

THE LAW RELATING TO
RELIEF & PROTECTION OF
DEBTORS

Being a Commentary on

THE USURIOUS LOANS ACT, 1918

[As amended by the Madras Amending Act of 1936]

THE MADRAS DEBTORS' PROTECTION ACT, 1934

[As amended by the Madras Act IV of 1936]

THE MADRAS DEBT CONCILIATION ACT, 1936

[Madras Act XI of 1936]

TOGETHER WITH

(1) *All Enactments in India relating to interest and the relief of debtors, including the latest amendments of the Civil Pro. Code.* (2) *Parallel Enactments, English and Indian, with Rules, and* (3) *Rules framed by Government under the Agriculturists' Loans Act, The Madras Debtors' Protection Act and The Debt Conciliation Act.*

BY

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Author of "The Evolution of the Indian Constitution"

WITH A FOREWORD

By The Hon'ble Mr. Justice

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High Court, Madras

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FOREWORD.

Almost since the dawn of history, the problem of indebtedness has been one of the major difficulties of society. Public men and private economists have been groping in the mist, hoping to hit on some practicable way of reducing debt, other than the too obvious method of paying hard cash. There is, of course, the brutally simple solution of bankruptcy, which may be practised either by individuals or by states, in the latter case often disguised as currency devaluation. But bankruptcy, quite rightly, carries with it a stigma and a penalty. What publicists are looking for is some practicable way of dealing with the difficulties of the honest man, who wants to pay his debts without losing the land which is his livelihood, but cannot do so because, for reasons which are beyond his control, the debts have swollen to an impossible size. The problem has been aggravated since the War by rapid fluctuations of prices, exchanges and currency values. A man borrows Rs. 100 in 1922 when this sum represents 300 measures of grain. Grain prices slump, and in 1930, when he is constrained to pay his debt, he has to sell 600 measures of grain to pay the principal and as much again to pay the arrears of interest. Thus, since he lives on a grain basis, the fall in prices has doubled both his debt and the interest on it. Nevertheless his taxes call for the same number of rupees as in 1922, his surplus crops sell for half the amount which they used to fetch, and the balance from which he hoped to repay the debt is non-existent. Moreover, his very indebtedness drives him into uneconomic courses. He sells at the wrong time owing to the imperative need for

cash. His land is badly tilled owing to the lack of means to procure good bulls, proper manure and efficient labour. He flounders in a morass of difficulties, from which he can be extricated only by a sudden rise of prices or unexpected windfall; and it is the hope of the windfall which too often leads him to gamble away the remains of his patrimony.

In seeking a remedy for such hard cases, the legislator is embarrassed by the fact that similar symptoms are presented by other cases which are not really hard cases at all. There is the man who borrows with neither the intention nor the means of repaying, deluding his creditor with false promises and mendacious guarantees. There is the man who is able to pay but dishonestly refuses to do so, if he can take refuge under any statutory defence. Such men are little better than common thieves and deserve no sympathy. Another source of embarrassment is the practice whereby the borrower is compelled to sign for much more than he receives, a practice which is very widespread, but is often pleaded falsely. It is an error to assume that all lenders are rogues and all borrowers honest men. The converse is more often the truth. A money-lender who systematically swindles his clients, soon gets a bad name and cannot hope to build up a sound business. The professional sowcar is frequently hard and grasping, but he generally has the sense to realise that flagrant dishonesty does not pay. The borrower labours under no such restriction.

Foremost amongst the dangers of all usury legislation is the danger of unduly restricting credit. Some measure of restriction would probably be beneficial in India, particularly if it could be applied to unremunerative borrowing for marriages etc., without adversely affecting commercial credit. But India is a land which

lives on borrowed money to an extent which is unknown in the West. Any serious disturbance of the credit system would shake the whole basis of the social fabric, and is not to be attempted without the gravest consideration.

This little book is an attempt to put together in a handy form those measures of the Indian legislatures which have been enacted in the attempt to relieve the honest debtor. Some of these measures are defective or inadequate. None of them are more than palliative. It is the hope of all who have studied the subject that the wisdom of future legislators will evolve some practicable scheme, whereby the load of debt may be lifted, without destroying the facilities for reasonable credit, and without doing injustice to the honest lender.

“COTTINGLEY,”
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S. WADSWORTH.

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THE LAW RELATING TO THE RELIEF AND PROTECTION OF DEBTORS

INTRODUCTION

I

How far the intervention of the State in transactions between private persons is necessary or desirable, is a question which is not free from controversy. On the one hand it may be argued that so long as the administration of the State is not directly affected by the activities of its citizens—activities which are *prima facie* lawful—the State's intervention would be out of place. On the other hand it may be urged that there is no such abstract being as a 'State' apart from its citizens, and that the State cannot look with unconcern on the struggles and miseries of its citizens. There was, no doubt, a period in the history of the world when the doctrine of '*Laissez Faire*' (Let men do as they please) held sway. This doctrine was based on the view propounded by Adam Smith that if freedom was granted to each individual to follow his own interest, he would, by so doing, advance also the interests of the community. It was, however, found that this doctrine which gave freedom for the poor and the weak to make their bargain with the strong and the powerful, oftentimes reduced the former to virtual slaves of the latter. The doctrine of *Laissez Faire* is now giving way, and State intervention which, in the early stages was confined to matters in which a large section of the people was concerned, such as Factory Legislation, Tariff Legislation etc., is now making inroads into the domain of private contract; and the Usurious Loans Act, the Debtors' Protection Act and the Debt Conciliation Act are, all, instances of State intervention of this kind.

The practice of moneylending and the collection of interest although it was prevalent in ancient times, was looked upon with disfavour. Nowadays we make a distinction between interest and usury. Interest is compensation for the use of the money borrowed

or rather for the deprivation of its use in the hands of the lender. Usury is oppressive or iniquitous interest. No such distinction was, however, drawn in the ancient days, and all moneylending for interest was classed as usury, and looked upon with disfavour. The Mahomedan Law prohibits the taking of any interest, although some texts make an exception in favour of the receipt of interest from 'infidels'. The ancient Hindu texts contain passages from which we find that loans and usury were prevalent but were not, at first, favoured. There are passages in the Vedas in which the sages regretted their indebtedness. In the age of Buddha, Buddha tolerated interest, although the Rishis condemned it. The legal rate was generally 15% per annum, although much higher rates were also prevalent. The Artha Sastra of Kautilya mentions that 15% was the normal rate. But in cases where the investment involved some risk,—e.g., a loan to a merchant trading on the High Seas—a higher rate was justifiable. It may go up to as much as 120% per annum. It was, however, laid down that if interest is allowed to accrue, the total interest should not exceed the principal. Manu fixes 5% per mensem (60% per annum) as the highest rate of interest allowable. Certain kinds of interest such as compound interest, periodical interest etc., were prohibited. Usury, in general, was not approved. There are passages in Manu stating that an usurer should not be invited to a Shraddha, and a Brahmin is forbidden to take food from an usurer. In the Gupta Period (300—500 A. D.) although interest was allowed, there were various restrictions. It was laid down that if principal and interest were paid together, the interest should not exceed the principal. If interest has been paid and the amount collected is twice the amount of the principal, then the King should not decree any more interest. If the interest already paid is four times the principal, then the creditor shall not be entitled to receive anything more from the debtor.

The prohibition against usury in English history may be traced back to the days of Edward I, if not still earlier. Any gain which accrues by the lending of money was condemned by Christian teaching. It was, as Shakespeare put it, 'a breed of barren metal.' It is not a gain which comes from work. It is really taking undue advantage of the necessity of another man. A man lends because he has spare money available. This does not bring benefit to him when it is in his possession. By temporarily parting with it to another he does not lose anything, provided, of course, the money is paid back

when he needs it. Therefore, getting compensation for the use of money which is lying idle with him is sinful. This is how the ancients felt on the matter, and that was why Edward I drove out the Jews from England, because, then, the Jews alone were lending out.

Gradually, when trade expanded, and a field for investing money was opened out, the taking of interest began to be recognised. It is not necessary to go into the details of the process by which the doctrine that the taking of interest was sinful, was got over. It is at this time of history that we find distinction between interest and usury. The laws fixed the maximum rates of interest from time to time, and any rate in excess of it was regarded as usurious. An Act of 1545, passed by Henry VIII, permitted the taking of interest at 10%. The rate was subsequently reduced by various enactments to 8%, 6%, and finally to 5% in the reign of Queen Anne. (12 Anne 2 Ch. 16). The Statute of William IV (3 & 4 Will. IV Ch. 42) in 1833 empowered Courts to allow interest in certain cases although no interest was stipulated for. After the advent of British rule in India, Legislation in India has, on almost all branches of the law, moved on parallel lines with Legislation in England. So we find that the Bengal Regulation XV of 1793, the Madras Regulation XXXIV of 1802, and the Bombay Regulations V of 1827 and I of 1814, fixed 12% as the maximum rate of interest which the Courts could enforce. This rate was fixed following the rate fixed in England under 13 Geo. III Ch. 63 (1783). The interest Act XXXII of 1839 passed in India merely enacted the provisions of 3 & 4 Will. IV Ch. 42 (1833).

It was at this juncture, *i. e.*, the beginning of the 19th century that the doctrine of *Laissez Faire* already referred to began to be emphasised, stress came to be laid on the liberty and freedom of contract as between man and man, there was a cry for the removal of all restrictions interfering with the freedom of contract, and as a result the Usury Laws Repeal Act was passed in England in 1854, and in India in 1855. Under these enactments the restrictions against usury were completely removed. Thus the restriction in Madras under Regulation XXXIV of 1802, which provided that—

“1. if the interest stipulated exceeds 12%, then only 12% and no more should be awarded by the Courts,

2. that compound interest shall not be awarded except where by a fresh contract the interest is merged in and is treated as principal,
3. that if interest is allowed to accumulate, the amount awardable as interest shall not exceed the principal, and
4. that in case of usufructuary mortgage where the usufruct is enjoyed by the mortgagee, the mortgagor is entitled to an account of the rents and profits, and any amount in excess of 12% shall be applied in reduction of the principal "

—all these restrictions were swept away, and the Courts were enjoined to enforce the rate agreed upon between the parties, whether usurious or not.

This freedom of contract, it was found, resulted in the exploitation by the moneylenders of the weak and the needy. Public opinion began to veer round to the view that the protection of the weak and the needy is the concern of the State. A Select Committee of the House of Commons was appointed about 1898 to enquire into the evils attendant upon the system of money-lending by professional moneylenders, or under oppressive conditions as to repayment. A Select Committee of the Incorporated Law Society on money-lending also went into this question, and the English Moneylenders Act, 1900, was passed based upon the recommendations of these two Committees. The Act was supplemented by the Moneylenders Act, 1911, which has been repealed and re-enacted with substantial additions, in 1927.

II

The Usurious Loans Act was passed in India in 1918, modelled on the English Act. But not all the provisions of the English Act were incorporated. Although this Act was passed only in 1918, the Courts in India exercising equity jurisdiction did interfere whenever the Courts felt that any contract was hard and unconscionable. Indeed the English Moneylenders Act was itself only an amending Act, amplifying the powers exercised by the English Courts in their equity jurisdiction. We, therefore, find that the judges in India, exercising equity jurisdiction, in proper cases, refused to uphold the interest stipulated between the parties, in spite of the express words of section 2 of the Usury Laws Repeal Act which provided that "The

amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties." In 4 Bombay High Court Reports (A. C.) 7, it was laid down that, notwithstanding the Usury Laws Repeal Act, the Courts in British India which administer both law and equity could examine a transaction and see if it was unfair or extortionate. Similar views were expressed in other cases. But the judges themselves felt that in exercising this equity jurisdiction they had to twist the law in some cases, and that in other cases, though intervention was called for, they were helpless. It was therefore, deemed necessary to invest the Courts with additional powers. In England, as soon as the Act of 1900 was passed, a doubt was expressed in some cases whether the Act enlarged the powers exercised by the Equity Courts, or whether it merely gave statutory recognition to these powers, and did not enlarge them. It was, however, finally decided by the House of Lords in 1906 Appeal Cases 461, that the Act "confers a new jurisdiction and gives to the borrowers a form of relief different in kind and range from that theretofore granted by any class of Tribunal in England. It differs from the relief granted by the Court of Equity in character, nature, and extent." The policy of the Act is to enable the Courts to prevent oppression, leaving it in the discretion of the Court to weigh each case upon its own merits, and to look behind a class of cases which peculiarly lend themselves to an abuse of power.

The exercise of this jurisdiction by the Court does not really militate against the older theory of freedom of contract. Courts of Equity have always required a reasonable degree of equality as between contracting parties. Liberty and freedom of contract should be given only to equals, and whenever the Court has intervened, it has done so only on the footing that the parties to the contract have not met on equal terms. When one party is poor, or weak, or unable to protect himself, and he enters into a contract with another not so placed, obviously the parties do not meet on equal terms. As observed by Pollock, the necessitous man acts under coercion. His poverty and not his will consents, and a Court of Equity is justified in coming to his rescue. The principle is thus put by LINDLEY, *L.J.* in 36 Ch. D. 145, (*Allcard v. Skinner*), "What, then, is the principle? Is it that it is right and expedient to save persons from the consequences of their own folly, or is it that it is right and expedient to save them from being victimised by other people? In my opinion the doctrine of undue influence² is founded upon the second of those

principles. Courts of Equity have never set aside gifts on the ground of the folly, improvidence or the want of foresight on the part of the donor. The Courts have also repudiated any such jurisdiction. It would obviously be to encourage folly, recklessness, extravagance and vice if persons could get back property which they foolishly made away with. On the other hand, to protect people from being forced, tricked or misled in any way, by others, and parting with their property, is one of the most legitimate objects of all laws."

As observed already, the Usurious Loans Act, 1918, did not bodily incorporate the entire provisions of the English Moneylenders Act, 1900. The English Act has been supplemented in 1927. The Usurious Loans Act has now been attempted to be supplemented in Madras by the Madras Debtors' Protection Act, 1934 (Madras Act VII of 1935) as amended by Madras Act IV of 1936. There are certain outstanding differences, between the English Acts and the Indian Acts, and these are adverted to at appropriate places in the body of the book.

The Usurious Loans Act, 1918 gave discretion to the Courts to interfere if two conditions were satisfied, i.e., that the interest is excessive *and* that the transaction is substantially unfair between the parties. The Court had no jurisdiction to interfere if only one condition was satisfied. For instance, Courts have had to uphold transactions which though substantially unfair cannot be deemed to satisfy the condition that the interest is excessive, and similarly Courts have had to uphold interest at 80% on the ground that the transaction has not been proved to have been substantially unfair. Again the application of the Act has not been uniform in the different Provinces and in the different Courts in the same Province. No doubt the Act also stated that interest may be so excessive as itself to lead to the inference that the transaction was substantially unfair. But the Act left it to the discretion of the Courts to apply the Act under stated circumstances, and this has resulted in an apparent conflict of decisions in cases in which the facts and circumstances appear to be analogous. The cases decided in (1906) A. C. 461 and (1906) 1 K. B. 79 are typical instances. It is for this reason that the English Moneylenders Act was amended in 1927 by enacting that interest in excess of 48% (a very high rate from the Indian point of view) shall be deemed to be excessive, and the transaction harsh and unconscionable (or substantially unfair, using the wording of the Indian enactment). This afforded only a partial solution of the

problem. As to transactions where the interest was under 48% the exercise of the powers was discretionary.

In Madras the problem is attempted to be tackled in two ways. Under section 6-A of the Madras Debtors' Protection Act the Courts are enjoined to presume that interest in excess of 9% in the case of secured loans, and in excess of 15% in the case of unsecured loans shall be deemed to be excessive, and the transaction substantially unfair. The only defect in this provision is that it applies only to loans under Rs. 500. But there is nothing to prevent the Courts applying the same principle to loans in excess of Rs. 500. In the second place the Usurious Loans Act has been amended in its application to the Madras Presidency by doing away with the dual condition as to the necessity for proving that the interest is excessive, and by providing that the Court *shall* exercise the powers if it holds that the transaction is substantially unfair. There can be no doubt but that this is a step in the right direction. Courts can now grant relief in a larger class of cases of usury. Whereas under the original section the exercise of the powers was discretionary, under the amended section it is obligatory on the Courts to exercise this power if circumstances justifying such exercise exist. It is also provided under the amendment that excessive interest *shall* (instead of *may* in the old Act) lead to the presumption, which is rebuttable, that the transaction is substantially unfair. In the case of agriculturists, compound interest *shall* be deemed to be excessive interest.

III

The Debtors' Protection Act is, however, extremely limited in scope. It was introduced in the Legislative Council as the Madras Moneylenders' Bill, and the name was changed to indicate its limited scope. The only protection that the Act affords to debtors is that moneylenders and pawnbrokers are required to maintain accounts showing particulars regarding the loan and the pawn, and to supply the debtor, on demand, and on payment of the prescribed fee, copies of these accounts or entries. They are also bound to grant receipts for payments made by debtors. Non-compliance with these provisions is visited with slight penalties. This small protection is afforded only to debts under Rs. 500. No attempt is made to regulate the business of moneylending or pawnbroking. Certain provisions in the English Acts which have not been,

and which may well have been, incorporated in the Indian Acts may be briefly adverted to.

1. The pawnbroker and the moneylender are dealt with separately in England [The Pawnbrokers Act of 1872, (35 and 36 Vic. Ch. 93), and the Moneylenders Act 1900—1927]. But both sets of persons are enjoined to take out licences to carry on business. There are penalties imposed for not complying with the rule; *viz.*, the moneylender cannot recover any loan that he may have made, while the borrower who may have parted with any security may recover it without repaying the amount borrowed.

2. There is a limit set to the amount of interest which a pawnbroker may charge. It is halfpenny for every two shillings for one month. (25% per annum).

3. Pledges for over 10 shillings should be sold in public auction under specified conditions, and the pawnbroker is liable to account for the surplus sale proceeds, if any, up to a limit of three years from the date of the sale.

4. A moneylender's contract should be in writing, signed by the borrower.

5. Provision for the payment of compound interest directly or indirectly, or for enhanced interest in case of default, are illegal. The only exception recognised under section 7 of the Moneylenders Act 1927 is that if a sum is due on a particular date, whether by way of principal or interest, and there is default, interest on this sum at the original rate may be charged.

6. A moneylender cannot do banking business. He cannot solicit business. He cannot enforce his claim in a Court inferior to a County Court.

7. There is a shorter period of limitation for suits by moneylenders, *i.e.*, one year.

This last provision may not be quite suited to Indian conditions. Though there is the advantage that the debtor will be induced to repay the loan soon, so as to avoid being mulcted in costs, and thereby prevent interest accumulating and eventually swallowing the debtor, considering the heavy indebtedness of the average Indian, one year would be too short a period within which to expect him to repay the loan. Whatever one may say about this provision, there

is no reason why the other provisions above referred to could not be introduced in India. It is to be hoped that in the light of the working of the Madras Debtors' Protection Act, not only will the scope of the Act be extended, but greater protection would be afforded to debtors on the lines of the English Moneylenders Act and Pawn-brokers Act.

It is interesting to observe that in the Central Provinces a law has recently been passed under which molestation of debtors by moneylenders is an offence punishable with imprisonment up to three months, or fine up to Rs. 500, or both. This legislation is intended to prevent moneylenders relying on threats of violence rather than the process of law. In Cochin it is provided, under a Bill recently introduced, that a moneylender who takes interest in excess of 12% in certain cases is punishable with fine up to Rs. 500.

IV

The Madras Debt Conciliation Act is a piece of legislation intended to relieve the indebtedness of agriculturists. India being mainly an agricultural country, the Government has, from early times, granted certain facilities and concessions to agriculturists. The Agriculturists' Loan Act and the Land Improvements Loans Act passed in 1883 and 1884 enabled the grant of loans to agriculturists for purposes such as the improvement of land, purchase of seed or cattle, or the relief of distress. Certain moveables of agriculturists are exempt from attachment and sale in execution of decrees, and the agriculturists' crops are exempt from attachment before judgment. But all these measures did not prevent the agriculturist from indebtedness. The agriculturist was getting more and more into debt, and since 1929, after the catastrophic fall in prices, especially of agricultural produce, the plight of the agriculturist has well nigh become desperate. Government set about devising ways and means to relieve the agriculturist. The Legislative Assembly voted funds for rural development, Government set up Marketing Boards, established Research Institutes, inaugurated irrigation schemes, and passed Debt Conciliation Acts. During the last two years nearly 25 Acts have been passed in all the Provinces, and about 25 more Bills are pending. These measures deal with a number of possible solutions of the problem, such as—

- (a) Compulsory scaling down of debts, with the provision of better security for the creditor.

- (b) Compulsory limitation of interest.
- (c) Compulsion placed on moneylenders to register and furnish periodical accounts.
- (d) Establishment of Conciliation Boards.
- (e) Establishment of Land Mortgage Banks and Co-operative Societies.
- (f) Subsidiary measures such as the security of holdings from attachment and so on.

The Bengal Moneylenders Act, 1933, the U. P. Usurious Loans Act, 1934, the Punjab Relief of Indebtedness Act, 1934, the C. P. Usurious Loans Act, 1934, and the Assam Moneylenders Act, 1934, and the Madras Debtors' Protection Act, 1936, all deal with the fixation of interest. The Rule of *Damdapat* is recognised in the Madras Debt Conciliation Act, 1936, the Bengal Moneylenders Act, 1933, the Punjab Relief of Indebtedness Act, 1934, and the C. P. Moneylenders Act, 1934. The conciliation and scaling of debts is dealt with in the C. P. Debt Conciliation Act, 1933, the U. P. Agriculturists Relief Act, 1934, the Punjab Relief of Indebtedness Act, 1934, the Madras Debt Conciliation Act, 1936, and the Bengal Relief of Indebtedness Act, 1935.

In our Presidency, Government are attempting to tackle the problem in three ways :

- (a) By subsidising the establishment of Land Mortgage Banks in rural areas, and giving the agriculturist long-term credits through these Banks ;
- (b) By establishing Debt Conciliation Boards and scaling down the debts ; and
- (c) By the Government itself granting loans direct to the agriculturist under the Agriculturists' Loans Act which was specially amended in Madras for this purpose. (*Vide* Appendix).

The essential feature of clause (c) as of clause (b) is also the scaling down of the debt. The scheme was introduced in June, and Deputy Collectors styled Special Loans Officers have been appointed in select areas, and the Government have issued special instructions to these Officers. The Special Revenue Inspectors have been asked to prepare, with the help of Village Officers, a list of debtors in each

village eligible for receiving loans, to send for them and explain to them the conditions under which they could obtain the loans from the Government to wipe out their indebtedness, and to see that as many debtors as possible availed themselves of the concessions. Every facility is to be given to the borrowers, and the applications for loans should be viewed in a liberal and sympathetic spirit, with the aim of granting loans to as many ryots as they possibly could. Cases of rejection of applications are to be reduced to a minimum, and should be had resort to only as a last resort after all possible facilities had been afforded to the applicants and their creditors to come to terms. If necessary, sufficient time should be allowed to them to deliberate over the matter and come to a decision. It is stated by Government, (*Vide* Government press communiques dated 27—8—36 and 5—11—36) that the scheme introduced in select areas has been fairly successful. The scheme has been introduced mostly in areas not served by Mortgage Banks, and the total amount granted by way of loans up to September, 1936 has been only about 6 to 7 lakhs. But provision has been made in the budget for the disbursements of loans up to 20 lakhs, and the Government have agreed to make available a larger amount if necessary. As a result of experience gained in the above districts where the scheme has, thus far, been in operation, the rules have been amended so as to ensure, as the minimum, the scaling down of debt to principal plus five per cent simple interest, or twice the principal, whichever is less. This has resulted in the scaling down of the debt to about 75%.

The scheme of debt conciliation has been much more successful in other Provinces. As was stated in the Legislative Assembly in the course of the discussion of the resolution on the appointment of a Committee to enquire into the indebtedness of agriculturists, in C. P. the debt has been reduced by 42%, in Bengal by 36%, and in the Punjab by 39%. It is to be hoped that in Madras also the rate of reduction would eventually be not less than 40%.

Other Provinces have advanced further than Madras with regard to the scheme for the relief of the agriculturist. Under the Punjab Relief of Indebtedness Act, the land of a statutory agriculturist cannot be sold in execution of a money decree. The most that the decree-holder could do is to apply for the temporary alienation of the judgment-debtor's land for not more than 20 years, and even then, provision has first to be made for the maintenance of the judgment-debtor and his family; in the case of small holders where the

average holding is 5 to 10 acres, this will ensure that the entire income is utilised for the maintenance of the judgment-debtor, and the decree-holder would practically get nothing. Further, the agriculturist's plough cattle, his implements and his seed cannot be attached, nor can his crops, except cotton and cane. If he is sued, the interest charges can be examined, and if they are found to be excessive, they can be reduced. When a cultivator dies, his ancestral land is not liable for the payment of his debts. He is also not liable for arrest. The U.P. Agriculturists Relief Act, 1934 also makes similar provision. One additional feature of the U. P. Act is that suits against agriculturists should be instituted only in a special forum.

One has, of course, to be careful in passing legislation of this kind. Attempts to protect debtors from moneylenders should not result in making it difficult for the debtors to raise loans in case of real need. As observed by the Bombay Banking Enquiry Committee, the more the moneylender is restrained by law, the worse the borrower fares. Again one has to remember that all the measures thus far taken by Government are only palliatives, and unless the cultivator is not prevented from the accumulation of further debts, all these measures would only better his position during the next 5 or 10 years, but in another generation he will be as indebted as ever before. The Government have provided machinery for the scaling down and the settlement of the debt by enacting in Madras the Debtors' Protection Act, the Usurious Loans (Madras Amendment) Act, 1936, and the Debt Conciliation Act, and has provided cheap credit facilities through direct loans under the Agriculturists Loans Act, and indirect loans through Land Mortgage Banks, and Co-operative Societies. But no amount of legislation can prevent the cultivator from running into debt, unless the cultivator himself realises the necessity for avoidance of all unnecessary debts. The debt which an agriculturist has to pay may be classified under the following heads: First of all there is the ancestral debt inherited from generation to generation. Secondly there are debts which may be attributed to improvident expenditure on domestic ceremonies. Thirdly there are the debts which are caused by failure of crops, damage caused by storm or floods. There are the debts which get accumulated on account of the usurious rates of interest at which the agriculturist is forced to borrow. It is also a point for consideration whether the amount of land revenue and rent which he has to pay are not high, and,

whether they also do not contribute to the accumulation of the debt, especially at a time of a fall in commodity prices. In these circumstances, the problem of rural indebtedness cannot be divorced from the problem of agricultural re-construction. The solution of the problem is partly economic, and partly educational. An improvement in agricultural prices is the first and foremost requirement. The standard of living of the Indian peasant must be increased, and he must become 'a better borrower and a more punctual repayer.' That the problem is serious is accepted by all concerned, and the Legislative Assembly recently passed a resolution for the appointment of a Committee to inquire into the question of the indebtedness of agriculturists, and report about the ways and means of extricating them from their present miserable plight. It is to be hoped that something tangible will come out of the labours of the Committee, and that instead of piece-meal legislation in the different Provinces, an All-India measure would be passed giving adequate relief.

V

The Debt Conciliation Act is, however, limited in its operation. It applies only to the debts of agriculturists; *i.e.*, those who actually till and cultivate land, and also those who depend on land for their subsistence, although they may not be the actual cultivators. Thus it will take in the big zemindar with an income of several lakhs of rupees while it will exclude the trader or the middle class citizen not engaged in agriculture. The Act excludes mortgage debts, debts for which there is a charge or lien on immoveable property, rent due by ryots to landholders and zemindars, *rent, kist* and *peishcush* payable to Government, and all demands recoverable as arrears of land revenue; (although the definition of debt in section 2 includes secured debts, section 18 (3) in effect, safeguards their rights against the security). It also excludes wages. All these categories constitute the major part of the debt of the agriculturist, and one may wonder what sort of protection the agriculturist would get when no attempt is made to deal with these classes of debts also. Again, even with regard to the debts to which the Act applies, all that the Act does is to create a Conciliation Board for a district or part of a district. This Board will bring the debtor and the creditors together on an application filed before it by the debtor or any creditor, it will frame a schedule of debts and liabilities, and it will persuade the debtor and the creditors to settle their debts amicably. If, within a period of 12 months, the Board is not able to induce at least a

majority of creditors, *i.e.*, creditors to whom not less than 50% of the total amount of the debtor's debts are owing, to come to a settlement with the debtor, the Board has merely to dismiss the application, and all its labours are wasted. Its decision regarding the debts and liabilities of the debtor is of no use or validity in any subsequent proceeding in Courts. Even if a majority do settle, the minority are not bound by the decision, they are at liberty to file a suit against the debtor in the Civil Court and obtain a decree, and execute it against the debtor's person and property subject to this condition that if the Board certifies that the offer made by the debtor and which was rejected by these creditors, (and accepted by the majority) was reasonable, the Board may issue a certificate to that effect, and on production of that certificate, the Court will not allow him costs of suit, or interest in excess of 6% on the principal from the date of the certificate, for the period subsequent to the certificate; and if under the agreement between the majority of the creditors and the debtor, any property is earmarked for satisfying the debts of the settling creditors, then the minority cannot proceed against these properties until the amounts settled as due to the former are fully paid. But all this will not relieve the agriculturist. To expect all the creditors to settle with the debtor is to expect the impossible. As long as there is at least one creditor who does not agree, he can harass the debtor. Not only so, he may make an application to the Insolvency Court for adjudication of the debtor, and on such an adjudication the entire properties of the debtor would vest in the Court or the Official Receiver, and the entire proceedings before the Debt Conciliation Board would become futile. Again, the object of the Act is the relief of the agriculturist. To distribute his entire properties among his creditors will not be relieving the agriculturist, but relieving the agriculturist of all his properties. Every scheme of conciliation must, therefore, be framed so as to leave something for the debtor to live on, and as long as such a scheme does not take in all his creditors, there is no guarantee that the debtor will be left something. (It is, of course, assumed that the debtor's properties are sufficient to pay off all his secured debts, and something would be left over for payment to the unsecured debts. If the equity of redemption in the properties is not of sufficient value, then there is no hope of redemption for such a debtor. He cannot get any relief under any scheme). As long therefore as no effective method is devised of settling all the unsecured debts of the debtor, it is submit-

ted that the Act will fail to achieve its purpose. That is why an attempt was made in the Legislative Council to enact a provision making it obligatory on the part of the minority to be bound by the decision of the majority, but the attempt was unsuccessful. (*Vide Commentaries under section 13*). Let us, however, hope that the Act will not result in merely setting up a costly machinery, (Conciliation Boards do involve expenditure although the members may be getting no salary. Mr. M. L. Darling, I. C. S. of the Punjab stated in the Indian Legislative Assembly that in the Punjab, each Conciliation Board costs Rs. 12,000 a year, and that a Board cannot be expected to operate successfully in an area larger than a Tahsil), but that the Boards will be able to induce all the creditors to settle with the debtor in the majority of cases that come up before them, and that the work of the Courts would be minimised, and would result in affording relief to the agriculturists who form the backbone of the country. Under the Debt Conciliation Act, the Conciliation Boards have to make enquiries as to the amount of the debts owing by the debtor, and the extent of his properties. (*Vide sections 9 and 12*). It will be found on a perusal of the rules framed by Government for the relief of indebtedness under the Agriculturists Loans Act, (*Vide Appendix*) that the Special Loans Officers have to make elaborate enquiries into the assets and liabilities of persons who apply for loans. The Hon. the Revenue Member stated in the Madras Legislative Council that instructions have been issued to the Special Loans Officers to place at the disposal of the Land Mortgage Banks the result of their enquiries, so as to facilitate the work of these Banks. It is to be hoped that the labours of the Debt Conciliation Boards would also be co-ordinated with the work of the Special Loans Officers, so as to facilitate the work of these Boards.

