

Gokhale Institute of Politics and Economics
Publication No. 6

Legislative Protection and Relief
OF
Agriculturist Debtors in India

BY

K. G. SIVASWAMY, B. A.

Member, Servants of India Society, and
Secretary, Servindia Rural Centre, Mayanoor.

[Price Rs. 4]

1939

Printed at the Aryabhushan Press, House No. 915/1 Bhamburda Peth,
Poona, by Mr. V. H. Barve and published by D. R. Gadgil, M. A.,
M. Litt. (Cantab), Director, Gokhale Institute of
Politics and Economics, Poona 4.

FOREWORD

The following monograph on the legislative measures regarding the protection and relief of agriculturist debtors in India is the result of an extended period of study and observation. In addition to his early experience of rural cooperation and welfare work Mr. Sivaswamy has spent the greater part of the last two years in a detailed study of the large number of enactments, bills, reports of committees etc. dealing with this question and in touring the various provinces of India in order to observe on spot the working of the legislative measures. I have to thank the Servants of India Society for permitting Mr. Sivaswamy to devote his time and energies towards the preparation of this publication and to thank the numerous officials and non-officials who have helped him at different stages of the study.

The legislative protection of agriculturist debtors in India has, a long history. The earliest legislative measures go as far back as the sixties of the last century. The beginnings are to be found in the Encumbered Estates and the Court of Wards Acts. This is essentially class legislation; a century after the beginning of British occupation of India Government was still thinking in terms of the landed gentry. Two serious disturbances heralded the advent of the new problems created by the commercial revolution and the modern judicial system. These two disturbances were the Santal rebellion of 1855 and the Deccan riots of 1872. The Deccan Agriculturists Relief Act — to whose consideration Mr. Sivaswamy devotes a whole chapter — is the first attempt to deal comprehensively with the new set of problems. This Act represents a most important land mark in credit legislative history and for the initial period of its operation it was distinctly beneficial. It certainly prevented the grosser abuses in rural moneylending that had developed under the British judicial system. The abolition of imprisonment for debt took away a formidable weapon from the hands of the creditor and the power given to courts to go into the history of the debt and to grant instalments eased the situation considerably for the debtor. For about a score of years after it was passed and under the care of a special judge the Act did good work. After that period many of its provisions were found to work obstructively and because of its many abuses and evasive practices were generated. In time, it became a target of general criticism and its repeal was universally advocated. Looked at retrospectively the D. A. R. Act is in the main a rural Moneylenders Act. Like the modern Moneylenders Acts — which

derive a great deal from it—the D. A. R. Act seeks mainly to regulate the general structure within which the rural credit machinery shall operate. This also is what may be called the operative part of the Act. Where the Act goes beyond the general aim, its provisions have remained a dead letter. The conciliation and arbitration machinery that it tried to set up almost never functioned; its insolvency provisions were not taken advantage of by the class of debtors; and the provision empowering the Collector to manage the lands of a debtor, enacted to mitigate sales of land to creditors, was not found to be workable.

The next step was taken in another province of smallholders—the Punjab. The Punjab Land Alienation Act addressed itself to a new problem. What was sought to be remedied was not the general abuse of the moneylending system but rather one specific evil—the passing of land from the hands of peasants into the hands of moneylenders. The method used was the prohibition of alienation of lands beyond a certain class; though prevention of alienation of land had been resorted to as early as 1872 in the Santal Regulations, its adoption for a settled peasantry was at this stage entirely novel. The Punjab Act achieved its immediate object—the preservation of land ownership in the hands of a certain class. But it failed to yield the other results expected of it; it failed to stay the process of the loss of lands on the parts of the small peasantry and it failed — by reason of giving rise to a new class of moneylenders — to lighten the heavy hand of the rural moneylender.

Another measure which early sought to grant some relief to the agriculturist against the harsh operation of the moneylending system was the exemption of a minimum produce and agricultural requisites from attachment provided under the Civil Procedure Code. This exemption from attachment, undoubtedly established an important principle, but the actual working of the provisions differed widely from province to province.

The D. A. R. Act and the Punjab Land Alienation Act arose naturally in provinces of small landholders where the abuses of the system of moneylending and its consequence, the dispossession of owner-cultivators, were more apparent than elsewhere. In the landlord provinces the landlord was often also the moneylender and hence the abuses arising out of the debtor-creditor relation could not always be visualised independently of the problems of the tenant-landlord relation. In these provinces the problem of protecting the debtor-cultivator—almost invariably a tenant—never took by itself an acute form and was, when tackled, dealt with as part of tenancy

legislation. Thus while the regulation of usufructuary mortgages became necessary as a result of the Punjab Land Alienation Act, in a landlord province a similar contingency would have to be covered by a regulation of sub-leases.

The area of the application of the D. A. R. Act was widened after the date of its passing, but its provisions were not incorporated in the legislation of any other province. The Punjab Land Alienation Act was adopted in the N. W. F. Province but in other provinces its principle was accepted only in connection with the protection of special classes, such as the aboriginal tribes. For the rest, apart from the enactment of the ineffective Usurious Loans Act (1918), the situation remained unchanged till 1930. Thus while the history of legislative protection covers a long period, and while, for most of the provisions contained in the Acts of the last decade, precedent may be found in enactments or regulations of an earlier period, the problem as we face it today is essentially a product of the last depression. The action taken by the various provincial governments to meet the depression was widely divergent. While in a province like the Central Provinces a series of enactments dealing comprehensively with the problem were passed between 1933 and 1938, in the neighbouring province of Bombay nothing whatever was even attempted till the latter year. For dealing with the situation created by the depression, the logical steps were, the declaration of a moratorium, the scaling down or adjustment of outstanding obligations and the provision of new credit and the regulation of the rate of interest and of the general business of moneylending. You do not find all these steps taken in the various provinces, nor is it always clear what principles were followed in shaping the new laws. The least divergence and difference of opinion is to be found regarding the provisions of the general Moneylenders Acts. In this respect the most serious universal defect is the non-provision of a supervisory or inspecting machinery. Without such a machinery the many regulatory provisions of these Acts are bound to remain largely inoperative. As regards the adjustment of debt and the form of the future credit machinery there is much divergence of opinion and some confusion of thought. In times of an acute depression like the one subsequent to 1929 the main argument in support of a scaling down of debts is the price fall, and the extent of the scaling down may well be measured by the extent of the price fall. But this argument and this measure is available only for a limited period after the onset of the depression. Except in the case of the U. P. Agriculturist Relief Act (1934) scaling down of debts was not attempted in any province as a measure directly arising out of the price fall. In all the other cases an attempt has been made to scale down debts, not as

a measure made specifically necessary by the depression, but rather as a preliminary of a reconstruction measure. The general device adopted for scaling down debts has been the Conciliation Board. The attempt has been to bring the debtor and creditor together and to get the debt scaled down largely as a result of voluntary agreement. There has no doubt been a varying measure of compulsion; obstinate creditors may be penalised in some ways and further, ease of recovery of instalments has been held out as an inducement. In the main, however, the scaling down is voluntary and does not presuppose any violent disturbance of the credit structure or the working of the credit machinery. It is obvious that in such a process no general rules regarding the measure of scaling down can be prescribed and that each case must be dealt with on its individual merits. It is, however, curious to find general measures of scaling down adopted even in some of the recent Acts, e. g. the Madras Act of 1938. The problem of debt adjustment is one of bringing about the largest measure of relief consistent with the continued working of the credit machinery. This gives rise to a number of problems of the structure of the conciliation machinery, the nature of awards and their enforcement which have all been discussed in great detail by Mr. Sivaswamy.

The adjustment of past debts is an immediate operation which takes place once for all within a short time and which cannot be visualised as being periodic. Whether in actuality it has to be repeated or not depends on the success achieved in dealing with the problem of future credit. Here the general frame-work is provided by the Moneylenders Acts, but a variety of additional specific measures have to be adopted to deal with the agricultural credit situation. A consideration of the positive measures for increasing the income of the agriculturists lies outside the scope of Mr. Sivaswamy's thesis. He is concerned with what can be achieved by legislative restrictions. The problem in this instance is how to induce the agriculturist to keep down his credit requirements within a given minimum even at a much lowered cost of credit. Limitations on voluntary or forced alienations of property and rights, limitations on the number of creditors, or limitations on the total amount of credit are the types of measures advocated or used. But in this all-important matter much more careful thinking and much more experience is required before we can be said to be near a satisfactory solution.

An outstanding impression that is bound to be created by a reading of Mr. Sivaswamy's careful record and discussion of the variety of provisions of the different enactments and their developments is of

how one thing leads to another. One aspect of this may be described in Mr. Sivaswamy's words as a race in legal safeguards and their evasion. This is well exemplified in such a case as the attempt in the Punjab to put down benami transactions. But there is another aspect also which owing to the limitations of his subject matter is not equally prominent in Mr. Sivaswamy's thesis. This aspect concerns the positive steps that governments are impelled to take as a corollary of their efforts at negative control; and this aspect has come to be more and more strongly emphasised during the last decade. Even here, as we have pointed above, there is nothing that is in principle novel. The administration of the Court of Wards Act not only contemplated the entire process of adjustment of debts, but also entailed the direct management of private estates by officers of government. The area of operation of State activity that comes under contemplation today is, however, enormously wider.

We are today, it seems safe to assume, standing on the eve of a period of a very extensive regulation of the agricultural industry by the State in India. At such a juncture it is necessary to emphasise the need for a very clear definition of their land policy on the part of our governments. It is a commonplace of thought that all problems in an economic or social sphere are closely interrelated. Policy regarding problems of agricultural credit or tenancy can only be decided in relation to our conception of the future of agriculture and of the peasantry. It will make a substantial difference to our decisions whether we contemplate an India of small individual holders or of large centralised farms. Every decision, of course, implies a policy in the background. Thus the Court of Wards Acts gave measure of the importance attached by Government to the landed gentry; and the Punjab Land Alienation Act reflected a land policy, as do even some detailed regulations such as the instructions to revenue officers under Sec. 40 of the C. P. Tenancy Act. What, however, is required today is to define land policy more clearly, explicitly, and comprehensively than was done on these previous occasions. What we mean may be made clear by a consideration of a specific question to which little attention seems to be yet paid. This is the question of how far and in what manner the idea of the economic holding shall be allowed to influence these legislative measures. When, for example, ownership of tenant rights are made inalienable shall the prohibition of alienation apply equally rigidly to both economic or uneconomic holders and shall such transfers as make for the creation economic holdings be encouraged or not? Or consider the provisions regarding the exemption of a minimum holding from attachment. Will this minimum

holding be defined as equivalent to an economic holding? And if so, will the sale of lands of uneconomic holders be permitted? This is no doubt a complex problem, but unless we courageously think it out, it may become more complex in the future because of today's legislation. It is also a part of policy to decide how far the state shall directly intervene in the affairs of the agriculturist, how far, for example, it shall take on itself to provide the credit requirements of the agriculturist. It is clear that most of today's measures contemplate no revolutionary change in the character of the credit machinery, and the nature of today's legislation is profoundly influenced by considerations of the continued working of the credit machinery. A radical method of adjusting debts seems, to have been adopted by the framers of the new Bombay Bill because they contemplate that in future every peasant whose debt is adjusted will be financed not by the old moneylenders but by the new agency of a resource society. Lack of information as to how this huge experiment is to be worked makes it impossible to judge of its merits, but it is a logical—though entirely novel—measure only if its premise regarding future finance is taken for granted.

All these questions which I have touched in passing and a host of others are treated with a commendable thoroughness by Mr. Sivaswamy in his monograph. He has also gone beyond the limits of the usual type of academic thesis and put forward detailed proposals of his own. Differences of opinion there may be regarding one or the other of Mr. Sivaswamy's proposals. To take one example, the case in favour of allowing freely alienation of ownership rights while creating permanent occupancy tenant rights in favour of expropriators, a policy not favoured by Mr. Sivaswamy may be supported by strong arguments. But whether one agrees with Mr. Sivaswamy or not, it will be admitted on all hands that his proposals have been carefully and consistently thought out and that they merit the most serious consideration on the part of all students of this subject.

D. R. GADGIL

PREFACE

My experience of rural work in the Tamil districts, as a result of my active association with the Co-operative and Panchayet movements in villages, and as the Secretary of the Rural Centre of the Servants of India Society at Mayanoor since 1928 has showed me that there are limits to the work of voluntary agencies. The latter cannot go beyond a certain measure. Civic and sanitary services may be undertaken, or some remunerative employment may be started, or better living ideas may be propagated to the extent to which one has funds, but many fundamental problems on whose solution depend the life and death of millions of agriculturist workers can hardly be solved by voluntary workers. What can a voluntary worker, for instance, do to prevent the exploitation of the agricultural worker by those who own lands, to provide an economic holding, to organise the leisure of the whole village in remunerative industries, to redeem the agriculturist from his load of irredeemable debts, to provide the necessary requisites of the agriculturist for his home and occupation, and to facilitate the sale of goods produced in the village? Legislation and State aid are simultaneously necessary, if rural work is to show any tangible success. The building of sound public opinion on rural questions and the organisation of peasants to press for their solution by the State should, therefore, receive as much attention, if not more, in any scheme of rural development, as acts of social service by voluntary workers, or projects for the joint effort of villagers do.

With this end in view, I was studying the debt problem of the agriculturists. The Director of the Gokhale Institute of Politics and Economics, Poona, Mr. D. R. Gadgil, M. A., M. Litt. (Cantab.), was kind enough to offer the help of his Institute in writing a thesis on the existing legislation for the protection and relief of agriculturist debtors. Mr. Gadgil also wanted that my studies of the existing law should be supplemented by a visit to different provinces to get a knowledge of its working. I visited C. P., U. P., Bihar, Bengal, and Orissa during November and December, 1937, and January 1938. Since then, owing to my preoccupations with my rural work, I could not give undivided attention to the completion of the thesis, and this explains the reason for the delay in publication.

My only justification for adding to the voluminous literature on the subject is the hope that this thesis will assist the workers in the field to put forth a definite scheme to Governments to undertake a complete legislation on the subject.

The time is opportune for pressing such a scheme, as all the governments, whether Congress or non-Congress, have pledged themselves to the electorates in unmistakable terms to relieve rural indebtedness. Governments, formed by the Congress particularly, have bound themselves to control usury (Karachi Fundamental Rights resolution), to declare a moratorium (Election Manifesto), to appoint special tribunals to inquire into the crushing burden of rural debt, and to liquidate debts which are unconscionable or beyond the capacity of the peasants to pay, (Resolution of the Faizpur Congress), to provide cheap credit facilities through the agency of the State (Election Manifesto), and to grant fixity of tenure and substantial reduction in rents to the tenants (Resolution of the Faizpur Congress).

I am thankful to Mr. D. R. Gadgil for not only discussing the various problems with me, but also assisting me in the arrangement of the ideas and their presentation. I am also thankful to the Governments of C. P., U. P., Bihar, and Bengal for giving me every facility to understand the working of debt legislation, and to the several friends of the Servants of India Society in different provinces who enabled me to study this question in all its aspects. To Mr. S. G. Vaze, B. A., Editor of the *Servant of India* and Mr. N. V. Phadke, M.A., LL.B., my colleagues in the Servants of India Society, my thanks are specially due for going through most of the proofs.

