Report by board regarding sums due to Government.

27. (1) In calculating the period of limitation for any suit filed in, or proceedings before, a civil court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings were pending as well as the time taken for the obtaining of certified copies of the order of the board shall be excluded.

Computation of period of limitation for suits and proceedings.

(2) The period during which proceedings under this Act have been pending including the actual period fixed in the agreement for payment of all the debts shall, in all suits filed or proceedings taken, in civil courts to recover debts, be excluded from computation under section 48 of the Code of Civil Procedure, 1908, or under the Indian Limitation Act, 1908.

NOTES.

CL. (1).—*Cf.* Ss. 12 and 14, Limitation Act, 1908. This sub-s. (1) refers only to debts which are the subject-matter of any proceedings under this Act.

Cr. (2).—This sub-s. (2) was introduced by an amendment proposed in the Council. The reason for this sub-section as been explained by the mover as follows:—

“The scope of sub-cl. (3) of Cl. 15 [*See* S. 18 (3)]. covers only two classes of debts. The first is the case of a debt other than the debt incurred subsequent to such agreement. The second kind of debt is that incurred after the date of the agreement. These are the two classes of debts: The first class covers the debt for which certificate has been granted under sub-s. (1). The second includes the case in which no certificate is required. Therefore, the two classes of debts covered by sub-cl. (3) of cl. 15 are entirely different from the debt referred to in Cl. 23 [S. 27 (1)]. The debt referred to in Cl. 23 [S. 27 (1)] is a debt which is the subject-matter of any proceedings under this Act. Therefore, the house will clearly see that debts of three classes are contemplated when we take sub-cl. (3) of cl. 15 [S. 18 (3)] along with cl. 23 [S. 27 (1)]. These are the three classes of debts referred to. In the case of all these three classes of debts, there is room for recovering them through Civil Courts. Therefore I want to put in a comprehensive provision covering the cases of all three classes of debts for the purpose of this legislation. (*Mr. G. Rameswara Rao's Speech in Council.*)

Members of the board deemed to be public servants. **28.** The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code.

29. (1) The [Provincial Government] may make rules to carry out all or any of the purposes of this Act and not inconsistent therewith.
Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules—

(a) with reference to all matters expressly required or allowed by this Act to be prescribed;

(b) regulating the procedure before a board;

(c) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;

(d) prescribing the records to be kept and the returns to be made by a board;

(e) prescribing the allowances, if any, to be paid to the chairman and members of a board;

(f) regulating the power of a board to summon parties and witnesses and the production of documents under section 13 and the grant of expenses to witnesses; and

(g) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 14.

(3) All rules made under this Act shall be subject to the condition of the rules being made after previous publication.

(4) In making any rule, the [Provincial Government] may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and in case of a continuing breach with fine which may extend to ten rupees for every day during which the breach continues after the first breach.

NOTES.

LEGISLATIVE CHANGES.—For the words “Local Government” the words “Provincial Government” has been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

The Madras Debt Conciliation Rules.

Rules framed by the Government under the Act.

In exercise of the powers conferred by section 29 of the Madras Debt Conciliation Act, 1936 (Madras Act XI of 1936), the Governor of Council is hereby pleased to make the following rules:—

RULES.

1. (1) These rules may be called the Madras Debt Conciliation Rules, 1937.

(2) These shall come into force on the 1st January, 1937.

2. In these rules,—

(a) "the Act," means the Madras Debt Conciliation Act, 1936 (Madras Act XI of 1936);

(b) "Board" means a Board established under the Act;

(c) "Collector" means the Collector of the District within whose jurisdiction the Board is established; and

(d) "Section" means a section of the Act.

3. (1) The quorum necessary for the transaction of business at a meeting of a Board shall be two, of whom one shall be the Chairman.

(2) The Chairman shall preside at every meeting of the Board and shall regulate the course of all business.

4. (1) If any member of a Board other than the Chairman is a party to, or personally interested in, any application before the Board, he shall withdraw from the Board during the hearing of such application and shall take no part in its determination.

(2) If the Chairman is a party to, or personally interested in, any application before the Board, the Chairman shall report such fact to the Board of Revenue through the Collector of the District if there is only one Board in the District or if there is more than one Board to the Collector concerned, and the Board of Revenue or the Collector, as the case may be, shall transfer the application to another Board for disposal.

5. (1) The headquarters of a Board shall be the headquarters of the officer who is its Chairman, or if the Chairman is a non-official, such place as may be fixed by the Board of Revenue.

(2) The Board shall ordinarily sit for the transaction of its business at its headquarters, but may sit at such other place as may be fixed by its Chairman. The Chairman shall fix the time for each meeting. In fixing the place and time for meetings, the Chairman shall have regard to the convenience of the Board and of the parties.

(3) The Board may adjourn its proceedings as may be deemed desirable for the proper transaction of its business.

6. Application under section 4, notices under sections 8 and 10 and certificates under section 18 shall be in such of the forms in Appendix 1 to these rules as may be applicable.

7. Every application under the Act shall be presented at the office of the Board, during office hours, by the applicant in person or by an agent

authorised by him in writing, to the Chairman or, during his absence, to the persons authorised by the Chairman to receive such application on his behalf.

8. If applications for the settlement of the debts of the same debtor are made to more than one Board, the Collector of the District, if the Boards are within a District, and the Board of Revenue, if they are in different districts, shall call for the applications from the different Boards and decide which Board can most conveniently deal with all such applications, and transfer for disposal by such Board all such applications presented to the other Boards.

Pending such decision by the Collector of the District or the Board of Revenue, as the case may be, no further proceedings shall be taken in respect of the applications by any of the Boards.

9. Every application under section 4 shall be stamped with a court-fee stamp of the value of twelve annas.

10. The proceedings of the Board shall be recorded in English.

11. In making an enquiry under Act, the Board may examine orally any party, or any other person supposed to be acquainted with the matter under enquiry or any fact relevant thereto, and the Chairman shall reduce to writing the substance of such examination.

Such party or other person shall be bound to answer truly all questions relating to such matter or fact put to him by the Board other than questions the answers to which would expose him to a criminal charge or to a penalty or forfeiture.

12. The written statements filed by parties and the substance of the examination of parties and other persons, reduced to writing under rule 11, shall form part of the record.

13. All certificates granted by the Board shall be signed by the Chairman and shall be dated and sealed with the seal of the Board.

14. A copy of the notice under sub-section (1) of section 10 shall be served on each known creditor. A copy shall also be posted on the notice board of the Collector's office, of the taluk office in each of the taluks where the debtor has property and of the office of the Board.

A copy shall also be posted in a conspicuous place in the village where the debtor ordinarily resides and in each of the villages, in which any immovable property, in which the debtor has any saleable interest, is situated.

15. Every summons issued under the Act shall be in writing and shall require the person summoned to appear at a stated time and place and shall specify whether his attendance is required for the purpose of giving evidence, or to produce a document, or for both purposes, and any particular document, the production of which is required, shall be precisely specified.

16. Any person summoned merely to produce a document shall be deemed to have complied with the summons, if he causes such document to be produced, without attending personally to produce the same.

17. (1) The service of summons under the Act on any person may be effected—

(a) by giving or tendering it to such person; or

(b) if such person is not found, by leaving it at his last known place of abode or business, or by giving or tendering it to some adult member of his family or his authorised agent; or

(c) if the address of such person is known to the Board, by sending it to him by post registered; or

(d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business.

(2) When the serving officer delivers or tenders a copy of the summons to the person concerned personally or to an agent or other person on his behalf, such officer shall require the person to whom the copy is delivered or tendered to sign an acknowledgment of service endorsed on the original summons.

(3) The serving officer shall, in all cases in which the summons has been served, add or cause to be added to the original summons an endorsement or annexure stating the date when, and the manner in which, the summons was served and the name and address of the person (if any) identifying the person served, or his place of abode or business and witnessing the delivery, posting or tender of the summons.

(4) All processes issued by the Board shall be served through the agency of the revenue establishment.

18. When the person whose evidence is required is unable, from sickness or infirmity, to attend before the Board issuing the summons, or is a person whom by reason of rank or sex, it may not be proper to summon, the Board issuing the summons may, of its own motion or on the application of the person whose evidence is required, dispense with his appearance, and order him to be examined by a person deputed by the Board for the purpose.

19. Where the person whose attendance is required is a public officer, or is the servant of a Railway Company or local authority, the officer issuing the summons may, if it appears that the summons may be most conveniently so served, send it by registered post pre-paid for acknowledgment for service on the person whose attendance is required, to the head of the office in which he is employed together with a copy to be retained by that person.

20. (1) A party who desires the attendance of a witness either to give evidence or produce a document shall deposit with the Board—

(a) in court-fees stamps, process-fees in accordance with the scales prescribed in the Civil Rules of Practice and Circular Orders; and

(b) in cash, allowances for travelling to and attending at Court in accordance with the scales laid down in rule 50 of the Civil Rules of Practice and Circular Orders.

(2) If the party required to make such deposits fails to do so within 15 days from the date of his application for the issue of process such application shall be dismissed. But he may within one month of such dismissal apply to have the dismissal set aside and the Board may in its discretion restore the application and deal with it.

(3) When the Board causes the attendance of a witness of its own motion and not at the instance of a party, the Board shall pass such orders as it thinks fit as to the payment of expenses to the witness and as to the party or parties by whom such expenses are to be borne.

21. (1) The stamp duty on an agreement drawn up under sub-section (2) of section 14 shall be paid by the debtor.

(2) The cost of registering the agreement shall be paid by the creditors who are parties to it, the amount payable by each creditor being proportionate to the compounded debt stated to be payable to him under the agreement. If any creditor commits default in paying his share of such cost it shall be recoverable from him as an arrear of land revenue.

22. Every application for a copy shall be addressed to the Chairman. The rules regarding grant of certified copies in Order No. 173 of the Standing Orders of the Board of Revenue as for the time being in force shall be followed in granting copies of the records maintained by a Board.

23. (1) The following registers and books shall be maintained by a Board:—

- (a) Register of applications.
- (b) Register of certificates.
- (c) (i) Process register.
(ii) Nominal Roster of Process Servers.
- (d) Diet-money register.
- (e) Register of copy applications.
- (f) Receipt book (in duplicate foils).
- (g) Register of contingent expenditure.
- (h) Cash book.
- (i) Remittance register.

These registers and books shall be maintained in the forms prescribed in Appendix II to these rules.

(2) After the close of each calendar year, the registers and books specified in sub-rule (1), after the entries relating to pending cases have been transcribed into new registers and books, and the records relating to completed proceedings of cases shall be transferred—

(a) if the headquarters of the Board is at the district headquarters to the office of the Collector; and

(b) in other cases, to the office of the Revenue Divisional Officer, within whose jurisdiction the headquarters of the Board is situated.

(3) The registers, books and records aforesaid shall be preserved for the periods specified below against each:—

- (a) Registers and book—6 years.
- (b) Records relating to cases—
 - (i) dismissed under section 9—2 years.
 - (ii) dismissed under section 17—2 years.

(iii) in which certificates have been granted under section 18 (1)—20 years; and

(iv) which have resulted in an agreement—3 years after the date of payment of the last instalment.

24. Each Board shall submit through the Collector to the Board of Revenue, a monthly progress return in Form No. VI in Appendix I to these rules.

25. Each Board shall submit not later than the 1st August every year to the Collector for submission to the Board of Revenue, an annual report on the working of the Act during the previous Fasli year. Such report shall indicate—

- (i) progress of work and results achieved;
- (ii) difficulties experienced in working the Act;
- (iii) amendments, if any, that appear to be necessary to the Act or the rules; and

(iv) such statistics or other information as may be prescribed from time to time, by the Board of Revenue.

26. The Chairman or a member of the Board, if a non-official, shall be entitled to draw travelling allowance for any journey performed by him in connection with his duties as such Chairman or member at the following rates:—

Journeys by rail—One second-class and one third-class fare.

Journeys by road—Annas four a mile.

Daily allowance for halts—Rupees three and annas eight.

The drawal of allowances will be subject to the conditions laid down in Part III of the Manual of Special Pay and Allowances.

27. The Chairman or a member of a Board, if an official, shall be entitled to draw for any journey travelling allowance and halting allowance at rates to which he would be entitled by virtue of his official position.

28. The Collector shall be the controlling officer empowered to countersign the travelling allowance bills of the Chairman and members of a Board.

29. The Local Government may provide for each Board such ministerial and menial staff as it may from time to time require, and may regulate the conditions of their employment and fix the salaries and allowances payable to them.

30. In all administrative matters the Board shall be subordinate to the Collector who shall be subject to the control of the Board of Revenue and the Local Government. The Collector shall appoint, punish and generally control the staff of the Board, but may, with the concurrence of the Board of Revenue, delegate to the Chairman of a Board such of his powers under this rule except that of appointment, as he may see fit. But the Chairman of the Board, shall be competent to appoint and punish the menial establishment.

31. The Collector shall inspect the Board's records at least once a year, but he may inspect them more frequently if he sees fit to do so. He shall submit a report to the Board of Revenue on the results of such inspection, once a year.

32. In every case in which a debtor or a creditor is a minor, or a person of unsound mind, the procedure laid down in Order 32 of the First Schedule to the Code of Civil Procedure, 1908, shall be applied.

APPENDIX I.

(Referred to in rules 6 and 24.)

FORM NO. I.

Form of application to be made by a debtor under section 4 (1) of the Madras Debt Conciliation Act, 1936.

To

The Debt Conciliation Board,

.....taluk,.....district.

Under section 4 (1) of the Madras Debt Conciliation Act, 1936, I....., son of....., caste, resident oftaluk, beg to apply for settlement of my debts.

2. The amount and particulars of all claims against me are as follows:—

Name, residence and full address of the creditor.	Amount of debt.	Particulars of debts including date of commencement, rate of interest, whether secured, and if so, how, etc.
(1)	(2)	(3)

Total ..

3. I hereby declare, that I am unable to pay the debts owed by me as shown above, and that I have not made any application to any other board.

4. The amount and particulars of my property including claims due to me are as follows:—

(1) Immovable property.

Specification of property, with boundaries where necessary.	Name of village with survey numbers owned.	Description of field—ryot-wari, inam estate ryoti, etc., with classification as wet, dry or garden.	Extent and assessment or rent.	Income derived.	Market value.	Details of any mortgage lien or charge subsisting thereon.	Remarks.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Lands, Houses.							

(2) Movable, including cash—

Description, and the place where they are kept.	Value.	Details of any mortgage lien or charge subsisting thereon.
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(3) Claims due—

Name and address of debtor.	Amount due.	Particulars of debts including date of commencement, rate of interest, whether secured and if so, how, etc.	Nature of the document evidencing the claim and in whose possession.
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.....
Signature of the applicant.

118 THE MADRAS DEBT CONCILIATION ACT, 1936.

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.

.....
Signature of the applicant.

FORM NO. II.

Form of application to be made by a creditor, under section 4 (2) of the Madras Debt Conciliation Act, 1936.

To

The Debt Conciliation Board,
.....taluk,district.

Under section 4 (2) of the Madras Debt Conciliation Act, 1936, I....., son of....., caste, resident of..... taluk beg to apply for the settlement of my claims against who is my debtor I declare that I have not made any application to any other board in respect of these claims.

2. The particulars required by section 6 of the Act are as follows :—

Name, residence and full address of the creditor.	Name and full address of the debtor against whom the creditor has claims.	The amount of claims due to the creditor.	Particulars of the claims including the date of commencement, rate of interest, whether secured and if so, how.

Total ..

.....
Signature of the applicant,

Verified that the contents of the application are true upon the personal knowledge of the undersigned.

.....
Signature of the applicant.

FORM NO. III.

Form of notice to creditors of debtor under section $\frac{8(2)}{8(3)}$ of the Madras Debt Conciliation Act, 1936.

Notice is hereby given to.....that an application under section $\frac{4(1)}{4(2)}$ of the aforesaid Act has been submitted for the settlement of the debts of..... and will be examined by the Board together with any objections that may be pre-

THE MADRAS DEBT CONCILIATION ACT, 1936. 119

ferred by any person interested at at..... o'clock on
theday of.....193

Dated the of 193 .

(Seal of the Board.)

.....
Signature of the Chairman,
Debt Conciliation Board
or
some other person authorized in this behalf
District.

FORM NO. IV.

Form of notice under section 10 (1) of the Madras Debt Conciliation
Act, 1936.

Whereas....., son of....., caste.....of taluk.....
debtor has submitted an application under section 4 of the aforesaid Act for the
creditor
settlement of the debts of....., son of....., caste..... of.....
taluk.

Whereas the Board is of the opinion that it is desirable to attempt to effect a
settlement between the said debtor and his creditors, you as one of the creditors
all the creditors
to whom the said debtor is indebted are hereby required to submit to the Board a
statement in writing on or before the.....at the Board's office at.....
of all debts owed to you by the said debtor.
them

The Board will scrutinize this statement at 11 a.m. on.....day
.....when you should appear before the Board.

You
2. are also required to furnish along with such statement
All the creditors
full particulars of all such debts and shall at the same time produce all documents
including entries in books of account on which you rely to support your claims,
they their
together with a true copy of every such document.

Attention is invited to section 10 (2) of the said Act under which every debt of
which a statement is not submitted to the Board in compliance with this notice
shall be deemed for all purposes, and all occasions, to have been duly discharged.

Attention is also invited to section 11 (3) of the said Act, under which if any
document which is in your possession or under your control is not produced by you
the document will not be admissible in evidence against the debtor in any suit
brought by you or by any person claiming under you for the recovery of the debt.

120 THE MADRAS DEBT CONCILIATION ACT, 1936.

The settlement in this case will take place at.....at 11 a.m. on the day of
.....193.....when you should appear before the Board.

Dated the.....day of.....193 .

.....

(Seal of the Board.) Signature of the Chairman,
Debt Concilliation Board

or

some other person authorized in this behalf.

District.

FORM NO. V.

Form of certificate under section 18 (1) of the Madras Debt Conciliation
Act, 1936.

This is to certify that during proceedings No.of.....under the
Madras Debt Conciliation Act, 1936, between (debtor) on one hand and.....
.....of.....(creditor) on the other hand, for the settle-
ment of an alleged debt of Rs.the said creditor
has, in our opinion, refused a fair offer of settlement made by the said debtor,
which the said creditor ought reasonably to have accepted.

2. The following particulars of the debt were furnished by the said creditor
under section 10 (1) of the Act.

(Here enter particulars.)

Dated.....the.....day of.....193 .

.....

(Seal of the Board.)

Signature of the Chairman,

Debt Conciliation Board.

District.

FORM NO. VI.

(Referred to in rule 24.)

D-16

Monthly progress return for the month of.....193....of the Debt Conciliation Boardtaluk.....district

	Cases pending at the beginning of the month.	Cases registered during the month.	Cases disposed of during the month.				Cases pending at close of month.	Number of certificates issued under section 18 (1).	Number of day on which the Board sat during the month.	Cases pending for six months and more with reasons for the pendency in each case.
			Dismissed under section 9.	Agreements executed under section 14 (2).	Cases in which agreement has ceased to subsist.	Cases dismissed under section 17.				
(1)	Number.									
(2)	Amount involved.									
(3)	Number.									
(4)	Amount involved.									
(5)	Number.									
(6)	Amount involved.									
(7)	Number.									
(8)	Amount.									
(9)	Amount due to those who agree.									
(10)	Amount in agreement.									
(11)	Number.									
(12)	Original.									
(13)	As compounded.									
(14)	Number.									
(15)	Amount.									
(16)	Number.									
(17)	Amount.									
(18)	Number of cases.									
(19)	Number of certificates.									
(20)	Amount due to creditor against whom certificate is granted.									
(21)	Number of day on which the Board sat during the month.									
(22)	Cases pending for six months and more with reasons for the pendency in each case.									

APPENDIX II.

(Referred to in rule 23).

(a)

Form of Register of applications.

Serial number.	Date of application.	Whether the application is by the debtor or by the creditor.	Name and residence of the debtor.	Name and residence of the creditor.	Purport of the application.	Number and date of order.	How disposed of.	
							Substance of order.	Remarks.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

(b)

Register of certificates.

Serial number.	Date.	Name of debtor.	Name of creditor or creditors.	Number and date of proceedings in which certificate was granted.

(c) (1)

Process Register.

(1)	(2)	(3)	Number of		Witness batta, etc.		(8)	Retrun of proces ses with un- expended ba tta		(11)	(12)
			Originals.	Copied with copies of ap- plications.	Name of depositor.	Amount.		Date.	Amount.		
									RS. A. P.		

(c) (ii)

Nominal Roiler of Process Servers.

(1)	Number of proceeding.
(2)	Nature of process,
(3)	Name of village.
(4)	Distance in miles.
(5)	Despatched (date).
(6)	Returnable (date).
(7)	Returned (date.)
(8)	Batta for witness, etc.
(9)	Signature of process server.
(10)	Unexpended batta, etc., refunded.
(11)	Chief Ministerial Officer's initials.
(12)	Manner of service.
	Explanation of the process server for delay, if any.

(d)

Debt money registers.

(1)	Date.
(2)	Number of the case.
(3)	Name of the party.
(4)	Opening balance.
(5)	Amount of deposit.
(6)	Total of columns (4) and 5.)
(7)	Amount paid to witnesses
(8)	Amount refunded to parties,
(9)	Signature or mark of witness or party.
(10)	Total of columns (7) and (8).
(11)	Closing balance, <i>i.e.</i> , difference between columns (6) and (10).
(12)	Initials of the head of the office.
(13)	Remarks.

(1)	Petition number.
(2)	Date of receipt.
(3)	Name and address of the applicant.
(4)	Description of record copy of which is required.
(5)	Number and value of court-fee stamps affixed to the application for search for the records.
(6)	Orders of the head of office as to whether copies may be granted or not with date of order.
(7)	Total number of words to be copied.
(8)	Total number of "three-anna" stamp papers required at 175 words a paper or the amount of fees payable in cash.
(9)	Date on which information of the (a) number of stamped papers required, or (b) the fee to be paid or (c) the postage labels required or (d) the search fee required was given to the applicant.
(10)	(a) Number of stamped papers, or (b) amount of cash or (c) postage labels deposited, with the initials of the head ministerial officer and date.
(11)	Name of copyist to whom they were handed over for copying and his initials in token of receipt.
(12)	When copy was ready.
(13)	Name of examiner and the date on which the copy was examined with his initials.
(14)	When copy delivered or sent by post or destroyed.
(15)	Signature of applicant when delivered in person.
(16)	Signatures of the copyist and examiner in token of having received the fee paid in cash.
(17)	Number of stamped papers copied and compared and number returned unused with initials of the head ministerial officer and date in each case.
(18)	Remarks (here enter the month in which each item is billed for, with initials of the head ministerial officer and date).

(2)
 Returns of copy applications.

(f)
Receipt book.

In the office of the Debt Conciliation Board of
 RECEIVED THIS day of 193 from son of
 the sum of Rs. being

Chairman.

(g)
Register of contingent expenditure.

(1) Date.	(2) To whom paid. Appropriation to each head.	(3) Number of sub vouchers. contingent abstract.	(4) Sub-head and detailed account heads. Subdivisions of sub-heads and detailed account heads as may be convenient. If the appropriation be not ordinarily allotted among the sub-divisions of a sub-head or detailed account head they should be linked by a brace and the amount placed below. Each of these spaces represents a money column.	(5) Sub-head and detailed account head. Subdivisions of sub heads and detailed account heads.	(6) Description. Amount.		(7) Total of each contingent abstract.	(8) Total of each month's bill.	(9) Date of detailed bill.	(10) Date of admission with initials.	(11) Remarks.

RS. A . P.

(A)
Cash Book.

Dr. Debt Conciliation Board of Year.					Cr.				
Date.	Folio in ledger.	Heading of item.	Details of item.	Amount.	Date.	Folio in ledger.	Heading of item.	Details of item.	Amount.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
				RS. A. P.					RS. A. P.

(f)
Remittance register.
CHALAN.

No. CHALAN.
To Debt Conciliation Board of
The Officer in charge
of the Treasury at
Received Rs. from
to the account
No. of
193 on the file of this Board.
Dated 193 .
Initials of the Chairman of the Board.

To Debt Conciliation Board of
The Officer in charge
of the Treasury at
You are requested to receive the
sum of Rs. from
and credit the same
to the account of
No. of 193 on the file
of this Board.
Dated 193 .
Signature of the Chairman of the Board.

No. CHALAN.
Treasury office.
RECEIVED this
day of
and entered as No. of
in the register of Civil Court's
Deposit of the sum of Rs. from
to the credit of the
account of
No. of 193 on
the file of the Debt Conciliation Board of
Dated 193 .
Signature of the Officer in charge
of the Treasury.

THE

Madras Agriculturists Relief Act, 1938.

History of the Legislation.

The Madras Moratorium Bill (1937).—At first the Government wanted to pass a Moratorium Act and introduced a Bill to that effect. The object of that Bill was to give temporary relief to indebted agriculturists in this Province pending the formulation of comprehensive measures for dealing with the problem of their indebtedness.

Provisions of the Bill.—“The Bill was to remain in force only for one year; but power was proposed to be taken to extend it for another year if necessary.

The intention was to give relief to agriculturists who had a saleable right in agricultural land situated in the Province and who derived not less than three-fourths of their annual income from such land. Relief was proposed to be confined to agriculturists, whose liabilities under the heads land-revenue, rents and taxes and cesses payable to local authorities did not exceed four hundred rupees per annum.

The Bill was not to apply to certain classes of debts, for example, revenue due to Government, income-tax, loans granted by Government and loans granted by a co-operative society, land mortgage bank, or joint stock bank. Nor was relief to be given in respect of rent which was payable after 30th June 1935.

After the Bill should come into force and so long as it should remain in operation, no suit or proceeding could be instituted against an agriculturist and all pending suits and proceedings should be stayed.

It was also made clear that an agriculturist should not be entitled to transfer any immovable property so as to defeat the rights of his creditors. Special provision had also been made for giving relief to persons the major portion of whose assets consisted of debts due from agriculturists and which could not be recovered while this Bill should remain in operation. In such cases, the Court was empowered to give to such persons the same relief as was given to an agriculturist by this Bill or such, smaller measure of relief as the Court considered sufficient.

Provision had been made for the setting up, if necessary, of an authority to dispose of matters arising out of the provisions of the Bill and to make and issue declarations on the application of agriculturists or their creditors.

Power had also been taken to make rules for the jurisdiction and conduct of proceedings taken before any such authority or authorities and also generally to carry into effect the provisions of the Bill and to remove any difficulties which may be experienced in its working". (*Statement of Objects and Reasons*).

On the publication of this Bill in the Local Official Gazette, it was subjected to very severe criticism from various persons and public bodies, from several points of view, on the merits of which it is not necessary now to enter.

Suffice it to say that the Government, after reconsideration of the measure in all its aspects, decided not to proceed with the Moratorium Bill, but immediately to introduce the contemplated measure of relief as a substantive enactment.

Agriculturists' Debt Relief Bill.—Object of the Bill—This new measure was published in the *Fort St. George Gazette* on the 1st December, 1937. The object of the Bill and its scope were explained as follows in the Statement of Objects and Reasons;

"The object of the Bill is to rehabilitate agriculture which is the basic industry of this Province. Directly or indirectly, the prosperity of all sections of the people is dependent upon the economic well-being of the agriculturist. His present deplorable plight is well known. While, on the one hand, his income has diminished, on the other, the interest upon his debt has been steadily accumulating, often at an unconscionable rate. The predominant feature of the distress is due to the burden of debt. It is the duty of any modern Government which is alive to its responsibilities to the people to relieve the producers of the people's food from such an intolerable burden. It would not be right for the State to permit the hereditary skill of the agriculturist to pass into unemployment, allowing land to fall into the hands of people who are strangers to the calling of agriculture. Conciliation and other voluntary methods have failed and the adoption of the principle of compulsion has become necessary.

The Bill provides that payment of the outstanding principal should discharge the debt. Interest will run from 1st October, 1937, at a rate not exceeding 6 per cent. per annum. In cases where high rates of interest are charged, payment of twice the principal is to have the effect of completely discharging the debtor from further liability. As far as possible persons following occupations other than agriculture have been excluded from the benefit of the Bill. Dues to Government and local bodies and to co-operative and certain joint-stock banks have also been excluded from its scope. Every endeavour has been made in

drafting the Bill to simplify the issues and make them easy of decision, thus minimising litigation.

The Bill also provides for the relief of tenants from the burden of old arrears of rent without encouraging default in the payment of current dues.

Numerous complaints have been received that owing to the expectation of legislation on these lines, creditors have had recourse to coercive processes causing great distress among agriculturists, and it is therefore proposed to give the benefit of the measure to debtors proceeded against since 1st October, 1937".

The provisions of this Bill were subjected to even greater criticism than those of the Moratorium Bill. A joint select committee of both houses were appointed on the 21st December, 1937 to consider the Bill in the light of public criticism.

Report of the Joint Select Committee.—The following are extracts from the Report of the Joint Select Committee:—

"The Committee has noted the various suggestions for improvement that have been made in the numerous memoranda submitted to it and in the light of those suggestions and of other criticisms which have been made, it has subjected the provisions of the Bill to a thorough scrutiny; and as a result thereof, has made many amendments therein.

The Bill as introduced had provided that in all cases, interest should run only from the 1st October, 1937 at a rate not exceeding 6 per cent per annum. The Committee has come to the conclusion that a distinction should be made between debts incurred during the pre-depression period when the value of money was very much less than now and debts incurred after the depression became acute. In the case of the former, a greater extent of scaling down is considered justifiable than in the case of the latter. It has accordingly limited the provisions which had been made in the Bill for the wiping out of arrears of interest, only to debts incurred before 1st October, 1932. As regards debts incurred on or after 1st October, 1932, the Committee thinks that the welfare of debtors would be sufficiently met by reducing the rate of interest to 5 per cent in all cases where it is higher than 5 per cent. Where a debt incurred after 1st October, 1932 is found to be wholly or in part a renewal of a debt incurred prior to that date, that debt or any part of it which may constitute such renewal will be dealt with as a debt incurred before 1st October, 1932. What has been compendiously described as the *damdupat* principle has been retained. In view of the proposal for the reduction of interest, in the case of debts incurred subsequent to the 1st October, 1932, the invok-

ing of that principle is unnecessary in respect of such debts and has therefore been expressly provided for only in the case of debts incurred prior to 1st October, 1932. The Committee considers that these provisions which it has made for the scaling down of old and new debts will go a great length to meeting the objection which had been raised to the provision in the Bill as introduced, for the wiping out of all interest on all debts outstanding on the 1st October, 1937.

The Committee has also exempted from the operation of this Act any debt or debts due to a woman who is entirely dependent on such debt or debts for her maintenance, and has accordingly included the following additional item in clause 4 of the Bill, *viz.* :—

“any debt or debts due to a woman on the 1st October 1937 who on that date did not own any other property, provided that the principal amount of the debt or debts did not exceed rupees three thousand.”

It has provided that in calculating the value of the property owned by the woman on the 1st October, 1937, the house in which she lived or any furniture therein or her household utensils, wearing apparel, jewellery or such like personal belongings, should not be taken into account.

The Committee has also exempted any wages due to an agricultural labourer or other rural labourer from the operation of the Act.

The Bill had provided that to obtain exemption from this Act, a company registered in British India or in an Indian State should have had on its register on the 1st October, 1937 at least 500 members. This provision did not apply to foreign companies, and the Committee has removed the distinction. In view of the provision in the revised Bill in favour of debts incurred after the 1st October, 1932, the Committee felt that there was no need to accept the suggestion made to extend the exemption to companies with smaller membership.

Another major change made by the Select Committee in the Bill is in regard to rents. Much apprehension was felt in certain quarters that the wiping off of arrears of rent would encourage the tenants to allow rent to fall into arrears even in the future. In order to remove this apprehension the Bill had provided that relief in respect of arrears should depend upon prompt payment of current dues. The Committee has strengthened this position by making the payment of the rent for fasli 1347 before 30th September, 1938 a condition precedent to the grant to a tenant of the relief from arrears of old rent. It is only where after paying the rent for fasli 1347 on or before 30th September, 1938, the tenant also pays the rent for fasli

1346 on or before the 30th September 1939, that he obtains a full discharge in respect of all arrears of rent accrued for previous faslis. If, having paid the rent for fasli 1347 on or before 30th September, 1938, he makes default in payment of the rent for fasli 1346, on or before 30th September, 1939, or pays only a portion of such rent on or before that date, he gets relief in respect of arrears for prior faslis only in proportion to the share of rent for faslis 1346 and 1347 paid by him. These provisions while helping the landholder to collect current dues are calculated to save the tenant against his own neglect. Mr. G. Krishna Rau strongly pressed that in any case the arrears for falsi 1345 should not be written off. But the Committee after carefully considering the position decided that there would be no practical relief given to a tenant if the burden of three faslis were left unrelieved and that there would be no incentive for the payment of current dues, if he was still to be left so heavily indebted.

The Committee has also provided that where a landholder has paid the tenant's share of the land-cess under the Madras Local Boards Act, 1920, he would be entitled to recover the same. It has also provided that in cases where a landholder has already obtained a decree against his tenant for the rent due to him for fasli 1345 and prior faslis, he can recover the whole of the costs awarded to him by such decree.

As a corollary to the abovementioned provisions, the Committee has provided that any payment of rent made by a tenant after the commencement of this Act shall be credited first towards the rent due by him for fasli 1347 and then towards the rent due by him for fasli 1346 and not towards any rent due for any prior fasli. It has also made a provision enabling the tenant to deposit the rent due by him into court and to ask the court to cancel his liability for the arrears of rent for previous faslis or to fix the extent of his liability under the provisions of this Bill.

The Committee has provided that the period of limitation for suits for the recovery of rent for fasli 1345 and prior faslis should be extended by three months from the dates allowed for the payment of the rents for faslis 1347 and 1346 as those dates would determine the tenant's liability for such arrears."

Bill explained.—In presenting the Report of the Joint Select Committee to the Assembly, the Prime Minister said that the measure was in some form or other before the country for four months. The Bill itself was before the country for two months and the measure as amended by the Select Committee for nearly a month. All sections of the House were represented on the Committee. "On the whole, I do not think," the Prime Minister said, "I am

overstating the case, if I say that the report carries with it a considerable amount of unanimity of opinion of the members that formed the Joint Select Committee. The changes made have been set out in the report. The major one is worthy of elucidation once again. The debts in respect of which relief is sought to be given, have been divided into two groups, firstly those incurred before the depression period and secondly those incurred after the depression period. The first set of debtors are treated in the manner in which they had been treated in the original Bill; that is to say, the modified form of Damdupat continues to apply. If a debtor has paid twice the amount of the principal he had borrowed in substance, he is said to be discharged, and if he has done that to a lesser extent, he has to give only the difference in order to get a discharge. In the other cases the principal is due, but the interest is wiped out. The second class of debtors are treated in a different way in the amended Bill. Five per cent. interest is charged instead of the higher rates that might have been charged in the original obligation; all payments made are given credit; and for the debt to be discharged, only the residue is to be paid. This is a major difference between the original Bill and the Bill as it has emerged from the Committee. There have also been other alterations, and some of them are very important. The revised Bill also deals with banks that were excepted."

"With regard to rent," the Premier continued, "the position even in the original Bill was that a tenant, if he is to claim the benefits of the measure in respect of arrears, was bound to pay the dues for the current fasli and the previous fasli. The Bill made it necessary for the tenant to be prompt in respect of the payment of the current rent. The Select Committee strengthened this position a little further. One more step has been taken and that is the provision making it necessary that the arrears for the current fasli 1347 should be paid before 30th September next in order that the tenant might be entitled to the benefits of this Bill."

The Prime Minister, proceeding, said that this was done to create a new psychology and to prevent the continuation of an attitude of falling into arrears year after year. It was felt by the framers of the Bill that this would enable the landlords to have better tenants and the tenants a better living. "The insistence on payment of current dues is beneficial to all parties concerned. This practice, if it is not prevailing now, is due not only to the poverty of the people to a great extent, but also due to a desperate untidiness brought about by the burden of previous arrears, which makes them feel that, as they have no means of escape from them, they might not worry about the present". It was with that object that the write-off was proposed. It would

be beneficial in the long run to the tenants and the landlords. The present change strengthened the position further by the making of a beginning absolutely necessary within a tangibly near time, namely, before 30th September, 1938. Much apprehension was felt, and it was used also as an argument, that probably the measure would lead to a tendency not to pay dues to the landlord and thus lead to a difficult situation. The policy behind the provision proposed in the Select Committee must be sufficient to dispel the apprehensions in that direction."

THE Madras Agriculturists Relief Act, 1938.

An Act to provide for the relief of indebted agriculturists in the Province of Madras.

WHEREAS it is expedient to provide for the relief of indebted agriculturists in the Province of Madras; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called THE
MADRAS AGRICULTURISTS RELIEF
Act, 1938.

NOTES.

Construction of the Act.—Where the provisions of the Act are clear and free from any doubt there is no necessity for interpretation. Where there is any possibility of doubt as to the intention of the legislature, the question would arise, as to whether a strict or liberal interpretation has to be adopted. Viewed as a piece of beneficial legislation to help the basic industry of the country, the Act has to receive the most liberal construction. But, there is another point of view that may be taken of this Act. It is a measure that seriously interferes with the contractual obligations of the parties. It affects the free flow of economic forces of supply and demand, especially in respect of monetary transactions. It curtails credit and interferes with banking facilities of the people. Viewed from this standpoint, it should receive a strict, rather than a liberal, construction. In this connection it may also be noted that the relief granted by this enactment is proposed to be given only once (*Vide Proceedings in Council*), i.e., it is intended to be an extreme measure, from which money lenders in other Provinces may take a lesson of restraint in dealing with the agricultural population.* Viewed from this point also, the Act should receive a strict construction.

* When, during the passage of the Bill in the Legislative Assembly, it was pointed out that in Bombay, where legislation was introduced more recently for the same purpose of helping agriculturists, the Government were content with providing for conciliation of debts, and not for wholesale cancellation of all past interest, the Premier replied that the introduction of compulsion in this Presidency would help to make conciliation a success in Bombay. The Premier seemed to think that the idea as to how far the Government was prepared to go in support of agriculturists, would make

The right course for the courts to adopt would be to give the language of each section its full significance, at the same time, not forgetting the spirit of the legislation and the tendency of the times.

Act if ultra vires.—A point was raised during the discussion of this Bill both in the Assembly and the council as to whether it was within the powers of the Provincial Legislature to pass this enactment.*

money lenders cautious in their transactions with them. He thought that this Act was an exceptional piece of legislation intended to serve as an object lesson to other provinces to show the extreme length to which Government would go to help the agriculturists of this country.

*The following extracts from the Proceedings in Council may be referred to in this connection:—Mr. T. T. Krishnamachari said that the subject had been included in the schedule of Federal subjects. He was aware that the Provincial Government had power to deal with matters relating to regulation of interest. But, the real point was whether questions relating to money-lending and money-lenders came within the provincial sphere. The subject was predominantly Federal in scope. If there was over-lapping in respect of such questions, the matter must be definitely decided by Federal legislation. He would like to specially emphasise the question of limiting interest. Whether this was really within the scope of provincial legislation was a matter which should be investigated outside. To the same effect the Rt. Hon. Srinivasa Sastriar said there were in the Bill subjects which were exclusively federal, exclusively provincial and those which were within the jurisdiction of both federal and provincial spheres. Under the class exclusively federal, there were cheques, bills of exchange, etc., that is, banking. Among the exclusively provincial subjects were land, agricultural loans and money-lending. It was stated in the transitional rules that when there was overlapping in respect of any matter between the provincial and the federal legislature, the latter's voice prevailed. They had in this Bill much overlapping in the topics treated. They had got the whole of the subject of banking and the subject of negotiable instruments and corporations falling under the Federal heading. To meet these objections the Premier replied "that the contention that banking was excluded from the Provincial list was clear enough, and he did not wish to enter into any discussion as to what such exclusion meant. He only wished to say that the Federal list did not cover legislation for relief of agriculturists in regard to their debts. This Bill was not the first measure of its kind dealing with the difficulties of agriculturists and the inclusion of "banking" in the Central list was not done to cover cases like the present ones at all. If it were so, it would be something like saying that criminal procedure covered all penal legislation. Procedure was something different from the substance of law. The material difficulties of agriculturists in the provinces could not be legislated upon by the Federal Legislature even if it was memorialised to do so."

"Even if members entertain doubts in the matter," the Premier said, "they should not give the benefit of such doubts in constitutional matters to the other side. I think it is proper and I have the right to ask of all members of the House, that they should try as far as possible to push forward our boundaries rather than push them back. I want the co-operation of all members of the House and of all sections of the House in that process". Therefore it was, the Prime Minister said, that he deprecated points of order being raised, which, when elaborated on without any definite conclusion being reached, merely helped those outside the province, instead of the province. (Proceedings in the Assembly and Council.)

BILL RESERVED FOR ASSENT OF THE VICEROY.—"This Bill was reserved for the consideration of the Viceroy. The reason for this reservation is that it is an essential requirement under the new Government of India Act. Section 107 of the Government of India Act provides that where a provincial law with respect to any of the matters enumerated in the Concurrent Legislative list contains provisions repugnant to an Act of the Central Legislature, on that matter, the Act of the Central Legislature will prevail, and the provincial law will to the extent of the repugnancy be void.

If, on the other hand, such an Act passed by a provincial legislature is reserved for the consideration of the Governor-General and has, thereafter, received the Governor-General's assent, the section provides that the provincial Act shall prevail in the province concerned; so that it is manifestly in the interests of the province that a Bill should be thus reserved.

The Governor-General's instructions for the transitional period lay down that in considering a Bill reserved on grounds of repugnancy, he shall take into account both the provincial and the All-India effects of its proposals, bearing in mind the necessity for keeping substantially unimpaired the uniformity of law which the Indian Codes have hitherto embodied.

By a number of its provisions, the Madras Debt Relief Bill affects civil rights and procedure on which the Central and Provincial legislatures have concurrent legislative powers.

Under Section 107 of the Government of India Act, this particular provincial legislation would not prevail in the Province against the existing law unless the Governor had taken action to reserve it for the consideration of the Governor-General. It is only by thus obtaining the assent of the Governor-General that the legislation of the Madras Legislature could be made effective.

The question, therefore, mainly at issue is, which of two sets of valid law shall, in respect of some of the provisions of the Debt Relief Bill, prevail. Reservation has thus been an essential constitutional requirement on which this legislation depends." The Viceroy has given his assent to the Bill.

Extent. **2.** It extends to the whole of the Province of Madras.

NOTES.

EXTENT OF THE OPERATION OF THE ACT.—The Act has been declared to extend to the whole of the Province of Madras.

Difficult questions may arise as to inter-provincial transactions. A transaction with an agriculturist may be entered into in this province, in respect of which, a part of the cause of action may arise in some District in the Bombay Presidency, and a suit is instituted in that province. What is the law to be applied? Conversely, an agriculturist in Bombay may be sued in Madras on a contract of loan entered into with a creditor in Madras. Would the defendant get the benefit of this Act? Such questions are not altogether free from difficulty. Whether the law of the province in which the person resides and carries on business prevails, or the law of the place where the court in which the suit is laid prevails, is a matter on which this Act affords no guidance. It would appear that each court is bound to apply its own laws irrespective of the parties that are brought before them. A citizen of Bombay sued in Madras would get the benefit of this Act, and conversely, it may be that an agriculturist of this province may not be able to obtain the protection of this Act, when sued in a court situate in another province, where a similar statutory relief is not provided for.

Definitions.

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

(i) 'person' means an individual and includes an undivided Hindu family, a marumakkattayam or aliyasantana tarwad or tavazhi, but does not include a body corporate, a charitable or religious institution or an unincorporated company or association;

(ii) 'agriculturist' means a person who

(a) has a saleable interest in any agricultural or horticultural land in the Province of Madras, not being land situated within a municipality or cantonment, which is assessed by the Provincial Government to land revenue (which shall be deemed to include peshkash and quit-rent), or which is held free of tax under a grant made, confirmed or recognized by Government; or

(b) holds an interest in such land under a landholder under the Madras Estates Land Act, 1908, as tenant, ryot or under-tenure holder; or

(c) holds an interest in such land, recognized in the Malabar Tenancy Act, 1929; or

(d) holds a lease of such land from any person specified in sub-clause (a), (b) or (c) or is a sub-lessee of such land:

Provided that a person shall not be deemed to be an 'agriculturist' if he—

(A) has in either of the two financial years ending 31st March, 1938 been assessed to income-tax under the Indian Income-tax Act, 1922, or under the income-tax laws of any Indian State or foreign Government; or

(B) has within the two years immediately preceding the 1st October, 1937 been assessed to profession-tax on a half-yearly income of more than three hundred rupees derived from a profession other than agriculture under the Madras District Municipalities Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in any other province in British India, any Indian State or any foreign State in India, or under the Madras Local Boards Act, 1920, in a panchayat which was a union before the 26th August, 1930; or

(C) has within the two years immediately preceding the 1st October, 1937, been assessed to property or house tax in respect of buildings or lands other than agricultural lands, under the Madras District Municipalities Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in any other province in British India or any Indian State, or under the Madras Local Boards Act, 1920, in a panchayat which was a union before the 26th August, 1930, provided that the aggregate annual rental value of such buildings and lands, whether let out or in the occupation of the owner, is not less than Rs. 600; or

(D) is a landholder of an estate under the Madras Estates Land Act, 1908, or of a share or portion thereof in respect of which estate, share or portion

any sum exceeding Rs. 500 is paid as peshkash or any sum exceeding Rs. 100 is paid as quit-rent, jodi, kattubadi, poruppu or the like, or is a janmi under the Malabar Tenancy Act, 1929, who pays any sum exceeding Rs. 500 as land revenue to the Provincial Government.

Explanation.—The annual rental value of any building or land for the purposes of proviso (C) shall—

(1) where the assessment is based on the annual rental value, be deemed to be such value;

(2) where the assessment is based on the capital value, be deemed to be five per cent. of the capital value; and

(3) in any other case, be deemed to be the value ascertained in the prescribed manner;

(iii) 'debt' means any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree or order of a civil or revenue court or otherwise, but does not include rent as defined in clause (iv) or '*Kanartham*' as defined in Section 3 (1) of the Malabar Tenancy Act, 1929;

(iv) 'rent' means rent as defined by the Madras Estates Land Act, 1908, or rent or Michavaram as defined by the Malabar Tenancy Act, 1929, or quit-rent, jodi, kattubadi, poruppu or the like, payable to the landholder of an estate as defined by the Madras Estates Land Act, 1908, whether a decree or order of a civil or revenue court has been obtained therefor or not, and includes interest payable thereon but does not include costs incurred in respect of the recovery thereof through a civil or revenue court or the share of the land cess recoverable by the landholder under section 88 of the Madras Local Boards Act, 1920; and

(v) 'creditor' includes his heirs, legal representatives and assigns.

NOTES.

S. 3 (i) "PERSON".—This is a special definition for the purpose of this Act. But for this special definition, the meaning given to the word in the General Clauses Act would prevail. The General Clauses Act defines "persons" as including "a company or association or body of individuals."

S. 3 (ii) "Agriculturist".—The definition of 'agriculturist' does not include within the term, any person who merely helps a land-holder, tenant or sub-tenant in cultivation either as a carpenter, blacksmith, barber or labourer and makes his living by such service.

Nor will the term include any mere agricultural labourer, who is not a 'tenant', although he may depend mainly upon the income from such labour.

AGRICULTURAL LABOURERS.—Amendments to include these persons also within the term 'agriculturist' were proposed and lost.

Replying to this point the Prime Minister said that it was time that he should, on behalf of the Government, say a few words on the point raised as to agricultural labourers who depended mainly on agriculture for their living. The only reason why no provision had been made for the relief of such classes of people from the burden of their debts, was that steps to be taken in connection with such relief were entirely different from the steps that could be taken in respect of the classes contemplated in this measure. It was difficult to bring together under one law the two classes of people. It was not as if the difficulties were not known or were not appreciated. It was not as if those people were not in need of relief in the opinion of the Government. They were in need of as much relief as the classes covered by the present Bill. Much could be done and much must be done for them. The Prime Minister said that he was in entire agreement with what the hon. the mover of the amendment had stated in regard to the condition of the agricultural labourers, but there were difficulties in bringing such classes under this Bill. It was very difficult, by any amendment of the present Bill, to bring within its purview, the agricultural labourers.

SUB-LESSEES OF LAND either directly from a lessee or from an intermediate lessee have been included by the Select Committee in the definition of 'agriculturist.'

No upper limit to Ryotwari land-holder.—Unlike in the case of landholders under the Estates Land Act and of Jenmis in Malabar with reference to whom upper monetary limits of rent have been fixed with a view to exclude such from the benefits of this Act, there is no upper limit fixed in the case of a ryotwari landholder. So whatever may be the

amount of land revenue payable by a ryotwari landholder, even when it is more than Rs. 500 per annum, he will be an 'agriculturist' within the meaning of this Act, and be entitled to its benefits. The only restrictions placed on ryotwari landholders in this Act are occupational and residential restrictions and not quantitative or monetary ones, and this has been so done with a view to avoid complications.

'SALEABLE INTEREST'.—A person may have a *valuable* interest in land without having a *saleable* interest, as in the case of a Hindu widow living on the income of family lands. The benefit of this Act may not apply to such cases.

"SALEABLE INTEREST IN LAND."—This would include the interest of a mortgagee. A mortgage is defined to be a transfer of an interest in specific immoveable property (*See* S. 58, T. P. Act). Hence a person who holds a mortgage over an agricultural land would be an agriculturist, although he is only a money lender, who holds the land as mere security for his money, and has never cultivated his lands and never intends to cultivate the same himself or through labour employed by him. As to what is or is not saleable interest in land, *see* Transfer of Property Act, 1882, S. 6.

"SALEABLE INTEREST"—*Benamidar and true owner.*—Suppose *A* is the owner of land and it stands in the name of *B* in the Revenue register; who is deemed to be an agriculturist under this section, the real owner *A*, or the benamidar *B*, or both? Under the general law the benamidar has no title to convey. It is the owner who has the right to convey any title to the property. But an amendment proposed in the Assembly to confine the term to "owners of property" was opposed by the Premier on the ground that if evidence was to be allowed as to the ownership of property, it would lead to unnecessary litigations. It would thus appear that in the intention of the Legislature the person whose name appears on the record should be deemed to be the agriculturist, whether or not he has any real interest in the property. Reference may also be made to sections 26 and 27 of the Act, which provide for furnishing information to creditors by District Collectors, Revenue Officers, Executive Officers of Municipalities and Local Boards as to payment of Income-tax, professional tax or house tax by their debtors. Provision is also made to the effect that such information given in the form of a memorandum or certificate shall be received as evidence of the facts stated therein. But it may be noted that the memorandum or certificate is not made *conclusive evidence*. It follows, therefore, that other evidence may be let in to show that the person mentioned in these documents as the assessee is

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not the real assessee but only a benamidar for the real owner. Again, S. 4 enacts that nothing in this Act affects debts and liabilities due to a woman on the 1st October, 1937. Would she get the benefit of this section if she is only a benamidar for another? or would she be entitled to the exemption under S. 4 if she is the real creditor, but the document stands in the name of a male relative? Such cases are not at all uncommon in this province, and it is difficult to ascertain what exactly was the intention of the Legislature—to give the benefit of the Act to the true owner or only the nominal owner. It would appear that the only right course to follow is to consider the real ownership as the criterion of having a "saleable interest". There is nothing in the Act to exclude evidence of real ownership.

"AGRICULTURAL OR HORTICULTURAL LAND".—For the definition of "Agriculture" and "Agricultural income" See also Income-tax Act, XI of 1922, S. 2. Use of land for *pasturage* is use for agricultural purpose. 2 R. 211=1924 R. 337; 1924 Cal. 668; so also *extracting toddy* from cocoanut trees, 50 M. 923. Lease of *fishery rights* on land covered with water is not agricultural purpose, nor the income therefrom agricultural income [See 63 M. L. J. 634. (F.B.)]; nor the process of letting sea water on land and extracting salt therefrom. 50 M. 204=53 M. L. J. 377 (F.B.); as to using land for quarrying purposes and getting income therefrom, see 25 A. L. J. 816=1927 All. 703.

"HORTICULTURE" is defined to mean the "cultivation of garden or orchard; the science and art of growing fruits, vegetables and flowers or ornamental plants". Horticulture is one of the main divisions of agriculture. (*Webster's Dict.*)

PERSON OWNING MERE HOUSE OR HOUSE SITE.—House or house site in a village would not come under "agricultural land" unless the site or backyard is used for raising crops, fruits, vegetables or any other kind of agricultural produce.

'NOT BEING SITUATED WITHIN A MUNICIPALITY OR CANTONMENT'.—The reason for the exclusion of these lands is not clear, as there is very little difference in status between the landholders in Municipalities and cantonments and in the villages. An amendment was proposed to delete these words, but was lost.

'LEASE'.—The lease may or may not be in writing. An amendment to restrict the clause to 'leases in writing' was proposed and lost. Sub-lessees and persons holding under such sub-lessees would also come under the definition. The words used are "sub-lessees of such land" not "sub-lessees under such lessee".

'WITHIN THE TWO YEARS'.—An amendment was proposed to substitute for these words 'four consecutive half-years' but it was lost.

'FOREIGN STATE IN INDIA'.—An amendment to delete the words 'in India' was proposed and lost.

An amendment for the deletion of the proviso (B) to the sub-clause (ii) was proposed but was not carried in the Assembly.

The Prime Minister, in opposing the amendment said that the deletion of this proviso would completely alter the character of the whole measure. It was possible to extend the relief to a large number of deserving people by amendments, but in order to extend relief to such persons, they should not do anything which would change the entire character of the Bill. The amendment would bring in for relief any man who had a little plot of land and also carried on a trade or paid profession tax. Liabilities arising out of purchases in shops and avocations in town would also be brought within the operation of the measure, which, he reminded the House, was not the object of the Bill.

'WITHIN THE TWO YEARS'.—An amendment to substitute 'within both the two years' was proposed and lost.

'ASSESSED TO PROPERTY OR HOUSE TAX'.—It is not necessary that the assessee should be the actual owner of the property or house in respect of which the assessment is levied. An amendment proposed to limit the exclusion to actual owners who may be assessed, was rejected on the ground that it would lead to unnecessary litigation if evidence was to be allowed as to ownership of property. [See also Notes under "Saleable Interest" supra.]

'UNDER THE DISTRICT MUNICIPALITIES ACT, ETC'.—It is only assessees under the several Acts mentioned in this clause that are excluded. An amendment was sought to be introduced to exclude such assessees in foreign countries *e.g.*, Ceylon and Burma, but the same was rejected on the grounds that such would be rare cases and that the introduction of this new element would complicate matters with regard to evidence.

LIMIT OF INCOME AND PROPERTY QUALIFICATION:—With regard to fixing the limit of income and property qualification, the Premier said, that if a pleader, an official or a shop-keeper who made Rs. 50 was brought within the benefit of the Bill, the consequences would be dangerous. It might be said that a man getting Rs. 49 would get the benefit of the measure and that there was not much difference between one who got Rs. 49 and another who got Rs. 50. Any line drawn anywhere would cover a few anomalies of that kind. Even at

the risk of some deserving cases not getting the benefit of the measure, it was, he said, safer to confine the relief to agriculturists only. To have a Rs. 50 standard was, he would submit, a fair method of distinguishing the class they sought to benefit from those whom they did not take into account in the Bill. As for the picture of misgovernment of municipal institutions (which resulted in unfair and incorrect valuations of property), he would protest against it and urge the House not to be carried away by it. On the whole, he would say that municipalities were well-governed and taxes were mostly properly levied. If there was anything wrong, he thought, it was that a large number of people got off without paying taxes. In order to save a few who were, according to some, taxed improperly, they should not spoil the whole scheme of the measure."

PROFESSION TAX.—See Madras Dist. Mun. Act, 1920, Ss. 93-97; Madras Local Boards Act, 1920, Ss. 93-97; Madras City Mun. Act Secs. 111-112.

PROPERTY OR HOUSE TAX.—See Madras Dist. Mun. Act, 1920, Ss. 81-91; Madras City Mun. Act, 1919, Ss. 99-109; Madras Local Boards Act, 1920, Ss. 99-103.

JENMI TENURE.—An amendment was moved for the deletion of the following words occurring in the proviso (D) :—

"or is a jenmi under the Malabar Tenancy Act, 1929, who pays any sum exceeding Rs. 500 as land revenue to the Provincial Government."

In support of this amendment it was claimed that this omission would place the jenmi on the same footing as the ryotwari landholder in reference to the measure. The *jenmam* tenure, was substantially the same as the ryotwari tenure, and there was no justification for a distinction being made to the prejudice of the *jenmi*.

The Prime Minister in opposing the amendment said that the Government would not go so far as the member wished, for, to do so would be to at once introduce a new policy altogether. In no sense of the term could the *jenmi* of Malabar be considered an "agriculturist". It might be that there were certain points of similarity between the *jenmi* and the ryotwari holders, but there were far more points of divergence between the two. "If the hon. member has any other Debt Relief Bill in reference to the *jenmam* tenure on the West Coast", the Prime Minister said, "the Government would give every consideration to such a measure."

Mr. R. M. Palat (the mover of the amendment) said that if the *jenmi* was not an "agriculturist" in the sense he did not cultivate his land, then many mirasdars of Tanjore and other

districts would also fall within that category. There were as many *jenmis* who cultivated their own lands as there were ryotwari holders doing so. *Jenmis* should not be made to suffer from the disadvantages of both the tenures without any of the benefits of either.

The Prime Minister said that the *jenmam* tenure had been separately treated all along. That was also the tradition of the House. There was a great deal of difference between *jenmis* and ryotwari holders. For instance, a *jenmi* could not evict his tenant as the ryotwari landholder could. The tenures being different, any measure of relief considered necessary in reference to the *jenmam* tenure should be the subject-matter of a separate Bill and not be brought in by way of an amendment to a clause of the Bill under consideration.

UPPER LIMIT FOR RYOTWARI PATTADARS.—The question of introducing an upper limit in the case of ryotwari pattadars, was brought up by means of an amendment to proviso (D) which excludes certain classes of estate landholders, inamdars and *jenmis* from the definition of an "agriculturist". Mr. Appadurai Pillai moved an amendment to limit the benefit of the Bill to ryotwari pattadars paying a land revenue not exceeding Rs. 250.

The Leader of the Opposition asked why relief was sought to be given to big mirasdar's whose large debts were incurred not necessarily for agricultural purposes.

The Premier contended that fixing a monetary limit would not serve the underlying purpose of the Bill. That was why, he said, the Government introduced a number of occupational and residential restrictions, in respect of which they were absolutely unwilling to agree even to the slightest amendments by way of liberalisation. To set up a monetary or quantitative limit would be to invite complications. The amendments were based on the notion that undeserving people were sought to be helped. That would not happen, the Premier assured the House, and declared that the provisos were so worded that relief would go only to deserving agriculturists.

It was contended that the Government had not made out a case for not providing an upper limit.

The Prime Minister, replying said that he admitted that this was an important amendment. At first sight, he said, the criticisms that had been levelled might look correct. But, instead of putting aside bigger landlords by having a monetary limit, they were excluding from the benefits of the Bill those who were income-tax payers, and those who paid professional tax above a certain limit and so on. It was not correct to say that by fixing a money limit they would be simplifying the position. The intention of the legislation was to distinguish the agriculturist

classes from those following occupations other than agriculture. An agriculturist who was paying say, Rs. 1,000 land revenue was indebted in proportion to his property in the same manner as an agriculturist who paid Rs. 50. If they wanted to distinguish the occupation of agriculture from other occupations they must go by professions. That was why they had adopted a complicated method rather than the one of fixing a money limit.

'EITHER OF THE TWO FINANCIAL YEARS'.—It is sufficient if a person has paid income-tax in any one of the two years, and it is not necessary that he should have paid the tax in both the years.

'OR FOREIGN GOVERNMENT'.—These words were not in the Original Bill nor in the Bill as it emerged from the Select Committee. These were added by way of amendment in the Assembly.

'OR UNDER THE MADRAS LOCAL BOARDS ACT, 1920 ETC'.—A distinction is made between Panchayats which were unions before 26th August, 1930, and other Panchayats, and it is only the former class that is included.

S. 3 (iii) "Debt" does not include rent or *Kanartham*, which is an incident of the *Kanom* tenure in Malabar. This word is defined as follows in the Malabar Tenancy Act. '*Kanom*' means the transferee for consideration in money or in kind or in both by a landlord of an interest in specific immovable property to another (called the '*kanomdar*') for the latter's enjoyment, the incidents of which transfer include, (i) a right in the transferee to hold the said property liable for the consideration paid by him or due to him which consideration is called '*Kanartham*'. . . . (S. 3 Mal. Ten. Act.)

DEBT.—'*Kanartham*' was excluded from the definitions of 'debt' by an amendment introduced by the Government. The object of this amendment was to remove the possibility of any injury to the tenure in Malabar called the '*Kanom*' tenure. This amendment does not in any way change the specific position of the debtor and creditor.

S. 3 (iv) Rent AS DEFINED IN THE MADRAS ESTATES LAND ACT, 1908". See Mad. Act I of 1908, S. 3 (11).

"RENT OR MICHAVARAM" AS DEFINED IN THE MALABAR TENANCY ACT. " '*Rent*' means whatever is lawfully payable in money or in kind or in both, to a person entitled to the use or occupation of a land, by another, permitted by the person so entitled, to have the use or occupation of the said land, for any purpose, on the understanding, express or implied, that the person so permitted would pay consideration for such use or occupation." (Mal. Ten. Act, S. 3 (w)). '*Michavaram*' means whatever is agreed by a *kanomdar* in a *kanom* deed to be paid

periodically, in money or in kind or in both, to or on behalf of the janmi. (S. 3, (q) Mal. Ten. Act.)

“DOES NOT INCLUDE COSTS INCURRED. . . . OR SHARE OF THE LAND CESS.” Costs incurred in respect of recovery of rents and land cess recoverable by the landholder under S. 88, Madras Local Boards Act will not be treated as rent. Special provision is made for the recovery of these dues. (See S. 16 *infra*.)

“WHETHER A DECREE OR ORDER OF A CIVIL COURT ETC”.—It was made clear by the Prime Minister in speaking in this point that this provision should not be interpreted as intended to re-open decrees with all the sins implied in the procedure. The provision really treated the liability as a whole and then scaled it down. It does not mean re-opening the whole matter. Only the resultant decree would be scaled down.

Sec. 3 (v).—‘Creditor’.—The definition of this term was included by the Select-Committee.

Under this sub-section if a woman becomes entitled to a debt as heir, legal representative or assignee of a male creditor she may not be entitled to the benefit of the special exemption made in her favour by S. 4 (h).

4. Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:—

(a) any revenue, tax or cess payable to the Provincial Government or any other sum due to them, by way of loan or otherwise;

(b) any revenue, tax or cess payable to the Central Government or any other sum due to them, by way of loan or otherwise;

(c) any tax or cess payable to any local authority or any other sum due to them, by way of loan or otherwise;

(d) any debt contracted on the security of house property alone in a municipality, a cantonment, or a panchayat which was a union before the 26th August, 1930;

(e) any liability in respect of any sum due to any co-operative society, including a land mortgage

bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 "or any debt due to any corporation formed in pursuance of an Act of Parliament or of any special Indian law or Royal Charter or Letters Patent."

(f) any liability arising out of a breach of trust;

(g) any liability in respect of maintenance whether under decree of court or otherwise;

(h) any debt or debts due to a woman on the 1st October, 1937, who on that date did not own any other property, provided that the principal amount of the debt or debts did not exceed rupees three thousand.

Explanation.—For the purpose of this clause, the house in which the creditor woman lived, or any furniture therein, or her household utensils, wearing apparel, jewellery, or such like personal belongings shall not be regarded as property.

(i) Any wages due to an agricultural or other rural labourer.

Provided that where the liabilities mentioned in clause (e) arise by reason of an assignment to the co-operative society such assignment has taken place before the 1st October, 1937 or is an assignment to such society of a loan granted by a co-operative society.

NOTES.

S. 4.—This section lays down the categories of debts and ties not to be affected by this Act.

Scope of Section.—"NOTHING CONTAINED IN THIS ACT SHALL AFFECT ETC."—The classes of debts and liabilities enumerated in this section are wholly exempted from the operation of this Act. Such debts can be collected and those obligations may be enforced as if this Act has not been passed.

Clauses. (a) to (c).—These clauses exempt debts due to the Provincial Government to the Central Government and to Local Authorities from the operation of this Act. The reason for this has been explained by the Prime Minister as follows: "If revenues, taxes and cesses were written off no object or advantage would be gained for the people by the passing of this Act,

If revenues, taxes and cesses were exempted, it was, because they were necessary for ordered administration. The procedure adopted by the Government in granting loans and collecting them was different from that adopted by private individuals. Further, the writing off of loans or interest thereon was a matter for executive action, and that course was available and need not be dealt with by legislation. Government could not afford to nor did they leave interest on loans to get into arrears as private creditors did, thereby leaving a burden, may be an act of charity, too heavy for the debtor to bear." (Proceedings in Council.)

"ANY DEBT CONTRACTED ON THE SECURITY OF THE PROPERTY ALONE . . ." If the security comprises any other property, e.g. agricultural land, or house or building in a village which is not a Municipality &c. it would not come under this clause. Even if the security comprises along with the house in the Municipality a pledge of jewels, documents or other valuable moveable property, this clause would not apply.

This clause mentions debts *contracted*. If the debt arises not out of *contract*, but by way of damages for wrongful withholding of monies, or by operation of law, would it come under this clause? Evidently they would not be *debts contracted*.

Clause (e).—This exempts debts due to co-operative societies from the benefits of this Act. The reason for this exemption is that the credit system of co-operative societies is not less important than the functions of the Government in regard to agriculture, and it would be impossible to treat co-operative societies as outside bodies and to place them in the same category as ordinary creditors. Debts due to certain corporations, companies and Banks have also been exempted, as national credit organizations, have, from the very nature of their constitution and business management, to be treated differently from individual creditors. The only restriction that is imposed is that such Banks should not charge usurious rates of interest.

This clause enumerates two classes of debts; the word "*liability*" is used in respect of the former class, and the word "*debts*" in respect of the latter. Sums due to co-operative societies and land mortgage banks are termed *liabilities*; where amounts due to Corporations formed under Acts of Parliament or Special Indian Laws, Royal Charter or Letter Patent are spoken of as *debts*. It would appear that the legislature did not intend to make any difference between the words "debt" and "liability" as used in this section.

CORPORATION FORMED IN PURSUANCE OF ANY SPECIAL INDIAN LAW.—The Reserve Bank of India, and the Imperial Banks would be Corporations formed under special enactments (*viz.*) the Reserve Bank Act and the Imperial Bank Act.

Liability arising out of a breach of trust (express or implied) and in respect of maintenance are treated differently from ordinary debts. Even agriculturists cannot escape discharging their obligations to the fullest extent possible in respect of these special classes of liabilities. No court of equity would extend its protection to persons guilty of a breach trust in any form, or to any extent; and the helpless condition of persons whose sole means of support is a paltry maintenance allowance calls for even a greater measure of protection than what even an agriculturist is entitled to. Such maintenance may be payable to women, children, aged parents, junior members of a Malabar tarwad or younger brothers of the holder of an impartible estate. Liability in respect of all classes of maintenance is left untouched by this Act.

Clauses. (h) and (i).—With reference to these clauses the Select Committee has observed as follows:—

“The Committee has also exempted from the operation of this Act any debt or debts due to a woman who is entirely dependent on such debt or debts for her maintenance, and has accordingly included the following additional item in clause 4 of the Bill:

“Any debt or debts due to a woman who, on October 1, 1937, did not own any other property, provided that the principal amount of the debt or debts on such date did not exceed Rs. 3,000.”

It has provided that in calculating the value of the property owned by the woman on October 1, 1937, the house in which she lived or any furniture therein or her household utensils, wearing apparel, jewellery or such like personal belongings, should not be taken into account.

“DEBTS DUE TO A WOMAN ON THE 1ST OCTOBER 1937”.—Would this clause apply if the debt becomes due to a woman after 1st October 1937. *A*, a woman, lends money to *B*, an agriculturist, on 1st January 1937 on a mortgage of his holding. The debt is made payable with interest on 1st January 1939. Such a debt would not come under this clause, the same not becoming *due* to the woman on the 1st October 1937.

“PROVIDED THAT THE PRINCIPAL AMOUNT OF THE DEBT OR DEBTS DID NOT EXCEED RUPEES THREE THOUSAND”.—The test is whether on the 1st October 1937 the principal amount of the debt or debts due to the woman did or did not exceed Rs. 3000.

“JEWELLERY OR SUCH LIKE PERSONAL BELONGINGS.”—These words would not include *all personal property*. For instance, costly and saleable goods and merchandise owned or possessed

by a woman would not come under the words "*like personal belongings*."

WAGES DUE TO AGRICULTURAL OR OTHER RURAL LABOURERS ARE also exempted from the operation of this Act. Such debts rarely carry any interest. The words "other rural labourer" would include a village-labourer employed for any purpose, though not agricultural. Wages due to domestic servants and personal attendants in the rural parts of this province would be saved by this sub-clause. Such labourers in towns and in city factories would not come under the term "rural labourers".

An amendment was proposed to include within the scope of this exemption debts due to orphans, very aged and disabled persons. The Prime Minister in opposing this amendment said that women, for whose benefit the protection was devised, constituted a distinct class. As for the other categories of persons referred to, numerous difficulties would arise in defining them or ascertaining their fitness for relief. He was unable to accept the amendment, because it would lead to enquiries whether a person was infirm or not and whether he was capable or not of earning a livelihood, and in the case of minors, the time that minority should be calculated up to—whether the date of the loan or of the legislation. The complications that would ensue might be too many to be solved easily. In the case of woman, at least, the tradition was to make a distinction with respect to tenure, estate and other matters. If a similar distinction was to be made in the case of other persons also, it would lead to difficulties. As for orphans, what was the criterion? Was it the mere fact of the death of parents? If so, a minor might be driving in a motor car, due perhaps to the absence of parental care, and was he to be considered an orphan? The House would be ill-advised in accepting this amendment. He would admit, at the same time, that there were many cases of an absolutely deserving character, but he was afraid these could not be provided for. Let them, therefore be content with providing for women who, he added, became "a nightmare" to him, because of the amount of literature which appeared in the Press on their behalf."

It would be very difficult to define a "disabled" person so as to entitle him to be exempt from the provisions of the Bill. Regarding minors, there was one great difficulty. In this country, if they proceeded to differentiate in regard to the legal rights of minors, an amount of complication with regard to the rights of the individual members of Hindu families would arise. Such difficulties would not arise in the case of women. (Proceedings in Council).

5. Where an undivided Hindu family other than a marumakkattayam or aliyasantana tarwad or tavazhi is assessed to the taxes specified in provisos (A), (B) and (C) to section 3 (ii), or falls within the category of persons specified in proviso (D) to the same section, no person who was a member of the family on the 1st October, 1937 shall be deemed to be an agriculturist for the purposes of this Act except section 13.

Special provision for undivided Hindu families, etc.

NOTES.

S. 5. This section contains a special provision for undivided Hindu families who are assessed to any of the taxes which disqualify such family from being treated as an agriculturist. As originally introduced the Bill applied to *marumukkattayam and aliyasantana tarwads and tavazhis*. In view of the impossibility of obtaining individual partitions in such families, the latter have now been excluded from this clause. A corresponding exclusion has also been effected in S. 6 which relates to the case of descendants of non-agriculturist members of undivided Hindu families which are agriculturists. (*Vide* Rep. of Select Committee.)

“UNDIVIDED HINDU FAMILY.” Would it include a re-united Hindu Family?

“NO PERSON WHO WAS A MEMBER OF THE FAMILY ON THE 1ST OCTOBER 1937, SHALL BE DEEMED TO BE AN AGRICULTURIST.”—Would a member born or adopted after 1st October 1937 be an agriculturist? Would a person separated before 1st October 1937, but who became reunited subsequent to that date be an agriculturist under this Act?

“EXCEPT S. 13”.—Section 13 deals with the rate of interest on new loans.

6. Where in an undivided Hindu family other than a marumakkattayam or aliyasantana tarwad or tavazhi which is an “agriculturist” within the meaning of section 3 (ii), any member of the family is not an agriculturist, then, notwithstanding anything contained in section 3 (ii), none of his sons and descendants in the male line shall be deemed to be an agriculturist for the purposes of sections 7 to 12 and 19 to 27 of this Act.

Sons and descendants of non-agriculturist members of Hindu families to be non-agriculturists.

NOTES.

See notes under S. 5 supra for the exclusion of marumakattayam and aliyasantana tarwads and tavazhis which were included in the original Bill.

CHAPTER II.

SCALING DOWN OF DEBTS AND FUTURE RATE OF INTEREST.

7. Notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by agriculturists to be scaled down. *be scaled down in accordance with the provisions of this Chapter.*

No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belonging to him; nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum as scaled down under this Chapter.

NOTES.

S. 7. Scope of Section—This section enacts that debts payable by agriculturists shall be scaled down, and the method and extent of scaling down are prescribed by the subsequent sections. (See Ss. 8 and 9).

“DEBTS PAYABLE AT THE COMMENCEMENT OF THIS Act”.—The scaling down is only for debts payable at the commencement of this Act. This is in accordance with the intention of the Legislature that the relief to the agriculturists is intended to be given only once, and it is expected that, once they are enabled to free themselves from the present pressing load of debt, they will take care of themselves for the future—provided some provision is made to regulate rates of interest for future transactions (*Vide* Ss. 12 and 13).

The words used are “payable . . . at the commencement of this Act.” A, an agriculturist, contracts a debt on the 1st January 1937 on the security of his holding, for the repayment of which with interest, two years’ time is given, i.e., it is made payable on 1st January 1939. Would it be debt payable at the commencement of this Act? Would the sections relating to the scaling down apply to such a debt? It would appear that the

word "payable" as explained by judicial decisions would also include debts that would become due on a future date or on the happening of a future contingency.

Payable. A sum of money is said to be payable when a person is under an obligation to pay it. "Payable" may therefore signify an obligation to pay at a future time, but, when used without qualification, 'payable' means that the debt is payable at once, as opposed to 'owing'.¹ (2 Ch. Div. 103 and Sweet Law Dic.; Black Law Dic.).

This term "Payable" is used in preference to the word "recoverable" which appeared in the original draft bill, as the latter word may imply the question of the solvency of the debtor. (*See* Rep. of Sel. Com. and Proceedings in the Assembly).

"NO SUM IN EXCESS OF THE AMOUNT AS SO SCALED DOWN SHALL BE RECOVERABLE."—This only applies to recovery by coercive process. There is no bar to the debtor voluntarily paying the full amount of interest and principal as per terms of the contract, or any sum in excess of the amount fixed by the scaling down process. Such voluntary payment will not be illegal, nor can the debtor recover the same from the creditor as sums had and received or as payment made under mistake. (*Vide* Sub-sec. (4) *infra*, and S. 9.).

8. Debts incurred before the 1st October, 1932 shall be scaled down in the manner mentioned hereunder namely:—

(1) All interest outstanding on the 1st October, 1937, in favour of any creditor of an agriculturist

¹A bill or note is said to become payable when it matures. As to the time when a debt becomes payable the following extracts from Bouvier may be referred to with advantage.

"Payment must be made at the exact time agreed upon. This rule is held very strictly in law; but in equity payment will be allowed at a time subsequent, generally when damages can be estimated and allowed by way of interest; (8 East 208). Where payment is to be made at a future day, nothing can be demanded till the time of payment, and, if there be a condition precedent to the liability, not until the condition has been performed. And where goods had been sold "at six or nine months' credit," the debtor would be allowed the option; (5 Taunt. 338).

Where no time of payment is specified the money is to be paid immediately on demand. When payment is to be made at a certain time, it may be made at a different time if the plaintiff will accept; [Viner, Abr. Payment (H)]; and it seems that the debtor cannot compel the creditor to receive payment before the debt is due. The time of payment of a pecuniary obligation is a material provision in the contract, and a creditor cannot be compelled to accept payment in advance; *People v. O'Brien*. 7 Am. St. Rep. 684.

whether the same be payable under law, custom or contract or under a decree of court and whether the debt or other obligation has ripened into a decree or not, shall be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date.

(2) Where an agriculturist has paid to any creditor twice the amount of the principal, whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged.

(3) Where the sums repaid by way of principal or interest or both fall short of twice the amount of the principal, such amount only as would make up this shortage, or the principal amount or such portion of the principal amount as is outstanding, whichever is smaller, shall be repayable.

(4) Subject to the provisions of sections 22 to 25, nothing contained in sub-sections (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him, or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

Explanation.—Where a debt has been renewed or included in a fresh document in favour of the same creditor, the principal originally advanced by the creditor together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable by the agriculturist under this section.

NOTES.

S. 8. Sections 8 and 9 lay down the method and extent of scaling down. A distinction is made between debts incurred before 1st October 1932 and those incurred after that date, *i.e.*, debts incurred during the pre-depression period and those incurred after the depression became acute. The former is dealt with in S. 8 and the latter in S. 9.