VI

The Usurious Loans Act, the Debtors' Protection Act, and the Debt Conciliation Act, are all interconnected. The debtor requires protection at three stages. At the inception of the contract of loan the law should ensure that the debtor and the creditor meet on equal terms and that the debtor has fair dealing. Then during the continuance of the relationship of debtor and creditor, the debtor should be prevented from being overreached by the creditor, and finally provision should be made for the conciliation and the liquidation of his debts, if necessary, by scaling them down. The Usurious Loans Act, as amended by the Madras Amendment, the Debtors' Protection

Act, and the Debt Conciliation Act, serve these purposes, respectively, however inadequately it may be. Indeed section 6-(A) of the Debtors' Protection Act introduced by the Amending Act of 1936, could properly have been added to the Usurious Loans Act but for the fact that it applied only to debts under Rs. 500. No apology is, therefore, needed for dealing with all these three enactments, together, in one book.

With regard to the commentary on the Usurious Loans Act, one word of explanation may be necessary. The book does not purport to give a complete list of all the cases decided in England and in India. For one thing, this book is not a digest but only a commentary. For another thing, precedents are not likely to be of much use except when they decide principles underlying the section. As has been repeatedly observed by the Judges themselves, each transaction must be judged on its own intrinsic merits, and a rate of interest which has been held to be fair in one case has been held to be unconscionable in another case. There have been cases where 60% and 80% have been held to be fair, while in some cases even 12% has been held to be unfair. Therefore only the leading cases and the latest cases which decide principles are referred to. Further, so far as Madras is concerned, by reason of the recent amendment, much of the case-law may not be of practical importance.

In the Appendices the enactments relating to interest, and to the relief of debtors, including the latest amendment of the Civil Procedure Code, are all collected for facility of reference.

The author is grateful to the Honourable Mr. Justice Wadsworth for his FOREWORD to this book.

THE USURIOUS LOANS ACT, 1918

(ACT X OF 1918)

[AS AMENDED BY INDIA ACT XXVIII OF 1926 AND MADRAS ACT OF 1936]

(Received the assent of the Governor-General on 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. (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.

NOTES.

The genesis of the Act—(*Vide* INTRODUCTION). We have already observed in the Introduction that even before the passing of the Act, the Courts in British India which were both Courts of law and equity exercised jurisdiction for the relief of the borrower in cases where the Courts of Equity would have granted relief. But the cases in which Equity Courts could interfere were limited, and the judges felt that sometimes they had to twist the law, and that at other times they were powerless. This Act now confers additional powers, and the Courts could interfere in all cases where the facts of the case justify such interference.

"The Act confers a new jurisdiction and gives to the borrower a form of relief different in kind and range from that theretofore granted to any class of Tribunal in England. It differs from the relief granted by Courts of Equity in *character, nature, and extent*... The policy of the Act is to enable the Court to prevent oppression, leaving it in the discretion of the Court to weigh each case upon its own merits, and to look behind a class of contracts which peculiarly lend themselves to an abuse of power," *Samuel V. Newbould*, 1906 Appeal cases 461, (House of Lords). These observations of the House of Lords made with reference to the English Moneylenders Act are equally applicable to the Usurious Loans Act.

Clause 1.—Usurious loans are loans where the interest is, or may be deemed by Courts to be, excessive.

(3) 'Suit to which the Act applies' means any suit—

- (a) for the recovery of a loan made after the commencement of the 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; 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.

NOTES.

Sub-Clause (c) of clause 3 was added by the Amending Act, XXVIII of 1926.

Clause 1.—Commercial Credits Corporation lend money, say, on a car, the amount being payable in instalments. They also charge a commission of 2 to 3%. This commission would also come under the term 'interest.'

Under the English Money-lenders Act 1927 (section 12) it is illegal for the money-lender to collect from the borrower any sum under the head of costs, charges, or expenses incidental to or relating to the negotiations for the grant of the loan or proposed loan, and if actually levied shall be applied in abatement of the principal. This is a salutary rule, and could well have been incorporated in the Usurious Loans Act. However, under section 3, the Court is entitled to take this also into consideration when considering the question as to whether a particular rate is excessive.

Clause 2.—The Court has to look into the substance of the transaction in whatever form it may be couched. Thus a hire-purchase agreement may, in some cases, be really a loan, and the Act would apply to such cases also.

This clause must be read with clause (3) of section 3 which also says that the substance of the transaction must be looked at. A hire-purchase agreement essentially consists of two parties, an owner of a chattel, and a hirer who hires the chattel from the owner, the hirer having the option to buy the chattel. But more usually a third party—a Finance Corporation—intervenes; it purchases the chattel from the owner, thereby itself becoming its owner, and then hires it to the hirer. In such a case the Finance Corporation is really a lender, and in proper cases the Usurious Loans Act may be applied to the transaction treating it as a loan on security. In some cases, as in *Maddell v. Thomas Co.*, (1891) 1 Q. B. 230, a loan by B to A is disguised under a transaction of sale of the chattel by A to B, and a hire of it back by B from A. Such a transaction is really a loan on security, and not a genuine hire-purchase agreement, and the Act could be applied.

Clause 3.—The definition of the word 'suit' is restricted. It is confined only to suits by creditors. A debtor cannot initiate proceedings except in the

cases covered by sub-clause (c) *i.e.*, suits for redemption of security. Under the English Act a borrower can initiate proceedings, and the Court can grant him relief. Section 2 of the English Moneylenders Act, 1900, expressly says so. This relief could be obtained by the debtor in England even after the loan has been repaid, *Saunders v. Newbould*, (1905) 1 Ch. 260.

The restricted definition in the Indian Act works out hardship in individual cases. Suppose a creditor lends a man Rs. 100 and gets a bond from him agreeing to pay it with interest Rs. 100 in 8 monthly instalments of Rs. 25 each; suppose the Courts are likely to hold that this transaction is unconscionable; suppose also that the debtor has paid all but the last instalment, and the creditor is foolish enough to file a suit for the last instalment. The Court may hold that the creditor has been paid much more than what is fairly due to him, and he may be asked to disgorge the excess. If he does not file any such suit but is content with what has been paid, then the debtor cannot invoke the jurisdiction of the Court.

The Act should not be applied to cases where the debtor is the plaintiff unless sub-section 3 (c) applies, *Chunilal v. Christopher*, 1926 Bom. 65.

Not retrospective.—The Act is not retrospective, *Parsotam Narain v. Benares Bank, Ltd.*, 1929 All. 59; *Gangadhar v. Parshram*, 1928 Nag. 120; *Kisan v. Sitaram*, 1927 Nag. 338.

It is very rare for a legislature to give retrospective effect to a law. Occasionally there may be cases where the evil has gone on to such an extent that unless retrospective effect is given to the law intended to check it, great public injury will be caused. But these are really exceptions to the general rule that a statute is not retrospective.

Sureties.—The section applies to sureties also, *Baijnath v. Dennett*, 1925 All. 400.

Negotiable instruments.—The Act applies to suits on negotiable instruments, *Sheobans Rai v. Shah Madho Lal*, 1931 All. 662.

Transferees.—The Act applies to transferees of creditors and debtors, *Mohar Ali v. Abdul Karim*, 107 I. C. 742; *Saiju Prasad v. Gouri Shankar and another*, 1928 Oudh 326 (F. B).

Clause 3 (c).—This sub-section though introduced in 1926 applies to mortgages of 1923, *Jnanchandra v. Mohan Chandra*, 35 C. W. N. 654 = 1932 Cal. 83.

3. (1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where in any suit to which this Act applies, whether *ex parte* or otherwise, the Court has reason 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,.....

(i) re-open the transaction, take an account between the parties thereto, and relieve the debtor of all liability in respect of any excessive interest;

- (ii) notwithstanding any agreement purporting to close previous transactions, and to create a new obligation, to 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 into by the parties or any persons from whom they claim, at any date more than *twelve* years from the date of the transaction ;
- (ii) do anything which affects any decree of a Court.

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 purpose 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 com-

pound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction :

Provided that in the case of loans to agriculturists, if compound interest is charged, the court shall presume that the interest is excessive.

(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.

(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

The Madras Act of 1936 made the following amendments in this section. For the text of the Act itself *vide infra*.

In sub-section (1) the words in italics were substituted for the following words:—“(i) that the interest is excessive; and (ii) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise one or more of the following powers, namely:—”

In sub-section (1) (iii) explanation I was added.

In sub-section (2) (b) the proviso in italics was added.

After sub-section (2) (d) the words ‘Explanation; Interest may of itself be sufficient evidence that a transaction was substantially unfair’ were deleted.

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 purpose of this sub-section the word '*notice*' shall have the same meaning as is ascribed to it under section 4 of the Transfer of Property Act, 1882.

(5) Nothing in this section shall be construed as derogating from the existing powers and jurisdiction of any Court.

NOTES.

Analogous law.—Section 1 English Moneylenders Act 1900.

Section 12 do. 1927.

Amendment.—In clause 1 (b) (iii) (i); the word 'twelve' was substituted of the word 'six', and in clause 3 the words in italics were added by the amending Act of 1926.

This section was amended in Madras in 1936. The words shown in italics show the amendments. The original words of the section would be found in the footnote. As to the effect of the Madras amendment, *Vide* notes *in fra*.

The English Moneylenders Act 1900 empowered the Courts to intervene in cases where the interest was excessive, and the transaction was hard and unconscionable, or is otherwise such that a Court of Equity would have given relief. The Act did not give any indication of the facts and circumstances to be taken into consideration for deciding whether the interest was excessive, and the transaction hard and unconscionable. The English Courts, had, however, in the exercise of their equity jurisdiction prior to the passing of the Act, and in applying the Act after it was passed, laid down certain principles for the guidance of Courts. For example the decision in *Pencione v. Higgins*, (1905) 21 T. L. R 11 enunciated the following principles to be taken into consideration:—

1. The necessity of the borrower.
2. His pecuniary position.
3. The presence or absence of security.
4. The relation in which the moneylender stood to the borrower.
5. The total remuneration which the moneylender derives from the whole transaction.

These principles have been embodied in the section itself in our Act. Clauses (a), (b), and (c) of subsection 2 indicate with sufficient particularity the inquiries to be made in order to find out in any given case whether the interest stipulated for is excessive or not, and the transaction substantially unfair. These points have to be determined by taking into account such matters as :

1. The financial condition of the debtor
2. The nature of the security etc.,

3. The risk incurred by the debtor,
4. The extra amount not paid but incorporated into the principal as expenses etc.,
5. In the case of compound interest the periods of the rests,
6. The total advantage that may reasonably be expected to accrue to the respective parties from the transaction, *Narendranath v. Pabani Mandal*, 52 C. L. J. 73.

Section analysed.—The operative part of the section is clause 1. It says that if the Court is satisfied that the transaction is substantially unfair, then the Court may do all or any of the following things :—

1. It can reopen the transaction, take an account between the parties, and ascertain what sum is fairly due to the creditor.

2. It can reopen previous transactions provided that the previous transaction is relevant to or in any way connected with the existing transaction if such previous transaction had come into existence within twelve years prior to the date of the existing transaction.

3. It can revise or alter any security given, or agreement taken in respect of the loan, and order the creditor, if he has parted with the security, to indemnify the debtor in respect thereof.

Clause 2 is really a commentary on clause 1, and indicates the circumstances to be taken into consideration in concluding whether the interest is excessive, and the transaction substantially unfair. Clauses 3 to 5 specify within what limits the Courts could exercise the jurisdiction conferred under clause 1.

Has reason to believe.—The question as to whether the interest is usurious or not must be considered by the court *suo moto* even though the defendant is *exparte*, or does not raise it.

Nana Mia v. Iqbal Nath, 1925 Cal. 392 ; *Narendranath v. Pabani Mandal* 52 C. L. J. 73= (1930) C. 776 ; *Mills Conduit Investment Ltd. v. Leslie & another* (1932) 1 K. B. 233.

The provisions can be applied even though the defendant confesses judgment, *S. P. R. M. Firm v. Maung Po Kya*, 1 R. 580=1924 R. 144.

The original section provided that in addition to the transaction being substantially unfair, the interest must also be excessive. The question as to whether a transaction is substantially unfair and whether the interest is excessive depends upon the facts and circumstances of each case. A rate of interest, say 12 per cent, may be quite fair in one case while it may be excessive and unfair in another case. In order to show the wide range of views which have been held by Courts from time to time, we may cite the following instances :—

Cases where the Courts have refused to interfere.—*Mehtabrai v. Iqbalnath*, 1930 L. 733.—In the absence of fraud or undue influence the terms made by the parties should be given effect to under the Usury Laws Repeal Act.

Ram Singh v. Ibrahim, 1925 S. 136=78 I. C. 418.—Mere hardship is no ground for interference in the absence of the creditor having taken undue advantage of the debtor's position, even if the transaction appears to be undoubtedly improvident.

Ayaram Tolaram v. Bhajanram, 1927 Lab. 158 = 8 Lah. 205. *Ramakrishna v. Herambachandra*, 56 Cal 960. *Din Mahomed v. Bhadrinath*, 1930 L. 65 = 11 Lah. L. J. 511. A party must prove that the rate of interest agreed upon is unusual or excessive.

Narendranath v. Pabani Mandal, 1930 Cal 776 = 52 C. L. J. 73; *Nabinchandra Dev v. Mi Robeya*, 5 R. 619. Stipulation to pay 25% per annum compound interest with yearly rests is not unconscionable in the absence of proof of undue influence.

Jawaya v. Mulraj, 1932 Lab. 252 = 13 Lah. 542. The mere fact that the total interest claimed exceeds the principal is not, by itself, excessive.

Dalip Narayan Singh v. Sharfunissa, 1929 Pat. 333. 15% per annum in the case of a mortgage is not by itself excessive.

Nanun v. Lachman, 1935 Lab. 38. Where a principal of Rs. 23 with interest added to principal once every three years, becomes Rs. 5250 in about 30 years of running account, there is no ground of intervention under the Act although the case may be a hard one.

Ayaram Tolaram v. Bhajanram, 8 Lah. 205 = 1927 Lab. 158. Stipulation to pay compound interest at the original rate if the party defaults in payment is not unreasonable or unconscionable. 12% per annum is neither unusual nor excessive.

Carringtons Ltd. v. Smith, (1906) 1 K. B. 79.—A director of a publishing company who had properties worth £ 9000 and who was earning a salary of £ 1000 per annum, and who owed only a debt of £ 150 although he was not pressed by his creditors, borrowed from a money lender £ 150, repayable with interest in monthly instalments. The interest worked out at 75% per annum. He was an intelligent man of business, and clearly agreed to the transaction. It was held that no case was made out for relief under the Moneylenders Act.

Reading Trust v. Spero, (1930) 1 K. B. 492.—A man was carrying on a business which was so speculative that the Banks would not give him credit. He borrowed money from moneylenders at 60% and 80% per annum. Held that there was no case for intervention by the Court. "Where a man of full understanding and in full possession of facts, for his own business purposes, contracts to pay excessive interest, the Court will not relieve him. It is not enough that the interest is excessive. It must also be harsh and unconscionable, though high interest, may itself, serve as proof of harshness". It was held in this case that the moneylender had discharged the onus of showing that the transaction was not harsh or unconscionable.

We may also quote the following observations of COUCH C. J. which were made before the Act was passed and which are still relevant. "Can this Court say that a contract to pay interest at the rate of 75% per annum.....is one which the courts ought to decline to interfere. If we were to say that, it would be in effect to say that the courts will not enforce a contract to pay interest beyond a certain rate. I am unable to say what interest should be fixed. Looking at the risk in lending money, at the many circumstances which in different cases may induce a person about to borrow money to agree to give a very high rate of interest, benefits which he thinks he may obtain by borrowing the money in a

particular quarter, considering all possible circumstances, I do not think that the Court can undertake to say that a contract to pay interest at this rate is, without other facts being shown, so hard or unreasonable that it should be declared to be unreasonable." *Zebounnisa v. Brojendra Coomar*, 21 W. R. 352.

Cases where the Courts have interfered.—We will now cite another case on the other side, a leading case on the subject decided by the House of Lords, (1906) A. C. 461. In this case £ 2,000 was borrowed upon the footing of repaying it together with interest £ 1,300 by twelve monthly instalments of £ 275, and in the event of default of any one instalment, the whole amount due became payable. The rate of interest worked out at 10½ per cent if the instalments were regularly paid, and at 418 per cent if the first instalment itself was not paid. It was *held* that the transaction was inexplicable except on the footing that the borrower who was a well-to-do man was unfit to manage business, and that it was hard and unconscionable, and the interest excessive.

"The section means that if there is evidence which satisfies the Court that the transaction is harsh and unconscionable, using the words in a plain and not in any technical sense, the Court may reopen it provided, of course, that the case meets the other condition required (*i. e.*, that interest is excessive) A transaction may fall within this description in many ways. It may do so because of the borrower's extreme necessity and helplessness, or because of the relation in which he stands to the lender, or because of his situation in other ways. These are only illustrations, and as in the case of fraud, it is neither practicable nor expedient to attempt any exhaustive definition. What the Court has to do in such circumstances, is, if satisfied that the interest or charges are excessive, to see whether in truth, and in fact, and according to its sense of justice, the transaction was harsh and unconscionable. Excess of interest or charges may of itself be evidence that the transaction is harsh and unconscionable, and particularly if it be unexplained. If no justification be established, the presumption hardens into a certainty". (LORD LOREBURN, Lord Chancellor.)

"The Court must be satisfied that the transaction is harsh and unconscionable, that is, unreasonable and not in accordance with the ordinary rules of fair dealing. The rate of interest may be so monstrous as to show that, by itself, there may be an 'inequality so strong, gross, and manifest that it must be impossible to state it to a man of common sense, without producing an exclamation at the inequality of it'. Even assuming that a man is in distress, 'it is not every bargain which distress may induce one man to offer, that another is at liberty to accept.'" (LORD MACNAUGHTEN.)

"It will of course always be competent for the lender to show that, in spite of the excessive rate of interest the transaction was, in fact, fair and reasonable. In this case the transaction seems to me to be altogether inexplicable on any system of fair dealing. The borrower was solvent and known to be solvent. The risk was trifling, the rate of interest extravagant, the clause of forfeiture quite unnecessary for the protection of the lender, and extortionate in its character" (LORD ATKINSON).

The cases above mentioned indicate that not much use would be served by giving a list of all the decided cases on the subject of usury. The question as

to whether a particular rate is excessive or not cannot be decided apart from the attendant circumstances. The Court must have regard to the prevailing rate on similar transactions in the locality, the nature of the dealings, and the period during which the account has remained outstanding, in addition to the other circumstances mentioned in the section. *Ruldu Mal, Thakurdas v. Allah Ditta*, 1927 Lab. 621=103 I. C. 531.

Kruse v. Seeley (1924) 1 Ch. 136.—A married lady gave a promissory-note for £ 500 for a loan of £ 300, and agreed to repay the amount in 24 monthly instalments. In default of payment of one instalment, the whole amount became due with interest at one shilling per pound per month. She also pledged furniture purchased 18 months before for £ 1,750. She was in extreme financial straits. She made default in paying even the first instalment. It was found that if all payments had been duly made, interest would have been at 62½%. Held in as much as the loan was not made on personal security only, but was adequately secured by the goods pledged, the rate of interest which might not have been regarded as necessarily excessive for a loan on personal security, became outrageous and extortionate for an advance upon good security. The Court gave a decree for £ 300 and simple interest at 18%.

It is possible that the interest might be deemed excessive and yet the transaction might not be deemed harsh and unconscionable. It is possible that the interest might be deemed so extravagantly excessive as alone to satisfy the Court that the transaction was harsh and unconscionable, *Poncione v. Higgins*, (1904) 21 T. L. R. 11, C. A.

An excessive rate of interest having reference to the nature of the risk and other circumstances is, in itself, *prima facie* evidence that the transaction is harsh and unconscionable. What amounts to excessive interest is to be determined by the Tribunal in each case, the question of risk being a material matter for consideration, *Samuel v. Newbould*, (1906) A. C. 461.

Where the rate of interest is high the court may presume that the transaction is substantially unfair, although there is no proof of undue influence. *Mohar Ali v. Abdul Karim*, 107 I. C. 742.

Unfair is not moral blameworthiness in the sense of tricking the debtor. Even where no case of overreaching the debtor is established, the court can interfere, *Nageswara Aiyer v. Ramanathan Chettiar*, 1935 M. 468.

A young man of 20 years gave security and got a loan at 18% C. I. with six monthly rests. He had quarrelled with his mother. Held, the debtor was hardly competent to enter into the transaction. The Court granted interest at 18% with yearly rests. The court must have regard to the circumstances at the time of the loan, and not in the light of subsequent events, *Mamladina v. Sukhdeo*, 1933 Nag. 224.

The moneylender is, between two fires. If the borrower is necessitous sympathy is excited. If not it is argued a commercial rate of interest has only to be exacted. As observed by BACON the problem has through out been "how to grind the teeth of usury that it bite not too much" and in spite of the Usurious Loans Act and other enactments no satisfactory solution has yet been reached.

Effect of Madras Amendment.—After this amendment, most of the cases decided under this section cease to have practical importance in Madras. The general principles discussed in these cases, as to the circumstances which would justify the Court in coming to a conclusion that a transaction is substantially unfair as between the parties thereto, would alone be useful.

The reason for this amendment is thus stated in the Statement of Objects and Reasons:—

"On a review of the working of the Usurious Loans Act, 1918 (X of 1918) in this presidency, it has been noticed that the powers conferred on Courts by the Act have not been utilized with any degree of uniformity, mainly owing to the fact that the powers conferred by section 3 are discretionary. The Government, after consulting the High Court, consider that it is desirable to make the exercise of such powers obligatory on Courts, when circumstances justifying such exercise exist. The Bill is intended to carry out the object. Similar legislation is in force in other provinces—See section 4 of United Provinces Act XXIII of 1934 and section 2 of Central Provinces Act XI of 1934.

2. The opportunity has been taken to make it clear that 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 on loans advanced to agriculturists, such interest should be presumed to be excessive."

The Madras amendment thus makes the following departure from the original enactment:—

(a) Under the original Act, the Court must be satisfied about two things, viz., that the transaction is substantially unfair between the parties thereto, and that the interest is excessive. This latter condition is now done away with; therefore in all cases where the Court comes to the conclusion that the transaction was substantially unfair, even though the Court may not be justified in holding that the interest is excessive, the Court has been conferred jurisdiction to interfere.

(b) The use of the word '*shall*' instead of '*may*' has rendered it obligatory on the Courts to exercise this power if circumstances justifying such exercise exist.

(c) Where the interest is excessive, even if no other circumstance is proved, the Court *shall* presume that the transaction is substantially unfair between the parties thereto (Under the original Act, the Court *may* presume). This presumption is rebuttable by the creditor.

(d) In the case of loans to agriculturists, if compound interest is charged, interest shall be deemed to be excessive. This presumption is irrebuttable.

Reopening old transactions.—Suppose A borrows from B Rs. 500 and agrees to repay it together with interest Rs. 500 in 10 monthly instalments of

100 each, the transaction would clearly be held to be usurious. Suppose the debtor pays 9 instalments, and does not pay the last instalment, and borrows a further sum of money, and for this and the balance due on the previous transaction a document is taken. If a suit is filed on this document, the Court can reopen the previous transaction and relieve the debtor of all excessive interest, and make the creditor disgorge the excess amount paid by the debtor. If, however, the previous balance of Rs. 100 had not been tacked on to the subsequent transaction, the Court would not have the power to interfere.

The Court has power to reopen an old transaction that is closed, provided it is relevant to or in some way connected with the existing transaction.

A closed transaction may be reopened even if there is no deception or pressure brought home, *Michaelson v. Nichols*, (1910) 26 T. L. R. 327 (E. E. Digest, Vol. XV, page 216).

'Default clause'.—The usual way in which creditors levy excessive interest is to insert a default clause providing that the entire amount is payable in the event of the principal or a portion thereof not being paid on the due date. Such clauses usually make it impossible for an ordinary person to say or calculate exactly what rate of interest is being charged for the loan. They have been held to be objectionable, and have been relieved against, *Halsey v. Wolfe*, 1915 (2) Ch. 330 at 334.

Decree of Court.—It is obvious that there should be a finality to the power of Courts to decide if a transaction is usurious or not. Except where the decree is directly under appeal, where a certain rate of interest has been upheld and a decree obtained, it should not be open to attack either in execution or collaterally. If therefore the amount due under a decree is tacked on to a fresh advance, and a suit is laid for the amount so consolidated, the Court cannot reopen the decree. That amount must be taken as final. If it is not possible to reduce interest without affecting a decree previously passed by a Court of competent jurisdiction, whether inter parties or not, the Court cannot interfere under this section, *Ibney Hasan v. Gulkandi Lal*, 1936 All. 611; *Ram Narain v. Mahmood Hasan*, 1936 All. 450; *Vide also Cohen v. Jonesco*, 1926 (1) K. B. 119 and 1926 (2) K. B. 1.

'Debtor and Creditor.'—The section does not define the words debtor and creditor. In *Saiju Prasad v. Sukhdeo*, 1928 Oudh 396 (F. B.), a debtor was defined as a person liable to pay money in a suit, and a creditor as a person who has the right to recover money in the suit. Transferees from debtors and creditors would also be debtors and creditors within the meaning of the section (*Ibid*).

The Madras Debtors' Protection Act defines the term '*creditor*' as a person who advances a loan (*Vide post*.)

Presumptions in cases of loans under Rs. 500.—This section must be read with section 6-A of the Madras Debtors' Protection Act added under Act IV of 1936. This section provides that in case of loans under Rs. 500 interest exceeding 9% in the case of secured loans, and exceeding 15% in the case of unsecured loans shall, until the contrary is shown, be presumed to be excessive, and the transaction substantially unfair. Though the section applies only to loans under Rs. 500 there is nothing to prevent the court from applying the same principle

to loans over Rs 500. It is a well established principle that the larger the amount lent the less is the yield of interest, and if, even in respect of loans under Rs. 500 interest in excess of 9% and 15% respectively may be presumed to be excessive, *A fortiori*, it would be so in the case of loans exceeding Rs. 500.

All the earlier cases under section 16 of the Indian Contract Act under which courts have enforced the contract rates in the absence of proof of undue influence, for example cases like *Kirti Chunder v. Atkinson*, 10 C. W. N. 640; *Satish Chunder Giri v. Hemchander*, 29 Cal. 828; *Mackintosh v. Wingrove*, 4 Cal. 137; though good law at the time when they were decided would, if it is submitted, be no longer useful as precedents.

The following observations may usefully be kept in mind. "You have to consider all the facts. The Act was passed in the interest of those who borrow from moneylenders. The more embarrassed a man's circumstances are, the less able is he to resist any terms which are either suggested to, or imposed on him by any person from whom he desires a loan. He will agree to almost anything to get some ready money. But on the other hand you have to consider the moneylender. He is often lending money on very indifferent security; in some cases on no security at all." (SANKEY, J. in *Glaskie v. Griffin* (1914) 111 L.T. 712.)

No amount of legislation will prevent a clever moneylender from circumventing the Act. A moneylender may pay only Rs. 50 but take a pronote for Rs. 100 bearing interest at 15%. There is no means of knowing that only Rs. 50 was paid, and a pronote carrying 15% interest would be perfectly fair. There are ways and methods by which clever moneylenders could evade the law. Time alone, and force of public opinion, must reform this class of moneylenders.

Sub-section (4).—'Bona-fide transferee without notice'.—A transferee of a mortgage which bore interest at Rs. 7-8-0 per cent per mensem, the transfer being for Rs. 2,000 when the face value of the document was Rs. 5,000, cannot be said to be a *bona fide* transferee. 'To say that he was not aware that the rate was unconscionable is absurd'. The fact that a mortgage of the face value of Rs. 5,000 is assigned for Rs. 2,000 must have put the assignee on enquiry as to why the transferor was selling his interest at such a loss, *Mohar Ali v. Abdul Karim*, 107 I. C. 742.

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the *Insolvency Pro- ceedings*. Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies.

NOTES.

Analogous law —Section 3 of the English Moneylenders Act 1900 and section 9 of the English Moneylenders Act, 1927.

It is a general presumption of law that a Bankruptcy Court could go behind a judgment and inquire into the consideration for the debt sought to be proved before it. The matter is thus explained by LORD ESHER :—"Although by consenting to a judgment the debtor is estopped everywhere else from saying that there is no debt due, although the judgment is binding on him by reason of his

consent and of its being the judgment of the Court, yet no such estoppel is effectual as against the Court of Bankruptcy. The Court is not estopped by the conduct of the parties, but it has a right to enquire into the debt', *Ex parte Lennox*, 16 Q. B. D. 315 at 323

If therefore, the Court could go into the consideration for the judgment-debt, it could also, as a corollary, relieve the debtor against usurious interest, and this is what the section provides. But it must be remembered that Courts would not ordinarily go behind a judgment-debt unless the circumstances are suspicious. *Vide Cohens v. Jones Co.*, 1926 (1) K. B. 119; *Ex parte Revell*, 13 Q. B. D. 720; *Ex parte Anderson*, 14 Q. B. D. 606; *In re a debtor*, 1903 (1) K. B. 705.

Under section 9 of the English Moneylenders Act, 1927, if the debtor becomes bankrupt, proof is admissible only at 5% per annum until all the other debts have been paid in full. The moneylender is placed under a disadvantage, and he is also required to give in his affidavit, full particulars of the actual loan made, repayments, and all other particulars to enable the Court to arrive at the actual nature of the transaction.

This is a salutary rule, and a similar provision may well be enacted in India also.

THE USURIOUS LOANS (MADRAS AMENDMENT) ACT, 1936

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:—

I. (1) This Act may be called the Usurious Loans (Madras Amendment) Act 1936.

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

(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.

II. In section 3 of the said Act :—

(i) In Sub-section (1) for the words, letters and brackets beginning with “ has reason to believe ” and ending with “ any of the following powers namely May ” the following shall be substituted, namely “ has reason 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 ; ”

(ii) The explanation to the same sub-section shall be re-numbered as Explanation II and the following shall be inserted as Explanation I namely :—

“ *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.

(iii) to clause (b) of sub-section (2), the following proviso shall be added, namely :—

“ Provided that in the case of loans to agriculturists, if compound interest is charged, the Court shall presume that the interest is excessive ; ” and,

(iv) the explanation to clause (d) of the same sub-section shall be omitted.

THE MADRAS DEBTORS' PROTECTION ACT, 1934

* [ACT NO. VII OF 1935.]

(AS AMENDED BY MADRAS ACT IV OF 1936.)

(Received the assent of the Governor, 16th January 1935 ; Received the assent of the Governor-General, 6th March 1935.)

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

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.

(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 object of the Act.—"The business of moneylending, with which is often associated the sale of jewels and articles of common use, as carried on by certain classes of moneylenders, is very unsatisfactory and places the debtors who are largely drawn from the middle and working classes at the tender mercy of the moneylenders. The need, ignorance, and illiteracy of the debtors are being exploited by certain classes of moneylenders to an unconscionable degree. A certain class of the moneylenders, 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 moneylending, and to secure as between certain classes of moneylenders and

* The Act was amended by Madras Act IV of 1936.

† The Act was brought into force on the 15th January, 1936. *Vide G. O. No. 4064 Law (general) dated 21st December, 1935. Fort St. George Gazette Part 1, page 1680.*

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.

"This 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.*)

The substance of the Act may be summed up in the following words:—Certain creditors and pawnbrokers are enjoined to keep certain accounts, to issue receipts for payments made by debtors, and to supply debtors with copies of entries in their accounts. Non-compliance with these provisions is visited with loss of interest in some cases, and disallowance of costs in others. Under section 6-A which was introduced by the Act of 1936, in the case of debts under the value of Rs. 500, where the interest exceeds the rate-specified in the section, *viz.*, 9 per cent for secured loans and 15 per cent for unsecured loans, a presumption of law is enunciated, a presumption rebuttable by evidence by the creditor, that the interest is excessive and the transaction substantially unfair within the meaning of the Usurious Loans Act.

The Act is applicable only to debts of less than Rs. 500. The object of the Bill was, as we have seen, not to deal in a comprehensive manner with the business of moneylending in general, but to remedy some of the evils associated with certain classes of moneylending, and especially with loans advanced to small borrowers who are generally drawn from the middle and working classes, by professional moneylenders either without security, or on the security of jewels and other articles. The Act assumes that these working classes and the middle classes generally borrow sums under Rs. 500 and it is for their protection that the Act is intended.