Poona,
8-5-1939

K. G. SIVASWAMY
Secretary,
Servindia Rural Centre, Mayanoor.

CONTENTS

CHAPTER I

LAW\$ TO PREVENT INDEBTEDNESS OF BIG LAND-HOLDERS

PAGE NO

Scope of the book—a review of legislation for the protection and relief of agriculturist debtors, 1—Transfer rights under pre-British rule and in Native States, 2—Growth of proprietary rights under the British rule, 3—Agricultural indebtedness and transfer of lands, 4—Since the depression, 5—Growth of indebtedness among tenants, 6—Civil law and the rural system of money-lending, 7—The defects in the civil law, 8—The indebtedness of land-holders, 9—Provisions of Encumbered Estates Relief Acts, 10—Administrative procedure, 11—State interference in property rights, 12—The Court of Wards Acts, 13—Ineffectiveness of the then existing law to prevent alienation of estates, 14—A scheme of family settlements, 15—The right of pre-emption to Government, 16—Restriction on the alienation of occupancy rights in 'Sir' lands, 17—Restriction on alienation of estates by land-holders, 18— No need for class legislation, 19 1-1.5

CHAPTER II

THE DECCAN AGRICULTURISTS' RELIEF ACT 1879

Devices to prevent transfers of land, 20—Investigation into the history of the bond, 21—Mode of taking an account, 22—Presence of defendants obligatory, 23—Arbitration. 24—Provisions to mitigate sales of land, 25—Insolvency provisions, 26—Village conciliators and courts, 27—A judicial machinery, 28—Registration of bonds, 29—Limitation of the period of suits, 30—Receipts and particulars of accounts, 31—Abolition of arrest and imprisonment of debtors, 32—Redemption before the due date, 33—Suing for accounts on secured debts, 34—Revision of decrees, 35—Instalments in suits for possession of properties, 36—Retrospective effect, 37—Courts to act of their own motion, 38—Limit of time for certificates, 39—Reservation of land for support of judgment-debtor, 40—Inclusion of agricultural labourer, 41—Mode of registration, 42—Attachment of standing crops, 43—The Commission of 1892: Results of the Act, 44—Benefits of the Act, 45—Evasions of the Law, 46—Determination of a fair rent and continuance of usufructuary mortgagees in possession of land to recover their debts, 47—Commission's recommendation to stop any kind of sale, 48—Postponement of repayments, 49—Transfer of possession to creditor or Collector not recommended, 50—Recovery of unsecured debts from the surplus of mortgaged property by sale of such property not recommended, 51—Reasons for failure of insolvency provisions, 52—Interest to be

decided by the court, 53-Attachment of standing crops a helpful method, 54-Abolition of the special judge, 55-A separate Village Courts' Act necessary, 56-Repeal of arbitration procedure, 57-Abolition of conciliators, 58-Village registrars, 59-Certificate of payments by decree-holders not necessary 60-Limiting period of suits, 61-Definition of an agriculturist appealable, 62-Oral evidence permitted to rebut sale deed, 63-A race in legal safeguards and evasions, 64-Neutralising factors in rural economy, 65-Power of Collector to set aside court sales, 66-Other changes in the Act, 67-Summary of proposals, 68. 33-51

CHAPTER III

THE PUNJAB LAND ALIENATION ACT, 1900

History of the question, 69-The main provisions of the Act, 70-Amendments of 1907, 71-Early forecasts about the results of the Act, 72-The non-agriculturist money-lender and unsecured credit, 73-Privileged position of agriculturist money-lender, 74-Conversion of unsecured to secured loans, 75-Increase in mortgage debt and mortgaged area, 76-Causes of mortgage debt, 77-Tendency towards the dispossession of the small-holder, 78-Results of working of the Act, 79-An enquiry into land sales in the Punjab, 80-Conclusion, 81-Increase in benami transactions, 82-How far benami transfers are unfair, 83-Ante-benami provisions of the Punjab Land Alienation Second Amendment Act of 1938, 84-Results of the new Act, 85-The Punjab Alienation of Land Third Amendment Act of 1938, 86-Results of the new Act, 87. 52-67

CHAPTER IV

REGULATION OF VOLUNTARY TRANSFERS

A

Restrictions on land alienation in other Provinces

The Bundelkhand Land Alienation Act of 1903, 88-The Land Alienation Act in the N. W. F. P., 89-Restrictions in rayatwari tenure, 90-Restrictions in grants of Government lands, 91-Restrictions on alienation of aboriginal lands, 92-The Chota-Nagpur Tenancy Acts, 93-Restricted tenure in Bombay, 94-The Working of the C. P. Land Alienation Act, 95-The Bengal Tenancy Act, VII A, 96-Assam, 97-The Agency Tracts Land Transfer Act, Madras, 98-Alienation problems of to-day, 99-Possibilities of restrictions on land alienation, 100. 68-81

B

Land alienation proposals

Non-agriculturist landholders, 101-Two kinds of dispossessed owners, 102-The problem of land alienation in the last and present centuries, 103-

Policy behind restrictions on land alienation, 104- Limitations of the policy, 105- An infringement of proprietary rights, 106- The proposal of 1882 of the Government of India, 107- Exclusion of moneylenders, 108- Exclusion of rentiers, 109-Exclusion of learned professions, 110- Defining agriculturists by process of elimination, 111- Restrictions on subletting, 112- Definition by tribes, 113- Definition by occupation, 114- Application of the rules in practice, 115- Defects in existing rules of land alienation, 116- Proposed rules, 117- Effect of the proposals, 118- Policy re-aboriginal lands, 119- Restricted tenure in rayatwari areas, 120- Impartible tenure, 121- Recommendations of the Famine Commission, 1880, 122. 81-92

C

Restrictions on leases

Sec. 40 of C. P. Tenancy Act discouraging purchase of tenancies by non-cultivators, 123- Its provisions, 124- Sec. 41 of C. P. Tenancy Act, Other restrictions on subletting,- Defects of the C. P. Tenancy Act, 125- Legitimate sub-leases to be defined, 126- Provisions for ejection, 127- Sub-leases by existing land-holders or tenants and by new purchasers, 128- Produce-sharing tenants to be treated as sub-tenants, 129- Rules of sub-leases, 130- Sub-leases to non-agriculturists, 131-Registration of sub-leases, 132- Occupancy rights, 133. 92-97

D

Rights of tenants

Fair rents, 134-Coercive processes, 135- Impartible holdings, 135 A. 97-102

CHAPTER V

REGULATION OF FORCED SALES OF LAND

A

Existing legislation and proposals

Early notifications on forced sales, 136-The Amendment of the C. P. C. in 1871, 137-Early legislation, 138-Later Legislation, 139-Fair price for lands, 140-Public sales only to agriculturists, Restriction unnecessary for those defined as non-agriculturists, 141-Arguments for total exemption of land from forced sales, 142-Arguments against. 143-Exemption of family farms, 144-Area of exemption, 145-Sale at fair price, 146-Quantity of land to be sold, 147-Liquidation of a debt to the extent of fair price, 148. 107-118

B

Exemption of a minimum produce and agricultural requisites from attachment

Why exemption necessary 149-The history of the question till 1877, 150-From 1877 to 1892, 151-The C. P. C. of 1903, 152-Action taken by

Local Governments, 153—The minimum requirements of an agriculturist, 154—Need for definite guidance to Courts, 155—Proportion of produce to be exempted, 156—Class of agriculturists, 157—A minimum produce to be exempted, 158—Food grains to be attached as a last alternative, 159—Special powers of Local Government during times of distress, 160—Exemption of houses and house-sites, 161—Exemption when recovering rent or revenue, 162. 118-125

C

Temporary alienation of lands by Revenue and Civil Courts

Definition, 163—Temporary alienation in the Punjab, 164—In the U. P. 165—Proposals re. temporary alienations, 166. 125-128

D

Modifications in the civil law to minimise sale of land for the debts of agriculturists

Provisions of the Code of 1859, 1877, and 1908, compared, 167—Summary, 168—Procedure to avoid sales re. execution of money decrees, 169—Procedure for sale of lands, 170—Other provisions to minimise sales, 171—Working of the provisions, 172—Proposals, 173. 129-133

CHAPTER VI

REGULATION OF MORTGAGES

Principles of regulation, 174—Limitation of period of usufructuary mortgages, 175—Objections, 176—Proposals, 177—A charge on produce 178—Registration of charges, 179—Limitation in attachment of standing crops, 180—Freedom for a rayat to sell his crops under certain conditions, 181—Mortgage by conditional sale, 182—Bengal Regulations, I of 1798, and 17 of 1806, 183—Objections to conditional sales, 184—Proposals, 185—Restriction of credit through limitations on mortgages, 186—Practical difficulties, 187—Registration of all loans, 188—Restriction on mortgage liability, 189—Period of usufructuary mortgages, 190—Restrictions on simple mortgages, 191—Reaction of maximum instalments by courts on mortgages, 192—Fixing the maximum number of instalments, 193—Classes to whom the regulation of mortgages applicable, 194. 134-148

CHAPTER VII

INSTALMENTS AND REDEMPTIONS

The civil law re. instalments, 195—Instalments in preliminary decrees with retrospective effect, 196—Instalments till confirmation of sale, 197—Need for regulating revision of instalments in different kinds of decrees and their execution, 198—Limits of instalments in redemption suits, 199—Instalments to be obligatory, 200—Creation of a charge during the pendency of

instalments, 201—Revision of instalments by revision of decrees, 202—Fixation of maximum instalments to include the periods of leases by Collectors, 203—Summary, 204—Class of agriculturist and class of loans to whom an order of instalments is to apply, 205—Limitation for suits, 206—Limitation for execution of decrees, 207—Redemption before due date, 208—Redemption in cases of partial repayments, 209—Summary procedure by Collectors, 210—Classes to whom applicable, 211. 153-164

CHAPTER VIII

REGULATION OF MONEY-LENDING

A

Control of usury

Early legislation, 212—Recommendations of the Deccan Commission, 213—The genesis of the Usurious Loans' Act of 1918, 214—Provisions of the Act, 215—Defects in working, 216—Recommendations of the Banking Enquiry Committee, 217—Prescription of the usurious rate, 218—Reopening of decrees barred, 219—Provision to sue for accounts, 220—No need to restrict the class of suits, 221—Rules of usury to apply to all loans, 222—No limitation of time to be placed on the investigation of accounts, 223—Working of the amended provincial Acts, 224. 171-178

B

Regulation of accounts

Maintenance of registers, 225—Issue of receipts, 226—The noting of discharges on the bond, 227—Submission of periodical returns to debtors, 228—Supply of copies of loan documents, 229—Certified accounts admissible as evidence, 230—Penalties for non-compliance with provisions, 231—Working of the provisions, 232. 178-183

C

Penalties and remedies for abuses in money-lending

Prohibition of illegitimate charges, 233—Written documents for loans, 234—Burden of proof of consideration, 235—Advertisements to borrow, 236—Recognition of payments by a judgment-debtor out of court, 237—Contracts to make repayments outside the province void, 238—Protection against molestation and intimidation, 239—Form of suits against agriculturists, 240—Provision to receive repayments by debtors, 241—Debtors' right to sue for accounts, 242—Conversion of rent arrears into ordinary debts, 243—Arrest and detention in the civil prison, 244—Damdupat, 245—Overwriting of bonds, 246—Loans and Moneylenders excluded from the operation of Moneylenders' Acts, 247—Principles underlying exclusion of loans and lenders, 248—Procedure for enforcement of penalties, 249. 183-200

D

Rates of interest

Legal fixing of rates of interest, 250—Limitations to fixing of interest rates, 251—Rates of interest on kind loans, 252—Need for different rates of interest in law, 253—Lending at a rate higher than the prescribed rate, not to be an offence in the initial stages, 254—Retrospective effect to rates of interest, 255—Procedure for fixing interest rates, 256—Rate of interest on decrees, 257—Rates of interest in insolvency, 258—Prevention of evasions, 259.

200-206

E

Registration and licensing of money-lenders

Licensing provisions inapplicable to all money-lenders, 260—Definition of a money-lender, 261—Exemption by Local Government, a crude method, 262—Devices to encourage registration, 263—A practical procedure for licensing, 264—Rules of license, 265—Cancellation of a license, 266—Consequences of cancellation, 267—Regulation of pawn-broking, 268—Provisions for pawn-broking in Indian Acts, 269—The working of the Ceylon ordinance 270. 206-216

CHAPTER IX

COMPULSORY LIQUIDATION OF DEBTS

A

Nature and scope of early measures of debt conciliation

Earlier schemes of liquidation in Bengal, 271—Debt conciliation in the C. P. in 1897, 272—Conciliation vs Compulsion, 273—Cooperative societies and debt conciliation in the Punjab, 274—Land mortgage banks in Madras, 275.

226-229

B

Moratorium Acts.

The U. P. notifications against sale of land and produce, 276—The Temporary Postponement of execution of Decrees Act 1937, U. P., 277—The Madras moratorium bill, 278—Moratorium in the C.P., 279—Temporary Relief of Small holder's bill, Bombay, 1938, 280.—Moratorium in Debt Relief Acts, 281.

229-233

C

Compulsory provisions for scaling down or for liquidation of debts of agriculturist debtors

Scaling down interest and adjusting excess to principal, a time-honoured method, 282—Conciliation supplemented by Moneylenders Acts, 283—Reduction of interest for depression period at a scheduled rate, 284—Taking an account from a certain date, and Law of Damdupat,

285—Fixation of rates of interest in the C. P., 286—In Bihar, 287—Annulment of interest in Madras, 288—The N. W. F. P. Bill of 1938, 289—Main features of relief under interest—merits and demerits, 290—Conclusion, 291—Methods of scaling down principal, 292—The price theory, 293—The Relief of Indebtedness Bill : Scaling down principal at a scheduled percentage, 294—Transfer of land at pre-slump values, 295—The Madras Agriculturists' Relief Act, 296—The law of Damdupat to reduce principal, 297—Scope of the Act, 298—Definition of agriculturists, 299—Reduction in rent debts, 300—N. W. F. P. Relief Bill, 301—Restriction of land sales to recoveries of secured loans only, 302—Liquidation of irrepayable debts, 303—The U. P. Temporary Regulation of executions Act, 304—The C. P. Liquidation of Industrial Worker's Debts Act, 305—The working of the Act, 306—Insolvency provisions in the Bengal Agricultural Debtors Relief Act of 1935, 307—Scaling down debts, the result of retrospective application of special provisions governing suits against agriculturists, 308—Retrospective effect to the limitation of period of usufructuary mortgages, 309—Limits to compulsory reduction of debts, 310—Cancellation of irrepayable debts on family farms, 311—Exemption of a minimum holding and class of agriculturists, 312.

233-257

CHAPTER X

THE STRUCTURE AND WORKING OF DEBT CONCILIATION ACTS

A

Provisions

Conditions for an amicable settlement, 313—Devices for securing creditors' co-operation of debts in the C. P., 314—In the Punjab, 315—In Bengal, 316—Ordering a Settlement, another device, 317—Awards vs. agreements, 318—Principles of a fair offer, 319—Interest of a mortgagee in the secured land, 320—Other devices staying of suits and proceedings, 321—Ensuring complete information from creditors by declaring certain debts as not payable, 322—Certain documents declared invalid in evidence, 323—Limits to compulsion are the strength of conciliation, 324—Whole property of the debtor, a charge for the settled debts, 325—State aid for recoveries, 326—Negotiability of the awards, 327—The smallness of the court fees, 328—Decrees of Civil Courts favourable to debtors, 329—The reaction of depression on the creditor, 330—The best machinery for conciliation, 331—The constitution of the boards in the C.P. and the Punjab, 332—Fixation of graded fees, 333—Class of debtors, 334—Class of debts—Rent debts, 335—Co-operative debts, 336—Debts due to banks, 337—Trade debts, 338—Need for

simple rules of application, 339—Need for securing of applications, 340—Result of all creditors not joining in an application, 341—Prevention of fraudulent practices, 342—Difficulties in serving notices, 343—Verification of statements, 344—Difficulties in the stay of proceedings by courts, 345—Powers of revision and appeal, 346—Powers of the Boards, 347. 258–278.