"All Interest Outstanding".—This need not necessarily be interest contracted for by the parties. Even *post diem* inter-

est and interest which courts sometimes award as *damages* for wrongful withholding of monies would come under this section and be deemed to be discharged—except perhaps in the case of persons occupying the position trustees, express or constructive, (as) executors, administrators, guardians of minors, Receivers appointed by order of court, agents, and managers of temple funds mishandling monies coming into their hands in their fiduciary capacity. [See S, 4 (f)]

“DEBT” INCURRED BEFORE 1ST OCTOBER 1932”.—If a document is executed before 1st October 1932 and the amount or any portion of the same is actually advanced to the creditor after 1st October 1932, it would evidently be debt *incurred* after 1st October 1932. The mere execution of the document would not create any liability, and *no debt would be incurred* by the mere execution. The incurring of the liability and the commencement of the debt will only be from the date of the payment of the amount to the debtor or to another on his behalf.* The date of payment and not the date of the document will determine the date on which the debt is incurred.

Such cases often arise in this Province with regard to transactions with Banks, Nattukottai Chettiars, Marwaries and other professional money-lenders. The borrower executes a security bond on landed property for a fixed amount—say Rs. 3000, on condition that he will borrow on promissory notes up to that amount from time to time, and that the property should stand security for all sums that may become due on the promissory notes up to Rs. 3000. In such a case the security bond may be executed *before 1st October 1932* and sums may actually be advanced *after 1st October 1932*. In such cases, the date of the actual advancement of the loan and not the date of the document would be the real test to determine the time of actual “*incurring of the debt*”.

PRINCIPLE OF DAMDUPAT APPLIED.—The Prime Minister, in reply to a proposed amendment for the omission of this provision, said that the proposal to omit the sub-clause would amount to this, that no relief should be given even though the agriculturist debtor had paid the amount he had borrowed twice over; it was impossible, he said, to accept the suggestion that even. If a debtor had paid,—his difficult position being admitted—twice the amount borrowed, all his payments should be ignored in computing his liability. That, he submitted, could not, on the face of it, be a correct principle to adopt. The principle of damdupat, which the mover of the amendment stated had not

* *Incure* is defined to mean “become liable or subject to” (as) to incur a debt. (Webs.). “To have liabilities cast upon one by act of parties or operation of law” (Bouvier).

been understood by anybody, was in fact, understood by everybody. It was true that one might not be able to enunciate it exactly in the manner that old Hindu lawyers accepted and worked it. But let anybody go to a village and ask a villager what he thought of a debtor who had paid his debt twice over, being excused interest dues. The villager would surely say that it was the right thing to do. The villager would surely also say that notwithstanding any documentary understanding to the contrary, the debtor must be helped out of that document. That, the Prime Minister submitted, was exactly what the Bill sought to do. It might be argued on the other side that it was not right, and that the terms of a contract should be conformed to. Indeed, that matter had been enacted as a drama in the "Merchant of Venice". But it was certainly not in accordance with the genius of Indian people to accept such a proposition. "I claim", the Prime Minister said, "that the principle of Damdupat, though it cannot be enunciated exactly by the people, is in their hearts and is part of the culture of the nation and must be accepted now, if we want to revive the nation".

The amendments moved, the Premier continued, were beautiful in their legal structure, and the proposals might be said by some to be quite good. But, he would say that they had not been examined by the people in the manner in which the provisions of the Bill had been examined, discussed, canvassed, criticised and accepted. Perhaps, if these amendments had been before the country, numerous objections would have been raised against them—more numerous, perhaps than had been raised against the Bill. He would urge the House to see whether the amendment before them would be an improvement on the original provision in the Bill. He would suggest that it was not. While pressing the case of the good and lenient creditor, they should also consider the case of the agriculturists. People were prone, under the present civilisation, to think that property in the shape of debt was very important, because the matter was on the anvil of the legislature just now. But people did not seem to think what would happen to the property of the debtor, out of which, he was unable to pay interest or principal. If the condition of the debtor and creditor was taken together, it would be seen that, after all, there was not much case for the amendment".

EXPLANATION. This deals with the renewal of debts.*

¹The following extracts from the proceedings in Council relating to renewal of debts may also be read with advantage:—

"Mr. T. T. Krishnamachari moved to add the following new proviso to the explanation to clause 8:—"Provided that no renewals before 1st October, 1928, shall be re-opened under this explanation, and, in the case of any such renewal, the principal shall be the principal due on the last document of renewal prior to 1st October, 1928."

"IN FAVOUR OF THE SAME CREDITOR". If a loan is raised from a third party to repay a previous loan, the principal amount in respect of this transaction would be the sums advanced by this third party and secured by the new document

9. Debts incurred on or after the 1st October, 1932 shall be scaled down in the manner mentioned hereunder, namely:—

Provision for debts incurred on or after 1st October, 1932.

(1) Interest shall be calculated up to the commencement of this Act at the rate applicable to the debt under the law, custom, contract or decree of court under which it arises or at five per cent. per annum simple interest, whichever is less, and credit shall be given for all sums paid towards interest, and only such amount

The explanation in the Bill stated that where a debt had been renewed or included in a fresh document in favour of the same creditor, the principal originally advanced by the creditor together with such sums, if any, as had been subsequently advanced as principal should alone be treated as the principal sum repayable by the agriculturist under this section.

He said it was necessary to specify a date after which the accounts should not be re-opened. He was not particular about the date he had mentioned. But it was essential that some must be mentioned."

Kumararaja M. A. Muthia Chettiar, in supporting the amendment, said that the object of the Bill was a laudable one, and in the interest of the smooth working of the sections of the Bill, a date should be specified after which accounts should not be re-opened. This was one of the weak points in the Bill, and it should be remedied.

The Prime Minister, in opposing the amendment, said that this was just the kind of thing that should be left to the Court to decide. He appreciated the point. It would be possible for the Court to bring the parties to an agreement, which would not be possible, if a date was fixed.

The amendment was then put and lost.

N.B.—The section says "The principal originally advanced by the creditor.....shall alone be treated as the principal sum repayable by the agriculturist under this section." It casts an imperative duty on the Courts. It is not left to the Court to fix the period up to which renewals have to be taken into account. Under such circumstances, it is not clear what the Court can do, except it be to act as an informal arbitrator and help in the adjustment of conflicting claims involving difficult and complicated question.

In this connection the following observations of the Premier made in another connection may also be noted. He said. "In this Bill, an attempt is being made to bring the creditor and the debtor together. Where conciliation has not succeeded, we have in this Bill another method. This is an attempt to make the creditor and the debtor come to terms without the help of an outside body. I claim that the provisions of the Bill will not lead to litigation. There are people able enough to understand what is good and what was bad."

as is found outstanding, if any, for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due:

Provided that any part of the debt which is found to be a renewal of a prior debt shall be deemed to be a debt contracted on the date on which such prior debt was incurred, and if such debt had been contracted prior to the 1st October, 1932, shall be dealt with under the provisions of section 8.

(2) Subject to the provisions of sections 22 to 25, nothing herein contained shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

NOTES.

Section explained.—With reference to this section, the Select Committee observed as follows:—“The Bill as introduced had provided that in all cases, interest should run only from October 1, 1937, at a rate not exceeding six per cent. per annum.

The Committee has come to the conclusion that a distinction should be made between debts incurred during the pre-depression period when the value of money was very much less than now and debts incurred after the depression became acute.

In the case of the former, a greater extent of scaling down is considered justifiable than in the case of the latter.

It has accordingly limited the provisions which had been made in the bill for the wiping out of arrears of interest, only to debts incurred before October 1, 1932.

As regards debts incurred on or after October 1, 1932, the Committee thinks that the welfare of debtors would be sufficiently met by reducing the rate of interest to 5 per cent. in all cases where it is higher than 5 per cent. Where a debt incurred after October 1, 1932, is found to be wholly or in part a renewal of a debt incurred prior to that date, that debt or any part of it which may constitute such renewal will be dealt with as a debt incurred before October 1, 1932. What has been compendiously described as the *damdupat* principle has been retained.”

“In view of the proposal for the reduction of interest, in the case of debts incurred subsequent to October 1, 1932, the in-

voking of that principle is unnecessary in respect of such debts and has therefore been expressly provided for only in the case of debts incurred prior to October 1, 1932.

The Committee considers that these provisions which it has made for the scaling down of old and new debts will go a great length to meeting the objection which has been raised to the provision in the bill as introduced, for the wiping out of all interest on all debts outstanding on October 1, 1937."

Pre-depression debts.—The Prime Minister said that they had to treat very old debts in a different manner from recent debts. It was for that reason that the Select Committee had made a distinction. In the case of the older debts a more drastic method was needed than in the case of the recent debts. Again, in the older days things had different values from what they had now. There was no question about that. Even if the old rates of interest were not considered bad, the man had still to discharge the burden. They had now different values for the land and the crops, and therefore, it was that they had to take drastic methods in dealing with those debts. (Proceedings in Council).

"Renewal".—The proviso deals with renewal of debts. The words used are "*any part of the debt which is found to be a renewal of a prior debt*".—It would appear that the renewal contemplated in this proviso is renewal in favour of the same creditor. (*Vide* Expl. to S. 8.) Amounts borrowed from a third party to pay an existing debt will not be a *renewal*.* It would be a *new loan*.

"REFUND ANY SUM WHICH HAS BEEN PAID".—If a debtor has paid to his creditor interest in excess of the scaled down amount, he would not be entitled to a refund of the excess amount. This will apply to payments made whether before or after the commencement of this Act. (*See* Notes under S. 7 *supra*.)

10. (1) The provisions of sections 8 and 9 shall not apply to any person who, though an agriculturist as defined in section 3 (ii), did not on the 1st October, 1937, hold an interest in, or a lease or sub-lease of, any land as specified in that section.

Exceptions.

*The word "*renew*" in the sense in which it is used in this section has been defined by Winchester as follows: "To grant or obtain an extension of; to continue in force for a fresh period, (as) to renew a note or lease." Bouvier in his Law Dictionary defines "Renewal" as a change of something old for something new; as, "*renewal* of a note or lease."

(2) Nothing contained in sections 8 and 9 shall affect—

(i) any mortgage by virtue of which the mortgagee is in possession of the property mortgaged, where no rate of interest is stipulated as due to the mortgagee, or

(ii) Any liability for which a charge is provided under section 55, clause(4), sub-clause (b) of the Transfer of Property Act, or

(iii) Any liability in respect of any sum due to any public company as defined in the Indian Companies Act, 1913, or to any scheduled bank as defined by section 2(e) of the Reserve Bank of India Act, 1934, if the interest payable in respect of the liability is not more than nine per cent. per annum.

NOTES.

Scope of Ss. 10 and 4.—This section may be compared with S. 4 which also provides for exemption of certain debts and liabilities for the provisions of this Act. S. 4 is however much larger in scope. It says "*Nothing in this Act shall affect.*" So, the classes of debts and liabilities mentioned in that section can be enforced as if this Act has not been passed. S. 10 is however limited in its scope and operation. It says that only "*the provisions of sections 8 and 9 shall not apply*" to the persons, debts and liabilities enumerated therein.

This will exclude from the operation of sections 8 and 9 all usufructuary mortgages and also other anomalous mortgages, under which the mortgagee is let in to possession of the property mortgaged, on condition of his enjoying the profits in lieu of of interest.

With reference to these clauses the Select Committee has observed as follows:—"Sub-clause (2) of this Clause has excluded 'usufructuary mortgages' from the operation of the *damdapat* rule. In view of the existence of certain kinds of mortgages in which the mortgagees are in possession of the mortgaged property, the Committee has substituted for the words 'usufructuary mortgage' the words 'any mortgage by virtue of which the mortgagee is in possession of the property mortgaged.' It has also excluded from the operation of the *damdapat* rule the liability of a purchaser of immovable property who is in possession of such property to pay the amount of any unpaid purchase money due by him."

S. 55 of T. P. Act deals with the rights and liabilities of buyer and seller of immovable property; and subsection 4 (h) of that section provides for a statutory charge on the property sold in respect of the unpaid portion of the purchase money. It runs as follows:—

“The seller is entitled—(a) to the rents and profits of the property till the ownership thereof passes to the buyer, (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, (any transferee without consideration or any transferee with notice of the non-payment), for the amount of the purchase money, or any part thereof remaining unpaid, and for interest on such amount or part.”

Sub-sec. (2) Cl. (iii).—With reference to this clause, the Select Committee has observed as follows:—“The Bill had provided that to obtain exemption from this Act a company registered in British India or in an Indian State should have had on its register on October 1, 1937, at least 500 members. This provision did not apply to foreign companies, and the Committee has removed the distinction.”

Referring to debts due to joint stock companies and Banking institutions the Prime Minister said:—“In the provision as it stood, every care had been taken to maintain banks in perfect order. Just as they sought to protect agriculturists and creditors against themselves, they might protect banks also against themselves. Surely, usurious rates would not help banks. The institutions could hardly be called banks if they claimed exemption from the operation of the Bill and yet charged usurious rates of interest from agriculturists on whose welfare that of the whole province depended. He would submit that banks had been protected as far as possible. In view of the provision relating to loans dating from after 1932, there could, he thought, be no room for complaint on the part of banking institutions. In the case of pre-depression debts, if banks had allowed these to remain uncollected all these years, could they, he asked, be called banks? Should they not be deemed to be merely money lenders? From all points of view, he thought, the provision was quite proper, and there was nothing wrong in protecting the agriculturist from the usury of a private individual money-lender or a money-lending institution that had got registered under the Companies Act.”

This sub-section as well as S. 4 (e) refer to debts due by agriculturists to certain banking institutions. The banks mentioned in S. 4 (e) are given a much larger measure of exemption from the provisions of this Act than those mentioned in this sub-section. Section 4 gives exemption from all provi-

sions of this Act, whereas the exemption given by this section is only from the provisions of sections 8 and 9. Even this limited measure of exemption is available to such banks "only if the interest payable in respect of the liability is not more than 9 per cent per annum."

"IF INTEREST PAYABLE . . . IS NOT MORE THAN 9 PER CENT". These Banks, though they originally charged 9 per cent. or even less, if default is made in respect of any instalment on the due date, generally charged interest on a much higher rate than 9 per cent. Any bank that charges interest, even on default, at rates higher than 9 per cent. would not get the exemption provided for by this section.

'INTEREST'.—This term includes not only the primary interest fixed but also the higher interest made to arise upon default.

PENAL INTEREST.—An amendment was moved that the following explanation be added.

"Explanation:—In determining whether the interest payable in respect of the liability is or is not more than 9 per cent per annum, regard shall be had only to the primary interest fixed and not to a higher interest made to arise upon default".

The Prime Minister, in opposing the amendment, said that it was on account of the penal interest levied that agriculturist debtors were screwed down to a condition worse than that of the victims of the inquisition. The debtor was unable to pay. It was known that he was unable to. A higher rate of interest was levied and it was not collected either. The whole property was eventually sold. It was to meet such cases that the provision had been made as it stood.

Public Companies.—These alone are exempted, and not private companies. An amendment for the omission of the word 'Public' was proposed and lost in the Assembly.*

Charitable Institution.—An amendment was proposed to exclude charitable and religious trusts from the operation of this Act. In opposing the amendment, the Premier said that his opposition was not due to any want of respect to the religious and charitable trusts. Individuals also were doing public and humanitarian work. It was not to be presumed that two or three persons joining together

* Mr. BASHEER AHMED moved that the word "public" and the proviso contained in the Prime Minister's amendment be deleted. He did not see any justification for making the discrimination that the Premier's motion did as between one set of companies and another. He would plead with the Premier to remove the element of discrimination from the clause.

THE PRIME MINISTER said, he could not accept the amendment, because it was not the intention to discriminate as between private companies and private individuals.

became more charitable, religious or philanthropic than a single individual. If there was reason to scale down debts due from agriculturists to very good persons, if there was reason for charitable and religious trusts investing their money on such miserable persons as agriculturists, instead of depositing them in banks, no special consideration could be shown to charitable trusts. There was a fundamental mistake in the assumption that all the religious and charitable trusts were doing better work than individual persons acting in the same cause. These trusts were immobile and would not change with the progress of times or ideas, and it was desirable that they should add some more weight to such immobile bodies.

11. Where a debt payable by an agriculturist includes any sum decreed as costs by any Court, or sums lawfully expended by a mortgagee or other person in order to preserve the property mortgaged, such sum or sums shall be recoverable in addition to the sum recoverable under the provisions of sections 8 and 9.

Provision as to costs etc., in certain cases.

NOTES.

S. 11.—This is an equitable provision which saves out of pocket expenses and costs actually incurred by a creditor and decreed by the court and amounts expended for the preservation of the mortgaged property from the operation of the scaling down sections.

12. All debts which have been scaled down under the provisions of this Act shall, so far as any sum remains payable thereunder, carry from the date up to which they have been scaled down interest on the principal amount due on that date at the rate previously applicable under law, custom, contract or otherwise:

Rate of interest payable by agriculturists on old loans.

Provided that it shall not in any case exceed $6\frac{1}{2}$ per cent per annum simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest.

NOTES.

S. 12.—These sections make provision for future interest, the one for future interest in respect of existing debts as scaled

down, and the other for interest on debts incurred by an agriculturist after the commencement of this Act. A maximum rate of interest at $6\frac{1}{4}$ per cent per annum is fixed. The Provincial Government is however empowered by notification in the Official Gazette to alter and fix any other rate of interest from time to time.

13. In any proceeding for recovery of a debt, the Court shall scale down all interest, due on any debt incurred by an agriculturist after the commencement of this Act, so as not to exceed a sum calculated at $6\frac{1}{4}$ per cent. per annum, simple interest, that is to say, one pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest:

Provided that the Provincial Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time.

Explanation.—For the purposes of this section, the definition of ‘agriculturist’ in section 3 (ii) shall be read as if—

(i) in proviso (A) to that section, for the expression “the two financial years ending 31st March, 1938,” the expression “the two financial years ending on the 31st March immediately preceding the date on which the debt is incurred” were substituted; and

(ii) in provisos (B) and (C) to that section, for the expression “the two years immediately preceding the 1st October, 1937,” the expression “the two years ending on the 31st March or the 30th September (whichever is later) immediately preceding the date on which the debt is incurred” were substituted.

NOTES.

S. 13. Rate of Interest.—With reference to this section and S. 12, the Select Committee observed as follows. “In these clauses, the Committee has fixed the maximum rate of interest on scaled down debts and on new debts at $6\frac{1}{4}$ per cent. per annum simple interest, instead of 6 per cent. per annum simple interest, as that rate corresponds to one pie per rupee per mensem or one anna per rupee per annum and would be more easily understood and adopted in rural areas.”

The Prime Minister said that the question before them was the rate of interest for the scaled down debts, whether it should be $6\frac{1}{2}$ per cent. or more. Various reasons might be said for adopting various rates. But he believed that a rate of $6\frac{1}{4}$ per cent. was good. People in the villages do not know how to calculate interest and the rate fixed, one pie per rupee per month was easy to calculate. Even illiterate persons would be able to understand the rate. That rate had also been provided for future loans.

All debts referred in Section 4 including those due to co-operative societies, land mortgage banks and other corporations—mentioned therein (Vide S. 4 (e)), are not affected by the limit of $6\frac{1}{2}$ per cent laid down in S. 13. There is nothing in this Act to prevent them from charging a higher rate of interest. Banks and joint stock companies mentioned in S. 10 (iii) are however affected by this section. The exemption afforded to these institutions is only in respect of the provisions of sections 8 & 9.

14. Notwithstanding anything contained in section 3 (ii) and subject to the provisions of sections 5 and 6, where in a Hindu family, whether divided or undivided, some of the members liable in respect of a family debt are not agriculturists while others are agriculturists, the creditor shall, notwithstanding any law to the contrary, be entitled to proceed—

(a) against the non-agriculturist member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt; and

(b) against the agriculturist member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt which shall be scaled down in accordance with the provisions of this Act.

NOTES.

S. 14. 'WHETHER DIVIDED OR UNDIVIDED'.—These words were deemed necessary for making the provisions of the Act workable. It was necessary to lay what should be done in cases where some of the members of undivided joint families followed non-agricultural occupations. The share of liabilities and reliefs would be on the basis of whether or not the member of the joint family concerned was an agriculturist. If the word 'undivided,

be left out, the benefit of the Act would be available only to divided families.

The Prime Minister said that this clause was very necessary if the provisions of the Bill were to be made workable. It would be necessary to lay what should be done in cases where some of the members of undivided joint families followed non-agricultural occupations. The share of liabilities and reliefs would be on the basis of whether or not the member of the joint family concerned was an agriculturist.

CHAPTER III.

Scope.—The Prime Minister, referring to this Chapter as a whole, said that he sincerely felt that this Chapter would really be for the benefit of the landlords. For some years past, there had been a rift between landlords and tenants. The rift appeared to be widening. He would submit that the provisions of this Chapter were not expropriatory. They might appear so in the eyes of those who were opposed to this Bill. But, in his opinion, these clauses would bring in a new life to the tenants and to the landlords. Let them examine the clauses coldly and logically. Let them not be carried away by emotion. The clauses were for creating a clean, tidy and orderly tenantry. Mere accumulation of arrears was not wealth, and the landlords should realise that these clauses would do good to both the parties, and would help to create a new life.

Referring to the position of Zamindars the Prime Minister said, "I ask whether it is safe for the country, good for the landholders themselves, and proper for the tenants, to go on in this manner. Of what earthly use will be the arrears for fasli 1340 or even 1344, if these gentlemen who are called the landowners are not able to collect the dues? If the Government appointed a Tahsildar or a Collector to collect the arrears, and he did not do so, he would be dismissed at once. If the Collector or the Tahsildar, without collecting dues, paid the dues to the Government out of his own pocket, would he be excused? I submit he will not be. He would be really doubly punished for not collecting the tax and for paying from his own pocket, in order to cover his failure of duty."

"I maintain," the Prime Minister continuing stated, "that the landholders are public servants and not owners of property at all. I maintain that they have been commissioned by solemn documents to collect the dues not by harassing and at the same time to pay promptly out of the monies collected a fraction to the Government. The rates had been very liberally fixed. Why then, did these people fail to perform their duties? Why should they complain if we say that they have failed in their functions? I have nothing more to add."

CHAPTER III.

ARREARS OF RENT.

15. (1) All rent payable by an agriculturist to a landholder or an under-tenure holder under the Madras Estates Land Act, 1908, or to a janmi or intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis and which is outstanding on the date of the commencement of this Act shall be deemed to be discharged whether the rent be due as such or whether a decree has been obtained therefor:

Conditional discharge of arrears of rent due to landholders, etc.

Provided that where the person liable to pay rent (hereinafter in this section referred to as 'tenant') does not, on or before the 30th September 1939, pay up all arrears of rent accrued in respect of any holding for faslis 1346 and 1347, the arrears of rent for fasli 1345 and prior faslis which were outstanding in respect of the same holding on the date of the commencement of this Act shall be deemed to be discharged only in the same proportion as the rent due for faslis 1346 and 1347 which is paid up by the ryot or tenant bears to the rent due for those two faslis:

Provided further that no tenant shall be entitled to the benefit of this section unless he shall have paid in respect of the holding, the rent due for fasli 1347 on or before the 30th September, 1938.

Explanation.—In cases governed by the Malabar Tenancy Act, 1929, any reference to a fasli year in this Chapter shall be deemed to be a reference to the agricultural year as defined in the Malabar Tenancy Act, 1929, which contains the greater part of the fasli year.

Illustrations.

(a) A ryot or tenant is in arrear at the commencement of this Act in respect of rent for a particular holding for fasli 1345 and prior faslis in the sum of Rs. 500 and is in arrear on that date in respect of rent for the same holding for faslis 1346 and 1347, the rent for each fasli being Rs. 100. Within the 30th September, 1938 he pays the rent for fasli 1347 and within 30th September, 1939, he pays the rent for fasli 1346. The arrears of rent of Rs. 500 which were outstanding at the commencement of this Act will be deemed to be discharged.

(b) A sum of Rs. 500 representing the arrears of rent in respect of a particular holding for fasli 1345 and prior faslis and the rents for faslis 1346 and 1347 for that holding are in arrear and outstanding at the commencement of this Act, the rent for each fasli being Rs. 100. The ryot or tenant pays the landholder within 30th September, 1938, the rent for fasli 1347 but fails to pay within the 30th September, 1939, any portion of the rent for fasli 1346. Only a sum of Rs. 250 or one half of the rent of faslis prior to and inclusive of fasli 1345 will be deemed to be discharged.

(c) In the same case, the ryot or tenant does not pay the landholder within the 30th September, 1938 the whole of the rent for fasli 1347. No portion of the arrears for fasli 1345 and prior faslis is discharged, and the ryot loses the benefit of this section.

(d) In the same case, the ryot or tenant pays the landholder within 30th September, 1938 the rent for fasli 1347, but pays within 30th September, 1939 only Rs. 50, being half the rent for fasli 1346. He has thus paid Rs. 150 out of Rs. 200 being the rent of both the faslis 1346 and 1347, before 30th September, 1939. A sum of Rs. 375, or three-fourths of the rent for faslis prior to and inclusive of fasli 1345 will be allowed to be discharged.

(2) Nothing contained in sub-section (1) shall be deemed to effect a discharge of arrears of rent which accrued due for fasli 1345, if proceedings for the recovery of such arrears stood stayed by an Act of the Legislature or by an order of a Court or if such proceedings, if instituted, would have stood so stayed. But the arrears of rent for fasli 1345 shall not be recoverable until the 30th September, 1938 or if the rent for fasli 1347 is paid before that date, until the 30th September, 1939.

(3) Notwithstanding anything to the contrary in any agreement or in section 64 of the Madras Estates Land Act, 1908, any payment of rent made by a tenant after the commencement of this Act shall be credited towards the rent due by him for fasli 1347 in the first instance and for fasli 1346 in the next instance, and not towards the rent due for any previous fasli.

(4) Every tenant shall be at liberty to pay into Court any amount towards the rent due or claimed to be due by him for faslis 1347 or 1346 or both and thereupon the Court shall, after notice to the landholder, under-tenure holder, j̄anmi or intermediary, as the case may be, apply the provisions of this Act and determine whether the whole or only a portion of the rent for the faslis aforesaid has been paid by the tenant, and also the extent of the remaining liability if

any, of the tenant for rent under the provisions of this Act.

Explanation.—For the purposes of this subsection, ‘Court’ shall mean the Collector referred to in section 209 (1) of the Madras Estates Land Act, 1908, or the Court referred to in section 3 (b) of the Malabar Tenancy Act, 1929, as the case may be.

NOTES.

S. 15.—With reference to this section the Select Committee’s report is as follows:—“Much apprehension was felt in certain quarters that the wiping off of arrears of rent would encourage the tenants to allow rent to fall into arrears even in the future. In order to remove this apprehension the Bill had provided that relief in respect of arrears should depend upon prompt payment of current dues.

The Committee has strengthened this position by making the payment of the rent for fasli 1347 before September, 30, 1938, a condition precedent to the grant to a tenant of the relief from arrears of old rent. It is only where after paying the rent for fasli 1347 on or before September, 30, 1938, the tenant also pays the rent for fasli 1346 on or before September, 30, 1939, that he obtains a full discharge in respect of all arrears of rent accrued for previous faslis.

If, having paid the rent for fasli 1347 on or before September, 30, 1938, he makes default in payment of the rent for fasli 1346, on or before September, 30, 1939, or pays only a portion of such rent on or before that date, he gets relief in respect of arrears for prior faslis only in proportion to the share of rent for faslis 1346 and 1347 paid by him.

But the Committee after carefully considering the position decided that there would be no practical relief given to a tenant if the burden of three faslis were left unrelieved and that there would be no incentive for the payment of current dues, if he was still to be left so heavily indebted.”

The Prime Minister, said that the point at present in issue was whether the arrears of some more years were to be kept alive. To this, he would only say that it was merely a case of an illusory attachment to property. It was impossible for any average tenant to pay arrears for even two years. The rents fell into arrears, not because the tenant was unwilling to pay, but because he was unable to pay. That was the state of affairs. It had been stated that it was possible for some tenants to sell away their cattle and land or house to pay the arrears of rent. But even the landholders would not want the tenants to do that at the present time.

SUB-SECTIONS (2) AND (3).—With reference to Sub-sections (2) and (3) the Select Committee has observed as follows:—The Committee has provided that any payment of rent made “by a tenant after the commencement of this Act shall be credited first towards the rent due by him for fasli 1347 and then towards the rent due by him for fasli 1346 and not towards any rent due for any prior fasli.

It has also made a provision enabling the tenant to deposit the rent due by him into court and to ask the court to cancel his liability for the arrears of rent for previous faslis or to fix the extent of his liability under the provisions of this Bill.”

16. Notwithstanding anything contained in this chapter, a landholder or an under-tenure holder under the Madras Estates Land Act, 1908, or a janmi or intermediary under the Malabar Tenancy Act 1929, shall be entitled to recover, in addition to any sum recoverable by him under section 15—

(a) the land-cess, if any, paid by him and recoverable under section 88 of the Madras Local Boards Act, 1920;

(b) the Land revenue and water cess, if any, paid by him to the Provincial Government which the tenant was bound to pay by virtue of any law, custom, contract or decree of court governing the tenancy and

(c) the costs awarded to him in any decree for rent obtained by him.

NOTES.

S. 16.—With reference to Ss. 15 and 16, the observations of the Select Committee are as follow:—The Committee has also provided that where a landholder has paid the tenant's share of the land-cess under the Madras Local Boards Act, 1920, he would be entitled to recover the same. It has also provided that in cases where a landholder has already obtained a decree against his tenant for the rent due to him for faslis 1345 and prior faslis, he can recover the whole of the costs awarded to him by such decree.

17. Notwithstanding anything contained in the Madras Estates Land Act, 1908, or the Malabar Tenancy Act, 1929, or in any law of limitation or procedure in force for the time being,

Extension of limitation for suits, etc., for rent in certain cases.

no suit or execution proceedings in respect of arrears of rent accrued for fasli 1345 or any prior fasli which, under the existing law, would become barred between the 1st October, 1937 and the 30th September, 1938, shall be so barred and the landholder, under-tenure holder, janmi or intermediary, as the case may be, shall be entitled to file a suit or institute execution proceedings for recovery thereof, on or before the 31st December, 1938; and in cases where the rent due for fasli 1347 has been paid before the 30th September, 1938, the period of limitation for any suit or execution proceedings for the recovery of any arrears of rent which, under the existing law, would become barred between the 1st October 1937 and the 30th September, 1939, shall stand extended until the 31st December, 1939:

Provided that where on the 31st December, 1938 or the 31st December, 1939, as the case may be, an application under sub-section (4) of section 15 is pending in any Court, the period of limitation prescribed by this section shall stand extended until the expiry of a period of two months from the date of the order on such application.

NOTES.

S. 17.—With reference to this section the Select Committee has observed as follows:—The Committee has provided that the period of limitation for suits for the recovery of rent for fasli 1345 and prior faslis should be extended by three months from the dates allowed for payment of the rents for faslis 1347 and 1346 as those dates would determine the tenant's liability for such arrears.

CHAPTER IV.

PROCEDURE AND MISCELLANEOUS.

18. (1) Where a decree is passed against an agriculturist in a suit filed on or after the 1st October, 1937, the Court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with the provisions of this Act, and where in any

Provision as to costs in certain cases.

such case a decree has been passed before the commencement of this Act, the Court shall, on application by the agriculturist, amend the decree accordingly.

(2) Nothing in sub-section (1) shall apply to any suit instituted on or after the 1st October, 1937 and before the commencement of this Act in respect of a claim which would be barred by limitation before the 1st April, 1938.

19. Where before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family whether or not he is the judgment-debtor or on the application of the decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be:

Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as are originally decreed to the creditor.

NOTES.

S. 19.—The application under this section has to be made to the Court *which passed* the decree, and not to the Court in which execution proceedings may be taking place. As to what the executing Court has to do under the circumstances, see S. 26 *supra*.

LIMITATION.—No limitation is prescribed in this Act for the filing of an application under this section. S. 20 provides that this application may be made within 60 days after the grant of stay of execution proceedings by the executing Court when it happens to be different from the Court which passed the decree.

20. Every court executing a decree passed against a person entitled to the benefits of this Act, shall on application, stay the proceedings until the court which passed the decree has passed orders on an application made or to be made under section 19:

Stay of execution proceedings.

Provided that where within 60 days after the application for stay has been granted the judgment-debtor does not apply to the court which passed the decree for relief under section 19 or where an application has been so made and is rejected, the decree shall be executed as it stands, notwithstanding anything contained in this Act to the contrary.

Explanation.—The expression “the court which passed the decree” shall have the same meaning as in the Code of Civil Procedure, 1908.

NOTES,

S. 20.—‘SHALL STAY’.—No option or discretion is given to the executing Court regarding the stay of execution, and the section is mandatory.

‘DOES NOT APPLY’.—It is only the application that should be made within 60 days, and if the application should be pending in the Court which passed the decree even after this period, the executing Court cannot proceed with the execution of the decree until the disposal of the application.

‘DECREE SHALL BE EXECUTED AS IT STANDS’.—This would imply that the judgment-debtor would be debarred from making the application under S. 19, both in cases where he fails to apply within 60 days of the stay, and where an application is made and rejected.

21. Nothing contained in this Act shall apply to the debts payable by any person who has been adjudicated an insolvent, if prior to the coming into force of this Act, a dividend has been declared out of his assets. If a dividend has not been so declared, this Act shall apply to the debts payable by such person if he would have been an agriculturist within the meaning of this Act but for his adjudication in insolvency.

Adjudications in insolvency.

NOTES.

S. 21.—With reference to this section, the Select Committee has observed as follows:—

This clause refers to adjudications in insolvency. The Committee thinks that the benefits of this measure should be extended to debtors against whom an order of adjudication has been made but whose assets have not yet been distributed.

For various reasons, an agriculturist might be taken to the Insolvency Court, and to exclude him from the benefits of the Bill, till a final dividend was declared, was not fair. The scaling down of such debts would also benefit the creditors to some extent.

'ADJUDICATED AN INSOLENT'.—This section would apply whether the agriculturist has been adjudged insolvent on his own application or on an application by any creditor of his.

'A DIVIDEND HAS BEEN DECLARED'.—To disentitle an insolvent agriculturist to the benefits of this Act, it would be sufficient on a strict interpretation of the language in the section if a dividend has been *declared*. It would be immaterial whether or not subsequent dividends also may have to be declared, or whether or not the declared dividend has been actually paid out to the creditors concerned. But, however *see* the observations of the Select Committee extracted above.

Para. 2. 'WOULD HAVE BEEN AN AGRICULTURIST INSOLVENCY'.—This expression has been adopted probably on account of the fact that an agriculturist on his adjudication would cease to be an agriculturist, having no property at all, all his property having become vested in the Official Assignee or Official Receiver as the case may be.

22. Where, in execution of any decree, any movable property of an agriculturist has been sold on or after the 1st October, 1937, any judgment-debtor may apply to the court for an order that the provisions of section 8 or 9, as the case may be and of sections 11 and 12 be applied to the decree, and the court, shall, if satisfied that the applicant is an agriculturist entitled to the benefits of those sections, apply the same and order the decree-holder to refund any sum received by him on or after the 1st October, 1937 in excess of the amount to which he would have been entitled if the property had not been sold:

Special provision in the case of certain sales of movable property.

Provided that no such order shall be made without notice to the decree-holder and without affording him an opportunity to be heard in the matter.

NOTES.

S. 22.—OBJECT OF THE SECTION.—Shortly after the publication of the first Bill regarding agricultural debtors on 1st October, 1937, there was considerable agitation throughout the country over the merits of the Bill. The present measure is only a continuation of the same efforts. In order to avoid any oppression due to any action having been taken in execution in the interval, this section has been enacted to help the judgment-debtors as against sales and execution proceedings in the interval.

'ANY JUDGMENT DEBTOR'.—These words may include a surety to an agriculturist who may not himself be an agriculturist, provided a decree has been passed against him and the agriculturist (the principal debtor). It may not be necessary that the agriculturist judgment debtor himself should make the application under this section.

23. Where in execution of any decree any immovable property, in which an agriculturist had an interest, has been sold or foreclosed on or after the 1st October, 1937, then, notwithstanding anything contained in the Indian Limitation Act, 1908, or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, any judgment-debtor, claiming to be an agriculturist entitled to the benefits of this Act, may apply to the court within 90 days of the commencement of this Act to set aside the sale or foreclosure of the property, and the court shall, if satisfied that the applicant is an agriculturist entitled to the benefits of this Act, order the sale or foreclosure to be set aside and thereupon, the sale shall be deemed not to have taken place at all:

Provided that no such order shall be made without notice to the decree-holder, the auction purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.

NOTES.

S. 23.—'ANY JUDGMENT DEBTOR'.—See Notes under S. 22 *supra*.

'OTHER PERSONS INTERESTED IN SUCH SALE'.—This would evidently refer to other decree-holders who may have obtained rateable distribution from out of the sale proceeds and also perhaps subsequent alienees from auction purchasers. (*Vide* S. 24 *infra*).

24. Where a sale is set aside under the preceding section, a purchaser shall be entitled to an order for repayment of any purchase money paid by him against the person to whom it has been paid:

Consequential provision on setting aside of sale.

Provided that no poundage shall be payable in respect of any such sale and provided further that where poundage has been collected the court shall direct the same to be refunded.

NOTES.

S. 24.—'NO POUNDAGE SHALL BE PAYABLE'.—This is because it has been provided in S. 23 that the sale "shall be deemed not to have taken place at all".

25. All alienations of immovable property made by an agriculturist debtor on or after the 1st October, 1937 shall be invalid as against every creditor whose sale in execution or forcelosure decree has been set aside under section 23 or who became entitled to rateable distribution of the proceeds of such sale under section 73 of the Code of Civil Procedure, 1908.

Alienations by debtor.

26. Any creditor may apply to the Collector of the district in which the creditor believes his debtor to have been or to be assessed to income-tax in terms of proviso (A) to section 3 (ii) or to profession, property or house tax under the Cantonments Act, 1924, in terms of provisos (B) and (C) to that section, for information as to the above facts and the Collector shall thereupon ascertain such information and grant to such creditor a memorandum in

District Collector to furnish information as to certain facts.

the prescribed form as to whether the debtor has been so assessed to income-tax or to profession, property or house tax. Such memorandum shall be received in every court as evidence of the facts stated therein.

NOTES.

S. 26.—“SHALL BE RECEIVED IN EVERY COURT AS EVIDENCE OF THE FACTS STATED THEREIN”.—It must be noted that it is not made conclusive evidence of such facts.

27. Any creditor may apply to the executive authority of a municipality, the president of a local board or the Revenue Officer of the Corporation of Madras for information as to whether his debtor was or is assessed to profession, property or house tax in terms of provisos (B) and (C) to section 3 (ii), and the executive authority, president or Revenue Officer shall thereupon grant to such creditor a certificate in the prescribed form as to whether the debtor named in the application has been so assessed to profession, property or house tax. Such certificate shall be received in every court as evidence of the facts stated therein.

Executive authorities of local bodies to furnish information as to certain facts.

Power to make rules. **28.** (1) The Provincial Government may make rules for carrying into effect the purposes of this Act.

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

(a) in regard to any matter which is required to be prescribed by this Act;

(b) prescribing the form of, and the fees to be paid in respect of, applications under this Act; and

(c) for removing any difficulty in giving effect to the provisions of this Act.

(3) All rules made under this section shall be consistent with the provisions of this Act. They shall be published in the Official Gazette and upon such publication shall have effect as if enacted in this Act.

S. 28] THE MADRAS AGRICULTURISTS RELIEF ACT, 1938. 181

NOTES.

The power to make rules reserved to the Government under this clause is very wide, and the only restriction is that the rules should not be inconsistent with the provisions of the Act.

"PRESCRIBED BY THIS ACT".—For example, *See* Ss. 26 and 27.

'AS IF ENACTED IN THIS ACT'.—These words would probably import that the rules framed by the Government would govern even cases pending at the time of the publication of the rules.

MADRAS ACT IV of 1938.

[Received the assent of the Governor-General on 11th March, 1938.]

Press Communique.

Fort St. George, 30th March, 1938.

No. 325.

The following summary of the Madras Agriculturists' Relief Act, 1938, is published with a view to apprise the public of the provisions of this important measure. Since there was a controversy over many of the provisions of this measure when it was considered by the Legislature it is important that the final shape of the relief afforded to Agriculturists under the Act which is now Law should be as widely known as possible. No copyright is reserved in regard to this summary; and political and social workers and organizations throughout the Province are requested to copy, translate and publish it so as to reach the agriculturists in the villages.

The Madras Agriculturists' Relief Act.

(In force from 22nd March, 1938.)

1. **Object of Act.**—The object of the Act is to give relief to indebted agriculturists. This object is attained by:—

(1) Scaling down their existing debts.

(2) Reducing the rate of interest on their future debts.

(3) Writing-off the arrears of rent dues to Zamindars, Janmis and other landholders.

2. **Debts scaled down.**—Debts are classified into two categories:—

(a) those which were incurred before 1st October, 1932; and

(b) those which were incurred on or after that date.

The relief given is different in the two cases.

(A) Debts incurred before 1st October, 1932.

(1) In the case of these debts, all interest outstanding on 1st October, 1937 is wiped out and only the principal or such portion of the principal as may not have been paid will be due from the agriculturist.

(2) Where an agriculturist has paid twice the amount of the principal to his creditor by way of interest or principal or both, the entire debt (principal and interest) is wiped out.

(3) Where the re-payments made exceed the principal, but are less than twice the principal, only such amount as would be necessary to bring up the amounts re-paid to twice the principal, or such portion of the principal as is outstanding, whichever is less, need be paid.

(4) Where a debt has been renewed and a fresh document has been executed, only the principal originally advanced together with the sums subsequently advanced as *principal* will be regarded as the principal for the purpose of these provisions.

(B) Debts incurred on or after 1st October, 1932.

In the case of these debts, the principal or such portion thereof as may be outstanding is not affected and will have to be re-paid. Relief is

given only in respect of interest. Interest is calculated at 5 per cent. per annum simple interest. All payments made by the agriculturist towards interest are deducted from the interest as so calculated, and only the balance, if any, will be due from the agriculturist.

3. Future interest.—No debt incurred by an agriculturist after the 22nd March, 1938 will bear interest at a rate exceeding 1 pie per rupee per mensem simple interest, or one anna per rupee per annum simple interest. This is the same as 6¼ per cent.

4. Whom does the Act benefit?—Every person who has a saleable interest in any agricultural land not situated within a municipality or cantonment is entitled to the benefits of the Act. Persons who hold land as ryots or tenants under Zamindars or Inamdars are also entitled to the relief provided. So are persons who hold an interest in land as kanamdars, kuzhikanamdars or werumpattamdars under janmis in Malabar.

Lessees and sub-lessees are also benefited by the Act.

Large Zamindars, Janmis and Inamdars have, however, been excluded from the benefit of the Act. A landholder of an estate who pays more than 500 rupees as peshkash, a janmi who pays more than that sum as land revenue, and an inamdar who pays more than 100 rupees as quit rent or jodi will not be entitled to the benefit of the Act. Ryotwari pattadars will, however, derive the benefit irrespective of the amount of land revenue paid by them. Even an agriculturist who has been declared insolvent will get the benefits of this Act if his property has not been already sold and payment made to his creditors out of the sale proceeds.

5. Who cannot get benefit under the Act?—The Act does not give relief to the following persons:—

(a) Persons who were assessed to income-tax in the year 1936-37 or 1937-38;

(b) Persons who have been assessed to profession tax on a half-yearly income of more than Rs. 300 or to property tax or house-tax in respect of buildings or lands of an annual rental value of Rs. 600 or more in a municipality, cantonment or ex-union panchayat.

6. Debts not affected by the Act.—The following debts are not affected by the Act and will have to be paid in full:—

(a) Usufructuary mortgages where no rate of interest is stipulated;

(b) Any balance of purchase-money due in respect of immovable property which has been sold;

(c) Any sums due to a public company or bank, provided the interest payable is not more than 9 per cent. per annum;

(d) Any sum declared as costs by any Court;

(e) Any sum spent to preserve mortgaged property;

(f) Any sums due to Government or to local bodies;

(g) Any sums due on a mortgage of house property alone in a municipality, cantonment or ex-union panchayat;

(h) Any sum due to a co-operative society or a land mortgage bank;

(i) Sums due on 1st October, 1937 to a woman creditor not owning any other property (exclusive of the house in which she lives, wearing apparel, jewellery and the like), provided that the principal amount of

the property owned by the woman in the shape of debts due to her is Rs. 3,000 or less;

- (j) Wages due to agricultural or other rural labourers;
- (k) Any liability arising out of a breach of trust; and
- (l) Any sum payable as maintenance.

7. Joint families.—Joint families will also be entitled to the benefit of the Act. If the family as a whole was assessed to income-tax or to any profession or property-tax which would have disentitled an individual assessee to the benefit of the Act, neither the family nor any member of the family would be treated as an agriculturist. If certain members of a joint-family are agriculturists while others are not, the family debt will be divided and the shares of the agriculturist and of the non-agriculturist members ascertained separately. The non-agriculturist members will remain liable for their full share of the debt, while the agriculturist members will have their share of the debt scaled down in accordance with the provisions of the Act.

8. Decrees re-opened.—“Debt” as defined by the Act will include decree debts also, and so any amount due under a decree which remained unsatisfied on the 22nd March, 1938 will, on the application of the agriculturist judgment-debtor, be scaled down in accordance with the provisions of the Act.

Proceedings in execution of a decree will, on application, be stayed until the decree is amended. An application for the amendment of the decree should, however, be made within 60 days of the stay order.

9. Sales set aside.—Any costs allowed to the decree-holder in a suit instituted after 1st October, 1937, are also liable to be reduced.

Where immovable property of an agriculturist has been sold or foreclosed on or after 1st October, 1937, the agriculturist debtor is entitled to apply to the Court within 90 days after the 22nd March, 1938, for setting aside the sale or foreclosure of the property. In such cases, the interest of the creditor is safeguarded by providing that alienations of immovable property made by an agriculturist debtor on or after the 1st October, 1937, will be invalid against the creditor concerned.

Where any immovable property of an agriculturist has been sold on or after 1st October, 1937, the sale will stand but the decree-holder is required to refund any sum received by him on or after that date in excess of the sum to which he would have been entitled if the property had not been sold.

10. Information furnished.—Creditors are entitled to apply to the Collector of the District or to the executive authority of the municipality or local board concerned, for information as to whether their debtors have been assessed to income-tax or to profession, property or house-tax in a cantonment, municipality or ex-union panchayat. The information furnished by the Collector or executive authority is receivable as evidence in Courts of Law.

11. Arrears of rent written off.—All arrears of rent due to landholders or undertenure holders under the Madras Estates Land Act or jammies or intermediaries under the Malabar Tenancy Act, for fasli 1345 and earlier faslies are to be treated as discharged, subject to two conditions, *viz.*, (a) that the rent for fasli 1347 is paid on or before 30th September, 1938; and (b) that the rent for fasli 1346 is paid on or before 30th September, 1939. Where only a portion of the rent for fasli 1346 has been paid before 30th September, 1939, the rent for fasli 1347 having been paid before 30th September, 1938, the arrears for fasli 1345,

etc., will be discharged only in the same proportion as the rent actually paid for fasli 1346 and 1347 bears to the full rent due for those two faslis.

Land-cess recoverable by a landholder under the Madras Local Boards Act, land revenue and water-cess payable by the tenant, and costs awarded in decrees for rent, will not be wiped out and the landlord will be entitled to recover them in addition to the rent for fasli 1346 and 1347.

In cases in which proceedings for the recovery of rent stood stayed by the Madras Estates Land Amendment Act (Madras Act VIII of 1934), the rent for fasli 1345 will also be due, though the date for the payment of that rent will be postponed to some extent.

All payments made by a tenant towards rent after the 22nd March, 1938, should be credited to the rent for fasli 1347 in the first instance and to the rent for fasli 1346 in the next instance. The tenant is also entitled to pay into the Court the amount considered by him to be due towards rent and ask the Court for a declaration as to what amount is actually due from him.

(*Fort St. George Gazette*, dated 5th April, 1938, Part 1, pages 505 to 507.)

Rules under Madras Agriculturists Relief Act, 1938
[Madras Act IV of 1938].

NOTIFICATION.

Fort St. George, March 24, 1938 (G.O. No. 772, Development).

No. 272.—In exercise of the powers conferred by clauses (a) and (b) of sub-section (2) of S. 28 of the Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938), the Government of Madras are hereby pleased to make the following rules:—

RULES.

1. An application under S. 18, 19, 20, 22 or 23 of the Act shall be in writing, shall specify the name and address of the applicant, the name and address of the respondent, a clear statement of the facts of the case and the nature of the relief prayed for, and shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908.

2. An application under S. 26 or 27 of the Act shall be in writing, shall specify the name and address of the applicant, the information required, and the name and address of the person in respect of whom, and the purpose for which, such information is required, and shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908.

3. There shall be affixed to every application under S. 18, 19, 20, 22, 23, 26 or 27 of the Act, a Court-fee stamp of the value of twelve annas.

4. (1) A memorandum granted to a creditor under S. 26 of the Act shall be in Form A appended to these rules with such variations as circumstances may require.

(2) A certificate granted to a creditor under S. 27 of the Act shall be in Form B appended to these rules, with such variations as circumstances may require.

FORM A.

[See Rule 4 (1).]

Memorandum granted by the Collector of.....under S. 26 of the Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938).

Read application from.....dated.....

Mr.

Mrs.

Miss

assessed to—

.....ofhas been

- (1) income-tax under *.....in the financial year ending.....
- (2) profession-tax by the.....cantonnement for the half-year ending.....on a half-yearly income of.....rupees, derived from a profession other than agriculture, under *.....
- (3) property or house-tax by the.....cantonnement in respect of buildings or lands other than agricultural lands under *.....and that the aggregate annual rental value of such buildings or lands is.....rupees.

Signature of the Collector.

* The appropriate Act or law under which assessment is made shall be entered here.

FORM B.

[See Rule 4 (2).]

Certificate granted under S. 27 of the Madras Agriculturists Relief Act, 1938 (Madras Act IF of 1938).

Read application from.....dated.....
the executive authority of.....Municipality

I.....the President of.....Board

the Revenue Officer of the Corporation of Madras
Mr.

do hereby certify that Mrs......

Miss

of.....has been assessed to—

- (1) profession-tax for the half-year ending.....on a half-yearly income of.....rupees derived from a profession other than agriculture, under *.....
- (2) property or house-tax in respect of buildings or lands other than agricultural lands under *.....and that the aggregate annual rental value of such buildings or lands is.....rupees.

Signature of the authority granting the certificate.

* The appropriate Act or law under which assessment is made shall be entered here.

C. J. PAUL,
Secretary to Government.

RULES.

No. 383.

In exercise of the powers conferred by sub-section (1) and clause (b) of sub-section (2) of section 28 of the Madras Agriculturists Relief Act, 1938 (Madras Act IV of 1938), the Government of Madras are hereby pleased to make the following amendments to the rules published with Development Department Notification No. 272, dated 24th March, 1938, in the Fort St. George Gazette Extraordinary, dated 24th March, 1938:

Amendments.

In the said rules—

(1) rules 1 to 4 shall be re-numbered as 2 to 5 respectively and the following shall be inserted as rule 1, namely:—

"1. Any tenant desirous of paying into Court any amount towards the rent due or claimed to be due by him for fasli 1347 or 1346 or both, under sub-section (4) of section 15 of the Act, shall present to the Court an application in writing for the purpose. The application shall specify the name and address of the applicant, the amount of rent paid by him into Court, the fasli or faslis for which it is paid and the name and address of the landholder, under-tenure holder, janmi or intermediary to whom it is to be paid. The application shall be signed and verified in the same manner as a pleading under the Code of Civil Procedure, 1908";

(2) In rule 4 as so re-numbered, before the words and figures "under section 18", the words and figures "under section 15 (4) read with rule 1 or" shall be inserted;

(3) in Form A, for the expression "see rule 4 (1)", the expression "see rule 5 (1)" shall be substituted; and

(4) in Form B, for the expression "see rule 4 (2)", the expression "see rule 5 (2)" shall be substituted.

(Fort St. George Gazette, dated 3rd May, 1938, Part 1, pp. 635-636.)

SUPPLEMENT.

S. 1, ACT, NOT ULTRA VIRES.—Though in one aspect and for one purpose a subject may be within the powers of the Federal Parliament, in another aspect and for another purpose it may fall within the powers of a Provincial Legislature. The Madras Agriculturists' Relief Act is one which relates to "*agriculture*" a subject reserved for the Provincial Legislature, item 20 of List II of Schedule VII of the Government of India Act. The Act relates to money lending to agriculturists, and "*money lending*" also is a subject reserved for Provincial Legislature, item 27 of List II of Schedule VII. The only effect of the Act, so far as Negotiable Instruments are concerned is to reduce liability where the maker or endorser is an agriculturist. The Act being in substance within the powers of the Madras Legislature, the fact that in particular cases it may operate to reduce liability on contracts evidenced by negotiable instruments cannot affect its validity. So too its affecting discretion given to Courts by the Usurious Loans Act cannot affect its validity. The Act is *intra vires* the powers of the Provincial Legislature, and not *ultra vires* on the ground that its provisions are repugnant to the provisions of the Negotiable Instruments Act, the Usurious Loans Act and the Hindu Law as to debts. I.L.R. (1939) Mad. 151=180 I.C. 994=11 R.M. 760=2 F. L. J. 39=49 L. W. 257=A. I. R. 1939 Mad. 361=(1939) 1 M.L.J. 272 (F.B.).

S. 3, PROVISO (c). CONSTRUCTION—"ASSESSED"—MEANING OF.—The proviso to S. 3 excludes from the benefits of the Act only persons who have been *assessed* to property tax. It does not exclude those who, though liable to property tax, have for some reason or other escaped assessment. It cannot be held that the words "*assessed to*" mean "*taxed in respect of*" and not that the person's name should actually be found in the assessment register. To so interpret would be clearly perverse. A person cannot be "*assessed*" unless the assessment is made in his name. 50 L.W. 411=A.I.R. 1939 M.W.N. 910=A. I. R. 1939 Mad. 942=(1939) 2 M.L.J. 495.

S. 3 (ii) PROVISO (c). PROPERTY SITUATE IN PANCHAYAT AREA.—The mere fact that the property is situate within a Panchayat area does not operate to exclude its owner from the benefits of the Act,

unless the Panchayat is one which was a union before 26th August, 1930 (*i.e.*) was a union formed under the Madras Local Boards Act, 1920, which was notified by Act XI of 1930. 50 L. W. (Summary of Recent Cases) 71.

S. 3 (*iii*). "DEBT"—PURCHASER OF MORTGAGED PROPERTY.—The definition of "debt" in S. 3 (*iii*) cannot be read as limited to cases where a person is personally liable. The reference to liability in the clause is wide enough to cover every person who is in any manner liable either because he is personally liable or because he is liable on account of the possession of property. A purchaser of mortgaged property is a person liable to pay the debt due under the mortgage and can therefore claim the benefit of the Act if he is an agriculturist. 48 L.W. 954=(1938) 2 M. L. J. 1068. As to what is "debt" under this Act, *see also* (1939) 1 M.L.J. 528; (1939) 2 M.L.J. 745 *infra*.

S. 3 (*v*). HEIR AND ASSIGNEE OF PROMISEE.—Where the renewal of a promissory note is in favour of the heir of the promisee who was ill, he will come under the definition of a creditor in S. 3 (*v*) of the Act. So too an assignee of a prior promisee. (1939) 2 M.L.J. (Notes of Cases) 95.

S. 4 (*c*). APPLICABILITY—CHATRAM ADMINISTERED BY LOCAL AUTHORITY.—Income from endowments and trusts, such as chatrams whose administration has been made over to a local authority must be regarded as income of the local authority within the meaning of S. 4 (*c*) of the Agriculturists' Relief Act; and a lessee of the chatram managed by the local authority cannot therefore call in aid the provisions of the Act. 50 L.W. 503=1939 M.W.N. 972=(1939) 2 M.L.J. 818.

S. 4 (*d*). HOUSE PROPERTY, MEANING OF.—The term "house" includes the land appurtenant to the house and necessary for its enjoyment. But a vacant piece of land, which is a separate unit with no building upon it, though destined for building purposes, would not be properly "house property" within the meaning of S. 4 (*d*). I.L.R. (1939) Mad. 943=1939 M.W.N. 731=50 L.W. 181=A.I.R. 1939 Mad. 789=(1939) 2 M.L.J. 233.

Vacant ground which is a part of the compound of the house property, is "house property" under S. 4 (*d*); "house property" will normally include the site on which the building stands and the garden compound or yard attached thereto. 50 L.W. 578=1939 M.W.N. 1148=(1939) 2 M.L.J. 782.

S. 4 (*f*). APPLICABILITY—MAHOMEDAN CO-HEIRS.—The relation of co-owners, such as co-heirs under Mahomedan law, is not that of creditor and debtor; the liability to pay interest will arise in such cases where the co-owner in possession of the common funds has realised interest by their investments. The liability of the co-owner in management to account to the others is not a

“debt” within the meaning of Madras Act (IV of 1938). The case is taken out of the Act by S. 4 (f) of the Act. I.L.R. (1939) Mad. 525=1939 M.W.N. 279=49 L.W. 391=A.I.R. 1939 Mad. 471=(1939) 1 M.L.J. 528.

S. 4 (h). CONSTRUCTION OF SECTION.—The section is not happily worded. Construing the language actually used and considering the intention of the framers of the Act the work “debt or debts”, in S. 4 must be regarded as a whole, provided, of course, the debt or debts were owed by agriculturists. Any debt owed by non-agriculturists to the woman plaintiff or any other property not in the shape of debt cannot be included, as it would deprive the woman of the benefit of the exemption. (1940) 1 M. L. J. (Notes of Cases) 26.

S. 7. SCALING DOWN OF DEBT—MORTGAGE DEBT—EXERCISE OF POWER OF SALE UNDER S. 69, TRANSFER OF PROPERTY ACT.—Where the creditor in exercise of his power of sale under S. 69 of the Transfer of Property Act, 1882, was about to recover by sale of the debtor’s property mortgaged to him the full amount of the debt, that is to say, without deducting the amount by which it had become reduced by the operation of the Madras Agriculturists’ Relief Act, 1938, and the debtor thereupon sued for an injunction to prevent the creditor from proceeding with the sale, *held*, that the suit was competent and that as the sale was imminent the Court might properly grant an interim injunction. It is no answer in such a case to say that under S. 69 of the Transfer of Property Act the debtor will be entitled to recover damages if the mortgagee exercised his power of sale in an improper or irregular manner. (1938) 2 M.L.J. 918.

It is implied in S. 7 of the Madras Agriculturists’ Relief Act that it is the duty of the creditor to scale down the amounts due to him by his debtors. There is nothing in the section indicating that the scaling down must necessarily be the act of a Court. It will be only in a case in which the creditor does not scale down his claim in accordance with the provisions of the Act that the intervention of the Court will be necessary. If a creditor attempts to exercise his power of selling the debtors’ property mortgaged to him reserved to him under the mortgage deed without scaling down the debt in accordance with the Act, that would be an act of injury, which the Court would prevent by issuing a temporary injunction on application by the debtor. 1938 M.W.N. 949=48 L.W. 531=(1938) 2 M.L.J. 920.

S. 8.—SCOPE AND APPLICABILITY OF SECTION.—The 1st defendant executed a mortgage deed in favour of the plaintiff on 27-7-1929. In execution of a money decree against the mortgagor the 8th defendant purchased the equity of redemption in a portion of the hypotheca in 1930, and he sold the same to the 9th defendant on 11-8-1933. The plaintiff sued

on his mortgage and claimed to bring to sale the properties purchased by the 9th defendant as part of the mortgaged security. There was a decree on the mortgage. The 9th defendant applied for relief under the Agriculturists' Relief Act. It was found that he and also the mortgagor were agriculturists. It was contended by the plaintiff that the liability of the 9th defendant was not one falling under S. 8 of the Act, as he purchased the property only in 1933 and his liability was not one subsisting prior to 1—10—1932.

Held, that the 9th defendant's liability was traceable to the original mortgage, that his purchase was not the basis of any new liability, and since the liability now sought to be enforced was one arising out of the mortgage of 1929, the case fell under S. 8 of the Act. *Held, further*, that relief under the Act was not limited to the extent of the proportion attributable to the property in the possession of the 9th defendant. 48 L.W. 954=(1938) 2 M.L.J. 1068.

S. 8, Expl. APPLICABILITY AND CONSTRUCTION.—The explanation to S. 8 speaks first of a renewal which is obviously by the same debtor. Then come the words "or included in a fresh document." Inclusion in a fresh document must be obviously by the same debtor. The effect of the explanation is that when the debtor merely renews the debt or includes in a fresh document the sum due under the old document, the scaling down provision would apply. 50 L.W. 523=1939 M.W.N. 990=(1939) 2 M.L.J. 609.

S. 8 does not lay down that under the explanation to the section the debtor must be the same. A change in "debtors" especially where he is the legal representative of the original debtor does not debar him from claiming the reliefs under the Act in the payment of those debts. (1939) 2 M.L.J. (Notes of Cases) 95.

There were three successive mortgages each in renewal of the one before. The mortgagees were in each case different, namely, the petitioner's mother, the petitioner's uncle and finally the petitioner to whom the money lent belonged. *Held*, the interpretation of the expression "same creditor" to include cases like this is not unreasonable. (1939) 2 M.L.J. (Notes of Cases) 77.

Ss. 8 and 10. LIEN FOR UNPAID PURCHASE MONEY.—A mortgage was executed for Rs. 7,000 on 4th November, 1914, the whole of the mortgage debt being the price payable by the mortgagors for lands purchased by them from the mortgagees and subsequent to the mortgage there was partition among the mortgagors and after the partition the mortgage debt was split up and a subsequent mortgage for Rs. 2,500 of other ancestral properties was executed by the new mortgagor for the portion of the debt that fell

to him and a decree was passed on that mortgage. When it was sought to be scaled down under S. 19 of Act IV of 1938, *held*, that S. 10, sub-S. 2 (2) of Act IV of 1938 is a sufficient answer to the petition for scaling down.' In view of the scheme of the Act the giving of other property as security did not affect the applicability of the clause in S. 10 as to the lien for unpaid purchase-money. (1939) 2 M.L.J. (Notes of Cases) 93.

For price of land sold defendant executed a pronote in 1931. In 1935 interest amounting to Rs. 900 was due on this promissory note. Defendants paid Rs. 760 towards that in cash and executed a new subsidiary pronote for the balance, namely, Rs. 140. In a suit to recover this amount, *held*, that S. 10 (2) is not applicable to the case as this small fragment of the sum is not charged under S. 55 (4) of the Transfer of Property Act. The money is not unpaid purchase-money and is wiped out as interest outstanding by S. 8 of the Act. (1939) 2 M.L.J. (Notes of Cases) 93.

Ss. 8 and 20. COMPROMISE DECREE.—On a promissory note of 1932 a suit was filed for principal, interest and costs. A compromise decree was passed in 1935. In execution of that decree some amount was received in March, 1937. After the coming into force of the Madras Agriculturists' Relief Act the judgment-debtor applied for scaling down the debt. The Court below split up the compromise decree and taking the amount of principal under the original claim calculated interest upon the contract rate up to the decree and at the decree rate afterwards and credited the payment towards interest and held that the balance of interest should be held to have been wiped out under the Madras Agriculturists' Relief Act. *Held*, that it was not permissible to split a compromise decree like this and that the amount due under the compromise decree must be taken as principal and that scaling down must be done on that basis. 50 L.W. (Summary of Recent Cases) 21.

On a mortgage of 1926 for Rs. 1,000 a suit was filed for a sum of Rs. 2,000 and odd and a final compromise decree was passed on 14th August, 1937, for Rs. 1,775 inclusive of costs and interest. A sum of Rs. 1,400 was paid towards the decree debt on 17th August, 1937. An execution petition was filed by the decree-holder in December 1937 after appropriating the payment of Rs. 1400 towards costs and outstanding interest in the first instance and the balance towards principal. A petition was filed by the judgment-debtors under Ss. 8 and 19 of the Act for scaling down of the debt stating that the appropriation was made only on the date of the execution petition, *i.e.*, in December, 1937 and that all interest outstanding on 1st October, 1937, must be wiped out and that the payment of Rs. 1,400 on 17th August, 1937, must be adjusted towards the principal only of Rs. 1,000 leaving thereafter nothing for execu-

tion. The Courts below did not give effect to this contention of the judgment-debtor.

Held, in revision that the creditor must, in the circumstances of the case, be deemed to have appropriated the payment towards costs and outstanding interest in the first instance and the balance only for principal on the date of the payment of the amount itself and not on the date of the execution petition. *Held also* that the compromise decree of 1937 cannot be considered to be a debt incurred after 1932 for application of S. 9 of the Act. (8 Beng. L.R. 107 and the judgment of Pandrang Row, J., in C.R.P. No. 86 of 1939, referred to). 50 L.W. (Summary of Recent Cases) 63.

S. 9 APPLICABILITY—IF CONFINED TO LIABILITIES UNDER CONTRACTS.—Though the word “incurred” in S. 9 of the Madras Agriculturists’ Relief Act suggests the idea of a liability voluntarily incurred, the terms of cl. 1 of that section indicate that the section refers not only to contractual liability but even to liabilities under law, custom or decree of Court. I.L.R. (1939) Mad. 525=1939 M.W.N. 279=49 L.W. 391=A.I.R. 1939 Mad. 471=(1939) 1 M.L.J. 528.

“INCURRED”—MEANING OF.—The expression “incurred” must be held to apply to the inception of the debt, that is, it must refer to the time when the original obligation was created, and not the principal amount as last found due plus interest on that from the date when it was found due. (1939) 2 M.L.J. (Notes of Cases) 57.

S. 10 (2) (ii). UNPAID PURCHASE MONEY.—The fact that for the purchase money due to the vendor the vendee gave as security some land other than the land sold and that the decree sought to be scaled down was passed in a suit to enforce this security can be no ground for holding that the debt does not come under S. 10 (2) (ii) of the Act and that it can be scaled down under the provisions of that Act. 50 L.W. (Summary of Recent Cases) 86. *See also* notes under Ss. 8 and 10, *supra*.

S. 15 (1) and (3). CONSTRUCTION AND SCOPE—IF INDEPENDENT OF EACH OTHER—S. 15 (3), NOT SELF-CONTAINED—CONTROLLED BY S. 15 (1).—Sub-S. (3) of S. 15 of the Madras Agriculturists’ Relief Act should not be construed as a self-contained enactment to be read by itself disregarding the rest of the section. It is necessarily part of the main S. 15 and is controlled by S. 15 (1). Petitioner, who was an agriculturist, owed no rent for Fasli 1345 or for any previous Fasli. On 3—12—1938, he owed rent for Faslis 1346 and 1347, and made a payment on that day declaring it to be for Fasli 1346. On the landholder seeking to bring his holding to sale in respect of Fasli 1347, the petitioner claimed that the rent paid by him should be credited to Fasli 1347 under S. 15 (3) of the Act, in spite of his declaration. *Held*, that the petitioner had not paid the rent for Fasli 1347 on or before 30—9—1938.

as required by S. 15 (1), proviso, and therefore could not claim the benefit of S. 15 (3). 1939 M.W.N. 1208=50 L.W. 800 (2)=(1939) 2 M.L.J. 791.

S. 15 and R. 6 (1). MAJOR AND MINOR INAMDARS.—The relationship between major and minor inamdars is not that of landlord and tenant, and S. 15 and R. 6 (1) of the Act would have no application. (1940) 1 M.L.J. (Notes of Cases) 29.

S. 19. WHO CAN APPLY.—Where a widow applied under S. 19 for scaling down of the decree which was passed against the assets of the deceased husband in her hands, on objection that inasmuch as there was no personal decree against her she was not a judgment-debtor entitled to apply under the Act. *Held*, she was a judgment-debtor within the meaning of the section and as such entitled to apply. ((1938) 2 M.L.J. 1068, rel. on.). (1939) 2 M.L.J. (Notes of Cases) 63. *See also* 50 L.W. (Summary of Recent Cases) 54.

APPLICATION OF SECTION TO NEGOTIABLE INSTRUMENTS.—Ss. 120 and 121 of the Negotiable Instruments Act do not apply to applications under S. 19 of the Madras Agriculturists' Relief Act for relief of debtors who are agriculturists. The words "suit thereon" in Ss. 120 and 121 clearly show that the proceeding intended to be denoted by those words is a proceeding initiated by some one who is entitled to sue or take legal steps to recover the money due on a negotiable instrument, *viz.*, by the promisee or payee; and they cannot apply to proceedings initiated by the maker or promisor for relief under a special Act like the Madras Act IV of 1938. There is consequently no estoppel in the way of an applicant under S. 19 of Madras Act IV of 1938, which prevents him from establishing that a debt evidenced by a negotiable instrument executed after 1932, was really one incurred before 1932, by showing that the instrument was in renewal of an earlier instrument executed prior to 1932. So far as Madras Act IV of 1938 is concerned there is no justification for regarding a debt incurred under a promissory note in a different way from other debts, as the object of the Act is to give relief to agriculturist debtors, whether the original debt was incurred under a negotiable instrument or otherwise. 50 L.W. 587=1939 M.W.N. 1044=(1939) 2 M.L.J. 658.

S. 19. RULES—SCOPE OF AMENDED RULES—NO RETROSPECTIVE EFFECT.—The petitioner claiming to be an agriculturist applied for the amendment of the decree against him under S. 19 of Act IV of 1938. The District Munsiff dismissed the petition on 4th May, 1939. The petitioner then filed the present petition under S. 115 of Civil Procedure Code for revision of the Munsiff's order. The respondent raised the objection that the petition for revision does not lie because the amended rules under the Act

dated 27th October, 1939, provided an appeal against the orders under S. 19. *Held*, the amended rules cannot have retrospective effect and do not govern the present case. On the merits held, where the certificate issued under S. 27 of the Act (of assessment to house-tax) showed that the petitioner was an agriculturist for the purposes of the Act and the respondent did not insist on the assessment register being produced, and unless the certificates were incorrect the Munsiff had no right to refuse the petitioner's claim that he was an agriculturist, the decision of the Munsiff is clearly perverse and must be reversed as it was a material irregularity in the exercise of his jurisdiction. (1939) 2 M.L.J. (Notes of Cases) 96.

APPEAL.—An order which merely decided that S. 19 of Act IV of 1938 is applicable and does not apply it for scaling down the decree, is not an appealable order. If the lower Court scales down the decree an appeal would lie from the new decree to be passed. (1939) 2 M.L.J. (Notes of Cases) 51.

N.B.—(1939) 2 M.L.J. 495 and (1939) 2 M.L.J. 609 are not now good law in view of the new Amended Rules under this Act.

Ss. 19 and 20. CONSTRUCTION AND SCOPE—DECREE CONFIRMED ON APPEAL.—Ss. 19 and 20 should be read together; the explanation of the expression "Court which passed the decree" in S. 20 of that Act equally applies to S. 19. The Court of first instance whose decree has been confirmed on appeal has clearly jurisdiction to entertain and deal with an application under S. 19 of the Act to scale down the decree debt and to amend the decree accordingly, and the application can properly be made to that Court. I.L.R. (1939) Mad. 520=183 I.C. 596=12 R.M. 329=49 L. W. 303=1939 M.W.N. 164=A.I.R. 1939 Mad. 483=(1939) 1 M.L.J. 329.

Ss. 19 and 20. JURISDICTION—MORTGAGE DECREE FOR SALE—EXECUTION.—In a mortgage suit instituted in 1929 in the Sub-Court of Berhampore, a final decree for sale was passed on 9—3—1933. In August 1934, an execution application was filed and pending that application, Orissa was constituted a separate Province. The execution proceedings were, however, continued in the Berhampore Sub-Court, and some of the mortgaged properties were sold on 26—7—1937, and purchased by the decree-holders themselves who had obtained leave to bid and set off the sale price against the said amount. All the mortgaged properties, including those which were sold by the Berhampore Courts had since the formation of the Orissa Province, come within the jurisdiction of the Sub-Court of Chicacole in the Madras Presidency. The sale was not confirmed, for on 24—8—1937, the judgment-debtors applied under O. 21, R. 90, C. P. Code, to have the sale set aside. During the course of the enquiry in that application, the judgment-debtors applied to the Berhampore Court, on 2—4—1938, under

S. 20 of the Madras Agriculturists' Relief Act praying for stay of execution. Applications under S. 19 of that Act were filed by the judgment-debtors on 6—5—1939 in that Court, and in the Chicacole Court on 14—4—1938, on the ground that the mortgaged properties were situate within the jurisdiction of the latter Court. On 4—7—1938, the Berhampore Court passed an interim order of stay on the application under S. 20. On 5—11—1938, that Court made an order directing the judgment-debtors to elect between the two Courts. As this was not done that Court dismissed the applications under S. 19 for non-prosecution on 13—12—1938. The applications under S. 20 were dismissed by the same Court later on 23—1—1939. On 13—12—1938 the Chicacole Court passed an order on the applications under S. 19 holding that it had jurisdiction to deal with them.

Held, in revision, (1) that as the execution petition was pending on 1—4—1936, in the Berhampore Sub-Court, that Court was perfectly competent, under the Notification No.F. 210 of 1936, Judicial, dated 1—4—1936, published by the Governor-General in Council, in pursuance of the powers conferred on him by the Government of India (Constitution of Orissa) Order of 1936, to go on with it, as if the order in council constituting Orissa Province had not been made; in other words, that Court had complete jurisdiction, and continued to function as a Court in the Madras Presidency and subject to the jurisdiction of the Madras High Court; (2) that there was no doubt that all the applications under Ss. 19 and 20 of the Madras Agriculturists' Relief Act must be deemed to be petitions raising questions relating to execution, discharge or satisfaction of the decree falling under S. 47, C. P. Code, and were therefore rightly presented to the Berhampore Sub-Court, which was the Court executing the decree then; (3) that the precaution taken by the judgment-debtors of presenting applications for the same relief to the Chicacole Sub-Court did not justify the Berhampore Court in dismissing the applications made to it simply because of the failure of the applicants to elect between the two Courts on the ground of non-prosecution; (4) that the Berhampore Court which had jurisdiction to deal with the applications was bound to deal with them on their merits, and that the proceedings had to be continued as if the Berhampore Sub-Court were still included in the Madras Presidency and had not ceased to be a Court belonging to the said Presidency; (5) that as the applications were proceedings initiated in connection with the pending execution application, the Berhampore Sub-Court and that Court alone had to deal with them and to deal with them as if it were still a Court in Madras Province, and as such it was bound by the provisions of the Madras Agriculturists' Relief Act or any Legislative enactment in force in the Madras Province; (6) that since the Berhampore Court alone had jurisdiction in the matter, it was

clear that the Chicacole Court had no jurisdiction to deal with the applications. 50 L.W. 851=(1939) 2 M.L.J. 853.

"DEBT".—The definition of debt specifically includes a decree debt, and it is clear that a decree debt is none the less a debt because it does not fall within the category for which special provision is made in S. 19. (1940) 1 M.L.J. 600.

APPEAL.—*Held*, orders under S. 19 cannot be deemed to be orders under S. 47, C. P. Code even when execution petitions are pending. The application under S. 19 has to be made to the Court which passed the decree. It is not a matter relating to the execution of the decree in any sense. If decree is scaled down an appeal will lie from the new decree, but if the application is dismissed no appeal can lie. (1940) 1 M.L.J. 422; (1939) 2 M.L.J. 853, not foll.; (1939) 2 M.L.J. 609, ref. to. [*N.B.*—See now New Appeal Rules cited *infra*.]

Ss. 19 and 20. HINDU JOINT FAMILY—SUCCESSIVE APPLICATIONS BY DIFFERENT INDIVIDUAL MEMBERS.—Any member of a Hindu joint family may apply for stay and scaling down a debt. But every member of the family in succession is not entitled to so apply and obtain stay. The joint family is obviously bound by an order passed on an application filed by any member or by any default committed by any member. I.L.R. (1939) Mad. 530=183 I.C. 865=12 R.M. 388=49 L.W. 620=1939 M.W.N. 441=A.I.R. 1939 Mad. 500=(1939) 1 M.L.J. 888. See also (1940) 1 M.L.J. (Notes of Cases) 25. See also (1940) 1 M.L.J. 300.

S. 20. (See also notes under Ss. 8 and 19).

WHO CAN APPLY—PUISNE MORTGAGEE.—A puisne usufructuary mortgagee who is impleaded as a party in a suit by the first mortgagee, and who is directed by the decree in that suit to redeem, is in no sense of the word a debtor. The decree is not against him for a debt payable by him, but in his favour allowing him a right in equity to redeem the first mortgage. He is not therefore entitled to apply under S. 20 of the Act. 1939 M.W.N. 736 (1)=(1939) 2 M.L.J. 225.

DECREE AGAINST JOINT FAMILY.—Where a decree is against a joint family as such which owns property assessed to house-tax of which the annual rental value exceeds Rs. 600 within the two years immediately preceding 1st October, 1937, no member of it can separately be held to be an agriculturist for the purpose of this Act, and an application by him under S. 20 does not lie. 50 L.W. (Notes of Recent Cases) 8.