There is, however, no reason why a distinction should be made between a big borrower and a small borrower. All borrowers need protection. Further a large section of the middle classes usually borrow sums exceeding Rs. 500, and to these persons no protection is afforded by the Act. The Act is new, and no doubt suitable amendments would be made in the light of its working. It may, however, be mentioned that the English Pawnbrokers Act, 1872, applies only to debts of £ 10 and under. It is interesting to find that Mr. Basudev who introduced the Debtors' Protection Act has now introduced a Bill in the Madras Legislative Council—Bill number 26 of 1936—for removing this restriction as to Rs. 500. It is to be hoped that this Bill would be passed unanimously.

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—

- (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, (VI of 1912) applies ;

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

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

(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 cost, 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 ;

(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—

- (i) a deposit of money or other property in a Government Post Office Saving 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 authorised 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 (XXVI of 1881) other than a promissory note ;

(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.

Clause 5.—The definition of the term ' creditor ' is exhaustive. It includes his legal representatives, assigns, and successors-in-interest, whether *inter vivos* or after death. The English Moneylenders Act excludes from the provisions of that Act *bona fide* assignees for value without notice of any defect (in the debt, security or agreement assigned) due to the operation of the Act, and of any person deriving title under him, if these persons are not themselves moneylenders. It was felt that, in India, seeing that the Act itself applies only to debts under Rs. 500, if any such exception is recognised, even the small

protection now attempted would disappear. The Act is intended for the protection of the small debtor, and for this purpose the Act merely lays down certain obligations on certain classes of creditors. These creditors should not be enabled to nullify the provisions of the Act by assigning the debt to a third party. With regard to the legal representatives of the creditor it is just and equitable that those who inherit assets should inherit liabilities and obligations. On principle there is no reason why an assignee should be exempt from the operation of the Act, whether *bona fide* or otherwise.

Although the English Act excludes *bona fide* assignees for value, at the same time, section 16 of the English Act of 1927 makes it obligatory on the assignor, under pain of conviction, to give to the assignee notice in writing that the debt, agreement or security is affected by the Act, and to give all further information, so as to enable the assignee to comply with the provisions of the Act (*i. e.* relating to the granting of copies of the accounts, the state of the loans, etc.). Unless the assignor is prepared to subject himself to conviction in a criminal Court, he would, in all cases, give notice to the assignee, and therefore, for practical purposes there can be no such persons as *bona fide* assignees without notice.

The English Acts throughout use the term 'moneylender'. The Madras Act uses instead, the term 'creditor.'

The English Act definitely excludes from the term 'moneylender' a person who carries on the business of banking. A certificate as a moneylender will not be issued to a person who carries on banking business, (Section 2 (3) of the Act of 1927). In India no such distinction is made. The Nagarathar community are moneylenders as well as bankers, and the Act applies to them also.

Traders.—A trader may also, under certain circumstances, come within the definition of a creditor, within the meaning of clause 5. Ordinarily a trader is one who buys and sells goods, and therefore there is no need for him to make loans, except casual advances. (As to this *vide* notes under clause 7). But oftentimes constituents take loans from traders promising to bring in goods and merchandise. If this practice is carried on on a large scale, these transactions would be loans within the meaning of the section. The difference between this loan and the ordinary loan is that these will be discharged in kind whereas the ordinary loan will be paid off in cash. Therefore these classes of traders will also have to maintain accounts, and satisfy the requirements of sections 3 and 4.

'The creditor' must be a person who advances loans 'in the regular course of business'. The question as to whether a loan is made 'in the regular course of business' is not capable of definite ascertainment. Creditors will attempt to evade the provisions of the Act by carrying on some other business as well, and say that they are not lending in the regular course of business. It is to get over this contingency that the English Moneylenders Act requires that a moneylender should get himself registered. It is a pity that the Madras Act makes no such provision although the Bill introduced contained such a clause.

Kundanlal v. Ram Pratap, 1936 L. 479.—Where a plaintiff admits having advanced loans to a number of persons, but does not say that he advanced them subsequent to 1931 (the Punjab Act was passed in 1930), 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' in the Act.

Clause 6.—This is taken, word for word from section 15 of the English Act of 1927. Cf. also the definition of the term in section 2 (1) of the Usurious Loans Act. [*Vide Dunn Trust v. Feetham*, (1936) 1 K. B. 22 (C. A.)]

Commercial Credits Corporation, when they lend money on, say, a car, deduct a commission of 2 to 3 per cent. This deduction would also be deemed to be interest within the meaning of this clause.

Clause 7.—Cf. the definition of the term under section 2 (2) of the Usurious Loans Act, and the definition of 'Moneylender' in section 6 of the English Moneylenders Act, 1900.

The object of the Act is, as mentioned already, to compel certain classes of creditors to keep accounts in a prescribed manner so as to prevent fraud on debtors. There are certain well known classes of persons who lend money or make advances of money, but who are, under existing laws, bound to keep accounts in a prescribed manner, whose accounts are audited periodically, and whose accounts are, under prescribed conditions, available for inspection or for taking copies. It is obviously unnecessary to bring these persons under the Act. Sub-clauses (i) to (iii) are cases of this kind and they are therefore excluded. Sub-clause (iv) is intended to cover stray cases of advances by persons whose main business is something other than moneylending. If, however these persons make advances habitually, (e.g., a trader who is in the habit of advancing money against the delivery of merchandise) these persons will come within the provisions of the Act. (*Vide Notes under clause 5.*)

Sub-clause (v) is intended in the interests of landholders and agriculturists who do not carry on moneylending as such, but who may have to advance money periodically to tenants and others, for improving the lands, for purchase of manure etc. The Negotiable Instruments Act itself contains provisions which safeguard the interests of borrowers under negotiable instruments. Therefore sub-clause (vi) excludes these transactions also.

The exclusion of the various persons mentioned in sub-clauses (i) to (vi) may fit in with the frame of the Act as originally passed. But by reason of the addition of section 6-A, one doubts whether the exclusion in respect of some of these transactions is justifiable. Suppose some Banks lend in excess of 9 per cent and 15 per cent. Why should these transactions be outside the scope of the Act. It is not impossible that some Banks may lend at usurious rates. This section therefore requires to be suitably amended.

Clauses 8 and 9.—The definition is the same as that contained in the English Pawnbrokers Act 1872, section 5.

Commission agents and mandi merchants who accept goods from constituents with a view to sell them or return them to the owners if unsold, and who make advances upon these goods, and charge a small commission, are not pawnbrokers within the meaning of this clause though they may have a lien on the goods. An attempt was made in the Madras Legislative Council, when the Bill was under discussion, to include these persons also under the clause, but there was a large body of opposition to such a course, and the attempt was given up.

Although such persons are not pawnbrokers, they may well come under the category of creditors within the meaning of clause 5. They advance loans in the regular course of business against goods delivered or to be delivered.

A pawn is distinguishable from a lien in that in the former a special property in the goods passes to the pawnbroker, while in the latter no right of property passes to the person exercising the lien, but only a right to detain the subject-matter until he is paid.

Clause 10.—For rules *vide infra* under section. 8.

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.

(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.

(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.

Analogous law.—Section 8 of the English Moneylenders Act, 1927. There is however a slight difference between the terms of the two sections,

This and the succeeding section embody the provisions which are intended to protect the debtors. The provisions of this section are common to pawnbrokers as well as ordinary moneylenders. The succeeding section deals exclusively with pawnbrokers. The obligation that is laid under these sections is that the creditors and pawnbrokers should maintain accounts giving full details of the amounts advanced by them, and make copies of these accounts available to the debtors.

Sub-clause (b).—A good deal of the difficulty in the matter of settling accounts between small debtors and their creditors will be obviated in the future. Every payment made by the debtor to the creditor will be supported by a voucher in the handwriting of the creditor, and a real case of false accounts will become a thing out of the ordinary.

An attempt was made in the course of the passage of the Bill in the Legislature to exempt creditors from the obligation of issuing receipts in cases where the payment is endorsed on the document itself. It was felt that this will allow scope for fraud. Oftentimes debtors do not take care to see that the payment is endorsed on the document. In the second place there is nothing to prevent the creditor from alleging that the document or other instrument on which the endorsement is made has been lost, and filing suits as if on lost instruments. Oftentimes documents may not be available with the creditor at the time and place where payments are made. In these circumstances it is right that the obligation to issue a receipt is laid in all cases. Even an illiterate debtor can take the receipt to his literate friend, and verify whether the receipt is in order. There will be no such possibility in the case of endorsements of payments on documents. The receipt is to be given to the debtor. If there are two or more debtors, rule 6 framed by Government (*Vide* under section 8) says that the receipt is to be given to the first named at the head of the account kept by the creditor. But suppose the actual payment is made by the second named. It may appear at first sight that in such a case also the receipt is to be given to the first named, under rule 6. But it is not so. Rule 6 cannot override the provisions of section 3 (1) (b) under which the receipt has to be given to the person paying the amount. Rule 6 would therefore take effect only in cases where it is not known which of two or more debtors made the payment.

Sub-clause (c).—In the Bill as it emerged from the Select Committee, a flat rate of annas eight was fixed for every statement of account. The statement may consist of two lines, or it may run to a page or two if the transaction has been pending for a long time. Therefore a flat rate in all cases would be disproportionate to the trouble which the creditor is put to in preparing the statement. Further a flat rate of annas eight irrespective of the amount of the loan may work out a real hardship. Therefore the rates were allowed to be fixed by Government. Under the rules so framed a sliding rate is fixed. (*Vide Infra* for rules).

Clause 2.—This clause says that if the copy of the account is certified in the prescribed manner, it shall be evidence in the same way as the original

accounts. Rule 7 framed by the Government prescribes the form of the certificate; but there is no obligation on the creditor imposed by any of the sections or any of the rules to certify the statement of account in the prescribed manner. The previous clause 1 (c) merely states that the creditor shall sign the statement of account. This is obviously an oversight, and must be remedied by an amendment of the rules.

Clause 3.—The whole purport of this clause centres round the words '*by such failure alone.*' All that the clause states is that such failure shall not conclude the debtor from disputing the correctness of the account. It is only a rule of evidence. A debtor, if he is a reasonable man, if he is a common sense man, and a cautious man, will certainly communicate to the creditor his protest if the account is incorrect. If he did not do so the Courts would be justified in drawing a presumption that the accounts are correct. But there may be incapable, ignorant or illiterate debtors who, although they do not object to the correctness of the account, may be able to satisfy the Court that the accounts are, as a matter of fact, not correct. This section would enable them to do so.

Under section 8 of the English Act of 1927 the statement of account to be delivered to the debtor by the moneylender should contain the following particulars :—

1. The date of the loan, the amount of principal, and the rate of interest,
2. Amounts paid by the debtor (if any), the dates of payment, and the dates on which the amounts paid fell due,
3. Amounts due and outstanding, the amounts of interest accrued and remaining unpaid
4. Amount of any sum not yet due which remains outstanding, and the date on which it is due, (*Vide Appendix*).

Under the English law the moneylender is also under an obligation to supply the debtor with a copy of any document relating to any loan, or of any security. There is no such provision in the Madras Act. This is a *lacuna* and must be remedied.

4. (1) Every pawnbroker shall regularly record and maintain an account in which, in addition to the particulars referred to in clause (a) of sub-section (1) of section 8, he shall record or cause to be recorded.—

Additional accounts to be maintained by pawnbrokers.

- (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.

(2) A copy of the entries in such account shall be delivered by the pawnbroker to the pawner at the time of the pawn on

tender of such sum as the local Government may prescribe as the charge therefor.

NOTES.

Analogous law.—Pawnbrokers' Act, 1872, section 12.

Under section 12 of the English Pawnbrokers Act and Schedule III thereto the pawnbroker must keep a pledge book showing the following particulars :—

1. Date of redemption.
2. Profit charged.
3. The amount of the loan.
4. The number of the pledge in the month.
5. Name of the pawner.
6. The address of the pawner.
7. The name of the owner if other than the pawner.
8. The address of the owner if other than the pawner.
9. List of articles pawned as mentioned in the pawn ticket.

The pawnbroker must also issue a pawn ticket to the pawner. There are also other provisions. (*Vide* Appendix.) The Madras Act is much less stringent than the English Act.

The section does not say anything as to the presumption to be drawn about the correctness of the copy of the entries in the accounts of the pawnbroker delivered to the pawner. It is obvious that if, at the time when the copy is handed over to the pawner, he does not then and there object to the correctness of the accounts such as, say, the description of the article, the weight and fineness of the jewel or precious metal pawned, and so forth, the entries must be presumed to be correct and the pawner cannot afterwards be permitted to question its correctness. If time were given to the pawner to say whether he accepts the correctness of the entries or not, it will lead to all sort of difficulties. The pawner may turn round and say, quite falsely, that he gave as pledge a quite different jewel. It is therefore right that while a copy of the statement of account delivered to the debtor by a creditor may be shown to be incorrect, the entries in the pawnbrokers' accounts as evidenced by the copy delivered to the pawner at the time of the pledge, must be conclusively presumed to be correct if not objected to then and there. This matter was adverted to in the Legislative Council when the Bill was under discussion, but it is a pity that it is not expressly stated in this section in the same manner in which the presumption is to be negated in the case of a statement of account of a creditor.

The English Act makes elaborate provisions for the sale of pledges by public auction. [Section 19 and Sch. V to the Act]. The Madras Act does not make any such provision. On the other hand most of the agreements relating to pawns empower the pawnbroker to sell the pledges in public auction or private sale. This question was raised in the Legislative Council. While on the one hand there is justification for insisting on sales of pledges by public auctioneers, there is the fact to be borne in mind that this will involve additional cost, and this is likely to wipe out what small surplus there may be out of the sale proceeds after satisfying the loan.

Anyway, the law relating to the business of pawn-broking is very unsatisfactory. It is better that a comprehensive law to regulate and control the business of pawn-broking is taken on hand, instead of piecemeal legislation in a perfunctory manner.

Clause 2.—For Rules framed by Government *vide* section 8.

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 and receipts to be in Arabic numerals.

NOTES.

In the Bill as originally introduced there was a clause under which the Government were to fix the 'form, the script, and the numerals' in which the accounts were to be kept. It was felt that in view of the innumerable forms and languages in which the accounts are kept, it might cause much inconvenience if a uniform form or script is prescribed. Therefore the form and script were dropped, and the section makes reference to the numerals alone.

The Act places the pawnbroker in a more advantageous position than the simple moneylender. Under section 3 (1) (c) read with rule 4 of the rules framed by Government under section 8, the statement of account to be furnished by a creditor to a debtor has to be in English or the chief vernacular of the locality, and should be signed by the creditor or his agent. On the other hand the copy of the entries in the pawnbrokers' account to be delivered to the pawner under section 4 may be in any script, and there is no obligation imposed in section 4 that it should be signed by the pawnbroker. It stands to reason and common-sense that the pawner will not accept a copy not signed by the pawnbroker, nor will it be reasonable to expect that the pawnbroker will deliver an unsigned copy, but a statute making provision for these matters must make things clear. When it expressly states that the statement of accounts delivered by a simple moneylender should be signed by the creditor or his agent, (section 3), it ought to have made a similar provision in the case of pawnbrokers' accounts also.

It may be that the legislature thought that, in as much as a pawnbroker is also a creditor within the meaning of section 2 (b) of the Act, the provisions relating to creditors would apply equally to pawnbrokers. It would have been better, to avoid doubts in the construction and interpretation of the sections, to have expressly stated in section 4 that the provisions of section 3 would apply to pawnbrokers' transactions also to the extent that they are consistent with the provisions of section 4.

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 & 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 account as required therein within one month after such requisition has been made, or if a pawnbroker 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.

Analogous law.—English Moneylenders Act, 1927. section 6.

This section deals with the penalties imposed on the creditors for non-compliance with the provisions of the Act. This section differs from the corresponding provision of English law. Under the English Moneylenders Act, if the moneylender makes default in complying with the provisions of the Act, "he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract, and interest shall not be chargeable in respect of the period of default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the moneylender shall be liable on summary conviction to a fine not exceeding five pounds for every day on which the default continues." Thus it is seen that the English Act is much more stringent.

The penalty provided in the section is not merely for the non-maintenance of the accounts referred to, but also for their non maintenance in the manner referred to (*i. e.* containing the particulars referred to in sections 3 and 4). Now, the defect or irregularity may be either very material or immaterial. Suppose, for example, in a pawnbroker's account the time for redemption of the jewel is not mentioned by inadvertence, but that in other particulars the account satisfies legal requirements. This omission is, after all, not very material, and yet under the section this will merit the same punishment as the non-maintenance of accounts. However, the question as to whether the accounts have been maintained as required is left for the Court to decide, and Courts may ignore technical omissions, or minor negligence. They would not attach the same importance to them as to serious, deliberate, and intentional omissions, or gross failure in the discharge by creditors of their duty. If it can be shown that by a little oversight, an unintentional omission has been caused by a person who is called upon to keep accounts in a particular form, the Courts will not hold that the accounts have not been properly maintained.

In *Simmons v. Russel Financiers, Ltd.*, 1934 (3) K. B. 487, the memorandum of transaction set out the loan, the principal and the rate of interest. It also set out the Bill of Sale as required by the Bill of Sales Act. It did not set out when the loan was to be paid or when interest is to be paid. *Held* that the moneylender had substantially complied with the provisions of the Act, and he is not liable for any penalty. *Vide* also *Mason Wood v. Greene*, (1936) 2 K.B. 870.

The Act is intended for the protection of the debtor, and the penalty provided in the section is not very serious. In the one case he merely loses his

costs, and in the other case he will not be entitled to interest during the period of his default. If the creditor keeps proper accounts, and gives the proper description and the full details of the pledge, or of the loan, he has nothing to fear.

6 A. (1) If in any suit or proceeding relating to a loan advanced after the commencement of the Madras Debtors' Protection (Amendment) Act, 1936, 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 (X of 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 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, (X of 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.

Analogous law.—Section 10 of the English Moneylenders Act, 1927. This section was added by the Amending Act IV of 1936. This section could more properly have been added as an amendment to the Usurious Loans Act. The reason, apparently, why it has been tacked on to this Act is that this section applies only to debts under Rs. 500.

The genesis of the section.—The Debtors' Protection Bill contained a provision fixing the maximum rates of interest that could be charged on secured and unsecured loans. The Government opposed the clause because at that time they had been informed by the Government of India that they themselves would introduce in the Central Legislature a Bill applicable to the whole of India. Later on, however, the Government of India dropped the idea, and allowed the

Madras Government to introduce a Bill suited to the conditions of the Provinces [Purport of the statement of the Hon. Sir K. V. Reddy in the Council].

Effect of the section.—In ordinary cases, in order to invoke the jurisdiction of the Court under the Usurious Loans Act, the debtor has to prove that the interest is excessive, and the transaction substantially unfair. Under the recent Madras amendment he has to prove that the transaction is substantially unfair. This section makes an exception to this general rule. The effect of this section is to throw the onus of proof on the moneylender to show that in spite of the interest being in excess of the rate specified in the section, (9 per cent simple interest in the case of secured loans, and 15 per cent simple interest in the case of unsecured loans), the transaction is substantially fair. [Vide commentary to section 3 of the Usurious Loans Act].

The section merely raises a presumption that a rate of interest in excess of the rate specified is excessive, and that the transaction is harsh and unconscionable. The lender can rebut it by evidence. *Reading Trust v. Spero*, (1930) 1 K. B. 492; *Indra Chandra Bag v. Hiralal Rong*, 40 C. W. N. 696=1936 Cal. 127=62 C. L. J. 545; *Mrilani Debi v. Harilal*, 63 C. L. J. 117=1936 Cal. 339.

The rate fixed in the English Act is 48%. In the original Bill the rate proposed was 12% for secured loans, and 18% for unsecured loans. There was an attempt to reduce the rates to 6% and 12%. It was, however, feared that fixing too low a rate would dry up credit, that legislation of this kind is intended for the benefit of the small borrower, and that if legislation goes too far, it will, far from benefitting him, interfere with the credit facilities available to him. By way of compromise the final rate agreed to in the Council was 9% and 15%.

The Act does not, of course, say that the Courts shall allow only 9% or 15%, as the case may be, and no more. But moneylenders would apprehend that a Court would ordinarily not grant more than what the Act specifies. A man may be very needy, he may not be able to offer very good security, and yet he may be quite an honest person in whom the moneylender has confidence, and the moneylender may be inclined to lend him if he is likely to get interest at a higher rate, and yet on account of the fact that the Courts may not enforce the higher rate, the moneylender may not be willing to lend him the amount. Thus by reason of the rate on unsecured loans being fixed too low, debtors in urgent need of money would be likely to be faced with difficulty. The rate fixed in the Act is, however, neither too high nor too low, and it is submitted, is suited to conditions in the Madras Presidency.

The section does not, of course, say that the Courts cannot, in the exercise of their jurisdiction under the Usurious Loans Act, reduce the interest still further.

Clause 2 of the section expressly says so. But there is always one difficulty in fixing a rate of interest in an enactment as fair and reasonable. Courts are likely to view the rate either as a maximum or as a minimum, and this is likely to work hardship in particular cases. For example suppose that the rate fixed in a contract was 24%, and the Court holds that it is excessive, and the transaction substantially unfair. In such cases the Courts have reduced the interest to 9% and 12%. Now when, under this section, the Courts are enjoined

to presume that an interest in excess of 15% is excessive, Courts may be tempted to draw the inference, although the inference does not follow, that 15% is fair and that it is sufficient if the rate is reduced to 15%. Thus a small debtor who prior to the enactment of this section had the chance of a much lower rate being fixed than 15% (in the case of unsecured loans), now stands the risk of losing this chance. It is to be hoped that Courts will not fall into this error.

Ferner Jeffreys v. Pinto, 1929 (1) Ch. 401.—Although a rate of interest not exceeding 48% does not carry the legal presumption that the transaction is harsh and unconscionable, yet where in addition the borrower gives a Bill of Sale over his furniture of ample security for such repayment, a rate of 48% is, in such circumstances, so excessive as to render the transaction harsh and unconscionable for the purposes of section 1 of the Moneylenders Act, 1900.

Moneylending is not a sin. The problem has throughout been, as observed by Bacon, 'how might the tooth of usury be grinded that it bite not too much.' No satisfactory solution has been arrived at, so far.

This section applies only to loans under Rs. 500. But the principle may well be applied to loans in excess of Rs. 500. [*Vide* Notes under the Usurious Loans Act].

This section applies only to loans made after the commencement of this Act, *i.e.*, loans made on or after 15th January, 1936. [*Vide* S. 7].

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

NOTES.

An Act is, as a rule, not retrospective. [*Vide* notes under section 2 of the Usurious Loans Act.] This Act is therefore not retrospective. Therefore in respect of loans made before the Act came into force, the moneylender is not under an obligation to keep accounts as mentioned in section 3. The provisions relating to the granting of receipts could, however, have been extended to all loans, and the Act may also have required, creditors to enter in their books payments made subsequent to the Act. The section wholly excludes these loans from the operation of the Act, the object being, as explained by the Honourable the Law Member in the Council, to allow sufficient time to moneylenders to adjust themselves to the new conditions.

It is interesting to find that in other Provinces the debtor gets much greater protection. For instance in the Bengal Moneylenders' Act and in the Punjab Relief of Indebtedness Act, there are provisions analogous to section 6 A of the Madras Debtors' Protection Act. But those provisions apply to all loans made before the commencement of those Acts and after the enactment of the Usurious Loans Act, 1918. The relevant portion of section 3 of the Bengal Moneylenders' Act is as follows :—

'Where in any suit in respect of any money lent by a moneylender after the commencement of the Usurious Loans Act, 1918, it is found that the interest charged exceeds the rate of 15% per annum in the case of a secured loan, or 25% per annum in the case of an unsecured loan, or 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.'

It has also been held that this section while it may not apply to a suit which has been disposed of in the first Court and is pending appeal, will apply to suits pending in the first Court when the Act came into force.

Vide Brojendra Kumar v. Sushil Chandra, 63 Cal. 368=39 C. W. N. 1213; *Radharanee Dasya v. Kshetra Mohan*, 40 C. W. N. 409; *Indra Chandra Bag v. Hirala Rong*, 40 C. W. N. 696=62 C. L. J. 545=1936 Cal. 127; *Mrilani Debi v. Harilal*, 63 C. L. J. 117=1936 Cal. 339; *Mohana v. Chunilal*, 1936 Lah. 678, (A case on the analogous section in the Punjab Act).

These Acts also enact the law of Damdupat. For example section 4 of the Bengal Moneylenders Act is as follows:—"Where in any suit in respect of any money lent by a moneylender before the commencement of this Act, it is found that the arrears of interest amount to a sum greater than the principal of the loan, the Court, unless it is satisfied that the moneylender 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."

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 pawnbroker to the pawner under sub-section (2) of section 4.

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RULES UNDER THE MADRAS DEBTORS' PROTECTION ACT, 1934

Fort St. George Gazette dated 24th December, 1935, Part I, page 1680

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. (1) These rules may be called the Madras Debtors' Protection Rules 1936.
- (2) They shall come into force on and from the 15th January, 1936.
2. In these rules unless there is anything repugnant in the subject or context, 'The Act' means the Madras Debtors' Protection Act, 1934.
3. (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. (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-debtors, as the case may be, shall sign the acknowledgement, 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 subrule (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 :—

	Rs.	A.	P.
(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 360 will be seven annas.

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

6. 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) 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 Debtors' Protection Act, 1934, for the loan of Rs. taken by on (date) and that there are no alterations or erasures in the account (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. 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 sub-section (2) of section 4 of the Act shall be one anna.

THE MADRAS DEBT CONCILIATION ACT, 1936

[ACT NO. XI OF 1936]

AN ACT TO MAKE PROVISION FOR THE SETTING UP OF DEBT CONCILIATION BOARDS TO RELIEVE AGRICULTURISTS FROM INDEBTEDNESS.

Received the assent of the Governor on the 29th February, 1936 and that of the Governor-General on the 5th April, 1936.

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.

NOTES.

Scope and purport of the Act.—"On account of the unprecedented economic depression prevailing in the 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

* This Act comes into force on the 1st January, 1937—Vide G. O. No. 3692 dated 17.12.1936—Fort St. George Gazette, 22nd December 1936.

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 conditions and the large number of sales of agricultural lands through Courts 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 considerable body of ryots are to be saved, and the passing of the lands into the hands of middlemen and professional moneylenders 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 debtor, 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.

I have framed the Bill on the very same lines and I have adopted mostly the language of the Central Provinces Act." (Statement of Objects and Reasons).

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% of the debts are owing enter into an amicable settlement with the debtor, and the other creditors do not agree, then the properties which under the settlement are set apart for payment to the creditors who agree to the settlement shall be available to them exclusively, and shall not be liable to be proceeded against by the dissentient minority. During the pendency of the proceedings before the Committee the suits filed by the creditors shall stand stayed.

If the entire proceedings become abortive because a majority of the creditors do not agree, then the parties are left to seek their remedies in the civil Courts, and the stayed proceedings will be continued. The suits of dissentient creditors may be continued by them in the civil Courts, or if they have not so far filed any suits, they may file suits, and proceed against the person of the debtor or that portion of the properties which has not been earmarked for the creditors who have agreed before the Board to settle with the debtor. There is a further disability imposed on these creditors. If the Board is satisfied that the offer made by the debtor is reasonable, and that the rejection of the offer by the creditors was unreasonable, (this applies not only in those cases where the majority of the creditors agree, but to those cases also where no such majority was forthcoming, and therefore the efforts of the Board were in vain) the Board may issue a certificate to the debtor to that effect, and in such a case the Court, in a suit for the recovery of the debt, shall not allow costs, or any interest on the debt after the date of such certificate other than 6% on the principal. This disability applies to secured creditors also.

The Act does not otherwise interfere with the rights of persons who have a mortgage or a charge. It deals only with unsecured debts, and at that, not all classes of debts but debts exceeding Rs. 100 incurred by agriculturists.

It is also clear that the Act could be invoked in aid only in respect of those debtors who own some property. There are two ways of dealing with such cases. The Land Mortgage Banks may intervene in those cases where the security is sufficient, and it may pay off the creditors, itself getting payment from the debtor in instalments spread over a period of years. If the property is not sufficient to pay 16 annas in the rupee then the Board will have to distribute the bulk of the property among the creditors by selling it, and leaving a small surplus for the subsistence of the debtor. It is obvious that any settlement under the Act should be such as to leave some surplus for the debtor. Otherwise there is no meaning in a settlement. If the entire property is to be given away to the creditors, it does not matter from the point of view of the debtor, whether one creditor takes it away or it is evenly distributed among all his creditors.

On a compilation it has been estimated that about 30 per cent. of the ryots could be benefitted under the Act.

The Act appears to be a parallel piece of Legislation to the Provincial Insolvency Act, but there is no provision for avoiding conflict between the two Acts. There is considerable scope for conflict. Suppose 50% of the creditors settle with the debtor through the intervention of the Board, and agree to take properties *a, b, c*, then, as observed already, the others may proceed only against the rest of the properties in execution of their decrees. But one of them may, instead of going to the civil Court, file a petition in the Insolvency Court, and if an adjudication order is passed, the Official Receiver would be entitled to take possession of properties *a, b, c*, also, and all the proceedings before the Board would have been frustrated.

Section 1 (3).—It is necessary that there should be sufficient time for framing rules, and also for deciding the question as to whether each district

- (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.

Clause (a).—Sanad-i-Milkiyat-i istimrar is a deed of permanent property granted to zemindars and proprietors of land under sections 2 and 3 of the Madras Permanent Settlement Regulation XXV of 1802, after fixing a permanent assessment on their property.

The term 'zemindar' would take in these holders of sanads. The word zemindar literally means a landholder, and would take in some of the other terms also, used in the section. The origin of these zemindars is well described in the Fifth Report; a discussion of it is beyond the purview of this book. For our purposes it is sufficient to state that in their origin they belong to two groups; (1) persons who claimed descent from ancient Sovereigns of this country, and who, during Mahomedan rule, were allowed to remain in possession of their territory on payment of a tribute, and (2) Officials appointed by Mahomedan Rulers for collection of revenue, the territory being divided between them into so many charges, and each being held responsible for the collection of the allotted quota. In course of time, as the power of the Central Government weakened, these persons became semi-independent, and began to claim proprietary interest in the soil, even when, originally, they were merely intermediate landholders, or farmers of revenue on behalf of Government. The permanent settlement during the time of the East India Company, confirmed their possessions in perpetuity, and the *jama* or *peishkush* payable by them was permanently fixed.

The 'ryotwari system' means the division of all arable land, whether cultivated or waste, into blocks, the assessment of each block at a fixed rate for a term of years, and the exaction of revenue from each occupant according to the area of the land thus assessed. Under this system the State is brought into direct contact with the owner of the land, without the intervention of an intermediate landholder such as the zemindar, (Soundara Raja Aiyangar's Land Tenures),

The term 'Inamdar' would take in the 'shrotriendmar' and the 'jagirdar'. An Inamdar is a person to whom land has been granted either free of rent, or on favourable assessment. The grant is made either for their services, or for their knowledge of the Vedas. Shrotriendmar are persons learned in the Vedas or religious persons to whom such a grant has been made. Jagirs are grants originally made during Mahomedan rule, and continued during British rule also till 1822, to civil and military officers or to the relatives of Rulers.

Clause (b).—An occupany ryot possesses in his land a heritable and alienable interest of a permanent character, *Venkata Narasimha v. Dandamudi Kotayya*;

20 Mad. 299; but not the sole interest, *Bodda Goddeppa v. Maharaja of Vizianagaram*, 30 Mad. 155.

Clause (c)—The term 'agriculture' is given a very wide meaning in this section. In the Madras Estates Land Act the term was defined as including only horticulture, and it was decided in *Raja of Venkatagiri v. Ayyappa Reddi*, 38 Mad. 736; *Maharaja of Venkatagiri v. Rami Reddy*, 31 M. L. J. 211; and *Seshayya v. Raja of Pithapur*, 31 M. L. J. 214, that the term did not include sylviculture (planting trees) or pasturing (raising grass for pasture). It was held that the term had only its ordinary meaning, *viz.*, raising of annual or periodical crops through the operation of ploughing and sowing. In *King Emperor v. Alexander Allan*, 25 Mad. 627, which was a case under the Madras District Municipalities Act, in construing the meaning of the term 'agricultural purpose' it was held that the land on which potatoes, grain, vegetables etc. are grown, as well as pasture lands are used for agricultural purposes. In *Murugesu Chetty v. Chinnathambi*, 24 Mad. 421, where the meaning had to be construed for the purposes of the Transfer of Property Act, it was held that betel cultivation was an agricultural purpose. These decisions give the narrow and wide definitions of the term, and we may usefully give them here.