B

The processes in settlement and the working of the C. P. boards

Joint and ancestral debts, 348—Determination of debts, 349—Disputed debts, 350—The scope of conciliation, 351—Reasons for rejection of applications, 352—Relation of land tenures to methods of settlements, 353—Nature of debts and settlements in Berar, 354—Difficulties in working, 355—Transfer of lands for debts, 356—The resiling of the creditor, 357—The transfer fee, want of insolvency provisions, risks in instalments, 358—The instalment system in Bengal, 359—Recoveries of instalments, 360—Rigorous provisions for recoveries in the C. P., 361—Restriction of credit of the settled debtor, 362—Other methods of recovery, 363. 258–289.

C

The working of conciliation boards in other provinces

Debt conciliation in the Punjab, 364—Debt conciliation in Madras, 365—Debt Boards in Assam, 366—Limitations in the working of village boards in Bengal, 367—Civil Court decisions, 368—Difficulties in staying proceedings, 369—Limitations of partial settlements, 370—Dearth of applications in the initial stages, 371—Difficulties of the Boards, 372—Structure of the machinery for conciliation, 373—Ordinary and special Boards, 374—Supervision and appeals, 375—Corruption and inefficiency of the Boards, 376—Features of debt conciliation in Bengal, 377. 289–304

D

Forms of state aid

Issue of bonds by the State, 378—Land Mortgage Banks, 379—Debt Redemption loans made by the Government of Madras, 380. 304–308

CHAPTER XI

DEBT RELIEF MEASURES AND THE CREDIT STRUCTURE OF THE COUNTRY

The United Provinces, 381—The Punjab, 382—The N.W.F.P. 383—Central Provinces and Berar, 384—Bengal, 385—Bihar, 386—Assam, 387—Bombay, 388—Madras, 389—A credit machinery for the future, 390. 309–322.

CHAPTER XII
SUMMARY OF MAIN PROPOSALS

I. Restrictions on transfer of land

1. Sale of land to agriculturists only— 2. Subleases and their registration— 3. Repeal of special Acts to preserve the estates of landholders— 4. Tenant rights— 5. Exemption of sales of agricultural land and houses in execution of decrees— 6. Exemption of moveable properties of agriculturists in execution of decrees— 7. Temporary alienations— 8. Forms of mortgages-their regulation— 9. Granting of instalments— 10. Redemption of mortgages 323-334

II. Regulation of money-lending

1. Control of usury— 2. Regulation of Accounts— 3. Prevention of abuses in money-lending— 4. Rates of interest— 5. Registration and licensing of money-lenders. 334-342

III. Liquidation of past debts

1. Experience of working of earlier measures of relief— 2. Moratorium Acts— 3. Compulsory scaling down of debts— 4. Debt Conciliation Acts and their working. 342-347

—————
NOTES

| SERIAL NO. | PAGE NO |
|--|-------------|
| 1. Recent enquiries into agricultural indebtedness of land-owners | ... 16—24 |
| 2. Tenants' indebtedness | ... 24—32 |
| 3. Restrictions on the transfer rights of landholders in the C. P. Tenancy Act | ... 103 |
| 4. Rules governing restrictions of land alienation in the Punjab | ... 103—104 |
| 5. The Burma Land Alienation Bill | ... 104—106 |
| 6. Restriction of transfer rights | ... 149—152 |
| 6A. Statement of cases—declaring sub-tenants to have rights of occupancy as against tenants under Sec. 40 of the C. P. Tenancy Act | ... 152 |
| 7. Ordering of instalments under the Encumbered Estates Act in the U. P. | ... 165—166 |
| 8. The Law of limitation for suits | ... 166—167 |
| 9. Redemption of Mortgages Acts | ... 168—170 |
| 10. Rates of interest which are deemed usurious | ... 217—218 |
| 11. Loans excluded from the operation of Money-Lenders Acts | ... 218—222 |

| | | | |
|-----|--|-----|---------|
| 12. | Rates of interest | ... | 223—224 |
| 13. | Notes of interest on decreed amounts | ... | 224—225 |
| 14. | Retrospective revision of terms of mortgages | ... | 348—350 |
| 15. | Facilities for recoveries of instalments through Revenue officers under the Bengal Agricultural Debtors Relief Act | ... | 351—352 |
| 16. | A summary of the insolvency provisions in the Bengal Agricultural Debtors Relief Act, 1936 | ... | 352—354 |
| 17. | Amended Provincial Insolvency Acts, (V of 1920) | ... | 354—356 |
| 18. | Debt conciliation measures in Native States | ... | 357—360 |
| 19. | Schemes of liquidation of debts of agriculturists in other countries | ... | 360—364 |
| 20. | The Bombay Agricultural Debtors' Relief Bill, 13 of 1939 | | 364—367 |
| 21. | The U. P. Agriculturists and Workmen Debt Redemption bill, and the Moneylenders bill, April 1939 | ... | 367—370 |

STATEMENTS

A Debt conciliation boards in the Central Provinces

| | | | |
|----|--|-----|---------|
| 1. | Applications on the basis of value by the Mehkar Board | ... | 370 |
| 2. | Working of Debt Conciliation Boards (To indicate rejected applications) | ... | 371 |
| 3. | Progress report of Debt Conciliation Boards | ... | 372—374 |
| 4. | Difficulties in fixing instalments in the case of small and uneconomic holders | ... | 375 |

B Debt Conciliation Boards in Bengal

| | | | |
|----|---|-----|---------|
| 1. | Statement to show the postponement of cases owing to non-appearance of creditors | ... | 376 |
| 2. | Progress statements of boards in Hajiganj circle | ... | 376 |
| 3. | Do Do Do in Chandpur division | ... | 377 |
| 4. | Sample cases of settlement by village boards in Bengal | ... | 378—379 |
| 5. | Sample cases to indicate the difficulty in fixing instalments in the case of uneconomic holders | ... | 380 |

C Debt Conciliation Boards in the Punjab

| | | | |
|----|---------------------------------------|-----|-----|
| 1. | Working | ... | 381 |
| 2. | Statement to indicate mode of payment | ... | 382 |

SELECT BIBLIOGRAPHY

| | | | |
|----|---|-----|---------|
| 1. | Publications other than Acts | ... | 383—385 |
| 2. | List of Acts relating to protection and relief of agriculturist debtors | ... | 386—390 |

CHAPTER I

LAWS TO PREVENT INDEBTEDNESS OF BIG LAND-HOLDERS

1 Scope of the book—A review of legislation for the protection and relief of agriculturist debtors

In this and the succeeding chapters are brought together the existing laws for the protection and relief of agriculturist debtors. It is not our object to examine the causes and extent of the agriculturists' debt, about which various estimates, official and non-official, have already been issued during the last fifty years. Measures for the organisation of agriculture as an industry, and for a credit and marketing machinery as its aid, are outside the scope of this book. It concerns itself mainly with the extent of protection and relief which legislation could give to the agriculturists to prevent the growth of unproductive debts and the evil results arising out of them. Undue exploitation of the needs of an ignorant debtor has been one result of the existing rural credit system. The accumulation of an irredeemable debt, sometimes passing from generation to generation, has been its second result. The passing of land into the hands of money-lenders, either by mortgage or sale, has been its third result. We have examined the laws enacted to prevent these consequences of debt in the following chapters and suggested future lines of legislation.

2 Transfer rights under pre-British rule and in Native States

Before the advent of the British rule private property in land was rarely transferred; neither was land compulsorily sold to satisfy the creditors. The Government of the time too did not generally transfer land from one occupier of land to another for non-payment of land revenue. It might occasionally change the agents or farmers of revenue, but generally it was not usual for the Government to change the cultivating proprietors or tenants who defaulted in the payments of land revenue. Under the rule in Native States, even in the latter half of the nineteenth century, there were few private transfers because the selling value of land was little. Whenever a creditor could not realize his debts, he, and the Revenue Collector on behalf of the State, settled between themselves the share of crops due to each of them. No land was sold for arrears of

revenue as its sale value was little. The arrears due were kept on the books and were recovered, if possible, during better times.¹

3 Growth of proprietary rights under the British rule

The recognition of individual rights of transfer of land under British rule increased the credit power of the proprietors.

Such rights with freedom to mortgage and sell them for repayment of debts grew in Bengal with the establishment of the Permanent Settlement.

"The zamindars are privileged to transfer to whomsoever they may think proper by sale, gift or otherwise their proprietary rights in the whole or any portion of their respective estates without applying to Government for its sanction to the transfer, and all such transfers will be held valid."
—*Regulation I of 1793, Section 9.*

Various measures were adopted since 1793 for the collection of land revenue. The revenue was first farmed out to the zamindars who were permitted to collect rents from the cultivators in the villages. For the performance of this duty they were in turn permitted to transfer freely their proprietary rights. The ancient chiefs, those who collected revenue during the pre-British rule, and those to whom lands were farmed out by public auction, were recognised as zamindars, who were to pay a contribution to the State as permanently or temporarily settled by the East India Company. But there was also a body of proprietors in many villages who had been occupying the land for centuries. They were differently called in the several provinces as under-proprietors, tenure-holders, Malik-makbuzas and privileged tenants, and they too had rights of transfer. In the rayatwari provinces of Bombay, Madras and Berar, Government collected the revenue by assessing individual plots and giving free rights of transfer to the holder of the pattas for such plots. Those who reclaimed waste lands on a low assessment for a temporary period were also granted free rights of transfer on payment of the full assessment. In Assam, Government lands were let on a periodic lease to buyers who too could mortgage and sell them. In addition to these proprietary holders, Government had to recognise the rights in land of those who held them revenue-free from the previous rulers. These were the Jaghirdars who were granted lands for military service, and the Inamdars who got lands either as remuneration for service or as rewards during the pre-British rule.²

1. Note on Land Transfer and Agricultural Indebtedness in India, 1895, pp. 4-11.

2. Note on Land Transfer and Indebtedness in India, 1895, pp. 11-24. See para on Land Tenures in the Banking Enquiry Committee Reports.

4 Agricultural indebtedness and transfer of lands

During the latter half of the nineteenth century, lands began to pass into the hands of non-agriculturist money-lenders in all provinces. The sub-division of the holdings among the proprietors, the high assessments in the early period, the periodical recurring of famines—all tended to poor returns from agriculture and a consequent increase in the irredeemable debts of agriculturists. The high castes in the proprietary body in villages began to lose their lands. So also the smaller zamindars. In the first quarter of the twentieth century indebtedness grew owing also to the increased credit of the agriculturists. For various reasons, such as special laws which imposed restrictions on the sale of land to non-agriculturists, the assimilation of the non-agriculturist money-lenders as agriculturists, and the surplus cash available with big agriculturists as a result of a rise in prices the agriculturist money-lender became important in varying degrees in all the provinces in the credit-machinery of the village. The growth of this new class of money-lenders gave a fillip to the dispossession of the small owner-cultivator. This class was interested in lending with a sole eye to buy more lands.

5 Since the depression

This was the position in 1930 when, owing to depression, the economic condition of the agriculturist worsened. The sudden fall in prices led to locking up investments in land; credit contracted, forced sales increased, and Governments began to consider the need for special measures to help the agriculturists to tide over the depression. The distress caused by the depression and the present extent of agricultural indebtedness would be apparent from special enquiries, as those carried out in the provinces of U. P. and Madras.¹

6 Growth of indebtedness among tenants

Indebtedness among tenants began to grow from the last quarter of the nineteenth century, for two reasons. When they had no rights of transfer, they had to pay a heavy rate of interest and debt accumulated quickly. When transfer rights were granted, they easily got into debt. In the one case the size of the debt might be small, but the repaying capacity was poor. In the other case, the size of the debt was large owing to over-borrowing as a result of improved credit, and the rayats could not repay. The nature of indebtedness and its consequence on the tenants is dealt with in the note appended to this chapter.

1. Vide appendix to this chapter.

7 Civil law and the rural system of money-lending

Having given a general outline of the trend of agricultural indebtedness in India during the last one century, we will now address ourselves to legislation attempted in the second half of the nineteenth century to relieve the indebtedness of the landlords. The system of civil law introduced in the country by the British was soon found unsuited to Indian rural conditions. Mr. Ibbetson, Deputy Commissioner of Rohtak, Punjab, wrote in 1891:

"My heart burns within me when, as I go through the villages, I am appealed to daily by persons suffering wrong. They go away sadly, either to endure the known wrong rather than the certain but unknown evils of a suit, or to borrow money, or, having borrowed it, to suborn false witnesses and concoct a story by the dim light of ignorance of our law, convinced that the plain truth will be rejected on some ground or other that they do not understand."¹

The Lieutenant-Governor Sir James Lyall summed up the views of his officers in the following terms in 1891:

"It is a fact that under the influence of indebtedness and of our present law and civil court procedure transfers of land are proceeding in all districts, and that measures to check this process, so far as it is due to the action of our laws and courts, are required throughout the province."²

Sir A. Mackenzie, the Chief Commissioner of the Central Provinces, in his evidence before the Famine Commission in 1878, said:

"It has been his experience in every district through which he has marched to be beset by unfortunate men, often of old yeomen stock, anxious to spread before him their little bundle of decrees, decrees for many times the original loan, then sale, and after that, the heart-breaking hunting of the camps and footsteps of the higher officials who can do nothing but send the petitioner away as he came."³

The fact was that the rayats and big land-holders could not understand the serious consequences of their contracts with the money-lenders, which the courts enforced to the very letter. Even if they had understood, the most needy among them could not have avoided agreeing to any terms.

8 The defects in the civil law

The civil law was defective in three respects. It made no provision for investigation into debts. It granted the rate of interest fixed in the bond, and had no regulations regarding the interest to be awarded. It had no rules for minimising sales of land in the enforcement of decrees. This state of law facilitated the passing of lands into the hands of money-lenders. But civil courts have

1. Note on Land Transfer and Agricultural Indebtedness in India, p. 104.

2. Ibid, p. 105.

3. Ibid, p. 106.

established themselves, and a uniform civil law based on sanctity of contracts without reference to the unequal status of the parties was administered since the enactment of the Civil Procedure Code in 1859. A radical alteration of the civil law to suit local conditions was impossible. What the rayat required was cheap and summary justice which would protect him from the unconscionable methods of the money-lender. With this purpose in view, provincial legislation was undertaken since the seventies of the last century. The first of this series of legislation concerned itself with special Acts to relieve the big land-holders of their indebtedness, and to conserve their estates from falling into the hands of money-lenders. The second made provision for a special procedure applicable to suits between money-lenders and agriculturists with the sole object of preventing forced sales through courts. The third provided for restrictions on land alienation. The fourth, which consists of recent enactments, arises partly out of the proposals of the Royal Agricultural Commission, and the Banking Enquiry Committees, and partly out of the depression in prices after 1929. This last set of laws is mainly concerned with liquidation of past debts and regulation of money-lending. Meanwhile the civil law has undergone various changes so as to suit the agricultural economy of India. All these various laws, their history and administration, and their effects in reducing the indebtedness of rayats and preventing the sale of their lands to money-lenders will be discussed in this and the following chapters.¹

9 The indebtedness of land-holders

Though the pitch of land revenue assessment was high when zamindars were created by the East India Company, the gradual rise in prices, and in the value of land, and the latitude given to the zamindars in fixing and collecting rents gradually created new wealth in their hands which led to over-borrowing. In many areas where rights of land ownership of village communities were reduced to mere occupancy rights, and farmers of revenue during the pre-British rule were granted proprietary rights as zamindars, the latter could not make proper use of this right and use it for land development.²

1. Vide appendix to this chapter for a note on the nature and effect of indebtedness on the agriculturists particularly after the depression.