Where one member of a joint Hindu family sought to have a debt due by the joint family scaled down, *held*, any member of a joint family can apply to have the decree debt of the family scaled down and it is the debt of the family as a whole that is to be scaled

down, if the family is proved to be an agriculturist within the meaning of the Act. The benefit under the Act is not to be restricted to the member of the family who makes the application. The entire scheme of the Act has reference to the character of the debtor and not to the character of the property comprised in a security for the debt. So where there is a mortgage comprising of agricultural land and other properties, the scaling down cannot be restricted only to agricultural land comprised in the mortgage, (1940) 1 M.L.J. (Notes of Cases) 25 ; (1939) 1 M. L. J. 888=1939 Mad. 500=49 L.W. 620.

HINDU FATHER—DECREE AGAINST, IN RESPECT OF LIABILITY ENFORCEABLE AGAINST FAMILY PROPERTY—RIGHT OF SON TO APPLY.—A decree passed against a Hindu father in respect of a family liability, that is to say, a liability enforceable against the family property, must be deemed in law to be a decree passed against his son also. The son must be regarded as virtually party to it, though not by name, as he must be regarded as a person by whom the debt is payable as well as by his father, and the son is therefore a debtor who is entitled to maintain an application under S. 20, 50 L.W. 636=1939 M.W.N. 1077=(1939) 2 M.L.J. 745.

UNDERTAKING BY HINDU FATHER TO MAKE RESTITUTION OF AMOUNT—CHARGE—RIGHT OF SON TO APPLY.—A "debt" in the Madras Agriculturists' Relief Act cannot be restricted to cases where a person is personally liable ; it is wide enough to cover the case of every person who is in any manner liable either because he is personally liable or because he is liable on account of possession of property, and takes in his heirs, legal representatives or assigns. The definition of "debt" under the Act would include a liability to make restitution. Where there is a liability on the part of a Hindu father to make restitution and pay certain amounts, which is made a charge on his joint family property, his son who takes that property as the result of a partition between him and his father would be a "debtor," and be entitled to apply under S. 20 of the Act. It cannot be said that because the son is not personally liable to pay the amount charged on the property falling to his share, he is not a debtor or that there is no debt which would entitle him to apply under the Act. (*Ibid.*)

LIMITATION—TIME EXPIRING ON HOLIDAY.—The proviso to S. 20 fixes a period of limitation for an application by an agriculturist judgment-debtor when a decree is being executed against him. It is a special provision inserted in the Act to meet the case where an agriculturist judgment-debtor has not taken the steps contemplated by S. 19. The period of 60 days is a period of limitation. It is not a condition precedent to the right to apply for relief that an application should be filed within 60 days of the stay. If the period of 60 days expires on a holiday, an application filed on the reopening day would be in time. I.L.R. (1939) Mad. 886=49

L.W. 762=1939 M.W.N. 521=A.I.R. 1939 Mad. 613=(1939) 2 M.L.J. 308.

APPLICATION TO EXCUSE DELAY.—Where after an application under S. 20 was made and proceedings stayed, an application under S. 19 was filed after 60 days fixed by S. 20 and along with it an application under S. 5 of the Limitation Act was filed to excuse delay. *Held* that S. 5, Limitation Act, does not apply to this Act. 50 L.W. (Summary of Recent Cases) 79.

DELAY IN REPRESENTATION OF PETITION.—Where a petition has been filed within the period fixed by S. 20 the fact that that period has been exceeded by the delay in re-presenting the petition is no ground for dismissing it if there is sufficient explanation for the delay. 50 L.W. (Summary of Recent Cases) 82.

STAY OF PROCEEDINGS.—The Court is bound if it is satisfied that the person making the application is entitled to the benefit of the Act, to stay the proceedings in order to give the judgment-debtor to have the decree modified by the Court which passed the decree. If an application is not put in within 60 days or if an application under S. 19 is dismissed the Court can proceed with the execution proceedings. (1940) 1 M.L.J. (Notes of Cases) 29.

Ss. 20 and 21. CONSTRUCTION AND SCOPE—DECREE AGAINST HINDU FATHER IN RESPECT OF FAMILY LIABILITY—FATHER DECLARED INSOLVENT—APPLICATION BY SON.—The exclusion of an insolvent enacted in S. 21 of the Act must be limited only to the insolvent and the debts payable by him, and even if the same debt is payable by another, *e.g.*, a Hindu son who is liable to pay his father's debts, the latter cannot be regarded as being virtually excluded by S. 21. If a debt is payable by more than one person, the insolvency of one cannot deprive the other person liable for the debt of his right to apply under the Act, if it otherwise satisfies the provisions of the Act. The fact therefore that a Hindu father against whom a decree has been passed has been adjudicated an insolvent and a dividend has been declared cannot deprive the debtor's son of his right to apply under S. 20 of the Act, when such decree is sought to be executed against the family property which is allotted to him in a partition, although the father cannot apply by reason of S. 21. 50 L.W. 636=1939 M.W.N. 1077=(1939) 2 M.L.J. 745.

S. 21. *See* (1939) 2 M.L.J. 745 *supra*.

S. 23. SCOPE OF SECTION.—The Court has no authority under the Act to set aside a court sale which has taken place prior to 1—10—1937. 50 L.W. (Summary of Recent Cases) 48.

S. 20 is applicable not only to a case arising under S. 19, but also under S. 23 of the Act. 50 L.W. (Summary of Recent cases) 64.

A Hindu widow inheriting her husband's estate has sufficient saleable interest in her husband's lands so as to sustain an application under S. 23. 50 L.W. (Summary of Recent Cases) 54.

S. 23. ORDER UNDER—APPEAL.—An order under S. 23 is not appealable, as the question involved is not one relating to execution, discharge or satisfaction of the decree within the meaning of S. 47, C. P. Code. 50 L.W. 201=1939 M.W.N. 735 (2)=A.I.R. 1939 Mad. 796=(1939) 2 M. L. J. 398. [*N. B.* See now amended Rule 8 under the Act.]

MORE RECENT CASES.

JURISDICTION OF DEBT CONCILIATION BOARD.—The Madras Debt Conciliation Board is merely concerned with the settlement of the debts in accordance with the Madras Debt Conciliation Act. Scaling down of debts under Madras Act IV of 1938 is for the Courts and not for a Debt Conciliation Board. The Board has no power to scale down debts. (1940) 1 M.L.J. (Notes of cases) 38.

S. 4 (g). “MAINTENANCE” in S. 4 (g) is not defined and cannot be supposed to have any technical meaning. Where a payment is meant for the maintenance of a decree-holder it will come under “maintenance” in S. 4 (g) of the Act. (1940) 1 M. L.J. (Notes of Cases) 34.

S. 4 (h). “OTHER PROPERTY.”—Besides the decree debt sought to be scaled down a woman creditor was entitled to a half-share in a mortgage debt. The principal amount of these two debts which were due on the 1st October, 1937, did not exceed Rs. 3,000. But the debtor contended that she was not entitled to the exemption under S. 4 (h) as the share in the mortgage debt was “other property.” *Held*, if it is found, that the other debt due to the woman creditor is also a debt due from an agriculturist she will be entitled to the benefit of the exemption under S. 4 (h), if not, such debt must be regarded as “other property” within the meaning of the provision and she will be excluded from it. [Anomalies which the wording of the section lead to pointed out. Decision of Krishnaswami Aiyangar, J. in C. R. P. No. 1072 of 1938 (unreported) overruled.] (1940) 1 M. L.J. 534.

S. 8. EXPLANATION. Where the debtor merely renews the debt or includes in a fresh document the sum due under the old document, the scaling down provisions of the Act apply, not where a third person takes over a debt due by a debtor and executes a fresh document in favour of the creditor. 186 I.C. 722.

Ss. 8 and 9. DEBT DUE FROM MEMBER OF JOINT HINDU FAMILY.—Where one member of a joint Hindu family sought to have a debt due by the joint family scaled down, *held*, any member of a joint family can apply to have the decree debt of the family scaled down and it is the debt of the family as a whole

that is to be scaled down, if the family is proved to be an agriculturist within the meaning of Act IV of 1938. The benefit under the Act is not to be restricted to the member of the family who makes the application. The entire scheme of the Act has reference to the character of the debtor and not to the character of the property composed in a security for the debt. So where there is a mortgage comprising of agricultural land and other properties, the scaling down cannot be restricted only to agricultural land comprised in the mortgage. (1940) 1 M. L.J. 300.

Ss. 8 and 9. COMPROMISE DECREE—EXECUTION—APPROPRIATION OF PAYMENTS.—In a suit on a mortgage bond a compromise decree was passed on 17-10-1936 and a final decree was passed on 14-8-1937, and on 17-8-1937, the debtor paid Rs. 1,400 in part discharge of the debt. On 14-12-1937, the decree-holder filed an execution application in which he stated that he appropriated Rs. 1,400 first towards interest and costs and the balance towards the principal. The debtor subsequently applies under S. 8 of the Madras Agriculturists' Relief Act to scale down the debt. *Held*, (1) that the date of the execution application could not be taken to be the date on which the appropriation was made by the creditor; (2) that since the debtor did not himself make a specific appropriation, the creditor was entitled to appropriate the amount in the manner he did; (3) that although the compromise decree may in some ways be considered to have given rise to a new debt, the date of the compromise was not the date on which the debt was incurred so as to make S. 9 of the Act applicable; and that it would be contrary to the spirit of the Act and even to the literal meaning of Ss. 8 and 9 to hold that, for purposes of Ss. 8 and 9, the debt was incurred after the 1st October, 1932. (1940) 1 M.L.J. 225.

S. 15. "TREE TAX" is not 'rent' under S. 15 and a ryot in possession of trees in a holding is not entitled to relief under the Act in respect of tree tax. (1940) 1 M.L.J. (Notes of Cases) 46.

RULES.

NEW RULE REGARDING PROVISION FOR APPEALS AGAINST ORDERS PASSED UNDER CERTAIN SECTIONS OF THE MADRAS AGRICULTURISTS' RELIEF ACT.

Fort St. George, October 27, 1939, (G.O. No. 2633, Development), No. 855 :

Rules framed under powers conferred by sub-section (1) and clause (c) of sub-section (2) of section 28 of the Madras Agriculturists' Relief Act, 1938 (Madras Act IV of 1938).

AMENDMENT.

After rule 7 of the said rules, the following rule shall be added, namely :—

“ 8. Appeals shall lie from any of the following orders passed by a Court under the Act, namely :—

(a) an order under section 18 (1) amending or refusing to amend a decree ;

(b) an order under section 19 amending or refusing to amend a decree or entering or refusing to enter satisfaction in respect of a decree ;

(c) an order under section 20 staying or refusing to stay proceedings in execution of a decree ;

(d) an order under section 22 directing or refusing to direct the refund of any sum realised in execution of a decree ;

(e) an order under section 23 setting aside or refusing to set aside any sale or foreclosure of immovable property ; and

(f) an order under section 24 directing or refusing to direct the repayment of any purchase money realised in execution of a decree ;

as if the order related to the execution, discharge or satisfaction of the decree within the meaning of section 47 of the Code of Civil Procedure, 1908.”

RULES REGARDING APPLICATIONS TO CIVIL COURTS
FOR SCALING DOWN OF NON-DECREED DEBTS.

Fort St. George, October 27, 1939 (G.O. No. 2634, Development), No. 856 :

Rules framed under powers conferred by sub-section (1) and clauses (b) and (c) of sub-section (2) of section 28 of the Madras Agriculturists' Relief Act, 1938 (Madras Act IV of 1938).

RULES.

1. In these rules—

(a) “ Act ” means the Madras Agriculturists' Relief Act, 1938;

(b) “ Court ” means the Court having jurisdiction under these rules ; and

(c) expressions used in these rules but not defined herein shall have the same meaning as in the Act.

2. (1) Where any debt, other than a decree-debt, is due by any person claiming to be an agriculturist entitled to the benefits of the Act in respect of such debt, the debtor or the creditor may apply to the Court for a declaration as to the amount of the debt due by the debtor to the creditor :

Provided that no such application shall be presented or be maintainable if any suit for the recovery of the debt be pending.

(2) The provisions of sub-rule (1) shall also apply to any person claiming that his debt has been discharged by virtue of the provisions of the Act.

3. (1) Every application under rule 2 shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

(2) There shall be affixed to every such application whether by the debtor or by the creditor a court-fee stamp of the value of 12 annas.

4. (1) Every application presented by a debtor shall contain the following particulars, namely :—

(a) the name and address of the applicant ;

(b) the name and address of the creditor in respect of whose debt the application is presented ;

(c) a statement that the debtor claims to be an agriculturist entitled to the benefit of the Act in respect of the debt of the creditor as against whom the application is presented ;

(d) the particulars of the debt in respect of which the declaration is claimed, including all matters necessary to invoke the jurisdiction of the Court to have the debt scaled down ; and

(e) the amount for which the applicant prays that the debt may be reduced.

The provisions of sub-rule (1) shall apply *mutatis mutandis* to an application presented by a creditor.

5. The application shall be rejected if it does not comply with any of the requirements of rule 4.

The rejection of an application under this rule shall not preclude the applicant from presenting a fresh application.

6. (1) On receipt of an application under rule 4, the Court shall, unless it rejects it under rule 5, pass an order fixing a date for hearing the application.

(2) Notice of the order under sub-rule (1) shall be served on the creditor and the debtor.

7. On the date originally fixed under rule 6 or on any subsequent date to which the application may be adjourned by the court, the Court shall, after taking such evidence or making such enquiry as it may consider necessary, pass such order on the application as it thinks fit.

8. If, at any time, while an application is pending in the court, a suit is filed by the creditor for the recovery of the debt which is the subject-matter of the application, the Court shall dismiss the application.

9. The order of the court declaring the amount of the debt under rule 7 shall be subject to appeal and second appeal as if it were a decree in an original suit.

10. The Courts having jurisdiction under these rules shall be the courts which would have jurisdiction to entertain suits for the recovery of the debts as unscaled.

PRESS COMMUNIQUES.

The following Press Communique has been issued by the Government of Madras :—

Doubts have been expressed as to whether an appeal lies against orders passed under Ss. 20 and 23 of the Madras Agriculturists' Relief Act, 1938, as it is a special Act. There is also a conflict of decisions as to whether or not the orders passed under the aforesaid sections can be construed as relating to execution proceedings. In order to clear these doubts, the Government have issued a rule providing for appeals from orders passed by a Court under Ss. 18 (1), 19, 20, 22, 23 and 24 of the Act, as if the orders related to the execution, discharge or satisfaction of decrees within the meaning of S. 47 of the Code of Civil Procedure, 1908.

With a view to carry out the object of the Agriculturists' Relief Act, an 'agriculturist' debtor as well as the creditor has to be empowered to set this law in motion. The Government have framed rules under S. 28 of the Act, so as to enable both the debtor and the creditor to apply to a Court to get an adjudication as to the amount due under the provisions of the Act. No such application can be presented or maintainable if any suit for the recovery of the debt be pending, and if, at any time, while an application is pending in the Court a suit is filed by the creditor for the recovery of the debt which is the subject-matter of the application, the application will be dismissed. Every application should be in writing and should be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints. There should be affixed to every such application whether by the debtor or by the creditor, a court-fee stamp of the value of twelve annas. An application presented by the debtor should contain the name and address of the applicant, the name and address of the creditor in respect of whose debt the application is presented, a statement that the debtor claims to be an agriculturist entitled to the benefit of the Act in respect of the debt of the creditor as against whom the application is presented, the particulars of debt in respect of which the declaration is claimed including all matters necessary to invoke the jurisdiction of the Court to have the debts scaled down and the amount for which the applicant prays that the debt may be reduced. These provisions apply *mutatis mutandis* to an application presented by a creditor. The application will be

rejected if it does not comply with any of the above requirements but such rejection will not preclude the applicant from presenting a fresh application. On receipt of an application, the Court will, unless it rejects it for want of the prescribed particulars, fix a date for hearing the application and notify the creditor and the debtor. The Court will then, after taking such evidence or making such enquiry as it may consider necessary, pass such order on the application as it thinks fit. The order of the Court will be subject to appeal and second appeal as if it were a decree in an original suit. The Courts having jurisdiction under these rules will be the Courts which would have jurisdiction to entertain suits for the recovery of the debts as unscaled.

Fort St. George, 9th June, 1938.

No. 499.—According to sub-section (1) of S. 15 of the Madras Agriculturists' Relief Act, 1938, *all arrears of rent* due to landholders or under-tenure holders under the Madras Estates Land Act or janmis or intermediaries under the Malabar Tenancy Act, *for fasli 1345 and earlier faslis* are to be treated as discharged subject to the following conditions, *viz.*—

(1) that the rent for fasli 1347 is paid on or before the 30th September, 1938; and

(2) that the rent for fasli 1346 is paid on or before the 30th September, 1939.

Where only a portion of the rent for fasli 1346 has been paid before the 30th September, 1939, the rent for fasli 1347 having been paid before the 30th September, 1938, the arrears for fasli 1345 and earlier faslis will be discharged only in the same proportion as the rent actually paid for faslis 1346 and 1347 bears to the full rent due for those faslis.

A doubt has been expressed whether the above provision has the effect of postponing the dates of payment of rent by a tenant to 30th September, 1938, in the case of rent for fasli 1347 and to 30th September, 1939 in the case of rent for fasli 1346, and of preventing the landholder from proceeding against the tenant before these respective dates. The Government desire to make it clear that it has not. What the Act does is merely to fix the latest dates for the fulfilment of the condition of payment of rent for faslis 1346 and 1347 to enable a tenant in arrears of any rent for fasli 1345 and earlier faslis to take advantage of the provisions of the Agriculturists Relief Act regarding the cancellation of such arrears. (*Fort St. George Gazette, 14th June, 1938, Part I, page 857.*)

Fort St. George, 20th July, 1938.

No. 636.—Under S. 15(1) of the Madras Agriculturists' Relief Act, *all arrears of rent* due to landholders or under-tenure holders under the Madras Estates Land Act or to Janmis or intermediaries

under the Malabar Tenancy Act *for fasli 1345 and earlier faslis* will be treated as discharged only

(i) if the rent for fasli 1347 is paid on or before the 30th September, 1938; and

(ii) if the rent for fasli 1346 is paid on or before the 30th September, 1939.

It has been brought to the notice of the Government that there is a general impression fostered by irresponsible persons that if the ryots do not pay the rents for faslis 1347 and 1346, they are likely to get some further concessions in respect of rents due for these two faslis, as the result of future legislation relating to zamindari and other proprietary areas. The Government desire to make it clear that this impression is erroneous and that there is no proposal, either by way of legislation or otherwise, to grant any further concessions than have been allowed under the Madras Agriculturists' Relief Act in the matter of payment of arrears of rent. They would also impress on the persons interested that they would not only not gain anything by withholding the payment of the rents due for faslis 1346 and 1347 but would also lose the benefit of the concessions with respect to arrears of rents due for fasli 1345 and the earlier faslis unless they pay off the rents due for faslis 1346 and 1347 by the prescribed dates. All persons who encourage delay in payment of dues for faslis 1346 and 1347 are doing great disservice to the poor people concerned as they will lose the great benefits conferred on them by the Relief Act. (*Fort St. George Gazette*, 26th June, 1938, Part I, page 1083.)

THE USURIOUS LOANS (MADRAS (AMENDMENT) ACT, 1936 (VIII OF 1937).

Prefatory Note:—On a review of the working of the Usurious Loans Act, 1918 in this Presidency, it had been noticed that the powers conferred on the Courts by the Act had not been utilised with any degree of uniformity, mainly, owing to the fact that the powers conferred by S. 3 were discretionary.

The Government after consulting the High Court, considered that it was desirable to make the exercise of such powers obligatory on Courts, when circumstances justifying such exercise exist. This Act is intended to carry out this object.

Similar legislation has been made in other Provinces. (See U. P. Act XXIII of 1934, S. 4 and C. P. Act XI of 1934, S. 2.)

The opportunity has been taken to make it clear that the relief should be afforded if the transaction as between the parties was substantially unfair, and that such unfairness should be presumed if the rate of interest charged is found to be excessive. The presumption is made rebuttable by proof of special circumstances justifying the high rate of interest. Having regard to the fact that agriculturists in this Presidency are, as a class, unable to bear the burden of loans at compound interest, provision has been made in the Bill that if compound interest is charged for loans advanced to agriculturist, such interest should be presumed to be excessive.

The Act is also made applicable to suits pending on the date when it becomes law as well as to suits instituted subsequently. (Statement of Objects and Reasons, *Fort St. George Gazette*, 24th November, 1936, Part IV, pp. 360, 361.)

[31st December, 1936, 5th February, 1937.

An Act to amend the Usurious Loans Act, 1918, in its application to the Presidency of Madras, for certain purposes.

WHEREAS it is expedient to amend the Usurious, Loans Act, 1918, in its application to the Presidency of Madras, for the purposes hereinafter appearing;

And whereas the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:—

Short title, extent and application. 1. (1) This Act may be called **THE USURIOUS LOANS (MADRAS AMENDMENT) ACT, 1936.**

2. It extends to the whole of the Presidency of Madras.

3. The provisions of this Act shall apply to all suits to which the Usurious Loans Act, 1918 (hereinafter referred to as the said Act), would apply and which are pending on, or are instituted on or after, the date of the commencement of this Act.

2. [The amendments made by this section have been carried out in the Principal Act, which, as amended in the Madras Presidency, has been printed below.]

THE USURIOUS LOANS ACT (X OF 1918).

[22nd March, 1918.]

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind; It is hereby enacted as follows:—

Short title and extent. 1. This Act may be called THE USURIOUS LOANS ACT, 1918.

(2) It extends to the whole of British India, including Baluchistan.

(3) The 1[Provincial Government] may, by notification in the 1[Official Gazette], direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Leg. Ref.

¹ Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Notes.

Sec. 1.—Act can be applied also in favour of a defendant who confesses judgment. 1 R. 580=1924 R. 144. Act is not retrospective. 104 I. C. 191=1927 N. 338. Act not retrospective and inapplicable to mortgage bond executed before date of Act. 1929 A. 59. See also 106 I.C. 38=1928 N. 120; 96 I.C. 382=1926 N. 473. Where a mortgage executed in 1923 was sought to be redeemed after Usurious Loans Amendment Act XXVIII of 1926, held, it was open to the Court to reduce the rate of interest payable to the mortgagee. 35 C.W.N. 654.

Sec. 2, Cl. (3).—Act is not retrospective. 104 I.C. 191=1927 N. 338 See also 106 I.C. 38=1928 N. 120. See also 35 C.W.N. 654 (as to effect of amending Act XXVIII of 1926). Act applies to Ajmere Merwara. 2 Aj. M.L.J. 5. Act does not apply to suits in respect of a loan made or security taken or an agreement made before its commencement. 96 I.C. 382=1926 N. 473. Act applies to all suits for the recovery of loans advanced after the commencement of the Act. S. 2 (3) is quite general and includes not only suits based on bonds but also suits based on negotiable instruments. 1931 A.L.J. 662=1931 A. 662. A suit for redemption of jewels pledged is

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

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

(2) "Loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "Suit to which this Act applies" means any suit—

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act;

¹[or (c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act].

3. (1) Notwithstanding anything in the Usury Laws Re-opening of trans- Repeal Act, 1855, where, in any suit to actions. which this Act applies, whether heard *ex parte* or otherwise, the Court ²[has reason

Leg. Ref.

¹ Cl. (c) to sub-Sec. (3) of S. 2 was added by Act XXVIII of 1926, S. 2.

² Substituted by Madras Act VIII of 1937, S. 2, for "has reason to believe (a) that the interest is excessive; and (b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise etc."

Notes.

not one to which the Act can apply, for under S. (2), Cl. (3) the applicability of the Act is confined to a suit for the enforcement of the security kept. 27 Bom.L.R. 1162. S. 2 (3) (b) of the Act applies irrespective of the fact whether the person sought to be made liable executed the document as principal debtor or as surety only. An undertaking to pay 75 per cent. interest as surety was relieved against. 23 A.L.J. 438=47 All. 745=88 I.C. 78. Suit by debtor for redemption of credit—Applicability of the Act. See 50 Bom. 107=92 I.C. 368=1926 Bom. 65.

Sec. 3: APPLICATION OF SECTION—ESSENTIALS.—In order to permit of the application of S. 3 of the Act, two facts are to be proved. The first is that the interest is excessive and the second is that the transaction was as between the parties thereto substantially unfair. 153 I.C. 943=1935 Pesh. 4. See also 130 I.C. 254=1930 C. 776. Under the section the following points are clear: (1) The duty is cast upon the Court in cases to which the statute is applicable to apply its mind to its provisions even in a suit heard *ex parte* (2) The words "whether *ex parte* or not" and "the Court has reason to

to believe that the transaction was, as between the parties thereto, substantially unfair, the Court shall exercise one or more of the following powers, namely,"]—

Notes.

believe" indicate that the intention of the legislature was to enable the Court to take up the question of its own motion whether it has been raised by the defence or not. (3) The words "has reason to believe" have a significance; they mean something more than mere suspicion, namely, that the person has sufficient cause to believe that thing. (4) Excessive interest cannot be defined but the considerations that should govern the matter are the financial conditions of the debtor, the nature of the security, the risk incurred, the period of rests and lastly the total advantage to the parties. (5) The word "substantially fair" should be understood in the light of practical tests laid down in Cl. (d) of sub-S. (2). *Interest at 25 per cent. compound* per annum with yearly rests is not excessive by itself so as to be described as being "substantially unfair." Relief not granted in a case between landlord and tenant. 130 I.C. 254=52 C.L.J. 73=1930 C. 776. The provisions of sub-Cl. (a), Cl. (2), S. 3, impose upon the Court the duty of coming to a conclusion as to what will be a reasonable rate of interest, having regard to the risk incurred. 1935 M.W.N. 408=1935 M. 468. For a transaction to be regarded as unfair within the meaning of sub-S. (d), Cl. (2), S. 3, it is not necessary that Court should be able to ascribe some moral blame-worthiness to the creditor in the sense that he has tricked the debtor into entering into that bargain, though the terms of sub-Cl. (d) show that taking undue advantage of the position of the debtor is one category of cases falling under that clause. But it is also open to the Court to come to the conclusion that the transaction is substantially unfair by taking into account the circumstances materially affecting the parties at the time of the loan. 1935 M.W.N. 408=1935 M. 468. When the rate of interest is not excessive, and the transaction is not substantially unfair, the fact that interest is capitalised once in three years and that as a result of accounts lasting for about 30 years the amount of Rs. 23 originally advanced has amounted to Rs. 5,250 is no ground for disallowing the claim, though the case is a hard one. The Usurious Loans Act does not apply to the transaction and the Court cannot re-open the account. 152 I.C. 522=1935 L. 38. Apart from any circumstance vitiating the contract and even if the contract is quite valid and operative, the Court has powers under S. 3 of the Usurious Loans Act to reduce the rate of interest if it finds on facts that the interest is excessive. 1 P. 263; 3 P. 279 and 7 P. 294 (P.C.), Dist. 1931 N. 25=130 I.C. 103. Cls. (a), (b) and (c), sub-S. (2) indicate with sufficient particularity the inquiries to be made in order to find out in any given case whether the rate of interest stipulated for is excessive or not; the points to be noted are to be determined by taking into account such matters as the financial conditions of the debtor, the nature of the security, etc., the risk incurred by the creditor, the extra amounts not paid but incorporated into the principal as expenses, etc., in the case of compound interest the periods of the rests; and lastly the total advantage that may be reasonably expected to accrue to the respective parties from the transaction. [(1906) A.C. 467, Ref.] 1930 C. 776. A bargain which is fair in its inception cannot become unfair by the happening of subsequent events, nor can interest which was reasonable in the beginning become excessive at a later date. The Court is limited to a consideration of circumstances which existed "at the date of the loan." 144 I.C. 218=1933 N. 224. From the mere fact that the mortgagor was indebted and in urgent need of money, it cannot be inferred that the mortgagees were in a position to dominate his will, and interest at Rs. 2-8-0 per cent. per mensem compoundable quarterly was not

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

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

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered

Notes.

held unconscionable. 27 A.L.J. 1091=1929 A. 680. A high rate of interest is not necessarily to be regarded as excessive or substantially unfair within the meaning of S. 3 (2) of the Usurious Loans Act. It is open to the creditor to adduce evidence of circumstances tending to show that the prevailing rate of interest in the locality from where the parties come is the same or nearly the same as it has been agreed to in the particular case or that, under the circumstances in which the loan was advanced, the high rate of interest was justified in view of the risk to which the creditor was exposed, making the transaction a substantially fair one. 27 A.L.J. 1174=118 I.C. 375. Even if it is proved that it is the custom in the locality to charge interest at 75 per cent. per annum and 150 per cent. per annum in case of default, the rate of interest can still be held to be excessive and Court has under S. 3 (1), power to re-open transaction and order repayment in respect of excessive interest and no claim for such relief is necessary. 1929 N. 348. It is a common thing in India for rates of interest to be charged upon secured loans amounting to one per cent. per mensem and on some circumstances even going as high as 2 per cent. per month. What rate of interest is charged depends on the circumstances, the security offered and so on, and no fixed rate of interest can be specified as being reasonable or fair in all cases. The burden is on the borrower to show that the rate of interest is excessive and it is somewhat difficult to hold that as between 12 per cent. and 15 per cent. the rate of interest alone can indicate that it was excessive. 10 P.L.T. 430=119 I. C. 410=1929 P. 383. In the absence of undue influence the Court cannot reduce the rate of interest fixed by the parties with open eyes unless the case falls within the provisions of the Usurious Loans Act. The rate of interest provided in a hand-note was only Re. 1 per cent. per month. There was nothing to show that this rate of interest was unreasonable. *Held*, that the rate of Re. 1 per cent. or as a matter of that Rs. 1-4-0 per cent. per month cannot be characterised as in any way excessive or extortionate in the case of a hand-note which does not carry any security [(1906) A.C.

into by the parties or any persons from whom they claim at a date more than ¹[twelve] years from the date of the transaction;

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

²[*Explanation I.*—If the interest is excessive, the Court shall presume that the transaction was substantially unfair; but such presumption may be rebutted by proof of special circumstances justifying the rate of interest];

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

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

(b) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is

Leg. Ref.

¹ Substituted for the word “six” by Act XXVIII of 1926, S. 3.

² Explanation was added by Madras Act VIII of 1937 and the old Explanation was re-numbered as Explanation II by Mad. Act VIII of 1937.

Notes.

461, Ref.] 10 P.L.T. 322=116 I.C. 43=1929 P. 340. In order to bring a case within the remedial provision of this Act it is necessary to establish (a) that interest charged was “excessive” and (b) that the transaction as between the parties thereto was “substantially unfair”. Both these elements must be proved to co-exist. 11 L.L.J. 511=120 I.C. 417=1930 L. 65. Where a mortgage bond contained a stipulation for payment of interest at 12 per cent. per annum with yearly rests and there was no evidence either that the rate of interest prevailing at the time was lower than that provided in the bond or that the transaction was substantially unfair. *Held*, that S. 3 of the Act was not a bar to the enforceability of the claim for interest. 56 C. 960=119 I.C. 207=33 C.W.N. 388. Transferee of debtor—Power of Court to relieve—Meaning of the words ‘debtor’ and ‘creditor’. See 4 L. 1=115 I.C. 841. A Court is authorised to consider the merits of a transaction in a case of recovery on a bond in which the defendant does not appear. If in such a suit, Court finds the payment of interest substantially unfair it is a fit case to reopen the transaction between the parties and give relief in respect of the excessive interest. Where even after the progressive discharge of principal, the fixed rate of interest continues on the whole sum borrowed, the provision as to interest is unconscionable and unfair and will not be enforced. 44 B. 775=58 I.C. 433=21 Bom.L.R. 1126. Principal amount made at settlement of previous accounts—High rate of interest—Power of Court to reduce principal amount and interest—General principles applicable. See 3 O.W.N. (Supp.) 222. Where an ignorant and illiterate mortgagor agrees to pay interest at 2 per cent. per mensem compoundable with monthly rests, the stipulation is hard and

calculated and the total advantage which may reasonably be taken to have been expected from the transaction:

¹[Provided that in the case of loans to agriculturists, if compound interest is charged, the Court shall presume that the interest is excessive; and]

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

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

²[* * * *].

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

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

Leg. Ref.

¹ Proviso was added by Madras Act VIII of 1937.

² Explanation was omitted by Madras Act VIII of 1937.

³ Inserted by Act XXVIII of 1926, S. 3.

Notes.

unconscionable and a Court of equity can grant relief. 75 I.C. 784 (2)=1925 All. 31. No relief as to rate of interest can be granted merely because of hardship, in absence of proof of undue advantage being taken by the creditor of the debtor's position. 11 S.L.R. 39=1935 Sind 136. See also 107 I.C. 742.

Sec. 3 (2) (d) Expln.—The mere fact that parties are money-lenders and that the interest is 2 per cent. per mensem simple and in default 3 per cent. does not bring the case within the explanation to S. 3 (2) (d). 'Excessive' is a relative term and what is 'excessive' in one case will not necessarily be so in another. It depends upon the surrounding circumstances. Courts, however, cannot assume their existence; they must be found on proper evidence. [1930 Cal. 207 and 1928 Oudh 396 (F.B.), Rel. on.] 144 I.C. 218=1933 N. 224.

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

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

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies.

THE USURY LAWS REPEAL ACT (XXVIII OF 1855).

Year.	No.	Short title.	Amendment.
1855	XXVIII	The Usury Laws Repeal Act, 1855.	Repealed in part, XIV of 1870.

[19th September, 1855.]

An Act for the repeal of the Usury Laws.

WHEREAS it is expedient to repeal the laws now in force relating to usury; It is enacted as follows:—

1. [Repeal of enactments.] *Rep. by the Repealing Act 1870 (XIV of 1870).*

Notes.

Secs. 3 and 4.—Where the rate of interest is high the Court may proceed to give relief under S. 3 (1) (a) and (b) read with the explanation to the proviso in Cl. (d) where it is stated that interest may by itself be sufficient evidence that the transaction was substantially unfair. In such a case it is unnecessary to consider whether the lender was in a position to dominate the will of the borrower. 107 I.C. 742.

[N.B.—The cases cited in the following Notes were decided before the passing of the recent enactments for relief of debtors—agriculturist or otherwise. Many of those decisions would be contrary to the spirit as well as the letter of modern legislation. These decisions have to be read along with these Acts.]

2. In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and, if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

Rate of interest to be decreed by Courts.

3. Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

Rate of interest upon a judgment or decree.

4. A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

Contracts for usufruct of property in lieu of interest.

Notes.

SECS. 2 TO 4.—SCOPE AND EFFECT OF THE ACT.—Act XXVIII of 1855 prescribes rules for determining the rate at which interest, where recoverable, shall be calculated and does not deal with the right to recover interest. 36 P.R. 1894. The Act abolishes all usury laws, and any rate of interest which the parties may stipulate is now legal. 6 B.H.C. (A.C.) 7. (*N. B.*—But the Usurious Loans Act now gives the Court power to allow or not such a rate). Ever since the Act was passed it has been the uniform practice of the Courts to treat all restrictions on the rate of interest, as removed. 20 W.R. 317=12 B.L.R. 451. This Act is a conclusive proof that the intention of the Legislature is that the parties shall be left to make, and be compelled to stand by, their own bargains. 2 M.H.C. 451. The effect of the above Act was not to take away the equitable jurisdiction of the Court to relieve against penalties. 17 B. 106 (F.B.). See also 2 C.W.N. 333; 10 B.H.C. 382 and 19 W.R. 271=11 B.L.R. 135. Courts in this country should take great care that they do not enforce oppressive transactions to which the parties have not given a really free consent. But a contract, which is deliberately consented to, cannot be set aside merely because a very heavy risk is provided for by a very high rate of interest. An agreement to pay an increased rate of interest on default, may be enforced at law; but equity will not recognize it. 6 B.H.C. (A.C.) 7. The provisions of this Act do not override the general law of the country. The Court is not compelled to enforce every agreement for interest. 99 P.R. 1894. See Contract Act, Ss. 73 and 74. The equity jurisdiction of Indian Courts is not taken away by the Act. 4 B.H.C. (A.C.) 202. In a case in which there is nothing to show that there was any fraud or undue influence, no discretion is left to the Courts under the sections of the Usury Laws Repeal Act referred to above, for modifying the terms as to interest made by the parties. 125 I.C. 629=1930 L. 733. Delay in suing is no sufficient reason for refusing plaintiff the full interest agreed upon between the parties. (50 P.R. 1912; 66 P.R. 1917 and 36 M. 533, Rel. on.) 125 I.C. 629=1930 L. 733. Interest at 25 per cent. per annum—No proof of undue influence—Transaction cannot be relieved against. 5 R. 619=106 I.C. 181=1928 R. 7. But in cases where Usurious Loans Act applies interest at 40 per cent. may be relieved against. 2 Ajmere Merwara Law Journal, page 5.

EFFECT OF THE ACT.—This Act does not affect or supersede the rules of Hindu Law as to interest. 7 B.H.C. (O.C.) 19. The Act was not intend-

5. Whenever, under the Regulations of the Bengal Code,¹ a deposit may be made of the principal sum and interest due upon any mortgage or conditional sale of land hereafter to be entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of 12 per cent. per annum:

Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

6. In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at

Leg. Ref.

¹ See Ben. Reg. I of 1798, S. 2. This Regulation is, however, now in force only in the Sonthal Parganas, and possibly in the Chota Nagpur Division; and with the exception of the parts which relate to interest, the Regulation is also in force in the Punjab. See the P. & N.W. Code.

Notes.

ed to interfere with the rules of Hindu Law with regard to money dealing. 3 B.L.R. (O.C.) 30=12 W.R. (O.C.) 9. See also 6 B.H.C. (A.C.) 23. Neither this Act nor S. 10 of the Contract Act prevents the application of the Hindu rule of Damdupat where the parties are Hindus living in Presidency-towns. 7 C.L.R. 204. The Act does not affect contracts entered into previous to the passing of the Act. 3 B.H.C. (A.C.) 11.

IMPLIED CONTRACTS FOR INTEREST ARE WITHIN THE ACT.—A contract to pay interest implied from the dealing of the parties is governed by Act XXVIII of 1855. Interest Act (XXXII of 1839) has no application to such a case. 36 P.R. 1894.

SCOPE AND EFFECT OF THE SECTION.—It is the intention of the Legislature that the parties shall be left to make and be compelled to stand by their own bargains. 2 M.H.C. 451. The section is applicable to suits on contracts, and interest at the agreed rate is recoverable irrespective of the creed of the contracting parties. 6 N.W.P. 358.

COURT'S POWER TO GRANT RELIEF AGAINST PENALTY, NOT AFFECTED BY THE SECTION.—This section does not affect the question of penalty or no penalty, and the Court has the power to decide upon that point and to grant relief against penalty. 19 W.R. 271=11 B.L.R. 135. It is open to the Court to decide notwithstanding this section whether a stipulation as to the enhanced rate was agreed upon between the parties as interest properly so called or as penalty. 3 C.W.N. 175=26 C. 300. If the terms of the section were strictly applied, it would be impossible to say to what extravagant and extortionate extent, the most usurious claim under the name of interest might not be carried. In a country like India where there is much borrowing by the ignorant lower classes who as much require to be protected against themselves as against money-lenders, a too literal application of the above provision could only be productive of oppression and

the rate stipulated therein; or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

THE AGRICULTURISTS' LOANS (MADRAS AMENDMENT) ACT (XVI OF 1935).

Sub-section (1) of Section 4 of the Agriculturists' Loans Act, 1884, empowers the Local Government to make, from time to time, Rules as to loans to be made to owners and occupiers of arable land for the relief of distress, the purchase of seed or cattle or any other purpose not specified in the Land Improvements Loans Act, 1883, but connected with agricultural objects. It is not clear whether this provision will enable the Local Government to make rules regulating the grant of loans to owners and occupiers of arable land for the relief of indebtedness. It is accordingly proposed to amend the Agriculturists' Loans Act, 1884, in its application to the Presidency of Madras, so as to bring loans for the relief of indebtedness expressly within the scope of Section 4 of that Act. (Statement of Objects and Reasons, *Fort St. George Gazette*, 23rd July, 1935, Part. IV, p. 272.

N.B.—The amendment effected by this Act will be found carried out in the Main Agriculturists Loans Act XII of 1884, S. 4 printed *infra*.

Notes.

injustice of the most grievous kind. 3 A. 260 (F.B.). This enactment in no way prevents a Civil Court in India, which administers law and equity, from examining into the character of the agreements made between persons between whom relations exist, which will enable one party to take advantage over the other and from declining to enforce such agreements, unless they are shown to be fair and reasonable. 4 B.H.C. (A.C.) 202.

MERE EXORBITANT RATE OF INTEREST HOW FAR GROUND FOR RELIEF.—The mere fact that the rate of interest on the amount due under a promissory note is exorbitant, is not sufficient to disentitle the plaintiff to the interest stipulated. 29 C. 823. *See also* 7 C.W.N. 876. Where a bond does not provide for two rates of interest, one lower and the other higher, the latter being payable under certain circumstances, but provides for only one rate of interest, payable on breach of the contract to pay at the stipulated time, S. 2 of Act XXVIII of 1855 is applicable to such a bond notwithstanding that the interest stipulated is payable from the date of the demand. 13 C. 200. Where under an agreement to re-pay a loan on a certain date, the debtor incurred no obligation to pay interest at all on the money which he sued, and his liability to pay interest only arose in the event of default, *held*, that such a stipulation was not governed by the Contract Act of 1872 or the Contract (Amendment) Act, 1899. Interest at the stipulated rate could be recovered under Act XXVIII of 1855, S. 2. 25 M. 343=11 M.L.J. 421.

COURT'S DISCRETION.—By S. 2 of this Act the Court must allow the contract rate of interest up to the date of the decree. 3 M. 125.

NEGOTIABLE INSTRUMENTS.—S. 80 of the Negotiable Instruments Act does not deprive a plaintiff of his contractual right to interest. 29 A. 33=11 C.W.N. 105=4 A.L.J. 29=9 Bom.L.R 1=1 M.L.T. 427=17 M.L.J. 35 (P.C.).

THE AGRICULTURISTS LOANS ACT (XII OF 1884).

Prefatory Note.—In a country like India, where agriculture is the main source of income for the vast majority of the people, and the income from which source contributes by far the largest portion of the revenues of State, the progress of agriculture is one of the main concerns of Government.

The poverty of the people engaged in agriculture necessitates the advance of loans by the Government to the raiyats engaged in the cultivation of land, for necessary agricultural purposes, as for instance, for purchase of seed and ploughing cattle in proper seasons, and for obtaining other agricultural implements.

The Legislature has therefore provided for the granting of such loans on moderate and reasonable rates of interest and for their recovery in small instalments, spread over a number of years. But for such help, these poor raiyats, many of them illiterate, would fall into the hands of greedy and usurious money-lenders. This Act as well as the Northern India Takkavi Act were passed for the purpose of giving relief to agriculturists by grant of loans from Government funds for purposes connected with cultivation.

[24th July, 1884.]

An Act to amend and provide for the extension of the Northern India Takkavi Act, 1879.

WHEREAS it is expedient to amend the Northern India Takkavi Act, 1879, and provide for its extension to any part of British India; It is hereby enacted as follows:—

Short title, 1. (1) This Act may be called THE AGRICULTURISTS' LOANS ACT, 1884; and

Commencement. (2) It shall come into force on the first day of August, 1884.

Local extent. 2. (1) This section and section 3 extend to the whole of British India.

(2) The rest of this Act extends in the first instance only to the territories respectively administered by the 1[Provincial Governments of Bombay, United Provinces, the Punjab, the Central Provinces, Assam and Ajmere.]

(3) But 1[any Provincial Government] may, from time to time, by notification in the 1[Official Gazette], extend the rest of this Act to the whole or any part of the territories under its administration.²

Leg. Ref.

¹ Substituted by Government of India (Adaptation of Indian Laws), Order, 1937.

² The Act has been declared in force in the whole of Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898). Burma Code, S. 2 of the Act was previously declared in force by notification under S. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), see *Burma Gazette*, 1896, Pt. I, p. 112, and under that section, Ss. 4, 5 and 6 of the Act were extended there, see *ibid.*, p. 121.

3. (1) On and from the day on which this Act comes into force, the Northern India Takkavi Act, 1879, and sections 4 and 5 of the Bombay Revenue Jurisdiction Act, 1880, shall, except as regards the recovery of advances made before this Act comes into force and of the interest thereon, be repealed.

(2) All rules made under those Acts shall be deemed to be made under this Act.

4. (1) The ¹[Provincial Government]²[or in a Province for which there is a Board of Revenue, or Financial Commissioner, such Board or Financial Commissioner subject to the control of the ¹(Provincial Government)] may, from time to time, ³[* * *] make rules as to loans to be made to owners and occupiers of arable land for the relief of distress ⁴[or indebtedness] the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects.

(2) All such rules shall be published in the ¹[Official Gazette].

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

Leg. Ref.

It has been declared in force in the Angul District by notification under S. 3 (2) of the Angul District Regulations, 1894 (Beng. Code), *see* Calcutta Gazette, 1896, Part. I, p. 1231.

¹Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

² Inserted by Act IV of 1914, S. 4 (1).

³ The words "with the previous sanction of the Governor-General in Council" subsequently altered into "subject to the control of" by Act VII of 1906 were omitted by Act IV of 1914.

⁴ Inserted by Madras Act XVI of 1935.

Notes.

Sec. 5.—Claim under S. 5 not cognizable by Civil Court. 19 A.L.J. 360. Even in cases where recovery of loans has been effected by sale of property. 26 A. 540; 29 C. 537; 22 A. 321.

6. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

THE AGENCY TRACTS INTEREST AND LAND TRANSFER ACT (I OF 1917.).

Under influences generated, in 1917 one year previous to the passing of the Usurious Loans Act, the Madras Government passed the Agency Tracts Interest and Land Transfer Act (Madras Act I of 1917) fixing a maximum rate of interest that may be allowed as against a member of a hill tribe, and also placing certain restraints on the alienation of land.

The following extracts from the Statement of Objects and Reasons may also be usefully noticed:—

This Act is based on the mode of the Angul Laws Regulation III of 1913.

IMMEDIATE NECESSITY FOR THE PASSING OF THIS ACT.—"The gradual dispossession of the khonds of the Ganjam Agency of their cultivable lands by Uriyas and others had for some years past attracted the attention of the Local Revenue Officers, practically all of whom had agreed that special measures were necessary to protect them against further dispossession. In September, 1914, the Governor in Council appointed a special officer to make a comprehensive examination of the agrarian and economic condition of these people. This officer was instructed to visit the Ganjam Agency and make himself acquainted with the circumstances of the khonds and with the details of the process by which they had been gradually losing possession of their lands, to consult the local officers and obtain their views as to the feasibility of devising means to check this dispossession and as to the form which interference should take, and to submit definite proposals to the Government. The special officer also visited the khondmals of Orissa. He recommended that protection afforded under sections 31 and 61 of the Angul Laws Regulation III of 1913 should be adopted in this Presidency for preventing the further alienation of lands, by the khonds and certain other hill tribes and for limiting the interest payable on loans sued for in the Agency Civil Courts. The Governor in Council accepted these recommendations and the Act was intended to give effect to them.

The Agent to the Governor in Vizagapatam also brought to the notice of the Government the existence of similar evils in the Vizagapatam Agency Tract and that opportunity was taken to make the Bill applicable to the hill tribes in that Agency". (See Statement of Objects and Reasons.)

STATEMENT OF OBJECTS AND REASONS.—See *Fort St. George Gazette* 10th October, 1916, p. 953.

**THE AGENCY TRACTS INTEREST AND LAND
TRANSFER ACT (I OF 1917).**

[23rd June, 1917 and 26th July, 1917.]

An Act to regulate the rate of interest and the transfer of land in the Ganjam, Vizagapatam and Godavari Agency Tracts.

WHEREAS it is expedient to limit the rate of interest and to check transfers of land in the Agency tracts of the Ganjam, Vizagapatam and Godavari districts; It is hereby enacted as follows:—

Preamble. 1. This Act may be called **THE AGENCY TRACTS INTEREST AND LAND TRANSFER ACT, 1917.**

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

(a) "Agency tracts" means the scheduled districts as defined in Acts XIV and XV of 1874 and included within the districts of Ganjam, Vizagapatam and Godavari.

(b) "Agent" means "Agent to the Governor" in the districts of Ganjam and Vizagapatam and "Government Agent" in the district of Godavari.

(c) "Hill tribe" means any body or class of persons resident in the Agency tracts (not being a landholder as defined in the Madras Estates Land Act, 1908) that may from time to time be notified as such for the purposes of the Act by the [Provincial Government.]

(d) "Immovable property" does not include standing timber, growing crops or grass.

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

(f) "Transfer" means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with property not being a testamentary disposition, and includes a charge or any contract relating to immovable property.

Maximum interest that may be allowed as against a member of a hill tribe. 23. In any suit instituted after the commencement of this Act, notwithstanding any agreement to the contrary—

(a) Interest on any debt or liability shall not as against a member of a hill tribe be allowed or decreed at a higher rate than twenty-four per centum per annum nor shall any compound interest or any collateral advantage be allowed as against him.

Leg. Ref.

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

² Cf. S. 31, Angul Laws Reg. III of 1913.

(b) The total interest allowed or decreed on any debt liability as against a member of a hill tribe shall not exceed the principal amount.

4. (1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.

(2) Where a transfer of property is made in contravention of sub-section (1), the Agent or any other prescribed officer may, on application by any one interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs.

(3) Subject to such conditions as may be prescribed an appeal against a decree or order under sub-section (2), if made by the Agent, shall lie to the ¹[Provincial Government] and if made by any other officers shall lie to the Assistant Agent or to the Agent as may be prescribed.

5. Notwithstanding the provisions of any law to the contrary, every suit against a member of a hill tribe instituted after the commencement of this Act shall be instituted only in the Courts of the Agency tracts.

26. In execution of a money-decree against a member of a hill tribe, no immovable property owned by him within the Agency tracts shall be liable to be attached and sold except as and if prescribed.

37. (1) The ¹[Provincial Government] may, from time to time, make rules to carry out the purposes of the Act.

(2) All rules made under this section shall be published in the ¹[Official Gazette] and, on such publication, shall have the same effect as if enacted in this Act.

Leg. Ref.

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

²Cf. S. 43, Angul Laws Reg. III of 1913.

³Cf. S. 67, Angul Laws Reg. III of 1913.

Notes.

Sec. 4 (2).—An application under S. 4 (2) of the Act for ejectment is not a suit and the order refusing it is not a decree. No second appeal lies from that order. 56 Mad. 984=145 I.C. 941=1933 Mad. 695=65 M. L.J. 383.

8. (1) This Act shall not affect transfers made or debts or liabilities incurred before the coming into force of this Act.

(2) Nothing in this Act shall affect a landholder's right to proceed against the ryots in accordance with the provisions of the Madras Estates Land Act, 1908, or the first charge declared by S. 5 of that Act, or the provisions of the said Act regarding relinquishment of a holding by a ryot.

THE MADRAS STATE AID TO INDUSTRIES ACT (V OF 1923).

Prefatory Note.—The following are the circumstances that led to the passing of this Act as given in the Statement of Objects and Reasons:—

CIRCUMSTANCES THAT LED TO THE PASSING OF THIS ACT.—The objects of this Bill are to afford subject to suitable limitations and safeguards State assistance to industrial enterprise in this Presidency partly by financial methods and partly by providing on favourable terms raw materials, fire-wood or water, being the property of Government. The special circumstances which, at the present stage of India's economic growth, tend to retard the development of industries and of industrial finance have been fully analysed in the report of the Industrial Commission and need not be recapitulated. It is sufficient to observe that, while deficiency in business experience and practical knowledge of the technical details of an industry have contributed to delay progress, the general ignorance of industries and of banking on the part of the major portion of the population and the timidity and conservatism of the investing public have been no less potent causes operating in the same direction.

2. The following are the main features of the measure now proposed:—

The scope of the Bill extends to industries which are of economic importance, and are either new, or nascent; or are sought to be introduced in areas in which they are still undeveloped; and, lastly, to cottage industries.

The opportunity has been taken to place upon a statutory footing the Board of Industries now existing by executive order, but with an enlarged and partly elective constitution. Its functions as hitherto will be advisory.

The forms of financial aid contemplated by the Bill are loans; subsidies (not exceeding 40 per cent. of the cost) for the purchase of machinery and for the conduct of research; State guarantees either of a minimum return on the paid-up capital of an enterprise or of the due discharge of cash credits, overdrafts or advances allowed by a bank to the management of an approved industrial concern; and, lastly, the taking up by the State of shares and debentures in industrial enterprises. All loans or advances are to be secured as a charge upon the whole assets of the enterprise subject to prior encumbrances and by collateral security if required.

Provision is made to enable Government to require the recipient of State aid to submit to inspection both the premises, plant and stock and the accounts of the concern and to furnish, if required, returns of its production and any other special accounts or statements; in the case of the larger concerns the Bill provides for the exercise of control by the appointment of Government Directors or otherwise.

The Bill further provides that, until the conditions on which assistance is granted have been fulfilled Government may limit the profits or dividends to be paid. Further, all moneys payable under the provisions of the Bill are to be recoverable by the Revenue authorities as arrears of land-revenue.

Lastly, it is provided that when an industrial enterprise has received assistance in the form of a subsidy or a grant of raw material, fire-wood, etc., it shall be bound to repay the value of the assistance at the close of a fixed term of years, if in the interval it is shown to be sufficiently prosperous.

3. In view of the peculiar character of the present measure and in order to render the working of the Act as flexible as possible, it has been deemed desirable to confer upon the Government extensive powers to regulate various matters by means of statutory rules to be made under it. (*Fort St. George Gazette*, 29th August, 1922, Part IV, p. 90.)

EFFECT OF SUBSEQUENT LEGISLATION.—Amended by Madras Act VIII of 1928 and Madras Act VI of 1930.

THE MADRAS STATE AID TO INDUSTRIES ACT (V OF 1923).¹

[3rd March, 1923.]

An Act to regulate State Aid to Industries.

WHEREAS it is expedient to give power to the Local Government to assist in the establishment and development of industries in the Presidency of Madras; and whereas the previous sanction of the Governor-General has been obtained under section 80-A of the Government of India Act to the passing of this Act; It is hereby enacted as follows:—

Short title. 1. (1) This Act may be called THE MADRAS STATE AID TO INDUSTRIES ACT, 1922.

(2) It extends to the whole of the Presidency of Madras.

Definitions. 2[1-A. In this Act—
(i) 'Cottage industry' means any industry carried on by a worker in his home; and
(ii) 'village industry' means any industry which forms the normal occupation, whether whole time or part time, of any class of the rural population of the Province.]

2. The 3[Provincial Government] may appoint any officer or other person to perform all or any of the functions of the Director of Industries under this Act.
Director of Industries.

Leg. Ref.

¹For Statement of Objects and Reasons, see *Fort St. George Gazette*, dated 29th August, 1922, p. 90.

²S. 1-A inserted by Mad Act XIII of 1937.

³Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

S. 5] THE MADRAS STATE AID TO INDUSTRIES ACT, 1923. 201

3. (1) (a) There shall be constituted a Board of Industries consisting of not less than ten and not more than twelve members including the Chairman and the *ex officio* members. Not more than three of the members shall be Government officials.

(b) One of the members shall be elected by the members for the time being of the Madras Chamber of Commerce; one by the members for the time being of the Southern India Chamber of Commerce; one by the members for the time being of the Madras Trades Association; and two by the members of the Madras ¹[Legislative Assembly]. The election shall be conducted in such manner as may be prescribed. A return of the name of every person so elected shall be made to the ¹[Provincial Government] by the Chairman of the Chamber or Association concerned and by the Secretary to the ¹[Legislative Assembly] respectively, and such return shall be published in the ¹[Official Gazette].

(c) The Director of Industries, Madras, and the Secretary to the Government of Madras in the Finance Department shall be *ex officio* members of the Board of Industries.

(2) The Chairman and the remaining members shall be appointed by the ¹[Provincial Government] by notification in the [Official Gazette] provided that if banking or mufassal interests and cottage industries are not represented by election, members so appointed shall include, as far as possible, persons who represent such interests or industries.

(3) The Board of Industries shall assist the ¹[Provincial Government] in dealing with applications for the grant of State aid under this Act.

(4) No member shall vote on or take part in the discussion of any question coming up for consideration at a meeting of the Board of Industries if the question is one in which he has any direct or indirect pecuniary interest by himself or his partner or in which he is interested professionally on behalf of a client or as agent for any person other than the Government, a local authority or a Railway Company.

4. No aid shall be given by the [Provincial Government] to any industrial business or enterprise except in accordance with the provisions of this Act.

5. (1) The industries to which aid may be given under this Act shall be such as have an important bearing on the economic development of the country and shall be:

No aid except in accordance with the provisions of the Act.

Industries to be aided.

Leg. Ref.

¹Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

- (a) new or nascent industries, or
- (b) industries to be newly introduced into areas where such industries are undeveloped, or
- (c) cottage industries.

1[(d) or old or established industries :

Provided that aid shall not be given to any old or established industry unless the 2[Provincial Government] are satisfied that special reasons exist for giving such aid.]

(2) No such aid shall be given to any joint-stock company unless:

(a) the same is registered in India on a rupee capital, and

(b) the company conforms to such rules as may be made by the 2[Provincial Government] from time to time requiring that a minimum number or a proportion of the members of its board of management shall be Indians :

Provided further that every recipient of aid under this Act shall make such provision for the training of apprentices as the 2[Provincial Government] may, from time to time, prescribe.

(3) The decision of the 2[Provincial Government] as to whether the conditions of this section are fulfilled shall be final 3[and shall not be called in question in any Court of law].

6. Subject to the provisions of this Act and of the rules framed thereunder, the 2[Provincial Government] shall have power to give aid to an industrial business or enterprise in one or more of the following ways:—

- (a) by granting a loan ;
- (b) by guaranteeing a cash credit, overdraft of fixed advance with a bank ;

4[(c) by paying a subsidy, in the case of a cottage industry for any purpose, and in the case of any other industry for the conduct of research or the purchase of machinery.]

(d) by subscribing for shares or debentures ;

(e) by guaranteeing a minimum return on part of the capital of a joint-stock company ;

(f) by making a grant on favourable terms of land, raw material, firewood or water 2[the property of the Crown for the purposes of the Province] ;

¹Cl. (d) was added by Madras Act VII of 1937, S. 2.

² Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

³Added by Madras Act VII of 1937.

⁴Substituted by Act XIII of 1937, S. 3.

¹[(g) by supplying at concessional rates electric energy from a source² (the property of the Crown for the purposes of the Province.)]

7. 3 [* * * *]

8. (1) Any person desiring to obtain a loan or other aid for any industrial business or enterprise shall make his application to the Director of Industries in such form and shall furnish such information concerning his business as may be prescribed.

Application for State aid and procedure in dealing with applications.

(2) If the extent of the aid applied for exceeds Rs. 50,000 and in any other case in which he considers this procedure necessary, the Director of Industries shall publish a notice in the prescribed manner calling upon any person who objects to the grant of the aid applied for to state his objections at a time or place to be specified, and shall hear such objection and make such inquiry as may be necessary.

(3) Every application for aid shall be placed before the Board of Industries for advice.

(4) The ²[Provincial Government] may constitute district committees for the purpose of advising on applications for aid.

(5) No aid shall be granted under this Act if the Board by a unanimous resolution at a meeting advises the rejection of the application.

9. No loan shall be granted of an amount exceeding 50 per cent. of the ⁴[net value of the assets of the industrial business or enterprise and of any other property offered as collateral security for the loan, after deducting in both cases existing encumbrances] such value to be ascertained by such person as may be appointed by the ²[Provincial Government] and in accordance with such rules as may be prescribed; for the purpose of this valuation the additional assets which may be created by the expenditure of the sums granted may be taken into account to such extent as may be prescribed.

Grant of loans.

5 [* * * *]

Leg. Ref.

¹ Cl. (g) was added by section 2 of the Madras State Aid to Industries (Amendment) Act, 1935 (Madras Act X of 1935).

² Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

³ Omitted by *ibid.*

⁴ Substituted by Madras Act VII of 1937, S. 3.

⁵ Proviso omitted by *ibid.*

10. Every loan granted under this Act shall be secured by a mortgage or floating charge upon the whole of the assets of the business or enterprise, subject to any encumbrances existing at the time of the grant, and by such collateral security, if any, as may be required by the 1[Provincial Government] and shall bear interest payable on such dates and at such rates as the 1[Provincial Government] may determine.

11. In any case in which a loan has been applied for under this Act, the applicant, and at any time during the currency of a loan that has been granted under it, the grantee, shall be bound—

(a) to comply with any general or special order of the 1[Provincial Government] relative to the inspection of the premises, buildings, or plant or stock in hand of the industrial business or enterprise;

(b) to permit the inspection of all accounts relative to the industrial business or enterprise;

(c) to furnish full returns of all products manufactured or sold both as regards description and quantity;

(d) to maintain such special accounts or to furnish such statements as the 1[Provincial Government] may from time to time require;

(e) to submit the accounts of the industrial business or enterprise to such audit as the 1[Provincial Government] may prescribe.

12. In any case in which a loan or loans is or are granted under this Act amounting to two lakhs of rupees or upwards, the 1[Provincial Government] shall, and in any other case may, by the appointment of Government directors or otherwise, take power to ensure such control over the conduct of the business or enterprise as shall suffice in their opinion to safeguard their interests.

13. (1) Every loan granted under this Act shall be made repayable by instalments within such period from the date of the actual advance of the loan, or when the loan is advanced in instalments from the date of payment of the last instalment, as may be fixed by the order granting the loan.

(2) The period fixed as aforesaid shall not exceed twenty years unless the 1[Provincial Government] shall, by general or by special order, extend the same.

Leg. Ref.

¹ Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

14. No guarantee of cash credit, overdraft or fixed advance with a bank shall be given except under the conditions prescribed in sections 9 to 12 in respect of loans.

1[14-A. Save as otherwise may be prescribed by rules made under this Act, nothing in sections 9, 10, 11 and 14 shall apply to any industrial business or enterprise with a capital outlay not exceeding 3(two thousand rupees) or to cottage industries.]

15. The condition of subscription for shares and debentures by the 3[Provincial Government] or the guarantee of a minimum return on the capital of any industrial business or enterprise shall be that the business or enterprise shall be subject to the conditions of section 11 in respect of inspection and returns as well as of the provisions of section 12 in respect of Government control:

Provided (a) that for all shares subscribed by the Government there must be taken up and fully paid for not less than an equal number of shares;

(b) that for all capital on which a return is guaranteed by Government there shall be paid up not less than an equal amount of capital which carries no guarantee.

16. The condition of a grant of subsidy or of any payment under guarantee of a minimum return on the paid-up capital or of the grant of Government land, raw material, firewood or water on favourable terms 4[or of the supply from the Government source of electric energy at concessional rates] shall ordinarily be that an amount equal to the sum paid or to the value of the grant 4[or concession] as fixed at the time, when it is made shall be repaid to the 3[Provincial Government] at the close of a fixed term of years if within that term the industrial business or enterprise shall be shown to be paying interest or a dividend upon the capital invested in excess of such rate as the 3[Provincial Government] may fix.

Leg. Ref.

¹ Section 14-A was inserted by section 2 of the Madras State Aid to Industries (Amendment) Act, 1928 (Madras Act VIII of 1928).

² The words "two thousand rupees" were substituted for "one thousand rupees" by Madras Act VII of 1937, S. 4.

³ Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

⁴ Inserted by Act X of 1935.

No subsidy,¹ to an industry other than a cottage industry] shall exceed 40 per cent. of the cost of the research or of the cost of the machinery as the case may be.

17. No recipient of State aid shall pay any dividend or distribute or take any profits in excess of such percentage rate upon the amount of the capital of the industrial business or enterprise as the ²[Provincial Government] may fix from time to time until the conditions on which the State aid has been granted are fulfilled. The balance of the profits, after setting aside proper amounts for depreciation or obsolescence of plant and buildings, and for the payment of interest on debentures of loans, shall be carried to a reserve fund to be utilized in such manner as the ²[Provincial Government] may approve.

Disposal of profits where condition of State aid is not fulfilled.

18. (1) All moneys payable under this Act, including any interest chargeable thereon and costs, if any, incurred, if not paid when due, may be recovered from the person aided and his surety, if any, under the law for the time being in force as if they were arrears of land revenue.

Methods of recovery of money due.

(2) When any sum due as aforesaid is paid by the surety or is recovered from him or out of his property under sub-section (1), the Collector shall, on the application of the surety, so far as possible, recover the same from the person aided and pay the same to the surety.

19. (a) The ²[Provincial Government] may make rules to carry out all or any of the purposes of this Act not inconsistent therewith.

Power to make rules.

(b) In particular and without prejudice to the generality of the foregoing power, they may make rules regulating all or any of the following matters:—

(1) the classes of industrial businesses or enterprises to which and the purposes for which aid may be given;

(2) the constitution of the Board of Industries, the term of office of its members, the quorum at the Board's meetings, the method of arriving at its decisions, the appointment of its

Leg. Ref.

¹ Addition was made by Madras Act XIII of 1937.

² Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

³ The words within square brackets were inserted by section 3 of the Madras State aid to Industries (Amendment) Act, 1935 (Madras Act X 1935).

⁴ Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

staff, the remuneration of its members, and all other matters relative to the conduct of its business; and the constitution and functions of district committees;

(3) 1 [* * * *]

(4) the manner of making applications for State aid and the information to be given in such applications, provided that no such rule shall require any applicant or grantee of aid to divulge any information relating to the technical details of any process or any patent owned by him;

(5) the manner of conducting inquiries and the matters to be specially inquired into in dealing with applications for State aid and the powers to be exercised by the Director of Industries conducting such inquiries;

(6) the mode of ascertaining the value of the assets of an industrial business or enterprise ²[or of any property offered as collateral security for a loan].

(7) the nature of the security to be taken for the due application of loans and grants and the rates of interest at which and the conditions under which loans or grants may be given, and the creation of a mortgage, floating charge or collateral security under section 10;

(8) the inspection of the premises, buildings, plant and stock on hand and the accounts of any industrial business or enterprise for which State aid has been granted;

(9) the mode of keeping and auditing the accounts and of furnishing returns of any industrial business or enterprise in respect of which State aid has been granted;

(10) the appointment and functions of Government directors or the prescribing of other methods of control of industrial businesses or enterprises in respect of which State aid has been granted;

(11) the application of profits in cases in which the conditions under which loans or grants have been made have not been fulfilled;

(12) the guaranteeing by the ³[Provincial Government] of cash credits, overdrafts or fixed advances by banks and the recognition of banks for this purpose;

(13) the fixing of the period for the repayment of loans and the conditions and dates of the repayment of subsidies and grants; ⁴[. . .]

Leg. Ref.

¹ Omitted by Government of India (Adaptation of Indian Laws) Order, 1937.

² Added by Madras Act VII of 1937, S. 5.

³ Substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

⁴ The word "and" was omitted by section 4 of the Madras State Aid to Industries (Amendment) Act, 1928 (Madras Act VIII of 1928).

(14) the recovery of any moneys due under this Act;
1[and]

2[(15) the conditions under which and the security on which loans shall be granted or guarantees of a cash credit, overdraft or fixed advance with a bank given to the industries referred to in section 14-A]:

Provided that such rules are laid on the table of the Legislative 3[Assembly] and notified in the 3[Official Gazette] one month after which they shall have the force of law unless amended by the Legislative 3[Assembly] within that period, or, if the 3[Assembly] is not sitting during that period, at its next meeting.

Powers of the Government as regards starting or conducting industries and giving aid of certain kinds.

20. Nothing in this Act shall be held to debar the 3[Provincial Government]—

(a) from starting or conducting industrial enterprises for experimental purposes or with a view to stimulate industrial development;

(b) from assisting an industrial business or enterprise by agreements to purchase on business terms the whole or a portion of the products of the same;

(c) from assisting an industrial business or enterprise by giving gratis or on favourable terms, the services of Government Officials or experts either in the capacity of advisers or for a limited period not exceeding one year for starting or conducting such business or enterprise;

(d) from assisting an industrial business or enterprise in connexion with industrial education or the training of apprentices.

4 [(e) from assisting a village industry in any manner which may be determined by the Provincial Government.]

Leg. Ref.

¹ The word "and" was inserted by section 4 of Madras Act VIII of 1928.

² Clause (15) was inserted by section 3 *ibid.*

³ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

⁴ Cl. (e) was added by Madras Act XIII of 1937.

DEBT LEGISLATION

I.

THE ASSAM MONEY-LENDERS' ACT (IV of 1934).

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

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

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

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

It is hereby enacted as follows:—

Short title, extent and commencement. 1. This Act may be called THE ASSAM MONEY-LENDERS' ACT, 1934.

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

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

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

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

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

(3) "Loan" means an advance (whether of money or in kind) at interest made by a money-lender and shall include any bond bearing interest executed in respect of past liabilities and any transaction which in substance is a loan;

[Explanation.—A bond bearing interest executed in respect of goods taken on credit constitutes a loan.] and

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

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

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

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

Prohibition of compound interest and provisions as to defaulting.

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

Simple interest in case of default.

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

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

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

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

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

(a) the date on which the loan was made, the amount of
 the principal of the loan, and the rate per cent. per annum of
 interest charged; and

(b) the amount of any payment already received by the
 money-lender in respect of the loan and the date on which it was
 made; and

(c) the amount of every sum due to the money-lender,
 but unpaid, and the date upon which it became due and the
 amount of interest accrued due and unpaid in respect of every
 such sum; and

(d) the amount of every sum not yet due which remains
 outstanding and the date upon which it will become due:

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

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

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

8. Where in any suit in respect of any loan made or any
 security taken for a loan made by a money-
 lender after the commencement of the
 Usurious Loans Act, 1918, it is found that

Presumption in the
 case of certain loans.

Obligation of
 money-lender to
 supply information as
 to state of loan and
 copies of documents
 relating thereto.

Copy of document
 for borrower.

Civil effects of non-
 compliance.

the interest charged exceeds the rate of $12\frac{1}{2}$ per cent. per annum in the case of a secured loan or $18\frac{1}{2}$ per cent. per annum in the case of an unsecured loan, the Court shall, until the contrary is proved, presume for the purposes of S. 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was, as between the parties thereto, substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged though not exceeding $12\frac{1}{2}$ per cent. per annum or $18\frac{1}{2}$ per cent. per annum, as the case may be, is excessive.

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

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

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

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

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

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

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

such agent or canvasser or demand or receive directly or indirectly any sum or other valuable consideration by way of commission or otherwise for introducing or undertaking to introduce to a money-lender any person desiring to borrow money.

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

Penalty.

each offence be liable, on conviction to imprisonment for a term not exceeding three months or a fine not exceeding three hundred rupees or both.

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

Civil effects of contravention.

the transaction shall be illegal, unless the money-lender proves that the contravention occurred without his consent or connivance.

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

Penalty in case of fraud.

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

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

Penalty.

order made under sub-section (1) shall, on conviction, be liable to a fine which may extend to five hundred rupees.

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

Appeal.

shall be appealable to the Court to which appeal ordinarily lies under the Code of Criminal Procedure, 1898, irrespective of the amount of fine to which an accused may be sentenced.

Power of Local Government to make rules.

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

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

(i) the form in which money-lenders shall keep accounts;
 (ii) the intervals at which borrowers may demand statements of accounts under sub-section (1) of section 7 and the fees to be paid for copies of documents supplied under sub-section (2) of the same section;

(iii) the manner in which an application for a deposit is to be made under sub-section (1) of S. 10, and a notice of the deposit is to be sent to the money-lender under the said sub-section; and

(iv) the enforcement of orders made under sub-section (1) of S. 12.

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

Rules under the Assam Money-Lenders' Act.

[12th March 1935.]

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

RULES.

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

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

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

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

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

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

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

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

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

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

[Forms omitted.]

THE BENGAL MONEY-LENDERS' ACT (VII OF 1933).

[26th October, 1933.]

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

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

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

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE BENGAL MONEY-LENDERS' ACT, 1933.

(2) It extends to the whole of Bengal:

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

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

Definitions.

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

Notes.

Sec. 1.—The scheme of the Act is to benefit the borrowers; and the provisions of the Act in favour of borrowers are more advantageous than the Usurious Loans Act (especially in respect of the burden of proof as to interest being harsh or excessive). 63 C.L.J. 117=1936 C. 339.

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

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

3. Where in any suit in respect of any money lent by a money-lender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of fifteen *per cent. per annum* in the case of a secured loan or twenty-five *per cent. per annum* in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the Court shall, until the contrary is proved, presume for the purpose of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was harsh and unconscionable and was substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged, though not exceeding fifteen *per cent. per annum* or twenty-five *per cent. per annum*, as the case may be, is excessive.

4. Notwithstanding anything in any other Act, where in any suit in respect of any money lent by a money-lender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the

Presumption in case of certain loans.

Power to limit interest recoverable in certain cases.

that the interest charged exceeds the rate of fifteen *per cent. per annum* in the case of a secured loan or twenty-five *per cent. per annum* in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, the Court shall, until the contrary is proved, presume for the purpose of section 3 of the Usurious Loans Act, 1918, that the interest charged is excessive and that the transaction was harsh and unconscionable and was substantially unfair, but this provision shall be without prejudice to the powers of the Court under the said section where the Court is satisfied that the interest charged, though not exceeding fifteen *per cent. per annum* or twenty-five *per cent. per annum*, as the case may be, is excessive.

Notes.

Secs. 3 and 4.—As to whether the provisions of Ss. 3 and 4 can be applied to a case where the decision of the trial Court was given before the Act came into force, *see* 40 C.W.N. 696=62 C.L.J. 545=1936 C. 127; 40 C.W.N. 409; 63 C.L.J. 117=1936 C. 339; 41 C.W.N. 499.

Sec. 4.—This section which came into force on 1st July, 1934, cannot be applied to an appeal pending at the time when the decree appealed against was passed prior to the coming into force of the Act. 63 C. 368=39 C. W.N. 1213. Whether this section has retrospective operation, *see* 63 C.L.J. 117=1936 C. 339. Ss. 3 and 4 do not apply to the case of a loan in kind, as the Act contemplates loans of money only. But under the Usurious Loans Act, loan means a loan whether of money or in kind. An agreement to pay fifty per cent. of the principal as profit or interest for each year, in the case of a loan of paddy, is substantially unfair, and the Court has power to reduce the interest. 41 C.W.N. 181. The word 'charged' in S. 3, undoubtedly qualifies the words 'money lent' and it means 'charged' or payable under the contract of loan. It is the nature of the stipulation between the parties at the time of the contract that determines the question as to whether the transaction is one which can be called harsh or unfair within the meaning of the section and both the two clauses mentioned in the section have reference to the actual stipulations in the contract itself regarding the amount of interest or the period of rests irrespective of the claim made by the plaintiff in the suit. 1937 C. 415.

APPLICABILITY.—S. 4 is not applicable to a suit which was instituted before that Act came into force. 41 C.W.N. 499.

principal of the loan, the Court, unless it is satisfied that the money-lender had reasonable grounds for not enforcing his claim earlier, shall limit the amount of such interest recoverable in the suit to an amount equal to the principal of the loan.

Maximum rate of interest recoverable under a contract which provides for the payment of compound interest.

5. No money-lender shall recover by suit interest of any kind at a rate exceeding ten *per cent. per annum* in respect of any loan made after the commencement of this Act under a contract which provides for the payment of compound interest.

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

Bar to recovery of interest exceeding the principal.

7. (1) Every money-lender, on demand made in the prescribed form by a debtor by registered post, shall supply such debtor with such particulars as may be prescribed concerning any loan made by him to the debtor on account of which any sum is due from the debtor.

Money-lender to supply debtor with particulars of loan.

(2) A money-lender who sends by registered post to the debtor at the address mentioned in the form of demand the particulars referred to in sub-section (1) shall be presumed to have complied with the demand made under that sub-section.

(3) Where a money-lender has complied with a demand made by a debtor under sub-section (1) the debtor shall not be entitled to make a further demand under the said sub-section in respect of the same loan within a period of six months from the date of such compliance.

8. If a money-lender to whom a demand has been made in accordance with the provisions of sub-section (1) of section 7 fails without reasonable excuse to comply therewith within a month from the date of the service of the demand, interest shall not be chargeable in respect of the loan concerning which the demand was made for so long as the default continues.

Failure to supply particulars under section 7.

9. (1) Where a debtor has sent to a money-lender by postal money-order any sum of money due from him to the money-lender in respect of a loan and the money-lender has refused to accept the same the debtor may apply in the prescribed manner to the lowest Civil Court having jurisdiction over the place where he resides for permission to deposit the said sum in Court to the account of the money-lender and the Court on receiving the prescribed fee from the debtor shall

Deposit in Court of money due to money-lender.

keep the said sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

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

Rules. 10. (1) The Local Government may make rules for carrying out the purposes of this Act.

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

(i) the form of a demand by a debtor and the particulars to be supplied by a money-lender under sub-section (1) of section 7; and

(ii) the manner in which an application for deposit is to be made under sub-section (1) of section 9, the fee to be paid for such application, and the manner in which a notice of the deposit is to be sent to the money-lender.

THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.

An Act to provide for the relief of indebtedness of agricultural debtors in Bengal.

WHEREAS it is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relations between agricultural debtors and their creditors:

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

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.

(2) It extends to the whole of Bengal.

(3) It shall come into force in such areas on such dates as the Local Government may, by notification, direct.

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

(1) "agriculture" includes horticulture and dairy farming and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees and the growing of fruits, vegetables and the like;

The Act came into force on 3rd July, 1936.

(2) "amount payable under an award" means an amount included under clause (d) of sub-section (1) of Section 25 in an award as payable by a debtor in respect of any debt, or any part of such amount which remains unpaid, together with any interest on such amount or part thereof which is due under the award;

(3) "Appellate Officer" means an officer appointed under Section 40;

(4) "award" means an award as made by a Board under sub-section (2) of Section 19 or sub-section (6) of Section 22, or as confirmed or modified by an Appellate Officer under sub-section (5) of Section 40;

(5) "Board" means a Debt Settlement Board established under sub-section (1) of Section 3, and includes an officer or the Collector authorised under the proviso to Section 4;

(6) "Certificate-officer" means a certificate officer as defined in the Bengal Public Demands Recovery Act, 1913;

(7) "Collector" includes any officer appointed by the Local Government to exercise any of the powers of a Collector under this Act;

(8) "debt" includes all liabilities of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether payable presently or in future, but does not include the following:—

(i) any amount the liability for the payment of which is only contingent;

(ii) any rent not due at the time when a Board determines the amount of debts under section 18;

(iii) any share of the produce of land payable on account of land cultivated under the system known as *adht*, *barga* or *bhag*;

(iv) any amount recoverable as a public demand, except—

(a) an amount referred to in sub-section (1) of Section 28, and

(b) arrears of rent payable on account of the use or occupation of land held by a tenant,

(v) any amount a suit or application for the recovery of which is barred by limitation; or

(vi) any debt due to any bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

(9) "debtor" means a debtor whose primary means of livelihood is agriculture and who—

(a) is a *raiyat* or an under *raiyat*, or

(b) cultivates land himself or by members of his family or by hired labourers. or by *adhiars*, *barghadars* or *bhagdars*; and includes a group of persons who join in making an application under the provisions of sub-section (1) of Section 9;

(10) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of a Board, in substance a loan;

(11) "notification" means a notification published in the *Calcutta Gazette*;

(12) "prescribed" means prescribed by rules made under this Act;

(13) "settlement" includes an amicable settlement and a settlement or adjustment made by order of a Board;

(14) "supplementary income" means any income derived by the debtor from any source other than agriculture;

(15) the expression "landlord", "*raiyat*", "under-*raiyat*" and "rent" have the same meanings as in the Bengal Tenancy Act, 1885.

Establishment of Debt Settlement Boards. 3. (1) The Local Government may, by notification, establish one or more Debt Settlement Boards for any local area specified in the notification.

(2) Each Board shall consist of a Chairman and of not more than four other members, to be appointed by the Local Government.

Power of Local Government to cancel appointments of Chairman and members of, or to dissolve, a Board. 4. The Local Government may, at any time, for reasons to be recorded in writing, cancel by notification, the appointment of the Chairman or of any other members of a Board or dissolve any Board:

Provided that if, when a Board is dissolved, the Local Government does not consider the appointment of another Board to be necessary or desirable, it may authorise any officer who has had judicial experience to exercise such of the powers of the Board in connection with the making of awards as it may specify and the Collector to exercise all or any of the other powers of the Board.

Delegation of powers to Commissioner. 5. The Local Government may, by notification delegate its powers under Sections 3 and 4 to the Commissioner.

6. The Chairman and the other members of a Board shall be appointed for a term of not more than three years, but shall be eligible for re-

appointment.

7. The Local Government may, by notification, from time to time, empower a Board to exercise all or any of the powers under sub-section (2) of Section 9, sub-section (2) of Section 13, clause (b) of sub-section (1) of Section 19, Section 21 or sub-section (1) of Section 22, and unless so empowered a Board shall not exercise any such powers.

Local Government may invest Boards with certain powers.

8. (1) Subject to the provisions of Section 9, a debtor may make an application for the settlement of his debts to a Board established for the local area within which he ordinarily resides within five years after the first Board is established under sub-section (1) of Section 3 for that local area.

Application for settlement of debts.

(2) Unless the debtor has already made an application under sub-section (1) any of his creditors may make an application to a Board to which the debtor might have applied under that sub-section.

(3) If applications are made to more than one Board in respect of the debts of the same debtor, such applications shall, subject to rules made under this Act, be transferred to and dealt with by one Board.

(4) No objection as to the place of presentation of the application shall be allowed by the Appellate Officer 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.

(5) Notwithstanding anything contained in sub-section (1), a Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (1) or sub-section (2) whether such application was made to it or to any other Board, except when such application under either of the said sub-sections has been dismissed under sub-section (3) of Section 13, or under clause (b) (ii) of sub-section (1) or sub-section (2) of Section 17.

(6) A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under sub-section (1) or sub-section (2).

9. (1) An application may be made under sub-section (1) of Section 8 for the settlement of—

Application for settlement of joint debts.

(a) an ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the

meaning of this Act, and they all join in making such application, or

(b) a debt for which two or more persons are jointly liable if all such persons are debtors within the meaning of this Act, and they all join in making such application,

and the Board may pass orders under this Act regarding any debt to which such application relates.

(2) If a debtor within the meaning of this Act is jointly liable with other persons for any debt other than a debt for arrears of rent such debtor may make an application under sub-section (1) of Section 8 for relief in respect of his liability in regard to such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under Section 7, pass such order as it thinks fit under this Act regarding the debt so far as such applicant is concerned and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due be entitled to realise more than his dues from the persons jointly liable.

10. Every application under Section 8 shall be in writing
Form and verification of application. in the prescribed form and shall be signed and verified in the prescribed manner.

11. (1) An application made by a debtor under sub-section (1) of Section 8 shall contain a statement of debt, in the prescribed form, which shall include the following:—

(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 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 the debtor's property both movable and immovable (including claims due to him), 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 within two years previous to the date of his application together with the name and address of the transferee;

(g) particulars of any supplementary income of the debtor; and

(h) a declaration that all his debts and all his properties have been included, in the statement.

(2) An application made by a creditor under sub-section (2) of Section 8 shall contain a statement of debt, 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;

(c) the history of each such debt with 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;

(e) particulars, so far as they are known to the creditor, of the debtor's property, as in clause (e) of sub-section (1);

(f) particulars, so far as they are known to the creditor, of any supplementary income of the debtor; and

(g) a declaration that agriculture is the primary means of livelihood of the debtor.

12. (1) On receipt of an application under Section 8, the Board shall pass an order fixing a date and place for consideration of the application, unless the application is dismissed forthwith under Section 17.

(2) The Board shall, in the prescribed manner, give notice of such order to the debtor (if he is not himself the applicant) or (if the debtor is the applicant) to all persons whose names and addresses are given in the application.

(3) The applicant may, at the discretion of the Board, be examined on oath or affirmation on the date fixed under sub-section (1) or on such other date as the Board may fix and a memorandum of the substance of the statement made by the applicant shall be recorded in writing by the Board.

(4) No woman who has made an application under Section 8 shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section.

13. (1) If after consideration of the application the Board does not dismiss the application forthwith under Section 17, it shall, in the prescribed manner, serve a notice on the debtor (unless the debtor is himself the applicant) and on every creditor whose name and address are given in the application and also publish a general notice requiring the debtor and all creditors to submit a statement of debt in the prescribed form within one month of the date of service of the notice, or publication of the general notice, whichever is later :

Further statements of debts.

Provided that, if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with such notice, it may extend the period for the submission of his statement of debt.

(2) If any creditor fails to comply with a notice under sub-section (1), the Board if so empowered, under Section 7, may pass an order in writing declaring that the amount of any debt due to him from the debtor on the date of such order shall, for the purposes of this Act, be deemed to be the amount stated in the statement of debt submitted by the debtor, and that no debt of which the creditor has failed to submit a statement, other than a debt which the debtor has included in his statement of debt shall be payable ;

and such order shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

(3) If any debtor fails to comply with a notice under sub-section (1), the Board shall dismiss the application and may allow against the debtor such costs as the Board considers reasonable and such costs shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the same is due :

Provided that an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Board on an application for review or by the Appellate Officer on appeal if it is proved to the satisfaction of the Board or of the Appellate Officer that the creditor or debtor or any person referred to in Clause (d) of sub-section (1) of Section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance :

Provided further that when a Board has ceased to exist an order made under sub-section (2) or sub-section (3) may be

varied or reversed by the Appellate Officer on an application if it is proved to his satisfaction that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of Section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance.

14. (1) When a creditor has submitted to the Board a statement of debt under sub-section (2) of Section 11 or sub-section (1) of Section 13, the Board shall fix a date for the production of all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him together with a true copy of each such document.

(2) The Board shall mark in the prescribed manner each original document so produced, keep the copy after verifying its correctness, and return the original to the creditor.

(3) No document relating to a debt regarding which a creditor has failed to submit a statement under sub-section (2) of Section 11, or sub-section (1) of Section 13, and no document which being in the possession or under the control of the creditor has not been produced by him as required by sub-section (1), shall be admissible in evidence against the debtor or his successor in interest in any suit by the creditor or by any person claiming under him for the recovery of the debt to which such document relates unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the document before the Board.

15. Subject to any rules made under this Act, the Board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

Board to attempt amicable settlement.

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

16. (1) Subject to rules made under this Act, a Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1908.

(2) Any person present may be required by a Board to furnish any information or to produce any document then and there in his possession or power.

Dismissal of applications.

17. (1) An application under section 8 may be dismissed by the Board, at any stage of its proceedings in respect of all or any of the debts to which it relates,—

(a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, or

(b) if, in the opinion of the Board—

(i) the applicant fails to pursue his application with due diligence, or

(ii) the debtor is attempting to use the provisions of this Act with a view to defraud any creditor or any person referred to in clause (d) of sub-section (1) of Section 11.

(2) An application under Section 8 shall be dismissed by the Board, if in its opinion—

(a) such application includes a claim which is intended to defraud any creditor; or

(b) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

18. (1) If there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and determine its amount:

Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to the existence and amount of the debt as between the parties to the decree.

(2) Before passing any order under Section 19, 21, or 22 the Board, after considering the statements of debt submitted under Section 11 and sub-section (1) of Section 13 and after hearing the parties and considering the evidence produced shall, in accordance with rules made under this Act, determine in respect of each debt the amount of the principal and the amount of the arrears of interest due thereon from the debtor up to the date of such determination.

(3) In determining the original principal of a debt for the purposes of proviso (ii) to clause (b) of sub-section (1) of Section 19, the Board shall determine the amount of original loan, after excluding any amount of interest on such loan which may at any time have been included as principal.

(4) When the Board has determined under sub-section (2) the amounts of the principal of a debt due from a debtor and of the arrears of interest due thereon, the decision of the Board in this respect shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

Settlement of debts. 19. (1) Subject to rules made under this Act—

(a) When any creditor agrees in respect of any debt owing to him to an amicable settlement with the debtor, the Board shall embody such settlement in writing; or

(b) When creditors to whom there is owing not less than forty per cent of the total debt, agree to an amicable settlement with the debtor, the Board, if it is so empowered under section 7 and if it considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement is a fair offer which the creditor concerned ought reasonably to accept, may pass an order that the debt to which the offer relates shall be settled in accordance with such offer:

Provided that for the purpose of this clause an offer shall not be considered by the Board to be a fair offer—

(i) if its terms are less favourable than the terms of the amicable settlement relating to a debt of the same description, or

(ii) if it contemplates the reduction of any debt to an amount which is less than the original principal of the debt as determined under sub-section (3) of Section 18, unless creditors to whom there is owing not less than sixty *per cent* of the total debt agree to the proposed reduction.

(2) The terms of any settlement of debts under sub-section (1) shall be embodied in an award to be made by the Board.

Explanation.—The words “total debt” mean the sum total of all debts which have been determined under Section 18 or regarding the amount of which there is no doubt or dispute.

Decision by Board as to whether a person is a debtor. 20. If any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not, the Board shall decide the matter.

Grant of certificate in respect of certain debts. 21. Subject to any rules made under this Act, if any creditor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, the Board if it is so empowered under Section 7, instead of passing any other order which it is competent to pass, may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates.

Secs. 20 and 34.—Under S. 20 of the Bengal Agricultural Debtors' Act if any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not, the Board shall decide the matter and it would seem that such a decision must precede any notice issued under S. 34 of the Act. It is not for the Insolvency Court which receives the notice to decide, more especially without taking any evidence whatsoever, whether a person is or is not a debtor within the meaning of the Act. 42 C.W.N. 173.

and thereafter, notwithstanding the provisions of any law for the time being in force, no Civil Court shall allow to the plaintiff, in any suit for the recovery of such debt, any costs in such suit or any interest on the debt after the date of such certificate in excess of simple interest at the rate of six *per cent per annum* on the principal of such debt as determined under sub-section (2) of section 18, and no decree for the recovery of such debt shall be executed until all amounts payable under an award in respect of other debts of the debtor have been paid, or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate.

22. (1) When the Board is satisfied that the debts of a debtor are such that they cannot be reduced under the provisions of section 19 to an amount which he will be able to repay within 20 years, and that the debtor is a fit person to be given the benefit of this section, the Board if it is so empowered under Section 7, may, subject to rules made under this Act, and after considering all the circumstances of the debtor, by a written order declare him to be insolvent and may by such order either.—

(a) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding 20 years, to be mentioned in the order, or

(b) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (a) to be desirable, direct that, subject to the provisions of sub-section (4) and of section 24, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order.

(2) The Certificate-Officer shall, on the requisition of the Board in the prescribed form, sell the property of the debtor referred to in clause (b) of sub-section (1) in the manner provided in the Bengal Public Demands Recovery Act, 1913, and the provisions of the said Act regarding sales in execution of certificates shall, subject to the provisions of this Act, apply to such sale.

(3) When the Board reduces the debts of an insolvent under clause (a) of sub-section (1), it shall specify in the order what sum he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors:

Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely, in a year of normal harvest, to leave to the insolvent, as provision towards his maintenance one-half of the surplus which remains

from the value of the produce of his land after paying to the landlord the current rent due for such land.

(4) when the Board directs the sale of an insolvent's property under clause (b) of sub-section (1), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house:

Provided that, even if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house:

Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realization of arrears of rent.

(5) When the property of the insolvent referred to in clause (b) of sub-section (1) has been sold under sub-section (2) or when he has paid all the sums fixed by the Board under sub-section (3) or when his property has been sold under S. 28, the Board shall make an order of discharge and grant him a certificate of discharge in the prescribed form. Such certificate shall release the insolvent from all debts which were or might have been included in the application under section 8:

Provided that if within five years of the order declaring the debtor insolvent any property is acquired by, devolves on, or is declared by a Civil Court or is discovered to belong to, the insolvent debtor such property shall, on application made by a creditor to the Board, be available for distribution among the creditors of the debtor, to the extent of their debts, in such manner as the Board may direct.

(6) An order passed by a Board under sub-section (1), shall be embodied in an award to be made by the Board.

23. The principal of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (b) of sub-section (1) of section 19 or under section 22, and the provisions of section 21 shall not apply to the principal of any such debt.

24. (1) When a debtor is declared insolvent under sub-section (1) of section 22, the Board shall, in the prescribed manner, determine what portion of his immovable property shall be deemed to be the dwelling house of the debtor for the purposes of this Act.

(2) Such dwelling house shall be exempt from sale under sub-section (2) of section 22 and from sale for the recovery of

any unsecured debt under Section 28, and, notwithstanding anything contained in any other Act, the debtor shall be incompetent to mortgage, charge, lease or alienate the same in any way until he is granted a certificate of discharge under sub-section (5) of Section 22.

(3) Notwithstanding anything contained in any other Act, no part of the property of a debtor who has been declared insolvent under sub-section (1) of Section 22 shall be exempt from sale under sub-section (2) of that section or under section 23 except such movable property as shall be prescribed, the immovable property excluded as provision towards his maintenance, and, subject to the provisions of sub-section (2), his dwelling house as determined under sub-section (1).

25. (1) An award shall be in the prescribed form and shall include the following particulars:—

(a) a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon;

(b) a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge;

(c) details of all debts which have been determined under Section 18 or regarding the amount of which there is no doubt or dispute;

(d) the amount to be paid to each creditor for each debt owing to him under the terms of an amicable settlement or of an order of the Board under Section 19 or Section 22;

(e) the manner and the order in which and the times at which the amounts referred to in clause (d) shall be paid:

Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act;

(f) the rate of interest, if any, payable on each amount referred to in clause (d);

(g) an order that all the properties mentioned in the list referred to in clause (a) or clause (b) except such properties as are exempt from sale shall, subject to any mortgage, lien or charge subsisting thereon, be security for the amounts payable under the award.

(2) At a place and time of which notice shall be given to the parties in the prescribed manner, the award shall be explained to the parties present and shall be signed by the Board; but the validity of an award shall not be affected by the absence of any of the parties.

(3) From the date of the signing of the award under sub-section (2) it shall, in supersession of all previous decisions in 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.

Special provision
arrears of rent.

26. Notwithstanding anything contained in this or any other Act—

(a) if any rent due for any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award;

(b) if any land referred to in clause (a) is advertised for sale in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve *per centum per annum*, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

27. (1) When an award is made as regards any debt which is secured by a mortgage, lien or charge on any immovable property of a debtor, such mortgage, lien or charge shall subsist to the extent of the amount payable in respect of such debt under the award until such amount has been paid or the property has been sold for the satisfaction of such debt or the debtor has been granted a certificate of discharge under sub-section (5) of S. 22.

(2) Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a Civil Court shall cease to subsist when such property is sold under the provisions of S. 28 or sub-section (4) of S. 29.

28. (1) If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due.

Recovery of amounts included in an award.

If the creditor does not so apply such amount shall for the purposes of clause (iii) of section 35, be deemed to be a debt incurred by the debtor after the date of the signing of the award.

(2) Subject to any rules made under this Act, the Certificate Officer, if satisfied that there is good reason for the failure to pay by the fixed date, may allow time to the debtor within which to pay any amount due. If the Certificate-Officer thus al-

lows time he may if he thinks fit, further direct that a similar period of time shall be given to the debtor after the time fixed in the award for payment of any other amount payable thereunder, within which to make such other payment, and the award shall be deemed to be modified accordingly.

(3) If the Certificate-Officer does not allow time under sub-section (2), or if the debtor fails to pay within the time allowed, the Certificate-Officer shall proceed to recover the amount in the manner provided in the Bengal Public Demands Recovery Act, 1913:

Provided that, if such debtor has been declared insolvent under section 22, the Certificate-Officer after allowing such time, if any, as he thinks fit, shall, forthwith, subject to the provisions of sub-section (4) of section 22 and section 24, sell such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or under sub-section (1) of section 29.

(4) Subject to the proviso to sub-section (3), if the Certificate-Officer fails to recover the full amount in respect of which an application has been made under sub-section (1) by sale of the immovable property or agricultural produce of the debtor, he shall sell such portion of the immovable property of the debtor as will be sufficient to pay all amounts payable whether under sub-section (1) of section 29 or under any decree which has, to the knowledge of the Certificate-Officer, been passed by a Civil Court in respect of a debt of which details are included in the award under clause (c) of sub-section (1) of Section 25.

(5) When the Certificate-Officer sells the immovable property of a debtor under sub-section (2) of section 22 or under this section he shall keep a separate account of the proceeds realised from the sale of any portion of such property upon which a mortgage, lien or charge is shown as subsisting in the list included in the award under clause (a) of sub-section (1) of section 25.

(6) If any debt in respect of which no amount is payable under the award is secured by a mortgage, lien or charge shown in such list, the Certificate-Officer shall sell the immovable property subject to such mortgage, lien or charge, unless a decree of a Civil Court for the recovery of the debt is outstanding in respect of such property. If such a decree is outstanding the Certificate-Officer shall distribute the sale proceeds in accordance with the provisions of clause (a) of sub-section (2) of section 29.

29. (1) When a Certificate-Officer has sold property of a debtor under sub-section (2) of section 22 or under section 28 he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate and next—

Distribution of sale proceeds.

(a) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (2) of section 18 and the date of confirmation of the sale; and

(b) any amount due to the Local Government included in a certificate issued under the Bengal Public Demands Recovery Act, 1913.

(2) After making the payments under sub-section (1), if any, the Certificate-Officer shall proceed as follows:—

(a) he shall, in the first instance, apply the surplus of the proceeds realised from the sale of any portion of the immovable property for which he has kept a separate account under the provisions of sub-section (5) of section 28 to the payment of any amounts payable under the award or under a decree of a Civil Court to creditors on account of debts which are secured by a mortgage, lien or charge upon such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882, and if such surplus is insufficient to meet such payments the balance of such amounts shall, unless the debt has been extinguished by such sale, rank equally with unsecured debts:

Provided that if there is any dispute or doubt as to the priority of payment of such debts, the Certificate-Officer shall refer the matter to the Appellate Officer who shall determine the same according to the provisions of the aforesaid Act;

(b) when there is a surplus after payment of the amounts referred to in clause (a), the Certificate-Officer shall apply the sum of such surplus and of any proceeds realised from the sale of other property of the debtor to the payment of any other amounts payable under the award, and if such sum is insufficient to meet such payment such other amounts and any amount payable on account of an unsecured debt for the recovery of which a decree has been passed by a Civil Court, and of which details are given in the award under clause (c) of sub-section (1) of section 25, shall rank equally between themselves for purposes of payment:

Provided that if any instalment has been paid under the award, for the year when an instalment fell due for the recovery of which application has been made under sub-section (1) of section 28, any instalment which fell due in that year, but which has not been paid, shall be given priority;

(c) any surplus remaining after payment of the creditors in accordance with the foregoing provisions of this section shall be paid by the Certificate-Officer to the debtor.

(3) The proceedings of a Certificate-Officer under this section shall be in accordance with rules made under this Act,

(4) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on any immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the Certificate-Officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance (if any) remaining after payment of such amount. The procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale.

(5) If the Certificate-Officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date:

Provided that the Certificate-Officer, instead of at once certifying any part of such amount to be irrecoverable may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

30. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 is sold in execution of a decree or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certificate-Officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act.

31. No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority.

32. If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to subsection (1) of Section 18 was obtained *ex parte* and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

Bar to suits and proceedings in Civil and Revenue Courts.

33. Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of—

(a) any debt included in an application under section 8 or in a statement under sub-section (1) of section 13, proceedings in connection with which are pending before a Board; or

(b) any debt for which any amount is payable under an award, except in accordance with the provisions of sub-section (5) of Section 29.

34. When an application under section 8 or a statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, the Board shall give notice thereof to such Court in the prescribed manner, and thereupon the suit or proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon, and if the Board includes any part of such debt under clause (d) of sub-section (1) of section 25 in the award or the Board decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Sec. 34.—No Court situated in a district in which the Bengal Agricultural Debtors Act has not been brought into force can be compelled to issue the stay order contemplated in the latter portion of S. 34 of that Act. In order to obtain such a stay order, the Act must be in operation both in the district in which the Board is situated to which an application is made for the settlement of a debt and also in the district in which the Court is situated to which the notice under S. 34 of the Act is actually sent. 41 C. W.N. 1363. Where the mortgaged properties had been sold to mortgagee-decree-holder for the exact amount of debt then due and owing to him and he was allowed to set-off the amount of the price as against the amount of the debt due to him from the judgment-debtors, the debt is no longer in existence although the sale has not yet been confirmed. There being no debt, the Court cannot stay further execution proceedings on receipt of a notice from the Debt Settlement Board under S. 34 of the Bengal Agricultural Debtors Act. 41 C.W.N. 1366.

Where an application has been made to the Board under S. 8 of the Bengal Agricultural Debtors Act and the Board has given notice thereof to the Court, the proceedings before that Court should be stayed. It is not for the Court to decide whether the Board is specially empowered under S. 7 or not to deal with the application. I.L.R. (1937) 2 Cal. 478= 41 C.W.N. 923=1937 Cal. 392.

In order that a notice under S. 34 of the Bengal Agricultural Debtors Act may be given, there must be a debt in respect of which some proceeding is pending in a Civil Court. Where in execution of a decree, the decree-holder purchases the property of the judgment-debtor and he is allowed a set-off, the debt is entirely wiped out and there is no proceeding pending in respect of any debt, although the sale has not been confirmed and an application under O. 21, R. 90, C. P. Code, is pending. Consequently if at this stage a notice is issued to the Civil Court under S. 34, it has no jurisdiction to stay further proceedings in execution. 41 C.W.N. 1307=1937 Cal. 713.

The condition precedent for giving the Board a jurisdiction to issue a notice under S. 34 of the Bengal Agricultural Debtors Act is the inclusion of a debt in the petition under Ss. 8 and 13 of the Act in respect of which a suit or proceeding is pending either in the Civil or in the Revenue Court. A proceeding for delivery of possession started by an auction-purchaser is not a proceeding in respect of a debt which was already wiped out by the auction-sale and cannot, therefore, be stayed on a notice under S. 34 of the Act. I.L.R. (1937) 2 Cal. 625=41 C.W.N. 924.

Ss. 34, 18 and 20.—Per *Edgley, J.*—Ss. 18 and 20 of the Bengal Agricultural Debtors Act do not debar the Civil Court from satisfying itself that the valid requirements of any notice which may be issued under S. 34 of the Act actually exist. It is, in fact, the duty of a Civil Court not to stay proceedings on receipt of a notice which purports to be a notice under S. 34 of the Act, unless the Court is satisfied that the notice in question is really a valid notice. 41 C.W.N. 1307=1937 Cal. 713.

Where in execution of a decree certain property is put up to sale and purchased by the decree-holder for less than the decretal amount, the debt ceases to exist to the extent of the price paid for the property and the executing Court is not bound to stay further proceedings on receipt of a notice under S. 34 of the Bengal Agricultural Debtors Act, although the sale has not been confirmed. No doubt, if the decree-holder makes an attempt to realise the balance of the debt. S. 34 would come into play. 42 C.W.N. 218.

Where the judgment-debtor's properties were sold in pursuance of a money decree and purchased by the decree-holder for a sum which was less the amount of the decree which sum was credited towards the satisfaction of the decree, the executing Court has no jurisdiction to stay further proceedings on receipt of a notice under S. 34 of the Bengal Agricultural Debtors Act, although the sale has not been confirmed. 42 C.W.N. 217.

It is not open to a Court to which notice under S. 34 of the Bengal Agricultural Debtors Act is sent to decide or even consider whether the debtor comes within the Act or whether he does not; that question rests solely with the Board. Thus a Debt Settlement Board can hold up a suit started in the Court of the Subordinate Judge, in which a sum of over Rs. 26,000 is in dispute, and if that Debt Settlement Board comes to the conclusion that the debtors are in fact 'debtors' within the meaning of the Act, the Board can completely oust the Court and adjudicate in effect upon a claim for Rs. 26,000 and the only appeal against their decision will be to a Munsif whose ordinary powers are limited to cases involving not more than one thousand rupees. Thus it seems to be that the Act in its present form is likely to entail consequences of a fantastic description which obviously could not have been realised or foreseen when the Act was drafted or passed. 1938 Cal. 23.

In order to obtain a stay order of the nature contemplated by S. 34, Bengal Agricultural Debtors Act, the Act must be in operation both in the district in which the Board is situated to which an application is made for the settlement of a debt and also in the district in which the Court is

35. Notwithstanding anything contained in any Acts, no decree of a Civil Court or Certificate under certain decrees and the Bengal Public Demands Recovery Act, 1913, shall be executed—

(i) for the recovery of a debt included in an application under section 8 or in a statement under sub-section (1) of section 13, until—

(a) the application has been dismissed by the Board in respect of such debt; or

(b) an award in which such debt is included has ceased to subsist under sub-section (5) of section 29;

(ii) except as provided in clause (a) of sub-section (1) of section 29 for the recovery of arrears of rent which became due from a debtor after the date of an application under section 8 in respect of his debts, unless notice of such decree or certificate has been given to the Board in the prescribed manner, and three months have elapsed since such notice was given;

(iii) for the recovery of a debt incurred by a debtor after the date of an application under section 8 in respect of his debts, until all the amounts payable under the award have been paid for such award has ceased to subsist under sub-section (5) of section 29.

36. Notwithstanding anything contained in any Act, any decree of a Civil Court passed in regard to a debt after the date of an application under section 8 shall be treated as a nullity in so far as—

(a) it is inconsistent with any order passed by a Board under sub-section (2) of section 13 regarding any debt or with any determination by the Board under section 18 of the principal and the arrears of interest of any debt included in a subsisting award; or

(b) it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the documents before the Board.

37. After receipt of an application under section 8 the Board may attach the immovable property of the debtor in the prescribed manner and thereupon such property shall be deemed to be under attachment under the provisions

Attachment of debtor's immovable property.

situated to which the notice under S. 34 of the Act is actually sent. But no Court situated in a district in which the Act has not been brought into force can be compelled to issue the stay order contemplated in the latter portion of S. 34. 1938 Cal. 23.

XXX THE BENGAL AGRICULTURAL DEBTORS ACT, 1935. [S. 38

of the Code of Civil Procedure, 1908, until such attachment is withdrawn or cancelled by the Board.

38. No appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act.

Bar to appeal or revision.

39. (1) The Local Government may authorise the Collector, subject to rules made under this Act, to transfer from one Board to another, for disposal, applications made under section 8.

Transfer of applications from one Board to another.

(2) A Board to which an application is transferred under sub-section (1) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred.

40. (1) An appeal may be made in the prescribed manner to an Appellate Officer to be appointed by the Local Government against—

Appeals.

(a) any decision or order of a Board under this Act or of a Certificate Officer under sub-section (2) of Section 28 or section 29,

(b) any award,

(c) the grant of a certificate under Section 21, or

(d) any failure on the part of a Board to perform its functions under this Act or any abuse by a Board of its powers:

Provided that in the case of appeals against any order under sub-section (2) of section 13, section 18, clause (b) of sub-section (1) of section 19, section 21, section 22 or section 29, the Appellate Officer appointed under this section shall be a person who has had such judicial experience as may be prescribed by rules made under this Act.

(2) An appeal under sub-section (1) shall lie if made within thirty days of the date of the decision, order, award or certificate referred to in that sub-section.

(3) The Local Government may make rules regarding the procedure to be followed by the Appellate Officer, and for the control and inspection of his work.

(4) The Appellate Officer may after giving the Appellant an opportunity of being heard reject an appeal summarily if he considers that there is no sufficient ground for interfering.

(5) If the Appellate Officer does not reject the appeal summarily, he shall hear the parties, if they appear, and consider any reasons which the Board may submit in regard to the grounds of such appeal, and may then either confirm or modify the decision or order of the Board or direct the Board to take such action as he thinks fit.

(6) The orders of the Appellate Officer shall be final.

(7) An appeal for the purpose of this section includes an application for revision.

(8) No appeal shall lie against a decision or order passed by a Board with the consent of the debtor and the creditor.

41. Whenever it appears to the Appellate Officer that for the ends of justice it is expedient to transfer from one Board to another an application made under section 8, he may order that the application be transferred to such Board as may be specified in the order and unless he otherwise directs, the provisions of sub-section (2) of section 39 shall be applicable to the proceedings in connection with such application.

Power of Appellate Officer to transfer application.

42. Subject to rules made under this Act, a Board may, if it thinks necessary, make a reference to the Appellate Officer stating the question upon which his opinion, advice or direction is required and the Appellate Officer shall give his opinion, advice or direction, as the case may be, thereon as soon as possible.

Reference to Appellate Officer.

43. (1) A Board shall, in all proceedings under this Act, be subject to the control of the Local Government.

Control over Board.

(2) Any person appointed by the Local Government in this behalf may inspect or cause to be inspected any property, books or documents in the possession 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, as he thinks fit to call for.

44. Subject to any rules made under this Act—

Power of Board to review its order.

(a) a Board may, on an application made by any person interested, review any decision or order passed by it and pass such order in reference thereto as it thinks fit,

(b) an Appellate Officer may, on an application made by any person interested, review any decision or order passed by him or his predecessor and pass such order in reference thereto as he thinks fit:

Provided that no order shall be varied or reversed unless an opportunity has been given to the persons interested to appear and be heard in support of such order.

45. (1) Except as otherwise provided in this Act, the provisions of—

Certain Acts not to apply to the proceedings under this Act.

(a) the Indian Evidence Act, 1872, and

(b) the Code of Civil Procedure, 1908 shall not apply to any proceedings before a Board.

(2) The procedure to be followed by a Board in any proceedings before it shall, subject to the provisions of this Act, be in accordance with rules prescribed under this Act.

46. Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings.

47. (1) Every award and every certificate granted under section 21, or sub-section (5) of section 22, shall be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner and within such period as may be prescribed.

(2) For the purpose of the registration under sub-section (1) of an award or a certificate the Chairman shall be deemed to be an officer of Government empowered to execute such instrument within the meaning of section 88 of the Indian Registration Act, 1908.

48. A copy of any order made by a Board under sub-section (2) of Section 13, and a copy of any award shall be published in such manner as may be prescribed by the Local Government.

49. The Chairman and the other members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code.

50. All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code.

51. No suit, prosecution or legal proceeding whatever shall lie against any Chairman or other member of a Board, Appellate Officer or Certificate-Officer in respect of anything in good faith done or intended to be done under this Act.

52. Notwithstanding anything contained in any other Act, when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings under this Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal,

S. 55] THE BENGAL AGRICULTURAL DEBTORS ACT, 1935. xxxiii

or executing the decree in question, as the case may be, shall be excluded.

Negotiability of awarded amounts. 53. The right to receive any amount payable under an award shall be assignable in the prescribed manner.

Penalties.

54. (1) Whoever—

(a) intentionally makes any false statement in writing or makes any false statement which has been recorded whether on oath or not before any Board or an Appellate Officer, in any proceeding under this Act;

(b) intentionally produces before a Board any false copy or translation of a document;

(c) falsely personates another and in such assumed character produces any document or makes any admission or statement or does any other act in any proceeding under this Act; or

(d) abets any act punishable under this section shall, on conviction, be liable to imprisonment for a term which may extend to three years or to fine or to both.

(2) No prosecution for any offence under this section may be commenced except by, or with the permission of, the Collector.

Power to make rules. 55. (1) The Local Government may make rules for carrying out the purposes of this Act.

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

(a) the maximum amount of debt which can be dealt with under the provisions of this Act;

(b) the fees to be paid for anything done under this Act and the persons by whom and the manner in which such fees shall be paid;

(c) the allowances, if any, to be paid to the Appellate Officer, the Chairman and other member of a Board;

(d) the office establishment of a Board, the pay, allowances and conditions of service of such establishment;

(e) the procedure of a Board, and the quorum for a meeting of a Board;

(f) the forms of application under section 8, of statements of debt under Section 11, of awards, of certificates under section 21, of requisitions under sub-section (2) of section 22, and of certificates of discharge under sub-section (5) of Section 22;

(g) the transfer of applications under sub-section (3) of section 8, or sub-section (1) of section 39 and disposal of applications under sub-section (3) of section 8;

xxxiv THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.

(h) the manner of signing and verification of applications under S. 8;

(i) the manner of giving notice under sub-section (2) of section 12, sub-section (1) of section 13 and sub-section (2) of section 25;

(j) the marking of original documents produced under sub-section (2) of section 14;

(k) the amicable settlement by a Board of debts under Section 15;

(l) the summoning and examination by a Board of parties and their witnesses, and the production of documents, under sub-section (1) of section 16;

(m) the determination by a Board under sub-section (2) of section 18 of the amount of the principal of a debt and the amount of interest due thereon;

(n) the settlement of debts by a Board under section 19;

(o) the grant of a certificate under section 21;

(p) the declaration by a Board under sub-section (1) of section 22 that a debtor is insolvent, the sale of his property and the reduction of his debts;

(q) the determination of a portion of the immovable property of a debtor as his dwelling house under sub-section (1) of section 24;

(r) the movable property of an insolvent debtor which shall be exempt under sub-section (3) of section 24 from sale;

(s) the order of payment of the amount referred to in clause (d) of sub-section (1) of section 25;

(t) the period within which an application under sub-section (2) of section 13 and sub-section (1) of section 28 shall be made;

(u) the grant of time under sub-section (2) of section 28 for payment of the amount due;

(v) the distribution of sale proceeds and the proceedings of a Certificate-Officer under section 29;

(w) the authorities whose approval is required under section 31;

(x) the manner of giving notice under section 34 and under section 35;

(y) the manner of attachment of immovable property under section 37;

(z) the transfer and disposal of applications under section 39;

(za) the manner of making an appeal under sub-section (1) of section 40;

(zb) the judicial experience required in the case of certain appellate Officer under proviso to sub-section (1) of Section 40;

(zc) the procedure of an Appellate Officer and the control and inspection of his work under sub-section (3) of Section 40;

(zd) the manner of review under Section 44 of a decision or order passed by a Board or an Appellate Officer;

(ze) the representation of a party in proceedings before a Board;

(zf) the manner in which and the period within which awards and certificates shall be registered under sub-section (1) of Section 47;

(zg) the publication under Section 48 of awards and of certain orders; and

(zh) the manner of assignment of an award under Section 53.

(3) The power of making rules conferred by clause (b) of sub-section (2) is subject to the condition that the rules be made after previous publication.

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

III

CENTRAL PROVINCES AND BERAR ACTS

*[CENTRAL PROVINCES ACT, II OF 1933 AS AMENDED BY ACTS NO. I OF 1934, XIV AND XXVIII OF 1935. XV AND XXXIII OF 1936 AND XVI AND XVII OF 1937.]

THE CENTRAL PROVINCES DEBT CONCILIATION ACT II OF 1933.

An Act to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness.

WHEREAS it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

Preamble.

*This Act was extended to Berar with effect from the 1st April, 1934 (*Vide* Notification 875-862 XII, dated 13th March, 1934. *See also* Government of India, Foreign Department Notification No. 81-I dated 21st February, 1934.

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

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE CENTRAL PROVINCES DEBT CONCILIATION ACT, 1933.

(2) It extends to the whole of the Central Provinces.

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

[NOTE.—The Act came into force on the 1st April, 1933 by Notification No. 957-765-XII, dated the 17th March, 1933.

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

Definitions.

(a) the expressions "*malik-makbuza*", "proprietor", "*raiyat*", "*riyat-malik*" and "village" shall have the meanings assigned to them in the Central Provinces Land Revenue Act, 1917 (II of 1917);

(b) the expressions "agriculture", "holding", "land", "occupancy tenant" and "absolute-occupancy tenant" shall have the meanings assigned to them in the Central Provinces Tenancy Act, 1920 (I of 1920);

(c) "Board" means a Debt Conciliation Board established under sub-section (1) of section 3;

(d) "creditor" means a person to whom a debt is owing and includes a co-operative society;

(e) "debt" includes all liabilities owing to a creditor, in cash or kind, secured or unsecured, payable under a decree or

Scope, object and applicability of the Act discussed—Act restricted to granting relief to agriculturists only—Duties and powers of Debt Conciliation Boards indicated. 1938 N.L.J. 17. As to whether, once a sale in execution has been held, the Debt Conciliation Board can interfere. 19 N.L.J. 174. The C.P. Debt Conciliation Act was enacted to make provision for the setting up of Debt Conciliation Boards to give relief to agriculturist debtors. The Debt Conciliation Boards set up by the Act must confine their activities only to cases where the debtors are agriculturists. If the applicant for relief is not a debtor, *i.e.*, a person whose main source of livelihood is agriculture, the Act would not apply to him, and the Conciliation Board would have no power to afford him any relief. The Board has absolutely no jurisdiction in a case where the judgment-debtor applicant is not an agriculturist. The fact that the decree-holder omits to protest against the Board's exercising jurisdiction in the matter cannot confer on the Board a power which it did not possess under the Act and does not preclude him from raising the question of jurisdiction before the Civil Court sitting in execution or the Civil Court from considering and trying the issue as to jurisdiction. 1938 N.L.J. 17.

Sec. 2 (e).—See 19 N.L.J. 16: 165 I.C. 412: 1936 Nag. 145.

order of a civil court or otherwise, whether due or not due, but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, or any money for the recovery of which a suit is barred by limitation;

(f) "debtor" means a person who earns his livelihood mainly by agriculture and who is an occupancy tenant or absolute-occupancy tenant or *raiyyat* or *raiyyat-malik* or a *malik-makbuza* or a proprietor, whose debts exceed Rs. 150; ¹[or such lower amount, not being less than fifty rupees, as the Local Government may, by notification, prescribe for a particular area];

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

3. (1) The Local Government may establish a Debt Conciliation Board for any district or part of a district. Such Board shall consist of a Chairman and two or more members, not exceeding ²[nine], including the Chairman, to be appointed by the Local Government which may, for reasons to be recorded in writing, cancel any appointment and dissolve any Board.

(2) The Chairman and every member of a Board so established shall be appointed for a term not exceeding one year. Such Chairman or member may, on the expiration of the period for which he has been appointed, be again appointed ³[from time to time] for a further term not exceeding one year.

(3) A Board shall have such quorum as may be prescribed.

(4) Where the Chairman and members of a Board are unable to agree, the opinion of the majority shall prevail. Where the Board is equally divided the Chairman shall have a casting vote.

(5) ⁴[If at any time the Chairman of a Board is temporarily prevented from discharging his duties, he may nominate any member thereof to act for him during his temporary absence and such member shall, while so acting, have the same powers as the Chairman.]

4. (1) A debtor or any of his creditors may apply to the

¹Inserted by Act XVI of 1937.

²For the word "five" the word "nine" was substituted by Act I of 1934

³Inserted by Act XXVIII of 1935.

⁴Sub-section (5) to section 3 was inserted by Act XIV of 1935.

Sec. 4. APPLICABILITY.—The expression "any suit or other proceedings" in S. 4 does not apply to Insolvency proceedings because they are not in respect of any "debt". 20 N.L.J. 252=1937 Nag. 288. The Act lends itself to abuse and fraud very easily, and must be very

Application for settlement between debtor and his creditors. Board appointed for the area in which any holding, land or village of the debtor, or any part thereof, is situate, to effect a settlement between the debtor and his creditors:

Provided that no application shall be made if the debtor's debts exceed ⁵fifty thousand rupees or such larger amount as may be prescribed for each area.

(2) No debtor or creditor shall simultaneously make more than one application, and where applications have been made by the debtor and any of his creditors, the applications made by the creditors shall be merged in the application made by the debtor.

5. Every application to a Board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (V of 1908), for signing and verifying plaints.

Particulars to be stated in applications. 6. (1) Every application presented by a debtor to a Board shall contain the following particulars, namely:—

(a) a statement that the debtor is unable to pay his debts;
 (b) the place where he resides;
 (c) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can, by the exercise of reasonable care and diligence be ascertained by him; and

(d) the amount and particulars of all his property, including claims due to him, together with a specification of the value of such property not consisting of money, and the place or places at which any such property is to be found.

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

(a) the place where the debtor resides; and

strictly construed and vigilantly applied by the special authority created by the Act. The Debt Conciliation Boards should therefore be alert and should first satisfy themselves about the *bona fides* of every application for settlement of debts. 1938 N.L.J. 17. A person who earns his livelihood mainly by agriculture is a debtor entitled to apply under S. 4. It is not merely necessary that he should have tenancy or proprietary land but also that it should be the main source of his maintenance. A person who has been earning his livelihood as a pleader's clerk for many years and as a private servant and who acquires some tenancy land only to enable himself to apply for settlement of his debts, is not an agriculturist and is not a debtor entitled to apply under S. 4 of the Act. 1938 N.L.J. 17.

⁵For the word "twenty-five" the word "fifty" was substituted by Act XVII of 1937.

(b) the amount and particulars of his claim against such debtor.

7. (1) On receipt of an application under section 4, the Board shall pass an order fixing a date and place for hearing the application:

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

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor or creditors, as the case may be.

17-A. (1) If, on receipt of an application under section 4, the Board admits the application as being within its jurisdiction or, under sub-section (1) of section 7, dismisses it on the ground of want of jurisdiction, a debtor or his creditor may, within thirty days from the date of admission or of the order of dismissal, as the case may be, make an objection in writing to the Board against such admission or dismissal.

(2) On receipt of an objection under sub-section (1), the Board shall make such order thereon as it thinks fit and it shall be final.

(3) If no objection is made under sub-section (1), or if an objection is made and decided under sub-section (2), the jurisdiction of the Board shall not be questioned in any civil court.

¹ Section 7-A was inserted by Act XV of 1936.

Secs. 7 and 7-A.—Scope—If RETROSPECTIVE.—S. 7-A.—introduced by the amending Act XV of 1936, cannot have retrospective effect; but in cases where it applies the result is that it is not open to any Civil Court to say that the Board had not in fact jurisdiction. 20 N. L. J. 57=170 I. C. 905 1937 Nag. 259. S. 7-A does not apply to pending proceedings, i.e., proceedings arising out of an application under the Act presented prior to the date when the section came into force. The right of a party to have the question of the jurisdiction of the Debt Conciliation Board decided by the Civil Court is a substantive and vested right, which every party had before the enactment of S. 7-A. The section takes away the jurisdiction of the Civil Court to determine this question and vests it exclusively in the Board. S. 7-A cannot therefore have retrospective operation so as to affect the vested rights of parties in regard to pending proceedings. In the case of such proceedings, therefore, the Civil Court must itself determine whether the Board is legally seized of the proceedings and has jurisdiction or not, if such a question is raised. 20 N.L.J. 203. S. 7-A has no retrospective operation. An order of the Debt Conciliation Board discharging a decree-holder's debt before the introduction of S. 7-A into the Act, can therefore be challenged by the decree-holder as being without jurisdiction in the Civil Court executing the decree. 1938 N.L.J. 17.

8. (1) If, after examining the debtor, it is in the opinion of the Board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served

Secs. 8 and 9.—Relative scope. The penalties for failure to file a statement under S. 8, and for failure to produce the documents under S. 9 of the Debt Conciliation Act, are distinct. The debt would be deemed to be discharged only in case the statement is not filed; the scope of S. 8 (2) is strictly limited to what is required by the creditor to be done under S. 8 (1). When the creditor files a statement, but fails to produce the document, the case falls under S. 9 and goes out of the scope of S. 8 and the Debt Conciliation Board has no power to declare the debt having been duly discharged. Such an order is *ultra vires* and illegal and cannot affect the jurisdiction of the Civil Court in regard to a matter pending before it arising out of the same transaction. The Civil Court can therefore proceed with the pending suit as if the debt had not been discharged. 169 I.C. 323=20 N.L.J. 21. A Debt Conciliation Board has no authority to say that a debt is deemed to have been duly discharged except where the creditor has failed to comply with the provisions of S. 8 (1), Debt Conciliation Act. There is no provision in the Act under which a Board is entitled to say that the claim is dismissed. When a creditor refuses to accept a reasonable offer, the Board can deal with the matter under S. 15. A civil suit therefore to recover the amount is not barred. (1937) Nag. 530=1937 Nag. 195.

Secs. 8, 9 and 16.—Where a mortgagee institutes a suit on his mortgage producing the mortgage bond in the Civil Court, and the mortgagor thereafter applies to the Debt Conciliation Board for settlement of the debt, the failure of the creditor to produce the mortgage deed before the Board will not authorise the Board to declare that the debt is duly discharged. It is not open to the Board to say that the debt is duly discharged under S. 8 (2) of the Debt Conciliation Act merely because the plaintiff mortgagee has not, in the opinion of the Board, complied with S. 9 (1). The mortgage-deed produced in the Civil Court cannot be said to be in the possession or under the control of the plaintiff within the meaning of S. 9, because it has been filed in the Civil Court. Since the Board has no jurisdiction to pass an order declaring the debt discharged in such a case, the suit in the Civil Court is not barred by S. 16 of the Act, in spite of an order by the Board declaring the debt discharged. 169 I.C. 268=20 N.L.J. 29.

Secs. 8 (1) and (2).—Under the proviso to S. 8 (1) of the Act, the Debt Conciliation Board has power to extend the period for submission of a statement by a creditor, if it is satisfied that the creditor was, unable for good and sufficient cause, to comply with the directions of the Board under S. 8 (1). Where the Board accepts a statement which was not filed by a creditor within beyond two months as required by S. 8 (1), without taking exception to the delay, it must be held that the Board in effect condones the delay; and when the Board condones the delay, the debt cannot be deemed to be duly discharged under S. 8 (2) by reason of the failure to submit the statement within the period of two months. The Board in such a case would be acting without jurisdiction if it declares the debt duly discharged under S. 8 (2). 169 I.C. 268=20 N.L.J. 29.

It is only when a creditor fails to comply with the provisions of S. 8 (1) of the Act that the debt is deemed to have been duly discharged under S. 8 (2); and if the creditor complies with S. 8 (1), the Conciliation Board

or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. 1[Such statement shall be submitted to the Board in writing on or before such date as the Board may fix in this behalf not being earlier than two months from the date of service or publication of the notice, as the case may be]:

Provided that, if the Board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him.

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

Provided that, if a creditor proves to the satisfaction of the Board or a civil court that the notice was not served on him and that he had no knowledge of its publication 2[or that he was prevented from complying with the provision of sub-section (1) on account of unforeseen or unavoidable difficulty or cause] the Board or court may revive the debt.

9. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section

Procedure on submission of statement of debts.

¹ Substituted by Act XIV of 1935.

² Inserted by Act XXVIII of 1935.

has no jurisdiction to declare his debt duly discharged. 170 I.C. 905=20 N.L.J. 57=1937 Nag. 259. The "debt" to which reference is made in S. 8 (2) of the Debt Conciliation Act refers only to a debt owed by a debtor who has applied to the Debt Conciliation Board and cannot be interpreted as referring to the liability to discharge a debt which lies on a person who has not applied to the Board and with whom the Board is not concerned. If several persons are jointly and severally liable in respect of a debt, and one of them makes an application to the Board, the liability of the others who do not apply to the Board, will not be extinguished by reason of the creditor's failure to file a statement before the Board in answer to the application made by one of the debtors only. 20 N.L.J. 25.

Sec. 8 (2).—See 165 I.C. 412=A.I.R. 1936 Nag. 145.

Sec. 9.—Applicability and construction—It is clear from the wording of S. 9 (3) that the section would not apply to the case of a creditor who has filed a suit already on the basis of the instrument of obligation. When a creditor has filed the document along with the plaint, as he is bound to do under the law, it cannot be said that the document is either in his possession or under his control. In such a case, therefore, the bond cannot be treated as being not admissible in evidence. If the Debt Conciliation Board in such a case wrongly declares that the bond filed by the creditor in the suit, but not filed before the Board, will not be relevant for proving his claim in the suit already filed by him, the Civil Court would be guided not by the order of the Board, but by the terms of sub-S. (3) of S. 9 of the Act only. 169 I.C. 323=20 N.L.J. 21.

tion (1) of S. 8 shall furnish, along with such statement, full particulars of all such debts and shall at the same time produce all documents, including entries in books of account, on which he relies to support his claims, together with a true copy of every such document:

1[Provided that if the Board is satisfied that any creditor was for good and sufficient cause, unable to produce such documents along with the statement, it shall require them to be produced on a date fixed for the purpose.]

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

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1), the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him.

2[9-A. Every statement submitted under sub-section (1) of section 8, together with all particulars furnished along with it under sub-section (1) of section 9, shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (V of 1908), for signing and verifying plaints.]

10. The Board shall call upon the debtor and each creditor, respectively, to explain his case regarding each debt and shall endeavour to induce them to arrive at an amicable settlement.

11. (1) Subject to the provisions of sections 132 and 133 of the Code of Civil Procedure, 1908, (V of 1908), and to rules made under section 25, a Board shall have power to summon any person whose attendance it considers necessary either to be examined as a party or to give evidence as a witness or to produce any document 2[for the purpose of ascertaining the antecedents of any debt or for any other purpose in connection with an inquiry under this Act.]

(2) Any person present may be required by a Board to give evidence or to produce any document then and there in his possession or power.

¹ This proviso was inserted by Act XXVIII of 1935.

² Section 9-A was inserted and the addition to section 11 (1) was made by Act XXXIII of 1936.

12. (1) If the creditors to whom not less than forty per cent. of the total amount of the debtor's debts are owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording ¹[a list of immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon], the amounts payable to such creditors and the manner in which and the times at which they are to be paid. Such agreement shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the Board and the parties:

Provided that, when a co-operative society is one of such creditors, no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies.

(2) An agreement thus made shall, within ²(one month) from the date of its making, be registered under the Indian Registration Act, 1908 (XVI of 1908), by the Chairman of the Board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court.

(3) For the purpose of the registration of an agreement under sub-section (2), the Chairman of the Board shall be deemed to be an officer of Government empowered to execute such agreement within the meaning of section 88 of the Indian Registration Act, 1908.

³[12-A. Where an agreement registered under sub-section (2) of section 12 relates to a debt which is secured by a mortgage, lien or charge on any immovable property of a debtor, such mortgage, lien or charge shall subsist to the extent of the amount payable to the creditor in respect of such debt in accordance with the terms of the agreement until such amount has been paid or the property has been sold for the satisfaction of such debt.]

¹ These words were inserted by Act XV of 1936.

² For the words "fourteen days" the words "one month" were substituted by Act XIV of 1935.

³ S. 12-A was inserted by Act XV of 1936.

Sec. 12 (1) and (2): "Amicable settlement"—When a creditor relinquishes his claim to a sum of money due to him on the debtors taking a special oath proposed by him, that amounts to an amicable settlement between the creditor and debtor within the meaning of S. 12 (1) of the Debt Conciliation Act; a decree obtained by the creditor in respect of the debt prior to the oath therefore ceases to exist and is replaced by the agreement to take the oath which under S. 12 (2) takes effect on registration as if it were a decree of a Civil Court. The decree previously obtained by the creditor cannot, therefore, any longer be executed. 20 N.L.J. 27.

1[13. (1) If a debtor defaults in paying any amount due in accordance with the terms of an agreement registered under sub-section (2) of section 12, such amount shall be recoverable as an arrear of land revenue on the application of the creditor made within ninety days from the date of default.

(2) Where the Deputy Commissioner has, under sub-section (1), recovered any amount which was payable in accordance with the terms of the agreement, he shall proceed to make payments as follows:—

(a) He shall, in the first instance, apply the sum realized from the sale of any portion of the immovable property referred to in section 12-A to the payment of any amount payable under the agreement on account of a debt which is secured by a mortgage, lien or charge on such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882 (IV of 1882), and, if the said sum is insufficient to meet such payments, the amounts which have remained unpaid shall rank equally with unsecured debt.

(b) If there is a surplus after the payments have been made under clause (a), the Deputy Commissioner shall apply to the payment of any other amounts payable under the agreement the sum of the surplus and of the proceeds realised from the sale of such portion of any other property of the debtor as will, together with the surplus, be sufficient to meet the payment of such amounts.

(c) If the sum of the surplus and sale proceeds referred to in clause (b) is insufficient to meet the payment of other amounts referred to therein, such other amounts and any amount payable on account of any unsecured debt for the recovery of which a decree has been passed by a civil court and of which details are given in the agreement shall rank equally between themselves for the purposes of payment.

(d) Any further surplus remaining after the payments have been made under clauses (a), (b) and (c), shall be paid by the Deputy Commissioner to the debtor.

(3) Where the Deputy Commissioner fails, under sub-section (1), to recover as an arrear of land revenue any part of the amount referred to therein, he shall certify that it is irrecoverable and thereupon the agreement shall cease to subsist.

(4) Where an agreement ceases to subsist, any amount which was payable under such agreement but has not been paid shall be recoverable as if a decree of a civil court had then been passed for its payment.

1["13-A. (1) If a creditor refuses to accept any amount tendered to him by his debtor in accordance with the terms of an agreement registered under sub-section (2) of section 12, or if, in any case, the debtor is doubtful as to the person entitled to receive such amount, the debtor may apply to the Deputy Commissioner for permission to deposit such amount with him.

(2) An application made under sub-section (1) shall be in writing and shall contain—

- (a) a statement of the grounds on which it has been made,
- (b) the name of the creditor to whose credit the deposit is to be entered, and
- (c) the name of the person to whom payment was last made and of the person now claiming it.]

1[13-B. (1) If it appears to the Deputy Commissioner that the applicant is entitled to make the deposit under section 13-A, he shall receive such deposit and give a receipt therefor.

(2) The Deputy Commissioner shall cause a notice of such deposit to be served on every person who, he has reason to believe, claims or is entitled to it and may pay the amount thereof to any person appearing to him to be entitled to it, or may retain it pending the decision of a civil court as to the person entitled to it.]

1[13-C. A debtor who has made a deposit under section 13-B shall be held to have fulfilled the terms of the agreement.]

1[13-D. No suit or other legal proceeding shall be instituted against [the crown] or any officer of [the crown] in respect of anything done regarding a deposit under this Act, but nothing in this section shall prevent any person entitled to recover the amount of such deposit from recovering it from any person to whom it has been paid under section '13-B."']

14. If no amicable settlement is arrived at under sub-section (1) of section 12, the Board shall dismiss the application.

¹Sections 13-A, B, C and D were inserted by Act No. XXXIII of 1936.

²Substituted by the Adaptation of Indian Laws Order 1937.

15. (1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the Board may, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed, in respect of the debts owed by him to such creditor.

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

(3) Where, after the registration of an agreement under sub-section (2) of section 12, any unsecured creditor sues for the recovery of a debt, other than a debt incurred subsequent to such agreement, in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such registration, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), not be executed until all amounts recorded as payable under such agreement have been paid or such agreement has ceased to subsist:

1[Provided that the provision in this sub-section shall not apply to the execution of a decree passed in a suit for the recovery of rent as defined in the Central Provinces Tenancy Act, 1920 (I of 1920)].

Bar of civil suits.

16. No civil court shall entertain—

¹ The proviso was added by Act XIV of 1935.

Sec. 15 (2)—Applicability—S. 15 (2) applies only where the creditor is suing for recovery of a debt in respect of which a certificate has been granted. It does not apply where the creditor is applying in execution for the recovery of a decretal debt. I.L.R. (1937) Nag. 344=169 I.C. 294=20 N.L.J. 28=1937 Nag. 120. Under S. 15 (2) the plaintiff-creditor is liable to be subjected to penalty in regard to costs of the suit and interest on the debt even in case the certificate is produced by the debtor after the filing of the plaint, but during the pendency of the suit, i.e., before the passing of the decree. 31 N.L.R. 147=155 I.C. 1032=19 N.L.J. 24=1935 Nag. 43.

S. 16—Applicability—Order without jurisdiction—order declaring debt discharged—Suit—If barred, 20 N.L.J. 29.

- (a) any suit in respect of—
 (i) any matter pending before a Board, or
 (ii) the validity of any procedure or the legality of any agreement made under this Act, or
 (iii) the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of section 12 from any person who, as a debtor, was party to such agreement whether such agreement is subsisting or not, or
 (iv) the recovery of any debt which has been deemed to have been duly discharged under sub-section (2) of section 8, except a debt which is revived under the proviso to that sub-section;

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 15.

17. Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a Board under section 4 and until the agreement registered in respect of such application has ceased to subsist, shall be voidable at the option of any creditor so defeated or delayed.

18. No appeal or application for revision shall lie against any order passed by a Board.

19. A Board may, ¹[either on its own motion at any time or] on the application from any person interested made within ninety days of the passing of an order, review any order passed by it and pass such order in reference thereto as it thinks fit:

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

¹ Inserted by Act XXXIII of 1936.

Construction and scope—If the Debt Conciliation Board had no jurisdiction to try to effect a settlement, all proceedings before it would be completely invalid and the Civil Courts would have jurisdiction to enquire whether those proceedings were invalid for want of jurisdiction, but if the Board had jurisdiction, then the Civil Courts would not have jurisdiction to inquire whether that jurisdiction was properly exercised and the legality or validity of any orders passed by the Board cannot be questioned in any Civil Court at all except perhaps on the ground of fraud. 170 I.C. 905=20 N.L.J. 57=1937 Nag. 259. A Civil Court sitting in execution has power to inquire into the question whether the Debt Conciliation Board had jurisdiction to entertain and hear an application under S. 4 of the Debt Conciliation Act made by a person who was not an agriculturist. 1938 N.L.J. 17.

Appearance of party before Board by agent but not by legal practitioner.

20. In any proceedings before a Board any party may be permitted to appear by an agent authorized in writing, but not by a legal practitioner.

Suspension of pending application or suit.

²[21. When an application has been made to a Board under section 4, any suit or other proceedings then pending before a civil court in respect of any debt for the settlement of which application has been made shall be suspended until the Board has disposed of the application:

². This revised section was inserted by Act XIV of 1936.

Sec.21—Applicability—If a debtor who is adjudged an insolvent applies to the Debt Conciliation Board for settlement of his debt, the proceedings pending in the Insolvency Court cannot be suspended under S. 21. S. 6 of the Act pre-supposes that the debtor has some property of his own and that his creditors have a remedy available to them in ordinary Civil Courts. When a debtor is divested of all his property in consequence of his having been adjudged insolvent, he no longer remains a "debtor" as such and he cannot possibly describe the property vested in the Insolvency Court as his property in the application which is required to be made in terms of S. 6 of the Act. 20 N.L.J. 252=1937 Nag. 288.

An application under S. 21 necessarily contemplates an application which it is competent for the applicant to make under the Act, and the Board referred to there means a Board which has jurisdiction to entertain the application. The Civil Court to which the application is made has the power to examine the competency of the Board to adjudicate on matters which are also before them. No separate suit is necessary in order to determine these questions. The Civil Court must ordinarily proceed with matters pending before it upon which it is competent to adjudicate. Any party relying upon a bar to these powers must establish the same, and the Court has then naturally to enquire into and determine the validity of the objection raised. This may involve an enquiry into the jurisdiction of the Debt Conciliation Board to entertain the matters before the Court, and the Civil Court itself is the tribunal competent to decide these matters. 20 N.L.J. 203. Though Berar is not British India, and though a certificate issued by a Debt Conciliation Board in Berar is not *ipso facto* valid in the Central Provinces, such a certificate, as a matter of a judicial comity and commonsense ought to be recognised and acted upon in the Central Provinces 20 N.L.J. 240. The certificate under S. 21 can stay only suits in respect of any debt for the settlement of which application has been made but it cannot justify the stay of a suit for possession of land. 20 N. L. J. 218. After the sale in execution of a decree has been held and the sale price has been set off against the judgment-debt or deposited in Court subsequent proceedings for confirming the sale are proceedings between the judgment-debtor and the auction-purchaser, just as are proceedings for the delivery of possession to the auction-purchaser. In these proceedings, the decree-holder plays no part, and these proceedings do not amount to executing a decree so as to fall within the ambit of the proviso to S. 21. The property has been sold in execution of the decree and the title of the auction-purchaser vests in him from the date of sale subject to confirmation, which is inevitable in the absence of any objection.

Provided that no decree, whether passed before the date of such application or passed in the suit after revival for the recovery of an unsecured debt in respect of which a certificate has been granted under sub-section (1) of section 15, shall be executed until all amounts recorded as payable under an agreement registered under sub-section (2) of section 12 have been paid or such agreement has ceased to subsist.]

22. Where in the course of an inquiry into an application made under section 4 a Board finds that there is any sum owing to Government on account of loans advanced under the Agriculturists Loans Act, 1884 (XII of 1884), or the Land Improvement Loans Act, 1883 (XIX of 1883), or otherwise, the Board shall report this fact through the Deputy Commissioner to the Commissioner.

Submission of reports by Boards regarding sums due to Government.

23. In calculating the period of limitation for any suit filed in, or proceeding before, a civil court for the recovery of a debt which was the subject of any proceedings under this Act the time during which such proceedings had continued shall be excluded.

Allowance of time for limitation.

Members of Board deemed to be public servants.

24. The members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code (XLV of 1860).

Proceedings deemed to be judicial proceedings.

1[24-A. All proceedings under this Act, shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code.]

Power to make rules.

25. In addition to any power specially conferred by this Act, the Local Government may make rules—

- (a) prescribing the quorum for, and regulating the procedure before, a Board;
- (b) prescribing the manner in which notices shall be issued and served or published under sub-section (1) of section 8;
- (c) prescribing the charges to be made by a Board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;
- (d) prescribing the records to be kept and the returns to be made by a Board;
- (e) prescribing the allowances, if any, to be paid to the Chairman and members of a Board;

Hence there is nothing in the proviso to S. 21, as amended, to prevent the Court confirming the sale. 169 I.C. 99=A.I.R. 1937 Nag. 98.

¹Section 24-A was inserted by Act XVI of 1937.

(f) regulating the power of a Board to summon parties and witnesses under section 11 and the grant of expenses to witnesses;

(g) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 12;

(h) prescribing the form of certificate to be granted under sub-section [(3)]¹ of section 13 or sub-section (1) of section 15; and

(i) generally, for the purpose of carrying into effect the provisions of this Act.

26. (1) All rules for which provision is made in this Act General provisions shall be made by the Local Government regarding rules. and shall be consistent with this Act.

(2) All rules shall be subject to the condition of previous publication.

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

Rules Framed under the Central Provinces Debt Conciliation Act.

[These Rules with slight verbal modifications have also been made applicable to Berar].

1. (1) These rules may be called THE CENTRAL PROVINCES DEBT CONCILIATION RULES, 1933.²

(2) In these rules "Act" means the Central Provinces Debt Conciliation Act, 1933.

2. The quorum necessary for the transaction of business at a meeting of a Board shall be as follows:—

<i>Quorum.</i>	
(i) In the case of a Board where the number of members is 3.	2
(ii) Where the number of members is more than 3:	3

Provided that a Board having a quorum may act notwithstanding any vacancy in the number of its members other than the chairman.

3. The Chairman shall preside at every meeting of the Board and shall regulate the course of all business.

4. (1) The Board shall ordinarily hold its sittings at such place as may be appointed as its headquarters by the Deputy Commissioner, but may sit at any other place within its jurisdiction for the convenient disposal of its business.

(2) The Board shall hold its sittings at such times as may be fixed from time to time by the Chairman and may adjourn its proceedings for any period if such adjournment is, in its opinion, necessary for the proper conduct of the proceedings.

¹For the figure (2) the figure (3) was substituted by Act XV of 1936.

²Notification No. 1444-411-XII, dated the 1st May 1933.

5. The parties shall be notified by the Chairman in such manner as he may deem necessary, of the time, and, if the place is other than the Board's ordinary headquarters, of the place at which the Board's sittings are to be held unless a special method for the service of a notice is prescribed by the Act.

6. An application under section 4 shall be made in Form No. I appended to these rules, and shall be presented at any time during court hours by the applicant in person or by an agent authorised in writing to the Chairman or any member of the Board.

It shall be accompanied in the case of a debtor, who is a tenant, raiyat or malik-makbuza, by his rasid-bahi, and in the case of a debtor, who is a proprietor, by a certified copy of entries in the register of proprietary mutations showing the village share or shares possessed by him.

7. Any member of the Board may examine the applicant in order to verify the accuracy of the particulars contained in the application and may call for additional information to complete the application.

8. If it is decided to proceed with the application the order under sub-section (1) of section 7 shall be recorded on an order sheet in the form prescribed for revenue cases. This form shall contain a note of every interlocutory order made in the case and shall show the date and place of the proceedings at every hearing. The proceedings shall be conducted, as nearly as may be, in accordance with the rules and procedure prescribed for the disposal of revenue cases under the Central Provinces Land Revenue Act, 1917.

9. Every application shall be made into a revenue case and dealt with according to the instructions in the Central Provinces Revenue Book Circular II-1.

10. An abstract of the statement made by each witness and the statements of the parties shall be filed with the record.

11. If at any time during the course of the proceedings it appears to the Board that any creditor has filed a suit or started any other proceedings which should be suspended under section 21 of the Act, the Board shall grant a certificate in Form No. II appended to these rules over the signature of the Chairman to the debtor concerned, specifying the debts owing to any such creditor which may be under settlement.

12. All certificates granted by the Board and all notices, summonses and other processes issued by the Board shall be signed by the Chairman and shall be dated and sealed with the seal of the Board.

13. The proceedings of the Board shall be recorded in English unless the Chairman decides to record them in the vernacular of the district.

14. Every notice under sub-section (2) of section 7 of the Act shall be in Form No. III appended to these rules.

15. Every notice under sub-section (1) of section 8 of the Act shall be in Form No. IV appended to these rules.

16. A copy of the notice under sub-section (1) of section 8 shall be served on each known creditor. A copy shall also be posted on the district and tahsil office notice boards and the notice board of the Board's office. A copy shall also be posted in a conspicuous place in the village where the debtor ordinarily resides and all the villages within the area for which the Board has been appointed where any holding or land of the debtor or any part thereof is situate.

17. Every notice required to be served under the above rule may be served either by tendering or delivering a copy thereof or sending such

¹ Notification No. 528-2961-XII, dated the 3rd February 1934.

iii RULES UNDER C. P. DEBT CONCILIATION ACT, 1933.

copy by registered post to the creditor on whom it is to be served or his authorized agent, or if service in the manner aforesaid cannot be made, by affixing a copy thereof at his last known place of residence.

18. No notice shall be deemed void on account of any error in the name or designation of any person referred to therein unless such error has produced substantial injustice.

¹19. Every application to the board shall be stamped with a court-fee stamp of the value of twelve annas. Further additional fees on the amount for which the debt is settled shall be charged and collected in the shape of court-fee stamps, at the rates indicated below—

(1) If the amount of the debt settled does not exceed Rs. 50—Re. 0-8-0.

(2) If the amount of the debt settled exceeds Rs. 500, but does not exceed Rs. 1,000—Re. 1.

(3) If the amount of the debt settled exceeds Rs. 1,000—Re. 1 for the first Rs. 1,000 and Re. 0-8-0 for every Rs. 500 or fraction thereof above Rs. 1,000.

No additional fees shall be recovered in cases in which the applications are rejected or no settlement is arrived at.

20. Process fees shall be paid by the applicant for the issue of notices and summonses in accordance with the scales prescribed from time to time in the rules on the subject made under the Central Provinces Land Revenue Act, 1917, and shall be paid in court-fee stamps.

21. The cost of registering an agreement under sub-section (2) of section 12 shall be paid by the creditors, amount payable by each creditor being proportionate to the compounded debt stated to be payable to him under the agreement and on default shall be recoverable from him as an arrear of land revenue.

22. The process fee on every application to the Deputy Commissioner for the recovery of any amount under sub-section (1) of section 13 shall be paid in advance by the creditor in accordance with the rules from time to time made under the Central Provinces Land Revenue Act, 1917, in court-fee stamps.

23. The stamp duty on an agreement drawn up under sub-section (1) of section 12 shall be payable by the debtor in non-judicial stamps.

24. Every application for a copy shall be addressed to the Chairman and shall bear a court-fee stamp of the value of ²two annas.

25. Copying fees for copies of records maintained by the Board and in its custody shall be charged at the rate of four annas for every 180 English words or 270 vernacular words, four figures being counted as one word.

26. Every application for a copy shall be accompanied by an advance sufficient to cover the estimated cost of the copy applied for.

27. The Chairman may then get the copy prepared on plain paper certified as a true copy over his signature and deliver it to the applicant or his duly authorized agent and also refund him the balance, if any, left, out of the advance after meeting the copying charges.

28. The fees chargeable under rules 25 and 26 shall be paid in cash to the Chairman who shall forthwith give a receipt over his signature to the applicant in the prescribed form and credit the amount into the treasury. Except where it is provided otherwise in these rules the Chair-

¹Substituted by Notification No. 4021-647-XII, dated the 28th October, 1936.

²Substituted for one by Notification No. 4683-4033-XII, dated the 14th December, 1936.

man shall, as far as possible, follow in regard to the grant of copies the procedure laid down in the rules for the grant of copies of revenue records made from time to time under the Central Provinces Land Revenue Act, 1917.

29. The copying of records sent to the district office for safe custody shall be governed by the rules from time to time made under the Central Provinces Land Revenue Act, 1917.

30. (1) The following registers and books shall be maintained by a Board:—

1. Register of cases.
2. Process register.
3. Diet-money register.
4. Inspection book.
5. Copying-fee register.
6. Receipt book.
7. Register of contingent expenditure.

(2) These registers and books shall be maintained in the forms prescribed for revenue case work.

31. The registers and books specified in rule 30 and the proceedings in each case shall, on completion, be transferred to the district office.

¹In the district office the proceedings in each case shall be preserved as under, and the registers and books for six years:—

- (1) Cases dismissed under section 7 (1)—2 years.
- (2) Cases rejected under section 14—
 - (a) Those in which certificates under section 15 have been issued—20 years.
 - (b) Those in which no certificates under section 15 have been issued—2 years.
- (3) Cases which have resulted in agreement—3 years after payment of the last instalment or 3 years after the issue of certificate by the Deputy Commissioner under section 13 (2) of the Act.

32. The Board may also, with the approval of the Deputy Commissioner, use such other revenue forms and registers as may be considered necessary by it.

33. The Board shall submit through the Deputy Commissioner and the Commissioner, to the local Government, a monthly progress return in Form No. V appended to these rules.

34. The Board shall also submit by the 15th of October every year through the Deputy Commissioner and the Commissioner to the local Government a report on the following particulars:—

- (i) Progress of work and results achieved.
- (ii) Difficulties experienced in working the Act, and amendments, if any, that appear to be necessary to the Act or rules.

35. All the records maintained by the Board and not sent for safe custody to the district officer shall be open to inspection at such time, in such place, and in the presence of such official as the Chairman of the Board may direct, free of charge by the parties, and on payment by others of a fee of 12 annas per hour or part thereof to be prepaid in court-fee stamps.

36. The inspection of records sent to the district office for safe custody shall be governed by the rules from time to time made under the Central Provinces Land Revenue Act, 1917.

37. (1) The Chairman or a member of the Board, if a non-official shall be entitled to draw travelling allowance for any journey performed by him in connection with his duties as such Chairman or member at the

¹Notification No. 2037-829-XII, dated the 21st June, 1935.

rates admissible, and subject to the conditions applicable, to a Government servant of the second grade under the Supplementary Rules issued by the local Government. Subject to the same conditions, he shall be entitled to daily allowance at the rate of Rs. 3 per day.

(2) The Chairman or a member of a Board, if an official, shall be entitled to draw for any journey travelling allowance and halting allowance to which he would be entitled by virtue of his official position.

(3) The Deputy Commissioner shall be the controlling officer empowered to countersign the travelling allowance bills of the Chairman and members of a Board.

38. The local Government may provide such ministerial and menial staff as the Board may, from time to time, require and may regulate the conditions of their employment and fix the salaries and allowances payable to them.

39. The power of a Board to summon a party or witness shall be the same as is conferred on a revenue officer by section 20 of the Central Provinces Land Revenue Act, 1917.

40. The form of the summons, the mode of serving and the mode of compliance shall be as prescribed, in the case of revenue officers, by sections 21 and 22 of the Central Provinces Land Revenue Act, 1917.

41. Process fees shall be recovered for the issue of summonses and payment of diet-money and travelling expenses shall be made to witnesses, in accordance with the rules from time to time made under the Central Provinces Land Revenue Act, 1917.

42. Every agreement arrived at under sub-section (1) of section 12 shall be registered at the Sub-Registrar's office for the sub-district within which the ordinary headquarters of the Board is situate.

43. A certificate under sub-section (2) of section 13 shall be in Form No. VI appended to these rules.

44. A certificate under sub-section (1) of section 15 shall be in Form No. VII appended to these rules.

45. In all administrative matters the Board shall be subordinate to the Deputy Commissioner and subject to the disciplinary control of the Commissioner and the local Government. The Deputy Commissioner shall appoint, punish and generally control the staff of the Board.

46. All processes issued by the Board shall be served by the tahsil process-serving staff through the Tahsildar of the tahsil concerned.

47. In every case in which a debtor or a creditor is a minor or a person of unsound mind, the Board and the parties concerned shall, so far as may be, follow the procedure laid down in Order XXXII of the first schedule to the Code of Civil Procedure, 1908.

[Forms omitted.]

USURIOUS LOANS ACT (X OF 1918.)

[As Amended by C. P. Act XI of 1934.]

An Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind; It is hereby enacted as follows:—

²Notification No. 514-XII, dated the 14th February, 1934.

Short title and extent.

1. (1) This Act may be called THE USURIOUS LOANS ACT 1918.

(2) It extends to the whole of British India, including British Baluchistan.

(3) The Local Government may, by notification in the local official gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Definitions.

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

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

(2) "Loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "Suit to which this Act applies" means any suit—

(a) for the recovery of a loan made after the commencement of this Act; or

(b) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act;

(c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act.

13. (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855 (XXVIII of 1855), where, in any suit to

¹As amended by section 2 of the Usurious Loans (Central Provinces Amendment) Act, 1934 (XI of 1934), which came into force on the 15th June, 1934.

Sec. 1.—S. 169 I.C. 832=1937 Nag. 101=I.L.R. (1937) Nag. 410.