Wide meaning.—The primary meaning of the term is the cultivation of the ground (Century Dictionary). In its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast, including gardening or horticulture, and the raising and feeding of cattle and other stock (Anderson's Law Dictionary).

Narrow meaning.—Its less general and more ordinary signification is the cultivation with the plough and in large areas, in order to raise food for man and beast, (Century Dictionary). That species of cultivation which is intended to raise grain and other food crops for man and beast. (Anderson's Law Dictionary). The Oxford English Dictionary defines the term as the science and art of cultivating the soil, including the allied pursuits of gathering in the crop, and rearing live stock, tillage, husbandry, and farming (in its widest sense). It is rarely restricted to tillage. (Husbandry is the business of a husbandman or farmer).

Horticulture which denotes the cultivation of gardens or orchards is a species of agriculture in its primary and more general sense, *Murugesu Chetty v. Chinnathambi*, 24 Madras 421. Horticulture includes floriculture (cultivation of flowering plants) and arboriculture (cultivating trees and shrubs).

Agricultural land is defined in the Agricultural Rates Act, 1896 (59 & 60 Victoria) as follows:—'Land used as arable, meadow, or pasture grounds, cottage gardens exceeding $\frac{1}{4}$ acre, market grounds, nursery grounds, orchards or allotments, but does not include land occupied together with a house as a park, gardens other than as aforesaid, pleasure grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a race course.'

A lease of land as a yard for ploughing cattle, or as a habitation for agriculturists, or as a pasture for ploughing cattle, or for the purpose of storing manure, or growing plants to be used as manure for agriculture, would all be

use of land for purpose of agriculture, *Murugesu v. Chinnathambi*, 24 Mad. 421 and a person engaged in these pursuits would be entitled to the benefit of the Act.

The definition in the section is apparently taken from the definition of the term in the English Workmen's Compensation Act, 1900 (section 1 (3) and section 20 of the Small Holdings Act, 1892). Forestry is also expressly included in the definition in the English Acts. There is no reason why it should not have been expressly included under the definition of the term. But the wide terms of the section would take in forestry also.

Clause (f).—Debt does not include rent due to a zemindar from a ryot. Debt as ordinarily understood is amount borrowed by the borrower for his private purpose. Rent on the other hand is the money due to the land holder as his share of the produce of land, both being co-sharers, and as such it differs from the ordinary conception of debt. Another reason for excluding rent is that the zemindar or landholder has to pay *peishkush* to Government, and this *peishkush* is fixed on the basis of the rent roll of the estate, and this will fall into arrear if the rent payable to him is liable to be interfered with under the Act. Again the Estates Land Act makes the rent due to the landlord a charge on the holding and it is a secured debt and hence outside the definition of debt.

Although the exclusion of rent from the definition of debt may be technically justified, it is obvious that the protection afforded by the Act to the agriculturist is thereby considerably reduced. On account of the extraordinary fall in the prices of agricultural produce the rents due to zemindars have fallen into arrears, just as the debts borrowed by the agriculturists from Sowcars or moneylenders have also fallen into arrear. If the main question is that the agriculturist should be relieved of indebtedness, he should be relieved as much from the former as from the latter. As it is, the Act excludes secured debts. It excludes rent due to the landlord. It excludes kist due to Government. One fails to see what sort of protection is afforded to the agriculturist. Indeed it would lead to one class of creditors getting benefits to the exclusion of another class. If sanctity of contracts could be encroached upon, and this is what the Act does, one fails to see why the sanctity of engagements on which the ryot holds land should also not be interfered with, if the object is to relieve the indebtedness of agriculturists.

Pannalal v. Baijnath, 1936 Nag. 145. — Debt includes any liability for a cash payment on account of net cash and compensation for equalisation of shares under a partition decree, and such a decree-holder is a creditor under this Act.

Bapu Sakharam v. Shrinadan, 19 N. L. J. 16. 'Debt' does not include a liability that may be found due on taking accounts of village profits. A suit for such accounts cannot be referred to a Conciliation Board.

'**Shall not include arrears of wages.**'—The object of this provision is to enable the wage-earner to sue in courts and get speedy relief. If the Act should apply to these wages also, wage-earners may be put to serious difficulty. They depend on wages for their sustenance. Once the application is made before the Board, nothing can be done by any creditor until the proceedings come to a close.

There is also the further risk that the amount due to him may be scaled down. The very object of the Act is to scale down debts. To scale down the debt of a wage-earner may result in serious hardship. That is why the Act does not apply to wages. There is no doubt the advantage, if the Act should apply, that he need not go to a court of law, he need not pay court-fee, or incur other expenditure. On the whole, however, the advantage was felt to be in excluding wages from the definition of debts.

Clause (g), Occupancy tenant. In view of the definition of the word 'tenant' in clause (b), the word 'occupancy' in this clause seems to be unnecessary.

Who earns his livelihood mainly by agriculture. [*Vide* notes under clause (c).] *Cf.* the following observations made in respect of the term 'employed in agriculture' under the English Workmen's Compensation Act:—"It is not limited to persons mainly employed in the manual operation of tilling, sowing, and reaping. A man employed in a farm may be mainly engaged in hedging and ditching, and still he may be employed in agriculture." *Smith v. Coles*, (1905) 2 K. B. 827.

The Act applies to debts exceeding Rs. 100. The reasons underlying this provision are (1) the small creditors would be put to unnecessary trouble by being asked to appear before the Board, prove their debts and take the chance of getting only a dividend, and (2) there should be a lower limit to the amount of the debts to which the Act applies so as to prevent a large number of applications being filed before the Board, and thereby simply flooding the Board with applications.

The Act does not fix a maximum limit. The Bill fixed a limit of Rs. 25,000 but the Select Committee deleted it. The result is that the Act could be taken advantage of by the big agriculturist, *i.e.*, the zemindars of big estates whose income is five or six lakhs of rupees, although the Act was intended for the protection of the small agriculturist.

The Act extends not only to agriculturists who actually till the land but also to landholders who depend on land although they may not themselves be cultivating it.

The Bill contained the word 'and' instead of the word 'or' in the definition of the term 'debtor'. The change has considerably widened the scope of the Act. A trader or merchant may not own a cent of land, he may contract debts, and subsequently if he becomes a landholder by purchasing some land, he would come within the definition, and although he may not depend on land or agriculture, he would be entitled to seek the protection afforded by the 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 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

Establishment and constitution of boards.

at least of the members shall be a non-official. The Local 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 Local 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.

It is obvious that there should be more than one Board for each district. According to the report of the Special Officer of the Government of Madras who went into the question of rural indebtedness, 83% of the agriculturists are indebted, and if all of them should seek protection under the Act, the Board would simply be flooded with applications.

Clauses 3 and 4.—It would have been better if the quorum had been fixed at three or if the quorum was to be two, then that the decision should be by a majority of 2. The members of the Board would be honorary office-holders, and it is possible that more often only two members sit to hear cases under the Act, and if the rule of the simple majority should prevail, with a casting vote to the President, the Board would virtually become a one man Board.

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.

Application for settlement between debtor and his creditors.

(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.

This section defines the jurisdiction of each Board of Conciliation. Every application must be filed before the Board appointed for the area in which the debtor resides. It is only if no Board has been established for that area that an application could be filed before the Board appointed for the area in which the debtor has property.

Sub-section, (2) would seem to suggest that if an application has been made by a debtor before a Board, a creditor cannot in respect of the same debtor, make an application to the same Board.

Sub-section (3) is intended to cover cases where a debtor lives or has property within the jurisdiction of more than one Board.

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(V of 1908), for signing and verifying plaints.

Verification of application.

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

Particulars to be stated in application.

- (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 residence 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.

NOTES.

Analogous law.—The Act is a parallel piece of legislation to the Insolvency Acts, and therefore analogous provisions are made with regard to the contents and form of the application. It will be observed that the language is, except for the omission of words and sentences which are not consistent with the scheme of the Act, almost identical with sections 12 and 13 of the Provincial Insolvency Act.

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

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

NOTES.

Analogous law.—The provision in this section is analogous to Order 7 Rule 13 of the Civil Procedure Code. If the application is not entertained at all because it is defective in form there could be no bar to a subsequent application. Further the scheme of the Act is the settlement of debts by amicable arrangement, and parties should be enabled to do so at any time. To prevent a person, simply because he has put in a first application, and it has been rejected on technical grounds without any investigation, would not only work out hardship on the parties but frustrate the very scheme of the Act.

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

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

'Fixing a date and place.'—These words indicate that the Board may tour within the limits of its jurisdiction and hold the required inquiry at a place convenient to all the parties.

Notice is to be sent by registered post. The section does not say if it should be served personally. It is just and equitable that notice should be prescribed to be served by post. The rules framed under the Act provide for this.

This notice is only a preliminary notice so that the parties concerned may, if they desire, be present when the Board is making a preliminary enquiry as to whether it is desirable, in the words of section 10, 'to attempt to effect a settlement.' [For form of notice, *vide* rules appended.]

It would have been better if the section had provided that along with the notice sent to each creditor a copy of the debtor's application should be forwarded. This would enable the creditors to know if the application includes any bogus creditors, and this would guide them in deciding whether to appear and contest other debts or merely have their own claim proved.

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

- (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.

NOTES.

This section confers a discretion on the Board to decline to proceed with an application. The first ground specified in clause (a) is very wide. It can decline to proceed if it does not consider it '*desirable or practicable*' to effect a settlement. This can arise, *inter alia*, under the following circumstances:—

1. The debtor may have no property which could be realised.
2. The properties of the debtor may be quite ample to pay all creditors in full, and the Board may well leave the parties to their ordinary remedies in courts.
3. Insolvency proceedings may be pending against the debtor

Clause (b) merely enacts the power vested in every judicial or quasi-judicial body to dismiss proceedings for not prosecuting with diligence the application presented before it.

Clause (c) appears to have been intended as a punitive measure. Obviously this clause would be invoked in aid only after notice has been issued to the creditors or the debtor, as the case may be, as the Board cannot be expected to know if a claim is collusive or fraudulent, unless some party raises such a plea before the Board.

This clause as it stands may apply to a creditor's application or a debtor's application. If a creditor has more than one claim against a debtor and one of this is a bogus claim, the Board may well dismiss the application.

So also in the case of a debtor's application. Parties ought to place the truth before the Board, and parties who come with unclean hands are not entitled to the services of the Board.

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 or 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 for 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.

This section is analogous to sections 33 and 34 of the Provincial Insolvency Act. This section states that if the Board entertains the application, and considers it desirable to attempt to effect a settlement, the creditors shall be called upon to prove their claims which shall be in the form of verified statements. For enabling the Board to make a decision it may examine a debtor. The examination of the debtor at this stage would be concerned mainly with the value of the properties and debts disclosed in his application, and the best way of con-

verting the assets into cash, although, of course, there is nothing to prevent the Board examining the debtor with regard to his past actions and prior alienations, if any.

' Served or published in the prescribed manner.'—The words *' in the prescribed manner '* qualify both *' served '* and *' published.'* The section therefore contemplates that rules will be framed prescribing in what cases notices should be served and the manner of service, and in what cases the notice shall be published, and the manner of the publication. Under the general law service shall be personal, as far as possible, unless it is not possible to effect such service.

Under the rules framed, the notice has to be *' served '* i.e., personally, served on each known creditor and has also to be *' posted '* on the notice boards of the Collector's office, the Taluk office, and the office of the Debt Conciliation Board, and in a conspicuous place in the village where the debtor resides, and in all the villages where the debtor may have property.

' Within two months.'—Under sub section (2) it is provided that claims not submitted to the Board within the period fixed shall be deemed to be fully discharged. This is a new presumption of law which the section enacts, and therefore creditors should have sufficient opportunity to prepare and submit statements giving particulars of the debts. Two months would be fairly sufficient for the purpose.

' Submitted.'—It is not clear if the statement could be sent by post, or if it should be presented in person. Section 49 of the Provincial Insolvency Act provides that it shall be sufficient if the proof affidavit is sent by post.

The form of the notice to be issued to creditors under this section appended to the rules framed would, inferentially, suggest that it is sufficient if it is sent by post. The creditor is required to be present only when the statement is being scrutinised, and when the Board is going to effect a settlement.

Neither the Act nor the Rules say what is to happen if a particular creditor does not appear when his statement is being scrutinised. Section 12 (1) states that the creditor must explain his case with regard to his debt. If he is not present to explain his case, does it mean that the Board has to reject his debt even if none of the creditors present or the debtor disputes the genuineness or *quantum* of the debt. It would therefore have been better if the rules had made provision for the issue of a notice to a creditor, after receipt of his statement, for further proof of his debt in case of dispute.

Again the notice under section 16 states that the creditor must appear on the day fixed by the Board for effecting a settlement. (*Vide* rules.) The object of the Act being the amicable settlement of debts, it may be argued that the actual presence of the creditors before the Board is necessary. But a creditor may be willing to abide by the decision of the board, and to accept the decision of the majority of creditors, and he should be enabled to prove his debt, and signify his willingness to accept the decision of the majority without being put to the expense and trouble of attending either in person or by agent at every hearing of the Board.

Sub-section (3).—As mentioned already sub-section (2) enunciates a new presumption of law. The presumption being an irrebuttable presumption of law, provision should be made for cases where a creditor, by no fault of his, has not been able to send a statement within the period fixed in sub-section (2). This sub-section therefore provides that the debt may be revived for one of the following reasons :—

- (a). That notice was not served upon him,
- (b). That he had no knowledge of the publication of the notice,
- (c). Other sufficient reason.

The wording of this section is very wide, and will cover all possible cases. It follows the analogous provision in Order 9 Rule 13 of the Civil Procedure Code. As sub-section (1) provides for notice being published, non-knowledge of the publication is also made an additional ground for reviving a debt. In the original Bill the words were '*that notice was not served on him and that he had no knowledge of the publication thereof*'. In the Legislative Council '*and*' was changed to '*or*.' The result is that a wide latitude is given to creditors, which probably was unforeseen. Let us take an instance where notice has been ordered to be served as well as published. Suppose a creditor has no notice served upon him but he has knowledge of the publication; or take the converse case of his being served with notice but his not being aware of the publication of it. In both cases it would be unjust to permit the creditor to revive the debt. But the language of the section, which enables a party to apply if one of the three conditions are satisfied, even though he cannot come under the other two conditions, would enable the creditor to revive such a debt. It should therefore have been made clear that the first two conditions respectively apply to those cases where notice is prescribed to be served, or published, as the case may be.

The words used in this sub-section are '*sufficient reason*.' The words used in the Limitation Act and the Civil Procedure Code are '*sufficient cause*.' It is submitted that the two phrases mean the same thing, and the cases decided under these two enactments would be relevant for construing this section also. Two obvious instances may be mentioned. A man may be unwell, or he may have gone out of India. He may not have been able to submit his statement in time. This would be sufficient reason within the meaning of this section.

'**Month.**'—The General Clauses Act [section 3 (33)] defines a month as a month reckoned according to the British Calendar. It is not 30 days.

Proviso to the section.—It will be found that under section 19 a Court shall not entertain a suit in respect of a debt which is not proved before the Board, and which is presumed to have become discharged, although the proceedings before the Board may have become infructuous. Provision has therefore to be made for application to the Court, after the termination of the proceedings, or before that, to the Board. Concurrent jurisdiction is vested in both the Board and the Court, and from the language of the section it would appear that the Board may entertain the application at any stage, *i.e.*, even after it has dismissed the application under section 17 on the ground that no settlement had been arrived at within 12 months. It is difficult to see why the Board should be per-

mitted to entertain an application after the proceedings before it have terminated. The wording of the proviso would make it obligatory on the Board to dispose of the application on its merits, even though it may have dismissed the application for conciliation, or may be on the point of passing such a dismissal order. The Board has no option in the matter. It cannot direct the applicant to apply to the Court, because the last words of the proviso, which says that a creditor who applies to one forum cannot apply to the other, would prevent the creditor from presenting the application to the Court, once the application has been made to the Board; i.e., once an application is presented to the Board. The section should be amended so as to empower the Board to refuse to entertain the application for reviver when the application for conciliation has been dismissed under section 17.

'After having applied to the other.'—The last sentence in the proviso merely enunciates the principle of *Res Judicata*. It says that if once an application is made before one forum and it is unsuccessful, then the applicant cannot invoke the jurisdiction of the other forum. The wording of the sentence is not happy and may lead to difficulties. As observed, it obliges the Board to go into the matter when it has no *seisin* over the subject matter. Secondly where the application is not disposed of on its merits, as where the application is dismissed for default, or where it is withdrawn by the party, the applicant is precluded from applying before the Court. No doubt in the first case he may present a revision before the Board itself. [*Vide section 23*]. In the latter case he will be without a remedy. It may be stated that the applicant has only himself to thank for having withdrawn the application. But the Board does not function as a Court, the proceedings before it do not have the force of binding decisions except in proceedings before the Board, [*Vide section 12 and the notes thereon*], and there is really no purpose in preventing the applicant from applying to the Court if the Board has not disposed of the application on the merits.

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.

Procedure on submission of statement of debts.

(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.

Order 7 Rule 18 of the Civil Procedure Code contains an analogous provision.

In order to enable the Board to decide what debts are due by a debtor, all the documents in the possession of the creditor must be produced. If a creditor produces some documents, and reserves others for being produced in Civil Courts should he be put to the necessity of filing a suit, there will be no chance of arriving at a finality in these matters. Therefore sub-clause (3) enunciates an important rule of evidence. It says that documents not produced before the Board shall not be admissible later on in Civil Courts. But such a penalty is proper only where the document is sought to be produced for proof of the debt in a suit for the recovery of the debt, and not in suits where the document is sought to be put in for a collateral purpose. Therefore the section makes it clear that only in suits for the recovery of the debt which was the subject of an enquiry before the Conciliation Board is such a document inadmissible.

The proviso is intended to safeguard creditors who were not able to produce the documents for valid reasons.

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.

'Shall be binding on all parties, in all proceedings before the Board.'—These words indicate that the Board is not functioning as a Court. Its decisions are binding only in proceedings before it. If it dismisses the application after making an enquiry under this section and after framing a com-

plete list of assets and liabilities, this list is practically waste paper. It does not bind anybody. The parties must prove these matters over again in the civil or insolvency court where the question may arise. This result may be justified on the ground that the enquiry is made for a specific purpose and when that purpose is frustrated parties may be restored to their *status quo ante*. But it will lead to complications in carrying into effect the decisions of the Board where the Board is able to effect a settlement between the debtor and his creditors or a majority of them. Suppose the Board rejects the claim of a creditor. Let us see what steps he could take. He cannot clearly file any suit in a court so long as the proceedings are pending before the Board. [*Vide* section 19 (a)]. Proceedings before the Board cease when (1) it dismisses the application, (2) when an agreement is reached between the debtor and all the creditors whose claims have been admitted by the Board, or a majority of them. When the whole proceedings are dismissed the rejected creditor can file a suit just like any other ordinary creditor, and the court can allow the claim of the creditor, although, of course, the court will give great weight to the view of the Board rejecting the claim of the creditor. When some settlement is arrived at, and the agreement provides for the payment of the agreeing creditors from specified properties, the Act [section 18 (3)] safeguards their rights by providing that these properties shall not be available for the creditors who have not settled until the debts of the settling creditors have been satisfied. But section 18 (3) speaks of only two classes of creditors—a creditor who has unreasonably refused the offer of the debtor (and this necessarily refers only to those creditors whose claims have been admitted by the Board), and creditors suing for the recovery of a debt incurred after the date of the agreement. Thus a rejected creditor may file a suit and get a decree, and proceed against the very properties set apart for the creditors who have settled with the debtor. This is an anomaly which must be remedied.

'A decree of a civil court shall be conclusive evidence.'—It is provided that a decree of a civil court shall be conclusive evidence of the debt, and the Board is precluded from going behind it. Under the bankruptcy law, the insolvency court can go behind a judgment-debt in proper cases. It would ordinarily not do so unless there are suspicious circumstances. The Debt Conciliation Act being a parallel piece of legislation, such a provision may well have been inserted. As it is, the words are mandatory, and there is nothing to prevent a debtor from suffering an *ex parte* decree colluding with the creditor, and the Board could not question such a decree.

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, (V of 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.

Sub-clause (2).—It substantially reproduces the words of Order 16 Rule 17, Civil Procedure Code. The Board will have the powers of a court only for the purpose of securing and examining witnesses, and the production of documents. The Board is not a court.

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, (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 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, (XVI of 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 reviver, and all the provisions of this Act shall apply in respect of the application accordingly.

NOTES.

This was the most controversial section in the Act. Controversy ranged over two topics. One was whether, and if so how far, compulsion may be resorted to in arriving at a settlement of the debts. Suppose a majority of creditors agree, should the minority be compelled to accept the decision of the majority, or should they be left to seek their remedy in the civil courts without prejudice to the rights secured to the settling creditors under the agreement approved by the Board. The arguments against compulsion which ultimately found support with a majority in the council, may be summed up as follows:—

(1) The whole scheme of the Act is conciliation. The Board does not function as a court, not even as an arbitrator; it merely lends its services and its experience in bringing the creditors and the debtor together and inducing them to agree. If compulsion is used it would not be a Debt Conciliation Act, but a Debt Coercion Act.

(2) The insolvency courts are there to compel the minority to accept the decision of the majority, and there is no purpose in setting up a duplicate machinery.

(3) It will lead to oppression. The debtor may create bogus debts, and cook up an artificial majority, and the honest creditor may suffer.

(4) In other Provinces where a similar Act has been passed no compulsion is introduced.

The arguments on the other side may be summarised as follows:—

(1) The object of the Act is to relieve the agriculturist from indebtedness. The object will not be achieved if only a portion of the debts is settled leaving the other creditors to harass the debtor in civil and other proceedings. According to the report of the Special Officer who went into the question of rural indebtedness 82% of the middle class ryots are indebted to an extent of 200 crores, in this Presidency, and partial relief is no good at all.

(2) Some sort of compulsion in an indirect form has been provided in the Act. If creditors do not, unreasonably, accept the offer of the debtor, they are liable to certain disabilities, such as deprivation of costs, and a portion of the interest. (*Vide-section 18*). Then why not push the principle of compulsion still further.

(3) Proceedings before the Debt Conciliation Board are really quasi-insolvency proceedings. The Act is passed because the insolvency courts do not function expeditiously, and a debtor would come before the Board only if he is unable to pay his debts. There is no harm in really making the Board a rival piece of machinery, doing business expeditiously and vesting it with powers of effecting a complete settlement.

(4) Fraud will always be there, and honest creditors always stand the risk of being defrauded in spite of safeguards.

With regard to the conciliation of mortgage debts, the main ground on which their rights are not interfered with by the Act, is that persons who have

advanced money on the security of property in the hope that they would realise their moneys to the fullest extent ought not to be forced to give up a portion of their claim. The argument on the other side is that, here again, the Act would not achieve its purpose if mortgage debts are not scaled down, that a substantial portion of rural indebtedness—indeed every substantial debt—is secured, and that if sanctity of contracts could be interfered with by courts under the Usurious Loans Act and the Debtors' Protection Act, then why not the mortgage-debts also be scaled down. After all what was pleaded was not a scaling down of the mortgage-debts but a proper ascertainment thereof, according to the economic value of money. If the price of agricultural produce has fallen down to half of what it was at the time of the loan, the debt becomes doubled, and it was argued that no injustice would result if the debt is halved in terms of money, because in terms of commodities the creditor gets the amount lent by him and interest. Logically the converse also must be laid. If the purchasing power of money falls, the creditors should *pro tanto* gain in terms of money.

Any way the result is that except for the indirect compulsion on all creditors (secured and unsecured) with regard to the losing of interest and costs provided for under section 18 (2) and the suspension of the execution of decrees of unsecured creditors under S 18 (3) no other compulsion is introduced in the Act. As to what has been done in other countries on this question may be gleaned from the following quotation :—

" In South Australia it is laid down : ' No step shall be taken by any mortgage grantee of any bill of sale, holder of a lien, or any other grantee or any other form of security over any property of the said farmer, to realize his security ' So also in New South Wales, when the Farmer's Relief Act of 1932 was passed, the same point was taken into consideration. In New Zealand the Act empowers the court to postpone action by the mortgagee for a period up to two years, to postpone the payment of interest on principal, reduce the rate of interest, remit the whole or any part of arrears of interest or principal, or postpone the right to sue for interest or principal. So also is the case in Germany. There a measure was introduced for the purpose of 'the gradual extension of the protection of farmers and tenants against foreclosure and distraint, so that the carrying out of forced sales was made practically impossible.' In New Zealand it becomes unlawful for the mortgagee to exercise any power of sale or entry into possession, or to issue any process of execution on any judgment obtained for moneys due under a mortgage debt without first giving the mortgagee notice. In South Africa all bond holders and creditors are asked to accept interest at the rate of 5% per annum on farm mortgages so long as subsidy assistance is necessary. To provide for cases in which bond-holders are unwilling to reduce the interest rate to 5 %, the Government have taken power to levy a tax on every creditor of a farm mortgage equal to the sum by which any payment received by him as interest on such mortgage after 31st March, 1933 shall exceed 5 % per annum." [Mr. Mahboob Ali Baig in the Legislative Council.] It may also be mentioned that in Bengal a Bill has been introduced which deals with secured debts also, subject to the condition that a Commissioner will be appointed by Government whose permission is necessary before the Board can take action under the particular section dealing with secured creditors.

As observed already in the Introduction to this book, other Provinces are ahead of Madras in regard to schemes for the relief of indebtedness.

This section provides that if 50% of the creditors agree and settle their debts, and the agreement is approved by the Board as equitable, the agreement shall be registered and it will take effect as a decree of court.

The Act does not say how the agriculturist is to be helped once an amicable arrangement is come to. The special officer who went into the question of rural indebtedness observed as follows:—"If the agriculturist is to be saved, the bulk of his standing debt at rates of interest ranging from 9 to 24% must be paid off by some financing agencies (like Government or Co-operative Societies, or Land Mortgage Banks) who at the same time will give the debtor agriculturists every opportunity of repaying from their income by charging interest at as low rates as possible, and by collecting in easy instalments spread over a long period of years." Land Mortgage Banks have so far done very little to help the agriculturist. Only about 6% of the debtors have been helped by Co-operative Societies. Unless therefore the Government come to their rescue by making loans under the Agriculturists' Loans Act there can be no hope for the ryots. In the course of the discussion of the Bill in the Madras Legislative Council the Hon. the Law Member stated that under the Agriculturists' Loans Act and the Rules framed thereunder Government have agreed to do their very best up to a maximum of Rs. 2,000 in cases where there is security, and where there is a possibility of the return of the loan. The maximum may also be increased in the future, in the light of the working of the Act. (*Vide, the discussion of the topic in the Introduction to the book*).

The Board may, by agreement between the parties, provide that the amount due to each creditor shall be payable in instalments.

Co-operative Society.—For definition *vide* section 4 of the Co-operative Societies Act (Madras Act VI of 1932).

Where a creditor is a Co-operative Society, the previous approval of the Registrar of Co-operative Societies is necessary before the settlement could be binding on the Society. This is in accordance with the scheme of the Co-operative Societies Act under which the Registrar has a deciding voice in all important matters relating to the administration of Co-operative Societies. It is, of course, not to be expected that the Registrar will unreasonably withhold approval if the Board considers that a settlement is just and equitable.

15. In any scheme of debt conciliation under this Act such properties as are exempt from attachment under the Code of Civil Procedure, 1908, (V of 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.

The object of this section is self-evident. It is obvious that what the creditor could not proceed against in execution should be left out of account altogether, in computing the assets of the debtor for the purposes of the Act. An attempt

was made in the Legislative Council to leave some property to the debtor, by providing that in addition to what the Civil Procedure Code prevents from attachment, the debtor should be left 2 acres of wet land, or 4 acres of dry land. It was pointed out that the debtor may own only 2 acres or 4 acres as the case may be, and if this is not to be taken into account, the creditors may have nothing at all to proceed against. The matter has, therefore, been left to the parties themselves to settle amicably.

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.

This section attempts to enunciate the rule of '*Damdupat*' to a limited extent. It declares that with regard to debts incurred on and subsequent to 1-6-33 the interest shall not exceed the principal. In respect of debts incurred prior to 1-6-33 the principal is taken to be the amount due on 1-6-33. If a promote was taken for Rs. 100 say, 12 years ago, and if by repeated acknowledgments it is kept alive and the total comes to Rs. 1,000 it would obviously be unfair to say by a legislation of 1936 that the creditor shall receive only Rs. 200. That is why a time limit has to be fixed. The date 1-6-33 has apparently been fixed as approximating to three years from the date of passing the Act.

Thavanai Loans.—It is usual in the case of Nattukottai Chetty Bankers to charge *thavanai* rates of interest. At the end of every 2, 3, 6, 10, or 12 months, interest is added to principal and compound interest is calculated. These *thavanai* loans also would come under the section. The principal would be the original amount lent, or the amount of principal and interest due on 1-6-33, and not the renewed debt which includes interest also.

On account of the economic depression which has set in since 1929, the price of land and of agricultural produce has considerably fallen. The economic value of the rupee has considerably varied. The agriculturist computes money only in terms of grain or other commodity that he produces. If at a time when he borrowed, say, Rs. 100, paddy was selling at 8 measures per rupee, in terms of paddy he borrows only 800 measures of paddy. But if later on, prices fall, and paddy sells at 16 measures per rupee, then he should be liable to pay only Rs. 50 and not Rs. 100. If this economic value of the rupee is not taken into consideration, the debt becomes doubled. The Act does not make any provision for computing the value of money in this manner; but under section 14 when an amicable arrangement is entered into, this point will no doubt be taken into consideration. This matter will be relevant under section 18 also.

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.

NOTES.

It is obvious that there should be a time limit within which to arrive at a settlement. Proceedings cannot be pending indefinitely.

12 months is fixed as the maximum time limit, and it is to be computed from the date of the application under section 4. It would have been better if the period was to have been computed from the time when all parties had entered appearance. It is quite a usual feature in civil courts, where there are a large number of defendants, to find that it takes as much as a year, sometimes, to serve notice on all parties. If parties should die during the pendency of proceedings, further time would be necessary for bringing in legal representatives. No doubt under the Act notice has to be sent by registered post, and not much time would be taken in effecting service of notice on creditors. But creditors may live in far off places, and it may therefore happen that in particular cases there is barely time for all the creditors to meet and effect a settlement. In any case it would have been better to add a proviso to the section empowering the Board to extend the time limit in proper cases, for sufficient cause.

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 certificates 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

Power of court to disallow cost or interest.

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

Decrease in suits after registration of agreement not to be executed.

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, (V of 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.

This section provides that where the debtor has made a reasonable offer—reasonable in the opinion of the Board—and the creditors do not agree, the Board shall grant a certificate to that effect, and the result is that although the proceedings before the Board may terminate, the civil court which entertains the suit to recover the debt shall not allow costs or interest exceeding 6% on the principal from the date of the certificate. This applies to secured creditors also.

If the entire proceedings before the Board should have become futile because a majority of creditors have not accepted the offer which the Board considers reasonable, then all the creditors would be faced with such a certificate. *A fortiori*, it will be so in the case of a minority where a majority has been found agreeable to the offer.

The facts which the Board has to take into account in deciding whether the offer is reasonable is described with sufficient particularity in the section. The certificate may be produced by the debtor even after the suit is filed, but before decree is passed. *Sukhlal Modhi Baniya v. Damrod Ganesh*. 1935 N. 43.

Kundanlal v. Ram Pratap, 1936 Lah 479.—As the Court is bound to refuse costs if the case falls within the purview of the section, the order refusing costs is a substantive order, and an appellant, if he wants to question it, must pay court-fee on it. In such a suit, the question of costs stands on a different basis from that of other suits.

The section applies not only to suits which may be filed by creditors after infructuous proceedings before the Board, but also to suits instituted already, and which have been stayed under section 25.

Clause 3.—This clause provides that the properties set apart for the majority of the creditors who settle with the debtor and whose settlement is approved by the Board and is registered, shall be applied in the first instance towards the satisfaction of these debts. [*Vide* notes under section 12 for the cumulative effect of sections 12 & 18 (3)].