2. "The extreme by excessive moderation of our demand has been at the root of the disaster and it is an economic mistake to surrender so large a margin of profit to unimproving landlords." (Mr. C. A. Elliot's evidence before the Famine Commission of 1880, Vol. 3, p. 186).

Money-lenders allowed the debts owed by the land-holders in Jhansi to accumulate, as their object was to buy the estates after the period of the settlement when they would have to pay a less land revenue to Government. Mr. C. A. Elliot in his written evidence submitted to the Famine Commission of 1879 said :

"The people have had famines before and have recovered from them all. The one new element in the case is that they have now an extremely valuable property in the land, and while they used their right as children, our courts have held them to their contracts as if they had been grown-up men."

10 Provisions of Encumbered Estates Relief Acts

Legislation was therefore enacted in several provinces to relieve the indebtedness of landlords. With this object, the Ahmedabad Taluqdars Act of 1862 which has been incorporated in the Gujarat Taluqdars Act of 1888, the Act of 1870 to protect the Taluqdars of Oudh, that of 1872 for Ajmer, and the Ajmer Loan Regulation of 1911, the Chota-Nagpur Encumbered Estates Act of 1876, the Sind Encumbered Estates Act of 1896, and the Bundelkhand Encumbered Estates Act of 1903 were passed in the several provinces. They have more or less the same structure. The Jhansi Encumbered Estates Act of 1882 was a special enactment to relieve the indebtedness of the landlords, but had no provision for the management of encumbered estates by the Government. The Jhansi, Gujarat, and Sind Encumbered Estates Acts are valuable in giving us an idea of the methods adopted for the settlement of claims of creditors. The original principal was to be judicially determined, reasonable interest not exceeding in aggregate the original principal was to be allowed, decrees could be re-opened, instalments could be fixed, and properties might be mortgaged or sold. Under the Jhansi Act XVI of 1882, a debt of Rs. 11.25 lakhs of the landlords was brought down to Rs. 7.61 lakhs. Government also bought up the property under this Act if it did not fetch a fair price. 61% of the reduced debt was paid off to creditors by the Government to be realised in instalments from the Jhansi estates.

11 Administrative procedure

The following were the other main provisions of these Acts. Applications should be made by indebted landlords within a specified time under most of the Acts. A manager was appointed to make a preliminary enquiry. Thereupon Court proceedings were stayed. The debtor could not contract debts, nor alienate property, nor issue rent receipts during the period of management of the estate by the Government. The manager would give notice to claimants, determine the liabilities, rank the debts, and prepare a scheme of liquidation. The Government would then decide whether they might

take over the estate. If so decided, the manager would take possession of the estate, and do everything necessary by way of lease, mortgage or sale to pay off the creditors. The estate would be restored to the land-holder subject to encumbrances made in favour of creditors. Certain Acts provided for a time limit within which all debts should be cleared, and the estate returned by the manager. In order to maintain their dignity, the landlords in Ajmer might themselves be appointed as managers.¹

12 State interference in property rights

Government by these Acts have taken power to withdraw the rights of property even without the consent of the landholder, in order to relieve indebtedness. Secondly, they may take charge of property even for other reasons. According to sec. 26, 1 of the Gujarat Taluqdars Act of 1888, Government may take charge of an estate "when there is reason to apprehend danger to the peace of the country or *danger to the well-being of the inferior holders*".

13 The Court of Wards Acts

But the Government of India did not favour an extension of these Acts to Bengal and Madras. They passed, instead, the Court of Wards Act to be applicable to the several provinces. Experience in Jhansi showed that the landlords got into debt again, and Government began to think that all their work might be wasted, unless there was some restriction on the rights of transfer after the release of the estates. These restrictions are referred to in a succeeding paragraph. Some of the facilities provided by the Encumbered Estates Relief Acts were no doubt continued in the Court of Wards Acts.

Under these Acts estates are taken over for management by Government when the heirs are females and minors, or suffer from any physical or mental defect. Proprietors too may apply to have their property placed under the Court of Wards. These Acts have certain special provisions for ascertainment and settlement of debts. A notice calling on claimants to submit a statement of debts due to them within a period of six months is issued. The sum of debts not so submitted shall be deemed to be discharged. Documents also, not filed with the statements, are held inadmissible in evidence. The Court may stay proceedings for one year at the request of the Court of Wards. All these provisions have been embodied with suitable modifications in the recent Debt Conciliation Acts. Certain special powers are also granted to the Collector for the settlement of debts. The claims may or may not be admitted by the Collector, and

1. Note on Land Transfer and Agricultural Indebtedness in India, pp. 138-144.

reasonable interest may be granted on the admitted amount of claims. Under the Madras Act, mortgagees in possession and lease holders may be dispossessed, and interest on the amount due to them may be fixed. But all these orders are appealable. In order to minimise forced sales of the lands of a ward, the Madras Act empowers the Local Government to transfer all decrees which require a sale of land to the Collector for execution. The Court of Wards Acts apply not to any special classes of land-holders as the Encumbered Estates Act do, but to all proprietors. ^{1,2}

Two amending Acts were passed in Bengal and Assam, in 1935 and 1937 respectively, in order to save the estates from being sold up by the creditors during their management under the Court of Wards Acts. The law permitted execution of decrees on the estates by a creditor, after the expiry of a year from the date of the commencement of management by the Court of Wards. This period was considered too short to permit the drawing up of a scheme of liquidation of debts. The Bengal Amendment Act of 1935, therefore, prohibited execution of decrees for four years during which interest at 4½% would be paid to all creditors, and for another period of seven years,

1. Vide Bombay Act I of 1905, Secs. 14 to 17; Madras Act I of 1902, Chap. V; U. P. Act VI of 1912 Chap. V; and C. P. Act XXIV of 1899, Secs. 12 to 15.

2. The debts which a Court of Wards has to settle ordinarily relate to the non-payment of land revenue and cesses, salaries, pensions, and allowances to the staff of the zamindar, family allowances, bills of suppliers, and loans on documents. According to the Court of Wards Report for 1935-36 of the Government of Bengal, the total debt, on the assumption of charge of the estates by the Court of Wards, amounted to Rs. 452 lakhs, and the amount of debt outstanding at the end of the year was Rs. 289 lakhs, which included an outstanding interest Rs. 19 lakhs. A sum of Rs. 44 lakhs was repaid or otherwise reduced during the year. The total debt of the estates in Madras at the beginning of the year 1936-37 was Rs. 65 lakhs; Rs. 12.76 lakhs was paid off; and Rs. 1.23 lakhs was struck off leaving an outstanding liability of Rs. 50.88 lakhs. In the Central Provinces and Bombay a sum of Rs. 1.76 lakhs and Rs. 89,500 was repaid by incurring fresh debts, a sum of Rs. 22,025 and Rs. 88,064 was repaid by sale of property, and a sum of Rs. 1.42 lakhs and 1.99 lakhs was repaid from current income, leaving an outstanding debt of Rs. 43.68 lakhs and Rs. 13.73 lakhs respectively, according to the administration reports of the Courts of Wards of these two provinces for 1936-37.

In the Bombay Presidency it is usual to reduce the claims of a creditor in consideration of prompt payment.

According to the report of the Court of Wards, U. P., for 1937 the outstanding debts due fell from Rs. 191 lakhs to Rs. 177 lakhs. Repayments could not be quick as the estates were not able to collect their civil and rent decrees, for the reason that some of the debtors have applied for a settlement of debts under the Encumbered Estates Act of 1934, and Government have stayed the execution of certain decrees.

if necessary, during which full interest would be paid. Though depression was claimed as the cause for this long moratorium and reduction of interest at a scheduled percentage, these provisions were not to be temporary to meet the depression period as in the case of the Bengal Agriculturists Debtors Relief Act of 1935, but were to be a permanent part in the Act. Another difficulty experienced in the working of the Act was that all the creditors were not in a position to realise their debts from the estates released to the proprietors from the management of the Courts of Wards. The amendment Act, therefore, provided for the appointment of trustees for the management of a released estate by the civil court on behalf of the creditors. These provisions were adopted also in the Assam Court of Wards Amendment Act of 1937¹.

One result of this amendment was that a number of land-owners who were hopelessly involved in debt began to apply to the Government to take over their estates under their own management. This result was hardly expected by the Government, and they have thus explained the purpose of the new Act of 1937 in their review on the administration of the estates under the Court of Wards for 1937-38.

"The object of amendment of last year 1937 was primarily to help the estates which were already under the protection of the Court, and not to encourage land-owners to seek freedom of their properties by imposing the burden of their management on Government whose officers have enough work of their own already."

When the amendment was under discussion in the Bengal Council in 1935, it was opposed on two grounds. Even though the rules provided that Government should not undertake management of encumbered estates belonging to those proprietors whose debts were due to extravagance or weakness of character, they were observed more in the breach than in the observance. It was said during the discussion :

"If an impartial investigation were made, it would be found that in many cases people, by bringing pressure to bear upon persons in high quarters, got their estates taken over by the Court of Wards, although the Court should not have done so."²

Secondly, the member representing the European group, Mr. W. H. Thompson, voiced the public sentiment against class legislation of this type which adversely and sometimes unjustly too, affected the interests of creditors and said :

1 Assam Legislative Council Proceedings, 1937, Vol. I, p. 117.

2 Bengal Legislative Council Proceedings, 19th Dec. 1935, p. 263.

“ There should not be one law for those who were fortunate enough to be taken over by the Court of Wards, and another law for the rest.”¹

In the Bombay Legislature too an amendment to the Court of Wards Act of 1905 was carried in 1934. This empowered the Court of Wards to issue a certificate to the civil court requiring the release of the property of a Government ward to such extent and for such period as may be necessary in the interest of the said ward. The effect of the amendment was that it gave large powers to the managers of the Court of Wards to declare a moratorium at their own will and pleasure and thus bring in direct pressure on the creditors to reduce their debts. The amendment was hotly discussed and opposed on the following grounds, viz., that decree-holders alone should not be made to suffer so that the other expenses of the estates under the Court of Wards might be liberally and without limit incurred,² that there would be no need for these wide powers if only credit-worthy estates of minors were taken under management as provided in the rules, that Sirdars and Jahgirdars did not want this undue protection which only affected their credit, and that this was only indirectly adding to the list of exempted articles in the Civil Procedure Code for a special class of land-holders, and thus to the list of inalienable tenures.³

14 Ineffectiveness of the then existing law to prevent alienation of estates

Various proposals were made from time to time to prevent the alienation of big estates for the repayment of debts. The Encumbered Estates Relief Acts passed in the various provinces no doubt helped to compose the debts in some cases and under special circumstances and minimise the evil of land transfer. The Court of Wards Acts permitted the interference of the State to bolster up reckless zamindars and to revive their fallen fortunes. But these Acts were curative in their character and not preventive. As early as 1821, Sir Thomas Munro proposed a system of entail in Madras with a view to preserve large estates. There was of course the rule in the Hindu Law which vested in sons an interest in the family property and empowered them to preserve it against mismanagement by their parents. But such a rule was hardly operative, as generally sons would not go against their fathers out of filial respect. Two provisions facilitating the preservation of family properties

1 Ibid, 25th Nov. 1935, p. 24.

2. Bombay Legislative Council Proceedings, Rao Bahadur R. R. Kale's Amendment, Aug. 1, 1934, p. 99.

3. Ibid, pp. 71-100.

were introduced in the Succession Act of 1865 which were repeated in the Transfer of Property Act of 1882. The one enacted that, when a bequest was made to a person not in existence at the time of the testator's death, subject to a prior bequest, the bequest to such a person should comprise the whole of the remaining interest of the transferor. The other enacted that no property could be transferred to a person which was to take effect only after the life time of one or more persons living at the date of such transfer. These three provisions in law, viz., the right of a son in Hindu family property, the obligation cast on a testator to transfer the whole of the property remaining after prior bequests, and the rule against perpetual transfers, were however considered insufficient to preserve estates from disintegration.

15 A scheme of family settlements

Mr. Justice West proposed in 1872 a scheme of family settlements. Under the scheme a landlord might voluntarily settle his estate for a definite period of fifty years. Leases of land should not exceed twenty-one years and the conditions should be approved by the Collector. The scheme was approved by the Chief Commissioner of the Central Provinces. There was agitation from the richer class of Muhammadans too for some kind of law which would preserve their estates intact through inheritance. The Government of India drafted a bill in April 1893. The idea underlying the bill was that Rajas and Nawabs who were granted hereditary titles should be enabled to settle a decent income on their successors, "for the perpetual maintenance of the title, so that no holder, however he may squander his life-interest, may be able to prejudice his successors". The bill was further extended to include within its scope those holding titles of any description. It provided that a settlement of the estate making it impartible for a definite period might be made with the consent of the executive government. The Secretary of State did not approve of the bill, as it vested too much power in the Government to interfere with the law of inheritance, and the proposal fell through.

16 The right of pre-emption to Government

Another device for preventing alienation of estates was also discussed on the basis of the proposal made to the Deccan Commission of enquiry into the working of The Deccan Agriculturists Relief Act, in 1892. The proposal was "to prohibit alienation except to the Government, or at least to give the Government in every case the prior option of purchase". This was no new proposal. Government themselves purchased lands of the indebted landlords under the Jhansi Encumbered Estates Act, and paid off the creditors,

They realised the amount by enhancing the revenue to be paid to them. The Deccan Commission raised three objections against the proposal. The one was that Government would have to buy these lands at a high price. The second was that it would be difficult to estimate a fair price. The third was that there might be collusion between the debtor and the creditor with a view to defraud the Government. The exercise, therefore, of the right of pre-emption by Government, it was thought, would entangle it in unnecessary financial commitments.

17 Restriction on the alienation of occupancy rights in 'Sir' lands

If the principle behind the exercise of the right of pre-emption is the repayment in cash of the capitalised proprietary right to the creditor by a third party, be it either the Government or any other, and its annual realisation from the debtor, such an arrangement may equally be made with the creditor. The salutary principle behind the whole scheme is the preservation of the right of cultivation to the debtor, and the transfer of only the right of collecting rents to the creditor.

One way of doing this was to grant the indebted land-holder the right of occupancy in his home farm (Sir land) which was sold by him to a creditor. This principle has been embodied in the Tenancy Acts of U. P., Punjab, and the C. P.¹ In the U. P., provisions were introduced in the Rent Law to the effect that, when the right of collecting rents in 'Sir' land was sold, the landlord should have a non-transferable right of occupancy in such lands at a low rental. He could also sell this occupancy right under certain special conditions.