Sec. 2 (a).—S. 2 (a) of the Amending Act (XI of 1934) is not retrospective in operation so as to enable the Court to exercise wider powers to reopen loan transactions made before the 15th June, 1934, at any rate when the amount due under such a loan has become the subject-matter of a litigation instituted before that date. 20 N.L.J. 285. The Usurious Loans Act was made applicable to Berar by virtue of Government Notification, in so far as it might be applicable and subject to any amendments to which the enactment might be subject in the Central Provinces. The Act was amended by C. P. Act (XI of 1934) since 15th June, 1934, and therefore the Usurious Loans Act as applied to Berar is subject to the same modification in Berar and the Amending Act therefore applies to Berar since that date. I.L.R. (1937) Nag. 410=169 I.C. 832=1937 Nag. 101.

Sec. 3.—See 20 N.L.J. 63; I.L.R. (1937) Nag. 410=169 I.C. 832=1937 Nag. 101.

which this Act applies, whether heard *ex parte* or otherwise, the Court has reason to believe—

(a) that the interest is excessive; or

(b) that the transaction was, as between the parties thereto, substantially unfair,
the Court shall exercise all or any of the following powers, namely, shall—

(i) reopen the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement purporting to close previous dealings and to create a new obligation, reopen any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just:

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

(i) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than twelve years from the date of the transaction;

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

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

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

(i) Provided that compound interest in excess of ten per cent. on any loan made after such date, as the Local Government may, by notification, fix, shall be deemed to be excessive:

(ii) Provided further that, where in any suit the Court finds that the rate of interest exceeds twelve per cent. per annum in the case of a secured loan or eighteen per cent. per annum in the case of an unsecured loan or that there is a stipulation for rests at intervals of less than six months, it shall, until the contrary is proved, presume that such rate is excessive, but this provision shall be without prejudice to the powers of the Court

under sub-section (1) where the Court is satisfied that the interest charged, though not exceeding twelve per cent, per annum or eighteen per cent. per annum, as the case may be, is excessive.

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

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

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

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

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

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

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

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

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies.

COMMERCE AND INDUSTRY DEPARTMENT.*Pachmarhi, the 29th May, 1934.*

No. 1060-836-XIII.—In exercise of the powers conferred by proviso (i) to clause (a) of sub-section (2) of section 3 of the Usurious Loans Act, 1918 (X of 1918), as amended by the Usurious Loans (Central Provinces Amendment) Act, 1934 (XI of 1934), the Governor in Council is pleased to direct that compound interest in excess of ten per cent. on any loan made after the 14th June, 1934, shall be deemed to be excessive.

The C. P. Money-Lenders Act 1934 (XIII of 1934) and Rules thereunder.

Explanatory Note:—The Act in the main is an educative one, the chief object being to protect the debtor from the consequences of his own ignorance. It is not intended exclusively for the benefit of the debtors belonging to the agriculturist class but the intention is that the greatest benefit from it should be derived by them. With his account periodically before him, the debtor will be more alert to the growth of his liabilities and will have an opportunity of taking stock of his position from time to time. The provisions are simple to follow and have been framed with a view to enable even the pettiest money-lender to adapt his methods of accounting to them.

2. Under section 3 (1) of the Act, the money-lender has to maintain the account of each debtor separately in the usual way in which he has been keeping it, and to send to the debtor regularly every year at the time when accounts are usually closed for that year, a statement in the form given in the schedule attached to the rules framed under the Act, in the Court language of the district, showing separately the various transactions entered into during the period and also the interest on each loan advanced to him separately. Government has after ascertaining the time when accounts are closed, laid down in rule 10 the time when such statements should be sent to debtors. The Act does not make it obligatory for the debtor to admit or deny the accuracy of the accounts. In order that the object of the Act should be fulfilled, it is essential that the debtor should study the statements sent to him by the creditor or have them explained to him.

3. The provisions of sections 3, 4, 5 and 6 do not apply to loans advanced before the Act came into force. But if any transaction in respect of such a loan is entered into after such date the provisions will apply to that transaction. The act also makes the rule of "damdupat" applicable in a modified form and empowers Courts to direct payment of decretal amount by instalments.

C. P. MONEY-LENDERS ACT 1934 (XIII OF 1934.)

This Act has also been applied to Berar and came into force on the 1st April, 1935.

An Act to regulate the transactions of money-lending in the Central Provinces.

Preamble. WHEREAS it is expedient to make better provision for the regulation and control of the transactions of money-lending;

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

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE CENTRAL PROVINCES MONEY-LENDERS ACT, 1934.

(2) It extends to the whole of the Central Provinces.

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

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

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

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

(iii) "co-operative society" means a society registered under the Co-operative Societies Act, 1912 (II of 1912);

(iv) "Court" includes a Court acting in the exercise of insolvency jurisdiction;

(v) "money-lender" means a person who, in the regular course of business, advances a loan as defined in this Act and shall include, subject to the provisions of section 3, the legal representatives and the successors in interest whether by inheritance, assignment or otherwise of the person who advanced the loan;

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

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

¹Substituted by Adaptation of Indian Law Order 1937 for "Indian"

(a) a deposit of money or other property in a Government post office bank or any other bank or in a company or with a co-operative society,

(b) a loan to or by or a deposit with any society or association registered under the Societies' Registration Act, 1860 (XXI of 1860), or under any other enactment,

(c) a loan advanced by [any] Government or by any local authority authorized by [any] Government,

(d) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certified auditor under the Companies Act, 1913 (VII of 1913),

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

¹[(f) a transaction which is in substance a charge on, or a sale of immovable property;]

(g) a loan advanced to an agricultural labourer by his employer;

(viii) "prescribed" means prescribed by rules made under this Act;

²[(ix) 'Sub-Registrar' means a Sub-Registrar appointed under the Indian Registration Act, 1908 (XVI of 1908).]

Maintenance of accounts by money-lender and supply of statements thereof to debtors.

3. (1) Every money-lender shall—

(a) regularly maintain an account for each debtor separately of all transactions in respect of any loan advanced to that debtor;

(b) furnish such debtor every year with a legible statement of accounts signed by the money-lender or his agent of any balance or amount that may be outstanding against such debtor on such dates and in such areas as may be prescribed. Such statement of accounts shall include all transactions in respect of the loan entered into during the year to which the statement relates and shall be furnished, in the Court language of the district in which the debtor resides, and in such manner, in such form, containing such details and on such date as may be prescribed.

(2) The account required under clause (a) of sub-section (1) shall be so maintained that items due by way of interest

¹As amended by the C. P. Money-lenders (Amendment) Act, 1937 (XIX of 1937) and also C. P. Money-lenders (Amendment) Act, 1937 (XXIV of 1937).

²Inserted by C. P. Act, XIII of 1937.

shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The money-lender shall not, in the absence of agreement, include the interest or any portion of it in the principal sum, and the principal and interest shall be separately shown in the opening balance of each new annual account:

Provided that—

(i) if the loan has, since it was originally advanced, passed by inheritance or assignment to a widow or a minor, such widow or minor shall not be bound to maintain and furnish the account under sub-section (1) for a period of two years from the date of such passing;

(ii) nothing in this section shall be deemed to lay upon any person the duty of maintaining and furnishing the account under sub-section (1) in the case of a loan wherein the title to recover is *sub judice* between two or more persons claiming as money-lenders adversely to each other unless and until the title has been finally decided by a Court of competent jurisdiction.

4. Copies of entries in the account required to be maintained under clause (a) of sub-section (1) of section 3, when certified in such manner as may be prescribed, shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries.

5. A debtor to whom a statement of accounts has been furnished under clause (b) of sub-section (1) of section 3 shall not be bound to admit correctness of accounts supplied. Debtors not bound to admit correctness of accounts supplied. acknowledge or deny its correctness and his failure to protest shall not by itself be deemed to be an admission of the correctness of the account.

6. Every money-lender, who receives repayment from his debtor on account of any loan advanced to him, shall forthwith give a receipt therefor. Receipt of repayment of loan.

7. Notwithstanding anything contained in any other enactment for the time being in force, in any suit or proceeding relating to a loan— Procedure of Court in suits regarding loans.

(a) the Court shall, before deciding the claim on the merits, frame and decide the issue whether the money-lender has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3;

(b) if the Court finds that the provisions of clause (a) of sub-section (1) of section 3 or of section 6 have not been complied with by the money-lender, it shall, if the plaintiff's claim is established in whole or in part, disallow the whole or

any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs; and

(c) if the Court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the money-lender, it shall, in computing the amount of interest due upon the loan, exclude every period for which the money-lender omitted duly to furnish the account as required by that clause:

Provided that if the money-lender has, after the time prescribed in that clause, furnished the account and the plaintiff satisfies the Court that he had sufficient cause for not furnishing it earlier, the Court may, notwithstanding such omissions, include any such period or periods for the purpose of computing the interest.

Explanation.—A money-lender who has maintained his account and furnished his annual statements of accounts in the prescribed form and manner shall be held to have complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3 in spite of any errors and omissions, if the Court finds that such errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of those clauses.

8. The provisions of sections 3, 4, 5, 6 and 7 shall not apply to any loan made before this Act comes into force:

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force is made after this Act comes into force, such transaction shall be subject to the provisions of those sections.

1[9. Notwithstanding anything contained in any other enactment for the time being in force, no Court original or appellate shall decree, in respect of any loan made before this Act comes into force, on account of arrears of interest, a sum greater than the principal

Powers of Court to limit interest recoverable in certain cases.

¹As amended by the Central Provinces Money-lenders (Amendment) Act, 1937 (XXIV of 1937).

Sec. 9. See 20 N.L.J. (Journal Portion), p. lv. As from 19-3-1937, the C. P. Money-lenders Act (as amended in 1937) applies to mortgage transactions made with money-lenders as a mortgage would clearly fall within the term "loan", although the Act of 193¹, before its amendment was not applicable to a loan transaction which was in substance a mortgage, a charge or a sale of immovable property. A Court should therefore be very slow to give retrospective effect to S. 9 of the Act as amended in the case of a transaction of loan which was not a loan within the meaning of the Act at the time when the suit was brought. The Amending Act of 1937 is not retrospective in operation and does not affect transactions prior to it. 20 N.L.J. 285.

of such loan, unless it is satisfied that the money-lender has reasonable grounds for not enforcing his claim earlier.]

Power of Court to limit interest to the extent of principal of loan.

10. No Court shall, in respect of any loan made after this Act comes into force, decree on account of arrears of interest a sum greater than the principal of the loan.

Power to direct payment of decretal amount by instalments.

11. The Court may, at any time on the application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after this Act comes into force, in respect of a loan shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit. During the pendency of an inquiry under this section, the Court may order the stay of execution of the decree subject to such conditions as it may impose. Such order shall be deemed to have been passed under section 47 of the Code of Civil Procedure, 1908 (V of 1908).

Register of money-lenders.

[11-A. (1) Every Sub-Registrar shall maintain a register of money-lenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (I of 1872).

¹Sections 11-A to 11-F were inserted by C. P. Act XIII of 1936.

Sec. 11.—S. 11 gives power to an executing Court to direct that any decree which comes before it for execution shall be made payable by instalments. In cases to which S. 11 applies, the Court quite apart from S. 42 read with O. 20, R. 11 (2), C. P. Code, has power to direct payment by instalments. 20 N.L.J. 141=1937 Nag. 409. Before the benefit of S. 11 can be availed of, it must be shown by the applicant that the decree-holder is a money-lender and that the transaction giving rise to the decree was a loan as defined by the Act. It is not enough that the relationship of decree-holder and judgment-debtor exists between the parties. A debt in respect of the sale and purchase of cotton is not a loan under the Act, 1938 N.L.J. 9. S. 11 has to be construed strictly, as it restricts existing rights under the law, and should not be allowed to override the provisions of the existing law, i.e., the provisions of O. 21, R. 92, C. P. Code, S. 11 cannot be interpreted so as to permit of an application for instalments being entertained after the bid at an auction sale in execution of a decree has been accepted and when the confirmation of the sale has become inevitable. Once the bid has been accepted, the Court has to confirm the sale under O. 21, R. 92, C. P. Code, unless good cause is shown under R. 89, 90 or 91 of O. 21. 1938 N.L.J. 15.

11-B. (1) Every money-lender shall register himself as a money-lender by an application made to the Sub-Registrar of any sub-district of the district or districts in which the principal place of business of such money-lender or a branch thereof is situate and, on such registration, the Sub-Registrar shall grant a registration certificate to the money-lender in such form as may be prescribed.

(2) Every application made under sub-section (1) shall be in writing and shall contain such particulars as may be prescribed.

11-C. Any person who makes an application for registration under section 11-B shall pay such registration fee, not exceeding eighteen rupees, as may be prescribed for the district in which it is granted and such fee shall be payable by means of court-fee stamps affixed to the application:

Provided that the Provincial Government may, by notification exempt any class of persons from the payment of the registration fee either generally or for any specified area.

11-D. A registration certificate granted under section 11-B shall be in force for four years from the date of the registration.

11-E. (1) No money-lender shall, after the expiration of three months from the date on which this section is brought into force, carry on his business as money-lender in any district without obtaining a registration certificate under section 11-B for such district.

(2) Whoever contravenes the provision of sub-section (1) shall be punishable with fine which may extend to fifty rupees, or, if he has previously been convicted of an offence under that sub-section, with fine which may extend to one hundred rupees.

11-F. (1) The Deputy Commissioner may accept from any person who has committed an offence against sub-section (1) of section 11-E, a sum of money not exceeding one hundred rupees by way of composition for such offence.

(2) On payment of such sum of money, the person who has committed an offence, if in custody, shall be discharged, and no further proceedings shall be taken against him in regard to the offence so compounded.]

Power to make rules. 12. (1) All rules for which provision is made in this Act shall be made by the Provincial Government and shall be consistent with this Act.

(2) All rules shall be subject to the condition of previous publication.

(3) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules prescribing—

(a) the manner and form with numerals in which statements of accounts shall be furnished and the details to be given in such statement under clause (b) of sub-section (1) of section 3; and

(b) the manner in which copies of entries in the account shall be certified under section 4.

1[(c) the form and particulars of a register under section 11-A,

(d) the form of registration certificate under section 11-B (1),

(e) the particulars of an application under section 11-B (2), and

(f) the registration fee under section 11-C.]

Rules under Act XIII of 1934.

Money-lender's Accounts Rules.

Government has framed the following rules under sub-sections (1) and (3) of section 12 of the Central Provinces Money-lenders Act, 1934 (XIII of 1934). The rules are intended both for the Central Provinces and Berar:—

1. These rules may be called the MONEY-LENDERS ACCOUNTS RULES.

2. They shall come into force on the 1st April, 1935.

3. In these rules, unless there is anything repugnant in the subject or context, "the Act" means the Central Provinces Money-lenders Act, 1934.

4. The statement of accounts prescribed in clause (b) of sub-section (1) of section 3 of the Act shall be furnished to the debtor in the court language of the district, in the form shown in the schedule hereto annexed.

NOTE.—Government does not assume any responsibility for supplying to creditors the forms they may require and each creditor should make his own arrangements for obtaining such forms as he may require, to enable him to send the statement of accounts to his debtor in due time.

5. The numerals to be used for the purpose of making entries in the statement shall be the same as those ordinarily used with the particular language employed.

¹ Sec. 12 (3): Sub-clauses (c) to (f) added by C.P. Act XIII of 1936.

N.B.—This Act is to come into force on such date as the Local Government may, by notification, appoint in this behalf and shall remain in force for four years from that date [C. P. Act XIII of 1936, S. 1 (1)].

6. The name and address of the debtor, and, in the case of joint-debtors, of each joint-debtor, shall be entered at the head of the account maintained by the creditor in accordance with sub-section (1) of section 3 of the Act.

7. In column 1 of the account will be shown so far as is possible the exact date on which the transaction took place.

8. The rate of interest as agreed on by the parties for each advance, whether in cash or kind, shall be shown in words in the column provided for the purpose in the form prescribed.

9. The value of repayments in kind and the amount appropriated from all repayments to principal and interest separately, shall be shown in the column provided in the prescribed form, on the date on which the transaction actually took place.

10. The statement shall be sent to the debtor within one month of the date or time specified below according to the area in which he resides:—

Area	Date or time	
Nagpur civil district ..	Diwali (for cash accounts).	Vaishakh Badi 30 for grain accounts).
Wardha civil district ..	Do.	do.
Jubbulpore civil district.	Do.	do.
H o s h a n g a b a d civil district.	Do.	do.
Chhindwara civil district	Do.	do.
Nimar civil district ..	Do.	do.
Raipur civil district ..	Do.	do.
East Berar civil district.	Do.	do.
West Berar civil district.	Do.	do.

11. Every statement shall be prepared and maintained in duplicate; one copy shall be retained by the creditor and one copy sent to the debtor in accordance with rule 10 and in the manner hereafter prescribed.

12. Entries in the statement relating to the amount and date of the loan, and the rate of interest, the appropriation of repayments, etc., shall tally with the entries made in the accounts maintained by the creditor in accordance with the provisions of the Act.

13. (a) One copy of the statement of accounts shall be sent to the debtor at his cost in accordance with the provisions of rule 11, by sending it by post to the address entered at the head of the account in accordance with rule 6 and the creditor shall, at the time of posting, obtain a certificate of posting it:

Provided that if the debtor or joint-debtors, as the case may be, agreed in writing to accept the statement of accounts by personal delivery, it shall not be necessary to send it by post.

(b) Where there are two or more joint-debtors the statement of account shall, in the absence of any contract to the contrary, be furnished to the joint-debtor who signs first in the document relating to the loan in question.

(c) If the debtor accepts the statement of accounts when delivered to him in person, he shall give an acknowledgment of its receipt on a separate sheet of paper. This acknowledgment shall bear the debtor's signature or thumb impression.

14. Certified copies of the entries in the account shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries, only when they bear a certificate, dated and countersigned by some person who has examined and compared the copy with the original, to the effect that "the copy is a true copy of the account as

maintained by the creditor and communicated to the debtor under the provisions of the Act."

[Forms Omitted.]

Money-lender's Registration Rules.

Government has framed the following further rules under subsections (1) and (2) of section 12 of the Central Provinces Money-lenders Act, 1934 (XIII of 1934). These are intended for both the Central Provinces and Berar:—

1. These rules shall be called the Money-lenders Registration Rules 1936.

2. They shall come into force on the 1st October, 1936.

3. In these rules, unless there is anything repugnant to the subject or context,—

(a) "Sub-Registrar" means the Sub-Registrar of the registration sub-district in which the principal place of business of such money-lender or a branch thereof is situate;

(b) "money-lender" means a money-lender, as defined in section 2 of the Central Provinces Money-lenders Act, 1934 (XIII of 1934);

(c) "authorized agent" means an agent appointed under a power-of-attorney.

4. The register of money-lenders prescribed by section 11-A (1) of the Act shall be maintained in Form No. I of the Schedule.

5. The application prescribed by section 11-B (2) of the Act shall be in Form No. II of the Schedule.

6. The certificate of registration prescribed by section 11-B (1) of the Act shall be in Form No. III of the Schedule.

7. The application prescribed in rule 5 shall be presented to the Sub-Registrar either by the money-lender ^{himself} or by ^{his} _{herself} ^{her} authorized agent.

8. On the presentation of an application in the prescribed form, the Sub-Registrar shall forthwith endorse on it the date of its presentation and if it is in order, shall require the presenter to pay the fee prescribed by rule 13 in court-fee stamps. These shall be affixed to the application and shall be duly punched and cancelled by the Sub-Registrar who shall put his initials and the date across each court-fee label. If the fee is not paid on the date on which the application is presented, another date shall be fixed for the payment of the fee.

9. If the application is not in order, it shall be returned by the Sub-Registrar to the presenter for fresh presentation in the proper form.

10. If the application is in order and the fee prescribed by rule 13 has been paid, the Sub-Registrar shall make necessary entries in the register prescribed by rule 4 and shall grant a registration certificate to the money-lender or his authorized agent.

11. The application shall, on disposal, be given a serial number and filed serially in a separate book maintained for the purpose. The applications will be retained for six years after which they will, with the previous order of the District Registrar, be destroyed.

12. An alphabetical index of the names of all money-lenders registered under the Act shall be maintained separately by every Sub-Registrar in the form prescribed for index Nos. I and IV by rules made under the Indian Registration Act, 1908, and entries made therein by the Sub-Registrar immediately after the grant of the registration certificate to the

money-lender. This alphabetical index shall be kept in the register of money-lenders.

13. The registration fee shall be Rs. 18 (rupees eighteen) for all the districts in the Central Provinces and Berar.

[Forms Omitted.]

**NOTE SHOWING THE SCOPE OF THE CENTRAL
PROVINCES ADJUSTMENT AND LIQUIDATION
OF INDUSTRIAL WORKERS' DEBT ACT, 1936
(V OF 1936).**

The Royal Commission on labour recommended special legislation providing a summary procedure for the liquidation of workers' unsecured debts. The object of the Act is to give effect to that recommendation. It follows the lines of the Provincial Insolvency Act, 1920 (V of 1920), with special provisions for the scaling down of debts, limitation of total liability to the assets, *plus* the amount payable from the income within three years after allowing for the maintenance of the workers and his dependants, and wider discretion to the courts in determining priority of debts for the distribution of assets and surplus income. The Act is an enabling measure and the relief it contemplates is restricted to industrial workers whose average monthly income does not exceed fifty rupees. The Act was passed on the 23rd January, 1936 and came into force in the following areas on the 1st January, 1937:—

Central Provinces.

- (1) Nagpur city.
 - (2) Wardha, Pulgaon and Hinganghat towns in the Wardha district.
 - (3) Jubbulpore town.
 - (4) Burhanpur town in the Nimar district.
- Berar.*
- (5) Akola town in the Akola district.
 - (6) Badnera and Ellichpur towns in the Amraoti district

**THE CENTRAL PROVINCES ADJUSTMENT AND
LIQUIDATION OF INDUSTRIAL WORKERS
DEBT ACT, 1936 (V OF 1936).**

An Act to provide for the adjustment and liquidation of the debts of industrial workers.

Preamble.

WHEREAS it is expedient to provide for the adjustment and liquidation of the debts of industrial workers;

AND WHEREAS the previous sanction of the Governor-General required by sub-section (3) of section 80-A of the

Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:—

1. (1) This Act may be called THE CENTRAL PROVINCES
 Short title. ADJUSTMENT AND LIQUIDATION OF INDUSTRIAL WORKERS' DEBT ACT, 1936.
- (2) It extends to the whole of the
 Extent. Central Provinces.
- (3) This section shall come into force at once and the
 Commencement. remaining provisions of this Act shall come into force in such local area and on such date as the Provincial Government may, by notification, direct.
2. In this Act, unless there is anything repugnant in the subject or context,—
- Definitions. (i) "assets" means all property owned by a person, which could be attached under the Civil Procedure Code, 1908, (V of 1908), in execution of a decree and, except where the context indicates otherwise, includes any sum realized by a court under this Act from the sale of any such property;
- (ii) "adjusted debt" means the sum shown against the name of any creditor in the schedule prepared under section 21;
- (iii) "average income" means the average monthly income of an industrial worker calculated on his total income from all sources during a period of twelve months preceding the month of the presentation of a liquidation petition under this Act;
- (iv) "court" means the principal civil court of original jurisdiction and shall include a civil court specifically empowered by notification in this behalf by the local Government;
- (v) "creditor" includes a decree-holder, "debt" includes a judgment-debt and "debtor" includes a judgment-debtor;
- (vi) "dependant", in relation to an industrial worker means any of the following relatives, namely:—
- (a) a wife, minor legitimate son and unmarried legitimate daughter, or a widowed mother; and
- (b) if, during a period of twelve months, preceding the month of the presentation of a liquidation petition, entirely dependant on the earnings of the industrial worker, a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, or, where no parent of the industrial worker is alive, a paternal grandparent;
- (vii) "factory" means a factory as defined in the Factories Act, 1934 (XXV of 1934);

(viii) "industrial establishment" means any establishment which the Provincial Government may, by notification, declare as an industrial establishment;

(ix) "industrial worker" means a person who is employed either by way of manual labour or on monthly wages in a factory, mine or industrial establishment and whose average income does not exceed fifty rupees, but shall not include a person who is employed for doing clerical work;

(x) "mine" means a mine as defined in the Indian Mines Act, 1923 (IV of 1923);

(xi) "prescribed" means prescribed by rules made under this Act;

(xii) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit;

(xiii) "secured debt" means a debt due to a creditor from his debtor for which the creditor holds a mortgage, charge or lien on the property of the debtor or any part thereof, as security for that debt;

(xiv) "surplus" means, in the case of industrial worker having—

(a) no dependant, twelve times his average income,

(b) one dependant, nine times his average income, and

(c) more than one dependant, six times his average income; and

(xv) other words and expressions shall have the meanings assigned to them in the Provincial Insolvency Act, 1920 (V of 1920).

3. Any industrial worker may present a petition for the liquidation of his debts (hereinafter called a liquidation petition), if his debts exceed the aggregate value of his assets and three times his average income and if he was, on the date of the presentation of a liquidation petition, an industrial worker for a period of not less than one year preceding such date.

Bar for entertainment of petition under the Provincial Insolvency Act, 1920.

4. No court shall entertain a petition under the Provincial Insolvency Act, 1920 (V of 1920), to have an industrial worker adjudged an insolvent except where—

(i) such industrial worker is not entitled to present a liquidation petition under section 3, or

(ii) a liquidation petition presented by such industrial worker under section 3 has been dismissed under section 14 or the proceedings have been cancelled under section 34.

5. Every liquidation petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure 1908 (V of 1908), for signing and verifying plaints.

6. Every liquidation petition shall be presented to the court having jurisdiction under this Act in any local area in which an industrial worker ordinarily resides or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody.

7. Every liquidation petition shall contain the following particulars, namely—

(a) a declaration that the petitioning industrial worker (hereinafter referred to as petitioner) is entitled to present a liquidation petition;

(b) a statement that he is willing but unable to pay his debts;

(c) the place where he ordinarily resides or personally works for gain or, if he has been arrested or imprisoned, the place where he is in custody;

(d) the court (if any) by whose order he has been arrested or imprisoned or by which an order has been made for the attachment of his property, together with particulars of the decree in respect of which any such order has been made;

(e) the amount and the particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they are known to, or can, by the exercise of reasonable care and diligence, be ascertained by him;

(f) the amount and particulars of all his property together with—

(i) a specification of the value of all such property not consisting of money;

(ii) the place or places at which such property is to be found; and

(iii) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars as are exempted by the Code of Civil Procedure, 1908 (V of 1908), or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree;

(g) a statement showing the number of his dependants and his average income; and

(h) a statement whether the petitioner has on any previous occasion filed a liquidation petition and, where such a petition has been filed,—

(i) if such petition has been dismissed under section 14 or the proceedings have been cancelled under section 34, the reasons for such dismissal or cancellation,

(ii) if such petition has been allowed, concise particulars of the debts liquidated, including a statement whether any previous liquidation has been cancelled and, if so, the grounds therefor.

8. The procedure laid down in the Code of Civil Procedure, 1908 (V of 1908), with respect to the admission of plaintiffs shall, so far as it is applicable, be followed in the case of liquidation petitions under this Act.

Procedure for admission of liquidation petitions.

9. (1) Where a liquidation petition has been admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to the creditors of the petitioner in such manner as may be prescribed.

10. A creditor, who has received notice of a liquidation petition presented by an industrial worker, shall not be entitled, from the date of the service of such notice, to apply to any Court for the arrest of the petitioner in any suit or proceeding for the recovery of any debt proposed to be liquidated under the liquidation petition and if such petitioner is under arrest or imprisonment in execution of a decree of any court, the court making the order admitting the petition shall, notwithstanding anything contained in any other enactment for the time being in force, order his release on such term as to security as may be reasonable and necessary.

11. (1) On the day fixed for the hearing of a liquidation petition or on any subsequent day to which the hearing may be adjourned, the Court shall require proof that the petitioner is entitled to present the liquidation petition:

Provided that he shall, for the purpose of proving his inability to pay debts, be required to furnish only such proof as to satisfy the Court that there are *prima facie* grounds for believing the same and the court, if when so satisfied, shall not be bound to hear any further evidence thereon.

(2) The Court shall also examine the petitioner, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing and the creditors shall have the right to question him thereon.

Prohibition to apply for arrest of industrial worker and power of Court to release industrial worker.

Procedure at hearing of liquidation petitions.

(3) The Court shall, if sufficient cause is shown, grant time to the petitioner or any of his creditors to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the petitioner and of any other oral evidence given shall be made by the Court and shall form part of the record of the case.

12. Subject to the provisions of this Act, the Court shall have the same powers and shall follow the same procedure, so far as may be, as a Court invested with jurisdiction under the Provincial Insolvency Act, 1920 (V of 1920).

13. If an industrial worker who has presented a liquidation petition under this Act dies, the proceedings in the matter shall abate.

14. Where, for reasons to be recorded in writing, the Court is not satisfied that a petitioner is entitled to present a petition under section 3, it shall dismiss the petition.

15. If the Court does not dismiss a liquidation petition, it shall make an order of adjudication, and may, at the same time or at any time afterwards, appoint a receiver for the property of the petitioner in accordance with the Code of Civil Procedure, 1908 (V of 1908).

16. (1) On the making of an order of adjudication, the whole of the assets of the petitioner shall vest in the Court or in a receiver and thereafter no creditor to whom the petitioner is indebted in respect of any debt adjustable under this Act shall have any remedy against the assets of such petitioner in respect of his debt or commence any suit or other legal proceeding except with the leave of the Court and on such terms as it may impose.

(2) All assets which are acquired by or devolve on the petitioner after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and the provisions of sub-section (1) shall apply in respect thereof.

(3) An order of adjudication shall relate back to, and take effect from, the date of the presentation of a liquidation petition on which it is made.

17. Any transfer of his assets by an industrial worker not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith

and for valuable consideration shall, if an order of adjudication is passed on a liquidation petition presented by him within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.

18. Every transfer of assets, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any industrial worker, who is unable to pay from his own money his debts as they become due in favour of any creditor, with the intention of giving that creditor a preference over other creditors, shall, if an order of adjudication is passed on a liquidation petition presented by him within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

Avoidance of preference to certain creditors over other creditors.

19. All debts, except those incapable of being fairly estimated or demands in the nature of unliquidated damages, shall be adjustable under this Act.

Debts adjustable.

20. (1) On making an order of adjudication, the Court shall enquire into the amount of the petitioner's debts and may refuse to admit any debt shown by the petitioner or claimed by any creditor.

Determination of petitioner's debts.

(2) In determining the amount of debts due, the Court may exercise the powers conferred upon it by section 3 of the Usurious Loans Act, 1918 (X of 1918):

Provided that no Court shall allow on account of arrears of interest, exclusive of such interest as has already been paid, a sum greater than the principal of the debt.

21. After the Court has determined the debts, it shall prepare a schedule in such form as may be prescribed showing—

Schedule of determined debts.

(i) the amount of the debts so determined and the creditors to whom they are due;

(ii) the assets of the petitioner and their value as estimated by the Court; and

(iii) the average income of the petitioner.

22. (1) If the adjusted debts of the petitioner do not exceed the sum of the assets and the surplus, the Court shall read out to the parties present the adjusted debts and the names of the creditors to whom they are due and shall discharge the petitioner.

Procedure after determination of debts.

(2) After a petitioner is discharged under sub-section (1), no sum shall be recoverable in any Court in respect of any debt then owed by him, with the exception of the adjusted debts and simple interest on such debts at a rate not exceeding six per cent. per annum from the date of discharge.

(3) The entry of a debt in the schedule prepared under section 21 shall, in any civil proceeding, be conclusive proof that sum was due to that creditor from the petitioner at the date on which such schedule was signed by the Court.

23. (1) If the total adjusted debts of a petitioner exceed the sum of his assets and the surplus, the Court shall issue a declaration that the petitioner is an encumbered industrial worker.

Encumbered industrial worker.

(2) The Court shall at the same time read out to the parties present the names of the creditors with the adjusted debts due to them and shall discharge the claims of those creditors to whom no debts have been found due on adjustment.

24. The Court shall realize the assets of every petitioner in respect of whom a declaration has been issued, under sub-section (1) of section 23, that he is an encumbered industrial worker.

Realization of debts of encumbered industrial worker.

25. (1) After realizing the assets of an encumbered industrial worker under section 24, the Court shall make over the proceeds of any assets on which, or any part of which, a creditor holds a mortgage, charge or lien to such creditor, up to the amount of the adjusted debts due to him from the encumbered industrial worker.

Making over proceeds of assets to secured creditors.

(2) If the amount realized under sub-section (1) is in any case insufficient to meet the adjusted debts due to the secured creditor, he shall rank in respect of the remainder of the debts due to him as an unsecured creditor.

26. (1) After taking any action required by section 25, the Court shall distribute the proceeds of the assets available for the unsecured creditors to those creditors in proportion to the adjusted debts due to them and shall make an order in such form as may be prescribed assigning a share of the surplus, not exceeding one thirty-sixth of the surplus in any one month payable on the specified dates to the creditors in order of priority.

Distribution of proceeds of assets to creditors in order of priority and assignment of shares of surplus.

(2) In determining the order of priority among the creditors, the Court shall have regard to the date of incurring

(b) fraudulently with intent to conceal the state of his affairs or to defeat the objects of this Act,—

(i) has destroyed or otherwise wilfully prevented or purposely withheld the production of any document relating to such of his affairs as are subject to investigation under this Act, or

(ii) has kept or caused to be kept false account books or

(iii) has made false entries in or withheld entries from or wilfully altered or falsified any document relating to such of his affairs as are subject to investigation under this Act, or

(c) fraudulently with intent to diminish the sum to be distributed among his creditors or to give an undue preference to any of his creditors,—

(i) has discharged or concealed any debt due to or from him, or

(ii) has made away with, charged, mortgaged or concealed any part of his assets,
he shall be punishable, on conviction, with imprisonment which may extend to one year.

38. (1) An encumbered industrial worker obtaining credit to the extent of fifty rupees or upwards from any person without informing such person that he is an encumbered industrial worker shall, on conviction by a Magistrate, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees or with both.

(2) Where the Court has reason to believe that an encumbered industrial worker has committed the offence referred to in sub-section (1) the court, after making such preliminary inquiry, as may be deemed fit, may send the case for trial to the nearest Magistrate of the first class and may send the accused in custody or take sufficient security for his appearance before such Magistrate and may bind over any person to appear and give evidence on such trial.

39. (1) The Provincial Government may, after previous publication, make rules for the purpose of carrying into effect all or any of the provisions of this Act.

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

(a) prescribing the manner of giving notice under sub-section (2) of section 9,

(b) prescribing the form in which a schedule shall be prepared under section 21,

(c) prescribing the form in which a statement shall be prepared under sub-section (1) of section 26,

(d) prescribing the form in which an order shall be made under sub-section (2) of section 26, and

(e) generally for the purpose of carrying into effect the provisions of this Act.

Commerce and Industry Department.

[Nagpur 2nd February, 1937.]

No. 306-317-XIII.—In exercise of the powers conferred by clause (iv) of section 2 of the Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Act, 1936 (C. P. Act V of 1936), the Governor in Council is pleased to invest the following Courts of the Subordinate Judges, Second Class, with powers to try cases under the said Act arising within the areas shown against them:—

Name of Court and area.

First Subordinate Judge, Second Class, Nagpur—Nagpur City.

First Subordinate Judge, Second Class, Wardha—Wardha and Pulgaon towns.

Subordinate Judge, Second Class, Hinganghat—Hinganghat town.

First Subordinate Judge, Second Class, Jubbulpore—Jubbulpore town.

First Subordinate Judge, Second Class, Burhanpur—Burhanpur.

Commerce and Industry Department.

[Nagpur 2nd February, 1937.]

No. 307-317-XIII.—In exercise of the powers conferred by clause (iv) of section 2 of the Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Act, 1936 (C. P. Act V of 1936), as applied to Berar, the Governor in Council is pleased to invest the following Courts of the Subordinate Judges, Second Class, with powers to try cases under the said Act arising within the areas shown against them:—

Name of Court and area.

First Subordinate Judge, Second Class, Amraoti—Badnera town.

Subordinate Judge, Second Class, Ellichpur—Ellichpur town.

First Subordinate Judge, Second Class, Akola—Akola town.

**Rules Under Sub-Section (2) of Section 39
of C. P. Act V of 1936.**

[The Rules apply to Berar also.]

1. These rules may be cited as the Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Rules, 1936.

2. In these rules—

(a) "the Act" means the Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Act, 1936 (C. P. Act V of 1936);

(b) words and expressions defined in the Act shall be deemed to have the same meaning as in the Act.

3. The notice of the order under sub-section (1) of section 9 shall be served either by registered post or through a process-server.

4. The schedule of determined debts under section 21 shall be prepared in Form A.

5. The order of the Court under sub-section (1) of section 26 shall be passed in Form B.

[Forms omitted.]

**The Central Provinces Reduction of Interest Act
(XXXII of 1936.)**

[This Act was brought into operation in the Central Provinces on the 1st January 1937 and in Berar on the 15th January 1937 and will remain in operation for three years.]

An Act to make provision for the reduction of the rate of interest in respect of the debts of certain debtors in the Central Provinces.

WHEREAS it is expedient to give relief to certain debtors by reducing the rate of interest payable by them on debts within a certain period;

Preamble.

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

It is hereby enacted as follows:—

Short title, extent, commencement and duration. 1. (1) This Act may be called THE CENTRAL PROVINCES REDUCTION OF INTEREST ACT, 1936.

(2) It extends to the whole of the Central Provinces.

(3) It shall come into force on such date and shall remain in force till such date, as the Provincial Government may, by notification, appoint.

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

(a) "creditor" means a person to whom a debt is owing, but shall not include a co-operative society being a society registered under the Co-operative Societies Act, 1912 (II of 1912), or a land mortgage bank established under the same Act or any other enactment or a scheduled bank as defined in the Reserve Bank of India Act, 1934 (II of 1934);

(b) "debt" includes all liabilities owing by a person, in cash or kind, secured or unsecured, payable under a decree or order of a Civil Court or otherwise;

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

(d) "secured debt" means a debt due to a creditor from his debtor for which the creditor holds a mortgage, charge or lien on the property of the debtor or any part thereof as a security for that debt.

3. (1) Notwithstanding the provisions of any law for the time being in force or any agreement or contract between the parties, no debtor shall be liable to pay interest to a creditor on a debt incurred by him at a rate higher than that specified in the schedule for any period between the first of January, 1932, and such other date as the 1[Provincial Government] may, by notification, appoint:

Rate of interest. Provided that such rate of interest shall be liable to be increased by the percentage rate by which the rate of interest at which the 1[Provincial Government] is able to secure a loan exceeds 4 per cent.

(2) The rate of interest at which the Local Government is able to secure a loan shall be published by the Local Government for general information in such manner as it thinks fit.

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

(4) A decree amended in accordance with the provisions of sub-section (3) shall be deemed to bear the date of the original decree.

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

Savings from the provisions of the Usurious Loans Act, 1918. 4. Nothing contained in the Usurious Loans Act, 1918 (X of 1918), shall apply to any debt falling under section 3.

Crown not bound by this Act. 5. This Act shall not be binding on the Crown.

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

SCHEDULE.
(See Section 3.)

Amount of debt -	Rate of interest		
	Compound interest per cent. per annum with yearly rests.	Simple interest per cent. per annum on	
		Secured debt.	Unsecured debt.
Rs. 5,000 and under ..	7½	10	15
Over Rs. 5,000 ..	6	9	13

THE C. P. PROTECTION OF DEBTORS ACT, (IV OF 1937.)

[8th March, 1937.]

An Act to provide for the protection of debtors from molestation and intimidation by their creditors.

WHEREAS it is expedient to make provision for the protection of debtors from molestation and intimidation by their creditors for the recovery of debts;

Preamble.

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

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE CENTRAL PROVINCES PROTECTION OF DEBTORS ACT, 1937.

(2) It extends to the whole of the Central Provinces.

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

22. The provisions of sections 4 and 5 shall apply only to such areas as the [Provincial Government] may, by notification, direct.

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

²The provisions of sections 4 and 5 have been applied to all areas of the Central Provinces. This Act came into operation in 'Berar' on the 30th March, 1937, and the provisions of Ss. 4 and 5 have been applied to all areas of Berar.

3. For the purposes of this Act, a person who, with intent to cause another person to abstain from doing or to do any act which he has a right to do or to abstain from doing,—

Definition of molestation. (a) obstructs, or uses violence to, or intimidates, such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters or does any similar act at or near a house or other place where such other person resides, or works, or carries on business, or happens to be, shall be deemed to molest such other person:

Provided that a person who attends at or near such house or place in order merely to obtain or communicate information shall not be deemed to molest.

4. Whoever molests, or abets the molestation of, any debtor for the recovery of a debt owed by him to his creditor shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Penalty for molestation.

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under section 4 shall be cognizable and bailable, and no Court shall take cognizance of any such offence except upon a report in writing of facts which constitute the offence made by a police officer not below the rank of sub-inspector.

Molestation to be cognizable and non-bailable offence.

THE PUNJAB DEBTORS' PROTECTION ACT (II OF 1936.)

[16th April 1936].

An Act to provide for the more effective protection of debtors in the Punjab.

WHEREAS it is expedient for the more effective protection of debtors to modify the existing law on certain points and to amend the law with respect to persons carrying on business as money-lenders;

Preamble.

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

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called THE PUNJAB DEBTORS' PROTECTION ACT, 1936.

(2) It extends to the Punjab.

(3) It shall come into force at once.

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

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

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

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

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

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

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

(i) a deposit of money or other property in a Post Office Savings Bank or any other bank, or in a company or with a co-operative society;

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

(iii) a loan advanced by the 1[Provincial Government] or by any local body authorized by the 1[Provincial Government];

(iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Indian Companies Act, 1913;

(v) a loan advanced to a trader;

¹Substituted by the Government of India (Adaptation of Indian Laws) Order 1937.

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

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

(7) "Money-lender" means a person who, in the regular course of business, advances a loan as defined in this Act and shall include the legal representatives and the successor-in-interest, whether by inheritance, assignment or otherwise, of the person who advanced the loan.

(8) "Trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include—

(i) a wholesale or a retail merchant,

(ii) a commission agent,

(iii) a broker,

(iv) a manufacturer,

(v) a contractor,

(vi) a factory owner,

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

CHAPTER II.

EXECUTION OF DECREES.

Definitions.

3. In this Chapter, unless there is anything repugnant in the subject or context,—

(1) "land" means land which is not occupied as the site of any building in a town or village, and is occupied or has been let for agricultural purposes, or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land;

(2) "Collector" means the Deputy Commissioner of a district or any officer specially empowered by the 1[Provincial Government] to exercise the powers of a Collector under this Chapter.

4. (1) Notwithstanding anything contained in any other

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 4.—If an attachment and temporary alienation of land are ordered by a Civil Court at any time after the passing of the Act in execution of a decree, the whole execution proceedings are to be transferred to the Collector. 39 P.L.R. 637=1937 Lah. 716.

The words "in the execution of decree" in S. 4, are not inadvertently added. Hence a Receiver in insolvency has power to lease agricultural land for a period of 20 years and S. 4 does not apply to such a case. 39 P.L.R. 738=1937 Lah. 558.

Temporary alienation of land in execution of decree for the payment of money.

enactment for the time being in force, whenever a Civil Court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money the proceedings of such attachment and alienation shall be transferred to the Collector.

(2) On the proceedings being transferred to him by the Civil Court the Collector shall decide the period of alienation, which shall not exceed twenty years in the case of land owned by a member of a statutory agricultural tribe, determined to be such by the [Provincial Government] in exercise of the powers conferred by section 4 of the Punjab Alienation of Land Act, 1900.

5. Such portion of the judgment-debtor's land shall be exempted from temporary alienation as in the opinion of the Collector, having regard to the judgment-debtor's income from all sources except such income as is dependent on the will of another person, is sufficient to provide for the maintenance of the judgment-debtor and the members of his family who are dependent on him.

Partial exemption of land.

The condition for applicability of S. 4 (1), is that the attachment and alienation of land must emanate from a Civil Court. Although 'Court' includes an Insolvency Court under S. 2 (4) of the Act it does not include a Receiver of insolvent's property. A sale of an insolvent's property is an act of the Official Receiver and not that of the Court and hence S. 4 (1) does not apply to the lease of insolvent's land granted by the Official Receiver. 18 Lah. 721=1937 Lah. 446.

Secs. 4 and 5.—APPLICABILITY—PENDING CASES.—An order granting lease by the executing Court before Punjab Act II of 1936 came into force cannot be set aside by the appellate Court under the provisions of that Act, even though that Act had come into force when the appeal was heard 170 I.C. 224=39 P.L.R. 237=1937 Lah. 496.

In general when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights. An appeal may for certain purposes be a continuation of the original proceeding; but an appellate Court is not justified in setting aside the judgment of a trial Court which when delivered was not open to any objection on the ground on which the appellate Court seeks to set it aside. In execution of a certain decree a temporary alienation of the judgment-debtors' lands was sanctioned by the executing Court in favour of the decree-holder in December, 1935. An appeal was preferred against this order which was not heard till June, 1936. In the meantime the Punjab Debtors' Protection Act came into force and the Appellate Court relying upon Ss. 4 and 5 of the Act remanded the case for disposal according to provisions of the new Act. *Held*, that Ss. 4 and 5 did not provide mere matters of procedure and had no retrospective effect; and even if they related to mere matter of procedure, the order made by the executing Court when no such law existed could not be held to be wrong on the subsequent enactment of the Act. 1937 Lah. 506, Reversed 39 P.L.R. 854=1937 Lah. 740. *But see* 1937 Lah. 52.

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

6. The Collector when acting under sections 4 and 5 shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to the Court from which the proceedings were transferred to him and any party aggrieved by an order of the Collector under section 4 or 5 shall have a right of appeal to the Commissioner who when hearing appeals under this section shall be deemed to be acting judicially and shall act in accordance with the provisions of law applicable to a Civil Court of appeal.

7. The period of limitation for an appeal under the last Limitation for appeals. for foregoing section shall run from the date of the order appealed against and shall be sixty days.

8. The [Provincial Government] may, subject to the condition of previous publication, make Rules to be made after previous publication. rules for carrying into effect the provisions of sections 4, 5, 6 and 7 of this Chapter.

9. When custom is the rule of decision in regard to succession to immovable property then, notwithstanding any custom to the contrary, ancestral immovable property in the hands of a subsequent holder shall not be liable in the execution of a decree or order of a Court relating to a debt incurred by any of his predecessors in interest:

Provided that, when the debt has been expressly charged by way of mortgage on ancestral immovable property by a predecessor in interest, the Court shall determine the liability of such land as if this section had not been passed:

Provided further, and subject to the foregoing proviso that, in respect of a debt incurred before the commencement of this Act, ancestral property in the hands of a subsequent holder may be liable, only if all the following conditions are satisfied:—

First.—That, before such liability is determined, the judgment-debtor shall be given sufficient opportunity to show cause against such liability.

Sec. 9.—A decree for an unsecured debt incurred before the commencement of the Act, was obtained against *A*. *A* died before attachment, leaving his ancestral property in the hands of his sons. The decree-holder tried to attach this property in the hands of the sons. *Held*, that as the land was not under attachment, when the Punjab Debtors' Protection Act commenced, its liability for the unsecured debts of *A*, must be determined according to the Punjab Debtors' Protection Act. 1937 Lah. 303.

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Second.—That such liability was permitted by the rule of custom applicable to the judgment-debtor immediately before the commencement of this Act, and nothing in this section shall prevent the judgment-debtor from proving the contrary.

Third.—That the decree-holder is able to show to the satisfaction of the Court that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent Court, not in *ex parte* proceedings, holding that such a custom was applicable to the sub-tribe in the tahsil to which the judgment-debtor belongs.

Fourth.—That the judgment-debtor is not able to show to the satisfaction of the Court, that, at the time the debt was originally incurred, there was a subsisting judgment or order of a competent Court, not in *ex parte* proceedings, holding to the contrary and subsequent to the judgment relied upon by the decree-holder.

Exemption of standing crops and trees from attachment or sale.

10. Notwithstanding anything to the contrary contained in any other enactment for the time being in force:—

(1) standing crops, other than cotton and sugarcane, shall not be liable to attachment or sale in the execution of a decree;

(2) standing trees apart from the land on which they stand shall not be liable to sale in the execution of a decree or an order of a Court.

11. (1) Notwithstanding anything to the contrary contained in any other enactment for the time being in force, where an application has been made to execute a decree passed after the commencement of this Act against a debtor as defined in sub-section (2) of section 7 of the Punjab Relief of Indebtedness Act, 1934, and not being a decree granting an injunction, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of six years from—

- (a) the date of the decree sought to be executed, or
 (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the

Sec. 10.—The provisions of S. 10 are mandatory, and a Court cannot after the Act has come into force, direct the sale of trees apart from the land on which they stand, even though the trees had been attached before the Act came into force. 170 I.C. 388=1937 Lah. 569.

THE PUNJAB REGULATION OF ACCOUNTS ACT, 1930. lxxxix

default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of six years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within six years immediately before the date of the application; or

(b) to limit or otherwise affect the operation of article 183 of the First Schedule to the Indian Limitation Act, 1908.

CHAPTER III.

BURDEN OF PROOF.

12. Notwithstanding anything to the contrary contained in any other enactment for the time being in force, the burden of proving that any consideration alleged to have been paid by a money-lender actually passed shall be on him; unless the consideration is acknowledged by a debtor in his own handwriting or has been endorsed by the registering officer acting under clause (c) of sub-section (1) of section 58 of the Indian Registration Act, 1908, as having been paid in his presence.

THE PUNJAB REGULATION OF ACCOUNTS ACT (I OF 1930).¹

Prefatory Note.—The Punjab Legislative Council had, for some years past, been contemplating legislations in the direction of ensuring fair dealing between certain classes of money-lenders and borrowers. As early as July, 1926, it passed a money-lenders Bill but Sir Malcolm Hailey the then Governor of the Punjab, to whose assent it was submitted, refused either to recommend it for final assent of the Governor-General or return it to the Council for reconsideration. He, however, gave an assurance that a measure on the same lines as the Money-lenders Bill, but simpler in scope and more effective in operation, would be introduced in the Legislative Council by His Government as a Government measure. The reason for this action was, as stated by His Excellency, that it was felt that the Bill as passed by the Council was not such as to achieve the object it had in view, i. e., protection of the ignorant borrower without, at the same time, unduly interfering with the normal course of trade and general credit. The definitions of "loan" and "money-lender" in particular appeared to His Excellency's advisers, likely to give difficulty in practical working. Further, the penalty of non-suiting provided by that Bill in case of non-compliance with its

¹In exercise of the powers conferred by sub-section (3) of section 1 of the Punjab Regulation of Accounts Act, 1930, the Governor in Council is pleased to appoint the first day of July, 1931, as the date on which the said Act shall come into force—"No. 1871-Judl., the 17th January 1931, *Punjab Gazette*," Part I, 1931, p. 657

provisions was, to say the least, extremely harsh. The present measure was accordingly introduced in the Council in 1929 in fulfilment of Sir Malcolm Hailey's promise. Its object is to secure as between certain classes of creditors and debtors an improved system of keeping accounts which will give to the latter a means of ascertaining periodically how their accounts stand and how they are composed. Simultaneously with this, the Act tries to avoid any unnecessary degree of regimentation which might tend unduly to harass the lender and to constrict the facilities for credit so useful in the rural system of economy. By excepting certain classes of loans, it expressly avoids interference with accounts connected with trade and commerce.

Subject to the restriction noted above, the Act is of general application. The working, however, of the Act to a great extent depends on the rules to be framed by the Local Government. (See *Statement of Objects and Reasons and Proceedings in Council.*)

19th January, 1930.

An Act to regulate the keeping of accounts of certain transactions.

WHEREAS it is expedient to make provision for regulating the keeping of accounts relating to certain transactions in the Punjab, and whereas the previous sanction of the Governor-General under section 80-A (3) of the Government of India Act has been obtained; it is hereby enacted as follows:—

Preamble.

1. (1) This Act may be called THE PUNJAB REGULATION OF ACCOUNTS ACT, 1930.

Short title, extent and commencement.

(2) It extends to the Punjab.

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

Provided that this date shall not be earlier than six months or later than one year after the date of final publication of the rules made under section 6.

Definitions.

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

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

Sec. 1: OBJECT OF ACT.—The object of the Act is to ensure that the accounts are kept in a clear and intelligible manner and that the notices of the balance due are also sent in a similar manner so as to be easily intelligible to the debtor. The mere acknowledgment by the debtor on the back of the notices that the statement of account is correct, cannot absolve the creditor from his responsibility for keeping accounts and sending notices in the prescribed form. 1937 Lah. 565.

Charter or Letters Patent or by any Act of the 1[Central Legislature.]

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

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

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

(5) "Creditor" means a person who in the regular course of business, advances a loan as defined in this Act and shall include subject to the provisions of section 3 the legal representatives and the successor-in-interest whether by inheritance, assignment or otherwise of the person who advanced the loan.

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

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

(i) a deposit of money or other property in a Government Post Office Bank or any other Bank or in a company or with a co-operative society;

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

(iii) a loan advanced by 1[the Central or any Provincial Government] or by any local body authorised by 1[the Central or any Provincial Government];

(iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the Companies Act;

(v) a loan advanced to trader;

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 2 (5) Where a plaintiff admits having advanced loans to a number of persons but does not say that he advanced them subsequent to the year 1931 when the loan in suit was advanced, there is no reason why he should not be held to have advanced these loans in the regular course of business within the meaning of the definition of the term "creditor". 160 I.C. 883= 38 P.L.R. 164=A.I.R. 1936 Lah. 469.

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

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

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

(9) "Trader" means a person who in the regular course of business buys and sells goods or other property, whether movable or immovable, and shall include:—

a wholesale or a retail merchant,

a commission agent,

a broker,

a manufacturer,

a contractor,

a factory owner,

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

Duty of creditor 3. (1) A creditor shall in order to maintain and to comply with the provisions of this furnish accounts. Act:—

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

(b) furnish each debtor every six months with a legible statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on the 30th day of June or 15th *Har* and the 31st day of December or 15th *Poh* in each year. This statement of account shall include all transactions relating to the loan entered into

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 2 (9).—A money-lender cannot be said to come under the definition of the word 'trader' as given in the Act. 40 P.L.R. 32.

Secs. 3 and 4.—In a suit governed by the provisions of the Act, the question of costs stands on a basis different from that of other suits, as the Court is bound to disallow costs if the case falls within the purview of S.3. If, therefore, the defendant wants to have the order of the lower Court allowing costs to be set aside in appeal, it is incumbent on him to pay Court-fee thereon. 160 I.C. 883=38 P.L.R. 164= 1936 Lah. 469. According to Act I of 1930, the Court cannot grant costs in any proceeding arising from a suit in which costs could not be granted. Where therefore a plaintiff bringing a suit on a promissory note does not comply with the provisions of S. 3 he is not entitled to any costs in revision from a decree dismissing his suit, although he succeeds, notwithstanding the objections of the respondent. The ordinary rule as to costs does not apply. 169 I.C. 697=10 R.L. 27=39 P.L.R. 138=1937 Lah. 58.

during the six months to which the statement relates, and shall be sent, in such manner and in such form and containing such details as the 1[Provincial Government] may prescribe, on or before the 31st day of August or 15th *Bhadon* in the case of any balance outstanding on the 30th day of June or 15th *Har* and on or before the 28th day of February or 15th *Phagan* in the case of any balance outstanding on the 31st day of December or 15th *Poh*.

Explanation.—(i) The 1[Provincial Government] shall prescribe the forms and numerals in which the accounts required by this provision of this sub-section are to be maintained and furnished, and the creditor shall at his option use one of the following scripts and languages, namely—English, Urdu, Gurmukhi, Nagri or Mahajani: Provided that if the debtor in writing demands that the account be furnished in any one of the above scripts it shall be supplied to him in that script at his cost according to the scale prescribed;

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

Provided that—

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

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

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

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

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

Penalty for non-compliance with the provisions of section 3.

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

(a) in any suit or proceeding relating to a loan, the Court shall, before deciding the claim on the merits, frame and decide the issue, whether the creditor has complied with the provisions of clauses (a) and (b) of sub-section (1) of section 3;

(b) if the Court finds that the provisions of clause (a) of sub-section (1) of section 3 have not been complied with by the creditor, the Court shall, if the plaintiff's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as may seem reasonable to the Court in the circumstances of the case and shall disallow costs;

(c) if the Court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the creditor, the Court shall in computing the amount of interest due upon the loan exclude every period for which the creditor omitted duly to furnish the account as required by clause (b) of sub-section (1) of section 3: provided that if the creditor has after the time prescribed in that clause furnished the account and the plaintiff satisfies the Court that he had sufficient cause for not furnishing it earlier, the Court may, notwithstanding such omission, include any such period or periods for the purpose of computing the interest.

Explanation.—A person who has kept his account and sent his six-monthly statements of accounts in the form and manner prescribed in clauses (a) and (b) of sub-section (1) of section 3 shall be held to have complied with the provisions of these clauses, in spite of errors and omissions, if the court finds that the errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of these clauses.

5. The provisions of this Act shall not apply to any loan advanced before the commencement of this Act:

Sec. 4.—S. 4 is inapplicable to a case where the defendant is admittedly a contractor. 39 P.L.R. 974=169 I.C. 966=1937 Lah. 756.

Sec. 5 (Proviso).—The Act has no retrospective effect as it is clearly provided in S. 5 that the provisions of the Act shall not apply to any loan advanced before the commencement of this Act. A mere payment of that loan after the commencement of the Act does not amount to a fresh tran-

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

6. (1) The ¹[Provincial Government] may make rules² not inconsistent with the Act for the purposes of carrying out all or any of the provisions of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, the ¹[Provincial Government] may make rules—

(i) prescribing the forms and numerals to be used in the accounts required by sub-section (1) of section 3.

(ii) prescribing the manner in which the accounts required by clause (b) of sub-section (1) of section 3 shall be furnished by the creditor to the debtor, the forms to be used, and the details to be incorporated therein and the scale of costs to be paid by such debtors as may demand that the account required by this clause should be furnished in one of the particular scripts mentioned in Explanation (i) of this clause:

Provided that before making any rules under the provisions of this section, the ¹[Provincial Government] shall, in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act, 1898, published by notification a draft of the proposed rules for the information of persons likely to be affected thereby, at least thirty days before a meeting of the Punjab Legislative ¹[Assembly]. The ¹[Provincial Government] shall defer consideration of such rules until after the meeting of the Punjab Legislative ¹[Assembly] next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.

THE PUNJAB RELIEF OF INDEBTEDNESS ACT (VII OF 1934).

[4th February, 1935]

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

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

saction within the meaning of the proviso to S. 5 so as to make the Act applicable to that extent. 164 I.C. 844=38 P.L.R. 944.

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

² S. 6. See Vol. II, Regulation of Account Rules.

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

It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called THE PUNJAB RELIEF OF INDEBTEDNESS ACT, 1934.

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

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

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

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

(2) "Loan" means, a loan whether of money or in kind, and includes any transaction which is, in the opinion of the Court, in substance a loan.

PART II.

INSOLVENCY PROCEDURE.

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

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

¹ Substituted by the Government of India (Adaptation of Indian Laws), Order, 1937.

Sec. 1.—The enactment of the Punjab Relief of Indebtedness Act subsequently cannot revive a right which has already been extinguished. 165 I.C. 358=1936 Lab. 482. The Debt Conciliation Board is not a board of adjudication but a mere board of conciliation and has no jurisdiction to decide the disputes arising between the creditors *inter se*. It has no power to reject a claim as unfounded or fictitious nor to dismiss a claim as unproved. So the jurisdiction of adjudicating upon the validity or otherwise of a claim is not vested in the Board. 39 P.L.R. 891.

Amendment of section 74 of the Provincial Insolvency Act, 1920.

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

PART III.

USURIOUS LOANS.

Amendment of the Usurious Loans Act, 1918.

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

(i) for the word "and" in clause (a) of sub-section (1) the word "or" shall be substituted:

(ii) for the word "may" where it appears for the first time in sub-section (1) the word "shall" shall be substituted:

(iii) for the word "may" after the word "namely" in sub-section (1) the word "shall" shall be substituted:

(iv) to sub-section (2) the following clause shall be added—

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

Sec. 5: APPLICABILITY—PENDING SUIT.—S. 5 which amends S. 3 of the Usurious Loans Act is applicable to a suit which is pending at the time when the Act came into force. Under that section, as amended, the Court is bound to reopen the transaction, if the rate of interest is excessive. 170 I.C. 911=1937 Lah. 936.

REDUCTION OF INTEREST—POWER OF INSOLVENCY COURT.—There is room for doubt if the amendments made in S. 5 of Act VII of 1934 would apply to insolvency proceedings at all; but whether they would or would not, even the provisions of S. 4 of the Usurious Loans Act, as they stood before Act VII of 1934 came into force, did confer jurisdiction on the Insolvency Court to exercise powers conferred by S. 3 of the Act on a Court in the trial of a suit. The Insolvency Court is, therefore, entitled to reduce the interest which could be allowed to a creditor if it finds sufficient justification for doing so on the merits of the case. 168 I.C. 682=9 R.L. 663=39 P.L.R. 495=1937 Lah. 629.

Retrospective
effect.
Act.

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

PART IV.

DEBT CONCILIATION BOARDS.

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

(2) "Debtor" means a person who owes a debt and
(i) who both earns his livelihood mainly by agriculture, and is either a landowner, or tenant of agricultural land, or a servant of a landowner, or of a tenant of agricultural land, or
(ii) who earns his livelihood as a village menial paid in cash or kind for work connected with agriculture:

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

Explanation.—(i) A debtor shall not lose his status as such through involuntary unemployment or an account of incapacity, temporary or permanent, by bodily infirmity, or, if he is or has been in service of His Majesty's Military or Naval Forces, only on account of his pay and allowances or pension exceeding his income from agricultural sources.

(ii) A debtor shall not lose his status as such by reason of the fact that he makes income by using his plough cattle for purposes of transport.

(iii) A debtor shall not lose his status as such only because he does not cultivate with his own hands.

Sec. 6.—According to S. 6 the provisions of part 3 of the Act apply only to suits which were pending on or instituted after the commencement of the Act. Hence it does not apply where the suit is decided long before the coming into force of the Act even though an appeal is pending. An appeal cannot be included within the scope of S. 6. The Legislature presumably used the word 'suit' advisably in S. 6 and that section cannot be held to be applicable to appeals. 165 I.C. 657=9 R.L. 277=38 P.L.R. 885=1936 Lah. 678. See also 1936 Lah. 574

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

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

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

8. (1) (a) The ¹[Provincial Government] may for the purpose of amicable settlement between debtors and their creditors establish debt conciliation boards.

(b) The ¹[Provincial Government] shall define the local limits of the area in which a board shall have jurisdiction.

(c) The ¹[Provincial Government] shall determine the pecuniary limits of the jurisdiction of the board, provided that no board shall have jurisdiction to make a settlement between a debtor and his creditors if the total debts of the debtor exceed Rs. 10,000 or such larger amount as the ¹[Provincial Government] may prescribe for any area.

(d) Such board shall consist of a chairman and two or more members to be appointed by the ¹[Provincial Government].

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

(f) The quorum of a board shall be prescribed by the ¹[Provincial Government].

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

(2) The ¹[Provincial Government] may cancel the appointment of any member of a board or dissolve any board.

(3) The ¹[Provincial Government] shall notify in the [Official Gazette]—

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

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

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

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

(4) When a board is dissolved or ceases to exist otherwise, the ¹[Provincial Government] may at any time establish another board within the same local limits in which the former board had jurisdiction and may declare this board to be the successor in office of the first board and may confer on it power to dispose of such applications under section 13 (2) and section 23 as the ¹[Provincial Government] may direct.

Application for settlement between a debtor and his creditors.

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

Provided that no application shall be made if the debtor's debts exceed ten thousand rupees or such larger sum as the ¹[Provincial Government] may prescribe for any particular area.

Verification of application.

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

Particulars to be stated in application.

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

(a) the place where he resides or holds land;

(b) the particulars of all claims against him together with names and residences of his creditors;

(c) the particulars of all his property, together with a specification of the value of such property and the place or places at which any such property is to be found;

(d) a statement that he is unable to pay his debts, and that they do not exceed the prescribed amount.

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

(a) the place where the debtor resides or holds land;

(b) the amount and particulars of his claim against such debtor;

(c) a statement that the debtor is unable to pay his debts.

Procedure on receipt of application.

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

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

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

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

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

Notice calling upon creditors to submit statements of debts.

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

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

Provided that if a creditor proves to the satisfaction of the board, or, if no board is vested with jurisdiction by the 1[Provincial Government,] to the satisfaction of a civil court, that the notice was not served on him and that he had no knowledge of its publication, the board or court may revive the debt.

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

Procedure on submission of statements of debts.

Provided that a decree or order of a civil court shall be conclusive evidence as to the amount of the debt to which the

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 13.—Where one of the executants of a promissory note made an application to the Debt Conciliation Board upon which he was discharged from the debt, a suit against the other executants is not incompetent by virtue of the provisions of S. 13 of the Act. That section only deals with the discharge of liability of the debtor who applies to the Board and not with the liability of other persons who are not parties to the proceedings before the Board. 39 P.L.R. 481=1937 Lah. 685.

decree relates, but the amount may be reduced as the result of an agreement arrived at in accordance with section 17.

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

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

Board to attempt amicable settlement.

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

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

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

Registration and effect of agreement.

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

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

Dismissal of applications in default.

Secs. 15 and 20: SCOPE OF.—When a claim is submitted, all that the Board can do is to use under S. 15 its best endeavours to induce the parties to arrive at an amicable settlement or to grant the debtor a certificate under S. 20 (1) in case any creditor does not accept a fair offer made by a debtor. Even that certificate does not debar the creditor from suing his debtor on his loan but only disentitles him to costs and interest after the date of the certification. 39 P.L.R. 891,

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

Bar to successive applications.

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

Grant of certificate by board in respect of debts.

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

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

Power of court to disallow costs or interest.

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

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

(a) any suit—

(i) to question the validity of any procedure or the legality of any agreement made under this Act, or

(ii) to recover any debt recorded as wholly or partly payable under an agreement made in accordance with section 17

Sec. 21 (a) (i).—A suit filed in the Civil Court for a declaration that the debts shown by a debtor as due to certain creditors are 'baseless and fictitious' and for an injunction to restrain the alleged creditors from proving their debts before the Debt Conciliation Board or recovering them from the debtor is not expressly barred by S. 21 (a) (i) of the Act nor impliedly barred by S. 9, C. P. Code. Neither of these reliefs

from any person who, as a debtor, was party to such agreement or

(iii) to recover any debt which has been deemed to have been duly discharged under sub-section (2) of section 13;

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 20.

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

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

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

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

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

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

involves an attack on the procedure of the Board or the legality of the agreement under S. 17 in which the proceedings have culminated and is consequently not covered by the prohibition. S. 21 does not debar the Civil Court from entertaining the reliefs. 39 P.L.R. 891.

Sec. 25.—The words “in respect of any such debt” in S. 25 of the Act mean in respect of any debt for the settlement of which application has been made to the Board. An insolvency application comes within the meaning of “other proceeding pending before a Civil Court in respect of any such debt.” Where, therefore, a person who has applied to be adjudicated an insolvent subsequently makes an application under S. 9 to the Board, the proceedings before the Insolvency Court should be suspended under S. 25. 170 I.C. 33=39 P.L.R. 756=A.I.R. 1937 Lah. 861.

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

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

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

(a) prescribing the amount of debt for the purposes of section 8 (1) (c);

(b) prescribing the quorum for and regulating the procedure before a board;

(c) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;

(d) prescribing the records to be kept and the returns to be made by a board;

(e) prescribing the allowances to be paid to members of a board;

(f) prescribing the place at which and the manner in which an agreement shall be registered;

(g) prescribing the form of certificate to be granted under sub-section (1) of section 20; and

(h) generally, for the purpose of carrying into effect the provisions of this Part of this Act.

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Under the Insolvency Act, it is the Court of the District Judge which is the primary Insolvency Court though provision is made for a Subordinate Judge to be made such a Court. The mere fact that there is a special Act for insolvency, does not mean that the Insolvency Court is not a Civil Court. All that the Insolvency Act does in this respect is to determine the Civil Court which shall hear insolvency petitions. (*Ibid.*)

The 'proceeding' referred to in S. 25 of the Act includes an appeal against adjudication as an insolvent. Where, therefore, an insolvent, pending the hearing of his appeal against the order of adjudication, applies to the Local Debt Conciliation Board set up under that Act to effect a settlement between him and his creditors, the hearing of the appeal should be suspended until the Conciliation Board has dismissed the application or an agreement has been made. 39 P.L.R. 338=A.I.R. 1937 Lah. 680.

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

29. In making any rule the ¹[Provincial Government] may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

Penalty for breach of the rules.

PART V.

DAMDUPAT.

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

Damdapat.

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

PART VI.

DEPOSIT IN COURT.

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

Deposit in court.

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

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

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

Power of Provincial Government to make rules.

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

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

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

¹ Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

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

PART VII.

REDEMPTION OF MORTGAGES.

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

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

PART VIII.

MISCELLANEOUS AMENDMENTS OF THE CIVIL LAW.

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

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

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

Provided, further, that save in so far as is otherwise provided in this section the court in considering the capacity of the

Sec. 34: APPLICABILITY—NON-AGRICULTURISTS.—There is no justification for the view that S. 34 does not apply to non-agriculturists. Chapter VIII of the Act in which this section comes, is headed "Miscellaneous Amendments of the Civil Law". The second proviso to the section appears to relate only to agricultural land but its other provisions are not so limited. 161 I.C. 960=8 R.L. 827=A.I.R. 1936 Lah. 843.

A warrant of arrest against a judgment-debtor was issued but was not executed upon the date on which the Punjab Relief of Indebtedness Act came into force. It was contended that as the warrant was issued prior to the commencement of the Act, it could be executed. *Held*, that there was nothing in S. 34 about the date of issue of the warrant. What the section says is that after 19th April, 1935 no judgment-debtor shall be liable to arrest unless the necessary conditions are fulfilled and therefore no action could be taken under the warrant in question. 160 I.C. 804=8 R.L. 615=A.I.R. 1936 Lah. 150.

judgment-debtor to pay shall take into consideration the value of the property of the judgment-debtor only to the extent to which a civil court can dispose of it under the law in execution of a decree.

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

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

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

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

Penalty for false claim of a principal sum.

Punjab Debt Conciliation Rules, 1935.

1. These rules may be called THE PUNJAB DEBT CONCILIATION RULES, 1935.

2. (i) In these rules—

(a) "Act" means the Punjab Relief of Indebtedness Act, 1934;

(b) "Board" means a Debt Conciliation Board established under the Act.

3. Unless in the case of any particular Board the [Provincial Government] shall order otherwise, the salary of the Chairman of a Board shall

Sec. 35.—A person belonging to an agricultural tribe and owning some land but not cultivating the land himself is not an agriculturist within the meaning of S. 60, C. P. Code, and therefore cannot claim the benefit of S. 35, Punjab Relief of Indebtedness Act. 1937 Lah. 287.

The provisions of S. 6 apply only to part 3 and not to part 8. S. 35 is to be found in part 8, and a judgment-debtor whose property has been attached in execution of a decree against him, is entitled to raise an objection, even in appeal, that that property attached is not liable to attachment and sale in view of the provisions of S. 35 provided the objection is raised before sale of the property has taken place. Where the Court on such objection being raised refuses to apply the provisions of the Punjab Relief of Indebtedness Act, it fails to exercise jurisdiction vested in it by law and its order is open to revision. 164 I.C. 225=1936 Lah. 574.

SCOPE AND APPLICABILITY—The effect of the amendment of S. 60, C. P. Code, by the Punjab Relief of Indebtedness Act, is that if a house is reserved for the personal occupation of judgment-debtor then it is saleable only if it has remained unoccupied for more than a year; otherwise only a house actually occupied by the judgment-debtor is exempt. See 171 I.C. 418=1937 L. 100.

be two hundred and fifty rupees a month and that of the other members two hundred rupees each. The Chairman and the members shall be entitled to receive in addition a fixed travelling allowance of seventy-five rupees a month.

4. A Board shall have its office at such place as may be fixed by the [Provincial Government.], and may hold its sittings at any place within its area of jurisdiction.

5. It may hold its sittings on all days except those which are allowed as local holidays or as holidays to all public offices in the Province, but nothing in this rule shall operate to invalidate proceedings taken by a Board on a sanctioned holiday.

6. Not less than two-thirds of the membership of a Board must be present to form a quorum. In calculating the total membership for the purpose of this rule the Chairman is to be counted, as well as the members.

7. An application for a settlement between a debtor and his creditors shall be signed by the applicant and his pleader (if any) and shall be verified at the foot by the applicant, who shall specify by reference to the numbered paragraphs of the application what he verifies of his own knowledge and what he verifies upon information received and believed to be true. The verification shall be signed by the applicant and shall state the date on which and the place at which it was signed.

8. (1) Every application for settlement between a debtor and his creditors shall be presented by an applicant in person or sent by registered post to the Chairman or to a member of the Board, or to any person authorised by the Deputy Commissioner in this behalf. On receipt of the application the Board shall order the relevant details to be entered in the register of applications for settlement of debts.

(2) Every application shall be accompanied by all such documents as will be necessary for the disposal of the proceedings before the Board.

(3) A further and better statement of the nature of the claim or defence, or further and better particulars of any matters stated in any application, may be admitted by the Board upon such terms as to costs and otherwise as may be just.

9. If the Board does not dismiss the application, it shall send to all persons concerned, at the expense of the applicant, a notice by registered post, acknowledgment due, issued under the provisions of section 12 (2) of the Act, of the date and place fixed for the hearing of the application.

10. If the applicant is a debtor, and the Board does not dismiss the application, the Board shall as soon as convenient cause to be posted in a prominent place at the office of the Board a notice in Form I attached to these rules. It shall similarly cause to be published, at the cost of the applicant, the same notice in some daily vernacular newspaper, commonly read in the area in which the Board has jurisdiction, at least twice within one month.

11. If the applicant is a creditor—

(1) the notice sent to the debtor under rule 8 may require him to submit to the Board at least 25 days before the date fixed for hearing the application, a written statement signed and verified by the debtor in the manner aforesaid containing—

(a) the particulars of all debts owed by him, together with the names and addresses of all his creditors;

(b) the particulars of all his property, together with a specification of the value of such property, and the place or places at which such property is to be found;

(ii) On receiving the written statement, the Board shall send by Registered Post (acknowledgment due) a notice of the date and place fixed for hearing the application to all creditors mentioned by the debtor in his statement.

The cost of issuing these notices shall be recovered by the Board from the applicant in advance.

12. On the date fixed for hearing the application, the Board, after any other proceedings it may consider necessary, shall, unless it dismisses the application, publish in the manner prescribed in the next following rule, a notice in accordance with section 13 of the Act, calling upon every creditor of the debtor to submit within two months a statement to the Board of all debts owed to him by the debtor.

13. (i) The notice shall be in Form II attached to these rules and shall be published as follows:—

(a) It shall be read out and explained in open session by the Chairman of the Board to all creditors who are present, and a memorandum shall be made that this has been done. The names of the creditors present shall also be recorded.

(b) A copy of the notice shall be affixed in some conspicuous part of the place where the Board is sitting.

(c) A copy of the notice shall be sent by registered post (acknowledgment due) to these creditors who have been named by the applicant or debtor, and are not present before the Board. The cost shall be borne by the applicant, but shall be recoverable, at the discretion of the Board, from a creditor who has had previous notice of the date fixed.

(ii) If the Board has reason to believe that the applicant has not disclosed the names of all creditors, it shall further cause the notice in Form II to be published at the cost of the applicant in some daily vernacular newspaper commonly read in the area in which the Board has jurisdiction, at least twice within one month of the order.

14. A certificate granted under section 20 (2) of the Act by a Board to a debtor in respect of debts due from him to any creditor shall be in Form III annexed to these rules, and shall be signed by the Chairman and the members of the Board present and sealed with the seal of the Board. The certificate shall be prepared in triplicate; one copy shall be delivered to the debtor, one copy shall be sent to the record room of the district in which the Board is working, to be filed in accordance with rules framed by the Punjab Government, and the third copy shall be attached to the record of the proceedings.

15. Every application for settlement made under section 9 of the Act and every application for review made under section 23 of the Act shall be stamped by the applicant with a court-fee stamp of the value of eight annas.

16. (i) For every registered notice to be sent by the Board under the Act and these rules the person at whose expense it has to be sent, shall pay to the Board, before the issue of the notice, the sum of six annas.

(ii) If the applicant fails to pay the expense of a registered notice within a week his application shall be dismissed in default. But he may, within one month of the dismissal, apply to have the dismissal set aside; and if he satisfies the Board that there was sufficient cause for his non-compliance with the order of payment, the Board shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the application.

17. The Chairman of the Board shall send quarterly returns of the work done by the Board to the Collector in Form IV annexed to these rules.

18. The costs of and incident to all proceedings before the Board shall be in the discretion of the Board, and the Board shall at the time of every settlement under S. 17 of the Act have full power to determine the amount to be paid as costs and the person by whom it is to be paid and to give all necessary directions for the purposes aforesaid.