Bar of civil suits. **19.** No civil court shall entertain --

(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 14 from any person who, as a debtor, was party to such agreement; or
- (iv) 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.

This section is a corollary to sections 4, 14 and 18. It gives a certain amount of finality to proceedings of the Board, and ensures that during the pendency of proceedings before it, Civil Courts shall not deal with the same matters. All debts to which the Act applies must be proved before the Board, and whether the proceedings before it result in an amicable arrangement or not, any debt in respect of which a statement has not been submitted to the Board under section 10 (1) shall be deemed to be discharged, and no suit will lie in respect of it unless the debt is revived as provided for in section 10 (3).

The Act does not provide for cases where there is likely to be clash between this Act and the Insolvency Act. As observed already one creditor may suspend the entire proceedings before the Board by filing an insolvency petition against the debtor. This matter must be dealt with by suitable amendment in the light of the working of the Act.

Clause (a) of section 19 merely states that a Civil Court cannot entertain a suit in respect of '*any matter pending before the Board*'. Is a claim of a creditor for admission of his debt, which is rejected, to be deemed '*pending*'? It is submitted that the answer should be in the negative, and that there is nothing to

prevent the rejected creditor from filing a suit in the Civil Court and getting a decree. Let us however give a very wide meaning to the words, and assume that a suit would not lie so long as proceedings are pending before the Board. After the proceedings terminate, this rejected creditor is in the same position as an 'admitted' creditor who does not agree to a scheme of conciliation. Like the latter he can file a suit for the recovery of his debt. (*Vide also notes under section 22*).

Bapu Sakharan v. Shrinadan, 19 N. L. J. 16.—Civil Courts are the only authorities having jurisdiction to enquire into an issue as to whether a special tribunal (such as a Debt Conciliation Board) acts within its powers or not.

Sub-section (4).—When a creditor does not submit a statement under section 10 (1) his debt is deemed to be discharged. Consequently the settlement is effected only in respect of other debts, and they alone are taken into consideration in distributing the property of the debtor, and in fixing the amount due to each creditor. When a debt is revived it is obvious there must be a *de novo* settlement.

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.

This section merely embodies the rule of *Lis Pendens*. During the period when proceedings are pending before the Board, for all practical purposes, the Board will be considered a Court, and the Board may set aside fraudulent alienations made when the matter is pending before it. The Board does not usurp the functions of the Civil Courts under sections 51 and 52 of the Transfer of Property Act, or of the Insolvency Courts under sections 53 to 55 of the Provincial Insolvency Acts, (and of the corresponding sections of the Presidency Towns Insolvency Acts). In respect of these alienations the creditors must seek their remedy under the respective Acts.

'By order of the Board on application by the creditors'.—The object of this provision is to provide for a summary remedy, and avoid expenditure in Courts. The application should be on behalf of all the creditors so that there may not be harassment of the alienee by each creditor taking proceedings individually.

Let us assume that an alienation is made by a debtor when the matter is pending before it, and on an application before the Board the Board holds that it is good, and shall not be avoided. The question is whether any creditor cannot file an insolvency proceeding, and in that proceeding question the alienation under the provisions of the Insolvency Act. There is no prohibition against it in this Act. Section 22 merely bars appeals and revisions against the

orders of the Board. Section 11 of the Civil Procedure Code cannot therefore apply. The Board is not a Court, and under section 12 (2) its decision is binding on the parties only in proceedings before it. Section 12 (2) therefore prevents these decisions operating as *Res judicata* under the general principles enunciated by the Privy Council in *Hook v. Administrator-General*, 48 C. 499; *Sheo Prasad Singh v. Ramnandan Prasad Singh*, 43 C. 694; *Ramachandra Rao v. Ramachandra Rao*, 45 M. 320 and *Rani Indar Kuar v. Thakur Baldeo Baksh Singh*, 39 M. L. J. 115.

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, (III of 1909) and the Provincial Insolvency Act, 1920, (V of 1920) nor shall such alienation be voidable under section 53 of the Transfer of Property Act, 1882, (IV of 1882).

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

NOTES.

The object of this section is this. If a *bona fide* alienation is made for a fair price for the purpose of carrying out any agreement that may have been arrived at, then no court whether functioning under the jurisdiction conferred by the Transfer of Property Act or of the Insolvency Acts should call this alienation in question. The provision that the agreement should have the sanction of the Board would guarantee the propriety of the transfer. That is to say it would prevent collusive transfers.

Bar of appeal or revision.

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

NOTES.

The object of the Act is to provide a summary remedy without resort to the ordinary Courts of Law. It is therefore obvious that the decisions of the Board should be final without any other forum having the right to hear appeals and revisions, subject to any revisional jurisdiction vested in the Board itself, for which provision is made in the next section.

This section merely states that no appeal or revision lies to any outside body against the decisions of the Board. Section 12 (2) states that the decision of the Board is binding on all parties 'in all proceedings before the Board'. These sections would therefore lead us to infer that a person is not prevented from taking appropriate proceedings in the civil court challenging proceedings before the Board. We have already dealt with the case of a creditor whose claim has been rejected by the Board. We observed that there is nothing to prevent the rejected claimant from filing a suit in the civil court and getting a decree, if not when the proceedings are before the Board, at least when the proceedings have terminated. Suppose the whole matter is again pending before the Board by reason of the revival of a debt as provided in section 14 (4). The application

before the Board must be deemed to have been put in as on the date of the reviver, the claimant whose debt was rejected by the Board at first would now be entitled to apply to the Board for admission of his debt on the basis of his decree, and the Board would have no option but to admit his debt. Let us consider another instance. Suppose a debtor asserts that a property in the name of a third party or even his wife is his property, and the Board rejects the debtor's contention. This decision would not prevent the debtor from filing a suit in the civil court for a declaration of his title and for appropriate reliefs. In the converse case also where the Board decides against the third party or claimant, the third party can similarly file such a suit. So all that this section means is that in all proceedings before it, its decision, is final, subject to its own power to review.

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.

NOTES.

The section does not specify the grounds on which the Board can entertain a revision. There is no special restriction as is mentioned in Order 47 Rule 1, C. P. C., or section 25 of the Provincial Small Cause Courts Act. It therefore follows that the Board can review an order whenever it feels just and equitable to do so.

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 authorised in writing.

Appearance of parties before board.

NOTES.

In the Bill as originally framed there was an absolute prohibition against legal practitioners appearing before the Board. It was apparently felt by the sponsor of the Bill (although he was himself a lawyer) that for the quick settlement of the cases coming up before the Conciliation Board, the lawyer would only be a hindrance, and that he would raise all sorts of quibbles and create complications. On the other hand it was felt that it was neither fair nor decent to shut out lawyers altogether, and at the same time allow authorised agents. Further the debtor himself or some of the creditors appearing before the Board may themselves be lawyers, and it may be a handicap to prohibit the opponents from requisitioning the services of lawyers. As a sort of compromise, lawyers and agents are authorised to appear with the permission of the Board.

It would, of course, have been absurd to have provided that a creditor living, say, in Rangoon should be compelled to appear in person before the Board.

25. When an application has been made to a board under section 4, any suit or other proceedings then *Stay of pending suits or other proceedings.* 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.

NOTES.

The object of the Act being the settlement of debts by conciliation without resort to courts, it is obvious that when proceedings are instituted before the Debt Conciliation Board all pending suits should be stayed until the proceedings before the Board terminate.

The language of the section is not happy. In the first place it says that the suit shall not be proceeded with '*until the Board has dismissed the application*'. Now under the Act the Board can dismiss an application only under sections 9 and 17, *i. e.*, where the Board does not decide to proceed at all, or where no amicable settlement is arrived at within 12 months of the application. Now suppose the Board does not dismiss an application because a majority of creditors settle with the debtor, and suppose the plaintiff in the pending suit is one of the minority. His suit has been stayed already. The proceedings before the Board are not dismissed. If the words of this section are to be literally construed then his suit cannot be proceeded with. But there can be no perpetual stay, and section 18 states that such a creditor may proceed with the suit; only he will not get costs or interest at more than 6% on the principal, and he cannot proceed against the property set apart for the creditors who have settled. Therefore instead of the words '*Until the Board has dismissed the application*' the words '*Until the proceedings before the Board have terminated*' should have been used.

Again, section 7 deals with the rejection of an application where the application is not in proper form. Suppose an application is made to the Board. Even if it has been rejected, it is an application made to the Board and not dismissed, as provided in this section and under the strict terms of the section, even if no application is made afresh, the Civil Court cannot proceed with the suit. Therefore instead of the words '*application has been made*', the words '*an application has been entertained by the Board*' should have been used.

As soon as the Board takes cognisance of the matter, the proceedings in the Civil Court should be stayed. But suppose, in execution of a decree, the Civil Court has sold the property, but the sale has not yet been confirmed the question is whether the proceedings should be stayed. In *Thukharam v. Mohanlal*, 19 N. L. J. 174, the point was left undecided. It is submitted that in such a case also the proceedings should be stayed. A court sale is not complete until it is confirmed. The sale certificate should bear the date on which the sale is confirmed, and until then execution proceedings are deemed pending, and under this section all pending proceedings should be stayed.

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, (XII of 1884) or the Land Improvements Loans Act, 1883, (XIX of 1883) or otherwise, the board shall report this fact to the Collector.

Report by board regarding sums due to government.

NOTES.

Loans advanced under the Agriculturists' Loans Act and the Land Improvements Loans Act are, under those Acts, recoverable as arrears of land revenue, and these loans are expressly excluded from the definition of debts for the purposes of the Act, (*Vide section 5 of the Agriculturists' Loans Act, section 7 of the Land Improvements Loans Act, and section 2 (f) of this Act*). The Board cannot, therefore, deal with these loans. The Board is required under this section to report to the Collector about any arrears due under these two Acts, obviously in order to enable him to take steps to collect the amount due to Government.

It is not clear whether the Collector could intervene on behalf of the Government and ask the Board to settle its debt also just like any other debt. Under the Revenue Recovery Act the Collector can issue a proclamation prohibiting the debtor from transferring or charging any of his immoveable properties. Suppose the Collector issues such a proclamation—then the debtor cannot make any private alienation of his properties. This, of course, does not prevent the debtor and the creditors settling, and the agreement is enforceable as a decree of court, and in execution the court may sell the debtor's property in spite of the proclamation of the Collector as the proclamation only prohibits a private alienation. But it would seem that the debtor cannot make a private alienation of his properties with the permission of the Board free of the disability arising under the proclamation of the Collector.

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, (V of 1908) or under the Indian Limitation Act, 1908, (IX of 1908).

NOTES.

Both the sub-sections of this section may well have been combined in one simple section. The Bill originally contained only sub-section 1 (omitting the last two lines). Sub-section (2) was added in the course of the passage of the Bill without suitably amending sub-section 1, and the result is that the two sub-sections partly overlap.

The object of the section is however clear. In calculating the period of limitation for suits, execution, insolvency, and other proceedings in courts, the actual period when the proceedings were pending before the Board, as well as the time taken in obtaining copies of the order of the Board shall be excluded. If the proceedings end in a settlement, and the agreement fixes a period for the payment of the debts of the persons who settle with the debtor, then in as much as the agreement after registration is executable as a decree of a court, the starting point of limitation will be the date on which the amount is payable.

Analogous law.—Under section 78 (2) of the Provincial Insolvency Act where an adjudication is annulled, and the parties have to take proceedings in civil courts, the period between the adjudication and the annulment thereof are to be excluded in computing limitation for suits, execution proceedings etc.

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, (XLV of 1860).

NOTES.

This provision is very necessary. Members of the Board ought not to enter upon their duties lightheartedly merely because they are honorary officers. They should realise their responsibility.

29. (1) The Local 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 subsection (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 Local 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.

(a)—Prescribed.—The following sections of the Act refer to matters being prescribed :—

Section 3 (3). The quorum of the Conciliation Board for each area is to be ' *prescribed* '

Section 14 (3). The agreement between the debtors and the majority of creditors is to be registered in the ' *prescribed* ' manner.

Section 18 (1). The certificate by the Board that the offer of the debtor was reasonable is to be in the ' *prescribed* ' manner.



[For Rules framed by the Government under this Act see the pages following].

RULES UNDER THE MADRAS DEBT CONCILIATION ACT, 1936

NOTIFICATIONS.

**Fort St. George, December 17, 1936 (G. O. No. 3692, Home).*

No. 924.—

In pursuance of sub-section (3) of section I of the Madras Debt Conciliation Act, 1936 (Madras Act XI of 1936), the Governor in Council is hereby pleased to appoint January the first nineteen hundred and thirty-seven as the date on which the said Act shall come into force.

No. 925.—

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

RULES.

1. (1) These rules may be called the Madras Debt Conciliation Rules, 1937.
(2) They 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. Applications under section 4, notices under sections 8 and 10 and certificates under section 18 shall be in such of the forms in Appendix—I 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 authorized by him in writing, to the Chairman or, during his absence, to the person authorized 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 the 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 authorized 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 served, send it by registered post prepaid 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 compound 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 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 connexion 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 counter-sign 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 XXXII 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 of,, taluk, 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. (1)	Amount of debt. (2)	Particulars of debts including date of commencement, rate of interest, whether secured, and if so, how, etc. (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.

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

(2) Movables, including cash—

Description, and the place where they are kept,

Value.

Details of any mortgage lien or charge subsisting thereon.

(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.

.....
Signature of the applicant.

Verified that the contents of paragraphs.....of the application are true upon the personal knowledge of and those in paragraphs..... upon information received and believed to be true by the undersigned.

.....
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 debt of..... and will be examined by the Board together with any objections that may be preferred by any person interested at..... o'clock on..... the..... day 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 debtors creditors has submitted an application under section 4 of the aforesaid Act for the 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 them by the said debtor.

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

2. You
All the creditors are also required to furnish along with such state-
ment, 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 their claims, 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.

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 Conciliation 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
the one hand and.....of.....(creditor)
on the other hand, for the settlement 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 .

.....
Signature of the Chairman,
Debt Conciliation Board.

(Seal of the Board)

District.....

APPENDIX II.

(Referred to in rule 28.)

(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.

(e)
Register of copy applications.

(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).	

(f)

Receipt book.

In the office of the Debt Conciliation Board of

RECEIVED THIS day of 193 from

the sum of Rs. being

(g)

Register of contingent expenditure.

(1) Date.	(2) To whom paid Appropriation for each head.	(3) Number of { sub-vouchers. contingent abstract.	Sub-head and detailed account heads	Sub-head and detailed account head.	Description	Amount.
			Sub-divisions of sub heads and detailed account heads as may be convenient. If the appropriation be not ordi- narily 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	Sub divisions of sub- heads and detailed account heads.		

RS. A. P

, son of

Chairman

(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.	

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11]

THE

(h)
Cash Book.

Debt Conciliation Board of

Year.

Dr. 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.

(6)

Remittance register.

CHALAN.

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
account of _____ to the credit of the

No. _____ of 193 _____ on the
file of the Debt Conciliation Board of

Dated 193 .

Signature of the Officer in charge
of the Treasury.

CHALAN.

Debt Conciliation Board of

To 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,

CHALAN.

No. Debt Conciliation Board of

To The Officer in charge

of the Treasury at

Received Rs. _____ from
to the account _____

of No. _____ of
193 on the file of this Board.

Dated 193 .

Initials of the Chairman of the Board.

APPENDICES

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- V. (a) THE BENGAL MONEYLENDERS ACT, 1933.
(b) THE CENTRAL PROVINCES DEBT CON-
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APPENDIX—I

The [English] Moneylenders Act, 1900

(63 & 64 V. c. 51)

An Act to amend the Law with respect to persons carrying on business as moneylenders.

8th August 1900.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

S. 1. (1) Where proceedings are taken in any court by a money-lender *Re-opening of transactions of money-lender.* for the recovery of any money lent after the commencement of this Act or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a Court of Equity would give relief, the court may reopen the transaction and take an account between the moneylender and the person sued, and may, notwithstanding any statement or settlement of account, or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risks and all the circumstances, may adjudge to be reasonable ; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it ; and may set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent by the moneylender, and if the moneylender has parted with the security may order him to indemnify the borrower or other person sued.

(2) Any Court in which proceedings might be taken for the recovery of money lent by a moneylender shall have, and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section, where proceedings are taken for the recovery of money lent, and the Court shall have power, notwithstanding any provision or agreement to the contrary, to entertain any application under this Act by the borrower or surety, or other person liable, notwithstanding that the time for re-payment of the loan, or any instalment thereof, may not have arrived.

(3) On any application relating to the admission or amount of a proof by a moneylender in any bankruptcy proceedings, the Court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money.

(4) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money-lending by a moneylender.

(5) Nothing in the foregoing provisions of this section shall affect the rights of any *bona fide* assignee or holder for value without notice.

(6) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

(7) In the application of this Act to Scotland, this section shall be read as if the words "or is otherwise such that a Court of Equity would give relief" were omitted therefrom.

[Ss. 2 and 3. Repealed by The Moneylenders Act, 1927.]

Penalties for false statements and representations.
S. 4. If any moneylender, or any manager, agent, or clerk of a money-lender, or if any person, being a director, manager, or other officer of any corporation, carrying on the business of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of material facts fraudulently induces or attempts to induce any person to borrow money or to agree to the terms on which money is or is to be borrowed, he shall be guilty of a misdemeanour, and shall be liable on indictment, to imprisonment with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both.

Amendment of 55 and 56 Vict. c. 4, s. 2, as to presumption of knowledge of infancy.
S. 5. Where in any proceedings under section 2 of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

Definition of moneylender.
S. 6. The expression "*moneylender*" in this Act shall include every person whose business is that of moneylending, or who advertises or announces himself or holds himself out in any way as carrying on that business: but shall not include—

(a) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers; or

(b) any registered society within the meaning of the Friendly Societies Act, 1856, (59 and 60 V. c. 25) or any society registered or having rules certified under section 2 or 4 of that Act, or under the Benefit Building Societies Act, 1836 (6 and 7 Will. IV. c. 32) or the Loan Societies Act, 1840, (3 and 4 V. c. 110) or under the Building Societies Act, 1874 to 1894; or

(c) any body-corporate, incorporated or empowered by a special Act of Parliament to lend money in accordance with such special Act; or

- (d) any person *bonafide* carrying on the business of Banking or insurance or *bonafide* carrying on any business not having for its primary object lending money, in the course of which and for the purposes whereof he lends money; or
- (e) any body-corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulation of the Board of Trade.

*Short title and
Commencement.*

S. 7. (1) This Act may be cited as the Money lenders Act, 1900.

(2) This Act shall come into operation on the first day of November One Thousand Nine Hundred.

APPENDIX—II

The [English] Moneylenders Act, 1927

(17 and 18 Geo. V—c. 21.)

An act to amend the Law with respect to persons carrying on business as moneylenders.
29th July 1927.

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

S. 1. (1). Every moneylender, whether carrying on business alone or as a partner in a firm, shall take out annually in respect of every address at which he carries on his business as such, an excise licence (in this Act referred to as "*a moneylender's excise licence*"), which shall expire on the 31st day of July in every year, and, subject as hereinafter provided, there shall be charged on every moneylender's excise licence an excise duty of fifteen pounds, or if the licence be taken out not more than six months, before expiration thereof, of ten pounds.

Provided that—

- (a) the duty charged on any moneylender's excise licence which will expire on the 31st day of July, nineteen hundred and twenty eight, shall, notwithstanding that the licence may be taken out more than six months before the expiration thereof, be a duty of ten pounds ; and
- (b) Where moneylender's excise licences are taken out by two or more moneylenders in respect of any address or addresses at which, they carry on their business as partners in a firm, the Commissioners of Customs and Excise shall remit, or if the duty has been paid repay, to the firm a sum equal to the aggregate of the duties charged on such number of licences taken out as exceeds the number of the addresses in respect of which they are taken out ; and
- (c) Where it is proved to the satisfaction of the Commissioners of Customs and Excise that there is in force a licence for carrying on the business of a pawnbroker at any premises, in respect of which a moneylender's excise licence is taken out by the person carrying on the business, the Commissioners shall remit, or if the duty has been paid repay, to that person such part of the duty charged on the moneylender's excise licence as is equal to the amount of the duty paid in respect of the licence for carrying on the business of a pawnbroker, or where in any such case moneylender's excise licences are taken out by partners in a firm

in respect of the premises, the remission or repayment shall be made to the firm.

(2) Subject to the provisions of this Act, moneylender's excise licences shall be in such form as the Commissioners of Customs and Excise may direct, and shall be granted on payment of the appropriate duty by any officer of Customs and Excise authorised by the Commissioners to grant them, and regulations made by the said Commissioners may make provision as to the procedure to be followed in making application for moneylender's excise licences:

Provided that a moneylender's excise licence shall be taken out by a moneylender in his true name, and shall be void if it be taken out in any other name, but every moneylender's excise licence shall also show the moneylender's authorised name and authorised address.

(3) If any person—

(a) takes out a moneylender's excise licence in any name other than his true name; or

(b) carries on business as a moneylender without having in force a proper moneylender's excise licence authorising him so to do, or, being licensed as a moneylender, carries on business as such in any name other than his authorised name, or at any other place than his authorised address or addresses; or

(c) enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of money, or takes any security for money, in the course of his business as a moneylender, otherwise than in his authorised name;

he shall be guilty of a contravention of the provisions of this Act, and shall for each offence be liable to an excise penalty of one hundred pounds:

Provided that, on a second or sub-sequent conviction of any person (other than a company) for an offence under this sub-section, the Court may, in lieu of or in addition to ordering the offender to pay the penalty aforesaid, order him to be imprisoned for a term not exceeding three months, and an offender being a company shall, on a second or subsequent conviction be liable to an excise penalty of five hundred pounds.

8. 2. (1) A moneylender's excise licence shall not be granted except to a person who holds a certificate granted in accordance with the provisions of this section authorising the grant of the licence to that person, and a separate certificate shall be required in respect of every separate licence. Any moneylender's excise licence granted in contravention

Certificate required for grant of moneylender's excise licence.

of this section shall be void.

(2) Certificates under this section (in this Act referred to as "certificates") shall be granted by the petty sessional court having jurisdiction in the petty sessional division in which the moneylender's business is to be carried on, so, however, that within any part of the metropolitan police district for which a

police court is established, a certificate shall not be granted except by a police magistrate.

(3) Every certificate granted to a moneylender shall show his true name and the name under which, and the address at which, he is authorised by the certificate to carry on business as such, and a certificate shall not authorise a moneylender to carry on business at more than one address, or under more than one name, or under any name which includes the word "Bank," or otherwise implies that he carries on banking business, and no certificate shall authorise a moneylender to carry on business under any name except—

- (a) his true name ; or
- (b) the name of a firm in which he is a partner, not being a firm required by the Registration of Business Names Act, 1916, [6 and 7 Geo. V c. 58] to be registered ; or
- (c) a business name, whether of an individual or of a firm in which he is a partner, under which he or the firm has, at the passing of this Act, been registered for not less than three years both as a moneylender under the Moneylenders Act, 1900, [63 and 64 Vict. c. 51] and under the Registration of Business Names Act, 1916.

(4) A certificate shall come into force on the date specified therein, and shall expire on the next following 31st day of July.

(5) A Secretary of State shall make rules with respect to the procedure to be followed in making applications for certificates (including the notices to be given of intention to make such an application), and certificates shall be in such form as may be prescribed by rules so made.

(6) A certificate shall not be refused except on some one or more of the following grounds—

- (a) that satisfactory evidence has not been produced of the good character of the applicant, and in the case of a company, of the persons responsible for the management thereof ;
- (b) that satisfactory evidence has been produced, that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is not a fit and proper person to hold a certificate ;
- (c) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a moneylender, is by order of a court disqualified for holding a certificate ;
- (d) that the applicant, has not complied with the provisions of any rules made under this section with respect to applications for certificates.

(7) Any person aggrieved by the refusal of a petty sessional court to grant a certificate may appeal to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts as if the refusals were an order of a court of summary jurisdiction.

Suspension and forfeiture of money-lenders' certificates.

8. 3. (1) Where any person, being the holder of a certificate, is convicted of any offence under this Act or under section 2 or 4 of the Betting and Loans (Infants) Act, 1842, [55 and 56 Vict. c. 4] or the Moneylenders Act, 1900, the court—

(a) may order that any certificates held by that person, and in the case of a partner in a firm by any other partner in the firm, shall either be suspended for such time as the court thinks fit, or shall be forfeited, and may also, if the court thinks fit, declare any such person, or any person responsible for the management of the moneylending business carried on by the person convicted, to be disqualified for obtaining a certificate for such time as the court thinks fit: and

(b) shall cause particulars of the conviction and of any order made by the court under this sub-section to be endorsed on every certificate held by the person convicted or by any other affected by the order, and shall cause copies of those particulars to be sent to the authority by whom any certificate so endorsed was granted, and to the Commissioners of Customs and Excise.

Provided that, where by the order of a court a certificate held by any person is suspended or forfeited, or any person is disqualified for obtaining a certificate, he may, whether or not he is the person convicted, appeal against the order in the same manner as any person convicted may appeal against his conviction, and the court may, if it thinks fit, pending the appeal, defer the operation of the order.

(2) Any certificate required by a court for endorsement in accordance with the forgoing provisions of this section shall be produced, in such manner and within such time as may be directed by the court, by the person by whom it is held, and any person who, without reasonable cause, makes default in producing any certificate so required shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding five pounds for each day during which the default continues.

(3) Where a certificate held by any person is ordered to be suspended or to be forfeited under the forgoing provisions of this section, any moneylender's excise licences granted to that person, whether in pursuance of that or any other certificate, shall be suspended during the period for which the certificate is ordered to be suspended or become void, as the case may be.

8. 4. (1) Sub-section (2) of section 2 of the Companies (particulars as to Directors) Act, 1917 (7 & 8 Geo. 5. c. 28) (which requires certain particulars to be published in trade catalogues, trade circulars, showcards and business letters) shall apply with the necessary modifications to every company licensed under this Act notwithstanding that the company was registered or had established a place of business within the United Kingdom on or before 22nd day of November, 1916.

Names to be stated on documents issued by moneylenders.

(2) Without prejudice to the provisions of the last forgoing section and of section 18 of the Registration of Business Names Act, 1916, a moneylender shall not, for the purposes of his business as such, issue or publish, or cause to be issued or published, any advertisement, circular, business letter, or other similar document which does not show—

- (a) In such manner as to be not less conspicuous than any other name, the authorised name of the moneylender; and
- (b) Except in the case of an advertisement published in a newspaper, any name, other than his authorised name, under which the moneylender, and in the case of a firm any partner therein was before the commencement of this Act registered as a moneylender under the Moneylenders Act, 1900; and any moneylender who acts in contravention of this sub-section shall be liable on summary conviction to a fine not exceeding 20 £ in respect of each offence.

(3) If a moneylender, for the purposes of his business as such, issues or publishes, or causes to be issued or published, any advertisement, circular or document of any kind whatsoever containing expressions which might reasonably be held to imply that he carries on banking business, he shall on summary conviction be liable to a fine not exceeding 100 £ and on a second or subsequent conviction, in lieu of or in addition to such a fine as aforesaid, to imprisonment for a term not exceeding three months or, in the case of a second or subsequent conviction of an offender being a company, to a fine not exceeding 500£.

S. 5. (1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a moneylender, or containing an invitation—

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

(2) Subject as hereinafter provided, no person shall publish or cause to be published in any newspaper or in any other printed paper issued periodically for public circulation, or by means of any poster or placard, an advertisement advertising any such particulars, or containing any such invitation, as aforesaid:

Provided that an advertisement in conformity with the requirements of this Act relating to the use of names on moneylenders' may be published by or on behalf of a moneylender in any newspaper or in any such paper as aforesaid or by means of a poster or placard exhibited at any authorised address of the moneylender, if it contains no addition to the particulars necessary to comply with the said requirements, except any of the following particulars, that is to

say any authorised address at which he carries on business as a moneylender and the telegraphic address, and telephone number thereof, any address at which he formerly carried on business, a statement that he lends money with or without security, and of the highest and lowest sums that he is prepared to lend, and a statement of the date on which the business carried on by him was first established.

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

(4) Where any document issued or published by or on behalf of a moneylender purports to indicate the terms of interest upon which he is willing to make loans or any particular loan, the document shall either express the interest proposed to be charged in terms of rate per cent. per annum or show the rate per cent. per annum represented by the interest proposed to be charged as calculated in accordance with the provisions of the First Schedule to this Act.

(5) Any person acting in contravention of any of the provisions of this section shall be guilty of a misdemeanour and shall in respect of each offence be liable, on conviction on indictment, to imprisonment for a term not exceeding three months or a fine not exceeding 100 £, or to both such imprisonment and fine, and, on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding £ 20, or to both such imprisonment and fine.

(6) Where it is shown that a moneylending transaction was brought about by a contravention of any of the provisions of this section, the transaction shall, notwithstanding that the moneylender was duly licensed under this Act, be illegal, unless the moneylender proves that the contravention occurred without his consent or connivance.

S. 6. (1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a moneylender after the commencement of this Act or for the payment by him of interest on money so lent and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract be made and signed personally by the borrower, and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract; and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given as the case may be.

(2) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and, either the interest charged on

the loan expressed in terms of rate *per cent. per annum* or the rate *per cent. per annum* represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act.

S. 7. Subject as hereinafter provided, any contract made after the commencement of this Act for the loan of money by a moneylender 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 provision as to defaults.

Provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the moneylender under the contract, whether in respect of principal or interest, the moneylender shall be entitled to charge simple interest on that sum from the date of the default until the sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, 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.

S. 8. (1) In respect of every contract for the repayment of money lent by a moneylender whether made before or after the commencement of this Act, the moneylender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of one shilling for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the moneylender or his agent showing—

- Obligation of moneylender to supply information as to state of loan and copies of documents relating there to.*
- (a) the date on which the loan was made, the amount of the principal of the loan and the rate *per cent. per annum* of interest charged ; and
 - (b) the amount of any payment already received by the moneylender in respect of the loan and the date on which it was made ; and
 - (c) the amount of every sum due to the moneylender, but unpaid, and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum ; and
 - (d) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

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

(3) If a moneylender to whom a demand has been made under this section fails without a reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be

entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the moneylender shall be liable on summary conviction to a fine not exceeding five pounds for every day on which the default continues.

S. 9. (1). Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act, 1914 (4 & 5 Geo. V. c. 59) relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and dividend, be calculated at a rate not exceeding five *per cent. per annum*, but nothing in the foregoing provisions shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled. The provisions of this sub-section shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of sub-section (1) of section 66 of the Bankruptcy Act, 1914.

(2) No proof of a debt due to a moneylender in respect of a loan made by him shall be admitted for any of the purposes of the Bankruptcy Act, 1914, unless the affidavit verifying the debt is accompanied by a statement showing in detail—

- (a) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the moneylender in respect of the loan and the date on which every such payment was made; and
- (b) the amount of the balance which remains unpaid distinguishing the amount of the principal from the amount of the interest included therein, the appropriation between principal and interest being made in accordance with the provisions of this Act where the interest is not expressed by the contract for the loan in terms of a rate; and
- (c) where the amount of interest included in the unpaid balance represents a rate *per cent. per annum* exceeding five *per cent.*, the amount of interest which would be so included if it were calculated at the rate of five *per cent. per annum*.

(3) General rules may be made under section one hundred and thirty-two of the Bankruptcy Act, 1914, for the purpose of carrying into effect the objects of this section.

S. 10. (1) Where, in any proceedings in respect of any money lent by a moneylender after the commencement of this Act or in respect of any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act, it is found that the interest charged exceeds the rate of forty-eight *per cent. per*

*Amendments of
63 & 64 Vict. c. 51,
S. 1.*

annum or the corresponding rate in respect of any other period, the court shall, unless the contrary is proved, presume for the purposes of section one of the Moneylenders Act, 1900, that the interest charged is excessive and that the transaction is harsh and unconscionable, but this provision shall be without prejudice to the powers of the court under that section where the court is satisfied that the interest charged although not exceeding forty-eight *per cent per annum* is excessive.

(2) Where a court reopens a transaction of a moneylender under the said section one of the Moneylenders Act, 1900, the court may require the moneylender to produce any certificate granted to him in accordance with the provisions of this Act and may cause such particulars as the court thinks desirable to be endorsed on any such certificate and a copy of the particulars to be sent to the authority by whom the certificate was granted.