These provisions were introduced in the Rent Act of 1881 in the N. W. P., and in Oudh in 1868 in respect of lands which the landlord was cultivating as a tenant till 1866. They were also introduced in the C. P. Tenancy Act of 1898, and in the Punjab Tenancy Act of 1861. It was thought that such a scheme might be suitably applied to the Deccan, of granting the proprietary right to the creditor and the occupancy right to the debtor. The proposal fell through as the officers in Bombay would not agree to take upon themselves the responsibility of determining the rental on the land when the creditors became the proprietors.²

1 Vide Appendix re rules of alienation of 'Sir' Lands in the C. P.

2 Note on Land Transfer and Agricultural Indebtedness in India, p. 181.

Ex-proprietary tenants in the U. P. hold their lands at a rent less than that paid by other classes of tenants. According to the Land Revenue Administration Report for 1936, these tenants held 7,25,700 acres out of a total

(*Could, on next page*)

18 Restriction on alienation of estates by land-holders

In some provinces restrictions were also placed on the proprietary rights of land-holders. Under the Oudh Settled Estates Act of 1917 and the Agra Estates Act of 1920, Taluqdars and land-holders who are registered under these Acts can get a declaration made that their properties shall not be auctioned at a public sale, nor mortgaged, nor sold beyond their life-time. The right of pre-emption by co-sharers in respect of sales of land is mentioned as a customary right in the U. P., and as a statutorily recognised right in the Punjab.¹ In Chota Nagpur sales of land were prohibited except with the consent of the Deputy Commissioner.² In Ajmer the Chiefs' lands were neither divisible nor alienable.³ Some of the Inams in the Bombay Presidency are impartible and inalienable.⁴ The Taluqdars in Gujarat could not mortgage their lands beyond their life-time without the permission of the Settlement Officer nor sell them without the sanction of the Government.⁵ In Berar the rayatwari holders have free rights of transfer, but the co-sharers and co-occupants have also certain rights of pre-emption.⁶ In Coorg those holding lands under privileged tenure could not alienate it without the sanction

(*Contd. from last page*)

area of holdings of 293 lakhs of acres at a legal rent of Rs. 38·80 lakhs in Agra, and 62,051 acres out of a total area of holdings of 99 lakhs of acres at a legal rent of Rs. 3·51 lakhs in Oudh. The Government review said that the increase in the exproprietary area was less than one-sixth of the area of 'Sir' transferred during the year. "In the preceding year the ratio of increase in exproprietary area to decline in 'Sir' area was more than one-half, and in the year before it was four-fifths." These figures indicate that the land-holders have been progressively selling both the rent-receiving and the occupancy rights in their lands. The recent Government Review on the Land Revenue Administration report of 28th January 1939 makes the following comments: "While the area of 'Sir' in the two provinces has decreased by 20,535 acres, the exproprietary area has risen only by 1,157 acres due partly to the ejectment of ex-proprietary tenants and mainly to relinquishments on a considerable scale of ex-proprietary rights owing to the bad financial condition of the proprietors in favour of the purchasers." According to the Central Provinces Administration Report for 1937, 1498 applications for sanction to transfer proprietary rights in 'Sir' land without the reservation of occupancy rights were disposed of during the year.

1 Note on Land Transfer and Agricultural Indebtedness, paras. 27 and 37.

2 The Chota Nagpur Encumbered Estates Act of 1876.

3 Note on Land Transfer and Agricultural Indebtedness, para 40.

4 Banking Enquiry Committee Report, p. 25.

5 Broach and Kaira Encumbered Estates Act of 1881, Sec. 28, and Gujarat Taluqdars Act of 1888, Sec. 31, 1.

6 Banking Enquiry Committee Report, para 80,

of the Deputy Commissioner.¹ In Madras, a special Act was passed called the Madras Impartible Estates Act (II of 1904) to prevent the partition of estates and make them inalienable except under certain conditions. According to this Act, certain scheduled estates are deemed impartible. The period of leases is also restricted to 15 years for home-farms and to 60 years for mining or quarrying leases. Property descends to the eldest son and the other members of the family are entitled to a maintenance allowance.

"The proprietor of an impartible estate shall be incapable of alienating or binding by his debts such estate or any part thereof beyond his own lifetime for the payment of land revenue due to Government, unless he shall have first obtained the consent in writing of the Collector of the district in which the estate is situated. Such consent shall not be refused unless in the opinion of the Collector the case is one in which the land revenue due to the Government may be realised by management of the estate under the provisions of the Madras Revenue Recovery Act, 1864."

19 No need for class legislation

It now remains to examine the need for these special laws for protecting big holders. They were justified when the Government assigned to them the duty of collecting the land revenue, and depended on them for the collection. That special Relief Acts have only reduced the credit of land-holders would be apparent from the following extract from the Banking Enquiry Committee report for Bombay:

"Some zamindars after having borrowed from money-lenders had their estates taken over for management under the Act, knowing that such a procedure will put the money-lenders to loss. This has made the money-lenders nervous about making advances to zamindars and as a result they have been insisting on sale deeds being passed to them instead of mortgage deeds. When an estate is taken under management, the creditor has to wait for many years and in the meantime gets no interest on his outstandings."

Under the Gujarat Taluqdars' Act encumbrances on estates have to be sanctioned by the Revenue Officers.²

Such restrictions under the Taluqdars' Act are not only irksome to the land-holders, but entail unnecessary work on the Government. The C. P. Banking Enquiry Committee Report has recommended removal of existing restrictions on the transfer of their rights in 'Sir' lands by proprietors of such lands.³ Prima facie no case exists

1 Banking Enquiry Committee Report, Coorg.

2 The sum of loans sanctioned during 1936-37 amounted to Rs. 31,546. In the district of Kaira sanction was given to one Taluqdar to borrow a sum of Rs. 3,000 on mortgage.

3 Para. 1572

today for special enactments. The Moneylenders Acts and special Acts to regulate suits against agriculturists have an equal application to land-holders too.

There should, therefore, be strong grounds for the use of the Government machinery for the liquidation of past debts of a single class as the land-holders. The exercise of the influence of Government by Government officers on creditors to forego part of their claims, the loss of court fees to the Government when the officers of the Court of Wards settle the debts, and the staying of proceedings by the Court against the estates, all these special privileges for a certain class of land-holders lack justification on public grounds. Public sentiment too revolts against the existence of such Special Acts. For these reasons, Encumbered Estates Relief Acts, provisions regarding the liquidation of debts in Courts of Wards Acts, and restrictions on transfer rights of land-holders should be early repealed, and the land-holders should be satisfied with the benefit of the civil laws which apply to all agriculturist land-holders and they should not be unduly restricted in their free rights of transfer.

Note 1.

RECENT ENQUIRIES INTO AGRICULTURAL INDEBTED- NESS OF LAND-OWNERS

1. The U. P. Government Enquiry into agricultural debt

The fall in the prices of agricultural commodities from 1930 led to a considerable contraction of credit of the agriculturist. To enquire into the resulting conditions, a questionnaire on agricultural debt was issued by the Revenue Secretary of the U. P. Government in January 1932. The replies received from Revenue Commissioners for about 2500 villages afford interesting information on the extent of debt and transfer of land during the period. In all the divisions the security demanded in land was double that of the pre-depression period. Loans could not be obtained without a registration of bonds. In some areas the money-lender preferred not to foreclose as a mortgage was a good 'lock-up investment'. The landlords did not like to redeem usufructuary mortgages because of scarcity of money and the fall in the value of land. Though no one was willing to buy land, the money-lenders who had lent on mortgage were forced to buy the lands of their debtors. The purchasers were mainly Vaishyas, Brahmins, and Jats, from Thakurs, Rajputs and Muslims, who were indebted to the former. "Voluntary sales were much less owing to lack of buyers. This in turn is due to lack of capital, and uncertainty as to prices." "In certain areas of Gorakhpur it is said that Marwaris, having lost their trade to a great extent, are purchasing land."

The following statistical summary of the enquiry brings out the main results.

| Name of division | Repayment of Loans. Percentage of villages under enquiry paying 50% of the loans. | Percentage of Renewals of old loans to total loans. | Amount of new loans. Percentage of loans issued before depression. | Steps to enforce payment. Percentage of villages to total. | Terms for loans. | | Retention of produce. Compared to that before the depression. | Sale of Land. Rise in Percentage of the number of enquiries. |
|---------------------------|---|--|--|--|--|--|---|--|
| | | | | | Rate of interest. | Security compared to that before depression. | | |
| S. T. Meerut | 20 | 15 | 25 | 1/3 | Increase in 40% of villages. | 1 1/2 to 3 times. | 35 | ... |
| L. T. | 7 | Few renewals | ... | ... | Increase by 50% in the rate in 40% of the cases. | Double | ... | 10 |
| S. T. Rohilkhand | 40 | 40 | 50 | 1/3 | ... | Do | 10 | ... |
| L. T. | 19 | Few renewals | ... | ... | 25% rise in 25% of the cases. | Do | ... | 20 |
| S. T. Allahabad & Agra | 20 | 50 | % of fresh advances to outstanding's has dropped from 58 to 12. | More cases taken to court but execution postponed. | ... | ... | Not more than 1/3 to 1/2 of normal amount stored. | ... |
| L. T. | 6 | ... | 50% | ... | ... | ... | ... | ... |
| S. T. Benares & Gorakhpur | % of repayments 35%, 15% and 45% respectively. | renewals 40% and 10% accumulated 55% respectively. | ... | ... | ... | ... | Majority have less. | ... |
| L. T. | ... | At old rates of interest with additional security in 35% of the cases. | ... | ... | ... | Double | ... | ... |
| S. T. Oudh | 33% of outstanding's repaid. | 7% | 44% below normal. | ... | ... | ... | ... | ... |
| L. T. | 8% of outstanding's repaid. | ... | More grain loans. | ... | ... | ... | ... | ... |

2. Enquiry into agricultural indebtedness by the Madras Government

The Madras Government appointed in 1935 Mr. W. R. S. Satyanathan to make an enquiry into agricultural indebtedness. He examined two typical villages in each district except Malabar and S. Kanara regarding sales and mortgages, and came to the following conclusions on the subject. The examination showed that the total lands that changed hands between 1930 and 1934 amounted to 23,932 acres; that 4,772 acres or 20 per cent. of the latter went to non-agriculturists; that the net area sold through civil courts rose from 181 acres in 1930 to 496 acres in 1934; that the net area sold by private sales rose from 4,944 acres to 6,179 in 1933; and that the net area mortgaged by agriculturists to non-agriculturists fell from 3,343 acres in 1930 to 2,297 acres in 1934. An examination of the figures of the Registration Department showed that the sale of land fell phenomenally in 1931 with a slight increase in 1932 and 1933, and that there was a drop in the number and value of mortgages.

Mr. Satyanathan made a comparison of the figures he collected with those of the Banking Enquiry Committee, which is given below:

| | 1930 | 1935 |
|--|------|------|
| 1 Debt per acre of occupied land | 53 | 63 |
| 2 Debt per rupee of assessment | 19 | 21 |
| 3 Percentage of secured debt | 50 | 47 |
| 4 Debt per head of population | 38 | 38 |
| 5 Percentage of amount borrowed from rāyat money-lenders | 47 | 93 |
| 6 Relation of debt to value of property before and after depression | 9 | 20 |

When one sees the disparity in the difference of figures under item five, it leads one to doubt their usefulness in drawing conclusions from them.

Mr. Satyanathan's report also mentions that a special enquiry into suits of agriculturists in civil courts showed a steady increase in the number of infructuous cases, of imprisoned debtors, and insolvency petitions. The main conclusion of the report is that land is passing to big landlord money-lenders from small and medium owners. The report adduces the following facts in support of this contention: (1) The special

enquiry showed an increase in sale of land (vide previous para). (2) The personal investigation of Mr. Satyanathan showed a debt of Rs. 72 per acre and Rs. 29 per rupee of assessment in the case of registered landholders and tenants paying a land revenue or rent of Re. 1 to Rs. 100, and Rs. 44 per acre and Rs. 8 per rupee of assessment in the case of those paying rent or revenue of Rs. 100 and above. The heaviness of the debt of the small holders must tend to sales of land. (3) The figures of the Registration Department also showed a fall in the number and value of sales between 1931 and 1933, as compared to those of 1929, although the figures for 1932 and 1933 showed a slight increase over those of 1931. (4) An examination of the patta holders holding pattas of Rs. 100 and below showed a fall in the number between 1926 and 1931 by 32,67,537 pattas.¹

The first statement shows a tendency to sales of land not necessarily from small and medium owners only. The second is based on an enquiry into only 564 families from which it will not be possible to generalise for the whole province and it shows only the heaviness of debt of smaller proprietors in proportion to their incomes from land. That debt is heavier per acre among the smaller proprietors is borne out by the village investigations of the Banking Enquiry Committee. To that extent the chances of sale of land by small owners to repay debts is greater than in the case of bigger owners. The third statement, viz., that the figures of the Registration Department show a steady increase in the number and value of sales between 1924 and 1928, and thereafter a fall. The fourth statement based on holdings is examined below.

3 Inaccurate calculations

The apparently large fall in the number of holders by 32.67 lakhs is due to a wrong calculation of the number of pattas. The report admits that the information has been extracted from the Land Revenue Report. In the calculation of pattas for 1925-1926, the number of single pattas and of *the shareholders* of the joint pattas has been added in the case of those paying Re. 1 and less, and those paying over Re. 1 and Rs. 10 and less, while the number of single pattas and joint pattas only (and not the share-

¹ A patta, single or joint, is given to every ryotwari holder for a revenue holding " which consists of a single field or subdivision or, what is far more common, a conglomeration of fields and subdivisions in a single village."

holders) have been added for 1930-31. The result is that the number of holders of lands paying Re. 1 and less has increased from 10·86 lakhs to 23·95 lakhs, and of those paying Rs. 10 and less and over Re. 1, from 29·37 lakhs to 52·23 lakhs for the year 1925-26. If the number of shareholders which totals 36·45 lakhs is excluded from this apparent fall of 32·67 lakhs, there will be a rise in the number of holders paying Rs. 100 and below by 3·78 lakhs. There is, therefore, no dispossession of 32·67 lakhs of holders.

4 The dispossession of the small holder

Elsewhere¹ is given a statement indicating the number of holders and the extent of holdings for the three quinquenniums ending 1935-36. They show that there has not been any appreciable fall either in the number of holders or the extent of their holdings among those paying a land revenue of Rs. 100 and below in the first two quinquenniums. But in the next quinquennium the average size of the holding of those paying over Rs. 10 and Rs. 30, over Rs. 30 and Rs. 50, and over Rs. 50 and Rs. 100 has diminished by ·66 acre, ·50 acre, and 1·7 acres respectively. The Land Revenue Report for 1935-36 states that about 55% of the pattas were assessed at Rs. 10 and less, but over Re. 1 a year. The average area of land and assesment on pattas paying Rs. 10 and less but over Re. 1 works out to about 3 acres and Rs. 4 respectively. The bulk of the land covered by these small holdings is dry. It will therefore not be far wrong to conclude that the smaller owners paying a land revenue of Rs. 100 and below must have lost more lands during the last ten years than the bigger owners whose areas of ownership have increased during the same period.

5 Different classes of big holders.

The author of the report divides the land-holders paying a land revenue of Rs. 100 and above into 3 classes. There are the very big landlords who combine money-lending with agriculture and who according to the author, are the class " who have acquired most of their lands by courts sale or private sale in discharge of debts due to them." The second class are those who own lands, but whose main income is from the learned professions as Government service, law and medicine. The third class are those who live solely by agriculture either by direct farming or by leasing their lands to tenants. All these classes lend money to the small rayats. But it will be impossible to say that the latter have been dispossessed from their lands to an " alarming extent ". The in-

¹ Vide para. 6 of the note.

vestigation of agricultural debt in other provinces by the Banking Enquiry Committees shows that there is a large percentage of debt free among the uneconomic holders. They are also not heavily indebted, as they are not creditworthy, and as they have supplementary sources of livelihood. But it will not be incorrect to state that dispossession from land will be greater in the case of holders paying between Rs. 15 and Rs. 100 and whose main source of income is cultivation.