19. Every Chairman of the Board on demand shall cause to be given a copy of any settlements made under section 17 of the Act, on payment

S. 1] AGRICULTURISTS' LOANS (U.P.) AMENDMENT ACT, 1934. cxi

of two annas, together with a certificate written at the foot of such copy that it is a true copy of such settlement, and such copies so certified shall be certified copies within the meaning of the Indian Evidence Act, 1872.

20. The following registers shall be kept by a Board and entered up under the supervision of the chairman on every day that the Board holds its sitting:—

- (1) Register of applications for settlement of debts (Form V).
- (2) Register of miscellaneous applications (Form VI).
- (3) Register of receipts and disbursements (Form VII).
- (4) Pay-roll register (Form VIII).

THE AGRICULTURISTS' LOANS UNITED PROVINCES (AMENDMENT) ACT (XII OF 1934).

[May 3, 1934, May 29, 1934.]

A BILL TO AMEND ACT XII OF 1884.

WHEREAS it is expedient to amend the Agriculturists' Loans Act so as to extend the purposes for which the ¹[Provincial Government] may grant loans to agriculturists;

AND WHEREAS the previous sanction of the Governor under section 80-C of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:

1. (1) This Act shall be called THE AGRICULTURISTS' LOANS UNITED PROVINCES (AMENDMENT) ACT, 1934.

(2) It shall extend to the whole of the territories comprised in the United Provinces of Agra and Oudh.

(3) It shall come into force on such date as shall be notified by the ¹[Provincial Government] in the ¹[Official Gazette] in this behalf.

2. The "principal Act" means the Agriculturists' Loans Act, XII of 1884.

3. In section 4 of the principal Act after the words "relief of distress" the words "the payment of existing debt" shall be added.

4. In section 4 of the principal Act after the words "agricultural objects" the words "including the purchase of rights in agricultural land" shall be added.

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 1. The U. P. Amending Act. XXIII of 1934 must be held to come into operation only since the 27th April, 1935, when it was published in the U. P. Gazette after having received the assent of the Governor-General. It is inapplicable to a suit which was instituted not only before that date but also before the Bill had received the assent of the Governor, although such suit was instituted after the Bill was passed by the Legislature. The Act cannot be said to be passed within the meaning of S. 1 (2) of the Amending Act until the final step necessary to make the Act has been taken. 167 I.C. 835=1937 O.W.N. 382=A.I.R. 1937 Oudh 241.

**THE USURIOUS LOANS (U. P. AMENDMENT)
ACT (XXIII OF 1934.)**

[10th April, 1935

An Act to amend the Usurious Loans Act, 1918, in its application to the United Provinces.

WHEREAS it is expedient to amend the Usurious Loans Act, 1918, in its application to the United Provinces of Agra and Oudh.

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

It is hereby enacted as follows:

1. (1) This Act may be called THE USURIOUS LOANS (UNITED PROVINCES AMENDMENT) ACT, 1934.

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

(3) The provisions of this Act shall apply to all suits instituted after the passing of this Act to which the Usurious Loans Act, 1918, hereinafter referred to as "the principal Act" would apply.

2. (1) In clause (1) of section 2 of the principal Act between the words "by way of interest" and the words "or otherwise" the words "or in the form of service to be rendered" shall be inserted.

(2) In clause (3) of section 2 of the principal Act the figure (i) shall be inserted between the word "means" and the words "any suit," a semi-colon shall be substituted for the full stop at the end of the clause, the word "or" shall be added after the semi-colon and the following shall be added:

"(d) for account of a loan by a debtor against his creditor.

(ii) any proceeding for the determination of a claim under the United Provinces Encumbered Estates Act, 1934."

3. In clause (a) of sub-section (1) of section 3 of the principal Act for the word "and" the word "or" shall be substituted.

4. In sub-section (1) of section 3 of the principal Act, for the words "may exercise all or any of following powers" the words "shall exercise one or more of the following powers" shall be substituted.

Amendment of proviso (i) to section 3 (1) of the principal Act.

Addition of Provisos to sub-clause (b) of sub-section (2) of section 3 of the principal Act.

5. In proviso (i) to sub-section (1) of section 3 of the principal Act for the word "twelve" the word "seventeen" shall be substituted.

6. The following shall be added as provisos to sub-clause (b) of sub-section (2) of section 3 of the principal Act:

"Provided that in the case of loans secured by a first mortgage the court shall deem the interest excessive if—

- (1) the rate exceeds 12 per cent. per annum, or
- (2) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 12 per cent. per annum and the interval between rests were six months:

Provided also that in the case of loans secured otherwise than by a first mortgage the court may, if it considers that the nature of the security warrants it, deem that the interest is not excessive even though the rate exceeds 12 per cent. per annum or the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 12 per cent. per annum and the interval between rests six months:

Provided also that in the case of unsecured loans the court shall, unless the contrary is proved, deem the interest excessive if—

- (1) the rate exceeds 24 per cent. per annum, or
- (2) the amount of interest that might become due at any time exceeds the amount that would become due at that time if the rate were 24 per cent. per annum and the interval between rest were six months:

Provided also that in the case of secured loans the court shall not deem the interest excessive if—

- (1) the rate does not exceed 7 per cent. per annum, and
- (2) the amount of interest that might become due at any time does not exceed the amount that would become due at that time if the rate were 7 per cent. per annum and the interval between rests were six months:

Provided also that in the case of unsecured loans the court shall not deem the interest excessive if—

- (1) the rate does not exceed 9 per cent. per annum, and
- (2) the amount of interest that might become due at any time does not exceed the amount of interest that would become due at that time if the rate were 9 per cent. per annum and the interval between rests were six months."

**The United Provinces Temporary Regulation of
Execution Act, 1934.**

[10th April, 1935.]

An Act to make temporary provision for the regulation of execution of civil court decrees for the debts of small agriculturists passed before the commencement of this Act.

WHEREAS owing to the slump in prices it is expedient to regulate the execution of civil court decrees for the debts of small agriculturists passed before the commencement of this Act;

AND WHEREAS the previous sanction of the Governor-General under section 80-A of the Government of India Act has been obtained to the passing of this Act; It is hereby enacted as follows:

Short title, extent and commencement. 1. (1) This Act may be called THE UNITED PROVINCES TEMPORARY REGULATION OF EXECUTION ACT, 1934.

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

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

Definitions. 2. In this Act unless there is anything repugnant in the subject or context, "cultivator" means:

(1) a person who is liable to pay rent or, but for a contract to the contrary, express or implied, would be liable to pay rent for land let for agricultural purposes, or

(2) a person who is liable to pay a sum not exceeding Re. 1 per annum as local rate under section 109 of the District Boards Act, 1922;

but shall not include a mortgagee of proprietary rights or a thekadar,

Provided that no person shall be deemed to be a "cultivator" if he engages in any trade or occupation other than those usually followed by persons named in the schedule.

Decrees to which this Act applies. 3. Subject to the provisions of S. 4 this Act shall apply to—

(i) every final decree for sale passed under sub-rule (3) of rule 5 or sub-rule (3) of rule 8 of Order XXXIV of the first Schedule to the Code of Civil Procedure, 1908, and

(ii) every decree for payment of money passed on the basis of a loan.

Decrees to which this Act does not apply.

4. This Act shall not apply to—

(i) any decree passed against any person other than a cultivator, or any decree passed after the commencement of this Act;

(ii) any decree passed in favour of a co-operative credit society registered under the Co-operative Societies Act, 1912;

(iii) any decree passed on the basis of a contract whereby a cultivator promised to supply sugarcane or other agricultural produce in consideration of an advance of money made in order to enable him to carry on the operations necessary for the production thereof; or

(iv) any decree for the payment of money in which the sum decreed including costs and interest up to the date of the decree, but excluding interest thereafter amounts to less than Rs. 10 or more than such amount as may be deemed to be the maximum amount under section 5; or

(v) any final decree for sale passed under sub-rule (3) of rule 5 or sub-rule (3) of rule 8 of Order XXXIV of the first Schedule to the Code of Civil Procedure, 1908, where the amount to be paid under the preliminary decree was less than Rs. 10 or more than such amount as may be deemed to be the maximum amount under section 5;

(vi) any decree the amount of which has been reduced under the provisions of the Agriculturists' Relief Act, 1934.

5. (1) The Local Government may from time to time by notification in the *Gazette* prescribe an amount as the maximum amount for the purposes of sub-sections (iv) and (v) of section 4 and that amount shall be deemed to be the maximum amount from such date as may be specified in that behalf in the notification, or, if no date is so specified, from the date of the notification.

(2) If at any time there is no maximum amount prescribed under sub-section (1) the maximum amount shall be deemed to be Rs. 1,000.

6. Any person against whom a decree to which this Act applies has been passed or his successor or representative may, within a period of one year following the commencement of this Act, apply to the Court passing such decree or, if the decree is being executed, the Court in which execution proceedings are pending, to give him the benefit of the provisions of this Act:

Secs. 6 and 7.—An application made by the judgment-debtor under S. 6, was rejected as he failed to deposit the one-fourth of the decretal amount as required by S. 7 of the Act within the time allowed by the Court. He made a second application and made the necessary deposit. *Held*, that the second application is maintainable in the absence of any pro

Provided that no person shall make such application unless he is a cultivator on the day on which this Act comes into force and is a cultivator on the date of the application.

7. Any person making an application under section 6 shall pay into court to the credit of the decree-holder either on the date of the application or on some other date within a period to be fixed by the court and not exceeding thirty days a sum equivalent to 25 per cent. of the amount due under the decree if the decree is for payment of money or, under the preliminary decree, if the decree is a final decree for sale.

Consequences of non-payment or payment under section 7. 8. (1) If payment is not made as required by section 7 the application made under section 6 shall be rejected.

(2) If the applicant makes payment as required by section 7 and there is nothing to show that he is not entitled to the benefit of this Act, the court shall pass an order directing that all proceedings then pending for the execution of the decree shall be stayed and that the debtor shall pay the balance into court by annual instalments to be fixed by the court, subject to the following provisions, namely,—

(a) if the rate of interest at which the debt was incurred exceeds 24 per cent. per annum, the total of the instalments shall not exceed 40 per cent of the amount due under the decree, and

vision debaring the cultivator from making such an application after an earlier application has been rejected. 171 I.C. 621=1937 O.L.R. 573=1937 O.W.N. 1126=A.I.R. 1937 Oudh 528.

Secs. 6 and 8.—The intention of the legislature in passing the Temporary Regulation of Sales Act was primarily to give relief to cultivators and the Court must therefore endeavour to interpret the Act according to its spirit. Where some, but not all of the judgment-debtors are cultivators within the meaning of the Act, the benefit of the Act shall, if possible, be granted to such of the judgment-debtors as are cultivators within the meaning of the Act, and shall be granted only so far as their share of liability is concerned; but if it is not feasible so to separate their liability than all the judgment-debtors would be entitled to the benefit of the Act. The cultivators judgment-debtors should not be made to lose the benefit of the Act by reason of their association with non-cultivators. 1937 A.L.J. 1387=1938 A.W.R. 20 (H.C.).

Sec. 7.—PERIOD FOR PAYMENT.—POWER OF COURT TO EXTEND.—Under S. 148, C. P. Code, and also in the exercise of its inherent powers the Court has jurisdiction to enlarge the period fixed by it by its order under S. 7 of the U. P. Temporary Regulation of Execution Act for payment of the 25 per cent of the amount due under the decree. But the enlargement can not extend beyond thirty days from the date on which the order under S. 7 was passed. 1937 O.W.N. 1233=1938 O.L.R. 6.

PERIOD OF THIRTY DAYS.—WHEN COMMENCES.—Under S. 7 the maximum period of thirty days which can be allowed by the Court for payment of the 25 per cent. of the amount due under the decree means thirty days from the date of the order, and not thirty days from the date of the application. 1937 O.W.N. 1233=1938 O.L.R. 6.

(b) if the rate of interest at which the debt was incurred is equal to or is less than 24 per cent. per annum, the total of the instalments shall not exceed 50 per cent. of the amount due under the decree,

(c) the number of instalments shall not exceed 5, and

(d) no interest shall be chargeable on the instalments.

(3) The court shall issue a notice to the decree-holder informing him of the order passed under sub-section (2).

9. The decree-holder may, within one month from the service of the notice under section 8 (3), or if no notice has been served on him, at any time within the period of three months from the date of the order under section 8 (2), apply to the court to have the order set aside, and, if he satisfies the court that the application under section 6 was not in order or that the payment under section 7 was not properly made or that this Act does not apply to the decree, the order shall be set aside.

10. (1) If the judgment-debtor in any year for which an instalment is due shall pay to the decree-holder an amount equal to the total of twenty times the amount of local rate, if any, payable by him in that year and the amount of rent, if any, that he is liable to pay in that year, or, but for a contract to the contrary, express or implied, would be liable to pay in that year, as reduced by any remissions which may have been granted, he shall be deemed to have paid the instalment for that year in full:

When judgment-debtor may be deemed to have paid an instalment.

Provided that in the case of the hill patts of Kumaun Division, the amount of instalment shall be five times the debtor's land revenue or the rent as the case may be:

Provided also that in the case of permanent tenure holders and fixed-rate tenants the section shall be so read as if for the words "the amount of rent" the words "three times the amount of rent" were substituted.

(2) If two instalments are in arrears the decree-holder may proceed to execute the decree for the balance that would have been outstanding had no proceedings been taken under this Act.

(3) If the applicant shall pay all the instalments, the decree shall be deemed to be satisfied in full.

11. The Local Government may for any local area from time to time by notification in the *Gazette* extend the period of one year within which a judgment-debtor may apply to the court in accordance with the provisions of section 6.

Extension.

12. No person who has made an application under the United Provinces Encumbered Estates Act shall be entitled to make an application under this Act.

When application cannot be made.

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

Rules.

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

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

14. Notwithstanding anything in this Act no person shall be deemed to be a cultivator who has been assessed to income-tax in the year immediately preceding the passing of this Act.

Income-tax assessee not deemed to be a cultivator.

SCHEDULE.

Agriculturists, agricultural labourers, general labourers, cowherds, goatherds, dairymen, blacksmiths, carpenters, fishers, hunters, boatmen, barbers, tanners and leather workers, scavengers, basketmakers, potters, midwives, watchmen, washermen, weavers or other servants of the village community or any similar class or person, whom the Local Government may by notification in the *Gazette* from time to time include in this Schedule.

The United Provinces Encumbered Estates Act (XXV of 1934 as amended by U. P. Act IV of 1935).

[10th April 1935.]

[N.B. FOR RULES MADE UNDER THIS ACT SEE 33 A.L.J.
(1935) JOUR. PORTION I TO LIV.]

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

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called THE UNITED PROVINCES ENCUMBERED ESTATES ACT, 1934.

Sec. 1: RECEIVER.—Even assuming that a Special Judge exercising Jurisdiction under the U. P. Encumbered Estates Act has the power to

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

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

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

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

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

Definitions.

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

(b) "private debt" means any debt other than a public debt;

(c) "public debt" means a debt due to Government or to a local authority;

(d) "land" means a share of or interest in a mahal in the United Provinces, but does not include the interest of a mortgagee or thekadar or an assignment of land revenue unless it is transferable and perpetual;

appoint a receiver, yet it is not open to him to exercise that power at the instance of persons who are no doubt creditors, but who are not entitled to possession of the properties in respect of which the appointment of a receiver is asked for. 1937 A.W.R. 1125=1937 A.L.J. 1316.

APPEAL.—It is impossible to entertain an appeal under one Act against an order passed under another Act. A judgment-debtor who is aggrieved by an order passed by the Sales Officer under S. 4 (a) of the Regulation of Sales Act has no right to appeal to the Board of Revenue under the Encumbered Estates Act, praying to have that order set aside. 1936 R.D. 396=1937 A.W.R. 119.

Sec. 2.—No doubt the Act is not intended for the relief of liabilities contracted in the course of ordinary business but once the liability is translated into the form of a decree it ceases to consist of unliquidated damages. 1937 R.D. 204.

Secs. 2 (a) and 7.—A suit in which the plaintiff claims the relief of possession of immovable property is obviously not one in respect of any 'debt'. A claim for mesne profits is equally not one for a 'debt', which is declared by the Encumbered Estates Act to include any 'pecuniary liability except liability for unliquidated damages.' Mesne profits are unliquidated damages. 1937 A.L.J. 1139=1937 A.W.R. 1118.

(e) "protected land" means land to which the provisions of the Oudh Settled Estates Act, 1917, or of Part II of the United Provinces Estates Act, 1920, apply and "unprotected land" means land to which these provisions do not apply;

(f) "mahal" has the same meaning as in sub-section (4) of section 4 of the Land Revenue Act, 1901;

(g) "landlord" means a proprietor of a mahal or of a share of or interest in a mahal and includes an ubaridar, an under-proprietor or a sub-proprietor and a proprietor of specific plots, but does not include a mortgagee or a thekadar:

Provided that no person shall be deemed to be a landlord, if his land is assessed to less than a local rate of one rupee under section 109 of the District Boards Act, 1922.

(h) "sir" has the same meaning in Agra as in the Agra Tenancy Act, 1926, and in Oudh as in the Oudh Rent Act, 1886;

(i) "khudkasht" means land, other than sir, cultivated by the landlord, with his own or hired stock or by his servants or by hired labour;

(j) "pre-slump profits" of land mean the balance left after deducting the amount of the annual Government revenue, if any, without allowing for the remission for the fall in prices and the rates payable annually under the United Provinces Land Rates Act, 1914, or any other Act for the time being in force, from the aggregate amount of—

(i) the rent which the landlord is entitled to receive annually from his tenants without deducting the remission due to the fall in prices,

(ii) the rent determined in accordance with rules framed by the Local Government which the landlord would have to pay annually for his sir and khudkasht, if any, if he were an exproprietary tenant thereof without making any allowance for the remission for the fall in prices,

(iii) all other profits annually receivable by the landlord, and

(iv) in the case of profits occasionally receivable or varying in amount from year to year other than the price of

Sec. 2 (g).—Where the cesses payable by a person come to less than Re. 1 however calculated, but such person has been assessed to Re. 1-1-0 and has regularly paid that amount, he comes within the definition of a landlord and is entitled to take advantage of the Act. 1937 R.D. 204 (1). A person who had executed a conditional sale and whose name was thereafter in mutation proceedings expunged from the *khevat*, is not a landlord within the definition of S. 2 (g). 1937 R.D. 146.

Secs. 2 (g) and 4.—A person who wishes to benefit by the provisions of the Act must necessarily prove that he was a landlord when the Act was passed. Acquisition of landed property subsequent to the passing of the Act is not sufficient. 1937 R.D. 103=1937 A.W.R. 268; See also 1937 R.D. 58.

timber trees sold, the average annual amount of such profits from the end of the year 1338 *Fasli*;

(v) one-fifteenth part of the estimated price of timber trees owned or possessed by the landlord and situated on his land,

(k) "post-slump profits" of land mean the balance left after deducting the amount of the annual Government revenue, if any, as reduced by the remission for the fall in prices, and the rates payable annually by the proprietor under the United Provinces Local Rates Act, 1914, or any other Act for the time being in force from the aggregate amount of—

(i) the rent which the landlord is entitled to receive annually from his tenants as reduced by the remission for the fall in prices;

(ii) the rent determined in accordance with rules framed by the Local Government which the landlord would have to pay annually for his *sir* and *khudkasht*, if any, if he were an exproprietary tenant thereof after allowing for the remission due to the slump in prices;

(iii) any other profits annually receivable by the landlord;

(iv) in the case of profits occasionally receivable or varying in amount from year to year other than the price of timber trees sold, the average annual amount of such profits from the end of the year 1338 *Fasli*;

(v) one-fifteenth part of the estimated price of timber trees owned or possessed by the landlord and situated on his land:

Provided that in calculating the pre-slump profits no regard will be had to remissions of rent and revenue and in calculating the post-slump profits no regard will be had to remissions of rent or revenue other than those for the fall in prices:

Provided also that if the pre-slump profits as calculated in accordance with sub-clause (j) are less than the post-slump profits the pre-slump profits shall be calculated in the manner laid down for calculating the post-slump profits in sub-clause (k);

(l) "instalment value" of proprietary rights in land means the sum which could be repaid with interest at the rate specified in section 27 by instalments over a period of 20 years out of the profits of that land after making due allowance for short collections, the cost of management and the maintenance of the landlord and his family;

(m) "transfer value" of proprietary rights in land is the valuation at which such proprietary rights would be transferred to a creditor under this Act in liquidation of a debt.

CHAPTER II.

APPOINTMENT OF OFFICERS.

3. (1) The Local Government may appoint any civil judicial officer to be a Special Judge of the first or second grade for any local area and such Special Judge shall, subject to the orders of Government as regards the area and extent of his jurisdiction, exercise the powers conferred, and perform the duties imposed, on him by this Act.

(2) The Local Government may suspend or remove any Special Judge so appointed.

CHAPTER III.

THE APPLICATION.

4. (1) At any time within one year after the date on which this chapter comes into force any landlord who is subject to or whose immovable property or any part thereof is encumbered with private debts, may make an application in writing to the Collector

Sec. 4.—An applicant under S. 4 must have been a landlord when the Act came into force. An applicant who acquires Zamindari property after that date is not entitled to the benefits of the Act. 1937 R.D. 158; 1937 R. D. 163=1937 A.W.R. 449. A person holding land in a *mahal* of a certain district is at liberty to present his application under S. 4 before the Collector of that district, even though his share in the *khexwat* of that district may not be assessed to a full rupee of local rate and even though the greater part of his landed property may lie in another district where he is fully qualified. 1937 R.D. 332. The dismissal of the application for the restoration of the original application under S. 4 does not debar the applicant from making a second application under the Act, as the two remedies prescribed by O. 9, R. 4, C. P. Code, are not mutually exclusive. 166 I.C. 400=1937 O.W.N. 61=A I.R. 1937 Oudh 262.

Secs. 4 and 6.—Under S. 6 the Collector should pass an order only when he is satisfied that the application under S. 4 "has been duly made." It is his business to satisfy himself after making adequate enquiries. He should at least send for the *patwari* and should not treat the copies of the *khexwat* filed along with the application as conclusive proof that the applicants are "landlords" under the Act. Such copies merely constitute a piece of evidence which can be rebutted. 1937 A.W.R. 267=1937 R.D. 101 (2). Where the period of six months extended by the Local Government under S. 4 (2) of the Act for filing application under that section, expired on a Gazetted holiday followed by a Sunday, an application filed on the succeeding Monday is within limitation. 1937 R.D. 298. There can be no doubt that any person who is a landlord within the meaning of the Act whose immovable property is encumbered with debts is competent to apply to the Collector under S. 4 of the Act. When the Collector is satisfied that the application was "duly made," he has to act in accordance with S. 6. The Collector is not merely competent, but is under an obligation, to satisfy himself that the

of the district in which his land or any portion of his land is situated stating the amount of such private debts and also of his public debts both decreed and undecreed and requesting that the provisions of this Act be applied to him :

requirements of S. 4 are fulfilled. 1937 A.L.J. 877=1937 A.W.R. 778=A. I.K. 1937 All. 658. Land belonging to the applicant under S. 4 of the Encumbered Estates Act need not be used for agricultural purposes. The Act in S. 2 (d) merely defines 'land' as a share or interest in a *mahal*. If the *khetwat* shows that the applicant has some land, although it is included in municipal limits and he pays water rates and house tax, he has nonetheless a share in a *mahal* and a liability to pay revenue and rates. 1937 R.D. 332. The revenue authorities alone are competent to decide whether an applicant under S.4 of the Encumbered Estates Act is a landlord within the meaning of that Act. The Deputy Commissioner should, therefore, decide this question before passing an order under S. 6 of the Act directing the application to be sent to the Special Judge. 1937 R.D. 136.

Quære.—Whether only a recorded co-sharer can apply under S. 4 of the Encumbered Estates Act? I.L.R. (1937) All. 963=1937 R.D. 554=1937 A. W.R. 923=1937 A.L.J. 867=A.I.R. 1937 All. 769. The joint property of two brothers, one of whom was an insolvent, was put up for sale and sold in execution of a decree. The sale was accepted by the Official Receiver on behalf of the insolvent so far as it related to his half-share. The other, however, filed an application under S. 4 of the Act, and the application was accepted. *Held*, that the acceptance of the application had the effect of stopping all further proceedings, and the sale of the half-share of the applicant in the property could not be confirmed, as such confirmation would be *ultra vires* in view of S. 7 of the Act. 1936 R.D. 537=1936 A.W. R. 1135. Under S. 4 (1) the application has to be made within one year *after* the date on which this chapter came into force. The Act came into force from the 30th April, 1935, therefore application could be made within one year, not *from* but *after* that date. Thus limitation runs from the 1st May and expires on the following 30th of April, not on the following 29th of April. If under S. 4 (2) the Local Government has extended the time prescribed under S. 4 (1) by a further period of six months, this can only mean six calendar months from the 1st of May. Limitation therefore runs to the last day of October. If the last day of October and the 1st of November happen to be holidays, the application presented on 2nd November, 1936, will be within time under S. 4 of the Limitation Act. 1937 R.D. 202. Trustees acting on behalf of a landlord and having all the requisite powers, including the power to transfer property, can make an application under S. 4 of the Encumbered Estates Act. 1937 R.D. 41.

Where the applications under S. 4 who are members of a joint Hindu family, omit to sign the application as guardians of their minor sons but bring the omission to the notice of the Court at the earliest opportunity, though after the expiry of limitation, and ask to be allowed to amend their application by the addition of the names of their sons, whose existence they are not trying to conceal there is no reason why they should not get the benefit of O. 6, R. 17, C. P. Code, although their application cannot be allowed under the provisions of S. 4 (4) of the Act. 1937 R.D. 590. But *see* 1937 R.D. 368. The benefit of S. 4 (4) cannot be availed of or claimed by a person who parleys with his creditors and then finds that limitation has applied. 1937 A.W.R. 1176 *See also* 1937 A.W.R. 868. In the case of a debt which is discharged by the fact that a suit brought by the creditor on the debt was dismissed on account of the plaintiff's default, but which is subsequently revived by a decree passed by the appellate Court on appeal, the debtor must be held to have been "prevented" from applying in

Provided that when the property of any landlord is under the superintendence of the Court of Wards any application under this section shall be made by the manager of his

time within the meaning of S. 4 (4) of the Act, because during the whole period there was no debt in respect of which the debtor could apply. The debtor in such a case must be given the benefit of the six months' extension of the limitation granted under S. 4 (4). 1937 A.W.R. 1178=1938 O. W.N. 37. If an application under the Act, which has *prima facie* not been duly made has been forwarded to the Judge without any enquiry, it is the duty of the Collector to make an enquiry when they are brought to his notice and report, if necessary, to the Board of Revenue for action to be taken in revision. The only Court which can decide whether an application has been duly made is the Court of the Collector, and if a *prima facie* case is made out by an objector, enquiry must be made by the Collector. 1937 R. D. 478=1937 A.W.R. 1030. Where an application under S. 4 of the Encumbered Estates Act fails to disclose the existence of a son who is joint with the applicant and does not express an intention to separate as required by the second proviso of S. 4, vital deficiencies of this description cannot be rectified after the limitation for the application has expired. 1937 R.D. 368. But see 1937 R.D. 590.

Khewats are only to be filed with the application under S. 4 to serve as evidence that the applicant is a landlord; there may well be cases where the *khewats* might be brought into conformity with the facts after the expiry of the Act without thereby invalidating a claim to have a right to apply under the Act. An order under S. 6 cannot therefore be cancelled on the ground that the applicant was not recorded in the *khewat* either when the application was filed or when it was forwarded to the special Judge. 1937 R.D. 482=1937 A.W.R. 1032. A person who was a landlord on the date on which the Act came into force and also on the date on which he presented the application under S. 4 of the Act, is entitled to the protection of the Act, even though during the interval he had divested himself of his proprietary rights but in order to secure the protection of the Act managed to recover a portion just sufficient to bring him within the definition of a landlord. 1937 R.D. 358. The word "prevent" connotes some physical disability which actually hinders a man from applying in time, such as serious illness or absence from India and the like. The Act has to be interpreted strictly. A man who thinks that he could do better by private negotiations than by application under the Act, and abstains from applying in the hope that his private negotiations would be fruitful and would render an application unnecessary cannot be said to be "presented" from applying within the meaning of S. 4 (4) of the U. P. Encumbered Estates Act, so as to be entitled to the benefit of that clause. If he applies only when his hopes are finally disappointed, he cannot claim the benefit of S. 4 (4). 1937 R.D. 396=1937 A.W.R. 868. See also 1937 A.W.R. 1176. An application presented about 4½ months beyond the time prescribed ought not to be accepted under S. 4 (4) of the Act, when the applicant gives no adequate reason to explain the delay beyond the plea that he was advanced in years and was continuously ill. It is the duty of the applicant to support his allegations by evidence. 1937 R.D. 484=1937 A.W.R. 1034.

Proviso 2 to S. 4 is a mandatory provision. The omission on the part of an applicant to disclose the existence of sons living jointly with him, whether accidental or deliberate, is a most material omission. The application is not one duly made. An amendment of such an application would be permissible only, if an application therefor, is made within the period of limitation prescribed for presenting an application under S. 4 of the Act. 1937 O.W.N. 1173.

property and, when any landlord is by reason of personal incapacity disqualified from instituting any proceeding in a civil court, an application under this section may be made on his behalf by his legal or natural guardian or any person actually managing his property:

Provided also that no application by a member of a joint Hindu family shall be entertained, unless—

(a) all the members of such family join and the fact is stated in the application, or

(b) the applicant makes in the application an express declaration of his intention of separating from the joint family and states the names and addresses of the remaining members of the family and the share which the applicant would be entitled to get on partition of the family property:

Provided also that no landlord who has been adjudicated insolvent and has not been discharged shall apply under this section:

Provided also that if an application under this section is made by all the heirs of a deceased debtor who are not members of a joint Hindu family, then this fact shall be stated in the application:

Provided also that if an application under this section is made by one or more but not by all the heirs of a deceased debtor who are not members of a joint Hindu family then this fact shall be stated in the application and the names and addresses of those heirs who have not joined in the application and the shares of all the heirs in the property inherited by them from the deceased debtor shall be mentioned in the application.

(2) The Local Government may by notification in the *Gazette* extend the time prescribed for making applications under this section by a further period of six months.

(3) If within three months after the date on which Chapter III of this Act comes into force a landlord has applied for amendment of a decree under the provisions of the United Provinces Agriculturists' Relief Act, 1934, the period from the date of his application to the date of the final disposal thereof shall be excluded from the period within which he may make an application under sub-sections (1) and (2) of this section.

(4) If a landlord presents an application under this section within a period of six months next following the last date on which an application may be made under the provisions of sub-section (1) or (2) of this section, as the case may be, and satisfies the Collector that he was prevented by any sufficient cause from applying within the period prescribed by those sub-sections, the Collector may accept the application.

5. No landlord who has made an application under section 4 shall be entitled to make another application to any other Collector. If such other application is made all proceedings arising out of it shall be void and such application shall be reported to the Board of Revenue.

Bar of second application.

6. 1[When an application has been duly made according to the provisions of section 4, the Collector shall forthwith pass an order that it be forwarded to the Special Judge and shall furnish the applicant free of cost with a

Transmission of application to Special Judge.

Sec. 6.—¹ Substituted by U. P. Amending Act IV of 1935.

Secs. 6 and 7.—See 158 I.C. 586=1935 O.W.N. 1118=A.I.R. 1935 Oudh 497.

Secs. 6, 7 and 2 (g).—A person obtained a decree for arrears of rent and proceeded against the landed property of his tenants and brought it for sale in execution of his decree instead of suing for their ejectment under S. 79, Agra Tenancy Act. Before the sale was confirmed, the judgment-debtors obtained an order under S. 6 of the Encumbered Estates Act and all further proceedings were stayed. *Held*, so long as the Collector's order under S. 6 stands, it must be presumed the judgment-debtors are landlords within the meaning of S. 2 (g). The judgment-debtors as landlords are entitled to protection of the Act. S. 7 of the Act applies also to the debts of a landlord which he owes *qua* tenant. A process for the ejectment of a tenant for arrears of rent in proceedings under S. 79, Agra Tenancy Act, is exempted from the provisions of S. 7 of the U. P. Encumbered Estates Act, 1937 R.D. 510. Where after the application is forwarded by the Collector to the Special Judge under S. 6 an objection is presented to the effect that the applicant is not a landlord within the meaning of the Act, there is nothing illegal in the order of the Collector for the recall of the records from the Court of the Special Judge. 1937 R.D. 163=1937 A.W.R. 449. Application under pending appeal against valuation under Regulation of Sales Act—Procedure to be followed by Deputy Commissioner. See 1936 R.D. 471. Under S. 6, it is incumbent on the Collector to satisfy himself by enquiry that the application under S. 4 has been duly made. The attachment of a copy of the *khowat* to the application, as required by R. 1 does not absolve the Collector from his responsibility. This extract from the *khowat* is merely a piece of evidence which may be rebutted by an objecting party. If it is pleaded that the share of the applicants as members of a joint Hindu family is insufficient to bring them within the definition of a landlord as set forth in Cl. (g) and the proviso attached thereto of S. 2 of the Act, it is only the Collector who can give a decision on this point and it is not open to him to leave the decision to the Special Judge. 1937 R.D. 77=1937 A.W.R. 279. A Court passing an order under S. 6 has got power to review that order, by reason of the fact that the whole of the C. P. Code have been made applicable, since 1st January, 1937, to all proceedings under the Act. But the only person who is entitled to apply for a review is the debtor whose application has been rejected for wrong reasons; a creditor who was not at all a party before the Court when it passed the order in question has no *locus standi* to apply for a review. 1937 A.W.R. 1176. An Assistant Collector has no jurisdiction to cancel an order passed by him under S. 6. His duty is to report to the Board of Revenue to take action in revision, if he finds that the order was not properly made. 1937

certified copy of the order. He shall then forward the applica-

R.D. 487=1937 A.W.R. 1032. It is only the Revenue authorities that can decide whether an applicant under S. 4 is entitled as a landlord within the meaning of S. 2 to the protection of the Act. If, therefore, after the Collector passes an order under S. 6, a creditor files an objection that the applicant is not entitled to the protection of the Act, it is the duty of the Collector to enquire into the objection and to reject it, if he thinks that the objection could not be maintained. If on the other hand he comes to the conclusion that the applicant under S. 4, not being a landlord within the meaning of the Act, is not entitled to the protection of the Act, he should submit the case to the Board for orders in revision under S. 46 of the Act with a recommendation that his order inadvertently passed under S. 6 should be cancelled. The Collector should not refer the objecting creditor to the special Judge. 1937 R.D. 358. Except by way of review, a Sub-Divisional Officer has no power whatsoever to cancel his order under S. 6 and to reject the application under S. 4, which has been thereby accepted. If the Sub-Divisional Officer thinks that he has made a mistake in certifying the applicant under S. 4 to be a landlord, he should submit the proceedings to the Board of Revenue with his recommendation, and the Board would then deal with the case in revision under S. 46 of the Act. 1937 R.D. 371.

Secs. 6 and 7.—Once an application under the Act has been sent to the Judge, the proceedings under the Regulation of Sales Act which are pending are automatically stayed. 1937 R.D. 479=1937 A.W.R. 1031. The obvious interpretation of S. 7 is that the Courts, whether Revenue or Civil, shall stay proceedings to which that section applies as soon as an order under S. 6 has been made. The special Judge has no jurisdiction to question the legality or otherwise of the orders of the Collector under S. 6; the Collector alone is competent to decide whether an application under S. 4 is in order. The collector's order forwarding the application is conclusive proof of the fact that the applicant is entitled to the benefit of S. 7. The special Judge has to assume that the applicant is entitled to the benefits of the Act and to proceed upon that assumption. 1937 A.L.J. 1207=1937 A.W.R. 1084. Where an Assistant Collector, after issuing a certificate under S. 6, finds that the applicant is not a landlord, it is within his power to submit the case to the Board in revision under S. 46 of the Act. 1937 R.D. 146. Where on the application of the judgment-debtor under S. 4 the Collector includes a decree for arrears of land revenue in the schedule covered by the certificate granted by him under S. 6 of the Act, and the decree-holder objects to the inclusion of the decree on the ground that a decree for arrears of land revenue is excluded from the operation of the Act, it is the duty of the Collector to frame an issue on the point and, after hearing the parties, to formulate a definite decision. He must apply his mind judicially to the point at issue and not dismiss the objection of the decree-holder summarily. 1937 R. D. 15.

Sec. 6: ENQUIRY UNDER—DUTY OF COLLECTOR.—It is the business of the Collector to satisfy himself that the application has been duly made and that the applicant is a landlord within the meaning of the Act. It is only after making the requisite enquiry and after satisfying himself that the "application has been duly made", that the Collector should pass his order under S. 6 and forthwith send it to the Special Judge. 1937 R.D. 158. The Board can cancel the order of the Collector passed under S. 6 of the Encumbered Estates Act forwarding an application under S. 4 to the Special Judge, if it comes to the conclusion that the applicant was not a landlord when the Act came into force. 1937 R.D. 105 (1)=1937 A.W.R. 278. Where after an order is

tion to the Special Judge and shall inform him of such public

passed by a Collector under S. 6 of the Encumbered Estates Act, certain creditors lodge an objection before his successor to the effect that the applicant under S. 4 is not a landlord within the meaning of the Act, the latter is quite at liberty to send for the record from the Court of the Special Judge for the purpose of the enquiry into the objection. Under R. 6 of the rules made by the Local Government under S. 54 of the Act, proceedings under the Act are governed by the provisions of C. P. Code. Consequently, except by way of a formal review, the Collector is not at liberty to cancel the order of his predecessor passed under S. 6 of the Act. After making the necessary enquiry in the presence of the parties, the Collector should submit the record in revision proceedings to the Board with his own recommendation for suitable orders to be passed by the Board under S. 46 of the Act. 1937 R.D. 199. See also 1937 R.D. 396. The passing of an order under S. 6 has the effect of staying further proceedings in execution of a decree and anything done by the Sales Officer after that, whether the order of the Collector under S. 6 is brought to his notice or not, is merely *ultra vires* and void. If the Sales Officer proceeds with the valuation and gives the decree-holder the option under S. 4 of the Regulation of Sales Act, accepting the valuation or makes an order to transfer the property to the decree-holder, the proceedings are void. 1937 A.W.R. 104=1937 R.D. 29. As no order can be passed under S. 6 except in favour of a landlord as defined in S. 2 of the Act, the Collector cannot pass that order without satisfying himself on that point. 1937 R.D. 165=1937 A.W.R. 458.

Secs. 6 and 7 and R. 5.—After the application under S. 4 is duly sent to the Special Judge under S. 6 of the Act, the arrears of Town Area Tax payable by the applicant are not recoverable by attachment and sale of his immovable property so long as the application is pending before the Special Judge. A Town Area Tax is not recoverable as arrears of land revenue and should, therefore, be reported to the Special Judge as laid down in R. 5. 1937 R.D. 203. If after forwarding an application filed under S. 4 of the Encumbered Estates Act to the Special Judge, the Collector holds that the applicant is not a landlord, he cannot cancel his own order. His duty is to refer the case to the Board in revision. For the same reason he cannot allow costs to the successful party. He may make a recommendation about costs but cannot do more. 1937 R.D. 332. Where without making any enquiry as to whether the applicant is a landlord within the meaning of the Encumbered Estates Act, the Sub-Divisional Officer passes an order under S. 6 of the Act and sends the application to the Special Judge, the creditors, who cannot be said to be parties to the proceeding, cannot come to the Board in appeal under S. 45. But it is open to them to draw the attention of the Sub-Divisional Magistrate to his mistake and ask him to move the Board to cancel his order in the exercise of the powers of revision conferred by S. 46. 1937 R. D. 268. See also 1937 R.D. 199. The passing of an order under S. 6 has the effect of staying further proceedings in execution of a decree, and from that time onwards anything done by the Sales Officer, whether the order of the Collector under S. 6 is brought to his knowledge or not, is merely *ultra vires*. Consequently an order of the Sales Officer transferring the property to the decree-holder in satisfaction of his decree passed after the acceptance by the Collector of an application under S. 6 is *ultra vires*, and must be set aside. 1937 A.W.R. 104=1937 R.D. 29; 1936 R.D. 396. A Collector, or a Deputy Collector empowered as a Collector, cannot cancel his own order passed under S. 6 of the Act; but if he thinks that a mistake has been made, it is his duty to submit the case to the Board of Revenue in revision under S. 46 of the Act with his recommendation. 1937

debts outstanding against the landlord as may be laid down in

R.D. 158. If a Collector or Assistant Collector discovers that he has passed an order under S. 6 under a misapprehension, and if he considers and comes to the opinion that the order should not have been passed, he should refer the case to the Board of Revenue under S. 46 of the Act with a recommendation that the order be set aside, or the order may be reviewed under O. 47, R. 1, C. P. Code, as the provisions of the C. P. Code have been made applicable to proceedings under the Act by the amended R. 6 of the Rules under S. 54 of the Act. But he should not cancel the order altogether, without resorting to either of these courses. 1937 R.D. 103=1937 A.W.R. 268. Under S. 6, it is the business of the Collector to satisfy himself that the application made under S. 4 has been duly made; for this purpose an enquiry is necessary. An order under S. 6 without due enquiry, is improperly passed and is liable to be cancelled. 1937 R.D. 189.

Sec. 6.—Order under—Production of copy before Sales Officer after order under S. 4 (a) of the Regulation of Sales Act and before preparation of certificate—Effect—Appeal against valuation of property—Effect on—Procedure to be followed. 1936 R.D. 490. The effect of an order of a Deputy Commissioner under S. 6 of the U.P. Encumbered Estates Act forwarding to the Special Judge an application duly made under S. 4 of the Act, is automatically to bring into operation the consequences set forth in S. 7 (1) (a) of that Act. A Civil Court has, therefore, no power to pass a final mortgage decree after the date of that order, and a decree so passed in ignorance of that order, can be set aside under the provisions of S. 151, C. P. Code. 165 I.C. 852=1936 O.W.N. 1164=A.I.R. 1937 Oudh 106. The question whether the party who has made an application under S. 4 of the Act falls within the definition of a landlord should not be left for decision by the Special Judge. This is a point which can be decided only by the Revenue Authorities—in the first instance by the Collector after making due enquiry before passing an order under S. 6, and in the last resort by the Board of Revenue in appeal or revision. 1937 R.D. 159. All the proceedings up to S. 6 of U. P. Encumbered Estates Act lie in the Revenue Court of the Collector. When the Collector passes an order under S. 6, the only papers to be forwarded to the Special Judge are (1) the original application under S. 4 with all documents attached thereto, and (2) the order of the Collector passed under S. 6; the actual proceedings should remain in the Court of the Collector. On receiving these papers, the Special Judge will open his record. 1937 R.D. 103=1937 A.W.R. 268. It is not proper for the Collector to send the whole of his record to the Special Judge. All the proceedings up to S. 6 are within the jurisdiction of the Revenue authorities and the records of those proceedings should therefore always remain in the collectorate. The only documents to be sent to the Special Judge are (1) the original application under S. 4, with all documents attached thereto, and (2) the Collector's order under S. 6. These will form the basis of the record in the Court of the Special Judge. 1937 A.W.R. 267=1937 R.D. 101 (2). Action taken under Rr. 8-A and 8-B, made under the Regulation of Sales Act constitute proceedings within the meaning of S. 7 of the Encumbered Estates Act. S. 7 of the latter Act is mandatory and any order passed by a Court acting under the Regulation of Sales Act after the Collector has taken action under S. 6 of the Encumbered Estates Act is *ultra vires* and must be set aside, pending the completion of the proceedings in the Court of the Special Judge. 1937 R.D. 30=1937 A.W.R. 119. If the Collector entertains and accepts an application under S. 4 of the U. P. Encumbered Estates Act, it is not open to the Special Judge, to whom it is forwarded under S. 6, to refuse to proceed with it on the ground that the applicant was not entitled to apply under S. 4 or that the Collector should not have treated

rules framed by the 1[Provincial Government] in this behalf].

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

the application as one "duly made." The Act nowhere empowers the Special Judge to send back the application to the Collector for the decision of a question which should have been, but was not, raised before the Collector originally and was subsequently raised before the Special Judge. It is not open to the latter to question the Collector's jurisdiction to entertain an application under S. 4. Once the application is received by the Special Judge from the Collector under S. 6, he has no option but to follow the procedure laid down by the Act. I.L.R. (1937) All. 963=1937 R.D. 554=1937 A.W.R. 923=1937 A.L.J. 867=A.I.R. 1937 All. 769. The Collector should not sanction an alienation of property under S. 7 of the Encumbered Estates Act when the proceeds of such alienation are to be utilized entirely for the benefit of the debtors, as for example their marriage expenses and repair of their residential house. There can be no question whatever that the alienation is to the prejudice of the creditors. 1937 R.D. 69 (1)=1937 A.W.R. 370. Where in a composite suit some of the reliefs claimed are affected by S. 7 of the Encumbered Estates Act and others are not, the whole suit should not be stayed. To such a case the provisions of O. 2, R. 6, C. P. Code, apply and the Court should order separate trial of the causes of action in respect of which the different reliefs are claimed and stay the trial of the suit only as regards such of those causes of action in respect of which the reliefs are affected by S. 7 of the Act. 1937 A.L.J. 1139=1937 A.W.R. 1118. Where certain creditors of a landlord apply to have the debtor adjudicated an insolvent, and pending that application, the debtor landlord makes an application to the Collector under the Encumbered Estates Act, the plain meaning of Ss. 7 and 48 (2) of the Act is that the application in insolvency filed by the creditors will be stayed and kept pending during the disposal of the case in the Court of the Special Judge and of the Collector under the Act. The insolvency proceedings cannot, under S. 48 (2), be regarded as an exception to the general rule laid down in S. 7, so as to save them from being stayed. It is open to the creditors to present their application outside the period barred by S. 48 (1). But when such an application has been presented, the provisions of S. 7 will apply and the proceedings in the Insolvency Court will be stayed just in the same manner as the proceedings in any other Civil or Revenue Court. I.L.R. (1937) All. 505=169 I.C. 220=1937 A.L.R. 486=1937 A.L.J. 158=1937 A.W.R. 142=A.I.R. 1937 All. 303. A sale in execution of a decree for damages obtained under S. 18 (5) of the Tenancy Act should be stayed on an application being made by the judgment-debtor under the Encumbered Estates Act and sent by the Collector to the Special Judge. Once the damages have been ascertained and settled in a decree, they cease to be unliquidated and must be included in the debt of the applicant. 1937 R.D. 130. Under S. 7 of the Act, it is the duty of the executing Court to determine whether the applicant was the owner of the property and whether he had a right to apply and also to decide on the objections raised in bar of the application for stay; the dismissal of the application for stay without considering these questions would amount to a refusal to exercise a jurisdiction justifying the High Court in interfering in revision under S. 115, C. P. Code. 1937 A.L.J. 877=1937 R.D. 498=1937 A.W.R. 778=A.I.R. 1937 All. 658. Where a joint property belonging to two brothers was sold at an auction in satisfaction of a decree, and one of the brothers filed an application to the Collector under S. 4 which was accepted, a confirmation of the sale so far as his half of the property is concerned is *ultra vires* in view of the provisions of S. 7 of that Act, in the absence of the confirmation of the sale by the Collector. 1936 A.W.R. 1135=1936 R.D. 537. In execution of a decree a certain sum of money that was in the custody of the Court of Wards to the credit of the judgment-debtor was attached, and the money was sent

Consequences of 1[7. (1) When the Collector has
 acceptance of an passed an order under section 6 the follow-
 application by the ing consequences shall ensue:
 Collector.

(a) all proceedings pending at the date of the said order in any civil or revenue court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered, except an appeal or revision against a decree or order, shall be stayed, all attachments and other execution processes issued by any such

Sec. 7.—¹ Inserted by U. P. Amending Act IV of 1935.

by the Court of Wards to the Executing Court. The judgment-debtor then made an application to the Collector under the Encumbered Estates Act and obtained an order under S. 6 of that Act. The judgment-debtor also made an application in the Executing Court presumably under S. 7 asking it not to pay the money received from the Court of Wards to the decree-holder. It was argued that after the money was received in Court, the attachment ceased to exist and was no longer in force when the Collector passed the order under S. 6 and that, therefore, S. 7 was inapplicable. Repelling that argument,

Held, that although the attachment was completed when the money was sent by the Court of Wards to the Court, it was wholly incorrect to say that the attachment was not in force after the receipt of the money by the Court, and that in fact it was by the very force of the attachment that the money was in Court and so long as it was not disposed of by the Court by paying it over to the decree-holder or otherwise, the attachment must be deemed to be in force and that, therefore, under S. 7 (1) of the Act, that attachment became null and void and consequently the money could not be made over to the decree-holder. 168 I.C. 467=9 R.O. 478=1937 R.D. 279=1937 O.L.R. 282=(1937) O.W.N. 562=A.I.R. 1937 Oudh 385. Proceedings against the judgment-debtor under the rules governing the Regulation of Sales Act should be stayed under S. 7 of the Encumbered Estates Act. 1937 R.D. 142. There can be no doubt that proceedings which a Court executing a money decree has to take after the sale, but before the final order of confirmation thereof, are proceedings in execution. They are clearly proceedings in respect of a public or private debt to which the judgment-debtor is subject within the meaning of S. 7 (1). Such proceedings must consequently be stayed by the executing Court if it receives information that the Collector has taken action under S. 6 of the Act. 1937 A.W.R. 897=1937 A.L.J. 865=1937 R.D. 542.

Sec. 7 (1) (a).—Applicability—Insolvency Court—If Civil Court. An Insolvency Court is a Civil Court for purposes of S. 7 and the provisions of S. 7 (1) (a) of that Act are therefore applicable to an Insolvency Court as well. I.L.R. (1937) All. 505=169 I.C. 220=1937 A.L.R. 486=1937 A.L.J. 158=1937 A.W.R. 142=A.I.R. 1937 All. 303. S. 7 is very wide in its terms and the "proceedings" mentioned in Cl. (1) (a) of that section are wide enough to cover proceedings in execution against a judgment-debtor's surety pending at the time when the Collector passes an order under S. 6. Where a person stands surety for the judgment-debtors and execution is taken out against him under S. 145, C. P. Code, on the failure of the judgment-debtors to pay the decretal amount, and pending the execution proceedings against the surety one of the judgment-debtors applies under S. 4, the proceedings against the surety should, in view of the provisions of S. 7 of the Act, be stayed till the matter is decided by the Court which has

court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued;

(b) no fresh suit or other proceedings other than an appeal or revision against a decree or order, or a process for ejectment for arrears of rent shall, except as hereinafter provided, be instituted in any civil or revenue court in the United Provinces in respect of any debts incurred before the passing of the said order:

Provided that when a landlord has executed an usufructuary mortgage in respect of any of his land and is in possession of that land as a *thekadar* of the mortgagee, no fresh process shall issue for his ejectment from that land for arrears of the *theka* rent.

(2) After the passing of the said order and until the application is dismissed by the Special Judge under sub-section

to hear and decide the application of the judgment-debtor under the Act. I. L.R. (1937) All. 561=169 I.C. 616=1937 All. 360. A "debt" under the Act means any pecuniary liability, and includes money which a party is liable to refund by way of restitution on reversal of a decree under S. 144, C. P. Code. Proceedings for restitution can therefore be stayed under S. 7 of the Act, if the application for stay is a genuine application and not intended to defeat the particular debt alone. 1937 R.D. 444=1937 A.W.R. 1029. The appropriate Court to which an application for stay under S. 7 (1) (a) is the Court which is executing the decree and in which the execution proceedings are pending. 1937 A.W.R. 986=A.I.R. 1938 All. 6. In the case of a decree jointly against several persons, the judgment debt being a joint debt, the execution has to be stayed under S. 7 (1) (a) even if one only of the judgment-debtors applies under the Act, until the special Judge has determined the amounts required to be determined under S. 9 (5) (a). 1937 A.W.R. 986=A.I.R. 1938 All. 6. S. 7 (1) (b) has no application to suits for possession of immovable property. A claim to possession of such property does not fall within the purview of S. 7 and is consequently not barred by reason of a prior order under S. 6 of the Act. 1937 A.W.R. 933=1937 A.L.J. 945=A.I.R. 1938 All. 8. A claim for recovery of mesne profits is not a claim in respect of a debt within the meaning of S. 7 (1) (b). Mesne profits at best amount to unliquidated debts. 1937 A.W.R. 933=1937 A.L.J. 945=A.I.R. 1938 All. 8. A suit to enforce a pecuniary liability imposed on the defendant by a deed of settlement is a suit in respect of debt as defined by the Act. 1937 A.W.R. 933=1937 A.L.J. 945=A.I.R. 1938 All. 8. Where in a suit it is found that some of the reliefs claimed fall within the purview of S. 7 (1) (b) but that the others do not so fall, there is no bar to the granting of relief in respect of the claims which do not fall within the mischief of S. 7 (1) (b). An order staying the entire suit in such a case is wrong in law and unjust, but the Court has jurisdiction to recall its order staying the entire suit; and its order so recalling the previous order cannot be challenged, because a Court has inherent jurisdiction to recall and cancel its invalid orders. 1937 A.L.J. 945=1937 A.W.R. 933=A.I.R. 1938 All. 8. Under Cl. (2) of S. 7 the person who is debarred from dealing in the property defined in that clause, without the consent of the Collector, is the landlord. A pledgee not even of the applicant landlord, but of the firm in which he is one of the partners cannot, therefore, be restrained from exercising his right of sale under S. 176 of the Contract Act in respect of the pledged goods. 1937 R.D. 383.

(3) of section 8 or proceedings under this Act are quashed under section 20 or until the Collector has liquidated the debt in full under section 23 or section 24 or granted a mortgage under section 25 or passed orders under section 27 or section 28, no decree obtained on the basis of any private debt incurred by the landlord after the passing of the order under section 6 shall be executed against any of his property, other than proprietary rights in land, which has been mentioned in the notice under section 11 and the landlord shall not be competent without the sanction of the Collector to make an exchange or gift of, or to sell, mortgage or lease, any of that property.

(3) After the passing of the order under section 6 and until the Collector has declared in accordance with section 44 that the landlord has ceased to be subject to the disabilities of this subsection no decree obtained on the basis of any private debt incurred after the passing of the order under section 6 shall be executed against any of the landlord's proprietary rights in land mentioned in the notice published under section 11 and the landlord shall not be competent, without the sanction of the Collector, to make any exchange or gift of, or to sell, mortgage or lease those proprietary rights, or any portion of them.

(4) Any transfer made in contravention of the provisions of this section shall be void.]

Proof of Debts and Procedure of Special Judge.

18. (1) When the Special Judge has received an application under section 6, he shall call upon the applicant to submit to him within a period to be fixed by him in this behalf a written statement containing, so far as may be practicable,—

Written statement to be submitted.

(a) full particulars respecting the public and private debts to which the landlord is subject, or with which his immovable property or any part thereof is encumbered;

(b) the nature and extent of the landlord's proprietary rights in land;

(c) the nature and extent of the landlord's property which is liable to attachment and sale under section 60 of the Code of Civil Procedure, 1908, exclusive of his proprietary rights in land; and

(d) the names and addresses of his creditors, so far as they are known to or can be ascertained by the applicant.

(2) The statement shall be verified in the manner prescribed by law for the verification of plaints:

Verification of statement.

¹Old Ss. 7 and 8 have been re-numbered as Ss. 8 and 9 and old S. 9 has been omitted by U. P. Amending Act IV of 1935. S. 5 of Amending Act is as follows:—"Whenever before the passing of this Act reference is made in the principal Act to S. 7, 8 or 9 such reference shall be read as if it were a reference to S. 8, 9 or 7, respectively."

Provided that, when the application is made by the manager of any property under the superintendence of the Court of Wards, it shall not be necessary for such manager to verify the statement; but the landlord shall, so far as may be practicable, within a period to be fixed by the Special Judge in this behalf, furnish such information regarding any of the matters mentioned in clauses (a), (b), (c) and (d) of sub-section (1) of this section as the Special Judge may require.

1[(3) When the written statement referred to in sub-section (1) or the information referred to in the proviso to sub-section (2) has not been submitted or furnished within the period fixed without any reasonable cause, the Special Judge may dismiss the application and in that case shall inform the Collector that he has done so.]

9. 1(1) The Special Judge shall publish in the *Gazette* a notice in English, Urdu and Hindi calling upon all persons having claims in respect of private debts both decreed and undecreed against the person or the property of the landlord by or on whose behalf the application has been made under section 4 to present to the Special Judge, within three months from the date of the publication of the notice, written statements of their claims.

(2) The Special Judge shall also cause copies of such notice to be published in such papers including at least one paper published in English as he may direct and to be exhibited at his own office, at the office of each Collector within whose district any part of the property of the landlord is situate, and at some conspicuous place in the village where the landlord resides and shall also send a copy of the notice by registered post to each of the creditors whose names and addresses are mentioned in the statement under clause (d) of sub-section (1) of section 7.

¹ Sub-section (3) of S. 8 has been inserted by U. P. Amending Act IV of 1935.

Secs. 9 and 13.—The Act allows a claimant a certain definite period within which to put forward his claim in a written statement. He has got the period specified in the notice, and in addition a further period of two months at the discretion of the special Judge who may grant it under S. 9 (3) of the Act. But no further time beyond this can be granted. As soon as the period of two months under S. 9 (3) expires, the claim is deemed to have been duly discharged under S. 13 of the Act. 1937 A.L.J. 1161=1937 A.W.R. 1081

(3) The written statement must be presented within the period specified in the notice, unless the claimant satisfies the Special Judge that he had sufficient cause for not presenting it within such period, in which case the Special Judge may receive the statement if presented within a further period of two months.

Provision for admission of claims within a further period of two months.

(4) If one or more members of a joint Hindu family apply under the second proviso of sub-section (1) of section 4 then the Special Judge shall apportion the debts due by and the property belonging to the joint family between members who have so applied and those who have not applied and, for the purposes of this Act, those members who have applied under section 4 will be treated as if they had separated from the other members.

Apportionment of debts and property in case of application by members of a joint Hindu family.

(5) (a) If one or more of several joint debtors, who are not members of the same joint Hindu family, apply under section 4 but all the joint debtors do not apply then the Special Judge shall determine the amount of the joint debt which is due by the debtor or debtors who have applied and the amount due by those who have not applied. For the purpose of this determination the Special Judge shall make the joint debtors who have not applied parties to the proceedings and shall hear any objection that they may make before recording his finding.

Determination of liability of joint debtors who are not members of a joint Hindu family.

(b) If all the joint debtors have not applied under section 4 the creditor shall have a right to recover from the debtors who have not applied only such amount on account of the joint debt as may be decreed by the Special Judge to be due by them.

(6) If one or more but not all the heirs of a deceased debtor who are not members of a joint Hindu family apply under section 4 the Special Judge shall apportion the debts due by and the property belonging to the deceased debtor between those heirs who have made the application and those who have not and subject to the provisions of section 49 that portion of the debt which falls to the share of the heirs who have applied shall be liquidated from the property allotted to them and they shall not be responsible for the portion of the debt which falls to the share of the heirs who have not joined in the application.

Apportionment of liability of heirs of a deceased debtor.

10. (1) Every claimant referred to in section 8 shall, in the written statement of his claim, give full particulars thereof and shall state so far as they are known to or can be ascertained by

Claim to contain full particulars.

him, the nature and extent of the landlord's proprietary rights in land and the nature and extent, if any, of the landlord's property other than proprietary rights in land.

(2) Every document on which the claimant bases his claim, or on which he relies in support thereof, shall be delivered to the Special Judge along with the written statement or Documents to be given up. if the Special Judge so directs, on some later date or dates to be specified by him from time to time in that behalf.

(3) If the document is an entry in any book, the claimant shall produce the book before the Special Judge, together with a copy of the entry on which he relies. The Special Judge shall mark the book for the purpose of identification and, after examining and comparing the copy with the original, shall return the book to the claimant.

(4) If any document in the possession or under the control of the claimant is not delivered or produced by him, as required by this section, Exclusion of documents not produced. the Special Judge may refuse to receive it in evidence on behalf of the claimant at the investigation of the case.

11. (1) The Special Judge shall publish a notice in the manner specified in section 8 specifying the property mentioned by the applicant under section 7 or by any claimant under section 10. Notice specifying alleged property of a landlord and determination of claims thereto.

(2) Any person having any claim to the property mentioned in such notice shall, within a period of three months from the date of the publication of the notice in the *Gazette*, make an application to the Special Judge stating his claim and the Special Judge shall determine whether the property specified in the claim, or any part thereof, is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant.

(3) The Special Judge shall determine all claims made under this section before he proceeds to determine the amount due to any creditor under section 14 and shall not pass any decree under that section until the expiry of a period of one month after the last day on which he determines a claim under this section.

(4) Any order passed by the Special Judge under this section shall be deemed to be a decree of a civil court of competent jurisdiction.

12. Any transfer of property made by a landlord or other person acting on his behalf between the day on which the first chapter of this Act comes into force and the day on which he applies under section 4, not being a transfer Annulment of transfer by landlord in certain cases.

made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, may be annulled at the instance of any creditor, if the Special Judge finds that such transfer was made with a view to deprive the landlord's creditors of their rights under this Act.

13. Every claim decreed or undecreed against the landlord in respect of a private debt, other than a debt due to a Co-operative Society registered under the Co-operative Societies Act, 1912, by its members, shall, unless made within the time and in the manner required by this Act, be deemed for all purposes and on all occasions to have been duly discharged.

Claim not duly notified to be deemed discharged.

14. (1) The Special Judge shall, by an order in writing, fix a date for inquiring into each claim made in pursuance of the notice published in accordance with section 8 and give notice of such date to the claimant and the person who made the application under section 4.

Examination of claims and determination of amount of debts.

(2) The Special Judge shall examine each claim and after hearing such parties as desire to be heard and considering the evidence, if any, produced by them shall determine the amount, if any, due from the landlord to the claimant on the date of the application under section 4.

(3) All evidence recorded in any suit or proceeding which is stayed under sub-section (1) of section 9, may be taken by the Special Judge as evidence recorded before himself.

(4) In examining each claim the Special Judge shall have and exercise all the powers of the court in which a suit for the recovery of the money due would lie and shall decide the questions in issue on the same principles as those on which such court would decide them, subject to the following provisions, namely—

(a) the amount of interest held to be due on the date of the application shall not exceed that portion of the principal which may still be found to be due on the date of the application;

(b) the provisions of the Usurious Loans Act, 1918, will be applicable to proceedings under this Act;

(c) the provisions of the United Provinces Agriculturists Relief Act, 1934, shall not be applicable to proceedings under this Act.

(5) For the purpose of ascertaining the principal under clause (a) of sub-section (4) the Special Judge shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transaction before December 31, 1916.

(6) For the purpose of ascertaining the principal under clause (a) of sub-section (4) the Special Judge shall not treat as principal any accumulated interest which has been converted into principal at any statement or settlement of accounts or by any contract made in the course of the transactions after December 31, 1916.

(7) If the Special Judge finds that any amount is due to the claimant he shall pass a simple money decree for such amount, together with any costs which he may allow in respect of proceedings in his court and of proceedings in any civil court stayed under the provisions of this Act, together with *pendente lite* and future interest at a rate not greater than the rate specified in section 27, and if he finds that no amount is due he may pass a decree for costs in favour of the landlord. Such decree shall be deemed to be a decree of a civil court of competent jurisdiction but no decree against the landlord shall be executable within the United Provinces except under the provisions of this Act.

15. In determining the amount due on the basis of a loan which has been the subject of a decree the Special Judge shall accept the findings of the court which passed the decree except in so far as they are inconsistent with the provisions of section 14.

Provided that the Special Judge shall not determine any claim under a decree, until any appeal or revision filed against such decree has been finally decided or the period allowed for appeal has expired, and in all such cases the finding of the Special Judge shall be based on the final decree.

16. The Special Judge shall rank all debts for priority provided that debts in the earlier of the following classes shall have priority over those in the later classes—

Class (1) Debts recoverable under the Agra Tenancy Act, 1926, the Oudh Rent Act, 1886, and the Land Revenue Act, 1901;

Class (2) Public debts due to the Government and public debts due to a local authority creating a charge on immovable property;

Class (3). Debts secured upon property against which the Collector may take action under the provisions of section 24 up to the value of the security;

Class (4). Other secured debts;

Class (5). Debts due on account of goods supplied or services rendered; and

Class (6). Unsecured debts due to a local authority, debts falling into class (3), in excess of the value of security and other unsecured debts.

17. (1) If the amount of any public debt reported by the Collector under section 6 is disputed and if a suit would lie in any civil or revenue court to determine the amount of that debt, the Special Judge shall, after such inquiry as may be necessary, determine such dispute.

(2) If a suit would not lie in any civil or revenue court to determine the amount of a public debt the Collector's decision about the amount of the debt shall be final.

18. Subject to the right of appeal or revision conferred in Chapter VI, the effect of a decree of the Special Judge under sub-section (7) of section 14 shall be to, extinguish the previously existing rights, if any, of the claimant, together with all rights, if any, of mortgage or lien by which the same are secured and, where any decree is given by the Special Judge to substitute for those rights a right to recover the amount of the decree in the manner and to the extent hereinafter prescribed.

19. (1) The Special Judge shall send the decrees granted under sub-section (7) of section 14 to the Collector for execution in accordance with the provisions of the next chapter. The Special Judge shall also inform the Collector of the order in which he has ranked the debts for priority.

(2) The Special Judge shall inform the Collector of the nature and extent of the property mentioned in the notice under section 11 which he has found to be liable to attachment, sale or mortgage in satisfaction of the debts of the applicant.

Secs. 18 and 35.—The Court of the Collector or of the Sub-Divisional Officer is not subordinate to the Chief Court, and the jurisdiction exercised by these Courts under Ss. 18 and 35 is quite independent of the Civil Courts. Accordingly the Chief Court has no power, either under S. 151 or under O. 41, R. 5, C. P. Code, to stay the proceedings under Ss. 18 and 35 of the Encumbered Estates Act pending an appeal filed before it against the decree of the Special Judge under S. 14 (7) of that Act. The proper procedure is to move the Collector to stay proceedings until the decision of the appeal filed in the Chief Court. 168 I.C. 180=1937 O.W.N. 473=A.I.R. 1937 Oudh 359.

20. The applicant may at any time within a period of one month from the day on which the Special Judge decides any claim under section 11 apply that the proceedings under this Act be quashed and the Special Judge shall quash such proceedings and pass such order as to the costs of the proceedings before him as he thinks proper, provided that the order of quashing proceedings shall not take effect unless the landlord within one month of such order pays into court the amount of any costs ordered by the Special Judge under this section.

CHAPTER V.

EXECUTION OF DECREES AND LIQUIDATION OF DEBTS.

21. The Collector shall after hearing any objection preferred by the applicant, determine the amount of any public debt which has not been reported under section 6 and which in accordance with rules framed by the Local Government in this behalf is to be liquidated under this chapter.

22. The Collector shall allow the debtor a period of two months within which he may pay into court the whole or any part of the amount due from him.

23. (1) If on the expiry of the said period the debtor shall have paid into court the full amount due from him the Collector shall discharge all his debts.

(2) If on the expiry of the said period the debtor shall not have paid into court the full amount due from him the Collector shall expend the amount, if any, paid in discharging the debts in order of priority and shall proceed to liquidate the amount still remaining due in accordance with the provisions of the following sections.

24. (1) The Collector shall first realize the value of such of the debtor's property other than proprietary rights in land, as shall have been reported by the Special Judge under the provisions of subsection (2) of section 19 to be liable to attachment or sale:

Provided that the Collector before passing orders under this section for the sale of any property shall hear any objection which the debtor may have to make to the sale of that property:

Provided also that the Collector shall leave to the debtor at least one residential house and the necessary furniture thereof if—

(a) the debtor owns such house and furniture and desires to retain it and

(b) such house and furniture is free from any mortgage or charge:

Provided also that if the debt can be liquidated under S. 27 the Collector shall not sell any property to the sale of which the debtor has objected.

(2) The amount so realized shall be expended by the Collector in discharging the debts in order of priority.

(3) For the purpose of execution against property outside the United Provinces the decrees passed by the Special Judge shall be deemed to be decrees in favour of the Collector.

(4) For realizing the value of the debtor's property under this section the Collector may exercise all the powers of a civil court for the execution of a decree.

25. If the sum, if any, realized under section 23 and section 24 is insufficient to liquidate the amount due by the debtor then if any person agrees to pay the amount still due and to accept a mortgage in either of the forms set out in the schedule in consideration of such payment, the Collector shall grant such a mortgage:

Provided that the post-slump profits of the area mortgaged shall not exceed three-quarters of the post-slump profits of the debtor's entire proprietary rights in land:

Provided also that the amount for which the mortgage is granted shall not be less than the value of the property mortgaged calculated at such multiple of the post-slump profits of that property as may be fixed by the Provincial Government from time to time by rule in this behalf:

Provided also that if during the period of the mortgage the land revenue of the land mortgaged is altered either at a quinquennial settlement or by the granting of a remission or by a variation of the remission for the fall in prices, then the period of the mortgage shall be re-determined by the Collector in accordance with rules framed by the 1[Provincial Government] and shall not be subject to a limit of 20 years:

Provided also that if the land mortgaged is brought under settlement the period of the mortgage shall be re-determined by the Collector in accordance with rules framed by the Provincial Government and shall not be subject to a limit of 20 years.

Explanation—“Payment” in this section shall include the discharge of any debt due to the mortgagee himself.

1. Substituted by the Government of India (Adaptation of Indian Laws) Order 1937.

26. If the sum, if any, realized under section 23 and section 24 is insufficient to liquidate the debt and a mortgage is not granted under section 25 then the Collector shall, in accordance with rules framed by the 1[Provincial Government], determine—

Determination of instalment value and transfer value of debtor's proprietary rights in land

(a) the multiple to be used in calculating the instalment value of the debtor's proprietary rights in land, and

(b) the multiple to be used in calculating the transfer value of the debtor's proprietary rights in land:

Provided that different multiples may be determined for calculating the instalment and transfer values of different portions of the debtor's property.

(c) the instalment value of the debtor's proprietary rights in land by applying to the post-slump profits of that land in the *Fasli* year in which the application is made the multiple or multiples determined under clause (a), and

(d) the transfer value of the debtor's proprietary rights in land by applying to the pre-slump profits of that land in the *Fasli* year in which the application is made the multiple or multiples determined under clause (b):

Provided that if the Collector, after hearing any of the parties who wishes to be heard, finds that the profits of the debtor have decreased since the year 1338 *Fasli* owing to a decrease either in the cultivated area or in the kind of profits mentioned in sub-clauses (iii), (iv) and (v) of clause (j) of section 2 or otherwise, he shall for the purpose of determining the transfer value of the debtor's proprietary rights in land add to the pre-slump profits such portion of that decrease as he may find to be due to the fall in prices.

27. If the amount still due by the debtor is less than the instalment value of his proprietary rights in land as determined under section 26 the Collector shall, in accordance with rules framed by the 1[Provincial Government], order him to pay such amount to the 1[Provincial Government] in instalments with future interest at a rate to be determined by the 1[Provincial Government] which shall not be higher than 4½ per cent. per annum, provided that such instalments shall not extend beyond a period of 20 years.

1. Substituted by the Government of India (Adaptation of Indian Laws) Order 1937.

28. (1) If the amount still due by the debtor exceeds the instalment value of this proprietary rights in land but does not exceed the instalment value of his proprietary rights in protected land, if any, together with the transfer value of his proprietary rights in unprotected land, if any, the Collector shall, in accordance with rules framed by the 1[Provincial Government] under section 31, transfer to the creditors shares in the debtor's entire proprietary rights in unprotected land and in accordance with rules framed by the 1[Provincial Government] order the debtor to pay the difference between the amount still due by him and the total transfer value of the shares so transferred to the 1[Provincial Government] in instalments over a period of 20 years with future interest at the rate determined under section 27.

(2) If the amount still due by the debtor exceeds the instalment value of his proprietary rights in protected land, if any, together with the transfer value of his proprietary rights in unprotected land, if any, the Collector shall transfer to the creditors the whole of the debtor's proprietary rights in unprotected land, if any, and order the debtor to pay an amount equal to the instalment value of his proprietary rights in protected land, if any, to the 1[Provincial Government] in instalments over a period of 20 years with future interest at the rate determined under section 27.

29. (1) The instalments ordered under section 27 or section 28 shall be paid by the debtor to the 1[Provincial Government] along with his land revenue and cesses and any such instalment not paid on due date shall be recoverable as an arrear of land revenue.

(2) If the full amount of any two consecutive instalments has not been paid within six months of the date on which the second of such instalments fell due, the whole amount remaining due from the debtor may, subject to rules framed by the 1[Provincial Government], be recovered as an arrear of land revenue.

(3) Notwithstanding anything in the United Provinces Court of Wards Act, 1912, the Court of Wards shall at the request of the 1[Provincial Government] assume charge of the estate of any debtor who has been ordered to pay instalments under section 27 or section 28 and who has not paid two consecutive instalments within six months of the date on which the second of such instalments fell due.

1. Substituted by the Government of India (Adaptation of Indian Laws) Order 1937.

30. If the Collector has proceeded under section 27 he shall, in accordance with rules framed by the ¹[Provincial Government], give to each creditor a bond or bonds for the amount due to him. Such bond or bonds shall bear interest at one per cent. less than the rate fixed under section 27 and shall be payable by the ¹[Provincial Government] within a period which shall not exceed 20 years:

Provided that the ¹[Provincial Government] may at any time pay to the creditor the whole amount remaining due at the date of payment.

31. (1) If the Collector has proceeded under sub-section (1) of section 28 he shall, in accordance with rules framed by the ¹[Provincial Government], liquidate the amount due to each creditor by transferring to him a share of the debtor's entire proprietary rights in unprotected land or by giving to him a bond or bonds of the description mentioned in section 30, or partly by one of these methods and partly by the other, provided that the transfer value of any share in the debtor's proprietary rights in unprotected land transferred to the creditor, together with the amount of the bond or bonds given to him, shall be equal to the amount due to him.

(2) If the Collector has proceeded under sub-section (2) of section 28 he shall, as far as possible, proceed as in sub-section (1) and the whole of the landlord's debt shall be deemed to be satisfied in full by the transfer to the creditors of his proprietary rights in unprotected land and by giving to them of bonds the total amount of which is equal to the instalment value of his proprietary rights in protected land.

32. If the Collector proceeds under section 28, then as far as possible, he shall liquidate the debts which have been ranked highest by the Special Judge first by means of sale under section 24, and then by means of bonds:

Provided that any creditor or creditors who would get cash or bonds under the provisions of this section may, if he or they so desire, have land transferred to him or them in accordance with the provisions of section 31.

33. The Collector may on the application of a debtor whose unprotected land is included in more than one mahal transfer to any creditor in exchange for the share in the debtor's entire proprietary rights in unprotected

1. Substituted by the Government of India (Adaptation of Indian Laws) Order 1937.

land which may have been transferred to him under section 31 a share or shares in any particular mahal or mahals which do not form part of the debtor's protected land, provided that the value of the share or shares transferred under this section shall be equal to the value of the share transferred under section 31.

Explanation.—For the purposes of this section the value of proprietary rights in land shall be calculated by applying to the post-slump profits of that land the multiple determined by the Collector under clause (b) of section 26.

34. A creditor to whom a share of the debtor's proprietary rights in land has been transferred under section 31 or section 33 may within three months of the passing of the order of transfer apply to the Collector to have the share so transferred or any part thereof sold by public action. The Collector shall sell such share or part by public auction and pay the sum realized, less a percentage determined by rule framed by the Local Government in this behalf, to the applicant.

35. If at any time after the decrees granted by the Special Judge have been sent to the Collector under the provisions of section 19 any person entitled to possession of any property under the provisions of this Act applies to the Collector to be put in possession of such property the Collector shall deliver possession of such property to him.

36. If in any year the produce of any portion of the debtor's property is below normal, the Collector may, in accordance with rules framed by the [Prov. Government] in this behalf, decrease the amount of any instalment which has been ordered under section 27 or section 28 and which falls due in that year and shall provide for the payment by the debtor of the amount so decreased either by increasing some or all of the subsequent instalments or by increasing the number of the subsequent instalments.

37. If during the currency of the settlement, whether at a quinquennial settlement or otherwise, any alteration takes place in the land revenue payable by or in the circumstances of a debtor against whom an order for the payment of instalments has been passed under section 27 or section 28, the Collector may, in accordance with rules framed by the [Prov. Government] in this behalf, re-determine the number and amount of the unpaid instalments.

38. If at a revision of settlement the Settlement Officer alters either the rents payable to or the land revenue payable by a debtor against whom an order for the payment of instalments has been passed under section 27 or section 28 he shall re-determine the instalment value of the debtor's proprietary rights in land situated in the district under settlement and the amount and number of the instalments in which the balance of the debt has to be repaid shall be re-determined by the Collector in accordance with rules framed by the [Prov. Government] in this behalf.

39. Nothing in the Bundelkhand Alienation of Land Act, 1903, shall prevent the ordering of payment of instalments by the Collector under section 27 or section 28 or the transfer of the debtor's proprietary rights in land by the Collector to the creditors under section 28.