(3) The powers of a court under the said section one of the Moneylenders Act, 1900, with respect to the reopening of the transactions of the moneylenders shall extend to any transaction effected under a special contract made in accordance with the provisions of section twenty-four of the Pawnbrokers Act, 1872 (35 & 36 Vict. c 33) and accordingly, for the purposes of the first mentioned section the provisions of paragraph (a) of section six of the Moneylenders Act, 1900, shall not apply with respect to any such transaction.

(4) The powers of a court under sub-section (2) of the said section one of the Moneylenders Act, 1900 [which enables a court at the instance of the borrower, surety, or other person liable, to exercise its powers under that section with respect to the reopening of the transactions of moneylenders, although no proceedings are taken for the recovery of the money lent, and notwithstanding that the time for repayment may not have arrived] may in the event of bankruptcy of the borrower be exercised at the instance of the trustee in bankruptcy, notwithstanding that he may not be liable in respect of the transaction.

(5) The powers of the court under the said sub-section (2) of section 1 of the Moneylenders Act, 1900, may be exercised notwithstanding that the moneylender's right of action for the recovery of the money lent is barred.

S. 11. (1) Subject as hereinafter provided, no action by a moneylender for the recovery of money lent by him or for enforcing any agreement or security relating to any such money shall be brought in any inferior court other than a county court:

Courts to which proceedings on money lending transactions are to be taken.

Provided that His Majesty may by order in Council direct that any inferior court specified in the order shall have the same jurisdiction as respects such actions as aforesaid as it would have had but for the provisions of this sub-section, and any such order may contain such provisions as appear to His Majesty expedient with respect to the making of rules of court for regulating the procedure to be followed in the case of any such action, and may be revoked or varied by any subsequent order made in like manner.

(2) Before any order in Council is made under this section, a draft thereof, shall be laid before each House of Parliament for a period of not less

than 21 days during the session of Parliament, and if either House before the expiration of the said period presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of a new draft order.

S. 12. Any agreement between a moneylender and a borrower or intending borrower for the payment by the borrower or intending borrower to the moneylender of any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan shall be illegal, and if any sum is paid to a moneylender by a borrower or intending borrower as for or on account of any such costs, charges or expenses, that sum shall be recoverable as a debt due to the borrower or intending borrower or, in the event of the loan being completed, shall, if not so recovered, be set off against the amount actually lent and that amount shall be deemed to be reduced accordingly.

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

S. 13. (1) No proceedings shall lie for the recovery by a moneylender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued :

Limitation of time for proceedings in respect of money lent by money-lenders.

Provided that—

- (a) if during the period of twelve months aforesaid or at any time within any subsequent period during which proceedings may by virtue of this proviso be brought, the debtor acknowledges in writing the amount due and gives a written undertaking to the moneylender to pay that amount, proceedings for the recovery of the amount due may be brought at any time within a period of twelve months from the date of the acknowledgment and undertaking ;
- (b) the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run in respect of any payments from time to time becoming due to moneylender under a contract for the loan of money until a cause of action accrues in respect of the last payment becoming due under the contract ;
- (c) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor the person entitled to take the proceedings is *non-compos mentis* the time limited by the foregoing provisions of this section for the commencement of proceedings shall not begin to run until that person ceases to be *non compos mentis* or dies whichever first occurs ; and

(d) if at the date on which the cause of action accrues or on which any such acknowledgment and undertaking as aforesaid is given by the debtor, the debtor is beyond the seas, the time limited by foregoing provisions of this section for the commencement of proceedings shall not begin to run until he returns from beyond the seas. so however that section 11 of the Mercantile Law Amendment Act, 1856, (which relates to the limitation of actions against joint-debtors where some are beyond seas) shall have as if this section included among the enactments therein referred to as fixing a period of limitation.

(2) Without prejudice to the powers of a court under section (1) of the Moneylenders Act, 1900, if at the time when proceedings are taken by a moneylender in respect of a default in the payment of any sum due to him under a contract for the loan of money any further amount outstanding under the contract but not yet due the court may determine the contract and order the principal outstanding to be paid to the moneylender with such interest thereon if any, as the court may allow up to the date of payment.

S. 14. (1) The provisions of section 6, 12 and 13 of this Act shall not apply in relation to any loan by a pawnbroker on a pledge, or in relation to any debt in respect of such a loan, or any interest thereon, notwithstanding that the loan is not made in the course of the business carried on by the pawnbroker in accordance with the Acts for the time being in force in relation to pawnbrokers, so long as the following conditions are complied with in respect of the loan :—

Special provisions as to pawnbroker's loans.

(a) The pawnbroker shall deliver or send to the pawner within seven days a note or memorandm containing all the terms of the contract and in particular showing the date on which the loan is made, the amount of the principal of the loan, interest charged on the loan expressed in terms of a rate *per cent. per annum*, and any other charges payable by the panwner under the contract, and the rate of interest charged shall not exceed the rate of twenty *per cent. per annum* ;

(b) Subject as hereinafter provided, the pawner shall not be charged any sum on account of costs, charges, or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan, except a charge for the preparation of documents relating to the loan not exceeding the sum of one shilling, and a charge equal to the actual amount of any stamp duty paid by the pawnbroker upon any such document :

Provided that a pawnbroker shall not be deemed to have failed to comply with the foregoing conditions by reason of his having made in good faith and in accordance with the terms of the contract for the loan—

(i) a reasonable charge in respect of the storage or care of any pledge which is not physically delivered to him or which although so

delivered, is of such weight or size that it would not under the Post Office Regulations for the time being in force be received for transmission by parcel post; or

- (ii) a charge for interest at a rate not exceeding 20 *per cent. per annum* upon any sum reasonably expended by the pawnbroker in respect of the storage or care of the pledge; or
- (iii) a charge not exceeding one shilling for rendering any account of the sale of any pledge; or
- (iv) a charge not exceeding one shilling in respect of any inspection of the pawnbroker's books.

(2) Any charge authorised by this section for the preparations of documents relating to a loan, or in respect of stamp duty upon any such document, may be deducted by the pawnbroker from the amount of the loan, and, if so deducted, shall be deemed for the purposes of this Act to be included in the principal.

S. 15. (1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them that is to say:—

" *Authorised name* " and " *authorised address* " mean respectively the name under which and the address at which a moneylender is authorised by a certificate granted under this Act to carry on business as a moneylender;

" *Business name* " means the name or style under which any business is carried on, whether in partnership or otherwise;

" *Company* " means any body corporate being a moneylender;

" *Firm* " means an unincorporate body of two or more individuals or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;

" *Interest* " does not include any sum lawfully charged in accordance with the provisions of this Act by a moneylender 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 moneylender in considerations of or otherwise in respect of a loan;

" *Principal* " means in relation to a loan the amount actually lent to the borrower.

(2) Where by a contract for the loan of money by a money-lender the interest charged on the loan is not expressed in terms of a rate, any amount paid or payable to the moneylender under the contract (other than simple interest charged in accordance with the proviso to section 7 of this Act) shall be appropriated to principal and interest in the proportion

that the principal bears to the total amount of the interest, and the rate *per cent per annum* represented by the interest charged as calculated in accordance with the provisions of the First Schedule to this Act shall be deemed to be the rate of interest charged on the loan.

S. 16. (1) Where any debt in respect of money lent by a moneylender whether before or after the commencement of this Act or in respect of interest on any such debt or the benefit of any agreement made or security taken in respect of any such debt or interest is assigned to any assignee, the assignor (whether he is the moneylender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

Notice and information to be given on assignment of moneylenders' debts.

(a) give to the assignee notice in writing that the debt, agreement, or security is affected by the operation of this Act ; and

(b) supply to the assignee all information necessary to enable him to comply with the provisions of this Act relating to the obligation to supply information as to the state of loans and copies of documents relating thereto,

and any person acting in contravention of any of the provisions of this section shall be liable to indemnify any other person who is prejudiced by the contravention, and also be guilty of a misdemeanour, and in respect of each offence be liable on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine, and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds.

(2) In this section the expression "assigned" means assigned by any assignment *inter vivos* other than an assignment by operation of law and the expressions "assignor" and "assignee" have corresponding meanings.

S. 17. (1) Subject as hereinafter provided the provisions of this Act shall continue to apply as respects any debt to a moneylender in respect of money lent by him after the commencement of this Act or in respect of interest on money so lent or 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 that agreement or security may have been assigned to any assignee, and, except where the context otherwise requires, references in this Act to a moneylender 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 moneylender 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 any person deriving title under him,

but in every such case the moneylender 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 any other proceedings commenced by an assignee or holder for value who is himself a moneylender ; and

(b) For the purposes of this Act and of the Moneylenders Act 1900, the provisions of section one hundred and ninety-nine of the Law of Property Act, 1925 (15 Geo. V. c. 20) 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.

S. 18. [*Omitted as it relates to the application of the Act to Scotland.*]

Short title, citation, construction, repeal, extent and commencement.

S. 19. (1) This Act may be cited as the Moneylenders Act, 1927, and the Moneylenders Act, 1900, and this Act may be cited together as the Moneylenders Act, 1900 to 1927.

(2) Except where the context otherwise requires, references in this Act to the Moneylenders Act, 1900 shall be construed as references to that Act as amended by this Act, and this Act shall be construed as one with that Act, and the provisions of this Act as to moneylenders' excise licences and offences in relation thereto shall also be construed as one with the Acts relating to duties of excise and the management of those duties.

(3) The enactments set out in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

[*Rest of this sub-section is omitted as unnecessary.*]

FIRST SCHEDULE.

CALCULATION OF INTEREST WHERE THE INTEREST CHARGED ON A LOAN IS NOT EXPRESSED IN TERMS OF A RATE.

1. The amount of principal outstanding at any time shall be taken to be the balance remaining after deducting from the principal the total of the portions of any payments appropriated to principal in accordance with the provisions of this Act.

2. The several amounts taken to be outstanding by way of principal during the several periods ending on the dates on which payments are made shall be multiplied in each case by the number of calendar months during which those amounts are taken to be respectively outstanding, and there shall be ascertained the aggregate amount of the sum so produced.

3. The total amount of the interest shall be divided by one-twelfth part of the aggregate amount mentioned in paragraph 2 of this Schedule, and the quotient, multiplied by one hundred, shall be taken to be the rate of interest *per cent per annum*.

4. If having regard to the intervals between successive payments it is desired so to do, the calculation of interest may be made by reference to weeks instead of months, and in such a case the foregoing paragraphs shall have effect as though in paragraph 2 the word "*weeks*" were substituted for the words "*calendar months*" and in paragraph 3 the words "*one-fifty second*," were substituted for the words "*one-twelfth*."

5. Where any interval between successive payments is not a number of complete weeks or complete months, the foregoing paragraphs shall have effect as though one day were one-seventh part of a week or one-thirtieth part of a month as the case may be.

SECOND SCHEDULE

ENACTMENTS REPEALED. (OMITTED)

APPENDIX—III

The [English] Pawnbrokers Act, 1872

(35 and 36 Vic. ch. 93).

Preliminary.

10th August, 1872.

An Act for consolidating, with Amendments, the Acts relating to Pawnbrokers in Great Britain.

Short title. **S. 1.** This Act may be cited as the Pawnbrokers Act, 1872.

[**Ss. 2, 3 and 4.**—*Omitted as unnecessary.*]

Definitions ; Application of the Act.

Interpretation. **S. 5.** In this Act—

"*Pawnbroker*" includes every person who carries on the business of taking goods and chattels in pawn ;

"*Pledge*" means an article pawned with a pawnbroker ;

"*Pawner*" means a person delivering an article for pawn to a pawnbroker ;

"*Shop*" includes dwelling house and warehouse, or other place of business, or place where business is transacted ;

"*Unfinished goods or materials*" includes any goods of any manufacture or of any part or branch of any manufacture either mixed or separated, or any materials whatever plainly intended for the composing or manufacturing of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith, and before the same are completed or finished for the purpose of wear or consumption ;

"*Constable*" includes any peace officer ;

"*Justice*" means justice of the peace having jurisdiction in the country or place where the matter requiring the cognizance of a justice arises ;

"*Court of summary jurisdiction*" means any justice, justices, or magistrate (however designated) having jurisdiction under the Summary Jurisdiction Act of 1848 (described in part 1 of the Second Schedule to this Act).

Extension of Act to keepers of certain shops. **S. 6.** In order to prevent evasion of the provisions of this Act, the following persons shall be deemed to be persons carrying on the business of taking goods and chattels in pawn (that is to say) every person who keeps a shop for purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and who

purchases or receives or takes in goods or chattels, and pays or advances or lends thereon any sum of money not exceeding ten pounds with or under an agreement or understanding expressed or implied, or to be, from the nature and character of the dealing, reasonably inferred, that those goods or chattels may be afterwards redeemed or repurchased on any terms; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan respectively within this Act.

Executors, etc. of Pawnbrokers. S. 7. The provisions of this Act relating to the pawnbrokers shall extend to and include the executors or administrators of deceased pawnbrokers except that an executor or administrator shall not be answerable for any penalty or forfeiture personally or out of his own estate, unless the same is incurred by his own Act or neglect.

Agents, Servants, Apprentices, etc. of Pawnbrokers. S. 8. For the purposes of this Act anything done or omitted by the servant, apprentice, or agent of a pawnbroker in the course of or in relation to the business of the pawnbroker, shall be deemed to be done or omitted (as the case may be) by the pawnbroker; and anything by this Act authorised to be done by a pawnbroker may be done by his servant, apprentice, or agent.

Assigns, Executors, etc. of Pawnbrokers. S. 9. The rights, powers, and benefits by this Act reserved to and conferred on pawners shall extend to and be deemed to be reserved to and conferred on the assigns of pawners, and to and on the executors or administrators of deceased pawners; but any person representing himself to a pawnbroker to be the assign, executor, or administrator, of a pawner shall, if required by the pawnbroker, produce to the pawnbroker the assignment, probate, letters of administration, or other instrument under which he claims.

Application of Act in respect of loans. S. 10. This Act shall apply—

- (1) To every loan by a pawnbroker of forty shillings or under;
- (2) To every loan by a pawnbroker of above forty shillings and not above ten pounds, except as in this Act otherwise provided in relation to cases where a special contract representing the terms of the loan (as authorised by this Act) is made between the pawner and the pawnbroker at the time of the pawning.

Nothing in this Act shall apply to a loan by a pawnbroker of above ten pounds, or to the pledge on which the loan is made, or to the pawnbroker or pawner in relation to the loan or pledge; and notwithstanding anything in this Act, a person shall not be deemed a pawnbroker by reason only of his paying, advancing, or lending on any terms any sum or sums of above ten pounds.

Exception of loans before commencement of Act. S. 11. Nothing in this Act shall apply to a loan made by a pawnbroker before the commencement of this Act, or to the pledge on which the loan is made, or to the pawnbroker or pawner in relation to the loan or pledge; and the enactments in force at the time of the making of the loan shall, after

and notwithstanding the commencement of this Act, have effect in relation to every such loan and pledge, as if this Act had not been passed.

General Obligations of Pawnbrokers.

Pawnbrokers to keep books etc. as in Schedule.

S. 12. A pawnbroker shall keep and use in the business such books and documents as are described in the Third Schedule to this Act, in the forms therein indicated or to the like effect, and shall from time to time, as occasion requires, enter therein in a fair and legible manner the particulars indicated in and in accordance with the directions of that Schedule and shall make all inquiries necessary for that purpose.

If a pawnbroker fails in any respect to comply with the requisitions of this section he shall be guilty of an offence against this Act.

Pawnbrokers to keep names over doors, and table of rates, etc exhibited in shops.

S. 13. A pawnbroker shall observe the following rules:—

(1) He shall always keep exhibited in large characters over the outer door of his shop his Christian name and surname or names, with the word pawnbroker;

(2) He shall always keep placed in a conspicuous part of his shop (so as to be legible by every person pawning or redeeming pledges, standing in any box or place provided in the shop for persons pawning or redeeming pledges) the same information as is by the rules of the Third Schedule to this Act required to be printed on pawn-tickets.

If a pawnbroker fails in any respect to comply with the requisitions of this section he shall be guilty of an offence against this Act.

Pawning ; Redemption ; Sale.

Pawn tickets to be given for pledges.

S. 14. A pawnbroker shall on taking a pledge in pawn give to the pawner a pawn-ticket, and shall not take a pledge in pawn unless the pawner takes the pawn ticket.

Profit and charges allowed to pawnbrokers.

S. 15. A pawnbroker may take profit on a loan on a pledge at a rate not exceeding that specified in the Fourth Schedule to this Act.

A pawnbroker may demand and take the charges specified in the same Schedule, in the cases and according to rules therein stated and prescribed.

A pawnbroker shall not, in respect of a loan on a pledge, take any profit, or demand or take any charge or sum whatever, other than those specified in the same Schedule.

A pawnbroker shall, if required at the time of redemption, give a receipt for the amount of loan and profit paid to him; and such a receipt shall not be liable to stamp duty unless the profit amounts to forty shillings or more.

S. 16. Every pledge shall be redeemable within twelve months from the day of pawning, exclusive of that day; and there shall be added to that year of redemption seven days of grace, within which every pledge (if not redeemed within the year of redemption) shall continue to be redeemable.

Pledges redeemable for one year with seven days of grace.

Pledges for 10 Sh. or under not redeemed in time forfeited.

S. 17. A pledge pawned for ten shillings, or under, if not redeemed within the year of redemption and days of grace, shall at the end of the days of grace become and be the pawnbroker's absolute property.

S. 18. A pledge pawned for above ten shillings shall further continue redeemable until it is disposed of, as in this Act provided, although the year of redemption and days of grace are expired.

Pledges above 10 Sh. redeemable until sale.

S. 19. A pledge pawned for above ten shillings shall when disposed of by the pawnbroker be disposed of by sale by public auction, and not otherwise; and the regulations in the Fifth Schedule to this Act shall be observed with reference to the sale.

Sale by auction of pledges above 10 Sh.

A pawnbroker may bid for and purchase at a sale by auction, made or purporting to be made under this Act, a pledge pawned with him; and on such purchase he shall be deemed the absolute owner of the pledge purchased.

S. 20. If an auctioneer does anything in contravention of the provisions of this Act relating to auctioneers, or fails to do anything which he is required by this Act to do, he shall be guilty of an offence against this Act.

Offences by auctioneers.

S. 21. At any time within three years after the auction at which a pledge pawned for above ten shillings is sold, the holder of the pawn-ticket may inspect the entry of the sale in the pawnbroker's book, and in the filled up catalogue of the auction (authenticated by the signature of the auctioneer) or in either of them.

Power to inspect sale book.

S. 22. Where a pledge pawned for above ten shillings is sold, and appears from the pawnbroker's book to have been sold for more than the amount of the loan and profit due at the time of sale, the pawnbroker shall, on demand, pay the surplus to the holder of the pawn-ticket in case the demand is made within three years after the sale, the necessary costs and charges of the sale being first deducted.

Pawnbroker to account for surplus within three years, subject to set-off.

If on any such demand it appears from the pawnbroker's book that the sale of a pledge or pledges has resulted in a surplus, and that within twelve months before or after that sale the sale of another pledge or other pledges of the same person has resulted in a deficit, the pawnbroker may set off the deficit against the surplus, and shall be liable to pay the balance only after such set-off.

Offences as to pledges for above 10 sh.

S. 23. If with respect to pledges for loans of above ten shillings a pawnbroker—

- (1) Does not *bona fide* according to the directions of this Act sell a pledge pawned with him ;
- (2) Enters in his book a pledge as sold for less than the sum for which it was sold, or fails duly to enter the same ;
- (3) Refuses to permit any person entitled under this Act, to inspection of an entry of sale in the pawnbroker's book, or of a filled up catalogue of the auction, authenticated by the auctioneer's signature, to inspect the same ;
- (4) Fails without lawful excuse (proof whereof shall lie on him) to produce such a catalogue on lawful demand ;
- (5) Refuses to pay on demand the surplus to the person entitled to receive the same ;

he shall in every such case be guilty of an offence against this Act and shall be liable on conviction thereof in a court of summary jurisdiction to forfeit to the person aggrieved a sum not exceeding ten pounds.

[Ss. 24, 25 and 26.—Omitted as being unnecessary.]

S. 27. Where a pledge is destroyed or damaged by or in consequence of fire, the Pawnbroker shall nevertheless be liable on application within the period during which the pledge would have been redeemable to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit, and 25 per cent on the amount of the loan.

Liability of pawnbroker in case of fire.

A pawnbroker shall be entitled to insure to the extent of the value so estimated.

S. 28. If a person entitled and offering to redeem a pledge shows to the satisfaction of a court of summary jurisdiction that the pledge has become or has been rendered of less value than it was at the time of the pawning thereof by or through the default, neglect, or wilful misbehaviour of the pawnbroker, the court may, if it thinks fit, award a reasonable satisfaction to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker (as the case requires) in such manner as the court directs.

Compensation for depreciation of pledge.

[Ss. 29 and 30.—Omitted as being unnecessary.]

S. 31. If a pawnbroker, without reasonable excuse (proof whereof shall lie on him, neglects or refuses to deliver a pledge to the person entitled to have delivery thereof under this Act, he shall be guilty of an offence against this Act, and a court of a summary jurisdiction may, if the court thinks fit, with or without imposing a penalty, order the delivery of the pledge on payment of the amount of the loan and profit.

Summary order for delivery of pledge to person entitled.

General Restrictions on Pawnbrokers.

*Prohibition of
purchasing
pledges; taking
pledges from
children etc.*

S. 32. If a pawnbroker does any of the following things —

- (1) Takes an article in pawn from any person appearing to be under the age of twelve years or to be intoxicated ;
- (2) Purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker ;
- (3) Employs any servant or apprentice or other person under the age of 16 years to take pledges in pawn ;
- (4) Carries on the business of a pawnbroker on Sunday, Good Friday, or Christmas day, or a day appointed for public fast, humiliation, or thanks-giving ;
- (5) Under any pretence purchases except at public auction, any pledge while in pawn with him;
- (6) Suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it ;
- (7) Makes any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption.
- (8) Sells or otherwise disposes of any pledge pawned with him except at such time and in such manner as authorised by this Act ;

he shall be deemed guilty of an offence against this Act.

[Ss. 33—36.—Omitted]

Inland Revenue Licences.

S. 37. Every pawnbroker shall yearly take out from the Commissioners of Inland Revenue an excise licence for carrying on his business, on which licence there shall be charged and paid for the use of Her Majesty, her heirs and successors an excise duty of 7 pounds ten shillings.

Every licence shall be dated on the day on which it is issued and shall determine on the 31st day of July.

A separate licence shall be taken out and paid for by a pawnbroker for each pawnbroker's shop kept by him.

If a person acts as a pawnbroker without having in force a proper licence he shall for every such offence be liable to an excise penalty not exceeding 50 pounds.

All the provisions contained in any Act relating to excise licences, duties or penalties, and in force at the commencement of this Act, shall

as far as the same are applicable, have full effect with respect to the licence and duty and penalty aforesaid.

S. 38. [*Omitted.*]

Licences not to be granted without certificate. S. 39. After the passing of this Act a pawnbroker's licence shall not be granted to any person except on the production and in pursuance of the authority of a certificate granted under this Act; save that it shall not be necessary for any person being at the commencement of this Act a licensed pawnbroker, or for his executors, administrators, assigns or successors, to obtain such a certificate.

Any licence granted in contravention of this section shall be void.

Certificates to be granted by justices. S. 40. Certificates under this Act shall be granted (as regards England) in the metropolitan police district by a magistrate sitting in any police court in the metropolis having jurisdiction in the district where the application is made, and in any place within the jurisdiction of a stipendiary magistrate by that magistrate and in other places by the Justices of the petty sessional division assembled at the petty sessions specially convened for that purpose,

Ss 41—42. [*Omitted.*]

Grounds of refusal of certificate. S. 43. An application for a certificate shall not be refused, except on the following grounds, or one of them :—

- (1) That the applicant has failed to produce satisfactory evidence of good character ;
- (2) That the shop in which he intends to carry on the business of a pawnbroker or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character ;
- (3) That he has not complied with the last preceding section.

S. 44. [*Omitted.*]

Penalties and Legal Proceedings.

General penalty for offences. S. 45. If a pawnbroker or other person is guilty of an offence against this Act, in respect whereof a specific forfeiture or penalty is not prescribed by this Act, he shall be liable, on conviction thereof in a court of summary jurisdiction, to a penalty not exceeding ten pounds.

Ss. 46—49. [*Omitted.*]

Production of books etc. before justices. S. 50. A pawnbroker shall at any time, when ordered or summoned by a court of summary jurisdiction, attend before the court and produce all books and papers relating to his business which he is required by the court to produce.

If he fails to do so, he shall be guilty of an offence against this Act.

THE THIRD SCHEDULE.

PLEDGE BOOK.

For date of redemption.
For profit charged.
For amount of loan.
For number of pledge in the month.
For name of pawner.
For address of pawner.
For name of owner, if other than pawner.
For address of owner, if other than pawner.
For list of Articles pawned, as described on pawn-ticket.

RULE.

All entries in the last five columns respecting each pledge shall be made on the day of the pawning thereof or within four hours after the end of that day.

THE FOURTH SCHEDULE.

PROFIT AND CHARGES ALLOWED TO PAWNBROKER.

PART I.—PROFIT ON LOAN.

A. On a loan of forty shillings or under—

For any time during which the pledge remains in pawn not exceeding one month, for every two shillings or fraction of two shillings lent .

... .. *One half penny.*

For every month after the first, including the current month in which the pledge is redeemed, although that month is not expired, for every two shillings or fraction of two shillings lent ...

... .. *One half penny.*

PROVISO.

If the pledge is redeemed before the end of the first fourteen days after the expiration of any month, the pawnbroker shall, in respect of those fourteen days, be entitled to take half of the amount which he would be entitled to take for the whole month.

B. On a loan above forty shillings—

For every month or part of a month for every sum of two shillings
and six pence or fraction of two shillings and six pence ...
... .. *One half penny.*

PART II.—CHARGE ON PAWN-TICKET.

Where the loan is ten shillings or under *One half penny.*
Where the loan is above ten shillings *One penny.*

PART III.—CHARGE ON INSPECTION OF SALE BOOK.

For the inspection of the entry of a sale *One penny.*

PART IV.—CHARGE ON FORM OF DECLARATION.

Where the loan is five shillings or under *One half penny.*
Where the loan is above five shillings *One penny.*

RULE.

This sum is to be paid by the applicant at the time of application.

THE FIFTH SCHEDULE.**REGULATIONS AS TO AUCTIONS OF PLEDGES ABOVE
TEN SHILLINGS.**

1. The auctioneer shall cause all pledges to be exposed to public view.
2. He shall publish catalogues of the pledges, stating—
 - (1) the pawnbroker's name and place of business;
 - (2) the month in which each pledge was pawned;
 - (3) the number of each pledge as entered at the time of pawning in the pledge book.
3. The pledges of each pawnbroker in the catalogue shall be separate from any pledges of any other pawnbroker.
4. The auctioneer shall insert in some public newspaper an advertisement giving notice of the sale, and stating—
 - (1) the pawnbroker's name and business;
 - (2) the months in which the pledges were pawned.
5. The advertisement shall be inserted on two several days in the same newspaper and the second advertisement shall be inserted at least three clear days before the first day of sale.
6. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, sold by auction, shall be sold by themselves, and without any other goods being sold at the same sale, four times only in every year, (that is

to say) on the first Monday in the months of January, April, July, and October, and on the following day and days, if the sale exceeds one day, and at no other time.

7. Where a pawnbroker bids at a sale the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale; and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.

8. The auctioneer shall, within 14 days after the sale, deliver to the pawnbroker a copy of the catalogue, or of so much thereof as relates to the pledge of that pawnbroker, filled up with the amounts for which the several pledges of that pawnbroker were sold, and authenticated by the signature of the auctioneer.

9. The pawnbroker shall preserve every such catalogue for three years at least after the auction.

APPENDIX—IV

THE AGRICULTURISTS' LOANS ACT, 1884

[India Act XII of 1884, as amended by the Madras Act XVI of 1935]

An Act to amend and provide for the extension of the Northern India Takkavi Act, 1879.

Preamble. 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. S. 1. (1) This Act may be called THE AGRICULTURISTS' LOANS ACT, 1884; and

(2) It shall come into force on the first day of August, 1884.

Local extent. S. 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 Governor of Bombay in Council, the Lieutenant Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmere.

(3) But any other Local Government may, from time to time, by notification in the Official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.

Repeal of Act X of 1879, and sections 4 and 5 of Act XV of 1880. S. 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.

Power of Local Government to make rules. S. 4. (1) The Local Government, 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 Local Government may, from time to time, make rules as to loans to be made to owners and occupiers of arable land for the relief of distress* or indebtedness, the purchase of seed or cattle, or any other purpose not specified in the Land Improvements Loans Act, but connected with agricultural objects.

*These words were added by the Madras Act XVI of 1935.

(2) All such rules shall be published in the local Official Gazette.

S. 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.

Recovery of loans.

S. 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.

Liability of joint borrowers as among themselves.

The Agriculturists' Loans Act, 1884

*RULES.

The following are the RULES framed under section 4 of the Act :—

*[*Vide* : G. O. No. 2531 Revenue dated 25—10—35, Fort St. George Gazette dated 29th October, 1935, pages 1436—1442 and also the amending Rules :—

G. O. Ms. No. 2975 Revenue dated 14—12—1935 Fort St. George Gazette dated 24—12—1935,

G. O. Ms. No. 55 Revenue dated 9—1—1936 „ 21—1—1936,

G. O. Ms. No. 1159 Revenue dated 25—5—1936 „ 2—6—1936.

G. O. Ms. No. 1161 Revenue dated 25—5—1936 „ 2—6—1936.

G. O. Ms. No. 1188 Revenue dated 4—8—1936 „ 11—8—1936.

G. O. Ms. No. 2145 Revenue dated 1—10—1936 „ 6—10—1936.]

Rules for the grant of loans for the relief of indebtedness under the Agriculturists' Loans Act, 1884, as amended by the Madras Act XVI of 1935.

In exercise of the powers conferred by sub-section (1) of section 4 of the Agriculturists' Loans Act, 1884 (XII of 1884), as amended by Madras Act XVI of 1935, the Governor in Council is hereby pleased to make the following special rules for the grant of loans for the relief of the indebtedness of agriculturists. (Fort St. George Gazette, of 29—10—35 pp. 1436—42 Part I.)

I. *Short title and commencement.*—(1) These rules may be called the Madras Agriculturists' Loans (Relief of Indebtedness) Rules, 1935.

(2) They shall come into force on the 29th day of October 1935.

II. *Persons to whom loans may be granted.*—Loans may be granted under these rules to persons who own lands or the occupancy right in lands, the value of which lands or right, as estimated by the officer competent to sanction the loan, does not exceed †Rs. 5,000.

III. *Conditions subject to which loans may be granted and the maximum amount of loan admissible.*—(1) No loan shall be granted under these rules to any person—

‡ (i) unless he makes full disclosure of all his liabilities; and

‡ (ii) unless he applies for an amount which would be sufficient to discharge all such liabilities.

† Substituted for Rs. 3,000 by the amending Rule—*Vide* G. O. Ms. No. 55, Revenue of 9—1—'36, Fort St. George Gazette of 21—1—1936.

‡ As amended by G. O. Ms. No. 1688, Revenue dated 4—8—1936, Fort St. George Gazette of 11—8—1936.

[*Note* :—For (General) Rule *Vide* Fort St. George, dated 2—12—32, pp. 79—88 Part I.

For (pumping installations and agricultural machinery or plant) rules *Vide* Gazette dated 20—3—33, pp. 543—9.—ED.]

(2) The amount of loan sanctioned to any applicant shall be limited to the amount finally ascertained as required for the discharge of all his liabilities :

Provided that no loan shall be granted if the amount so ascertained * is below Rs. 100 or if it exceeds Rs. 2000.

† (3) In this rule, the expression 'liabilities' whenever it occurs except in clause (ii) of sub-rule (1) shall not include—

- (a) arrears of wages ;
- (b) land revenue or anything recoverable as an arrear of land revenue ;
- (c) rent as defined in the Madras Estates Land Act, 1908 (Madras Act I of 1908) ; or
- (d) any money the recovery of which by suit is barred by limitation.