6 Average holding for 3 quinquenniums

A statement of the number of pattas classified according to the land revenue paid by them, the extent of holdings under each group, and the average holding is given below as they stood in 1925-1926, 1930-1931, and 1931-36.

| | 1925-1926 | | Average holding in acres | 1930-1931 | | Average holding in acres. |
|--|---------------|------------------|--------------------------|---------------|------------------|---------------------------|
| | No. of Pattas | Size of holdings | | No. of Pattas | Size of holdings | |
| Rupee one and less ... | 10.86 | 6.02 | 0.55 | 12.12 | 6.79 | 0.55 |
| Rupees ten and less but over Re. 1 ... | 29.37 | 89.98 | 3 | 31.69 | 96.48 | 3 |
| Rupees 30 and less but over Rs. 10 ... | 9.87 | 75.60 | 7.66 | 10.07 | 77.11 | 7.66 |
| Rs. 50 and less but over Rs. 30 ... | 2.23 | 30.04 | 13 | 2.26 | 29.22 | 12.9 |
| Rs. 100 and less but over Rs. 50 ... | 1.22 | 26.23 | 21 | 1.17 | 25.92 | 22 |
| Rs. 250 and less but over Rs. 100 ... | 0.462 | 19.62 | 42.75 | 0.469 | 19.30 | 41 |
| Rs. 500 and less but over Rs. 250 ... | 0.094 | 8.43 | 89.33 | 0.097 | 8.49 | 88 |
| Rs. 1000 and less but over Rs. 500 ... | 0.029 | 5.25 | 176 | 0.028 | 5.51 | 197 |
| Over Rs. 1000 ... | 0.010 | 5.59 | 532 | 0.011 | 6.51 | 592 |
| Total ... | 54.145 | 266.76 | | 57.915 | 275.33 | |

1931-36

| | No. of Pattas in lakhs of acres | Size of holdings in lakhs of acres. | Average holding in acres. |
|--|--|-------------------------------------|---------------------------|
| Rupee one and less ... | 13.26 | 7.21 | 0.55 |
| Rupees 10 and less but over Re. 1 ... | 34.12 | 101.04 | 3 |
| Rupees 30 and less but over Rs. 10 ... | 10.26 | 74.06 | 7 |
| Rupees 50 and less but over Rs. 30 ... | 2.21 | 27.45 | 12.4 |
| Rupees 100 and less but over Rs. 50 ... | 1.23 | 24.99 | 20.3 |
| Rupees 250 and less but over Rs. 100... | 0.47 | 18.97 | 40.4 |
| Rupees 500 and less but over Rs. 250... | 0.104 | 8.71 | 83.75 |
| Rupees 1000 and less but over Rs. 500... | 0.031 | 5.60 | 180.66 |
| Over Rupees 1000 ... | 0.01 | 7.27 | 560 |
| Total ... | 61.69 | 275.30 | |

(The extent of the area in acres of holdings and the number of simple and joint pattas transferred to Orissa in 1935-36 was 3.70 lakhs and 1.08 lakhs respectively. While these figures have been included in the quinquennium ending with 1930-31, they are excluded in that ending with 1935-36.)

7 Recent resettlement reports

The village enquiries referred to in the recent resettlement reports of the several districts in the Madras Presidency throw light on certain special features of indebtedness that have arisen since 1930. The Guntur Report of 1935 says that, while the rayat's borrowings for purchase of lands had to be repaid without any reduction in amount, 'the value of all his assets including the land so bought has depreciated on account of the fall in the prices of agricultural produce.'¹ The Nellore Resettlement Report of December 1937 says: "no ryot will dispose of his land if he could help it. A common feature of the sale of land is the foreclos-

ing of mortgage, where the creditor is content with appropriating to himself all the land of the debtor and putting down all the money due to him for the sale value of land, though it may exceed by far its actual market value. This has been a very common kind of transaction in the recent years of economic depression and low prices." Another noteworthy feature is that the number of money-lenders as against agriculturist lenders has increased in the deltaic areas. The number of money-lenders has increased from 31 to 236, and that of agriculturist money-lenders from 2,571 to 2,631 in the villages selected for enquiry in the two periods 1901-4 to 1907-8 and 1928-29 to 1932-33 in the Southern Taluqs of Salem district and 21 villages of Musiri taluq. Similarly there has been an increase in the number of money-lenders in the deltaic taluqs of Nellore district. While the ratio of agriculturist lenders to non-agriculturist lenders was 76 to 100 in 1928-29, it is 100 to 210 in 1933-34. This is, however, explained in the report in the following words, that "persons who are known as sowcars are mostly agriculturists, and they prefer to be known as such as they command higher social status, and as delta produces more wealth, the money-lending class grows more rapidly." ¹ The resettlement reports also refer to the increase in the percentage of debts to the land value, which is again due to depression.²

The Kurnool resettlement report of 1935 refers to sale of land to big money lenders in the following terms: "The boom in groundnut was accompanied by an extension of credit and increase of indebtedness on a big scale. Many ryots undoubtedly thought a golden age had dawned and extended their holdings on the strength of easily obtained loans. The present fasli has brought the aftermath. Lands are being sold to meet these debts, and landed property is tending as perhaps never before in this district to accumulate in the hands of the big money-lending ryots or of the merchants. Small ryots became tenant holders." Another result of the depression referred to is the conversion of owners of lands into tenants who work under their landlord creditors with a view to repay their debts. "But the tenant's share is not intended to leave him much of a surplus after paying the expenses of cultivation, with the result that, instead of getting out of debt by parting with his land, he finds himself

1 Nellore Resettlement Report 1937, p. 19.

2 vide Resettlement Report of Northern taluqs of Salem District, 1937, p. 37, para [e].

becoming more and more involved." The same report refers to one other interesting fact as the cause of indebtedness. Rayats retain uncultivable lands in their possession, so that 'they can more easily get loans without substantially increasing their real assets or acquiring expensive security.'

Note 2.

TENANTS' INDEBTEDNESS.

12 The non-agriculturist money-lender in Bengal

In Bengal the money-lenders were mostly non-agriculturists. "In the vast majority of cases of agricultural loans in Bengal, the lenders are non-agriculturists so that a portion of the agricultural income is gradually passing into their hands depleting further the already scanty stock of agricultural capital. In some cases the lender acquires the land, reducing the borrower to the status of an under-rayat or of a barghadar (produce-sharing tenant) who has to pay more as rent".¹

13 The bankruptcy of the small cultivator

For an understanding of the recent position of tenants, we give below a review of an enquiry made in Bengal in 1935. Enquiries were made by the Collectors of 6359 families of two villages in each circle in their districts, between February and March 1934. These have been tabulated in appendix II in the preliminary report of the Bengal Board of Economic Enquiry on rural indebtedness (1142 L. R. 18-1-35). The families were classified in these tables under four classes as (1) those who are debt free, (2) those whose debts did not exceed twice their income after deducting the value of the food consumed, (3) those whose principal debt did not exceed four years' income after deducting the value of the food consumed, (4) and those whose debts exceeded the latter. Certain supplementary enquiries were also made and the results have been tabulated in Appendix II in the preliminary report. The average holding of the tenants examined was 6.73 acres in the first table, and 3.63 acres in the second table. The average income was Rs 114, average expenditure Rs 136, and average debt, Rs 96.

¹ Banking Enquiry Committee report, Bengal, page 75.

The following table will indicate the debt position of occupancy tenants.

| | Percentage of families in each class. | | Average debt Statement II | Percentage of debt to total debt | Percentage of no. of families holding below 2 acres |
|--|---------------------------------------|--------------|---------------------------|----------------------------------|---|
| | Statement I | Statement II | | | |
| 1. Debt free ... | 29.8 | 23 | | | |
| 2. Those whose debts did not exceed two years' income ... | 50.4 | 43 | 112 | 42.5 | 15 |
| 3. Those whose debts did not exceed four years' income ... | 10.4 | 16.5 | 401 | 23.3 | 5.3 |
| 4. Those whose debts exceeded four years' income ... | 9.4 | 17.4 | 585 | 34.2 | |

These figures indicate that those whose debts exceeded their four years' income owed a third of the total debts. They formed between one-sixth and one-tenth of the total number of families examined, i. e. roughly 13%. We should add to this number 15% and 5.3% of the total number of families in the first two indebted classes respectively who held 2 acres and below, and who could not repay their debts as their income would just be sufficient to maintain them. Nor could the subsidiary sources of income of these classes which had been estimated at not more than Rs. 45 per annum by the Banking Enquiry Committee improve their credit position in any way. About 33% of the families might be, therefore, considered insolvent.

14. The reaction of the depression on the attitude of creditors.

The position in Bengal is peculiar. Moneylenders could not collect the amounts due to them owing to depression during the last 7 or 8 years. The Economic Enquiry report of the Rangpur district made by the Settlement department is quoted by the Board of Economic Enquiry in their report, and it states the following about the favourable attitude

created in the creditors by the depression for any scheme of scaling down of debts.

"Of the outstanding debts the greater part was borrowed in the 3 years 1928, 1929 and 1930. Since then the amount of borrowing has slackened off....It is probable that creditors will compound the debts on terms which are fair and equitable to both parties."

The report also states that money-lenders agreed to instalments on loans without the addition of interest. We have made special mention of this fact to show that creditors would not be unwilling to forego interest in any scheme of debt conciliation. The Economic Enquiry report mentions the failure of money-lenders to collect even interest, much less their capital outstanding, and of the difficulty of getting purchasers for lands auctioned by courts.

15 Distress conditions in Bihar, Orissa and Chota Nagpur

Reports were called for by the Government of Bihar in 1935 to understand the distress caused by depression.

In Bihar the depression has increased forced sales through courts. The value of mortgages and sales has remained stationary, while their number has increased. In Orissa the contraction of credit has led to more economy in the domestic budgets of tenants. With the fall in land values, the number of buyers decreased. Consequently debt has contracted. As the holdings were not protected from court sales for inability to pay rents and cesses, their sale by courts have only increased of late. It is surprising that even in spite of the fact that landlords had to transfer the land to the same judgement-debtor cultivator owing to the difficulty of finding new tenants to take it, the number of court sales have gone up in Cuttack and Puri between 1931 and 1934.

In Sambalpur, where the C. P. Tenancy Act is in force and tenants could neither transfer nor sell lands, the number of mortgages increased from 1354 to 1667, and that of sales from 560 to 1117 between the years 1931 and 1933.

In Chota Nagpur the tenants became more subject to the money-lender after the depression, as he generally supplied them seeds, grains and cattle. He could always attach the produce. Consequently, lands had to be brought to sale for arrears of rent. The money-lender held the lands also in *zar-peshgi* mortgages (rent of which is received in advance),

the debtor cultivating under him. When the full amount could not be recovered, fresh documents were taken. When a tenant absconded, new tenants were employed by the money-lenders without the knowledge of officers. Crops were pledged to them orally without any registration. Where the debts could not be repaid, lands were also surrendered to the zamindars who settled them with the money-lender. The latter rarely wants the land. He wants only leases of land. Under the Tenancy Act of 1924 permission of the Revenue Officer was necessary for sale of lands and for mortgaging them with possession beyond five years. But mortgages within five years could not be controlled. The number of perpetual leases rose enormously in the area. The Ranchi Resettlement Revisional Report mentions the number of illegal mortgages as amounting to 61,533. The Tenancy Act has been amended in 1937 with a view to check such mortgages.

The Hon. Mr. P. C. Tallents, speaking on behalf of Government during the discussion on a private bill in 1936 for the relief of agriculturists, summarised the reports of Collectors about the extent of economic distress in the following words :

"These reports indicate that, though the depression has made itself felt (and hardly felt) by the cultivators, it has not widely affected their credit position; that they have met the situation largely by reduction of expenses, by refraining from fresh borrowing on the part of the debtors, and on the part of the creditors by refraining from putting undue pressure on the debtors. The situation has thus been met after some fashion. The increase of indebtedness is ascribed not to the taking of fresh loans, but to the mounting up of loans already in existence. It is widely reported that it is against the interest of the ordinary village money-lender to bring agricultural holdings to sale at a time when it is difficult to find a purchaser. Government believe that there has been a good deal of amicable scaling down of debts between money-lenders and borrowers. It is less easy in this province to supply statistics relevant to the matter than it is in other provinces which have the staff of village officers, but there are certain facts and figures which I will now give to the House which give some indication of the difficulties in which the agricultural population have been put during the last few years.

" I will take first the Government land revenue. The percentage of current collection of land revenue to the current demand 9 years ago

was 98; last year it was 92. The percentage of the current collection of rent in Government Estates to current demand 9 years ago was 89; last year it was only 65. The number of certificates filed for arrears of rent due to Government 9 years ago was 4,853; last year it was 11,906. The number of rent suits instituted in Revenue Courts in Chhota Nagpur and Orissa was 38,255 nine years ago; last year it rose to 92,145. The number of rent suits instituted in the civil Courts of this province rose during the same period from 1,11,361 to 1,57,321. The proportion to the whole is, however, still small; for the number of rent-paying tenancies in the province is estimated to be something in the neighbourhood of 60 lakhs. The number of Civil Court proceedings in which immovable property has been sold up nine years ago was 16,596; last year it amounted to 42,134. These, Sir, are figures which undoubtedly show what difficulties the agriculturists have been experiencing during the last few years."¹

16. The money-lender landholder in U. P.

In the U. P. a substantial percentage of debts of tenants was owed to the landlords. The percentage would probably be more, if we exclude the debts of under-proprietors and fixed-rate tenants.²

Debt owed to a landlord means that he can sue him in the revenue court for arrears of rent, and the civil court for arrears of loans due. It was usual for occupancy tenants to surrender their holdings owing to the debt they owed to their landlords.³

17. The distress among the tenants since 1930

The distress among the tenants since 1930 would be apparent from the replies received by the U. P. Government in their enquiry in 1932.

They showed that "repayment of loans have greatly decreased, the volume of outstanding debt has greatly increased, and that the amount of fresh debt available to borrowers is now only one-half to one-fourth of the amount usually available before the fall in prices." The replies further showed the exact state of agricultural distress in the province. There was a decrease in the number of cattle and the price it fetched. Handing over of crops, cattle and ornaments and the sale of household articles are mentioned as common methods for repaying debts. Loans

¹ Bihar and Orissa Legislative Council Proceedings, Vol. 134, 1936 p. 386-387.

² The U. P. Banking Enquiry Committee Report, page 105.

³ Ibid, page 55.

on bonds increased. The security taken in land was greater. Rates of interest too increased. The loss of lands has been little, as money-lenders knew that execution proceedings would be of little use. In Allahabad and Agra "the tenants have in a number of cases handed over their land temporarily to the lender and now work as labourers or sell fodder etc." In Benares and Gorakhpur "sub-tenants had to give up their lands on account of high rents and debtors worked as the labourers of lenders. Cases where the cultivators had to go without the means of subsistence were few, but cases where they have to be satisfied with one meal a day were many." Cropping became poorer, and poorer crops replaced better crops. The amount of produce retained by the tenant was less than in normal years. The capacity of the money-lenders to lend decreased. Grain loans were on the increase, and it was reported that there was a tendency in Oudh for a larger number of grain loans to be recorded in cash. In Meerut and Rohilkhand zamindars were badly hit except those who lent to their own tenants. Of the latter the report says that "the tenant is in their power and they still find the prospect of ejecting tenants and disposing of vacant land attractive". The situation called for a drastic liquidation of past debts and prevention of the unconscionable methods of money-lenders.

18 The growth of tenants-at-will in the Punjab

In the Punjab only an extent of 7.3% of the total cultivated area was held in 1931-32 by occupancy tenants. But 48.2% of the area was held by tenants at will.¹ Consequently tenants with transferable rights are few. 50 years there has been an increase in the area held by tenants-at-will. Major Wace in his evidence submitted to the Famine Commission of 1880 said that the total area held by the occupancy tenants and tenants-at-will was 35.40 lakhs of acres, and 64.88 lakhs of acres respectively. It would thus seem that the proportion of area held by tenants-at-will to that by occupancy tenants increased from a little less than two times to more than six times the area.