40. Notwithstanding anything in the Oudh Settled Estates Act, 1917, or in the United Provinces Estates Act, 1920, the Collector shall, in accordance with rules framed by the [Prov. Government], determine the extent to which the instalments ordered under section 27 or section 28 shall be a charge on any portion of the debtor's land which has not been transferred by the Collector under section 28 or of which a mortgage has not been given under section 25.

41. A debtor may at any time after an order for the payment of instalments has been passed under section 27 or section 28 or a mortgage granted under section 25 pay into the court of the Collector who passed the order or granted the mortgage any sum towards the liquidation of the debt in respect of which the order was passed or the mortgage was granted. The Collector shall receive such sum and credit it to the [Prov. Government] or pay it to the mortgagee and shall, in accordance with rules to be framed by the [Prov. Government] in his behalf determine the number and amount of the future instalments or the future period of the mortgage.

42. (1) If a mortgagee holding possession under a mortgage granted under this Act remains in possession after the expiry of the period for which he is entitled to hold and on expiry of which he is bound to deliver back the mortgaged property without any payment by the mortgagor, the Collector shall, on the application of the person

entitled to possession, direct that the mortgage be redeemed, eject such mortgagee and place the person so entitled in possession and may also direct the mortgagee to pay such compensation to the person found to have been wrongly left out of possession as it may deem reasonable.

(2) The Collector may enforce the payment of any compensation ordered under sub-section (1) as if it were an arrear of land revenue.

43. 1[When an application has been dismissed under sub-section (3) of section 8 or] when an order has been passed under section 20 quashing further proceedings under the Act, the following consequences shall ensue, namely—

(a) the whole of the proceedings under this Act shall be set aside;

(b) notwithstanding anything contained in section 18 all rights and remedies and proceedings stayed under sub-section (1) of section 9 shall revive to the creditors as if no action had been taken under this Act; and

(c) in computing the period of limitation prescribed for any suit or other proceeding for the recovery of debts in respect of which a written statement has been filed under section 10 the period from the date of the 2[order of the Collector under section 6] to the date of the order of the Special Judge quashing further proceedings under the Act shall be excluded;

(d) in computing the period of limitation prescribed for any suit or proceedings in respect of a claim which has been stated before the Special Judge under section 11 the period from the date of the publication of the notice under sub-section (1) of that section to the date of the order of the Special Judge quashing proceedings under this Act shall be excluded.

Cessation of disabilities. 44. (1) In each of the following cases, namely—

(a) when the debt has been liquidated under section 23 or section 24;

(b) when a mortgage has been granted under section 25;

(c) when the amount ordered to be paid in instalments under section 27 or section 28 has been paid in full or realized as an arrear of land revenue;

(d) when proceedings have been quashed under section 20;

¹Inserted by U. P. Amending Act IV of 1935.

²Substituted by U. P. Amending Act IV of 1935.

1[(e) when the application has been dismissed under sub-section (3) of section 8.]

the landlord shall cease to be subject to the disabilities mentioned in sub-section (3) of section 9 and the Collector shall forthwith make a declaration to that effect.

(2) In computing the period of limitations prescribed for any proceeding stayed under sub-sections (2) and (3) of section (9) the period from the date of decree referred to in those sub-sections up to the date of the declaration under sub-section (1) of this section shall be excluded.

CHAPTER VI.

APPEAL AND REVISION.

45. (1) An appeal against any decision, decree or order of a Special Judge of the first grade under this Act shall lie to the High Court or Chief Court, as the case may be. The period of limitation for appeals under this sub-section shall be ninety days.

Appeals.

¹ Cl. (e) inserted by U. P. Amending Act IV of 1935.

Sec. 45 and 14 (7)—Where in an appeal filed under S. 45 against a simple money decree passed by the Special Judge under S. 14 (7) of that Act against the appellant, the latter wants a reduction in the amount of interest decreed by the lower Court, the appeal is clearly governed by Art. 1 of Sch. I of the Court-Fees Act, and court-fee must be paid *ad valorem* on the amount of interest disputed by the appellant in the appeal. 171 I.C. 78=1937 O.L.R. 503=1937 O.W.N. 890=A.I.R. 1937 Oudh 501. Where in an appeal purporting to be under S. 45 of the Encumbered Estates Act, against an order passed in proceedings under the Regulation of Sales Act, the appellant in point of fact tries to show that the proceedings under the latter Act are null and void in view of an order passed under S. 6 of that former Act, but yet with his petition of appeal attaches a copy of an order to which he cannot possibly take exception, the appeal is out of order and is liable to be dismissed. The term "final" used in S. 45 (5) of the U. P. Encumbered Estates Act only means "not subject to appeal." It cannot be final in the sense that the power of the High Court to interfere in revision is shut out. 1937 A.W.R. 1031=1937 A.L.J. 1101.

Secs. 45 and 46—Applicability. A creditor has no right of appeal to the Board of Revenue under S. 45 of the Encumbered Estates Act, against an order accepting an application under S. 4 of the Encumbered Estates Act, because he is not a party to the proceedings before the Collector on the application. He can, however, apply to the Board by way of revision under S. 46 of the Act. 1937 R.D. 484=1937 A.W.R. 1034.

Secs. 45 to 47—The restrictions prescribed by Ss. 45 to 47 of the Act apply only to orders, decrees, decisions and proceedings of Special Judges under the Act and not to those of ordinary Courts. Where a Munsif executing a decree dismisses an application made by the judgment-debtor under S. 7 of the Act, the order of dismissal is one passed by him in his ordinary jurisdiction as a Munsif under S. 47, C. P. Code, and cannot be said to have been passed by him in his capacity as a Special Judge, even though he happens to be a Special Judge for the purposes of the Encumbered Estates Act. A second appeal against his order of dismissal is, therefore, not barred by Ss. 45 to 47 of the Act. 168 I.C. 467=1937 O.L.R. 282=1937 O.W.N. 562=A.I.R. 1937 Oudh 385.

(2) An appeal against any decision, decree or order of a Special Judge of the second grade under this Act shall lie to the District Judge. The period of limitation for appeals under this sub-section shall be thirty days.

(3) An appeal against any decision, decree or order of a Collector or Settlement Officer under this Act shall lie to the Board of Revenue. The period of limitation for appeals under this sub-section shall be sixty days.

(4) The provisions of sections 5 and 12 of the Indian Limitation Act, 1908, shall apply to appeals under this Act.

(5) The decision on an appeal under this section shall be final.

46. Any Court empowered under section 45 to hear an appeal under this Act may of its own motion, or on the application of any person concerned, call for the record of proceedings in any case under this Act pending in a Court from which appeals lie to such Court and after giving due notice to the parties concerned pass such order thereon consistent with the provisions herein contained as it thinks fit, and such order shall be final.

47. Except as provided in sections 45 and 46, no proceedings of the Collector or Special Judge under this Act shall be questioned in any Court.

Proceedings not to be questioned.

CHAPTER VII.

MISCELLANEOUS.

48. (1) From the date of the application under section 4 up to the date when the Collector has liquidated the debts in full under section 23 or section 24 or has granted a mortgage under section 25 or has ordered the payment of instalments under section 27 or 28 or has transferred the whole of the landlord's proprietary rights in unprotected land under section 28 or the proceedings under this Act have been quashed—

(a) no creditor shall be entitled to present an insolvency petition against the landlord and

Sec. 46—Applicability—Order under S. 6, passed under misapprehension—Procedure for correcting. See 1937 A.W.R. 268=1937 R.D. 103. Rule 6 made by the Local Government under S. 54 of the U. P. Encumbered Estates Act makes the Civil Procedure Code applicable only so far as it is relevant and not inconsistent with the Act. From a consideration of all relevant sections of the Act and the rules framed thereunder, it is clear that the power to appoint a receiver in terms of O. 40, C. P. Code, has not been conferred on the Special Judge. 1937 A.W.R. 1125=1937 A.L.J. 1316.

(b) the landlord may present a petition that he be adjudged to be insolvent and, if he does so, no further proceedings shall be taken under this Act, while the insolvency proceedings are pending.

(2) Subject to the provisions of sub-section (1) the landlord or any creditor may present a petition that the landlord be adjudged insolvent but any amount or amounts due under any order passed by the Collector under section 27 or 28 shall for the purposes of the insolvency proceedings be deemed to be a debt or debts secured upon such of the landlord's subsisting property in land as has been reported by the Special Judge under sub-section (2) of section 19 to be liable to attachment or sale.

49. (1) If the debts of a landlord are the debts due from his deceased ancestor which are legally recoverable only from certain property in the possession of the landlord, only such property and no other property belonging to the landlord shall be dealt with under the provisions of this Act; and all references to the property of the landlord in the various sections of this Act shall be deemed to be references only to such property and to no other.

(2) If in the course of inquiry it is proved that a landlord who has applied for the application of this Act only in respect of debts due from his deceased ancestor has appropriated any property received from such ancestor or that he owes also other debts which are recoverable from him personally and in respect of which claims have been preferred under section 8, the Special Judge shall give him the option of either withdrawing his application or paying the personal debts and value of any property appropriated by him as aforesaid or having the whole of his property dealt with under this Act. In case he withdraws his application all proceedings under this Act shall be quashed. If he elects to pay his personal debts and the value of any property appropriated by him the Special Judge shall give him such time for doing so as he shall think necessary and on the landlord paying the same shall proceed with the case. If the landlord fails to pay the same within the time allowed by the Special Judge his application shall be dismissed. If the landlord elects to have the whole of his property dealt with under this Act, the Special Judge shall require him to give particulars of all such property and after giving the claimants another opportunity of giving further particulars of property as required by section 10 shall take fresh proceedings under section 11 in respect of such property. If the landlord refuses or

Limited application of the Act in case of inherited debts.

Procedure when applicant in respect of inherited debt found to be subject to personal debt.

neglects to exercise any of the options provided in this sub-section the Special Judge shall dismiss his application.

(3) In all cases in which proceedings are quashed or the application is dismissed under this section the Special Judge may make such order as to costs as he thinks proper.

50. If a landlord with regard to whom a notice has been published under section 8 dies before a declaration has been made in respect of him under section 44,—
Death of proprietor before liquidation.

(a) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the landlord were still living; and

(b) any person succeeding to the whole or any portion of the landlord's property shall become subject in respect of that property to the disabilities imposed by sub-section (2) of section 9 and shall continue so subject until a declaration has been made in respect of him under section 44.

51. Every investigation conducted by the Special Judge with reference to any claim made to him under this Act, or to any matter connected with any such claim, shall be deemed to be a judicial proceeding within the meaning of Indian Penal Code, 1860; and the Special Judge shall be deemed to be a public servant within the meaning of that Code.
Investigation to be deemed a judicial proceeding. Special Judge to be deemed a public servant within the meaning of the Indian Penal Code.

52. For the purposes of compelling the attendance of witnesses and the production of documents, and of awarding costs, the Special Judge shall have the powers conferred on a Civil Court by the Code of Civil Procedure, 1908.
Power to summon witnesses, compel production of documents, and award costs.

53. No suit or other proceeding shall be maintained against any public servant in respect of anything done by him in good faith pursuant to this Act.
Bar of suits.

54. (1) The [Prov. Government] may make rules consistent with the provisions of this Act for regulating the procedure of the Collector, the Special Judge and the Settlement Officer in proceedings under this Act and generally for carrying out the purposes this Act, may fix the legal fees chargeable under this Act and may confer the powers of the Collector under this Act on any Assistant Collector of the first class.
Power of Gov. Government to make rules.

(2) Before making the rules under this section the [Prov. Government] shall publish a draft of the same in the [Official Gazette] and shall concurrently cause a copy of the said draft

to be sent to every member of the ¹[Chambers of the Provincial Legislature].

(3) In making the rules finally the ¹[Prov. Government] shall consider the opinions received by them as well as any opinion expressed by the ¹[Either Chamber of the Provincial Legislature].

Matters to be regarded in making rules relating to multiples. 55. In framing rules to guide the Collector in determining multiples under section 26 the ¹[Prov. Government] shall have regard to—

(1) the market value of land in the area or areas in which the landlord's property is situated,

(2) the percentage of the post-slump profits which the landlord must retain to maintain himself, his family and his dependents and for the management and upkeep of his property.

56. The ¹[Prov. Government] may at any time alter the rules which they have framed for determining multiples under section 26 and, if they do so, the Collector may revise the instalments ordered under section 27 or section 28 either by altering the amount of each instalment or by increasing or decreasing the period over which the instalments are payable.

57. The Collector may, subject to rules framed by the ¹[Prov. Government] transfer, any proceedings under this Act which are pending in his Court to the court of an Assistant Collector of the first class empowered under section 54 and may withdraw any proceedings so transferred.

58. The Board of Revenue may transfer any proceedings under this Act from the Court of one Collector to that of any other Collector.

59. Nothing in this Act shall affect the powers of the Collector under the Land Revenue Act, 1901, to collect the Land revenue or any money recoverable as an arrear of land revenue.

SCHEDULE.

FORMS OF MORTGAGE.

(See section 25).

1. A mortgage by which the mortgagor delivers proprietary possession of the mortgaged land to the mortgagee and authorizes him to retain such possession and to receive the rents and profits of the land in lieu of interest and towards payment of the principal, on condition that after the expiry of a specified term not exceeding twenty years the mortgaged

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

debt shall be deemed to be fully satisfied and the land shall be re-delivered to the mortgagor without any payment by him.

2. A mortgage without possession, subject to the condition that, if the mortgagor fails to pay the principal and interest according to his contract, the mortgagee may apply to the Collector to place him in possession of the mortgaged land for such term not exceeding twenty years as the Collector may consider to be equitable, the mortgage to be treated as a usufructuary mortgage for the term of the mortgagee's possession and to be deemed to be fully satisfied on the expiry of such term.

The United Provinces Regulation of Sales Act (XXVI of 1934).

[*N.B.*—For Rules framed under this Act, see 33 A.L.J. (1935) Journal Portion i—xxx. For Rules regulating sales of agricultural land in the United Provinces, see 1937 A.L.J. Journal Portion pages 13—29.]

[10th April, 1935.]

*An Act to make temporary provision for the regulation
of sale of agricultural land.*

WHEREAS owing to the slump in prices it is expedient to regulate the sale of agricultural land in execution of civil court decrees against agriculturists;

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

It is hereby enacted as follows:—

Short title, extent and commencement. 1. (1) This Act may be called THE UNITED PROVINCES REGULATION OF SALES ACT, 1934.

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

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

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

(1) "Agriculturist" means a person who pays land revenue or a local rate under section 109 of the District Boards Act, 1922, or is an under-proprietor or tenant of agricultural land having transferable rights therein.

(2) "Agricultural land" means land which is let or held for agricultural purposes or as grove land or for pasturage and shall include any interest in such land or in any mahal (including the abadi land) or share in a mahal but shall not include

Sec. 1.—Rules under Act—Sale of ancestral property—Sanction of Government—If necessary. 1937 R. D. 269.

standing timber, standing crops, or other ungathered produce of land when sought to be sold apart from the land itself.

3. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, when agricultural land is sought to be sold in execution of a civil court decree against an agriculturist in respect of a loan taken prior to the passing of this Act, the Collector shall, unless the Court grants instalments, determine the value of such agricultural land to be sold in execution in respect of a loan taken prior to this Act.

Secs. 3 and 4.—Where the encumbrances on some agricultural land put to sale in execution of a Civil Court decree exceed the estimated value of the property, the whole property subject to incumbrances may be transferred to the decree-holder in full satisfaction of his decree. 1937 R.D. 170. An appeal to the Board of Revenue under the Regulation of Sales Act must be presented within 60 days from the date of order appealed from. When the copy of the order is applied for only after the expiry of the period of 60 days, the appeal presented after that is clearly barred by limitation and cannot be entertained. 1936 R.D. 366. No appeal lies to the Board of Revenue from the order of the Collector transferring and handing over the property of the judgment-debtor to the decree-holder in full satisfaction of his decree under execution, under the provisions of S. 4(a) of the Sales Regulation Act. There is no provision in the Act for an appeal against such an order. 1936 R.D. 297. Where after the sale certificate had been issued under the Regulation of Sales Act, the judgment-debtor filed an application with the Assistant Collector under S. 141 and O. 9, R. 7 read with R. 13, C.P. Code, saying that she had no knowledge of the proceedings subsequent to the receipt of the order of Government sanctioning sale of the property, and the application was rejected by the Assistant Collector. *Held*, (i) that an appeal did not lie under S. 3 of the Act against the rejection of the application for restoration of the case to the file, (ii) that the Regulation of Sales Act did not abrogate the rules in Chapter XL of the Revenue Manual and that, therefore, the judgment-debtor had a right of appeal to the Commissioner and a right of application in revision to the Board. 1937 R.D. 191. Where the judgment-debtor lodges an objection to the valuation of the property on the ground that it has not taken into account a decree of the High Court recognising his claim to a further piece of land, definite orders should be passed on the objection and if the property of the judgment-debtor has been varied by a decree of the High Court, then a fresh valuation should be made. An order transferring the property to the decree-holder without passing any orders on the objection is liable to be set aside. 1937 R.D. 157. Where the Assistant Collector passes an order in the absence of the judgment-debtor accepting the valuation and handing over the property in full satisfaction of the debt, and the judgment-debtor applies for the review of that order pleading that there had been failure to comply with the ordinary rules of service of notice, it is the duty of the Collector to enquire into his allegations. If he is satisfied that the notice was not properly served he might not be able to set aside the order passed but he could at least make a reference to the Board. 1937 R.D. 582. Where it is definitely found that there had been no proper service of notice on the judgment-debtor under S. 3 (3), the subsequent proceedings must be held to be null and void, and the sale must be set aside. The judgment-debtor in such a case is not bound to prove that loss has accrued to him as a result of the material irregularity. 1937 A.W.R. 1175. The making of steps down to a tank is no doubt a work of public utility but it means no profit to the creditor in any sense at all and its value for purposes of sale is nil. 1937 R. D. 411. When the property valued consists of groves, the details of the

tural land in the manner hereinafter following. If such value exceeds the amount of the decree, together with the proportionate amount of any prior encumbrance determined in

trees valued should be shown in the valuation statement to enable the Collector or the Board in appeal to see if the valuation was approximately correct. 1937 R.D. 411. In valuing trees which are leased out annually, their annual value and not their capital value should be taken. 1937 R. D. 380.

Secs. 3, 4 and 5.—Where owing to a wrong valuation, the whole share of a judgment-debtor is transferred by the Collector when it will suffice to transfer 11-12ths of his share to meet the decree, the Board will not confirm the transfer even though the difference between the old and the revised valuation is small and the share left to the judgment-debtor will be negligible. Because, it is the policy of Government to transfer as small an area as possible in satisfaction of decrees. 1937 R.D. 341. Under S. 4 (a), the decree-holder is entitled to take the land valued at less than his decree only in full discharge of his decree with its encumbrances and interest. He cannot take the land up to its valuation in part-payment of his decree. 1937 R.D. 587. Where after the passing of an order under S. 4 (a) and before the preparation of a certificate which would clinch the decree-holder's proprietary right, the judgment-debtor produces a copy of an order passed by the Deputy Commissioner under S. 6 of the Encumbered Estates Act forwarding his application under the Act to the Special Judge, the proceedings have to be stopped in view of S. 7 of the latter Act. The appeal by the judgment-debtor against the valuation of his property under the Regulation of Sales Act thereupon becomes infructuous and has to be dismissed. If, however, the Special Judge finally rejects the application under the Encumbered Estates Act, the appeal may be revived on the application of the appellant. 1936 R.D. 490. Where a person brought certain property in execution of his simple money decree and the transfer took place subject to a prior mortgage held by another who is seeking to execute his own decree, the transferee of the property is not entitled to the benefits of the Regulation of Sales Act by virtue of S. 10 of that Act. This means that the property should be valued, not on the lines laid down in that Act, but on the present net profits as calculated from the reduced rentals less the land revenue as reduced after the remissions given in connection with the slump in prices. 1937 R.D. 169. Where it has not been shown that the creditors on being placed in possession of the property would be unable to realise the rents, the multiple should not be lowered on the ground that management is difficult and collections are low. 1937 R.D. 147.

RIGHT OF THIRD PARTIES TO INTERVENE—ORDER IN FAVOUR OF THIRD PARTY—LIABILITY TO BE SET ASIDE.—Where the Sub-Divisional Officer passed an order under S. 3 of the Regulation of Sales Act noting that both parties accepted the valuation and that the decree-holder wished to exercise his option under S. 4 (a), a third party has no right to intervene claiming that he has rights of pre-emption and asking that the property should be transferred to him. An order passed by the Sub-Divisional Officer in favour of such third party is *ultra vires*. The order can, however, be set aside only by the Board in revision and not by the Sub-Divisional Officer acting under S. 151, C. P. Code. 1937 R.D. 172. Where the Government returns the statement of valuation submitted to it for sanction, with the direction that a fresh valuation be carried out under the Regulation of Sales Act, the judgment-debtors should be served with notice regarding the revaluation of the property and should also be given an opportunity of objecting to that valuation. Otherwise, all the proceedings subsequent to the new valuation are liable to be quashed in appeal.

accordance with the rules under section 70 of the Code of Civil Procedure, 1908, the Collector shall determine the amount of such agricultural land, the value of which, as calculated in the

1937 R.D. 269. The Act does not provide for any appeal to the Board of Revenue under any other section than S. 3 of that Act. An order of the Assistant Collector refusing to set aside an order passed *ex parte*, accepting the Tahsildar's estimate of the value of the property and also accepting the decree-holder's offer to take the property in full satisfaction of his decree, is not appealable to the Board but only to the Commissioner. The Board has only revisional powers in the matter. The rules in Ch. XL of the Revenue Manual have not been abrogated by the Regulation of Sales Act. 1936 R.D. 500; 1937 B.D. 35=1937 A.W.R. 192. Until the sale of a property is confirmed the property has not been sold. Such land is "sought to be sold" within the meaning of S. 3 of the U. P. Regulation of Sales Act. The sale is still being sought until it is confirmed. A Court should not, therefore, refuse to take action under the Act on an application made after the sale but before its confirmation. 1937 A.W.R. 625=1937 R.D. 291. Rent means rent payable *zaid* rent is not legally payable, and rent recorded as *zaid mutaliba* should not therefore be taken into consideration, but should be excluded, in valuing the property under the Act. 1937 A.W.R. 194=1937 R.D. 68. In cases of valuation under the Act, it is not enough for the Sales Officer to fall back on vague generalities. Rates in respect of *sir* and *khudkash* lands must be calculated not on the average incidence but on the soil rates. The officer must apply his mind to the matter. 1937 A.W.R. 112=1937 R. D. 25. Orders under Ss. 3 (3) and 5 of the Regulation of Sales Act should not be combined but should be separately recorded, for an appeal lies against an order under S. 3 (3) of the Act and revision only in the case of orders under other sections. 1937 R.D. 69=1937 A.W.R. 354. The Collector is under a duty to comply most strictly with S. 3 (3) of the Regulation of Sales Act before he takes action under Ss. 4 and 5. If he fails to do so and never comes to any decision regarding the valuation of the property under S. 3 (4), the consequence is that the proceedings under Ss. 4 and 5 are null, as the decree-holder cannot exercise his option until the value of the land and the amount to be transferred are determined in accordance with S. 3. 1936 R.D. 564. Where a judgment-debtor having notice of the valuation proceedings fails to appear and object to the valuation, and the Sales Officer accepts valuation and puts the decree-holder to his option and the decree-holder chooses to accept under S. 4 (a) of the Regulation of Sales Act, the judgment-debtor cannot be heard to say in an appeal against the order under S. 3 (4) that he had no knowledge of the proceedings or that the valuation has been conducted contrary to the Act and the rules made thereunder. Where it appears that the judgment-debtor did not regard the valuation really of any consequences and his object is clearly to postpone the sale, the appeal ought to be dismissed. To allow such appeal would be to condone an abuse of the process of the Court. 1936 R.D. 524. A judgment-debtor was summoned to examine the valuation of the property and put in objections, if any. He did not file any objection, but applied for adjournment on the ground that he was applying to the Civil Court for instalments. On the adjourned date he did not produce before the Sales Officer any order for stay from the Civil Court; nor did he file objections to the valuation. *Held*, on appeal to the Board of Revenue, that he could not be heard to say that he had no sufficient opportunity to examine or question the valuation or that the Sales Officer should have waited indefinitely for a stay order from the Civil Court. 1936 R.D. 443. Where an appeal by a judgment-debtor is really directed not against the valuation but against the fact that the property was sold

manner hereinafter following, if not subject to a prior encumbrance, is equal to the amount of the decree, or, if subject to a prior encumbrance, to the amount of the decree together with the proportionate amount of such encumbrance determined as aforesaid. If the court grants instalments, the Collector shall reject the application for execution.

in satisfaction of the decree, the appeal cannot be considered to be a genuine appeal under the Regulation of Sales Act which allows appeals only against valuation; the appeal has to be regarded as one made in the hope of postponing in some way or other the sale of the property in satisfaction of the decree against the judgment-debtor. Where it also appears that the judgment-debtor has been perfectly aware of what has been going on, the appeal is merely an attempt to get the sale of property set aside in some manner and has to be dismissed. 1937 A.W.R. 192=1937 R.D. 35. Where a judgment-debtor, who challenges in appeal the correctness of the valuation alleging that profits from certain items were not included, had an opportunity to produce evidence to support his allegations of which he failed to take advantage, he is not entitled to a remand to have the question of the omission of those items considered. 1937 R.D. 265. When there is *prima facie* reason to suppose that the judgment-debtor was not given sufficient opportunity to challenge the valuation of property under the Regulation of Sales Act, and the valuation itself has not proceeded strictly in accordance with the rules, the Board on appeal under S. 3 (4) of the Act will set aside the proceedings and direct a re-valuation in accordance with the lines laid down in the rules. If it is found that the judgment-debtor has in the meanwhile applied to the Deputy Commissioner under the Encumbered Estates Act, the Deputy Commissioner will be requested to postpone final orders on the application until the question of valuation is finally settled. If the proceedings under the Regulation of Sales Act are set aside altogether or to any substantial extent, proceedings on the application under the Encumbered Estates Act may be revived and the application dealt with according to the merits. 1936 R.D. 471. The special appeal allowed by sub S. (4) of S. 3 of the U. P. Regulation of Sales Act direct to the Board of Revenue, is merely an appeal against the valuation calculated by the Collector under sub-S. (2), and not an appeal against the order of sale. 1937 A.W.R. 51=1936 R.D. 554. Where the parties have accepted the valuation statement prepared by the patwari, it is not open to them to contend in appeal that the Court did not make local enquiry, when it has not been stated in the grounds of appeal that they were not given the opportunity of examining the patwari or calling further evidence. Nor it is open to them to contend that the standard of multiple should be reduced by more than one-third; without the special sanction of the Commissioner it cannot be reduced by more than 16 per cent. 1936 R.D. 456. On the Collector valuing the property under S. 3 of the Regulation of Sales Act, the decree-holders exercised the option under S. 4 (a), as the valuation of the whole property fell short of the amount of the decree and encumbrances; the whole property was accordingly handed over to the decree-holder under S. 4 (a). In appeal to the Board of Revenue by the judgment-debtor a remand was prayed for, for a re-valuation on the ground that the Rules under the Act had not been published when the valuation statement was prepared, but that they were published subsequently when the final order was passed by the Collector under S. 4 (a). *Held*, that since no real attempts were made by the Sub-Divisional Officer to strictly follow the rules, the Board, when satisfied that there was any substantial advantage to be gained by such a course, should order a remand for a re-valuation. 1936 R.D. 513.

(2) For the purpose of sub-section (1) the value of the agricultural land sought to be sold shall be calculated on the net profits arrived at after ignoring the remissions in rent and revenue due to the slump in prices and other remissions, if any, and shall be such multiple of such net profits as the Collector shall, having regard to all the circumstances, consider fair and reasonable in accordance with rules framed by the [Prov. Government] in this behalf:

Provided that in the districts of Almora and Garhwal and in the Naini Tal Tahsil of Naini Tal District and the tract of Jaunsar Bawar in the Dehra Dun District, the Collector may, if in his opinion that will give a fairer result, calculate the value of land by applying multiples to the land revenue assessed on that land or rates to the area of that land.

(3) Before finally fixing the net profits or the multiple under sub-section (2), the Collector shall give the parties an opportunity of being heard and shall take into consideration any objection urged by any of them.

(4) The decision of the Collector under this section shall be appealable to the Board of Revenue within sixty days of such decision, and the decision of the Board of Revenue shall be final.

(5) The provisions of section 5 of the Indian Limitation Act shall apply to appeals under this Act.

4. When the value, and, if necessary, the amount of agricultural land has been determined in accordance with section 3, the Collector shall give the decree-holder the option of—

(a) taking the agricultural land, or the amount of agricultural land so determined as the case may be; or

Secs. 4 and 5.—Proceedings under—Order under S. 6, Encumbered Estates Act—Effect of—Order transferring property to decree-holder after order under S. 6 of Encumbered Estates Act—If *ultra vires*. 1937 A.W.R. 104=1937 R.D. 29. The Regulation of Sales Act does not abrogate the rules in Chap. 40 of the Revenue Manual. Transfer of property to the decree-holder under the Regulation of Sales Act is tantamount to a sale of the property; sale needs confirmation of the Collector and an appeal would lie to the Commissioner from the confirmation of a sale. An application in revision to the Board of Revenue would lie provided the Rules are satisfied. The Board will therefore interfere in revision with an order transferring the property to the decree-holder made after the acceptance by the Collector of an application under S. 6, Encumbered Estates Act. 1937 A.W.R. 104=1937 R.D. 29. An order under S. 4(a) of the Regulation of Sales Act completing the transfer of a portion of the property of the judgment-debtor to the decree-holder is not appealable to the Board of Revenue. The Act does not provide for any appeal to any authority against such an order. It only provides for an appeal against the valuation. 1936 R.D. 396. After the Collector has handed over to the decree-holder the bulk of the property ordered to be sold by the Civil Court in execution of a decree under S. 4 (a) of the Regulation of

(b) having the sale postponed till November 1, 1936; or
 (c) if the decree-holder chooses neither of the courses
 (a) and (b) having the decree realized by sale of the agricultural land in accordance with the provisions of section (7)1.

5. If the decree-holder exercises the option mentioned in clause (a) of section 4, the Collector shall transfer to him the agricultural land or the amount of agricultural land determined in accordance with section 3 (2) as the case may be, in full satisfaction of the decree:

If the decree-holder exercises the first option.

Provided that in cases where the decree is not against a particular piece of land, the Collector may allow the objection of the debtor to the sale of that land, if the judgment-debtor has got other land sufficient for the satisfaction of the decree.

6. If the decree-holder exercises the option mentioned in clause (b) of section 4, the execution of the decree shall be entirely suspended during the period of postponement of sale and such period shall be excluded from the period of limitation prescribed for execution of the decree, and for such period no interest shall accrue.

If the decree-holder exercises the third option.

7. If the decree-holder does not exercise the option mentioned in clause (a) or (b) of section 4, the agricultural land or the amount of agricultural land determined under section 3, as the case may be, shall be sold, and if

If the decree-holder exercises the first or second option.

Sales Act, the judgment-debtor cannot appeal against the order of valuation and seek to re-open the whole question of valuation of the property on the ground that he had no notice of the proceeding for valuation, when in fact he has known all about what was happening and has been in a position at any time to make any representations he had to make regarding the valuation of the property if he thought fit. 1936 R.D. 436. In spite of the passing of the Regulation of Sales Act the sanction of the Government under S. 20 of the Oudh Laws Act is still required to sales of ancestral property. Transfer under S. 4 of the Regulation of Sales Act is tantamount to a sale. Unless this sanction is duly obtained the vendee gets no good title. 1937 O.W.N. 1167.

Sec. 4.—¹ Figure '7' was substituted for figure '8' by U.P. Amending Act (IX of 1936).

Sec. 5.—[See *salo* notes under S. 3 *supra*.] Revision lies to the Board against orders passed under the Regulation of Sales Act against which no provision is made for appeal in the Act. But an order of transfer of property to the decree-holder under S. 5 of the Act does not require the confirmation of the Collector and is not appealable to the Commissioner. If an order has been passed wrongly under S. 5, the Board alone can interfere, and in revision only. 1937 R.D. 30=1937 A.W.R. 119.

Sec. 5, Rr. 8-A and 8-B.—Order of Collector under S. 6, Encumbered Estates Act—Subsequent order of transfer to decree-holder—Legality—Action under Rr. 8-A and 8-B—If "proceedings" under S. 7 of the Act. 1937 R.D. 30=1937 A.W.R. 119.

the sum realized from such sale does not fully satisfy the decree and the value of the land calculated in the manner prescribed in sub-section (2) of section 3 is not less than the amount of the decree together with prior encumbrances, the sum realized shall be deemed to satisfy the decree in full; but if the value of the land is less the sum realized shall be deemed to satisfy the decree to the extent of the value of the land calculated in the manner prescribed in sub-section (2) of section 3, and for the balance the creditor may adopt any remedy open to him.

8. The [Prov. Government] may from time to time by notification in the [Official Gazette] extend the period mentioned in clause (b) of section 4:

Extension of the period of postponement.

[Provided that, if the [Prov. Government] so extends the period, the Collector shall, as soon as possible after the commencement of each such extension, again give the option mentioned in section 4 to any decree-holder, who, when that option was last given, elected under clause (b) of the said section to have the sale postponed, and the provisions of sections 5, 6 or 7, as the case may be, shall again apply according to the option exercised by the decree-holder.]¹

9. The provisions of this Act shall cease to have effect from November 1, 1936, unless the [Prov. Government] extend the period by notification under section 8, in which case the Act shall continue to be in force during the period of such extension.

[Provided that in all cases in which the Collector has given the option mentioned in section 4 and the decree-holder has not elected under clause (b) of the said section to have the sale postponed the provisions of sections 5 and 7 of the Act shall continue to have effect until the transfer of land under section 5 has been completed or the decree has been wholly or partly satisfied under section 7, as the case may be.]²

10. Nothing in this Act shall apply to a mortgage decree sought to be executed by sale of the mortgaged property in the hands of a subse-

Saving.

Sec. 8.—¹ Proviso substituted by U.P. Amending Act (IX of 1936).

Sec. 9.—² Proviso inserted by U. P. Amending Act (IX of 1936).

Sec. 10.—A half-share of one of the mortgagors in a property subject to mortgage was sold in execution of a simple money decree, and was brought by certain persons, subject to the charge of the previous mortgage. Subsequently the mortgagee filed a suit on the basis of his mortgage-deed impleading the subsequent transferees of the half-share of one of the mortgagors and obtained a decree against all including the said transferees. The execution of this decree was transferred to the Collector for the sale of the property mortgaged. *Held*, that the Regulation of

quent transferee who has taken the transfer subject to the mortgage on the basis of which such decree has been obtained.

11. (1) The Local Government may make rules consistent with the provisions of this Act generally for carrying out the purposes of this Act, and may confer the powers of the Collector under this Act on any Assistant Collector of the first class.

(2) Before making the rules under this section the Local Government shall publish a draft of the same in the *Gazette* and shall concurrently cause a copy of the said draft to be sent to every member of the 1[Chambers of the Provincial Legislature.]

(3) In making the rules finally the Local Government shall consider the opinions received by them as well as any opinion expressed by the 1[either Chamber of the Provincial Legislature.]

12. In framing rules to guide the Collector in determining multiples under section 3 (2) the Local Government shall have regard to—

(1) the market value of land in the area or areas in which the landlord's property is situated, and

(2) the percentage of the post-slump profits which the landlord must retain to maintain himself, his family and his dependents and for the management and upkeep of his property.

THE UNITED PROVINCES AGRICULTURISTS' RELIEF ACT (XXVII OF 1934).

[10th April 1935.]

[N. B.—For Rules made under this Act See 33 A.L.J. (1935) Jour portion pp. I—IX]

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

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

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

It is hereby enacted as follows:

¹ Substituted by Adaptation of Indian Laws Order, 1937.

Sales Act could not be applied to the half-share of the property in the hands of the subsequent transferees and that that half-share could only be sold under the ordinary rules on the basis of present values, but that the other half-share which was still in the hands of the mortgagors was entitled to the benefits of the Act. 1937 R. D. 196. See also 1937 R. D. 197. No appeal lies to the Board of Revenue from an order of an Assistant Collector finding that the appellant is a transferee covered by S. 10 of the Regulation of Sales Act and that he is not entitled to the privileges of the Act. 1936 R.D. 338.

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This Act may be called THE UNITED PROVINCES AGRICULTURISTS' RELIEF ACT, 1934.

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

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

(3) The Local Government may, after obtaining the approval of [both Chambers of the Provincial Legislature] by notification in the *Gazette*, direct that all or any of the provisions of the Act shall not apply to any area which it may specify in the notification.

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

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

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

(a) if the debtor is a revenue-paying landlord, or an under-proprietor in Oudh holding a sub-settlement, there has been a suspension or remission of the revenue of any of his holdings; or

(b) if the debtor is a landlord, holding land free of revenue, there would have been a suspension or remission of the revenue of any of his holdings if revenue had been payable therefor; or

(c) if the debtor is a thekadar of land, there has been a suspension or remission of the rent of any holding payable to him; or

(d) if the debtor is a tenant of land or a person other than a thekadar or an under-proprietor in Oudh holding a sub-settlement and paying rent for his land, there has been a suspension or remission of the rent of any holding payable by him.

Sec. 1.—CONSTRUCTION—DUTY OF COURT TO HAVE REGARD TO OBJECT OF ACT.—The U. P. Agriculturists' Relief Act was enacted for the advantage and relief of agriculturists; and the Courts should keep this fact in view when interpreting the provisions of any particular section of the Act which may have been drafted in ambiguous language. 1937 A.W.R. 1173=1937 A.L.J. 1235.

Sec 2 (2)—"AGRICULTURIST"—MEANING OF.—The definition of 'agriculturist' in S. 2 (2), Agriculturists' Relief Act, is not confined only to persons actually engaged in the avocation of agriculture. 170 I.C. 742=

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

(a) a person who, in districts not subject to the Benares Permanent Settlement Regulation, 1795, pays land revenue not exceeding Rs. 1,000 per annum; or

(b) a person who, in districts subject to the Benares Permanent Settlement Regulation, 1795, pays a local rate under section 109 of the District Boards Act, 1922 not exceeding Rs. 120 per annum; or

(c) a person holding land free of revenue, who pays a local rate under section 109 of the District Boards Act, 1922, not exceeding Rs. 120 per annum; or

(d) in Oudh, an under-proprietor holding a sub-settlement of land the revenue of which does not exceed Rs. 1,000 per annum; or

(e) a thekadar who holds a theka of land the revenue of which does not exceed Rs. 1,000 per annum; or

(f) a person other than a thekadar or an under-proprietor in Oudh holding a sub-settlement, who pays rent for agricultural land not exceeding Rs. 500 per annum; or

(g) a person holding land free of rent, the area of which does not exceed 80 acres; or

(h) a person ordinarily living outside the limits of any municipality who belongs to any of the classes of persons mentioned in schedule I;

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

A.I.R. 1937 Oudh 369 (F.B.). The word 'person' used in definition of agriculturist must be interpreted in the sense of juristic person and would as such include a body of persons like the trustees. Therefore persons in the position of trustees for the management of an estate must be regarded as agriculturists within the meaning of S. 2 (2) of the Act, and as such are entitled to the benefit of the Act. 170 I.C. 742=1937 O. W.N. 740=A.I.R. 1937 Oudh 369 (F.B.). A person paying land revenue in respect of certain properties in his capacity as *mutwali* of a *wakf* may be an agriculturist as defined by the Act, though he is not the owner of the properties. If he has a beneficial interest under the *wakf*, the payment of land revenue by him would bring him under the definition of "agriculturist"; but if he takes no beneficial interest under the *wakf* whatever, he is merely a trustee for others. I.L.R. (1937) All. 509=168 I.C. 955=1937 A.L.J. 178=A.I.R. 1937 All. 344.

Sec. 2 (2) (f)—"AGRICULTURAL LAND".—The expression "agricultural land" in S. 2 (2) (f) cannot be interpreted as meaning only land held for agricultural purposes. The expression is a comprehensive one including all land which is fit for agriculture, though in fact it is being used for some other purpose, and includes grove land as well. A grove-

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

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

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

Explanation II.—In the case of members of a joint Hindu family or joint owners or joint tenants, each member or owner

holder is therefore an agriculturist and is therefore entitled to the benefits of the Act. 1937 A.L.J. 686=171 I.C. 558=A.I.R. 1937 All. 627. Where a tenancy is held by a joint Hindu family, S. 2 (2) (f) applies to the case, and the whole family which pays the rent of the agricultural land not exceeding Rs. 500 per annum is an agriculturist. For any particular member to claim the benefit of an agriculturist it is not necessary to refer to Explanation 2 of S. 2 (2) in such a case. Explanation 2 is only required in the case of a joint family where the total rent is more than Rs. 500 per annum, and then the different members may claim under Explanation 2 that their share is less than Rs. 500, and that they would be agriculturists. 1938 A.W.R. 26 (H.C.)=1937 A.L.J. 1345.

Sec. 2 (2) (f), Expls. 2 and 3.—Explanation 2 of S. 2 (2) does not apply to Ch. II, S. 3 of the Act; it is not necessary to resort to that Explanation in the case of a joint Hindu family which holds an agricultural holding the rent of which is only Rs. 5 per annum. A joint Hindu family which pays a rent not exceeding Rs. 500 is an agriculturist under S. 2 (2) (f), as word “person” in that clause includes a Hindu joint family. Such a family is entitled to instalments under S. 3 of the Act. 1938 A.W.R. 25 (H.C.)=1937 A.L.J. 1367.

Sec. 2 (2), Proviso.—A person falling within the categories (a), (d) (f) and (g) of S. 2 (2) should be considered to be holding land, though the land, is in the actual occupation of a *thekadar* or a tenant, who should also be considered to be holding such land. Each holds it in a different tenure. If other conditions are fulfilled, both of them should be considered to be “agriculturists” as defined by the Act; if they do not pay income-tax exceeding the amount of the local rate payable in respect of the same land. It is not correct to hold that only one person can hold the same land at the same time. It can be held by holders of different grades at one and the same time. If a judgment-debtor is a proprietor in respect of some lands and is also the *thekadar* of other land, the local rate payable in respect of both classes of land can be taken into consideration for purposes of the second proviso to S. 2 (2) of the Act. I.L.R. (1937) All. 694=170 I.C. 113=1937 A.L.J. 459=A.I.R. 1937 All. 476.

Sec. 2 (2), Expl. II.—Though under Expl. II to S. 2 (2) of the

or tenant shall be considered to be an agriculturist for the purposes of Chapters II (except sections 3, 4, 5 and 8), III and VI, whose share or interest in revenue, local rate or rent or the rent-free land, as the case may be, does not respectively exceed the aforesaid limits.

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

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

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

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

Explanation VII.—When a person, holding land in districts subject to the Benares Permanent Settlement Regulation, 1795, or holding land free of revenue, pays both rent and local

Agriculturists' Relief Act each member of a joint Hindu family or each joint owner or joint tenant may for certain purposes apply for certain benefits conferred by the Act, it is equally clear that each member of a joint family or joint owner or joint tenant cannot claim the benefits conferred by S. 5 or by S. 30 of the Act, because S. 5 and Ch. IV which contains S. 30 are expressly excluded in the Explanation. Each member of a joint Hindu family can be regarded as an agriculturist only in certain specified cases, e.g., proceedings for redemption of mortgages under Ch. III, proceedings under Ss. 37 and 38, etc. But in other cases than those expressly covered by the Explanation it is only the karta of the joint family or the person actually recorded as holding the property or paying the revenue that can be treated as the agriculturist, and the other individual members cannot claim the same benefits and privileges. For the purposes of an application under S. 5 or Ch. IV, therefore, the karta of a joint Hindu family, who is normally the persons recorded as owner or person paying revenue, etc., is the only person who can apply and who can be regarded as an agriculturist. If he is found to be not an agriculturist, that concludes the matter and the other members of the family cannot avail themselves of Expl. II to S. 2 (2) and apply under Ss. 5 and 30. 1937 A.L.J. 970=1937 A.W.R. 890=1937 R.D. 534=A.I.R. 1938 All. 12.

Sec. 2 (2), Prov. and Expl. VII.—Expl. VII to S. 2 (2) does not override the Proviso to S. 2 (2), but is on the other hand subject to it so far as applications specially exempted under it are concerned. Applications governed by Chap. IV and V are completely covered by the Proviso and not affected by the Explanation. I.L.R. (1937) All. 759=171 I.C. 573=1937 A.L.J. 680=A.I.R. 1937 All. 633.

rate, he shall not be deemed to be an agriculturist if the total of the rent and local rate annually payable by him exceeds Rs. 500.

Illustrations.

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

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

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

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

(5) "Court" means a civil court.

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

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

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

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

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

(i) a loan advanced by the 1[Central Government or the Provincial Government] or by any Municipal, District or Cantonment Board authorized by the 1[Central Government or the Provincial Government] to advance loans, or by a Co-operative society;

¹ Substituted by the Adaptation of Indian Laws Order, 1937.

Sec. 2(10).—The price due in respect of goods sold to an agriculturist is not a loan, which as defined by S. 2 (10) (a) means an advance to an agriculturist, whether of money or in kind. A suit for the price of articles purchased by an agriculturist is not a suit for recovery of loan under the Act and the defendant in such a suit is not entitled to relief under the Act and cannot claim instalments. 1937 A.L.J. 766=171 I.C. 571=A.I.R. 1937 All. 669. See also 165 I.C. 469. The correct date to take for determining whether a loan is a secured one or an unsecured one is the date on which the loan is taken and not the date on which a suit is brought to recover it. It is not open to a mortgagee who has taken a mortgage for his debt to give up his security and sue for a simple money decree, so as to enable him to claim a higher interest as on an unsecured loan under Sch. III of the Agriculturists' Relief Act. I.L.R. 1937 All. 500=169 I.C. 227=1937 A.L.J. 177=A.I.R. 1937 All. 395.

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

(iii) a loan of agricultural produce repayable at the next harvest with not more than one quarter of the quantity of the said produce by way of interest.

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

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

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

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

(12) "Prescribed" means prescribed by this Act, or by rules made under this Act.

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

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

CHAPTER II.

SUITS AGAINST AGRICULTURISTS.

3. (1) Notwithstanding any provision in the Code of Civil Procedure, 1908, to the contrary, the Court, at the time of passing a decree for money or a preliminary decree for sale in default of payment of money or a preliminary decree for foreclosure against an agriculturist, and on the

Fixing of instalments at the time of passing of decree.

Sec. 3.—The words "decree for money" used in S. 3 of the Agriculturists' Relief Act are quite general, and are applicable to all money decrees whether they are based on a loan or on any other claim. The Court has, therefore, power to fix instalments for payment of decretal amount at the time of passing a decree for certain arrears of *guzara*. 170 I.C. 887 = 1937 O.W.N. 889 = A.I.R. 1937 Oudh 487.

S. 3 (1), Proviso.—According to the proviso to S. 3 (1) of the Act, instalments granted to an agriculturist to whom Chapter III applies should not extend beyond four years from the date of the decree. An order making the decree payable in twelve years is, therefore, wrong and without jurisdiction. 165 I.C. 900 = 9 R.O. 269 = 1936 R.D. 592 = 1936 O.W.N. 1226 = A.I.R. 1937 Oudh 154. The person referred to in proviso I to S. 3

application of such agriculturist, shall, unless for reasons to be recorded it directs otherwise, direct that the total amount found due for principal, interest up to the date of the decree and costs, if any, shall be paid in such number of instalments payable on the dates fixed by the court as having regard to the circumstances of the judgment-debtor and the amount of the decree, the Court considers proper:

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

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

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

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

(1) of the U. P. Agriculturists' Relief Act, for whom a four years' limit is prescribed is one who has made an application under Ch. III of the Act and to whom Ch. III therefore applies. A person who is not a mortgagor, but who is only a simple debtor, cannot, on the plain language of the section be held to be an agriculturist to whom Chapter III applies at all, and to him, therefore, the four years' limit cannot be applied. He can only come under the second category mentioned in the proviso, i.e., "other agriculturists", provided of course he is agriculturist. I.L.R. (1937) All. 951=1937 A.L.J. 1134=1937 A.W.R. 854=A.I.R. 1937 All. 778. Under the first proviso to S. 3 (1) of the Agriculturists' Relief Act, the maximum period in a case to which Chapter III does not apply is 15 years. A Court fixing period of 10 years in such years cannot be said to have committed any irregularity in the exercise of its jurisdiction so as to justify interference in revision. I.L.R. (1937) All. 502=169 I.C. 231=10 R.A. 3=1937 A.L.J. 274=1937 A.W.R. 231=A.I.R. 1937 All. 345.

Sec. 3 (2)—A Small Cause Court, though it has no jurisdiction to attach an immovable property by reason of S. 7, C. P. Code, has jurisdiction to create a charge thereon. A charge can therefore, be created on the immovable property of a judgment-debtor in virtue of the terms of S. 3 (2) in a small cause Court case. I.L.R. (1937) All. 418=1937 A.L.R. 262=167 I.C. 784=9 R.A. 580=1936 A.W.R. 1288=1937 A.L.J. 93=1937 R.D. 39=A.I.R. 1937 All. 194.

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

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

4. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the rate at which future interest. future interest may be allowed in any decree for payment of money or for sale in default of payment

Sec. 3 (4)—Neither S. 3 (4) nor any other provision in the U. P. Agriculturists' Relief Act authorizes the Court to limit the decree-holder's right for enforcing payment of the whole decretal amount to a case of default in the payment of consecutive instalments. Such an order is therefore, liable to be set aside. 12 Luck. 630=165 I.C. 713=1936 R.D. 531=1936 O.W.N. 1090=A.I.R. 1937 Oudh 141.

Secs. 3 Proviso and 5.—The words "an agriculturist to whom Chap. III, applies" used in the proviso to S. 3 of the Agriculturists' Relief Act mean an agriculturist falling under Cls. (a) to (h) of the definition given in S. 2 (2). The period of instalments which could be fixed in the decree standing against such an agriculturist could not extend beyond four years. The date from which this period is to be reckoned, where the instalments are fixed by the Court under S. 3 at the time of the passing of the decree, is no doubt the date of the decree. But where the instalments are fixed under S. 5 after the passing of the decree, such date would be the date of the order converting the decree into a decree for payment by instalments. 12 Luck. 630=165 I.C. 713=1936 O.W.N. 1090=A.I.R. 1937 Oudh 141. In the case of a mortgagor agriculturist to whom Ch. III applies, instalments can be granted and spread over a period not exceeding four years. The Court has no jurisdiction in such a case to order instalments to be spread over a period exceeding four years. The fact that the judgment-debtor happens to be a military officer with a small pension does not entitle the Court to make such an order. To do so would be contrary to the clear terms of the statute and *ultra vires*. 1937 A.L.J. 1291=1937 A.W.R. 1035=A.I.R. 1938 All. 26.

Sec. 4—"ANY ORDER FOR GRANT OF INSTALMENTS"—IF CONFINED TO ORDER UNDER S. 3.—The words "any order for grant of instalments" in S. 4 of the Agriculturists' Relief Act are very wide and cover any order passed under the Act, whether under S. 3 or under S. 5. It is not correct to restrict them to an order passed under S. 3. I.L.R. 1937 All. 536=168 I.C. 191=1937 A.L.J. 370=A.I.R. 1937 All. 449.

APPLICABILITY—DECREES PASSED BEFORE ACT.—S. 4 does not apply to decrees passed before the Act, and future interest allowed in such decrees, though subject to reduction under S. 30 according to the rates specified in Sch. III of the Act, is not liable to further modification according to the rate notified by the Government under S. 4 (2) of the Act

of money or for foreclosure or in any order for grant of instalments passed against an agriculturist shall not exceed the rate notified by the 1[Provincial Government] in the 1[Official Gazette] under sub-section (2) as in force at the time when the decree or order, as the case may be, is passed.

(2) As soon as possible after the rate of interest at which the 1[Central Government] will lend money to the 1[Provincial Government] is announced, the 1[Provincial Government] shall notify that rate in the 1[Official Gazette], and publish it in such other manner as it thinks proper, and that rate shall be the rate in force for future interest from such date as may be notified by the 1[Provincial Government] until such date as it is superseded by a new rate.

5. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court shall, unless for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to

Power to fix instalments after the passing of decrees.

(1937 O.W.N. 550, Foll.) 170 I.C. 794=1937 O.L.R. 508=1937 R.D. 473=10 R.O. 77=1937 O.W.N. 952=A.I.R. 1937 Oudh 498. I.L.R. (1937) All. 771=171 I.C. 520=1937 A.L.R. 854=1937 R.D. 360=1937 A.W.R. 606=1937 A.L.J. 681=A.I.R. 1937 All. 645. S 4 does not give the Court, in fixing instalments for payment of the decretal debt, to allow future interest in cases in which no such interest has been allowed by the original decree. 12 Luck. 630=165 I.C. 713=1936 O.W.N. 1090=A.I.R. 1937 Oudh 141. *Per Full Bench (Zia-ul-Hasan, J., contra)*.—S. 4 of the Agriculturists' Relief Act does not apply to decrees passed before the Act. Future interest allowed in such decrees, though subject to reduction under S. 30 according to the rates specified in Sch. III, is not liable to further modification according to the rate notified by Government under S. 4 (2) of the Act. 168 I.C. 318=9 R.O. 467=1937 O.L.R. 253=1937 O.W.N. 550=1937 R.D. 235=A.I.R. 1937 Oudh 312 (F.B.). There is no provision in the Act authorising the Court, in fixing instalments for payment of the decretal debt, to allow future interest in cases in which no such interest has been allowed by the original decree. (1936 O.W.N. 1090, relied on.) 166 I.C. 288=1937 O.W.N. 130=1937 O.L.R. 6=A.I.R. 1937 Oudh 266. S. 4 is imperative, and that section applies to all decrees. When the Court under S. 5 converts the original decree into a new decree, it has no power to fix future interest at a rate beyond the maximum prescribed by S. 4. I.L.R. (1937) All. 951=1937 A.W.R. 854=1937 A.L.J. 1134=A.I.R. 1937 All. 778.

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 4 (2)—SCOPE OF—RATE OF INTEREST NOTIFIED—DURATION OF. Under S. 4 (2) the rate of interest notified by the Government is to remain in force for a definite period, and when a new rate is notified that supercedes the prior one. The sub-section lays down future rates of interest for definite periods; it is not necessary that there should be one inflexible rate after date of the decree. I.L.R. (1937) All. 536=1937 A.L.R. 325=168 I.C. 191=1937 A.W.R. 398=1937 A.L.J. 370=A.I.R. 1937 All. 449.

Sec. 5—APPLICABILITY—COMPROMISE DECREE.—S. 5 also applies to compromise decree. Such a decree is covered by the words "any decree" in the section; and if it is a decree for money, it can be converted into one for payment by instalments. 168 I.C. 191=I.L.R. (1937) All. 536=1937 A.L.R. 325=1937 A.L.J. 370=A.I.R. 1937 All. 449.

the decree-holder, direct that any decree for money or preliminary decree for sale or foreclosure passed by it or by any court whose business has been transferred to it against an agriculturist, whether before or after this Act comes into force, shall

APPLICABILITY—INSTALMENT DECREE.—S. 5 applies to cases in which instalments had already been fixed by the decree. The words "converted into a decree for payment by instalments" occurring in S. 5 (1) should be read along with the following words, namely, "drawn up in such terms as it (the Court) thinks fit in accordance with the provisions of S. 3". A decree may already be an instalment decree but S. 5 gives the Court power to provide for payment of instalments in accordance with the provisions of S. 3. 165 I.C. 797=1936 O.W.N. 1224=A.I.R. 1937 Oudh 107. S. 5 of the Act which is most general in its scope and applies to "any decree for money" cannot be held to be inapplicable to a decree for money directing payment by instalments. I.L.R. (1937) All. 502=169 I.C. 231=1937 A.L.J. 274=1937 A.W.R. 231=A.I.R. 1937 All. 345. The words "any Court whose business has been transferred to it" in S.5 of the Agriculturists Relief Act refer only to a Court which has ceased to exist and whose entire business has been taken over by another Court. The words have no reference to a case where a decree has been transferred from one Court to another for execution. An executing Court has therefore no power to grant relief under the Act in a decree transferred to it for execution by another Court situated in or outside the United Provinces. I.L.R. (1937) All. 558=169 I.C. 31=1937 A.L.J. 397=1937 A.W.R. 339=A.I.R. 1937 All. 396. In the case of an agriculturist falling under cl. (a) of S. 2 (2) the period of instalments which could be fixed in the decree standing against him cannot extend beyond four years. An order making the decretal amount payable in instalments extending over a period of 12 years is, therefore, without jurisdiction. (1936 O.W.N. 1090, followed.) 166 I.C. 288=1937 O.W.N. 130=A.I.R. 1937 Oudh 266. Where an execution application was made by the decree holder before the period of twelve years prescribed by S. 48, C. P. Code and while it is pending an application is made by the judgment-debtor under S. 5 of the Agriculturists' Relief Act, such application is not incompetent although made after 12 years have expired since the date of the decree. The Court would be quite justified in allowing instalments to the judgment-debtor on such application, and this action on its part will not in any way debar the decree-holder from obtaining relief if default is made in the payment of the instalments. 171 I.C. 41=1937 O.W.N. 906=A.I.R. 1937 Oudh 467. The Chief Court will not entertain an application in revision against an order of the Small Cause Court refusing to make the decretal amount payable in instalments under S. 5 as a right of appeal is allowed to the judgment-debtor under Sub-S. (2) of S. 5. 171 I.C. 281=1937 O.W.N. 1071=A.I.R. 1937 Oudh 523. "Decree", for purposes of S. 5 is the decree for instalments and not the original decree; and when a decree is converted into a new decree under S. 5, the Court can fix a period for instalments starting from the date of the new decree and not necessarily from the date of the original decree; and it does not act wrongly if it fixes instalments from the date of the new decree. 1937 A.W.R. 854=1937 A.L.J. 1134=A.I.R. 1937 All. 778. Where after applying under S. 5 for instalments, the judgment debtor applies to the executing Court for stay of the sale in execution, but that Court rejects the application for stay, no appeal lies against that order. But the High Court would interfere in the matter in the exercise of its revisional jurisdiction. 1937 A.W.R. 989=1937 A.L.J. 1197. S. 5 gives the Court power to fix instalments in the case, *inter alia*, of "any decree for money". These words are quite general and are applicable to all money decrees whether they are based on a loan or on any other claim,

be converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of section 3:

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

(2) If, on the application of the judgment-debtor, the Court refuses to grant instalments, or grants a number or period of instalments which the judgment-debtor considers inadequate,

165 I.C. 469=1936 O.W.N. 1158=A.I.R. 1937 Oudh 124. The word 'judgment-debtor' as used in S. 5 should be construed in the sense of the person liable for payment of the decree for the time being, or in other words to include the legal representatives and transferees of the original judgment-debtor. The word 'agriculturist' has been used in S. 5 only in the description of the decrees in which instalments can be fixed. According to the terms of that section, all that is necessary is that the decree should have been passed against an agriculturist. Where, therefore, the decree is passed against a person who was an agriculturist both at the time of the loan as well as at the date of the suit, the conditions of S. 8 are satisfied, and the transferee from the judgment-debtor is entitled to the benefit of S. 5, whether or not he is an agriculturist. 170 I.C. 794=1937 O.W.N. 952=A. I.R. 1937 Oudh 498.

Sec. 5 (1)—Nature of order under. See 1937 A.W.R. 1123. If a Judge of a Small Cause Court rejects an application under S. 5 (1) for the fixing of instalments the remedy of the applicant lies in an appeal under S. 5 (2) of that act, and not in an application under S. 25 of the Provincial Small Cause Courts Act. The provisions for an appeal which are contained in S. 5 (2) are not curtailed or governed by S. 27 of the Provincial Small Cause Courts Act, so as to make an application under S. 25 of that Act the proper remedy when the Judge of a Small Cause Court has refused to grant instalments. 168 I.C. 470=1937 O.W.N. 589=A.I.R. 1937 Oudh 358. A final decree for sale cannot be said to be 'fully satisfied within the meaning of Proviso to S. 5 (1) until the sale is confirmed. Under S. 65 of the C. P. Code, it is not merely the sale but also the sale becoming absolute that vests the property in the purchaser and under O. 21, R. 92, the sale becomes absolute only on confirmation. 1937 O.W.N. 1153.

Sec. 5 (2)—APPEAL—FORUM. Where the order refusing an application is made by a Civil Judge of the Special Jurisdiction under the Agriculturists' Relief Act, who is immediately subordinate to a District Judge, an appeal from that order lies to the District Judge. I.L.R. (1937) All. 514=1937 A.W.R. 387=1937 A.L.J. 363=A.I.R. 1937 All. 297. A judgment-debtor applied under Ss. 5 and 30 of the Agriculturists' Relief Act praying for the reduction of the interest on the decree amount and for instalments. The Court holding that the applicant was not an agriculturist, rejected the application. On appeal, the judgment debtor confined his appeal to the question of refusal of instalments. The District Judge allowed the appeal holding the judgment-debtor to be an agriculturist and remanded the case to the lower Court. Held, that the order of the District Judge was final under S. 5 (2) of the Act and no appeal from the order lay to the High

its order shall be appealable to the court to which the court passing the order is immediately subordinate, and the decision of the appellate court shall be final.

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

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

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

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

7. Notwithstanding anything contained in any other enactment for the time being in force, every suit for recovering an unsecured loan in which the defendant, or, where there are several defendants, any of the defendants, is an agriculturist, shall be

Forum of suits against agriculturists.

Court. I.L.R. (1937) All. 703=171 I.C. 177=1937 A.L.J. 684=A.I.R. 1937 All. 565. For the purpose of S. 5 (2), the Court of Small Causes must be deemed to be immediately subordinate to the Court of the District Judge. An appeal from an order of the Small Cause Court refusing instalments, therefore, lies to the District Court and not to the High Court. 171 I.C. 281=1937 O.W.N. 1071=A.I.R. 1937 Oudh 523. See also 1937 A.W.R. 1079=1937 A.L.J. 1096. Sub-S. (2) of S. 5 which makes the decision of the appellate Court final, not only debars a further appeal against it but also prevents interference with it in revision. If the order is to be interfered with in revision, it would affect the finality just as much as interference therewith in appeal. Accordingly, an order of the appellate Court refusing to grant instalments is not open to revision. 165 I.C. 469=1936 R.D. 580=1936 O.W.N. 1158=A.I.R. 1937 Oudh 124. See also 1937 O.W.N. 1153.

SUCCESSIVE APPLICATIONS UNDER S. 5—MAINTAINABILITY. A second application under S. 5 asking the Court which has already passed an instalment decree to vary its own decree is incompetent, and the Court has no jurisdiction to entertain such an application. If a judgment-debtor is dissatisfied with the number or periods of instalments he can appeal to the superior Court, under S. 5 (2), and the decision of such Court shall be final. But he has no right to prefer a separate application to the same Court again. 1937 A.L.J. 1291=1937 A.W.R. 1035=A.I.R. 1938 All. 26.

Sec. 7—S. 7 is not inapplicable to a case where the suit had been instituted before the Act came into force and an *ex parte* decree obtained at an earlier stage of the suit. The section clearly provides that no Court should have jurisdiction to entertain a suit when it is filed, or to try it unless the conditions laid down in the section are fulfilled. Where, therefore, an *ex parte* decree passed against an agriculturist in a suit instituted prior to the coming into force of the Act is subsequently set aside and the suit is restored to file,

instituted and tried in a court within the local limits of whose jurisdiction—

(a) the agriculturist defendant, or any of the agriculturist defendants, where there are more than one such defendants, actually and voluntarily resides; or

(b) in case the agriculturist defendant, or all the agriculturist defendants, reside outside the limits of the United Provinces of Agra and Oudh—

(1) the holding or the landed property of the agriculturist defendant, or any of them, if there are more than one such defendants, is situate, and

(2) If the agriculturist defendant or none of the agriculturist defendants has a holding or landed property, the agriculturist defendant or any of them, if there are more than one such defendants, carries on the profession by virtue of which he is classed as an agriculturist.

8. (1) No person shall be deemed to be an agriculturist

the defendant is entitled to plead his status as agriculturist and want of jurisdiction under S. 7. The section is not confined to suits instituted after the Act came into force. I.L.R. (1937) All. 757=171 I.C. 419=1937 A.W.R. 601=1937 A.L.J. 687=A.I.R. 1937 All. 634. The provisions of S. 7 are mandatory, and a Court has no jurisdiction to try a suit unless the defendant or defendants, who are agriculturists, actually and voluntarily reside within the local limits of its jurisdiction. The cardinal point is residence; and the fact that the defendants carry on some trade or business within a Court's jurisdiction cannot affect the question. 1937 A.W.R. 800=1937 R.D. 501. S. 7 does not confer or take away jurisdiction from any Court. It merely modifies the provisions of the Civil Procedure Code as regards the place of suing. For the convenience of agriculturists, the section limits the choice of the plaintiff as regards forum to the Court within whose jurisdiction the agriculturist defendant resides. But the section in no way excludes the operation of S. 21, C. P. Code. If the defendant remains *ex parte* and does not object to the forum, he cannot afterwards raise the objection in execution proceedings. I.L.R. 1937 All. 761=1937 A.L.J. 720=171 I.C. 196=1937 A.L.R. 811=1937 A.W.R. 603=A.I.R. 1937 All. 567. Under the mandatory provisions of S. 7 of the Agriculturists' Relief Act, the only Court which has jurisdiction to entertain and try a suit against an agriculturist on the basis of an unsecured loan is the Court within the local limits of whose jurisdiction that defendant actually and voluntarily resides. The fact that the defendant carries on business or does some trade in another place does not affect the question or invest the Court of such place with jurisdiction to entertain and try the suit. 1937 A.L.J. 843=A.I.R. 1937 All. 761. S. 7 applies even to a suit instituted prior to the coming into force of the Act. An objection after the Act came into force that the suit, though instituted prior to the date of the coming into force of the Act, ought to be tried only in a Court within whose jurisdiction the defendants reside, is competent and may be given effect to by the Court in which the suit was instituted, though it was instituted in that Court properly at the time. 1937 A.W.R. 1173=1937 A.L.J. 1235.

Sec. 8—For the application of S. 5, it is necessary to show that the decree was passed against an agriculturist. The language of S. 8 would seem to read as if it referred to the same person, and to require that the person referred to should have been an agriculturist at the time of the

Change in the status of an agriculturist. for the purposes of this chapter, unless he was an agriculturist both at the time of the advance of the loan as well as at the date of the suit:

Provided that, if a person has a subsisting interest in land, but, by reason of a temporary transfer or for any other similar reason, does not for the time being pay any rent or revenue in respect thereof, he will not merely by reason of such non-payment cease to be an agriculturist.

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

CHAPTER III.

MORTGAGES AND THEIR REDEMPTION.

9. Notwithstanding anything contained in the Transfer of Property Act, 1882, or any contract to the contrary, no mortgage of land or grove by a Form of possessory mortgage, agriculturist made after the commencement of this Act shall be valid if, under the terms of such mortgage, possession of the mortgaged land or grove is delivered to the mortgagee, unless the mortgagee is authorized to retain such possession and to receive the rents and profits of such land or grove both in lieu of interest and towards payment of the principal, on condition that after the expiry of a fixed term not exceeding twenty years, the mortgaged land or grove shall be re-delivered to the mortgagor and the mortgage debt shall be deemed to have been discharged.

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

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

10. Applications under this chapter shall, if the principal money secured does not exceed Rs. 500,— Jurisdiction of Collector under this chapter. be brought before the Collector, and the word “court” in this chapter shall in such cases include the “Collector.”

advance of the loan as well as at the date of the suit. But it would be impossible to apply the section in that sense in cases in which the original debtor has died or has ceased to possess any interest in the mortgaged property before the institution of the suit. The reasonable construction in such a case, therefore, would be to require proof about the original debtor being an agriculturist at the time of the advance of the loan, and about his successor or legal representative against whom the decree is passed satisfying that condition at the date of the suit. 170 I.C. 794=1937 O.L.R. 508=(1937) O.W.N. 952=A.I.R. 1937 Oudh 498.

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

12. Notwithstanding anything contained in section 83 of Transfer of Property Act, 1882, or any contract to the contrary, an agriculturist who has made a mortgage either before or after the passing of this Act, or any other person entitled to institute a suit for redemption of the mortgage, may, at any time after the principal money has become due, and, before a suit for redemption is barred, file an application before the Court within whose jurisdiction the mortgaged property or any part of it is situate, in such form and giving such particulars as the¹[Provincial Government] may by rule prescribe, and praying for an order directing that the mortgage be redeemed, and, where the mortgage is with possession, that he be put in possession of the mortgaged property. The application shall be duly verified in the manner prescribed by law for the verification of plaints and shall state the sum which the applicant declares to the best of his belief to be due under the mortgage. The applicant shall at the same time deposit such sum with the Court.

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

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

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

¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937.

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

Procedure when applicant is absent.

16. If, on the date fixed or any subsequent date to which the proceedings may have been postponed, the applicant appears and the mortgagee does not appear in spite of notice, or the mortgagee appears and does not accept the money deposited by the applicant in full discharge of his mortgage or objects to redemption of the mortgage on any other ground, the Court shall hold an inquiry to determine whether the applicant is entitled to redeem the mortgage and whether the money deposited by him is sufficient. If the Court finds that the applicant is not entitled to redeem, it shall reject the application. If it finds that the applicant is entitled to redeem, but must pay a large amount than that deposited by him, the Court shall order the applicant to deposit the balance within a fixed period. If the applicant fails to deposit the said balance, the Court shall reject his application. If the Court finds that the applicant is entitled to redeem and that the amount deposited by him was sufficient or if it was not sufficient, the applicant has deposited the balance within the time fixed, it shall order that the mortgage be redeemed, that the money deposited be paid to the mortgagee, and that the title deeds, if any, in possession or power of the mortgagee shall be deposited in Court and shall be delivered to the mortgagor.

General procedure and procedure in contentious cases.

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

Cessation of interest.

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

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

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

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

Return of deposit.

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

Deposit not to be attached.
Terms "mortgagor" and "mortgagee" to include their successors.

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

Investment of powers on Assistant Collectors and transfer of proceedings.

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

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

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

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

23. (1) An appeal shall lie to the District Judge from an order of a Collector or Assistant Collector passed under this chapter. An appeal shall lie from the order of a civil court passed under this chapter to the court to which original decrees passed by such court are ordinarily appealable, and where such decrees are appealable to more courts than one, to the court of lowest jurisdiction.

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

When application can be filed under this chapter.

24. (1) No application under section 11 or 12 shall be filed, unless—

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

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

(2) In cases in which the status of a mortgagor as "agriculturist" on the date of mortgage is at issue and no documentary evidence is forthcoming to prove it, the status of the mortgagor on that date shall be determined with reference to the

Sec. 23.—The U. P. Agriculturists' Relief Act does not provide for any appeal from a refusal to grant instalments under Sec. 3 of the Act. The appeal provision in Sec. 23 is only for Chapter III and not for Ch. II. 1937 A.L.J. 1345=1938 A.W.R. 26 (H. C.). An appeal under S. 23 of the Agriculturists' Relief Act is not an appeal falling under Art. 11 of Sch. II of the Court-Fees Act, but falls under Art. 1 of Sch. I, and therefore *ad valorem* Court fee must be paid on the amount of the subject-matter in dispute. 1937 A.L.J. 1173=1937 A.W.R. 932=A.I.R. 1938 All. 14.

entries in the record-of-rights or the annual registers prepared under the Land Revenue Act, 1901, of the year nearest to the year of mortgage for which they exist.

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

Bar of suit.

26. (1) The limitation for making an application for redemption under this chapter shall be the same as that provided in the Indian Limitation Act, 1908, for a suit for redemption.

Limitation and procedure.

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

(3) The provision of sections 6, 7, 8, 19 and 21 of the Indian Limitation Act, 1908, shall apply to applications under this chapter and the provisions of section 5 of the said Act shall apply to appeals under this chapter.

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

Applicability of the Code of Civil Procedure to proceedings under this chapter.

Civil Court decrees.

CHAPTER IV.

RATES OF INTEREST.

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

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

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

29. If an unsecured loan taken after the date on which this Act comes into force, is, if it is not a loan for a fixed term, repaid within two years of the date of the taking of the loan, or, if it is a loan for a fixed period, is repaid within such period, the debtor shall not be liable to pay interest at a rate higher than the prevailing rate of interest for a secured loan of the same class in force at the time the loan was taken.

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

Sec. 30.—CONSTRUCTION AND SCOPE OF SECTION.—The words "loan" and "interest" occurring in S. 30(1) of the Agriculturists' Relief Act must be understood as having the meanings given to them by the definitions of those words in S. 2; and it is only the principal amount actually advanced that is the "loan", and anything paid over and above that is "interest" no matter what form or shape it may take. The renewal of a mortgage deed by the execution of a fresh mortgage deed for the amounts due under the prior deed, without any fresh advance of money cannot be regarded as a fresh advance of a loan in cash or kind. Even if the new transaction is by way of a possessory mortgage under which the mortgagee takes possession undertaking to set-off the income against interest, if there is no fresh advance of money to the mortgagor, the transaction cannot be regarded as a fresh advance in kind by the mortgagee to the mortgagor. What the Court has to see is the actual amount advanced or lent and not what by some fiction might be imagined to have been indirectly advanced. The previous transaction cannot be deemed to have been closed by the execution of a fresh document, so as to preclude it from being re-opened under the Act. 1937 A.W.R. 892=1937 R.D. 536=A.I.R. 1938 All. 1.

REDUCTION OF INTEREST—POWER OF COURT TO REDUCE WITHOUT APPLICATION BY THE JUDGMENT-DEBTOR.—If the Court passing the decree has not reduced interest under S. 30 (1) of the Agriculturists' Relief Act it must do so under S. 30 (2) upon application made to it by the judgment debtor. If the Court reduces the interest without an application by the judgment-debtor, but of its own motion after giving the parties an opportunity of being heard before such reduction, it cannot be said that the order is without jurisdiction so as to justify interference by the Board in revision when the decree-holder has not in any way been prejudiced. Though the order is not technically in accordance with S. 30 (2), since it results in justice being done, it will not be interfered with. 1937 A.L.J. 1291=1937 A.W.R. 1035=A.I.R. 1938 All. 26.

(2) If a decree has already been passed on the basis of a loan and remains unsatisfied in whole or in part, the Court

An amendment of the decree made under S. 30, Agriculturists' Relief Act on the application of one of the judgment-debtors enures not only for his benefit but also for the benefit of all the judgment-debtors. 170 I.C. 794=1937 O.L.R. 508=1937 O.W.N. 952=A.I.R. 1937 Oudh 498. S. 30 does not require that the loan must be taken by the person making the application under the Act. All that is necessary under the section is that there should be loan as defined by the Act. If the loan was advanced to an agriculturist, and if the applicant is also an agriculturist on the date of the suit on the loan, the applicant is entitled to the benefit of the reduction of interest under S. 30. I.L.R. (1937) All. 514=168 I.C. 655=1937 A.L.J. 363=1937 A.W.R. 387=A.I.R. 1937 All. 297. The respondent who held a preliminary decree for sale against the appellant applied under O. 34, R. 5, C. P. Code, for the decree being made absolute. The appellant filed an application stating that on account of bad harvests and agricultural difficulties, he could not collect the decretal amount, and stating that "he was about to present an application to the Local Government that his property and debts be managed according to the new Acts" prayed that the decree-holder's application for the decree being made absolute be dismissed. This application was disallowed by the Court and the decree was ordered to be made absolute. The appellant brought an appeal against this order of dismissal of his application. *Held*, that though the appellant referred to Ss. 47 and 96, C. P. Code, in the heading of his appeal, the appeal was really directed not against the final decree passed by the Court but against the order passed by the Court rejecting the application filed by the judgment-debtor and that no appeal lay against that order. 168 I.C. 721=9 R.O. 494=1937 R.D. 324=1937 O.L.R. 313=1937 O.W.N. 594. *See also* A.I.R. 1938 All. 12. The rate of interest to be fixed by the Court in an application under S. 30 is to be calculated not on the accumulated amount due under the loan as on the 31st December, 1929, but on the principal amount advanced as loan. "Interest" in S. 30 must include both the simple and the compound interest, and "loan" must mean the principal sum originally advanced which remains outstanding at the time when the application is made. I.L.R. 1937 All. 805=170 I.C. 567=1937 A.W.R. 710=1937 A.L.J. 671=A.I.R. 1937 All. 598 (F.B.).

COSTS—POWER OF COURT TO REDUCE.—There is no provision in the Agriculturists' Relief Act allowing the Court authority to make any reduction either in the principal money or in the amount of costs allowed under the original decree. S. 30 provides only for reducing the amount decreed on account of interest. An order reducing the amount of costs proportionate to the reduction made in the amount of interest cannot, therefore, be supported. 166 I. C. 288=1937 O.W.N. 130=A.I.R. 1937 O. 266.

"DEBTOR"—MEANING OF.—The word "debtor" in S. 30 is not limited to the person who actually took the loan, nor to the person who is personally liable for its repayment. The debtor is one who has to pay the debt; he may be the person personally liable or a mortgagor or the successor of a mortgagor. The debtor under S. 30 need not be even an "agriculturist", though the loan should be granted originally to an agriculturist. I.L.R. (1937) A. 514=9 R.A. 661=1937 A.W.R. 387=1937 A.L.J. 363=A.I.R. 1937 A. 297.