IV. *Officer competent to sanction loans.*—All loans under these rules shall be sanctioned by an officer specially appointed for the purpose for any specified area or areas by the Local Government. The officer so appointed shall be designated the Special Loans Officer for such area or areas. The Special Loans Officer shall have power to reject any application for a loan under these rules.

The Local Government may also empower any officer by name or in virtue of his office to exercise the powers of a Special Loans Officer under these rules either generally or in any specified area.

V. *Application for loans.*—Every application for a loan under these rules shall be made to the Special Loans Officer in writing in form A hereto annexed. The application shall be signed by the applicant himself, or if he is illiterate, shall bear his mark, which shall be attested by two respectable witnesses.

Note:—Printed copies of form A can be obtained, free of charge, from all Revenue Inspectors and Village Headmen.

VI. *Procedure on receipt of application.*—On receipt of an application for a loan, the Special Loans Officer shall satisfy himself, by communication with the creditors of the applicant or otherwise, that the loan, if granted, will effectually relieve the applicant from his indebtedness.

Note.—(1) Notices shall be issued by the Special Loans Officer

- (a) to the applicant in Form I, and
- (b) to his creditors in Form II

to appear in person with the documents and other records and on a day mentioned in the notice. On the receipt of all the documents and records connected with the claims of the creditors, the Special Loans Officer shall scrutinise the same and shall, if necessary, examine the creditors and the applicant and make such other inquiry

* Added by G. O. Ms. No. 2145 Revenue dated 1—10—1936—Fort St. George Gazette dated 6—10—1936.

† Sub-rule (3) to Rule III was newly inserted by G. O. Ms. No. 55, Revenue, 9—1—1936, Fort, St. George Gazette, dated 21—1—1936.

as he may think fit, in respect of the nature, binding character, and amount of each claim. He shall then fix the amount which, in his opinion and in the circumstances, should in equity, be accepted by each creditor in full settlement of his claim against the applicant. The amount fixed, in respect of each creditor, shall be appreciably less than what the creditor may, according to the letter of the law, be entitled to and shall, in no case, exceed the amount of the original principal together with interest at six per cent per annum or twice the amount of the original principal, whichever is less.

(2) If every creditor agrees to take in full settlement of his claim the amount fixed under paragraph (1), the Special Loans Officer shall by an order in form IV inform the applicant and the creditor—

(a) that, subject to the results of the enquiry under rule VII, proving satisfactory and subject also to the furnishing by the applicant of adequate security, a loan equivalent to the sum-total of the amounts fixed as payable to each creditor, rounded off, if necessary, to the next higher multiple of ten rupees, will be sanctioned; and

(b) that the loan, when sanctioned, shall be disbursed direct to the creditors concerned, in accordance with the amounts fixed under paragraph (1) as payable to them respectively, and the excess, if any, sanctioned for rounding off shall be disbursed to the applicant.

(3) Before issuing such order, the Special Loans Officer shall obtain a signed statement in form III, from each of the creditors to the effect that he will take payment of the amount fixed under paragraph (1) in respect of his claim, on the date, and at the place, fixed by the disbursing officer, and that if he delays taking such payment he will not claim interest for the period of such delay.

(4) If any creditor does not agree to accept the amount fixed under paragraph (1) the Special Loans Officer shall reject the application.

**In determining the indebtedness of a person under this rule, the following shall not be taken into account, namely:—*

(a) *arrears of wages,*

(b) *land revenue or anything recoverable as an arrear of land revenue,*

(c) *rent as defined in the Madras Estates Land Act, 1908 (Madras Act I of 1908), or*

(d) *any money the recovery of which by suit is barred by limitation.*

* Newly added by G. O. Ms. No. 55, Revenue, dated 9—1—1936, Fort St. George Gazette the. dated 21—1—1936.

FORM I.

Notice to applicant.

To
son of.....residing at.....village
taluk. Your application dated.....for a loan of Rs.....has been
 received. An enquiry about the application and the amount of debts due by
 you will be held by me on.....at..... You are hereby directed' to appear
 before me on that date with all your creditors and the concerned documents
 including those substantiating your title to the properties proposed to be mort-
 gaged to the Government.

If you fail to appear, your application is liable to be rejected.

(Sd.).....

Special Loans Officer

FORM II.

Notice to creditors.

Whereas.....son of.....	residing at.....village.....taluk, has
.....		applied for a loan of Rs.....for the discharge of
Name of creditor (1)	Amount due to the creditor according to the applicant Rs..... (2)	the debt due to you as shown in the margin as well as
		debts due to others, and whereas I propose to hold an
		enquiry into the application and the debts of the
		applicant on.....at.....You are hereby
		directed to appear before me on that date with the
		documents in support of the debt due to you by the
		applicant.

(Sd.).....

Special Loans Officer.

FORM III.

Statement of creditor.

I,.....son of.....residing at.....village
taluk, have, at the enquiry held by the Special Loans Officer,.....
 on.....into the loan application of.....son of.....residing
 at.....village.....taluk, agree to accept a sum of Rs.....-from
 the Government in entire discharge of the debt due to me by the said.....
by *promissory note* or *mortgage deed* or other document
 dated.....in case the Special Loans Officer finally decides after detailed
 enquiry to sanction a loan to the applicant. I hereby bind myself to appear
 before the disbursing officer on the date fixed by him in the notice to be issued
 by him and receive payment of the above said sum of Rs.....I shall claim
 no interest for the period subsequent to the date fixed in the disbursing officer's
 notice and during which I delay making my appearance and receiving payment.

(Sd.).....

Creditor,

FORM IV.

Order of the Special Loans Officer.

Whereas at the enquiry held by me on.....into the loan application of.....son of.....residing at.....village,.....taluk, the creditor (or creditors) of the applicant named in the margin has (or have) agreed to accept the sum (or sums) noted against him (or them) in entire discharge of the debt due to him (or them) by the said.....and the said creditor (or creditors) are hereby informed that, subject to the results of the detailed local enquiry proving satisfactory and to the furnishing by the applicant of adequate security a loan of Rs.....will be sanctioned to the said..... Such loan will be disbursed to the creditor (or creditors) direct by the undersigned according to the amount (or amounts) noted against him (or them) in the margin. The sum, if any, in excess of the amount payable direct to the creditor (or creditors) will be disbursed to the applicant.

Name of creditor.	Date of pronote or mortgage document.	Amount accepted in words and figures Rs.
(1)	(2)	(3)

Camp.....

(Sd.).....

Dated.....

Special Loans Officer.

To

The applicant.

The creditor (or each creditor)

The Officer conducting the local enquiry with the application.

VII. *Local Enquiry.*—(1) No loan shall be sanctioned without a local enquiry by the Special Loans Officer or by such other officer as the Board of Revenue may empower in this behalf. When it is proposed to grant a loan under rule VI, the Special Loans Officer or other officer holding the local enquiry shall cause a notice in form B, hereto annexed, to be put up in the village chavadi, or, if there is no village chavadi in a conspicuous place in the village. The notice shall state that he intends to hold an enquiry into the application on a day mentioned in the notice and will be prepared to receive and consider objections to the grant of the loan. Copies of this notice shall be served on, or sent by post to, the applicant and all the creditors mentioned in the loan application. On the day mentioned in the notice, * or on any other day to which the enquiry may from time to time be adjourned, the Special Loans Officer or other officer holding the enquiry, shall inspect the lands mentioned in the application and make * enquiry as expeditiously as possible in the village as to the correctness of the statements made by the applicant, calling, if necessary, for the relevant documents from the applicant and such of the creditors or other persons interested as may

*Added by G. O No. 2145 Revenue dated 1—10—1936, Fort St. George Gazette dated 6—10—1936.

be present. The *bonafides* and solvency of the applicant, the sufficiency of the security offered and his capacity to repay the loan, shall be carefully ascertained in the manner prescribed in rule XII of the Madras Land Improvements and Agriculturists' Loans (General) Rules, 1933. Very careful and exhaustive enquiry shall be made regarding the title of the applicant to the lands, offered by him as security. Similar enquiry shall be made in respect of the lands offered by sureties as collateral security. The Special Loans Officer, or other officer holding the enquiry, shall also require the village officers to furnish a statement in form C hereto annexed.

(2) On the completion of the enquiry, the officer holding it shall prepare a record of the enquiry in form D, hereto annexed. If the enquiring officer is not the Special Loans Officer, he shall submit a report of the results of his enquiry in form D together with the loan application and other connected documents and records to the Special Loans Officer.

VIII. *Security*.—(1) No loan shall be granted unless the value of the security offered exceeds, * *by at least one and a half times*, the amount of the loan as finally ascertained under these rules.

(2) The arable land of which the applicant is the owner or in which he has the occupancy right, or so much of it as will be sufficient under sub-rule (1), shall be the security for the loan,

(3) If the value of the applicant's interest in the land referred to in sub-rule (2) is less than the value of the security required under sub-rule (1), collateral security shall be required. Such collateral security shall consist of arable land, belonging to other persons, who are willing to furnish such security.

(4) The Special Loans Officer shall obtain encumbrance certificates for a period of not less than twelve years preceding the date of the application for the loan, in respect of the lands offered as security by the applicant and his sureties, if any.

†IX. *Rate of interest*.—The rate of interest charged on loans under these rules shall be notified by the Local Government from time to time, in the Fort St. George and the District Gazettes. The applicant whose applications are pending disposal when the rate of interest is raised shall be given an opportunity of agreeing to the altered rate or of withdrawing their applications.

X. *Method and period of re-payment*.—(1) Loans shall be repayable by equal annual instalments discharging both principal and interest in the manner laid down in rule VI of the Madras Land Improvements and Agriculturists'

* Substituted for 'by at least one-half' by G. O. Ms. 55 Revenue, dated 9—1—1936, Fort St. George Gazette, dated 21—1—1936.

† No. 322 :—In exercise of the powers conferred by rule IX of the Madras Agriculturists' Loans (Relief of Indebtedness) Rules, 1935, the Governor in Council is hereby pleased to notify that the rate of interest chargeable on loans granted under the said rules shall until this notification is cancelled or modified be 5½ per cent per annum. *Vide* G. O. Ms. No. 2532 Revenue dated 25—10—1935, Fort St. George Gazette dated 29—10—1935, page 1442.

Loans (General) Rules, 1933. The date for the repayment of each annual instalment shall be fixed in accordance with the provisions of the said rule. The first instalment shall be payable not later than the date of the disbursement of the loan or of the last portion of the loan.

Provided that where the interval between the disbursement of the loan or of the last portion thereof and the date fixed for the payment of the first instalment is less than twelve months, the amount of the first instalment shall be the simple interest on the loan or the aggregate of the simple interest on each portion of the loan, from the date of its actual disbursement to the date on which the payment of such first instalment is due.

(2) The maximum number of annual instalments, in which the loan shall be repaid, shall be 25, and shall be fixed by the Special Loans Officer with due regard to the capacity of the borrower to repay the loan.

XI. *Grants of loans and rejection of loan applications.*—(1) If, on the completion of the local enquiry and of such further investigation as may be considered necessary, the Special Loans Officer is satisfied that the loan may be granted, he shall record a decision to that effect, which shall be appended to the record of the enquiry in form *D* and shall take immediate steps for the issue of an order granting the loan, and directing to whom and in what amounts, it should be disbursed. The order granting the loan shall be in form *E* hereto annexed.

(2) If, as a result of the local enquiry or further investigation, the Special Loans Officer is satisfied.—

(a) that the application is not *bona fide*; or

(b) that the applicant is not solvent; or

(c) that the security offered by the applicant is not sufficient; or

(d) that the conditions laid down in these rules have not been complied with

he shall reject the application and intimate such rejection to the applicant and his creditors in form *H* hereto annexed.

XII. *Disbursement of loans.*—(1) Every loan sanctioned under these rules shall be disbursed by the Special Loans Officer.

(2) When the Special Loans Officer has recorded a decision that the loan may be granted, he shall issue a notice in form *F*, hereto annexed, to the applicant to appear with his sureties, if any, to sign and receive the loan order and to execute a security bond in form *G* hereto annexed. The sureties, if any, shall be required to execute a security bond in form *G-1* hereto annexed. The Special Loans Officer shall also issue a notice in form *I* hereto annexed, to the creditor or each creditor as the case may be, to appear in person or by duly authorised agent, on the date fixed for the appearance of the applicant and to take payment of the amount payable in satisfaction of his claim.

(3) Every creditor or his authorised agent, who appears in compliance with a notice under sub-rule (2) shall, before receiving payment, sign and hand over to the Special Loans Officer a valid acquittance in form *J* hereto annexed.

of the claim against the applicant and shall also, if he has not already done so, surrender to the Special Loans Officer all documents relating to the claim so discharged.

XIII, *Application of general rules.*—The provisions contained in the Madras Land Improvement and Agriculturists' Loans (General) Rules, 1933, shall also apply to the loans granted under these rules in so far as they have not been varied by or are not inconsistent with the specific provisions contained in these rules.

FORM A.

(SEE RULE V).

Application for loan.

1. Name of the village of the applicant or applicants.
2. The following particulars in respect of the applicant or each of the applicants :—

- | | |
|----------------------|----------------------------|
| (i) Name ; | (iii) Religion and caste ; |
| (ii) Father's name ; | (iv) Age. |

3. The relationship of the applicants to one another.
4. Residence and occupation of the applicant or applicants.
 - (i)
 - (ii)

5. Amount of loan required.

6. (a) Particulars of the land owned by the applicant or applicants—

Name of the village.	Government, zamindari, jirayati or inam.	Description. wet or dry etc.	Survey No.	Extent.	Assesment.	Number and name of the registered holder.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
			rights of others in the property.			
Nature of title to land.	Present market value of land.		Name	Nature and extent of right, whether as co-sharer, mortgagee, etc.		Remarks if any of the enquiring officer.
(8)	(9)		(10)	(11)		(12)

**Note.*—Particulars of the mortgages, if any, to the Government should also be included in this statement.

- (b) Particulars of lands offered as security by the applicant and his sureties, if any.

[Details in the same columns as in paragraph (a)].

Note.—Particulars of the nature and extent of encumbrances should be entered in columns (10) and (11). Particulars of the mortgages, if any to the Government, should also be included in this statement.

7. Total of the existing debts of the applicant.—

Creditor's name.	Mortgage deed or promissory note (if mortgaged) particulars of lands (mortgaged).	Date.	Amount borrowed.	Rate of interest.	Amount due to creditors less repayments.	Purpose for which incurred.
(1)	(2)	(3)	(4)	(5)	(6)	(7)

†† **Note.**—Particulars of the mortgages, if any, to the Government should also be included in this statement.

8. Do the other interested persons support the loan application. If so, secure their signatures here as a token of consent.

9. The lands to be mortgaged are not subject to any mortgage or encumbrance or sale, etc., other than the mortgage debts to be discharged by raising this loan, and the mortgage to the Government, if any, as detailed in the statement under item 7. Further these lands have not been subject to any sale or auction either by Civil Court or by the Revenue Department. I declare that there are no encumbrances, debts, liabilities other than those mentioned against column (6) above.

10. I hereby solemnly declare that all the information given in this application is true. I bind myself on notice from you to appear with my creditors and surety if any and file all documents and vouchers and take the loan amount that may be sanctioned. If any delay be caused by my non-appearance in time, it will rest in your discretion to reject the application or cancel the loan order. I also bind myself not to contract any further debts secured or unsecured and also not to dispose of, alienate or encumber in any other way the properties mentioned in *paragraph 6 above* till final orders are passed on this application.

Date and address.

.....
Signature of the applicant.

11. (To be signed by the sureties if any)

I, the surety for the above loan do hereby solemnly declare that what is stated in the above application regarding the nature and extent of the encumbrances on the lands offered as collateral security is true and that there are no other encumbrances on the lands.

Date and address.

.....
Signature of the surety.

†† Added by G. O. Ms. No. 1161 Revenue dated 25—5—36, Fort St. George Gazette dated 2—6—1936.

FORM B.

(SEE RULE VII.)

Notice of enquiry to be held in connection with applications for loans.

Notice is hereby given that.....son of.....residing at village.....has applied for a loan of Rs.....from the Government for the purpose of discharging the debts due by him to the following creditor or creditors :

Name of creditor

Father's name

Residing at

The following lands have been offered as security for the loan :—

Taluk.	Village.	Nature of the land	Assessment,
		Survey No.	Extent

The undersigned will hold a local enquiry in the village in connection with the application on.....and will be prepared to receive and consider objections to the grant of the loan, which should be made either in person or in writing on that date.

Date.

*Designation.***FORM C.**

(SEE RULE VII.)

Statement to be obtained from village officers.

1. Name of the applicant and of his father.
2. Are the particulars given in columns 2 to 7 of item 6 (a) and (b) in the application correct ?
Where there is variation give the correct figure. (Verify each item and certify to that effect)
3. Are the lands in the possession and enjoyment of the applicant ?
Does he enjoy them with full rights of disposition by sale, gift or otherwise ?
4. Are there co-owners (such as brothers or collaterals) who enjoy the land in common with the applicant and, if so, what are their names and relationship to the applicant and their interest in the lands ?
Do they object to the grant of the loan ?
5. If the applicant is a Hindu widow, who are her reversioners ?
6. (a) Are the lands of the applicant encumbered or attached by or subject to a decree of a civil court ? If so what are the encumbrances—mortgages, *including mortgages, if any, to the Government, maintenance charges, etc.

(b) Give similar particulars in respect of the lands offered as security by the surety if any.

7. What is the present estimated value, based on the market value of similar lands in the neighbourhood of

(a) (i) the lands owned by the applicant

(ii) the lands proposed to be mortgaged

(b) the properties of the surety, if any, proposed to be mortgaged ?

Give the prices for which adjacent lands were sold during the last three years, quoting their survey numbers, extent, and assessment.

8. What is the arrear of land revenue, if any, due on the lands mortgaged.

9. If the applicant has taken loans from the Government previously, was he regular and prompt in their repayment ? Are any such loans still outstanding ? If so, give particulars of such loans.

10. (a) *Has the applicant any debts besides those mentioned in the application ?*

(b) *Does he possess any lands besides those mentioned in the application either in your village or elsewhere and, if so, give particulars of village, survey number, extent, classification, and estimated value.*

(c) *Give the following particulars with regard to the repaying capacity of the applicant :—*

1. *Probable annual income from—*

(i) *lands,*

(ii) *other sources,*

(iii) *total income.*

2. *Probable annual expenditure for—*

(i) *cultivation.*

(ii) *house-hold expenses. (give the number of members of the family)*

(iii) *Government kist,*

(iv) *other expenses,*

(v) *total expenditure.*

3. *Probable savings for a year.*

(d) *Has the applicant ever borrowed from any co-operative society ? If so, was he regular in repaying his debts and were his lands, ever brought to sale ?*

(e) *Is the sanction of the loan a real and necessary relief to the applicant or is the loan so insignificant considering the status of the applicant as not to warrant the grant of special relief by the Government ?*

Village Headman and Karnam.

* Substituted by G. O. No. 2145 Revenue, dated 1—10—1936—Fort St. George Gazette, dated 6—10—1936.

FORM D.

[SEE RULES VII AND XI (1).]

Record of the local enquiry.

[Application under the Agriculturists' Loans Act, 1884, as amended by
Madras Act XVI of 1935].

1. Serial number of application.
2. (i) Name and village of applicant.
(ii) Amount of loan applied for.
3. Have the particulars regarding survey number, description etc., given in columns 1 to 7 of the loan application in respect of the following items been verified and are they correct ?
 - (i) Lands owned by the applicant.
 - (ii) The lands proposed to be mortgaged.
4. (i) Is the applicant the sole owner of the lands, or does he own them in common with any others ? and, if the latter, is he the managing member of the family of which the others are members ? If not, has their consent to the loan application been taken in writing ?
 - (ii) If the applicant is a tenant, does he possess any, and if so, what transferable interest in the lands, and has notice under Rule XIV of the Madras Land Improvement and Agriculturists' Loans (General) Rules, 1933, been served on the land-holder ; if so, on what date and has he objected to the grant of the loan ?
 - (iii) If the application has been made on behalf of a minor, is the application signed by his legally constituted guardian ? Give particulars as to the extent and nature of the minor's interest in the land.
 - (iv) If the applicant is a Hindu widow, do her reversionary heirs consent to the loan application and have their signatures been taken in token of their consent ?
5. Are any loan obtained by him previously from the Government still outstanding ? If so, give particulars of such loans.
6. Is he in arrears to the Government for land revenue, or for any instalment of a loan previously obtained, * or in arrears of rent to the landlord or in arrears of wages ?
7. What is the present estimated value (based on the market value of similar land in the neighbourhood) of
 - (a) (i) the lands owned by the applicant.
 - (ii) the lands proposed to be mortgaged.

* Added by G. O. Ms, No. 1161 dated 25—5—1936—Fort St. George Gazette, dated 2—6—1936.

(b) the properties of the surety, if any, proposed to be mortgaged.

8. Are there any pre-existing encumbrances on the lands proposed to be mortgaged by the applicant, and the surety, if any, **including mortgages, if any, to the Government*? What are the names of the mortgagees and the amount of their claims? (Enclose the encumbrance certificate obtained from the Registration Department). What is the present estimated value of the applicant's or the surety's interests in the lands proposed to be mortgaged?

9. What are your remarks on the liabilities of the applicant and his repaying capacity? Is he capable of repaying the loan?

10. Objection of third parties, if any, to the proposed loan.

11. Recommendation of the officer conducting the local enquiry.

[To be filled in only when the Enquiring Officer is not the Special Loans Officer].

Signature and designation

12. Decision of the Special Loans Officer :

[To be filled in by the Special Loans Officer in his own hand.]

(1) Total amount of loan sanctioned.

(2) Purpose. Names of the Amount
creditors, awarded.

(3) The number of annual instalments in which the loan should be repaid and reasons for fixing that number.

(4) Amount of annual instalment :

	Rs. A. P.
Principal	...
Interest	...

Total	... _____

(5) Due date of payment

Kist commencing with fasli

.....

Full signature of the Special Loans Officer.

FORM E.

[SEE RULE XI (1)]

Order granting a loan under the Agriculturists' Loans Act 1884, as amended by the Madras Act XVI of 1935.

No of

1. The sum of Rs.....is granted to.....caste
.....calling.....son of.....residing at.....

*Added by G. O. Ms. No. 1161 Revenue dated 25—5—1936—Fort St. George Gazette dated 2—6—1936.

.....(with the consent of.....the record of which is hereto annexed) and the duly constituted guardian of.....son of.....residing at.....
.....a minor of theage of.....years as a loan under the Agriculturists Loans Act, 1884, as amended by a Madras Act XVI of 1935, for the discharge of the debt due to.....(enter name or names of creditors and the amount)
debts

subject to the following conditions :—

2. The conditions referred to are as follows :—

(a) (i) That on the execution of the necessary security bonds by the aforesaid.....and his sureties, if any, the amount of the loan shall be disbursed to the aforesaid creditor as follows :

*(1)	(2)	(3)	(4)	(5)
<i>Name of creditor.</i>	<i>Nature of debt.</i>	<i>Date of loan.</i>	<i>Document number if it is registered.</i>	<i>Amount to be Paid Rs.</i>

(ii) If it shall be proved to the satisfaction of the Special Loans Officer that the lands offered as security for the loan have been subsequently mortgaged for other loans without his previous permission the whole unpaid balance of the loan or such portion of it as the Special Loans Officer may determine with interest thereon calculated as prescribed in Rule XXIV of the Madras Land Improvement and Agriculturists' Loans (general) Rules, 1933, and costs if any, shall be deemed to become due at once.

(b) (i) That the loan with interest thereon at..... per cent. shall be repaid by equal annual instalment of Rs.....each falling due with the..... 'Kist' commencing with fasli..... If the period intervening between the disbursement of the loan, or of the last portion thereof and the date fixed for the repayment of the first instalment is less than 12 months, the first instalment to be paid shall represent only the simple interest on the loan or the aggregate of the simple interest on each portion of the loan from the date of its actual disbursement to the date on which payment of such first instalment is due:

(ii) Such annual payment shall be made to the village officers or at the Treasury of.....

(iii) If default be made in the repayment of the loan with interest as provided for in clause 2 (b) hereof, and the same is not paid before the close of the revenue year in which payment falls due, then interest shall be charged on the instalment or the balance of instalment so remaining unpaid at one anna per ten[†]rupées per mensem in the manner prescribed in Rule XXIII of the Madras Land Improvement and Agriculturists' Loans (general) Rules, 1933 ; and

(iv) If default in the payment of annual instalment on account of the loan occurs, and recovery cannot otherwise be made for if the borrower applies to be adjudicated or is adjudicated, a bankrupt or an insolvent, the entire unpaid

* Substituted by G. O. No. 2145 Revenue, dated 1-10-1936, —Fort St. George Gazette, dated 6-10-1936.

† Newly inserted, *Vide*. Fort St. George Gazette dated 24-12-1935, G. O. Ms. No. 2975, Revenue, dated 14-12-1935.

balance of the loan or such portion of it as the Special Loans Officer may determine shall be deemed to become due at once and the whole of the land specified in condition (c) or such portion of it as the Special Loans Officer may deem necessary shall be sold for the recovery of the loan with interest thereon calculated as prescribed in Rule XXIV of the Madras Land Improvement and Agriculturists' Loans (general) Rules, 1933, and the expenses of sale, if any.

(c) That for the repayment of the amount due or becoming due hereunder, the lands specified below are hypothecated as security to the Government.

[Note.—All lands hypothecated whether by the applicant himself or by a surety or sureties should be specified in clause (c) of the order granting the loan and such property should be described as nearly as may be in the manner prescribed in section 21 of the Indian Registration Act, 1908.]

Special Loans Officer.

I have understood and agree to the aforesaid terms and conditions.

Signature of borrower.

Note.—The words in italics in paragraph 1 of this form are specially intended for the loans granted to minors and may be struck out in other cases.

Recoveries.

Date of payment.	Amount Paid Rs.	Signature (with date) and designation of the officer receiving the payment.
(1)	(2)	(3)

FORM F.

[SEE RULE XII (2)]

Notice to applicant.

Application No.....of.....on the file of the Special Loans Officer of.....

To.....son of.....residing at.....hamlet of.....village.

You are hereby required to appear in person with your sureties, if any, before.....on.....at.....to sign and receive the loan order, and to execute the necessary documents furnishing security.

If you fail to appear your application is liable to be rejected.

CAMP.

Date.

Special Loans Officer.

FORM G.

[SEE RULE XII (2)]

Security bond to be executed by a borrower or borrowers

This instrument made the.....day of.....between
.....(hereinafter called " the mortgagor") of the one part and
the Right Hon. the Secretary of State for India in Council (hereinafter called
the 'Mortgagee') of the other part.

*Whereas the property more particularly described in the schedule hereto
belongs to a minor of the age of.....years (hereinafter called ' the minor')
and whereas the mortgagor herein is the duly constituted guardian of the said
minor and whereas the mortgagor as such guardian has applied for and has
received from.....acting for and on behalf of the mortgagee an order
under the Agriculturists' Loans Act, 1884, as amended by Madras Act XVI of
1935, and dated the.....day of.....in virtue of which the mortgagor
as such guardian is entitled to receive the aggregate sum of.....Rupees
as a loan for the mortgagee for the purpose of.....*

AND WHEREAS security for the punctual repayment of the same, according
to the terms of the said order, is demanded by or on behalf of the mortgagee
and in order to furnish such security the mortgagor has agreed to sign these
presents.

AND WHEREAS *the mortgagor being satisfied that a mortgage of the piece
or parcel of land intended to be hereby granted, conveyed and assigned for the
purpose of securing the said loan is for the benefit of and advantageous to the
minor and his estate.*

NOW THESE PRESENTS WITNESS, that in consideration of the said loan and
in pursuance of the said agreement the mortgagor *on behalf of the said minor
and in exercise of the powers for this purpose given to or vested in him as such
guardian as aforesaid and of all and every other power enabling him in this
behalf* doth hereby transfer to the mortgagee, his successors and assigns, the
lands described in the schedule hereunder written, with the appurtenances there-
to, subject to redemption as hereinafter mentioned.

AND it is hereby agreed that if the mortgagor, his successors and assigns,
or the said minor, shall duly comply with the terms on which the said loan has
been granted and shall duly repay the amount of the said loan together with any
interest which may have become payable thereon or on any part thereof and all
costs if any, incurred by the mortgagee, his successors or assigns in making the
said loan or otherwise in connection therewith, the mortgagee, his successors or
assigns shall thereupon retransfer the said lands to the mortgagor, his legal
representatives or assigns *or the said minor* or as he or they shall direct.

PROVIDED ALWAYS and it is hereby agreed that in case the mortgagor, his
successors or assigns *or the said minor*.....shall fail to comply
with the terms on which the said loan has been granted or shall not duly repay
the amount of the said loan or any part thereof or any interest thereon or any
part thereof or any such costs as aforesaid, then and in any such case it shall be
lawful for the mortgagee, his successors and assigns or the.....

.....for the time being of.....
to sell the said lands or any part thereof and out of the proceeds of such sale
to make good to the mortgagee, his successors, or assigns, the amount which, in
consequence of any such default, shall be payable by the mortgagor, his succes-
sors or assigns or *the said*.....under the terms of the
said order.

*Provided also that the rights and remedies contained herein shall not in
any way prejudice, affect, or limit the mortgagee's rights under the*.....
.....*Act.*

In witness whereof, the mortgagor has hereunto set his hand the day and
year first above written.

The Schedules above referred to,

Regis- tration District.	Regis- tration Sub District.	Vil- lage.	Sur- vey No.	Wet or Dry.	Ex- tent Acs.	Assess- ment. Rs.	Trees, wells, etc.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

Witness

Signature of borrower.

(Sd.) (1).....,son of.....,village of.....

(Sd.) (2).....,do.....,do.....

Signed by the above **named** }
borrower and witnesses }
in the presence of the }

(Sd.).....

SPECIAL LOANS OFFICER.

Note.—The words in italics in this form are specially intended for
loans granted to minors, and may be struck out in other cases,

FORM G (1).

[SEE RULE XII (2)]

Security bond to be executed by a surety for a borrower.

This instrument made the.....day of.....193.....between...
.....of.....(hereinafter called "the mortgagor")
of the one part and the Right Honourable the Secretary of State for India in
Council (hereinafter called "the mortgagee") of the other part.

WHEREAS..... has received from the.....of
have
.....acting for and on behalf of the mortgagee an order under
the Agriculturists' Loans Act, 1884, as amended by Madras Act XVI of 1935, and
dated the.....day of.....193.....in virtue of which the said.....is
are
entitled to receive the aggregate sum of Rupees.....as a loan from the
mortgagee for the purpose of.....

AND WHEREAS security for the punctual repayment of the same, according to the terms of the said order, is demanded by or on behalf of the mortgagee, and in order to furnish such security the mortgagor has agreed to sign these presents,

Now these presents witness that, in consideration of the said loan and in pursuance of the said agreement, the mortgagor doth hereby transfer to the mortgagee, his successors and assigns, the lands, described in the schedule hereunder written with the appurtenances thereto, subject to redemption as hereinafter mentioned, and it is hereby agreed that, if the said..... ^{his} _{their} legal representatives and assigns shall duly comply with the terms on which the said loan has been granted and the said.....Or ^{his} _{their} legal representatives or assigns or the mortgagor or his legal representatives shall duly repay the amount of the said loan together with any interest, which may have become payable thereon or on any part thereof and all costs, if any, incurred by the mortgagee, his successors or assigns in making the said loan or otherwise in connection therewith, the mortgagee, his successors, or assigns shall thereupon retransfer the said lands to the mortgagor, his legal representatives, or assigns or as he or they shall direct.

Provided always and it is hereby agreed that in case the said..... ^{his} _{their} legal representatives or assigns shall fail to comply with the terms, on which the said loan has been granted, or in case the said..... ^{his} _{their} legal representatives or assigns or the mortgagor or his legal representatives shall not duly repay the amount of the said loan or any part thereof or any interest thereon or on any part thereof or any such costs as provided for in the said order, then and in any such case it shall be lawful for the mortgagee, his successors and assigns or the.....Collector for the time being of.....to sell the said lands or any part thereof and out of the proceeds of such sale to make good to the mortgagee, his successors or assigns the amount which in consequence of any such default shall be payable by the said..... ^{his} _{their} legal representatives or assigns.