19. The economic condition of occupancy tenants

The economic condition of occupancy tenants approximates to that of smaller proprietors. Their average debt is a little less than that of the latter, so too their mortgage debt. The recent village surveys show

¹ Land Revenue Report, 1932.

that a majority of them are in debt. They also show that most of them have running accounts with agriculturist landlords in the Western Punjab.¹ In single landlord villages the money-lender finances the tenants with the help of the landlord who "gives him a house free of rent, and if necessary puts pressure on debtors who will not pay, when the division of the produce takes place, handing over a part of it to the money-lender."²

20 The tenant under the money-lending malguzar.

Land transfers are few in the C. P. There is not much secured debt among the tenants as 15% of the area alone held by tenants is transferable.³

Want of security has led to the levy of a high rate of interest on loans to tenants. Illegal mortgages or leases were also common. Though the money-lender knew they were illegal, they were taken because of the ignorance of the tenant who thought them valid.³

The miserable position of a tenant under a money-lending landlord is well described in the following extracts of the Banking Enquiry Committee report.

As most cultivators are illiterate, there is a very common tendency among malguzars to credit all payment including rental payments to debts. As the malguzar is entitled under the Land Revenue Act to have the occupancy tenant ejected when three years' rents are in arrear, this is a very dangerous weapon in the hands of those who are land-grabbers. (Para. 599.)

It appears to us that the existing law with regard to occupancy tenant land gives the money-lending malguzar dangerously wide scope for getting possession of the land of tenant borrowers if he desires to do so, and there is always a danger that transactions between the malguzar and his tenant may be tainted by a certain amount of undue influence. (Para. 2033. See also paras. 300 and 805.)

The depression after 1930 has deteriorated the position of the tenant still further, as he has to sell more produce for making cash payments. The relief measures passed to relieve the situation and help the tenantry in the liquidation of their debts are described elsewhere.

21: Want of credit of zamindari tenants

The economic condition of tenants in zamindari areas of the Madras Presidency has not improved during the present century

Banking Enquiry Committee, page. 230.

C. P. Banking Enquiry Committee report, para. 714.

C. P. Banking Enquiry Committee report, para. 2044.

largely owing to the defects in the existing Tenancy Act. High and insecure rents, the indefiniteness of the area of the holdings, non-maintenance of irrigation sources, spasmodic collection of rents and illegitimate exactions have reduced the value of land as a proper security, and consequently the credit of the rayat is low. The Madras Banking Enquiry Committee's report says that while there was commonly in zamindari areas a large uncollected balance, this balance was not equitably distributed among the cultivators so that all might benefit equally.

"It depends on the skill, influence, ability to evade, obstinacy or poverty of the individual. In consequence other things being equal, land in zamindari areas is less readily saleable outside and therefore less valuable than that in ryotwari villages."

Consequently, the rates of interest on borrowings are high. The Madras Central Land Mortgage Bank feels nervous of expanding its operations in zamin areas, because of want of survey of lands and settlement of rents.

Money-lenders are generally afraid to lend on mortgages owing to the rights of zamindars to eject the tenants for non-payment of rent, and the absence of a proper survey of lands. The administration reports of the Court of Wards always indicate the heavy indebtedness of tenants. The landholders generally do not lend to their tenants as in the C. P. But arrears of rent are converted in some areas into pro-note debts as due to the landlords.

22. The province of Assam comprises two geographical areas, the Surma valley in the South and the Assam valley in North. The former was badly affected by floods and the number of mortgages even for small loans has increased since 1929.¹ In the other less populated Assam valley, the town money-lenders lent on mortgages to small holders who were the Mymensingh Settlers and ex-garden coolies.² The revenue collecting agents of zamindars allowed arrears of rent to accumulate, took mortgage bonds for the same and then got possession of the land.³

The Banking Enquiry Committee's report says :

1 The Assam Banking Enquiry Committee report, para. 35.

2 Para. 43.

3 Para. 45.

"Many well-to-do agriculturists also take lands on mortgage and in due course become owners. Then there are many indigenous money-lenders in both valleys who have considerable areas of land that used to belong to their debtors."¹

23. Distress conditions in Assam since 1930.

The loan companies also lent to the joteders who had rights of transfer in their lands. But since the depression the agriculturist money-lender and loan companies are withdrawing their capital by collecting the amounts due to them in rural areas, and stopping further lending. The result has been that the rayat has entirely to depend on the ex-garden coolies and the village mahajan for any borrowings.²

1 p. 158.

2 Rural Indebtedness in Assam, a paper read by Mrs. Sadhana Das Gupta; M. A. Shillong, at the Economic Conference, Nagpur, Dec. 1938;

CHAPTER II.

THE DECCAN AGRICULTURISTS' RELIEF ACT, 1879

20 Devices to prevent transfers of land

The first comprehensive enactment which attempted to minimise permanent alienation of land for debt was the Deccan Agriculturists' Relief Act of 1879. It was based on the recommendations of the Deccan Riots Commission of 1875. It provided for an investigation of transactions between the agriculturists and the creditors and the determination of the genuine principal and interest due. Having so determined the amount due, it empowered the courts to grant and revise all decrees and execute them in such manner as to avoid as far as possible the sale of land of the debtor. If even these provisions could not save an agriculturist from selling his land, it provided for a liberal insolvency procedure. The Act also provided for conciliation and village courts with a view to utilise local public opinion in deciding the amounts due by an agriculturist. It introduced a number of safeguards to prevent frauds in money-lending. It provided a special machinery to render cheap and summary justice to the rayats. As this Act was the precursor of most Indian legislation on the subject, we deal below with its history and its provisions in some detail.

21 Investigation into the history of the bond

Investigation into the history of debt transactions becomes pure guess work when the court has no documents nor accounts to go upon. It is an extremely difficult process for the court to unravel the real facts merely from a bond. Sir Thomas Hope, when introducing the bill in 1879, said :

As Mr. Pedder expresses it, " The passing of a bond by a native of India is often of no more value as proof of a debt he thereby acknowledges, than the confession by a man under torture of the crime he is charged with. That the money-lenders do obtain bonds on false pretences; enter in them larger sums than agreed upon; deduct extortionate premiums; give no receipts for payments and then deny them; credit produce at fraudulent prices; retain liquidated bonds and sue upon them; use threats and warrants of imprisonments to extort fresh bonds for sums not advanced; charge interest unstipulated for, over-calculated or in contravention of Hindu Law — these are facts proved by evidence. "

It is to remedy this state of affairs that various provisions were enacted in the Deccan Agriculturists' Relief Act which are referred to in the succeeding paragraphs.

22 Mode of taking an account

Sections 12 and 13 of the Act provided for the mode of taking an account. The court should first ascertain whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise.

It should then take an account between the parties. Accounts of principal and interest should be separated. Credit should be given to the debtor for all payments in cash and kind. Any over-written amount in the bond should be cancelled. Accumulated interest added to the principal from time to time should be excluded, "unless the court for reasons to be recorded by it in writing deems such debit to be reasonable". Monthly simple interest should be calculated on the outstanding principal at a rate fixed by the court. A calculation not only of the amounts paid, but of profits, services, and advantages of every description received from the debtor should be calculated in money value. The amount so calculated should be credited to the interest due at the time the payment is made, and the balance to principal. The account should be made up to the date of the institution of the suit. If the balance due under interest exceeded the outstanding principal, "double the latter shall be deemed to be the amount then due".

23 Presence of defendants obligatory

An investigation of accounts required that the defendants should be present during the trial. So it was obligatory on the court to summon them in every suit, unless the court deemed it unnecessary to do so.*

24 Arbitration

Section 15 provided for arbitration in cases where an enquiry could not result in arriving at the actual amount of a loan due.

25 Provisions to mitigate the sales of land

A number of provisions related to the repayment of debts, preventing as far as possible the sale of land to the creditors. With a view to assist the debtors to know the exact amount of their debt,

1 "This clause has been interpreted in some parts of the Presidency strictly and the wretched man is dragged to the court under a warrant of arrest. After this he does not gain much, but he loses his wages for the period that he is kept away from his work in his remote village. I personally should desire that much latitude in this matter should be left to the presiding judge, Only where he suspects real fraud and the amount at stake is pretty large that he should compel the presence of the defendant debtor." Extract from the opinion of District Judge, Belgaum, on Bill No. VII of 1934, p. 36.

which was not generally supplied by the creditor, Section 16 provided that they might sue for accounts. In such cases the court would determine the amount due according to Sections 12 and 13. Under Section 17 the amount might be paid in instalments. Under Section 18 the debtor might deposit the amount due in the court. Under Section 20 decrees might be revised during their execution and instalments might be fixed by the court with or without interest. The Act also provided that immoveable property should not be attached "unless specifically mortgaged and the security still subsists" (Sec. 22). It was thought that temporary letting for rent might be permitted for realisation of the debt. The Collector was therefore empowered to take over the property of the judgment-debtor, after setting apart the portion necessary for the maintenance of the judgment-debtor and his family. He might then manage it by letting it on lease or otherwise for a maximum period of 7 years (Sec. 22, para. 2). The debtor was declared incompetent during this period to alienate the property in any manner (Sec. 30).

26 Insolvency provisions

Where a debtor was unable to repay debts as determined by the court with or without interest either in instalments or by temporary alienation of land, he was a fit case for being adjudicated as an insolvent. The Deccan Agriculturists' Relief Act provided also for liberal insolvency provisions. The principles underlying any insolvency law are expedition in the collection of what could be repaid by a debtor, and facility for the latter to begin life afresh without the encumbrance of any past liabilities. With a view to making it easy for a debtor to apply for insolvency, elastic provisions were introduced in the Act. A creditor could apply to the court to get a debtor declared insolvent. It was not necessary that there should be an attachment of property or arrest or imprisonment of a debtor to entitle him to the insolvency provisions. The debtor might apply to a subordinate judge to be declared an insolvent, even if he owed Rs. 50 or upwards, and not Rs. 500 and upwards as provided in the Insolvency Act. The court might declare a debtor as an insolvent without any enquiry into his past conduct and character, as the question of ability to repay was purely one of arithmetic. The court would go into the history of the transaction. The court Nazir was to be the receiver without any remuneration. The court might direct the Collector to take possession of the property of the insolvent not required by him for his maintenance for a period not exceeding 7 years, which he might let on lease or manage otherwise for the benefit of the creditors (Sec. 29). If the debt was a

secured one, the court might authorise the Collector to let the land for 20 years on payment of a premium equal to the amount of such debtor, in the alternative, to sell the land. Any surplus remaining after meeting the secured debt was to be utilised to repay unsecured debts. The premium should be applied to repay the debt. And if any rent was also collected, it should be paid to the receiver for the first 7 years and to the insolvent thereafter (Sec. 30). The houses or other buildings belonging to and occupied by an agriculturist were to be exempt from the possession of the Collector (Sec. 29). This is an improvement on the position in the Provincial Insolvency Act under which the Receiver might sell the lands without first letting them on lease and sell all the land and houses too without setting apart a portion of property for the maintenance of the judgment-debtor and his family. It should be noted that appeals against orders of the the subordinate judge were barred (Sec. 33).

27 Village conciliators and courts

The appointment of conciliators who can grant awards to the parties, and of village munsifs to try petty suits were the other features of the Deccan Agriculturists' Relief Act. The idea was to reduce litigation and to provide a cheap machinery to bring the debtor and creditor together in a friendly manner to decide the money claims of the latter. It was also considered that village public opinion would be able to exert a healthy influence on them. The courts too would be relieved of much of their work. The Act also provided for the appointment of village munsifs to try petty suits upto rupees ten. This was based on the Madras system of village courts. Pleaders were prohibited from appearing before these conciliators and village munsifs (Secs. 38-49).

28 A judicial machinery

The Act further provided for a judicial machinery to try suits against agriculturists. Subordinate judges were empowered to try certain suits, but there should be no appeal from their decrees or orders in the Deccan districts. A special judge was appointed to inspect, supervise, and control the proceedings of the subordinate judges, munsifs and conciliators (Chapters II and VII). The absence of appeal and the provision for revision by the special judge were considered the chief merits of the Act on the following grounds :

" The long purse will have less advantage over the short one. The temptations to technicalities will be diminished. The percentage of cases which will come under scrutiny will certainly be ten times as large as under the appeal system and probably more. "

Provision was also made in the Act to give the services of a pleader at Government expense for such rayats as could not afford it.

29 Registration of bonds

The Act also provided for a number of safeguards to prevent the abuses in money-lending. The Deccan Riots Commission had suggested that registration of bonds would prevent the frauds practised through them. The Act, therefore, provided that village registrars should be appointed before whom every instrument by an agriculturist should be executed if it was to be valid. The consideration should be fully stated in every instrument, and the village registrar should attest it, thereby certifying to the fact of payment of the consideration money. (Secs. 55-63).

Further, with a view to preventing suits arising out of oral transactions, the Act provided that every mortgage, lien, or charge on any immoveable property of an agriculturist should be valid only when reduced to writing (Sec. 70). Under Sec. 59 of the Transfer of Property Act, mortgages of Rs. 100 and over alone require to be registered.

30 Limitation of the period of suits

The Deccan Riots Commission wrote that "reduction in the period of limitation increased the difficulties of the rayat in his earlier borrowing transactions with the money-lender". The period of limitation was, therefore, extended in the case of suits for the recovery of money from a person to 12 years for registered instruments, and in other cases to 6 years (Sec. 72).

31 Receipts and particulars of accounts

The Act also provided safeguards against frauds such as "not giving credit for payments, wrong representation of accounts to debtors, and tendering in evidence false receipts and false evidence of alleged payments".¹ It, therefore, made issue of receipts obligatory on the creditor. Also, if a debtor demanded particulars of the loans or a pass book in which his account should be fully entered, the creditor was bound to render them. Failure to supply these was made an offence for which the creditor was liable to pay a fine of Rs. 100 (Secs. 64-67).

32 Abolition of arrest and imprisonment of debtors

One weapon in the hands of the creditor to compel a debtor to do forced labour for him, or to part with property which he need not under the civil law (Secs. 60 and 61 of the C. P. C.) was the facility for

¹ D. A. R. Act, K. S. Gupte, p. 297.

arrest and imprisonment of debtors granted by courts. Sir Thomas Hope, when introducing the bill, said: "Unacknowledged payments, fresh bonds for sums unadvanced, life-long slavery and even female dishonour may all be obtained, the first three constantly, by the mere production of the warrant of arrest without enforcement. The Decan Riots Commission said in 1874 that "it would seem probable that somewhere about 150,000 warrants had been used as threats only." In order to put an end to these evils, section 21 of the Act abolished arrest and imprisonment of a debtor in execution of a decree for money.

These were the original provisions of the Act. But they were modified from time to time during its long and chequered history. The amended Act of 1882 made a number of important changes as a result of experience gained in its working.

AMENDMENT ACT OF 1882

33 Redemption before the due date

According to the Act, accounts might be reopened even in mortgage suits and the principal and interest determined by the court. But the Transfer of Property Act provided that the right to sue for redemption of mortgages did not exist before the due date mentioned in the bonds, and before the full mortgage debt had been completely discharged. The court, therefore, could not grant a decree and fix the instalments of payment, but only declare the amount due in redemption suits unless the mortgagor had the right to sue for redemption even before the due date and even when he had not fully paid the amount. This was provided for by an additional Sec. 15 *a*.

34 Suing for accounts on secured debts

The original Act provided in Section 17, in suits by debtors, for accounts, for fixing instalments in the decrees passed in such suits, and for payment of the amounts due to the defendants as deposit in courts. But this section was interpreted by the courts that they did not relate to debts secured by mortgages, and therefore a mortgagor could not sue for accounts. And inasmuch as the fixing of instalments when passing a decree under Sec. 17 related only to suits for recovery of unsecured debts, no instalments could be fixed in decrees passed in suits in which a mortgagor sued for accounts.