INTEREST ON COSTS—DISCRETION OF COURT.—The Court has a discretion to grant or not to grant interest on costs. 167 I.C. 316=1936 A.W.R. 1262=1937 A.L.R. 172=A.I.R. 1937 A. 114. A loan which was originally an unsecured loan but became subsequently a secured loan when a compromise decree was passed on the basis of it and some property was given as

which passed the decree shall on the application of the judgment-debtor amend it by reducing, in accordance with the provisions of sub-section (1), the amount decreed on account of interest.

security, must be regarded as an unsecured loan throughout for the purposes of Sch. III of the Act. 1937 O.W.N. 875=171 I.C. 46=10 R.O. 69=1937 O.L.R. 499=1937 R.D. 434=A.I.R. 1937 O. 469. *Quære*: Where a debtor executes to his creditor a fresh promissory note in renewal of a prior instrument, in respect of the principal and interest due under the earlier instrument, whether the creditor can be deemed to re-advance the amount to the debtor and whether such a notional payment can be considered to be a "loan" for purposes of S. 30. I.L.R. (1937) A. 694=170 I. C. 113=1937 A.L.J. 459=1937 A.W.R. 447=A.I.R. 1937 A. 476. The application of S. 30 of the Agriculturists' Relief Act is in terms confined to loans or decrees passed on the basis of a loan. The two basic principles underlying the idea of a loan are: (1) that the property in the thing borrowed remains with the creditor and is not transferred to the debtor, and (2) that the thing borrowed is intended to be returned in *specie*. There is nothing in the definition given in S. 2 (10) of the Act to derogate from either of these principles. Where petrol and other motor accessories are purchased on credit, the property in the goods purchased is undoubtedly transferred from the seller to the buyer as soon as the sale takes place. There is also no idea of the goods purchased being ever returned. The case is one of sale for a price, even though the price is to be paid afterwards. A transaction of this nature cannot be regarded as a loan within the definition contained in S. 2 (10), and the buyer is, therefore, not entitled to any relief under S. 30. 165 I.C. 469=1936 O.W.N. 1158=A.I.R. 1937 O. 124. Where the Court has power to reduce interest under S. 30 of the Agriculturists' Relief Act, the mere fact that the order reducing the interest wrongly refers to S. 4 does not make the order *ultra vires*, if otherwise it is in accordance with law. 165 I.C. 797=9 R.O. 261=1936 R. D. 590=1936 O.W.N. 1224=A.I.R. 1937 O. 107. Under S. 30 the Court has no jurisdiction to interfere with the rate of interest decreed originally for the period prior to 1st January, 1930. S. 30, under which alone the Court can amend the decree empowers the Court to interfere with the rate of interest only from the period beginning with 1st January, 1930. I.L.R. (1937) A. 771=171 I.C. 520=1937 A.L.R. 854=1937 A. 645.

SCOPE—WHETHER PREVAILS OVER O. 34, C. P. CODE.—In view of S. 4, C. P. Code, the Agriculturists' Relief Act which is a special law must prevail over the provisions of O. 34, C. P. Code. 167 I.C. 316=1936 A.W.R. 1262=A.I.R. 1937 A. 114.

Sec. 30 (1)—'LOAN'—IF MEANS ONLY PRINCIPAL AMOUNT.—The word "loan" used in S. 30 (1) of the Act means not only the principal amount, but the whole amount due under the terms of a contract or decree up to the 31st December, 1929. Accordingly interest ought to be allowed on the whole amount due for principal and interest on the 1st January, 1930, and not on the principal amount only. 1937 O.W.N. 875=171 I.C. 46=1937 O. L.R. 499=1937 R.D. 434=A.I.R. 1937 O. 469.

Secs. 30 (1) and (2)—'DEBTOR' AND "JUDGMENT-DEBTOR"—IF INCLUDES TRANSFEREE.—The word "debtor" in S. 30 (1) includes not only the original debtor but also his legal representatives and transferees. Similarly the word "judgment-debtor" used in S. 30 (2) should not be confined to the original judgment-debtor, but should extend to his successors and legal representatives who are subsequently substituted in his place. It is not necessary that the transferee of the original debtor should also be an agriculturist. If he is a "debtor" in the sense of a person liable to pay the debt, he is entitled to the benefit of S. 30 (1) of the Act. Similarly he would be entitled to the benefit of S. 30 (2) if he is a judgment-debtor,

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

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

irrespective of the consideration whether he is an agriculturist or not. 170 I.C. 794=1937 O.W.N. 952=A.I.R. 1937 O. 498.

Sec. 30 (2) The words in S. 30 (2) "the court which passed the decree" refer to the trial court and not to the appellate court 1935 C.W.N. 1198. See also 1935 O.W.N. 1094. It would be most in consonance with the intention of the legislature and best conducive to business to state that the court which passed the decree" in S. 30 (2) is the court of the first instance and not the trial court. 158 I.C. 424=1935 O.W.N. 1094=1936 Oudh 5.

APPLICABILITY.—The decree referred to S. 30 (2) is not confined to a decree passed before the Act. The policy of the Act is to give relief to all debtors against whom decrees have been passed on the basis of loans either before or after the Act came into operation. A judgment-debtor is therefore entitled to apply for relief under the section even when he has allowed a decree to be passed against him after the Act came into force. The defendant in a suit instituted after the Act came into force is not bound to apply for relief under the Act in the suit itself before decree; and omission on his part to apply for such relief before decree will not operate as *res judicata* so as to bar an application by him for relief after decree. I.L.R. (1937) A. 943=1937 A.L.J. 842=1937 A.W.R. 849=A. I.R. 1937 A. 753.

COSTS AWARDED BY ORIGINAL DECREE.—S. 30 (2) of the Act provides for reducing the amount of interest but not of costs. An order reducing the amount of costs awarded by the original decree is, therefore, without jurisdiction. 165 I.C. 900=1936 O.W.N. 1226=A.I.R. 1937 O. 154.

INTERPRETATION.—The words "has already been passed" in S. 30 (2) do not mean a decree passed before the Act came into force, but mean any decree passed prior to the date of the application. 167 I.C. 168=1936 A.W.R. 1132=1936 A.L.J. 1309=1937 A.L.R. 144=A.I.R. 1937 A. 96. Under S. 30 (2) of the Act the Court is empowered to reduce the *pendente lite* rate of interest not merely as a rate but also to reduce the amount by providing that that interest should only be on the loan, that is the principal of the loan, and not on accrued interest. 167 I.C. 316=1936 A.W.R. 1262=1937 A.L.R. 172=A.I.R. 1937 A. 114. A Court acting under S. 30 (2) cannot reduce future interest already allowed by the decree, if it does not exceed interest which the Court can award under S.30 (1). I.L.R. (1937) A. 771=171 I.C. 520=1937 A.L.R. 854=1937 A.W.R. 606=1937 A.L.J. 681=A.I.R. 1937 A. 645.

Sec. 30 (3)—APPEAL.—There is no right of appeal from an order of a Civil Judge refusing to amend the decree under S. 30. 165 I.C. 469=1936 O.W.N. 1158=A.I.R. 1937 O. 124.

Secs. 30 and 33.—S. 33 (1) is applicable even to a mortgagor who has executed a usufructuary mortgage. The section applies to every agriculturist debtor, no matter whether the debt is due by him under a pro-

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

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

CHAPTER V.

MAINTENANCE OF ACCOUNTS.

Duty of creditor to maintain and furnish accounts. 32. (1) A creditor shall, after the date on which this Act comes into force,—

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

(b) supply each agriculturist debtor every year with a full and correct statement of account signed by the creditor or his agent of any balance or amount that may be outstanding against such debtor on account of each separate loan on such date as the Local Government may prescribe in this behalf. Such statement of account shall include all transactions entered into during the year to which the statement relates, and shall contain such details and particulars as the Local Government

missory note, simple bond or mortgage deed, whether the mortgage be a simple, usufructuary or conditional mortgage. S. 30 does apply to mortgages. A mortgagor who has executed a usufructuary mortgage is therefore entitled to apply for an account under S. 33 (1). 1937 A.W.R. 892=1937 R.D. 536=A.I.R. 1938 A. 1.

Sec. 30, and Sch. III.—The legislature in framing the table in Sch. III of the Act recognised that certain rates were to be applied to compound interest loans and certain other rates of a larger amount to simple interest loans. The Court has no option to alter compound interest into simple interest. 167 I.C. 853=1937 A.W.R. 76=1937 A.L.J. 125=A.I.R. 1937 All. 207.

REVISION.—Where the point raised is that the Court below applied a rate of interest for which it had no jurisdiction in law to apply, the point involves a question of jurisdiction and a revision is, therefore, competent. 167 I.C. 853=1937 A.L.J. 125=1937 A.L.R. 263 (1)=A.I.R. 1937 A. 207. Order on Revision. See C. P. Code, S. 115. 1937 A.W.R. 710=A.I.R. 1937 A. 598 (F.B.).

S. 33] THE U. P. AGRICULTURISTS' RELIEF ACT, 1934 clxxxv

may prescribe. It shall be supplied to the debtor within one month of the aforesaid date in such form and in such manner as the Local Government may prescribe:

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

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

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

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

Sec. 33.—REVISION.—Where a Munsif returns the plaint in a suit under S. 33 of the U. P. Agriculturist's Relief Act for presentation to the proper Court, the High Court is not precluded from interfering with the order returning the plaint in revision on the ground that an appeal lies to the District Judge from that order. Since no appeal from that order lies to the High Court, the High Court has power to interfere in revision. 1937 A.L.J. 1194=A.I.R. 1937 All. 792=I.L.R. (1934) All. 965=1937 A.W.R. 895.

SUIT UNDER—VALUATION—JURISDICTION.—A suit under S. 33 is a suit for an account of money pure and simple and is not a suit for recovery of any amount. Suit a suit has to be valued at an amount between Rs. 100 and 500 under Rule 28 (3) of the Rules framed by the High Court of Allahabad under S. 9, Suits Valuation Act under notification No 7067-30-3 (4), dated 17-12 1935, and the suit falls within the pecuniary jurisdiction of a Munsif's Court. The suit must therefore be instituted in that Court and not in the Court of the Civil Judge. 1937 A.W.R. 1171=1937 A.L.J. 1224.

Sec. 33 (1)—SUIT UNDER—NATURE OF—IF ONE FOR DECLARATION.—It is perfectly clear that suits under S. 33 (1) are not suits for declaration, but are suits really for an account of money. The fact that the word "declare" is used in sub-section (2) of S. 33 does not make the suit one for a declaration. I.L.R. (1937) All. 965=1937 A.L.J. 1194=1937 A.W.R. 895=A.I.R. 1937 All. 792.

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

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

Penalty for non-compliance with the provisions of section 24. 34. Notwithstanding anything contained in any other enactment for the time being in force,—

(a) in any suit or proceeding relating to a loan against an agriculturist, if the debtor objects that the creditor has not complied with the provisions of section 32, the Court shall determine such objection before deciding the claim on the merits;

(b) if the Court finds that the provisions of clause (a) of section 32 (1) have not been complied with by the creditor, it may, if the creditor's claim is established in whole or in part, disallow the whole or a portion of the interest found due, as it may deem reasonable in the circumstances of the case, and shall disallow the creditor's costs;

(c) if the Court finds that the provisions of clause (b) of section 32 (1) have not been complied with by the creditor, the Court shall in computing the amount of interest due upon the loan exclude every period for which the creditor has failed to comply with the said provision ;

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

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

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

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

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

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

CHAPTER VI.

MISCELLANEOUS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42. Except as otherwise provided by this Act no order passed by the [Prov. Government] or the Collector under this Act shall be called in question in a civil Court,

Exclusion of jurisdiction of civil courts.

Stamp duty, etc. on certain bonds by agriculturists.

Power of [Prov. Government] to make rules.

SCHEDULE I.

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

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

SCHEDULE II.

Percentage rates mentioned in section 28 by which the prevailing rate of interest should exceed the percentage rate at which the Local Government borrow from the Government of India.

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

SCHEDULE III.

Rates of interest for section 30.

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

CXC U. P. STAY OF PROCEEDINGS (REV. COURT) ACT, 1937.

NOTE—X in this schedule means—

(a) For the period from January 1, 1930, or the date on which the loan was taken, whichever was later, till the first date notified under section 4, at a rate of 4½.

(b) For the period from the first date notified under section 4 till the date fixed by the Local Government as the final date to which section 30 shall apply, [the rate for the time being notified under section 4 in respect of the period for which each such rate is in force]¹ or 4½, whichever is less.

SCHEDULE IV.

Rates of interest mentioned in section 31.

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

SCHEDULE V.

Scale mentioned in section 40

Amount or value of the bond	Stamp	Regis-	Copy-
	duty	tration	ing
	Rs. a.	Rs. a.	As.
Where the amount or value secured does not exceed Rs. 50.	0 1	0 1	3
Where it exceeds Rs. 50 but does not exceed Rs. 100	0 2	0 2	3
Ditto Rs. 100 ditto Rs. 200	0 4	0 4	4
Ditto Rs. 200 ditto Rs. 300	0 6	0 6	6
Ditto Rs. 300 ditto Rs. 400	0 8	0 8	8
Ditto Rs. 400 ditto Rs. 500	0 12	0 12	10
Ditto Rs. 500 ditto Rs. 600	1 10	2 4	12
Ditto Rs. 600 ditto Rs. 700	2 0	2 4	12
Ditto Rs. 700 ditto Rs. 800	2 6	2 4	12
Ditto Rs. 800 ditto Rs. 900	2 12	2 4	12
Ditto Rs. 900 ditto Rs. 1,000	3 2	2 4	12
For every Rs. 250 or part of Rs. 250 above Rs. 1,000 and up to Rs. 3,000	1 0	0 4	Nil

U. P. STAY OF PROCEEDINGS (REVENUE COURT) ACT, (IV OF 1937).

An Act to provide for the stay of proceedings in certain cases under the Agra Tenancy Act and the Oudh Rent Act.

WHEREAS it is expedient to provide for the stay, pending further legislation, of certain proceedings under the Agra Tenancy Act, 1926, and Oudh Rent Act. 1886;

¹Sch. III, Note (b). Words in square brackets were substituted by U. P. Amending Act III of 1935.

U. P. STAY OF PROCEEDINGS (REV. COURTS) ACT, 1937. cxci

It is hereby enacted as follows:

1. (1) The Act may be called THE
Short title extent and commencement. UNITED PROVINCES STAY OF PROCEEDINGS
(REVENUE COURTS) ACT, 1937.

(2) The provision of section 2 of this Act shall remain in force for a period of six months only:

Provided that the Provincial Government may from time to time, by notification in the Gazette, extend this period for such further period or periods not exceeding six months in the aggregate, as it may deem fit.

2. Notwithstanding anything contained in the Agra
Tenancy Act, 1926, or the Oudh Rent Act,
1886, or the Code of Civil Procedure, 1908,
all proceedings in suits and applications of
the classes specified in the schedule to this Act, pending on the
date when this Act comes into force, all attachments of movable
property made in connection with such suits and applications
shall be withdrawn, all judgment-debtors detained in execution
of decrees and orders passed in such suits and applications shall
be released, and all sales of immovable property in connection
with such suits and applications shall be stayed:

Provided (first) that nothing in this section shall apply to proceedings in connexion with, or arising out of, such suits or application in respect solely of the rent for rabi 1344 Fasli or subsequent instalments, except (in the case of rabi 1344 Fasli) where remissions for agricultural calamity have been given; and

Provided (secondly) that notwithstanding anything contained in the Code of Civil Procedure, 1908, the institution of any such suit in respect of the rent instalment for rabi 1344 fasli or subsequent instalments shall not by itself bar the institution of a fresh suit in respect of rent falling due before the rabi instalment of 1344 Fasli: and

Provided (thirdly) that if any such suit or application relates to rent for rabi 1344 Fasli, or subsequent instalments, as well as to rent for any instalments before rabi 1344 Fasli, the Court shall notwithstanding anything contained in any law for the time being in force, hear and determine the suit or application so far only as it relates to rent for rabi 1344 Fasli or subsequent instalments, and shall stay the rest.

3. In computing the period of limitation for any suit or application of the classes specified in the schedule to this Act, instituted or presented after the expiry of this Act, which might have otherwise been instituted or presented during the period this Act remains in force, the period during which this Act remains in force shall be excluded.

CXCII TEMP. POSTPONEMENT OF EXECUTION OF DECREES ACT, 1937.

SCHEDULE.

SECTIONS 2 AND 3

Under the Agra Tenancy Act, 1926.

The following suits and applications specified in the fourth Schedule to that Act:

Group A—Serial numbers 2, 4, 13 (as respects only suits for rent other than rent due from under-proprietors).

Group B—Serial numbers 3, 4, 5, 6, 7, 8, 9, 10, 11, 19, 20, 21.

Group C—Serial numbers 1, 2.

Group F—Serial numbers 2, 3, 4, 5.

Under the Oudh Rent Act, 1886.

Suits and applications under the following sections of the Act: 52, 53-A, 54, 59, 60 (1), 61 (1), 62 (1), 62-A (1) and Section 108, sub-sections (2) (except for rent due from under-proprietors), (3), 3 (a), (4), (5a), (8), and (12).

**THE TEMPORARY POSTPONEMENT OF
EXECUTION OF DECREES ACT, (X OF 1937.)**

[20th December, 1937.]

An Act to provide for the temporary postponement of execution of certain decrees of Civil Courts against agriculturists.

WHEREAS it is expedient to provide for the temporary postponement, pending further legislation for granting relief from indebtedness to agriculturists, of the execution of certain decrees passed against agriculturists by civil courts;

It is hereby enacted as follows:

- | | |
|----------------------------|---|
| | 1. This Act may be called THE |
| Short title. | TEMPORARY POSTPONEMENT OF EXECUTION |
| | OF DECREES ACT, 1937. |
| | (2) It extends to the whole of the |
| Extent. | United Provinces. |
| | (3) It shall come into force at once |
| Commencement and duration. | and shall remain in force for a period of six months: |

Provided that the Provincial Government may, from time to time, by notification in the *Gazette*, extend the operation of the Act for such further period or periods, not exceeding a total of six months, as it may deem fit.

Definitions. 2. In this Act,

(1) Civil Court includes a Court of Small Causes.

(2) "Agriculturist" means a person who—

(a) pays land revenue not exceeding Rs. 1,000 per annum, or

(b) in districts subject to the Benares Permanent Settlement Regulation, I of 1795, pays a local rate under section 109 of the District Boards Act, 1922, not exceeding Rs. 120 per annum, or

(c) holds land free of revenue and pays a local rate under section 109 of the District Boards Act, 1922, not exceeding Rs. 120 per annum, or

(d) in Oudh, pays rent as an under-proprietor in respect of land, the revenue of which does not exceed Rs. 1,000, or

(e) pays rent of agricultural land (other than that paid as an under-proprietor) not exceeding Rs. 1,000, or

(f) holds land free of rent, the area of which does not exceed 80 acres, or

(g) ordinarily lives outside the limits of any municipality and belongs to any of the classes of persons mentioned in the schedule:

Provided, firstly, that no person shall be deemed to be an agriculturist—

(i) if he is assessed to income-tax, or

(ii) if the total of the annual revenue assessed on the land held by him either as a proprietor or as an under-proprietor, the annual rent payable by him otherwise than as an under-proprietor, and ten times the amount of the local rates annually payable by him for land for which he pays no revenue or the total of any two of them exceeds Rs. 1,000:

Provided, secondly, that no *thekadar* or mortgagee shall be deemed to be an "agriculturist" by reason of his being included in any of the categories (a) to (g) if he is so included only on account of being such *thekadar* or mortgagee.

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

Explanation II.—In the case of members of a joint Hindu family or joint owners or joint tenants, each member, owner, or tenant shall be considered to be an agriculturist whose share or interest in revenue, local rate or rent or the rent-free land, as the case may be, does not respectively exceed the aforesaid limits.

Explanation III.—The word "rent" in this sub-section includes, in cases where rent is payable in kind, the money equivalent thereof recorded in the *Khatauni* of the previous year, but shall not include *zaid mutalba* or any amount paid in excess of the rent legally payable.

(3) The expressions "land", "rent", "tenant", "*thekadar*" and "under-proprietor" have the same meaning as in the Oudh Rent Act, 1886, or in the Agra Tenancy Act, 1926, as the case may be.

3. (1) All proceedings in execution of any decree for money or for foreclosure or sale in enforcement of a mortgage passed by a Civil Court on the basis of a liability incurred before passing of this Act, in which the judgment-debtor or any one of the judgment-debtors is, at the date of the passing of this Act, an agriculturist shall be stayed during the period this Act shall remain in force, if such judgment-debtor does not pay more than Rs. 250 as land revenue or rent, or more than Rs. 30, as local rate for revenue-free land or if, the total of the revenue, rent and ten times the local rate payable by him or any two of them, does not exceed Rs. 250.

(2) Any other agriculturist, who is a judgment-debtor to any such decree as aforesaid may apply to the Court which passed the decree, or the Court by which such decree is being executed, for stay of execution and the Court shall stay the execution of such decree during the period this Act shall remain in force, if the applicant pays or deposits in Court along with his application (a) one-fifth of the amount for which the decree can be executed on the day of such payment or deposit, in case the decree provides for payment by instalments and cannot be executed for the whole amount or, (b) one-twelfth of the total amount of the decree remaining unpaid, in case the whole decree can be executed on such date as aforesaid:

Provided that if the applicant pays or deposits one-half of such one-fifth or one-twelfth as aforesaid, as the case may be, along with his application, the Court may, on good cause shown, stay the execution of such decree conditionally on the applicant paying or depositing the remaining one-half within a period not exceeding two months from the date of such application.

(3) All attachments of growing crops, agricultural produce, livestock and other movable property of a perishable nature made in execution of decrees the execution of which has been stayed under sub-section (1) or (2) and existing on the date on which an unconditional stay order is passed, or on which conditional stay order becomes absolute, shall be withdrawn.

(4) All proceedings under the Provincial Insolvency Act, 1920, against an agriculturist, whether on the application of the creditor or of the debtor, pending, in the case of an agriculturist to whom sub-section (1) applies, on the date on which

this Act comes into force, or, in case of any other agriculturist, on the date on which an order for stay of execution is passed under sub-section (2), or on which a conditional stay order becomes absolute, or instituted after such date as aforesaid, shall be stayed, during the period this Act shall remain in force.

4. (1) On the date on which this Act comes into force, all persons in detention in civil prison in execution of any decree for money, passed by a civil Court in which the judgment-debtor or any one of the judgment-debtors is an agriculturist, shall be released.

Release of persons in detention in civil prison.

(2) No person shall in any case be liable to arrest or detention in civil prison in execution of any such decree as is referred to in sub-section (1) during the period the Act shall remain in force.

5. (1) In computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force, for (a) the institution of a suit in a civil court against an agriculturist for money or for foreclosure or sale in enforcement of a mortgage and (b) the execution of such a decree as is referred to in section 3, and not covered by section 6, the period during which this Act, shall remain in force shall be excluded.

Computation of the period of limitation.

(2) In computing the period of twelve years prescribed by section 48 of the Code of Civil Procedure, 1908, the period during which this Act shall remain in force shall be excluded.

6. Nothing herein contained shall (a) preclude any decree-holder from accepting payment under, or any adjustment of, his decree voluntarily made by the judgment-debtor, or (b) apply to decrees for money arising out of claims relating to trusts or for maintenance or for profits in favour of a co-tenant or co-owner, or for mesne profits, or for damages or for contribution between co-tenants of agricultural land, or (c) apply to a mortgage decree sought to be executed by sale of the mortgaged property in the hands of a subsequent transferee, who has taken the transfer subject to the mortgage on the basis of which such decree has been obtained.

Payment of certain decrees.

CXCVI TEMP. POSTPT. OF EXECUTION OF DECREE ACT, 1937.

SCHEDULE.

The classes mentioned in section 2 (2) (g).

Agricultural labourers, general labourers, cowherds, goatherds, dairymen, blacksmiths, carpenters, fishers, hunters, boatmen, barbers, tanners and leather-workers, scavengers, basket makers, potters, midwives, watchmen, washermen, weavers, cartmen, dyers or other servants of the village community or any similar class of persons whom the Local Government may, by notification in the *Gazette*, from time to time include in this Schedule.

INDEX

A

Abatement

of suits under Beng. A.D. Act, 1935, xxvii.

Accounts

Creditor's duty to maintain, (M.D.P. Act, 1934), 29.

Nature of and details to be noted in, (M.D.P. Act, 1935), 29, 30.

Figures in, must be in Arabic numerals, (M.D.P. Act, 1934), 40.

Statement of accounts to be given by creditor to debtor on requisition, (M.D.P. Act, 1934), 30.

Debtors omission to object to correctness of statement of, effect of, (M.D.P. Act, 1934), 34.

Additional accounts to be maintained by pawn-brokers, (M.D.P. Act, 1934), 35.

English law as to accounts to be kept by pawn-broker, 37.

Creditor bound to produce, and documents, (Beng. A.D. Act, 1935), xvii.

Creditor bound to produce, and documents, (M.D.C. Act, 1936), 99.

Effect of non-production, 99, xvii.

Copy of creditor's, admissible in evidence, (M.D.P. Act, 1934), 33.

Copy of creditor's, admissible in evidence, (C.P.M.L. Act, 1934), lxi.

Penalty for creditor not *keeping* of, (M.D.P. Act, 1935), 41.

Penalty for not *furnishing* statement of, 41.

Duty of creditor to maintain, (U.P.A.R. Act, 1934), clxxxiv.

Adjusted debt

Definition of, in C.P. Ind. W.D. Act, 1936, lxix.

Admission

Non-objection as to correctness of statement of accounts does not amount to, 34.

Non-objection as to correctness of statement of accounts does not amount to, (C.P.M.L. Act, 1934), lxi.

Agency Tracts

Definition of, in Act I of 1917, 197.

As to debts of hill tribes in, *see* Act I of 1917, 197.

Agency Tracts Interest and Land Transfer Act (I of 1917), 196-199.

Agent

Definition in Act I of 1917, 197.

Agreement of settlement

(Under M.D.C. Act, 1936), when to be accepted by Board, 101.

Effect of, 102.

To be signed or authenticated by Board, 101.

When secured creditor does not consent, 102.

When Co-operative Society is a party, 101, 102.

Registration of, 102.

Under C.P.D.C. Act, 1933, xliii.

Registration and effect of (*Ibid.*).

Recovery of sums due under, xlv.

Agricultural calamity

Definition of, in (U.P.A.R. Act 1934), clxii.

Agricultural labourers

Mere, are not 'agriculturists' (M.A.R. Act, 1938), 142.

Agricultural land

House or house site is not, (M.A.R. Act, 1938), 144.

Agriculture

Extracts from the report of the Royal Commission on Agriculture relating to rural indebtedness, 78-82.

Definition of, in M.D.C. Act, 1936, 90.

Definition of, in Beng. A.D. Act, 1935, X.

Definition of, in C.P.D.C. Act, 1933, xxxvi.

Definition of, in Punj. Rel. of Ind. Act, 1934, xcix.

Agriculturist

Definition of, in M.A.R. Act, 1934, 139.

Definition of, in U.P.A.R. Act, 1934, clxiii.

Forum of suit against, under U.P.A.R. Act, 1934, clxxxiii.

Change of status of, (U.P.A.R. Act, 1934), clxxv.

Meaning of, (M.A.R. Act, 1938), 142.

Agriculturist under M.A.R. Act, 1938

Meaning of, 142.

Aliyasantana Tarwad, 154.

Lessee of land, 142.

Marumakkatavam Tarwad, 138.

Joint Hindu Family, 154.

Person not owning any interest in land prior to 1st October, 1932, is not for purposes of Ss. 8 and 9, 162-163.

Does not include mere agricultural labourer, 142.

Debts payable by, to be scaled down, 155.

Agriculturists' Loans Act, (XII of 1884), 194-196.

Agriculturists' Loans (Madras Amendment) Act XVI of 1935, 193.

Agriculturists' Loans (U.P. Amendment) Act XII of 1934, cxi-cxiii.

Alienation

Certain, by debtor in operative against creditor, 179.

Aliyasantana Tarwad.

Is a person (M.A.R. Act, 1938), 139.

When can be deemed 'agriculturist' under M.A.R. Act, 1938, 154.

Amendment of decree

Under M.A.R. Act, 1938, 175.

Court to which application, to be made, 175.

When some coparceners in joint Hindu family are agriculturists, 175.

'Amount payable under an award'

Meaning of, under Beng. A.D. Act, 1935, xi.

'Appellate Officer'

Definition of, under Beng. A.D. Act, 1935, xi.

Appeals

Under Ben. A.D. Act, 1935, xxx.

Under Ass.M.L. Act, 1934, v.

Under C. P. Ind. W. Act, 1936, lxxvii.

Appeals—(Contd.)

Under U.P.A.R. Act, 1934, clxxviii.

Under U.P. Enc. Est. Act, 1934, cxlviii.

Limitation for, under Punj D. P. Act, 1936, lxxxvii.

See also under 'BAR OF APPEAL.'

Appearance of parties

By agent or legal practitioner can only be on permission (M.D.C. Act, 1936), 108.

As to, under Punjab Rel. of Ind. Act, 1934, civ.

Can be by agent but not by legal practitioner under C.P.D.C. Act 1933, xlviii.

Application

For redemption (U.P.A.R. Act, 1934), clxxvi.

Procedure on, clxxvi, clxxvii.

Application for settlement

Under M.D.C. Act, 1936, 96.

Under C.P.D.C. Act, 1933, xxxviii.

Under Beng. A.D. Act, 1935, xiii.

Under Punj. Rel. of Ind. Act, 1934, c.

Form of, under S. 4 (1) (M.D.C. Act, 1936), 116, 117.

Form of, under S. 4 (2) (M.D.C. Act, 1936), 118.

Particulars required (M.D.C. Act, 1936), 96, 97.

Particulars required (Beng. A.D. Act, 1935), xiii.

Particulars required (C.P.D.C. Act, 1933), xxxviii.

Particulars required (Punj. Rel. of Ind. Act, 1934), c.

Should be verified and be in writing, (M.D.C. Act, 1936), 96.

May be presented by party or authorized agent, 112.

Jurisdiction of Board to receive, 95.

Procedure on application, (M.D.C. Act, 1936), 97.

Procedure on application (Beng. A.D. Act, 1935), xv.

Procedure on application, (C.P.D.C. Act, 1933), xxxix.

Procedure on application, (Punj. Rel. of Ind. Act, 1934), c.

Rejection of, (M.D.C. Act, 1936), 97.

Rejection of, (Punj. Rel. of Ind. Act, 1934), cii.

Dismissal of, (M.D.C. Act, 1936), 97, 105.

Dismissal of, (Beng. A.D. Act, 1935), xvii.

Dismissal of, (C.P.D.C. Act, 1933), xlv.

Dismissal of, (Punj. Rel. of Ind. Act, 1934), cii.

Transfer of, from one Board to another Beng. A.D. Act, 1935, xxx.

Of joint debts under Beng. A.D. Act, 1935, xiii.

Arrears of rent

Conditional discharge of, under M.A.R. Act, 1938, 170.

Wiped out in certain cases, 170-172.

Special provision as to, under Beng. A.D. Act, 1935, xxiii.

Arrest

Special provision as to, in Punj. Rel. of Ind. Act, 1934, cvii.

Assam Money-Lenders' Act (IV of 1934), i-vi.**Assets**

Definition of, in C.P. Ind. W. Act, 1936, lxix.

Association (Incorporated)

Not a 'person' under M.A.R. Act, 1938, 139.

'Average income'

Definition of, in C.P. Ind. W.D. Act, 1936, lxix.

'Award'

- Definition of, under Beng. A.D. Act, 1935, xi.
- Form and particulars of, under Beng. A.D. Act, 1935, xxii.
- Recovery of amount included in, under Beng. A.D. Act, 1935, xxiii.

B**Bank**

- Definition of, in M.D.P. Act, 1934, 23.
- Definition of, in C.P. M.L. Act, 1934, lix.
- Definition of, in Punj. D.P. Act, 1936, lxxxiv.
- Definition of, in Punj. Reg. of Accts Act, 1930, xc.

Bar of appeal

- Under Mad. D.C. Act, 1936, 108.
- Under C.P.D.C. Act, 1933, xlvii.
- Under Punj. Rel. of Ind. Act, 1934, civ.

Bar of Revision

- Under C.P.D.C. Act, 1933, xlvii.
- Under Punj. Rel. of Ind. Act, 1934, civ.
- Under Mad. D.C. Act, 1936, 108.
- Under Beng. A.D. Act, 1935, xxx.

Bar of Suit

- Under C.P.D.C. Act, 1933, xlv, xlvii.
- Under Mad. D.C. Act, 1936, 106.
- Under Beng. A.D. Act, 1935, xxvii.
- Under Punj. Rel. of Ind. Act, 1934, civ.
- Under U.P. Enc. Est. Act, 1934, cli.
- Under U.P.A.R. Act, 1934, clxxix.
- Bengal Agricultural Debtors' Act, 1935, x-xxxv.
- Bengal Money-lenders' Act (VII of 1933), vii-x.

Board

- Definition of, in M.D.C. Act, 1936, 90.
- Definition of, in Beng. A.D. Act, 1935, xi.
- Definition of, in C.P.D.C. Act, 1933, xxxvi.
- Establishment of, under C.P.D.C. Act, 1933, xxxvii.
- Members of, are public servants (C.P.D.C. Act, 1933), xlix.
- Establishment of, under (Punj. Rel. of Ind. Act, 1934), xcix.
- Establishment of, under C.P.D.C. Act, 1933, xxxvii.
- Establishment of, under M.D.C. Act, 1936, 93.
- Establishment of debt settlement, under Beng. A.R. Act, 1934, xii.
- Tenure of office of Chairman and Members, xii.
- Investment of powers on, xii.
- Power of, to require attendance of persons and production of documents, (M.D.C. Act, 1936), 101.
- Power of, to require attendance of persons and production of documents, (Beng. A.D. Act, 1935), xvii.
- Power of, to require attendance of persons and production of documents, (Punj. Rel. of Ind. Act, 1934), cii.
- Power of, to require attendance of persons and production of documents, (C.P.D.C. Act, 1933), xlii.
- Power of, to decide dispute as to existence or amount of debts or assets, (M.D.C. Act, 1936), 100.
- Power of, to decide dispute as to existence or amount of debts or assets, (Beng. A.D. Act, 1935), xviii, xix.

Board—(Contd.)

- Power of, to grant certificate in respect of certain debts (M.D.C. Act, 1936), 105.
- Power of, to grant certificate in respect of certain debts (Beng. A.D. Act, 1935), xix.
- Power of, to grant certificate in respect of certain debts (Punj. Rel. of Ind. Act, 1934), ciii.
- Power of, to grant certificate in respect of certain debts (C.P.D.C. Act, 1933), xlvi.
- Power of, to review its own order (M.D.C. Act, 1936), 108.
- Power of, to review its own order (C.P.D.C. Act, 1933), xlvii.
- Power of, to review its own order (Beng. A.D. Act, 1935), xxxi.
- Power of, to review its own order (Punj. Rel. of Ind. Act, 1934), civ.
- Duty of, to report to Government as to sums due to it, (M.D.C. Act, 1936), 109.
- Members are public servants (M.D.C. Act, 1936), 110.
- Members are public servants (Punj. Rel. of Ind. Act, 1934), cv.
- Members are public servants (C.P.D.C. Act, 1933), xlix.
- Members are public servants (Beng. A.D. Act, 1935), xxxiii.

Body Corporate

- Not a 'person' under M.A.R. Act, 1938, 139.

Bond

- Definition of, in U.P.A.R. Act, 1934, clxvi.

C

- Central Provinces Debt Conciliation Act (II of 1933), xxxv-l.
- Central Provinces Money-Lenders' Act (XIII of 1934), lviii-lxv.
- Central Provinces Adjustment and Liquidation of Industrial Workers Debt Act, (V of 1936), lxviii-lxxix.
- Central Provinces Reduction of Interest Act (XXXII of 1936), lxxx-lxxxii.
- Central Provinces Protection of Debtors' Act (IV of 1937), lxxxii, lxxxiii.

Certificate

- Grant of, by Board, under Punj. Rel. of Ind. Act, 1934, ciii.
- Grant of, by Board, under C.P.D.C. Act, 1933, xlvi.
- Effect of certificate, (*ibid.*).
- Grant of, by Board under, (M.D.C. Act, 1936), 105.
- Form of Certificate, 120.
- Grant of, by Board under Beng. A.D. Act, 1935, xix.
- Effect of certificate, xx.

Certificate Officer

- Definition of, in Beng. A.D. Act, 1935, xi.

Cesses

- Liability, *re*, due to Grant, not affected by M.A.R. Act, 1938, 149.
- Liability, *re*, due to Local Authority, 149.

Charge-holder

- Under S. 55 (4) (b), T.P. Act, not affected by Ss. 8 and 9, M.A.R. Act, 1938, 163.

Charitable Institution

- Not a 'person' under M.A.R. Act, 1938, 139.

Civil Procedure Code

- Amendment of S. 60 (1) (c), by Punj. Rel. of Ind. Act, 1934, cviii.
- Amendment of O. 21, R. 2 by Punj. Rel. of Ind. Act, 1934, cviii.

Collector

- Definition of, in Beng. A.D. Act, 1935, xi.
- Definition of, in Punj. D.P. Act, 1936, lxxxv.
- Definition of, in U.P.A.R. Act, 1934, clxvi.
- Jurisdiction of, under U.P.A.R. Act, 1934, clxxxvi.

Company

- Definition of, in M.D.P. Act, 1934, 23.
- Definition of, in C.P., M.L. Act, 1934, lix.
- Definition of, in Punj. Act, 1936, lxxxiv.
- Definition of, in Punj. Reg. of Accts. Act, 1930, xci.
- Unincorporated, not a 'person' under M.A.R. Act, 1938, 139.
- Liability to public, not affected by M.A.R. Act, 1938, 163.

Compound interest

- Presumption as to, being excessive interest, 44, 45.
- Prohibition as to, in A.M.L. Act, 1934, ii.

'Co-operative Society'

- Definition of, in M.D.P. Act, 1934, 23.
- Definition of, in C.P.M.L. Act, 1934, lix.
- Definition of, in Punj. D.P. Act, 1936, lxxxiv.
- Definition of, in Punj. Reg. Acct. Act, 1934, xci.
- Definition of, in U.P.A.R. Act, 1934, clxvi.
- Liability to, when not affected by M.A.R. Act, 1938, 150.
- Settlement of, debt due to, under Beng. A.D. Act, 1935.

Corporation

- Examples of, formed under special Indian Laws, 151.
- Liability *re* debts due to, when not affected by M.A.R. Act, 1938, 150.

Costs

- Power of Court to disallow, (Punj. Rel. of Ind. Act, 1934), ciii.
- Power of Court to disallow, (M.D.C. Act, 1936), 106.
- Power of Court to disallow, (C.P.D.C. Act, 1933), xlvi.
- Not to be allowed to creditor not complying with Ss. 3 and 4 (M.D.P. Act, 1935), 41.
- Provision as to, in certain cases in M.A.R. Act, 1938, 166-174.
- Due to land-holder *re*, rent decrees, 173.
- Scale of costs, as to suits filed on or after 1-10-1937, 175.
- When full costs awardable, 175.
- Decree may be amended as to, 175.

Cottage Industry

- Definition of, in M.S.A.I. Act, 1923, 200.

Court

- Definition of, in M.D.P. Act, 1934, 24.
- Definition of, in C.P., M.L. Act, 1934, lix.
- Definition of, in C.P. Ind. W.D. Act, 1936, lxix.
- Definition of, in Punj. D.P. Act, 1936, lxxxiv.
- Definition of, in Punj. Reg. of Accts. Act, 1930, xci.
- Definition of, in U.P.A.R. Act, 1934, clxvi.

Court-fee

- For application under S. 4, M.D.C. Act, 1936, 113.

Creditor

- Definition of, in M.D.C. Act, 1936, 90.
- Definition of, in M.D.P. Act, 1934, 24.
- Definition of, in M.A.R. Act, 1938, 141.
- Definition of, in C.P., D.C. Act, 1933, xxxvi.
- Definition of, in C.P., Ind. W.D. Act, 1936, lxix.
- Definition of, in C.P. Red. of Int. Act, 1936, lxxx.
- Definition of, in Punj. Reg. of Accts. Act, 1930, xci.
- Definition of, in U.P.A.R. Act, 1934, clxvi.
- Duty to maintain accounts (M.D.P. Act, 1934), 29.
- Duty to maintain accounts (U.P.A.R. Act, 1934), clxxxiv.
- Duty to maintain and furnish accounts under Punj. Reg. of Accts. Act, 1930, xcii, xciii.
- Penalty for non-compliance, xciv.
- Duty to give debtor statement of accounts on requisition, (M.D.P. Act, 1934), 30.
- Duty to give receipts for payment, (M.D.P. Act, 1936), 29.
- Duty to give receipts for payment, (C.P. M.L. Act, 1934), lxi.

Cultivator

- Definition of, in U.P. Temp. Reg. of Ex. Act, 1934, cxiv.
- Special provisions regarding execution of decrees against, in U.P. Temp. Reg. of Ex. Act, 1934, cliv-clx.

D**Damdapat**

- Application of principle, under M.A.R. Act, 1938, 157, 159.
- Application of principle, under Beng. M.L. Act, 1933, ix.
- Application of principle, under Punj. Rel. of Ind. Act, 1934, cvi.

Debt

- Definition of, in M.D.C. Act, 1936, 90.
- Definition of, in M.A.R. Act, 1938, 141.
- Definition of, in Beng. A.D. Act, 1935, xi.
- Definition of, in C.P., D.C. Act, 1936, xxxvi.
- Definition of, in C.P. Red. of Int. Act, 1936, lxxxii.
- Definition of, in Punj. Rel. of Ind. Act, 1934, xcviii.
- Definition of, in U.P. Encumbered Estates Act, 1934, cxix.
- If distinguishable from 'liability', 151.
- Maximum rate of interest on secured and unsecured, under M.D.P. Act, 1934, 44.
- Maximum rate of interest in certain cases under Beng. M.L. Act, 1933, ix.
- Under M.A.R. Act, 1938.
- Payable by agriculturist to be scaled down, 155.
- Certain, not liable to be affected by the Act, 149, 150.
- Liability *re*, breach of trust, 150.
- Liability *re*, debt due to Co-operative Society, 149, 150.
- Liability *re*, debt due to Government, 149.
- Liability *re*, debt due to Local Authorities, 149.
- Liability *re*, maintenance dues, 150.
- Liability *re*, wages due to agriculturist or rural labourer, 150.
- Liability *re*, debts secured on house in Municipality in certain cases, 149.
- Liability *re*, debts secured on house in certain Panchayats in some cases, 149.
- Liability *re*, debts to a public company when not affected by Ss. 8 and 9, 163.
- Liability *re*, debts due to Scheduled Bank, 163.
- Liability *re*, debts due to woman, 150.
- When due by joint Hindu family, shares of debts to be separated in certain cases, 168.

Debt—(Contd.)

- Provision *re*, debts incurred before 1st October, 1932, 156.
- Provision *re*, debts incurred on or after 1st October, 1932, 160.
- Adjustment and liquidation of, of industrial workers, in C.P., lxviii-lxxix.
- Maximum amount allowable in satisfaction, of, under M.D.C. Act, 1936, 104.
- Power of Board under M.D.C. Act, 1936, to decide dispute as to existence or amount of, 100.
- Grant of certificate *re*, some debts under M.D.C. Act, 1936, 105.
- Statement of, to be filed by creditor before Board (Beng. A.D. Act, 1935), xvii.

Debt Conciliation

- C.P. Act (II of 1933), xxxv-liv.
- Madras Act (X of 1936), 67-127.
- Bengal Agricultural Debtors' Act, 1935, x-xxxv.
- Punjab Rel. of Ind. Act, 1934, xc-v-cxi.

Debt incurred

- Meaning of, in M.A.R. Act, 1938, 158.

Debtor

- Definition of, in M.D.C. Act, 1936, 90.
- Definition of, in Beng. A.D. Act, 1935, xi.
- Definition of, in C.P. D.C. Act, 1933, xxxvii.
- Definition of, in Punj. Rel. of Ind. Act, 1934, xcviii.

Decree

- Execution of, to be stayed in certain cases under M.A.R. Act, 1938, 176.
- Amendment of, when some judgment-debtors are members of a joint Hindu family, under M.A.R. Act, 1938, 175.
- Execution avoided in certain cases under M.D.C. Act, 1936, 106.
- Execution avoided in certain cases under Beng. A.D. Act, 1935, xxix.
- To be deemed void in certain cases (Beng. A.D. Act, 1935), xxix.

Dependant

- Definition of, in C.P. Ind. W.D. Act, 1936, lxix.

Deposit in Court

- Debtor may, debt due (Ass.M.L. Act, 1934), iv.
- Debtor may, debt due (Bengal M.L. Act, 1933), ix.
- Debtor may, debt due (Punj. Rel. of Ind. Act, 1934), cvi.
- Debtor may, debt due (C.P.D.C. Act, 1933), xlv.
- Under U.P.A.R. Act, 1934, clxxxvii.

District Collector

- To give information *re*, income-tax assessment on debtor (M.A.R. Act, 1938), 179.
- Information to be in form of memorandum, 179, 180.
- Memorandum admissible in evidence, 180.
- But it is not conclusive evidence, 180.

E**Evidence**

- Burden of proof, of consideration, under Punj. D.P. Act, 1936, lxxxix.
- Admissibility in, of memorandum given by District Collector (M.A.R. Act, 1938), 180.
- Admissibility in, of certificate granted by Local Authorities, 180.

Execution.

- Of decree barred in certain cases under Punj. D.P. Act, 1936, lxxxviii.
- Of decree barred in certain cases under Beng. A.D. Act, 1935, xxix.
- Of decree barred in certain cases under M.D.C. Act, 1936, 106.
- Limit as to, (U.P.A.R. Act, 1934), clxxiii.
- Stay of, in certain cases under M.A.R. Act, 1938, 170.

F

Factory

- Definition of, in C.P. Ind. W.D. Act, 1936, lxix.

Foreclosure

- To be set aside in certain cases under M.A.R. Act, 1938, 178.

Forms

- As to, under M.D.C. Act, 1936, 116-127.

H

Hill-tribe

- Definition of, in Act I of 1917, 197.

Holding

- Definition of, in C.P.D.C. Act, 1933, xxxvi.

Horticultural land

- What is, 144.

Horticulture

- Definition of, 144.

House and house site

- Not agricultural land, 144.

I

Immovable property

- Definition of, in Act I of 1917, 197.
- Sale to be set aside in certain cases under M.A.R. Act, 1938, 178.
- But notice to be given to D.H., A.P., etc., 178.
- Effect of setting aside sale, 179.

Indemnity

- Against prosecution for chairman and member of Board (Beng. A.D. Act, 1935), xxxii.

Industrial Establishment

- Definition of, in C.P. Ind. W.D. Act, 1936, lxx.

Industrial worker

- Definition of, in C.P. Ind. W.D. Act, 1938, lxx.
- As to Liquidation of debts of, *see* C.P. Adjustment and Liquidation, etc., Act, 1936.
- May present liquidation petition, under C.P. Ind. Work. Act, 1936, lxx.
- Contents of, lxxi.
- Court to which it is to be presented, lxxi.
- Procedure on receipt of application, lxxii, lxxiii.
- Order of adjudication, lxxiii.

Industrial worker—(Contd.)

- Effect of adjudication, lxxiii.
- Encumbered, lxxv.
- Realization of debts of encumbered, lxxv.

Insolvency

- Provisions as to, in M.A.R. Act, 1938, 176.
- Provisions as to, in Beng. A.D. Act, 1935, xx.
- Provisions as to, in Usu. L. Act, 1918, 190.
- Provisions as to, in U.P. Enc. Est. Act, 1934, cxlix.
- Amendment of S. 10 Pro. Ins. Act, by Punj. R. of Indebtedness Act, 1934, xcvi.

Instalments for payments.

- Fixing of, at time of passing decree (U.P.A.R. Act, 1934), clxvii.
- Fixing of, after passing of decree, clxx.
- Provision as to, in U.P. Enc. Est. Act, 1934, cxliii.
- Method of payment of, cxliii.
- Reduction of, cxlv.
- Revision of, (*ibid.*).
- Re-determinaion of, cxlvi.
- Instalments charged on land, cxlvi.

'Instalment value'

- Definition of, in U.P. Enc. Est. Act, 1934, cxxi.

Interest

- Definition of, in Mad. D.P. Act, 1934, 27.
- Definition of, in Usu. Loans Act, 1918, 185.
- Definition of, in Ass. M.L. Act, 1934, i.
- Definition of, in C.P. Us.L.Am. Act, 1934, lv.
- Definition of, in C.P., M.L. Act, 1934, lix.
- Definition of, in C.P. Red. of Int. Act, 1936, lxxxiv.
- Definition of, in Punj. D.P. Act, 1936, lxxxiv.
- Definition of, in Punj. Reg. of Accts. Act, 1930, xci.
- Definition of, in Punj. Rel. of Indebtedness Act, 1934, xcvi.
- Definition of, in U.P.A.R. Act, 1934, clxvi.
- Power of Court to disallow, (C.P.D.C. Act, 1933), xlvi.
- Power of Court to disallow, (Punj. Rel. of Ind. Act, 1934), ciii.
- Power of Court to disallow, (Mad.D.C. Act, 1936), 106.
- Creditor not entitled to, in cases of non-compliance into provisions of M.D.P. Act, 1935, 41.
- Rate of, for loans after passing of Act (U.P.A.R. Act, 1934), clxxxix, clxxxiv.
- Rate of, before the Act, clxxx.
- Provision as to future, (U.P.A.R. Act, 1934), clxix.
- Cessation of, under U.P.A.R. Act, 1934, clxxvii.
- Maximum rate of, for secured and unsecured debts (M.D.P. Act, 1934), 44.
- Maximum rate of, under Beng. M.L. Act, 1933, ix.
- Application of Damdupat principle, 157-159, ix, cvi.
- When can be presumed to be excessive, 44, 45.
- Power of Court to relieve against excessive, 45.
- Power to limit under Beng. M.L. Act, 1933, viii.
- Power to limit under C.P., M.L. Act, 1934, lxii.
- Arrears of, wiped out *re*, debts incurred before 1st October, 1932, by M.A.R. Act, 1938, 156.
- Due on debts incurred on or after 1st October, 1932, how to be calculated, 160.

Interest—(Contd.)

- Rate of, payable by 'agriculturist' on old loans, 166.
- Rate of, payable by agriculturist on new loans, 167.
- Rate of, under C.P. Red. of Int. Act, 1936, lxxxii.
- Extinguishment of, in certain cases under M.A.R. Act, 1938, 156.
- Sums exempt from, under C.P. Ind. W. Act, 1936, lxxvi.
- Creditor not to refund, already realized, 161.
- Contract for usufruct of property in lieu of, 191.
- To be decreed by Courts, 191.
- Rate upon judgment or decree, 191.
- Rate of, on future adjustment, 192.
- Deposit of, in certain cases, 192.

Interest outstanding

- Would include *post diem* interest, 157.

J

Jenmi

- Is not 'agriculturist' under M.A.R. Act, 1938, 146.
- Distinguished from Ryotwari landholder, 146.

Joint Hindu Family

- Distinguished from Marumakkatayam and Aliyasantana Tarwad or Tavazhi, 154.
- Is a 'person' under M.A.R. Act, 1938, 139.
- When can be deemed 'agriculturist' under M.A.R. Act, 1938, 154.
- Special provision regarding, in the Act, 154.
- Separation of share of debt in particular cases, necessary, 168.
- Sons and descendants of members of, when agriculturist, 154.
- Member of, on 1-10-37 not 'agriculturist' except for certain purposes, 154.
- When some coparceners are members of, amendment of decree, 175.

K

Kanartham

- What is, 148.
- Is not 'debt' under M.A.R. Act, 1938, 148.

'Khudkasht'

- Definition of, in U.P. Enc. Est. Act, 1934, cxx.

L

Land

- Definition of, in C.P. D.C. Act, 1933, xxxvi.
- Definition of, in Punj. D.P. Act, 1936, lxxxv.
- Definition of, in U.P. Enc. Est. Act, 1934, cxix.
- Definition of, in U.P.A.R. Act, 1934, clxvi.

Landholder

- Definition of, in M.D.C. Act, 1936, 89.

'Landlord'

- Definition in Beng. A.D. Act, 1935, xii.
- Definition in U.P. Enc. Est. Act, 1934, cxx.

Lease

- May or may not be in writing for M.A.R. Act, 1938, 144.

Legal Practitioner

- Right to represent party, (Beng.A.D. Act, 1935), xxxii.
- Right to represent party (Mad. D.C. Act, 1936), 108, 109.

Legal Practitioner—(Contd.)

Party cannot appear by, in proceedings under C.P.D.C. Act, 1933, xlviii.

Can under Punj. Rel. of Ind. Act, 1934, civ.

Lessee

Of land is 'agriculturist' for M.A.R. Act, 1938, 140.

In M.A.R. Act, 1938, includes sub-lessee and sub-sub-lessee, 144.

Lien

Distinguished from pawn, 36.

Limitation

Special provision in M.D.C. Act 1936, 109, 110.

Special provision in M.A.R. Act, 1938, 173.

Special provision in Beng. A.D. Act, 1935, xxxii.

Special provision in C.P. Ind. W. Act, 1936, lxxvii.

Special provision in C.P.D.C. Act, 1933, xlix.

Special provision in C.P. Ind. W. Act, 1936, lxxvii.

Special provision in Punj. Rel. of Ind. Act, 1934, cv.

Special provision in Punj. D.P. Act, 1936, lxxxvii.

Special provision in U.P. Stay of Proceedings (Rev. Courts) Act, 1937, cxci.

Special provisions in U.P. Tem. Postpt. of Ex. of Dec. Act, 1937, cxcv.

Loan

Definition of, in M.D.P. Act, 1934, 27.

Definition of, in Usu. Loans Act, 1918, 185.

Definition of, in Ass. M.L. Act, 1934, i.

Definition of, in C.P. Usu. L. Am. Act, 1934, lv.

Definition of, in C.P. M.L. Act, 1934, lix.

Definition of, in Punj. D.P. Act, 1936, lxxxiv.

Definition of, in Punj. Reg. of Accts. Act, 1930, xci.

Definition of, in Punj. Rel. of Indebtedness Act, 1934, cxvi.

Definition of, in U.P.A.R. Act, 1934, clxvi.

Local Authority

Executive Officer of, should give certificate *re*, some matters to creditor, under M.A.R. Act, 1938, 180.

Certificate, admissible in evidence, 180.

But it is not conclusive evidence, 180.

M**Madras Agriculturists Relief Act, 1938**

Principles on which Act is based, 67-75.

Original publication of Moratorium Bill, 129.

Object of this Act, 130.

Report of the Joint Select Committee, 131-133.

Bill explained, 133-135.

Construction of Act, 136.

Act, if *ultra vires*, 137.

Madras Debtors' Protection Act, (Act VII of 1935), 1-66.**Madras Debtors' Protection Act VII of 1935.**

Principles on which Act is based, 1-7, 67-75.

Statement of objects and reasons, 8.

Report of the Select Committee, 8-11.

Dissenting minutes, 11-17 (Foot Note).

Proceedings in Council, 17-20.

M.D.P. Act, 1934.

Applicability of Act, 20.

Act does not govern loans advanced before commencement of the Act, 63.

Madras State Aid to Industries Act (V of 1923), 199-208.**Madras Debt Conciliation Act (XI of 1936), 67-127.**

Principles on which Act is based, 67-75.

Necessity for the Act, 75, 76.

Scope of the Act, 76, 77.

Tendencies of Courts, apart from Act, 77.

Extracts from Report of Royal Commission on Agriculture, 78-88.

Mahal

Definition of, in U.P. Enc. Act, 1934, cxx.

Maintenance

Liability *re*, not affected by M.A.R. Act, 1938, 140.

Malik-Makbuza

Definition of, in C.P. D.C. Act, 1933, xxxvi.

Marumakkatayam Tarwad

Is a 'person' under M.A.R. Act, 1938, 139.

When can, be deemed 'agriculturist', 154.

Michawaram

What is, 148.

Mine

Definition of, in C.P. Ind. W.D. Act, 1936, lxx.

Molestation

Definition of, in Punj. D.P. Act, 1936, lxxxiii.

Money

Definition of, in U.P.A.R. Act, 1934, clxvii.

Money-lender

Definition of, in Ass. M.L. Act, 1934, i.

Definition of, in Beng. M.L. Act, 1933, viii.

Definition of, in C.P. M.L. Act, 1934, lix.

Definition of, in Punj. D.P. Act, 1936, lxxxv.

Registration of, under C.P.M.L. Act, 1934, lxiv.

Registration-fee (*ibid.*).

Duration of Registration Certificate (*ibid.*).

Bar to carry out business without certificate (*ibid.*).

Duty to maintain accounts under C.P., M.L. Act, 1934, lx.

To supply debtor with particulars of loans under Beng. M.L. Act, 1933, ix.

Penalty for failure to supply, (*ibid.*).

Restriction of, *re*, advertisement under Ass. M.L. Act, 1934, iv.

Restriction of, in employing agents and canvassers, v.

To furnish every year statement of account to debtor, (C.P.M.L. Act, 1934), lx.

Money-lenders' Acts

Assam M.L. Act, 1934, i-vii.

Bengal M.L. Act, 1933, vii-x.

C.P. M.L. Act, 1934, lviii-lxviii.

Mortgage

Mortgagee with possession not affected by, Ss. 8 and 9 of M.A.R. Act, 1938, 163.

Movable property

- Special provisions *re*, sale of, in execution, 177.
- Excess of scaled down amount to be refunded from purchase money, 177.

N**Non-agriculturist**

- Sons and descendants of non-agriculturist members of joint Hindu family are, 154.

Notice

- To submit statement of debts, (M.D.C. Act, 1936), 98.
- To submit statement of debts (Punj. Rel. of Ind. Act, 1934), ci.
- Forms of, under (M.D.C. Act, 1936), 118, 119.
- To be sent by Registered Post, 97.
- To be sent to all creditors, (*ibid.*).
- Service of, 113.
- To D.H., to be ordered before refund of excess amount (under M.A.R. Act, 1938, 178.
- To D.H., and A.P., before setting aside sale of immovable property under M.A.R. Act, 1938, 178.

Notification

- Definition of, in Beng. A.D. Act, 1935, xii.

O**'Occupancy tenant'**

- Definition of, in C.P. D.C. Act, 1933, xxxvi.

P**Parties**

- Can appear before Board through Agent or Pleader, only on permission (M.D.C. Act, 1936), 108.
- Can appear by agent but not legal practitioner (C.P.D.C. Act, 1933), xlviii.
- Can appear by agent or legal practitioner (Punj. Rel. of Ind. Act, 1934), civ.

Pawn

- English law as to, 36.
- Distinguished from lien, 36.

Pawn-broker

- Definition of, in M.D.P. Act, 1934, 29.
- English law as to, 36, 37.
- Special accounts to be kept by, 35.
- English law as to the same, (M.D.P. Act, 1934), 37.
- Duty to give copy of entries in account at time of pawn to owner (M.D.P. Act, 1934), 38.
- Penalty for not giving copy, 41.
- Power of Pro. Govt. to frame rules as to accounts to be kept by, 63.

Pawner

- Definition of, in M.D. Act, 1934, 29.

Payable

- Meaning of, 155, 156.
- Distinguished from 'due', 156.
- Distinguished from 'recoverable', 156.

Penalty

- For not giving receipts for payment under M.D.P. Act, 1935, 41.
- For creditor not keeping accounts (M.D.P. Act, 1934), 41.
- For creditor not giving copies of, 41.
- For creditor not giving receipts for payments, 41.
- For pawn-broker failing to give copy of entry to owner (M.D.C. Act, 1936), 41.
- Under Beng. A.D. Act, 1935, xxxiii.
- Under Ass. M.L. Act, ii, v.
- Under C.P. Adjustment and Liquidation, etc., Act, 1936, lxxvii, lxxviii.
- Under C.P., M.L. Act, 1934, lxiv.
- Under C.P. Ind. W. Act, 1936, lxxvii.
- Under Punj. Reg. of Accts. Act, 1934, xciv.
- For molestation under Punj. D.P. Act, 1936, lxxxiii.
- Under Punj. Rel. of Ind. Act, 1934, cvi, cviii.
- Under U.P.A.R. Act, 1934, clxxxvi, clxxxvii.

Person

- Definition of, in M.A.R. Act, 1938, 139.
- Definition in Gen. Cl. Act, 142.
- Aliyasantana Tarwad whether a, under M.A.R. Act, 1938, 139.
- Marumakkatayam Tarwad whether a, 139.
- Joint Hindu family, whether a, 139.
- Association or Company not incorporated not a, under M.A.R. Act, 1938, 139.
- Charitable or religious institution not a, under M.A.R. Act, 1938, 139.

'Post-slump profits'

- Definition of, in U.P. Enc. Est. Act, 1934, cxxi.

Poundage

- To be refunded, when sale set aside under M.A.R. Act, 1938, 179.

Power of Board

- Under M.D.C. Act, 1936, 95, 97, 100, 101, 105, 108.
- Under Beng. A.D. Act, 1935, xvii, xxii, xxix, xxxi.

Power of Court

- To disallow costs or interests (Punj. Rel. of Ind. Act, 1934), ciii.
- To disallow costs or interests (C.P.D.C. Act, 1933), xlvi.
- To disallow costs and interest under M.D.C. Act, 1936, 106.
- To re-open transactions under Usu. L. Act, 1918, 185, 186.
- To limit interest (C.P., M.L. Act, 1934), lxii, lxiii.
- To limit interest, under Beng. M.L. Act, 1933, viii.

'Pre-slump profits'

- Definition of, in U.P. Enc. Est. Act, 1934, cxx.

Presumption

- From excessive interest that transaction is unfair, 188.
- As to interest being excessive, 44.
- In case of certain loans, under Beng. M.L. Act, 1933, viii.
- In case of certain loans, under Ass. M.L. Act, 1934, iii.

Principal

- Definition of, in M.D.P. Act, 1934, 29.
- Of certain debts not to be reduced under Beng. A.D. Act, 1935, xxi.

'Private debt'

- Definition of, in U.P. Enc. Est. Act, 1934, cxix.

Property

Definition of, in C.P. Ind. W.D. Act, 1936, lxx.

Proprietor

Definition of, in C.P., D.C. Act, 1933, xxxvi.

'Protected land'

Definition of, in U.P. Enc. Est. Act, 1934, cxx.

Public Company

Debt due to, when not affected by Ss. 8 and 9, M.A.R. Act, 1938, 163.

'Public debt'

Definition of, in U.P. Enc. Est. Act, 1934, cxix.

Punjab Regulation of Accounts Act (I of 1930), lxxxix, xcv.**Punjab Relief of Indebtedness Act (VII of 1934), xcv.****Punjab Debtors' Protection Act (II of 1936), lxxxiii, lxxxix.****Purchase money**

Refund of, when sale set aside (M.A.R. Act, 1938), 179.

R**Raiyat**

Definition of, in Beng. A.D. Act, 1935, xii.

Definition of, in C.P., D.C. Act, 1933, xxxvi.

Receipts

Creditor's duty to give, for payments, 30

Particulars to be noted in, 30.

Penalty for not giving, 41.

Refund

Of excess amount in case of sale of movable property (M.A.R. Act, 1938), 177.

Registration

Of amicable settlement under M.D.C. Act, 1936, 101.

Effect of registration (M.D.C. Act, 1936), 102.

Of awards and certificates under Beng. A.D. Act, 1935, xxxii.

Of agreement of settlement (Punj. Rel. of Ind. Act, 1934), cii.

Its effect, cii.

Of agreement of settlement (C.P.D.C. Act, 1933), xliii.

Regular course of business

Meaning of, 25.

Religious Institution

Not a 'person' under M.A.R. Act, 1938, 139.

Renewal

Renewed debt, how affected by M.A.R. Act, 1938, 161.

Whether to be in favour of same creditor, 162.

Rent

Definition of, in M.A.R. Act, 1936, 141.

Is not 'debt' under M.A.R. Act, 1938, 148.

Conditional discharge of, under M.A.R. Act, 1938, 170.

Conditional discharge of arrears of, under M.A.R. Act, 1938, 170-172.

Special provisions as to arrears of, under Beng. A.D. Act, 1935, xxiii.

Rental value

Meaning of, 141.

Revenue taxes or cesses

Not affected by M.A.R. Act, 1938, 149.
Reason for such exemption, 150, 151.

Review

Power of Board, to review its own order (M.D.C. Act, 1936), 108.
Under Beng. A.D. Act, 1935, xxxi.
Power of Board to, its own order under C.P. D.C. Act, 1936, xvii.
Power of Board under Punj. Rel. of Ind. Act, 1934, civ.

Revision

See under 'BAR OF REVISION'

Riyat-Malik

Definition of, in C.P. D.C. Act, 1933, xxxvi.

Rules

Under Madras Debtors' Protection Act, 64-66.
(Under M.D.P. Act, 1934)—
(i) As to maintenance of accounts, 64.
(ii) As to manner of furnishing statement of accounts, 64.
(iii) As to person for whom relief is to be given in case of joint loan, 65.
(iv) As to manner of certifying copies of accounts, 65.
(v) As to sums chargeable for grant of copy by pawn-broker, 66.
Under Madras Debt Conciliation Act, 112-127.
(Under M.D.C. Act, 1936)—
(i) Procedure where Chairman or Member of Board is party to or interested in proceedings, 112.
(ii) Quorum for meeting and conduct of proceedings, 112.
(iii) Headquarters of Board, 112.
(iv) Presentation of application to Board, 112.
(v) Procedure when applications are made to more than one Board, 113.
(vi) Court-fee for application, 113.
(vii) Notice on whom to be and how served, 113.
(viii) Service of summons, 113, 114.
(ix) Examination of witnesses in certain cases, 114.
(x) Process fee and travelling allowance to witnesses, 114.
(xi) Stamp duty and registration fees for registering agreement of settlement, 114.
(xii) Registers, Books, etc., to be kept by Board, 115.
(xiii) Deposit of records, 115.
(xiv) Preservation of records, 115.
(xv) Monthly and annual reports to be sent to Board of Revenue, 115.
(xvi) Travelling and halting allowances to Chairman and Members of Board, 116.
(xvii) Board's establishment, 117.
(xviii) Inspection of Board's records by Collector, 117.
Under U.P. Reg. of Sales Act, clxi.
Matters to be considered in making, clxi.
Under Assam Money-Lenders' Act, vi, vii.
Under C.P. Debt Conciliation Act, 1-1iv.
Under C.P. Money-Lenders' Act, lxxv-lxxviii.
Under C.P. Adjustment and Liquidation of Industrial Workers Debt Act, lxxx.
Under Punj. Rel. of Ind. Act, 1934 cviii-cxi.

S

Sale

- Debtor's property under Beng. A.D. Act, 1935, xxiv.
- Distribution of sale proceeds, xxiv.
- Distribution when sold for rent, xxvi.
- Procedure when 'movables' have been sold in execution, (M.A.R. Act, 1938), 177.
- Of immovable property to be set aside in certain cases, under M.A.R. Act, 1938, 178.
- When set aside, notice to D.H., and A.P. necessary, 178.
- Also purchase money to be repaid to A.P. 179.

Saleable Interest

- Meaning of, 143.
- Whether benamidar or real owner has, 143.
- Includes mortgage interest, 143.
- Distinguished from 'valuable interest', 143.

Sanad-i-Milkiyat-i-istimrar

- What is, 91.

Scheduled Bank

- Debt due to, when not affected by Ss. 8 and 9, M.A.R. Act, 1938, 173.

'Secured Creditor'

- Definition of, in M.D.C. Act, 1936, 90.

'Secured debt'

- Definition of, in M.D.C. Act, 1936, 90.
- Definition of, in C.P. Ind. W.D. Act, 1936, lxx.
- Definition of, in C.P. Red. of Int. Act, 1936, lxxxii.
- Maximum rate of interest allowable on, (M.D.P. Act, 1935), 44.

Secured loan

- Definition of, in U.P.A.R. Act, 1934, clxvii.

Settlement

- Definition of, in Beng. A.D. Act, 1935, xii.

Settlement of debt

- Due to Co-operative Society, under Beng. A.D. Act, 1935, xxvi.
- Application for settlement of debt, (M.D.C. Act, 1936), 95.
- Application for settlement of debt under Beng. A.D. 1935, xiii.
- Maximum amount allowable in satisfaction of a debt (M.D.C. Act, 1936), 104.
- Properties exempt from attachment not to be taken into account (M.D.C. Act, 1936), 104.
- See also under "APPLICATION FOR SETTLEMENT".

'Sir'

- Definition of, in U.P. Enc. Est. Act, 1934, cxx.

Stamp duty

- To be given by creditor to debtor (U.P.A.R. Act, 1934), clxxxiv-

Statement of Account

- To be given by creditor to debtor (U.P.A.R. Act, 1934), clxxxiv, clxxxviii.
- Creditor to be called upon to submit, (M.D.C. Act, 1936), 98.
- Creditor to be called upon to submit, (Punj. Rel. of Ind. Act, 1934), ci.
- Creditor to be called upon to submit, (Beng. A.D. Act, 1935), xvi.

Statement of Account—(Contd.)

- Creditor to be called upon to submit, 140.
- Procedure on submission of, (M.D.C. Act, 1935), 140.
- Procedure on submission of, (C.P.D.C. Act, 1933), xli.
- Procedure submission of, (Punj. Rel. of Ind. Act, 1934), ci.

Stay of execution

- Mandatory in certain cases, under M.A.R. Act, 1938, 176.

Stay of Suits

- In certain cases under Beng. A.D. Act, 1935, xxvii.
- In certain cases under M.D.C. Act, 1936, 109.

Sub-lessee

- Of land is also 'agriculturist', 140.
- Includes also every person holding under sub-lessee, 144.

Sub-Registrar

- Definition of, in C.P., M.L. Act, 1934, lx.

Suits

- See under 'BAR OF SUITS' and 'STAY OF SUIT'.
- Abatement of, in certain cases under Beng. A.D. Act, 1935, xxvii.
- By debtor for account of money lent (U.P.A.R. Act, 1934), clxxxv.
- Forum of Suits against Agriculturist (U.P.A.R. Act, 1934), clxxiii.

'Suit to which this Act applies'

- Definition in Usu. Loans Act, 1918, 185.
- Definition in C.P.U.L. Am. Act, 1934, lv.

'Supplementary income'

- Definition in Beng. A.D. Act, 1935, xii.

Surplus

- Definition of, in C.P. Ind W.D. Act, 1936, lxx.

T

Taxes

- Due to Government not affected by M.A.R. Act, 1938, 149.
- Due to local authorities also not affected, 149.

Tenant

- Definition of, in M.D.C. Act, 1936, 90.

Thekadar

- Definition of, in U.P.A.R. Act, 1934, clxvii.

Trader

- Definition of, in Punj. D.P. Act, 1936, lxxxv.
- Definition of, in Punj. Reg. of Accts. Act, 1930, xcii.

Transfer

- Definition of, in Act I of 1917, 197.
- Avoidance of certain, under C.P.D.C. Act, 1933, xlvii.
- Of application from one Board to another under Beng. A.D. Act, 1935, xxx.
- Avoidance of certain, (M.D.C. Act, 1936), 107.
- Not to be considered fraudulent in certain cases), 108.
- Power of Collector to, proceedings under U.P. Enc. Est. Act, 1934, clii.
- Power of Board of Revenue, (*Ibid.*).

Sale . . . in U.P. Enc. Est. Act, 1934, cxxi.

Debt

Liability arising out of breach of, not affected by M.A.R. Act, 1938, 150.

U

Under-proprietor

Definition of, in U.P.A.R. Act, 1934, clxvii.

Under-raiyat

Definition of, in Beng. A.D. Act, 1935, xii.

Unsecured debts

Maximum rate of interest, permitted under M.D.P. Act, 1935, 44.

U.P. Agriculturists' Relief Act, (XXVII of 1934), clxi-cxc.

U.P. Encumbered Estates Act (XXV of 1934), cxviii-cliii.

Procedure on application, cxvii-cxxxiii.

Proof of debts and procedure of Special Judge, cxxxiii-cxl.

Execution of decrees and liquidation of debts, cxl.

Appointment and removal of Special Judge under, cxvii.

Application under, cxvii-cxxv.

Only one application lies, cxvii.

U.P. Regulation of Sales Act (XXVI of 1934), cliii-clxi.

U.P. Stay of Proceedings (Revenue Court) Act (IV of 1937), cxc-cxcii.

U.P. Temporary Postponement of Execution of Decrees Act, (X of 1937), cxcii-cxcv.

United Provinces Temporary Regulation of Execution Act, 1934, cxiv-cxviii.

Unsecured loan

Definition of, in U.P.A.R. Act, 1934, clxvii.

Usury Laws Repeal Act (XXVIII of 1855), 190-193.

Usurious Loans Act (X of 1918), 184-190.

Madras Amendment Act (VIII of 1937), 183, 184.

C.P. Amendment Act (XI of 1934), liv-lvii.

Amendment by U.P. Amendment Act (XXIII of 1934), cxii, cxiii.

Amendment by Punjab Rel. of Ind. Act, 1934, xcvi.

Not applicable to debts falling under S. 3, C.P. Red. of Int. Act, 1936, lxxx.

V

Village

Definition of, in C.P., D.C. Act, 1933, xxxvi.

'Village Industry'

Definition of, in M.S.A.I. Act, 1923, 200.

W

Wages

Due to agriculturist or other rural labourer not affected by M.A.R. Act, 1938, 150.

Witness

- Summoning of, under M.D.C. Act, 1936, 101.
- Duty when summoned to produce documents only, 113.
- Service of summons on, 113, 114.
- Service when not to be found, 113.
- Travelling and subsistence allowances to, 114.
- Procedure where, is unable to attend, 114.

Words and Phrases

- Adjusted debt, lxix.
- Agency Tracts, 197.
- Agent, 197.
- Agricultural calamity, clxii.
- Agricultural land, cliii.
- Agriculture, 90, x, xxxvi, xcix.
- Agriculturist, 139, cliii, clxiii.
- 'Amount payable under an award', xi.
- Appellate Officer, xi.
- Assets, lxix.
- 'Average income', lxix.
- Award, xi.
- Bank, 23, lix, lxxxiv, xc.
- Board, 90, xi, xxxvi.
- Bond, clxvi.
- Certificate Officer, xi.
- Collector, xi, lxxxv, clxvi.
- Company, 23, lix, lxxxiv, xci.
- 'Co-operative Society', 23, lix, lxxxiv, xci, clxvi.
- 'Cottage industry', 200.
- Court, 24, lix, lxix, lxxxiv, xci, clxvi.
- Creditor, 90, 24, 141, xxxvi, lxix, lxxx, xci, clxvi.
- Cultivator, cxiv.
- Debt, 90, 141, xi, xxxvi, lxxx, xcvi, clxvi.
- Debtor, 90, xi, xxxvii, xcvi.
- Dependant, lxix.
- Factory, lxix.
- Hill-tribe, 197.
- Holding, xxxvi.
- Immovable property, 197.
- Industrial establishment, lxx.
- Industrial worker, lxx.
- 'Instalment value', cxxi.
- Interest, 27, 185, i, lv, lix, lxxx, lxxxiv, xci, xcvi, clxvi.
- Khudkash, cxx.
- Land, xxxvi, lxxxv, cxix, clxvi.
- Landholder, 89.
- Landlord, xii, cxx.
- Loan, 27, 185, i, lv, lix, lxxxiv, xci, xcvi, clxvi.
- Mahal, cxx.
- Malik-makbuza, xxxvi.
- Mine, lxx.
- Molestation, lxxxiii.
- Money, clxvii.
- Moneylender, i, viii, lix, lxxxv.
- Notification, xii.
- Occupancy tenant, xxxvi.
- Pawn-broker, 29.
- Pawner, 29.
- Person, 139.

Words and Phrases—(Contd.)

- Post-slump profits, cxxi.
- 'Pre-slump profits', cxx.
- Principal, 29.
- Private debt, cxix.
- Protected land, cxx.
- Property, lxx.
- Proprietor, xxxvi.
- Public debt, cxix.
- Raiyat, xii, xxxvi.
- Rent, 141.
- Riyat-malik, xxxvi.
- Secured creditor, 90.
- Secured debt, 90, lxx, lxxx.
- Secured loan, clxvii.
- Settlement, xii.
- Sir, cxx.
- Sub-Registrar, lx.
- 'Suit to which this Act applies', 185, lv.
- Supplementary income, xii.
- Surplus, lxx.
- Tenant, 90.
- Thekadar, clxvii.
- Trader, lxxxv, xcii.
- Transfer, 197.
- Transfer value, cxxi.
- Under-raiyat, xii.
- Under Proprietor, clxvii.
- Unsecured loan, clxvii.
- Village, xxxvi.
- Village industry, 200.