Provided also and it is hereby agreed that although as between the saidand the mortgagor the mortgagor is surety only for the said..... yet as between the mortgagor and the mortgagee the mortgagor is to be considered as a principal debtor for the principal moneys, interest, and costs intended to be hereby secured so that the mortgagor or his legal representatives shall not be released or exonerated by time being given to the said.....or ^{his} _{their} legal representatives or by any other dealing, act, matter, or thing whatsoever whereby the mortgagor or his legal representatives as surety or sureties only for the said..... and ^{his} _{their} legal representatives would be so released or exonerated.

In witness whereof the mortgagor has hereunto set his hand the day and year first above written.

The schedule above referred to—

Registra- tion Dis- trict.	Registra- tion sub- district.	Village.	Survey number.	Wet or dry.	Extent Acs.	Assessment.	Trees, wells etc.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

(Sd.)

Signature of surety.

Witness.

(Sd.) (1).....son of.....village of.....

(Sd.) (2).....:.....son of.....village of.....

Signed by the above-named
surety and witnesses in the
presence of the

}
(Sd.)

Special Loans Officer.

FORM H.

[SEE RULE XI (2)]

Notice intimating the rejection of application.

Application No.....of.....on the file of the Special Loans Officer of.....(name).....of village..... is hereby informed that his application for a loan of Rs.....under the Agriculturists' Loans Act, 1884, as amended by Madras Act XVI of 1935, has been rejected for (state here briefly the grounds of rejection).

Station. (Sd)

Date. *Special Loans Officer.*

To the applicant.

Copy to his creditor (or each of his creditors.)

FORM I.

[SEE RULE XII (2)]

Notice to creditor or creditors.

Application of..... on the file of the Special Loans Officer of.....

To.....son of.....residing at.....hamlet of.....village..... You are hereby required to appear in person or by duly authorised agent before me on..... and receive payment of the amount due to you from the said.....

If you fail to appear on the date *you will get no interest for the period between that date and the date on which you actually appear to receive payment.

Comp.

(Sd.)

Date.

Special Loans Officer.

FORM J.

[SEE RULE XII (3)]

Receipt for the payment of loan.

Treasury.....District.....month of.....193...

Head of Service chargeable

Number of Voucher.

(1)

(2)

Received this.....day of.....193..... the sum of Rs being the amount due to me..... (name) of..... in full settlement of the amount due to me under the *pronote*/mortgage deed dated..... from (here enter the name of the borrower)..... the borrower in loan order No.....dated.....193...under the Agriculturists' Loans Act, 1884, as amended by Madras Act XVI of 1935. The said *pronote*/mortgage deed is herewith attached with the discharge of the debt duly certified thereon.

(Sd.) Claimant.....

(Stamp if required.)

APPENDIX—V (a)

THE BENGAL MONEYLENDERS ACT, 1933.

*[Bengal Act VIII of 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—

(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 moneylender before the commencement of this Act it is found that the arrears of interest amount to a sum greater than the principal of the loan, the Court, unless it is satisfied that the moneylender 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.

Power to limit interest recoverable in certain cases.

5. No moneylender 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.

Bar to recovery of interest exceeding the principal.

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.

7. (1) Every moneylender, 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.

Moneylender 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 moneylender 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 moneylender 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 moneylender by postal money-order any sum of money due from him to the moneylender in respect of a loan and the moneylender 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 moneylender and the Court on receiving the prescribed fee from the debtor shall keep the said sum in deposit and shall send a notice of the deposit in the prescribed manner to the money-lender.

Deposit in Court of money due to money-lender.

(2) If a moneylender 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 moneylender 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 moneylender.

APPENDIX—V (b)

*THE CENTRAL PROVINCES DEBT CONCILIATION ACT, 1933

[Act No. II of 1933 as Amended by Acts No. I of 1934 and No. XIV
and No. XXVIII of 1935 and No. XV of 1936.]

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

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*THE CENTRAL PROVINCES DEBT CONCILIATION ACT, 1933.

[Act No II of 1933 as Amended by Acts No. I of 1934 and No. XIV
and No. XXVIII of 1935 and No. XV of 1936.]

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

Preamble. 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 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

Definitions.

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

(a) the expressions "*malik-makbuza*", "proprietor", "*raiyyat*", "*raiyyat-malik*" and "village" shall have the meanings assigned to them in the Central Provinces Land Revenue Act, 1917 [*C.P. Act 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 [*C. P. Act. 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 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 ;

* All subsequent amendments have been incorporated and they are printed in *italics* in the body of the sections.

† The Act came into force on the 1st April 1933 by Notification No. 957-765-XII, dated the 17th March 1933.

(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 ;

(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 *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.

Establishment of Debt Conciliation 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 *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) †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 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 :—

Application for settlement between debtor and his creditors.

Provided that no application shall be made if the debtor's debts exceed twenty-five 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.

Verification of application.

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, 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 :—

* For the word " five " the word " nine " was inserted by Act I of 1934.

† Inserted by the Act XXVIII of 1935.

‡ Sub-section (5) to section 3 was inserted by Act XIV of 1935.

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

Procedure on application. 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 :

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.

*7-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.*

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 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 submitted to the Board in writing on or before such date as the Board*

* Newly added by S. 2 of the C. P. (Amendment) Act XV of 1936.

† Substituted by Act XVI of 1935.

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 * or that he was prevented from complying with the provisions 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 (1) of section 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.

Procedure in submission of statement of debts.

* *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.

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.

Board to endeavour amicable settlement.

11. (1) Subject to the provisions of sections 132 and 133 of the Code of Civil Procedure, 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 for the purposes of any inquiry under this Act.

Power of Board to require attendance of persons and production of documents and to receive evidence.

* This Proviso was inserted by Act XXVIII of 1935.

(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.

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 * a list of immoveable 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 *one month* from the date of its making, 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.

(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.

‡ 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 immoveable 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.*

†† 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 the 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:—*

* Inserted by S. 3 of the C. P. (Amendment) Act XV of 1936.

† For the words "fourteen days" the words "one month" were inserted by Act XIV of 1935.

‡ Newly added by S. 4 of the C. P. (Amendment) Act XV of 1936.

†† Substituted for the old S. 13 by S. 5 of the C. P. (Amendment) Act XV of 1936.

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.

**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.*

Suspension of pending application or suit.
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 proceeding under this Act the time during which such proceeding 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).

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 ;

* This revised section 21 was inserted by Act XIV of 1935.

- (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) 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.

General provisions regarding rules.

26. (1) All rules for which provision is made in this Act shall be made by the Local Government and shall be consistent with this Act.

(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 C. P. DEBT CONCILIATION ACT, 1933

* In exercise of the powers conferred by section 25 of the Central Provinces Debt Conciliation Act, 1933 (C. P. Act II of 1933), read with section 21 of the Central Provinces General Clauses Act, 1914, (C. P. Act I of 1914), the Local Government is pleased to make, after previous publication, the following rules for the purposes mentioned therein :—

R U L E S

1. (1) These rules may be called the Central Provinces Debt Conciliation Rules, 1933.

(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 :—

Quorum.

(i) In the case of a Board where the number of.....2
members is 3.

(ii) Where the number of members is more.....3
than 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.

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 authorized 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-makbuzā*, 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 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 situated.

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 copy by regis-

* Vide C. P. Notification No. 528—2961—XII, dated 3—2—'34.

tered 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.

19. Every application to the Board shall be stamped with a court-fee stamp of the value of eight annas.

20. Process fees shall be paid 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 one anna.

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 290 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 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 Chairman 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.

*In 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, 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 office 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 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. 8 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 counter sign 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-servicing 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.

FORM No. I

Form of application referred to in rule 6

To—The Debt Conciliation Board,

.....tahsil.

Under section 4 of the Central Provinces Debt Conciliation Act, I.....
son of..... caste....., resident of.....
tahsil, beg to apply for settlement of my debts between my creditors
claims debtor
 and myself. The particulars required by section 6 of the Act are as follows :—

Name, residence and full address of creditor or debtor.	Amount of debt or claim owed.	Particulars of debts, claims including date of commencement, rate of interest, whether secured, and if so, how, etc.
1	2	3
Total ...		

2. I hereby declare that I am unable to pay the debts owed by me as shown above.

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

Property

Specification of property.	Village.	Total area or extent of share and home-farm.	Rent or revenue payable.	Value.	Remarks.
1	2	3	4	5	6
(1) <i>Immoveable</i> — Village shares ... Malik-makbuza holding. Tenancy ... Houses ...					

* Vide C. P. Notification No. 514—X—11, dated 14—2—'34.

(2) *Moveable, including cash.*—Description. Value—
 (3) *Claims due*—

Name and address of debtor.

Amount due.

N. B.—Paragraphs 2 and 3 will be scored out in the case of creditors.

Signature of applicant.

Verified that the contents of paragraph of the applica-
 tion are true upon the personal knowledge of, and those in paragraph
 upon information received and believed to be true by the undersigned.

Declared at.....on.....

Signature of applicant.

FORM No. II

Form of Certificate.

[*Section 21 of the Central Provinces Debt Conciliation Act, 1933,
 and rule 11 of the Central Provinces Debt Conciliation Rules, 1933.*]

This is to certify that an application has been made to this Board for the
 settlement of the debts of.....(debtor) among which is a debt of
 Rs.....which the aforesaid debtor is said to be
 owing to.....of.....(creditor).

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

(Seal of the Board,)

Signature of Chairman,

Debt Conciliation Board,

.....*district.*

FORM No. III

Form of notice to creditors or debtor under sub-section (2) of section 7 of the Central Provinces Debt Conciliation Act, 1933.

[*Rule 14 of the Central Provinces Debt Conciliation Rules, 1933.*]

Notice is hereby given to.....
 that an application under section 4 of the aforesaid Act has been submitted for
 the settlement of the debt of.....and will be
 examined by the Board, together with any objections that may be preferred by
 any person interested at.....at.....o'clock on
 the.....day of... 193 .

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

(Seal of the Board,)

Signature of Chairman,

Debt Conciliation Board,

.....*district.*

* FORM No. IV

Form of notice under sub-section (1) of section 8 of the Central Provinces Debt Conciliation Act, 1933.

[Rule 15 of the Central Provinces Debt Conciliation Rules, 1933.]

Whereas....., son of....., caste....., of....., tahsil..... debtor has submitted an application under section 4 of the aforesaid Act for the settlement of the debts of....., son of....., caste....., of....., tahsil..... and whereas the Board is of the opinion that it is desirable to attempt to effect a settlement between the said debtor and his creditor, 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 them by the said debtor. The Board will scrutinize this statement at 11 a. m. on.....day.....when you should appear before the Board.

2. You All the creditors are also required to 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 you they rely to support your their claims, together with a true copy of every such document.

Attention is invited to section 8 (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.

3. 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 Chairman, Debt Conciliation Board,district.

*Vide C. P. Notifications No. 339-2758-XII dated 5-2-34 and No. 1899-XII, dated 7-6-35.

FORM. No VI.

Form of Certificate under section 13 2) of the Central Provinces Debt Conciliation Act, 1933.

[Rule 43 of the Central Provinces Debt Conciliation Rules, 1933.]

This is to certify that every reasonable effort was made by me or under my orders to recover the arrears of the amount due fromofto.....of of under agreement No.registered at... .. on..... by the Chairman of the Debt Conciliation Board,.....The amount of the arrear recovered is Rs,.....and the irrecoverable balance is Rs.....

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

(Seal of Deputy
Commissioner.)

Signature of the Deputy Commissioner,
.....district.

FORM No. VII

Form of Certificate under section 15 (1) of the Central Provinces Debt Conciliation Act, 1933.

[Rule 44 of the Central Provinces Debt Conciliation Rules, 1933.]

*This is to certify that during proceedings No. of.....under the Central Provinces Debt Conciliation Act, 1933, between.....of..... (debtor) on one hand and.....of..... (creditor) on the other hand, for the settlement 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 8 (1) of the Act.

[Particulars.]

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

(Seal of the Board.)

Signature of the Chairman,
Debt Conciliation Board,
.....district.



APPENDIX—V (c)

† CENTRAL PROVINCES MONEYLENDERS ACT, 1934

(Act No. XIII of 1934 As amended by C. P. Act
No. XIII of 1936.)

[This Act has also been applied to Berar and shall come into force on the
1st April 1935 in the Central Provinces and Berar]

An Act to regulate the transactions of moneylending in the Central Provinces.

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 ;

† The Act in the main is an educative one, the chief object being to
protect the debtor from the consequences of his own ignorance. It is not
intended exclusively for the benefit of the debtors belonging to the agriculturist
class but the intention is that the greatest benefit from it should be derived by
them. With his account periodically before him, the debtor will be more alert
to the growth of his liabilities and will have an opportunity of taking stock of
his position from time to time. The provisions are simple to follow and have
been framed with a view to enable even the pettiest moneylender to adapt his
methods of accounting to them.

"2. Under section 3 (i) of the Act the moneylender has to maintain the
account of each debtor separately in the usual way in which he has been keeping
it, and to send to the debtor regularly every year at the time when accounts are
usually closed for that year, a statement in the form given in the schedule
attached to the rules framed under the Act, in the court language of the district,
showing separately the various transactions entered into during the period and
also the interest on each loan advanced to him separately. Government has
after ascertaining the time when accounts are closed, laid down in rule 10 the
time when such statements should be sent to debtors. The Act does not make
it obligatory for the debtor to admit or deny the accuracy of the accounts. In
order that the object of the Act should be fulfilled, it is essential that the debtor
should study the statements sent to him by the creditor or have them
explained to him.

"3. The provisions of sections 3, 4, 5 and 6 do not apply to loans advanced
before the Act came into force. But if any transaction in respect of such a loan
is entered into after such date the provisions will apply to that transaction.
The act also makes the rule of "*damdapat*" applicable in a modified form and
empowers Courts to direct payment of decretal amount by instalments."
Explanatory Note to the Act.

It is hereby enacted as follows :—

Short title, extent and commencement. 1. (1) This Act may be called the Central Provinces Moneylenders 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 Indian Legislature ;
- (ii) "company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or any of the Colonies or Dependencies thereof, or in British India, or incorporated by an Act of Parliament, or by Royal Charter or Letters Patent and includes Life Assurance Companies to which the Indian Life Assurance Companies Act, 1912, (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) "moneylender" 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—
 - (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 Government or by any local authority authorized by Government,
- (d) 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, (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,
- (f) a transaction which is in substance a mortgage or sale of immoveable property ;
- (g) a loan advanced to an agricultural labourer by his employer ;

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

*(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 moneylender 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 moneylender 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 shall be shown as separate and distinct from the principal sum and separate totals of principal and interest shall be shown. The moneylender shall not, 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 moneylenders 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.

Evidential value of copies of accounts

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 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.

Debtors not bound to admit correctness of accounts supplied.

6. Every moneylender, 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 moneylender 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 moneylender, it shall, if the plaintiff's claim is established in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs ; and
- (c) if the court finds that the provisions of clause (b) of sub-section (1) of section 3 have not been complied with by the moneylender, it shall, in computing the amount of interest due upon the loan, exclude every period for which the moneylender omitted duly to furnish the account as required by that clause :

Provided that if the moneylender has, after the time prescribed in that clause, furnished the account and the plaintiff satisfies the court that he had sufficient cause for not furnishing it earlier, the court may, notwithstanding such omissions include any such period or periods for the purpose of computing the interest.

Explanation.—A moneylender who has maintained his account and furnished his annual statements of accounts in the prescribed form and manner shall be held to have complied with the provisions of clauses (a) and (b) of

sub-section (1) of section 3 in spite of any errors and omissions, if the court finds that such errors and omissions are accidental and not material and that the accounts have been kept in good faith with the intention of complying with the provisions of those clauses.

8. The provisions of sections 3, 4, 5, 6 and 7 shall not apply to any loan made before this Act comes into force :

Provided that, if any fresh transaction in respect of a loan made before this Act comes into force is made after this Act comes into force, such transaction shall be subject to the provisions of those sections.

9. Notwithstanding anything contained in any other enactment for the time being in force, no court shall decree, in respect of any loan made before this Act comes into force, on account of arrears of interest, a sum greater than the principal of such loan, unless it is satisfied that the moneylender has reasonable grounds for not enforcing his claim earlier.

Power of Court to limit interest to the extent of principal of loan.

10. No court shall, in respect of any loan made after this Act comes into force, decree on account of arrears of interest a sum greater than the principal of the loan.

11. The court may at any time on the application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after this Act comes into force, in respect of a loan shall be paid in such number of instalments and subject to such conditions on the dates fixed by it as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

Power to direct payment of decretal amount by instalments.

Register of moneylenders.

*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).

11-B. (1) Every moneylender shall register himself as a moneylender by an application made to the Sub-Registrar of any sub-district of the district or districts in which the principal place of business of such moneylender or a branch thereof is situate and, on such registration, the Sub-Registrar shall grant a registration certificate to the moneylender in such form as may be prescribed.

Registration of moneylenders and registration certificates.

(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 :

Registration fee. *Provided that the Local Government may, by notification, exempt any class of persons from the payment of registration fee either generally or for any specified area.*

Duration of registration certificate.

11-D. A registration certificate granted under section 11-B shall be in force for four years from the date of the registration.

11-E. (1) No moneylender shall, after the expiration of three months from the date on which this section is brought into force, carry on his business as moneylender in any district without obtaining a registration certificate under section 11-B for such district.

Bar to carry out business without registration certificate. (2) Whoever contravenes the provision of sub-section (1) shall be punishable with fine which may extend to fifty rupees, or, if he has previously been convicted of an offence under that sub section, with fine which may extend to one hundred rupees.

Penalty. **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.

Composition of offences. (2) On payment of such sum of money, the person who 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 Local 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 Local Government may make rules prescribing—

(a) the manner and form with numerals in which statements of accounts shall be furnished and the details to be given in such statement under clause (b) of sub-section (1) of section 3 ; and

(b) the manner in which copies of entries in the account shall be certified under section 4.

- * (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 FRAMED UNDER THE C. P. MONEY-LENDERS ACT, 1934.

[C. P. Act No. XIII of 1934.]

Government has framed the following rules under sub-sections (1) and (3) of the Central Provinces Moneylenders Act, 1934, (XIII of 1934), as amended by C. P. Act XIII of 1936. The rules are intended both for the Central Provinces and Berar.

1. These rules may be called the "Moneylenders Accounts Rules".
2. They shall come into force on the 1st April 1935.
3. In these rules, unless there is anything repugnant in the subject or context "the Act" means the Central Provinces Moneylenders Act, 1934.
4. The statement of accounts prescribed in clause (b) of sub-section (1) of section 3 of the Act, shall be furnished to the debtor in the court language of the district, in the form shown in the schedule hereto annexed.

NOTE.—Government does not assume any responsibility for supplying to creditors the forms they may require and each creditor should make his own arrangements for obtaining such forms as he may require, to enable him to send the statement of accounts to his debtor in due time.

5. The numerals to be used for the purpose of making entries in the statement shall be the same as those ordinarily used with the particular language employed.

6. The name and address of the debtor, and, in the case of joint-debtors, of each joint-debtor, shall be entered at the head of the account maintained by the creditor in accordance with sub-section (1) of section 3 of the Act.

7. In column (1) of the account will be shown so far as is possible the exact date on which the transaction took place.

8. The rate of interest as agreed on by the parties for each advance, whether in cash or kind, shall be shown in words in the column provided for the purpose in the form prescribed,

9. The value of repayments in kind and the amount appropriated from all repayments to principal and interest separately, shall be shown in the column provided in the prescribed form, on the date on which the transaction actually took place.

10. The statement shall be sent to the debtor within one month of the date or time specified below according to the area in which he resides :—

Area.	Date or time.
Nagpur civil district	... Divali (for cash accounts), Vaishakh Badi 30 (for grain accounts).
Wardha civil district	... Do. do.
Jubbulpore civil district	... Do. do.
Hoshangabad civil district	... Do. do.
Chhindwara civil district	... Do. do.
Nimar civil district	... Do. do.
Raipur civil district	... Do. do.
East Berar civil district	... Do. 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. One copy of the statement of accounts shall be sent to the debtor at his cost in accordance with the provisions of rule 11, by sending it by registered post, acknowledgment due, to the address entered at the head of the account in accordance with rule 6.

Where there are two or more joint-debtors the statement of account shall, in the absence of any contract to the contrary be furnished to the joint-debtor who signs first in the document relating to the loan in question.

14. Certified copies of the entries in the account shall be admissible in evidence for any purpose in the same manner and to the same extent as the original entries, only when they bear a certificate, dated and countersigned by some person who has examined and compared the copy with the original, to the effect that " the copy is a true copy of the account as maintained by the creditor and communicated to the debtor under the provisions of the Act."

The schedule above referred to—
Loan Account of *son of* *caste* *Residence*

Opening balance (if any)
 Principal
 Interest

JAMA.				NAMA.						
Date.	Particulars of repayment, whether cash or kind, in words	Repayment figures.		Remarks.	Date.	Particulars of advance in words whether cash or kind.	Advance in figures.		Amount of interest charged.	Re-marks
		Cash.	Kind (number and weight)				Cash.	Kind (number and weight).		

Add opening balance as above ...
 Principal. Interest Balance outstanding on.....19 .
 Total ...

(Signature) Creditor or Agent.

The Central Provinces Moneylenders (Amendment) Act, 1936.
[C. P. Act No. XIII of 1936.]

[Published in the *Central Provinces Gazette*, dated the 1st May 1936]

An Act to amend the Central Provinces Moneylenders Act, 1934

Preamble. WHEREAS it is expedient to amend the Central Provinces Moneylenders Act, 1934, (C. P. Act XIII of 1934), in the manner herein-after appearing;

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, commencement and duration.

1. (1) This Act may be called the Central Provinces Moneylenders (Amendment) Act, 1936.

(2) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf and shall remain in force for four years from that date.

Amendment of section 2, C. P. Act XIII of 1934.

2. After clause (viii) of section 2 of the Central Provinces Moneylenders Act, 1934 (C. P. Act XIII of 1934) (hereinafter referred to as the 'said Act'), the following clause shall be inserted, namely:—

(ix) 'Sub-Registrar' means a Sub-Registrar appointed under the Indian Registration Act, 1908 (XVI of 1908).

Insertion of sections 11-A, 11-B, 11-C, 11-D, 11-E, and 11-F, C. P. Act XIII of 1934.

3. After section 11 of the said Act, the following sections shall be inserted, namely:—

Register of moneylender.

11-A. (1) Every Sub-Registrar shall maintain a register of moneylenders in such form and containing such particulars as may be prescribed.

(2) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (I of 1872).

11-B. (1) Every moneylender shall register himself as a moneylender by an application made to the Sub-Registrar of any sub-district of the district or districts in which the principal place of business of such moneylender or a branch thereof is situate and, on such registration, the Sub-Registrar shall grant a registration certificate to the moneylender in such form as may be prescribed.

Registration of moneylenders and registration certificate.

(2) Every application made under sub-section (1) shall be in writing and shall contain such particulars as may be prescribed.

11-C. Any person who makes an application for registration under section 11-B shall pay such registration fee, not exceeding eighteen rupees, as may be prescribed for the district in which it is granted and such fee shall be payable by means of court-fee stamps affixed to the application :

Provided that the Local Government may, by notification, exempt any class of persons from the payment of the registration fee either generally or for any specified area.

Duration of registration certificate. **11-D.** A registration certificate granted under section 11-B shall be in force for four years from the date of the registration.

Bar to carry out business without registration certificate. **11-E.** (1) No moneylender shall, after the expiration of three months from the date on which this section is brought into force, carry on his business as moneylender in any district without obtaining a registration certificate under section 11-B for such district.

Penalty. (2) Whoever contravenes the provision of sub-section (1) shall be punishable with fine which may extend to fifty rupees, or, if he has previously been convicted of an offence under that sub-section, with fine which may extend to one hundred rupees.

Composition of offences. **11-F.** (1) The Deputy Commissioner may accept from any person who has committed an offence against sub-section (1) of section 11-E a sum of money not exceeding one hundred rupees by way of composition for such offence.

(2) On payment of such sum of money, the person who has committed an offence, if in custody, shall be discharged, and no further proceedings shall be taken against him in regard to the offence so compounded.

Amendment of section 12, C. P. Act XIII of 1934. **4.** After clause (b) of sub-section (3) of section 12 of the said Act, the following clauses shall be inserted, namely :—

- (c) the form and particulars of a register under section 11-A,
 - (d) the form of registration certificate under section 11-B (1),
 - (e) the particulars of an application under section 11-B (2), and
 - (f) the registration fee under section 11-C.
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APPENDIX—VI

THE CIVIL PROCEDURE CODE, 1908

[Relevant Sections.]

S. 34. (1). Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Interest.

(2) Where such a decree is silent with respect to the payment on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

S. 35. (3) The Court may give interest on costs at any rate not exceeding six per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

The Civil Procedure Code, 1908, [As amended by India Act XXI of 1936]

PROCEDURE IN EXECUTION

*Powers of Court
to enforce execu-
tion.*

S. 51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed ;
- (b) by attachment and sale, or by sale without attachment of any property ;
- (c) by arrest and detention in prison ;
- (d) by appointing a receiver ; or
- (e) in such other manner as the nature of the relief granted may require.

* *Provided that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—*

- (a) *that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree—*

* The Proviso to S. 51 was added by the Amending Act XXI of 1936.

- (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
- (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof, and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

ARREST AND DETENTION IN CIVIL PRISON.

Order 21 Rule 37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court *shall*, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

† *Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.*

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment-debtor.

† **Order 21 Rule 40.**—(1) *When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.*

* The word *shall* was substituted for "May" by the Amending Act XXI of 1936.

† The Proviso to sub-rule (1) was added by the Amending Act XXI of 1936.

‡ Substituted for the old Or. 21 R. 40 by the Amending Act XXI of 1936.

(2) Pending the conclusion of the enquiry under sub-rule (1) the Court, may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may subject to the provisions of section 51 and to the other provisions of the Code make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest :

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days, or release him on furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.

ATTACHMENT.

Proviso to S. 60. (1) Provided that the following shall not be liable to attachment or sale, (in execution of a decree):—

(b) Tools of artisans and, where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section.

S 61. The Local Government, may, by general or special order published in the local official Gazette, declare that, such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Local Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

Partial exemption of agricultural Produce.

Order 38, Rule 12. Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the court to order the attachment or production of such produce.

Agricultural Produce not attachable before judgment.

APPENDIX—VII

INSOLVENCY ACTS

Provincial Insolvency Act (Act V of 1920).

Petition and adjudication. **S. 7 [Section 10 of the Presidency Towns Insolvency Act.]** Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may, on such petition, make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Conditions on which creditor may petition. **S. 9. [Section 12 (1) of the Presidency Towns Insolvency Act.]** A creditor shall not be entitled to present an insolvency petition against a debtor unless—

- (a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and,
- (b) the debt is a liquidated sum payable either immediately or at some certain future time, and
- (c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

Conditions on which debtor may petition. **S. 10. (1) [Section 14 (1) of the Presidency Towns Insolvency Act.]** A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts, and

- (a) his debts amount to five hundred rupees, or
- (b) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money, or
- (c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.

S. 28. (1)

* (2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a Receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt proveable under the Act shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose.

* The corresponding section of the Presidency Towns Insolvency Act, *viz.* Section 17 is identical in terms except for certain verbal alterations, and for the substitution, 'Official Assignee' for the words 'Court or Receiver.'

APPENDIX—VIII

ENACTMENTS ALLOWING INTEREST.

(a) The Interest Act, 1839 (Act XXXII of 1839.)

An Act concerning the allowance of interest in certain cases.

Preamble. WHEREAS it is expedient to extend to the territories under the Government of the East India Company, as well within the jurisdiction of Her Majesty's Court as elsewhere, the provisions of the Statute 3rd and 4th William IV, chapter 42, section 28, concerning the allowance of interest in certain cases ;

1. It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment ;

Power of Court to allow interest.

Provided that interest shall be payable in all cases in which it is now payable by law.

(b) The Madras Estates Land Act.

§. 81. An arrear (of rent) shall bear simple interest at the rate of one-half per cent per mensem from the date on which the arrear fell due, until it is liquidated.

(c) Negotiable Instruments Act (Act XXVI of 1881).

§. 80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realisation of the amount due thereon, or, until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate is specified.

(d) Provincial Insolvency Act (Act V of 1920).

§. 48. [Presidency Towns Insolvency Act, 1909, Rule 23 of Sch. II] (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is proveable under this Act, the creditor may prove for interest at a rate not exceeding six per centum per annum—

Interest.

- (a) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or
- (b) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Act includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

(e) The Indian Succession Act (Act XXXIX of 1925).

Interest when no time fixed for payment of general legacy.

S. 351. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exception.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed. **S. 352.** Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest upto such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest. **S. 353.** The rate of interest shall be four per centum per annum in all cases except when the testator was a Hindu, Muhammadan, Buddhist, Sikh or Jaina, or an exempted person, in which case it shall be six per centum per annum.

No interest on arrears of annuity within first year after testator's death.

S. 354. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

S. 355. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

(f) Land Acquisition Act, 1894 (Act No. I of 1894).

Payment of interest. **S. 84.** Where the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

APPENDIX—IX

ENACTMENTS DISALLOWING INTEREST.

(a) Civil Procedure Code, 1908.

Interest on deposit not allowed to plaintiff after notice. **Or. 24 R. (3)** No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of receipt of such notice, (*notice of deposit*), whether the sum deposited is in full of the claim or falls short thereof.

(b) The Indian Succession Act, 1925 (Act No. XXXIX of 1925).

Refunding to be without interest. **S. 365.** The refunding (*of legacies*) shall, in all cases, be without interest.

(c) Transfer of Property Act (IV of 1882)

Cessation of interest. **S. 84.** When the mortgagor or such other person as aforesaid (person entitled to institute a suit for redemption) has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money, shall cease from the date of the tender or in the case of a deposit where no previous tender of such amount has been made, as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, and the notice required by section 83 has been served on the mortgagee :

Provided that, where the mortgagor has deposited such amount, without having made a previous tender thereof, and has subsequently withdrawn the same or part thereof, interest on the principal money shall be payable from the date of such withdrawal.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to a reasonable notice before payment or tender of the mortgage-money, and such notice has not been given before the making of the tender or deposit, as the case may be.

APPENDIX—X

ENACTMENTS WHEREUNDER INTEREST IS IN THE DISCRETION OF THE COURT.

(a) Civil Procedure Code, 1908.

S. 34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

Interest.

S. 35. (3) The Court may give interest on costs at any rate not exceeding six per centum per annum, and such interest shall be added to the costs and shall be recoverable as such.

(b) The Land Acquisition Act, 1894.

S. 28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

Collector may be directed to pay interest on excess compensation.

APPENDIX—XI

THE PUNJAB REGULATION OF ACCOUNTS ACT, 1930.

[Punjab Act I of 1930.]

(Received the assent of His Excellency the Governor on the 19th January, 1930, and that of His Excellency the Viceroy and Governor-General on the 9th March 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.

Short title, extent and commencement.

1. (1) This Act may be called the Punjab Regulation of Accounts Act, 1930.

(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 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 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) " 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 or a deposit with any society or association registered under the Societies Registration Act, 1850, or under any other enactment ;
- (iii) a loan advanced by Government or by any local body authorised by Government ;
- (iv) a loan advanced by a bank, a co-operative society or a company whose accounts are subject to audit by a certificated auditor under the companies Act ;

- (v) a loan advanced to a trader ;
- (vi) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881 other than a promissory note ;
- (vii) a transaction which is, in substance, a mortgage or a sale of immoveable 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 moveable or immoveable, 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 to maintain and furnish accounts.

3. (1) A creditor shall in order to comply with the provisions of this 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 Local 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 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 Local 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 Local Government shall prescribe the forms and numerals in which the accounts required by this provision of the 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 *sub-judice* between two or more persons claiming as creditors adversely to each other unless and until the title has been finally decided by a court of competent jurisdiction.

(2) Entries in the account prescribed under clause (a) to sub-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.

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 provision 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 issues whether the creditor has complied with the provisions of clause (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.

Savings. 5. The provisions of this Act shall not apply to any loan advanced before the commencement of this Act :

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

Powers of Local Government to make rules. 6. (1) The Local Government may make rules 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 Local 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 Local Government shall, in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act, 1898, publish 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 Council. The Local Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Council next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.

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