This defect was rectified by providing for a new clause 15 *d*. It empowered mortgagors to sue for accounts without seeking for redemption of the mortgaged lands. Before the decree declaring

the amount was granted, the mortgagor might also apply for redemption. In such cases a decree for instalments as mentioned in para 33, might be granted by the courts.

35 Revision of decrees

The court had also power to grant instalments with or without interest 'on any decree passed against an agriculturist' (Sec. 20). But the High Court held in 1881 that 'decrees *passed against an agriculturist*' could mean only against an agriculturist *personally* and therefore could not include decrees for the recovery of money by sale of mortgaged property. The result of such a ruling was that the very object of the Act of preventing sales of land through courts by the method of granting instalments in decrees relating to mortgage suits came to be frustrated. A special provision was, therefore, necessary empowering the court to grant instalments in cases of decrees in suits for redemption, foreclosure and sale, and proceedings under such decrees.

This was provided by the addition of a new clause 15 *b*. It empowered the court that, in passing decrees in suits, or in proceedings under a decree for redemption, foreclosure and sale, it might order instalments 'on such dates and on such terms as to the payment of interest and where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor as it thinks fit.' If an instalment fixed was not repaid on the due date, the court need not bring the *whole* mortgaged property to sale, but just a portion necessary to repay only the arrears of instalment.

36 Instalments in suits for possession of properties

Another set of suits had to be covered, viz., those for recovery of possession of mortgaged property. A mortgagee holding a conditional sale mortgage might sue for the possession of property. Such suits were covered by Sec. 15 *c*. In such cases, too, the court might determine the profits from land, take an account of payments of debts already made, and fix instalments for the balance due. If the amount fixed was not paid, the mortgagee might be put in possession of the whole or any part of the property mortgaged for the realisation of the sum.

37 Retrospective effect

The Act failed of its purpose in respect of some of the important provisions too because retrospective effect was not given to them. The abolition of arrest and imprisonment for debts, and the restriction of court sales of land only to properties specifically mortgaged for a loan could not apply to decrees passed before the

commencement of the Act. The defect was rectified by giving retrospective effect to these provisions.

38 Courts to act of their own motion

It was also found that the court could not transfer lands for temporary management by the Collector either in insolvency provisions, or when passing a decree or in the course of proceedings under a decree against an agriculturist (Secs. 22 & 29), unless the debtor applied for it. The latter never applied. And in order to prevent these sections becoming a dead letter, the Amendment Act empowered the courts to direct the Collector of his own motion to take up the temporary management of the lands of the debtors.

39 Limit of time for certificates

The original Act did not provide for any limitation of the period for which the certificate of a conciliator would be valid. The result was that the money-lender began to use his award or certificate as a means of intimidating the debtor in several ways. A limit of time during which the certificate should be enforced by the creditor was provided in the Amendment Act of 1882.

40 Reservation of land for support of judgment-debtor

The original Act saved part of the land of the debtor required for his maintenance and that of his family from being taken over by the Collector whenever he managed it under the direction of the court. But there was no exemption made regarding the produce of the land. The result was that the produce could be attached by the creditors, even though the land was left in the hands of the judgment-debtor. Sec. 30 of the Ajmir Courts Regulation of 1877 had provided for exemption from attachment in execution of decrees of "such agricultural produce as may be required for the subsistence of the debtor and his family and as seed or as fodder for cattle used for agricultural purposes." On the basis of this Regulation, the Amendment Act provided that the Collector might direct that a property not taken under his management " shall be deemed to be reserved for the support of the judgment-debtor or insolvent and the members of his family dependent on him " (Sc. 73 A).

41 Inclusion of agricultural labourer

The Amendment Act of 1882 also made clear the class of agriculturists to whom it was to apply. It was made to apply to "any one who earned his livelihood principally or wholly by agriculture whether by himself or his servants or tenants". By this amendment those who engaged in agricultural labour were also included in the definition.

THE AMENDMENT ACT OF 1886

42 Mode of registration

Two important amendments were made in the Act in 1886. One of them prescribed the mode of registration of documents regarding immoveable property, which should be compulsorily registered under Sec. 17 of the Indian Registration Act. This section provided that mortgages of Rs. 100 and over could be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. The new amendment provided in addition that the registered instrument should be read aloud to an agriculturist, and the sub-registrar should attest the transfer of consideration. Where a document made a reference to previous documents, copies of the latter should be produced. The consideration should be fully stated in it. The executant should appear in person.

43 Attachment of standing crops

Secondly, it was found necessary to define in Sec. 22 that standing crops were moveable property. Under Sec. 22 immoveable property could be attached only if specifically pledged. The courts held that standing crops could not be attached as they were immoveable property and as they were not specifically pledged. To remove the anomaly, a clause was added in Sec. 22 that standing crops were moveable property.

44 The Commission of 1892 : Results of the working of the Act

The Government of India appointed a Commission to enquire into the working of the Deccan Agriculturists' Relief Act in 1891. The Commission reported that accumulation of new debts had been arrested owing to the limitation of interest; that improvident borrowing had been checked; that the number of mortgages had increased, and that, even though the number of agriculturist money-lenders had been increasing, "a large and increasing area is still being annually transferred to the trading and other classes." The Commission concluded thus:

"The Act by reducing the burden of debt, by exempting land from liability to sale in execution of money decrees, and by making clear to the rayat the result of the contracts which he enters into, has undoubtedly largely checked the transfer of land both by the voluntary action of the parties, and by the action of the court; but it has unquestionably failed to stop that process."

45 Benefits of the Act

The Commission also showed the benefits of redemption of mortgages as a result of the Act. The Deccan Riots Commission had stated that "instances of the redemption of mortgage were

almost unknown." But during the 12 years of the working of the Act, "redemption claims to the extent of 27 lakhs of rupees were settled at nearly 18 lakhs. During the same period the conciliators settled 3,357 claims of a total value of 9 lakhs of rupees at nearly 7 $\frac{3}{4}$ lakhs of rupees. The mortgage debt thus settled in the course of the last 12 years comes to a total of 36 lakhs of rupees, and the settlement was made at 25 lakhs of rupees." (Report of the working of the D. A. R. Act, 1891-92, page 37.)

46 Evasions of the Law

The Commission made specific recommendations regarding the lines on which the Deccan Agriculturists' Relief Act should be amended. The taking of an account in respect of mortgages with possession was an extremely uncertain affair. There was no basis for calculating the annual land incomes. They could not be decided as multiples of land revenue, nor of rent, as sufficient data was not available for the purpose. They varied with the seasons. In spite of so much of uncertainty in taking an account of income from usufructuary mortgages, the Act applied this provision not only to mortgages executed after, but before, its commencement. A slight mistake in the calculation of the profits of land by even a rupee per acre would affect enormously the amount of debt due at the end of 20 or 30 years. Further, the Act provided that, in mortgage suits or in the proceedings for execution of decrees relating to such suits, instalments might be fixed. This meant that a creditor holding an usufructuary mortgage was ousted out of his possession of land, and asked to depend on future repayments by instalments by the debtor. Interest might or might not be allowed to be added to these instalments. The result was that creditors avoided the courts. They used the provisions for arbitration to circumvent the law. An arbitrator's award, when filed in a court, had the force of a decree. So even when there was no dispute, an agreement could be entered into, the creditor converting thereby usufructuary mortgages into simple mortgages. The system of conciliation under which the conciliator induced the parties to come to an agreement was also abused in a similar manner. For example, bonds were renewed as a result of conciliation, thereby converting unsecured loans into secured loans, as the Act permitted only the latter class of loans to be recovered by the sale of land.

47 Determination of a fair rent and continuance of usufructuary mortgages in possession of the land to recover their debts

Another device adopted by the creditor was to get the land sold to him, and to return it back on the repayment of the loan. "To

such lengths is the practice carried that the Commission came across one case in which a ryot had sold a field in order to raise enough money to dig a well in it." The Commission, therefore, recommended that the terms of usufructuary mortgages entered into before the passing of the Act should not be reopened, that the rent of the land should be determined, and that the mortgagee should be permitted to continue with the land in his possession, the rent being adjusted to the debt due. The Act was suitably amended in consonance with this recommendation, but the clause giving retrospective effect was not amended. Sec. 13 A provided that, where a court was unable to determine profits in the case of a land in possession of the mortgagee or his tenants other than the mortgagor, it might fix a fair rent for such property in lieu of profits, and the rent might be abated for years of serious failure of crops. Two clauses were added in Sec. 15 B. The one empowered the courts to direct, in the decrees for redemption or foreclosure, the mortgagee to continue in possession of land for the recovery of the debt, instead of restoring the land to the debtor, and permitting him to repay the amount due in instalments. The other empowered the court to fix such period for which the mortgagee was to continue in possession "as will in the opinion of the court be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest". By these provisions the hardship in ejecting a mortgagee with possession and asking him to get back his loan in instalments was removed.

48 Commission's recommendation to stop any kind of sale

The Commission also recommended that the provision that, when an instalment was not repaid, a portion of the property could be brought to sale to realise it should be deleted. This was not given effect to.

49 Postponement of repayments

The Commission further recommended that a mortgagor whose mortgage was foreclosed, or redeemed, or whose land was brought to sale should be given sufficient time to make the payment. This was provided for by the addition of a new Section 15 AA empowering the courts to name a future day not less than 6 months for the repayment of the money due under the decree.

50 Transfer of possession to Creditor or collector not recommended

The Commission found that the method devised in the Act of directing the Collector to manage the properties of the debtor for 7 years was an unworkable one. In the first place, the profits of the land had

to be estimated. In the second place, the work was too much for the Collector. In the third place, there was usually nothing left to be administered after setting apart sufficient land for the maintenance of the judgment-debtor and his family particularly in the Deccan, where the size of a holding was just sufficient or even smaller for the maintenance of a family. Fourthly, periods of scarcity followed each other so quickly that profits could not be easily determined. Fifthly, the debtor would lose touch with agriculture during long intervals of transfer of his landed property. The Commission recommended that the better method would be to permit the land to be cultivated on payment of an annual rent by the debtor himself, and that the policy of temporary alienation would be more successful in provinces where cultivators had a surplus holding.

51 Recovery of unsecured debts from the surplus of mortgaged property and sale of such property not recommended.

The Commission also held that the insolvency provisions were less generous than the provisions of the Act for the non-insolvent debtor's help. In the case of the latter, lands could not be attached or sold unless specifically mortgaged. Even in the case of mortgage suits, the court would grant instalments and continue the mortgagee in possession, but would not permit sales of land except in respect of default of instalments. But the Act provided in respect of insolvents that lands could be sold for the recovery of secured debts, and that the surplus realised in such sales might go to repay unsecured debts. The insolvency provisions should be brought into line, according to the Commission, with the other provisions.

52 Reasons for failure of insolvency provisions

The insolvency provisions have not been availed of by the agriculturists, as had been expected by the framers of the Act. Their object was to annul irrepayable debts so that agricultural credit might be put on a sound footing. But the Act has failed in its object. Various reasons are given for the failure of these provisions. The debtor is not anxious to be freed from debt, provided the creditor is satisfied with the repayments made by him off and on. The creditor is less exacting than an insolvency court in insisting on repayments. The debtor does not see such a promising future for himself that he should get rid of the existing debt so that he might conserve his future income for his living. Possibly all that could be parted with to the creditor by way of sale or mortgage of land had been done, and there was nothing for him to gain by being declared an insolvent. No agriculturist, again, would like to be declared an insolvent when he has little to gain from it, and when he

only loses his prestige. Considering the mental attitude of the rayat who cannot grasp the fact that time is of the essence of a loan, and that his pious promises to repay cannot be adjusted to his debt, and who consequently is in no way depressed by an unpaid debt, and considering also the fact that a debt does not ordinarily reduce itself, but grows, which a rayat cannot overtake in spite of repeated payments, one can easily understand his reluctance to apply to a court to be declared an insolvent. It is a case of saving him against himself. The approach to the problem lies possibly in empowering courts to declare an agriculturist as an insolvent when passing a decree in a suit or during the course of proceedings in the execution of a decree, and thereafter to apply the provisions of insolvency.

53 Interest to be decided by the court

The Commission found that the discretion given to the court to fix a reasonable interest when taking an account had been so useful that they recommended that it should be applied to all suits against agriculturists. This was given effect to in the Amendment Act of 1895 by adding a new section 71 A. The section empowered the courts to calculate reasonable interest even in the case of usufructuary mortgages which stipulated for an assignment of the profits from land to interest.

54 Attachment of standing crops a helpful method

It is to be noted that the Commission had misgiving about the working of the clause which exempted the produce from a land set apart for the judgment debtor from attachment. As has been already mentioned, the small holder had only a subsistence holding. But the setting apart of land for subsistence applied only when it was managed by the Collector for the benefit of the debtor. Otherwise the produce of subsistence holding could always be attached. The Act no doubt permitted the attachment of standing crops. The Commission found that this was hardly resorted to by the creditors for various reasons. The debtor might have mortgaged the crop to a third person. The costs to the creditor for watching, watering, and harvesting the crop were great. The whole amount of debt could not be recovered in this manner. Land revenue and rent are the first charges on the crop. With all the difficulties attendant on attachment of crops, the Commission recommended that the procedure could be greatly improved, and that this was the one beneficent method in judicial administration for the execution of decrees which could assist the creditor in the realisation of his loan, and help the debtor in not parting with his land.

55 Abolition of the special judge

The other recommendations of the Commission are summarised below. The procedure for revision by a special judge should be replaced by the ordinary law of appeal. The special judge was abolished by the Bombay Government only in 1910, while the procedure for revision for certain suits was continued.

56 A separate Village Courts' Act necessary

As the courts of village munsifs tried petty suits not only against agriculturists but all classes, it was recommended that they should come under a separate Act. This was not given effect to, but the value of suits which could be tried in the village courts was increased from Rs. 10 to Rs. 25 in 1927.

57 Repeal of arbitration procedure

When accounts were taken, the parties had a right to refer a dispute to arbitration. But this power was misused to oust the jurisdiction of courts and to evade the provisions of the Act. In Sind bogus awards were filed with a view to prevent taking of an account by the courts. The High Court issued instructions in 1921 to the judges that awards should not be admitted, unless they were sure that there was no coercion or outside pressure applied to the parties, and that there was a real dispute between the creditors and debtors to be settled by arbitration.

The Act empowered the Courts to appoint arbitrators to decide disputes. But this provision was not used by the courts, as parties could not be compelled to come under arbitration, as proper arbitrators were not available, and as arbitration would hardly serve any purpose when facts have to be ascertained about a debt. On the recommendation of the Commission, Sec. 15 which empowered the courts to refer certain matters to arbitration was repealed in the Amendment Act of 1895.

58 Abolition of conciliators

Though the Commission found that conciliation had only been misused in favour of the creditor, it did not recommend its abolition in the hope that it would improve. The working of the conciliation procedure in villages has a great lesson for those who pin their faith to the machinery of village boards to conciliate and settle debts. Men of the right stamp were not available. A good many money-lenders secured places on these boards. A conciliator had not the facilities of a court to arrive at real facts. Further, he could only certify an agreement. Debts which would have been reduced and spread over instalments by a court were thus settled according to

the wishes of the creditor. And the court had no power to reject such agreements. Further, the conciliators had not such a commanding position of influence over the creditors as to persuade them to agree to an amicable settlement. On the other hand, they colluded with the creditors and certified agreements which went directly against the provisions of the Act. Further, conciliators could not effect a settlement in many cases, and the parties were thus often put to a wasteful expense of time and money. The institution of conciliators was abolished by the Bombay Government in 1911.

59 Village registrars

The original Act provided for a system of village registrars for groups of villages for registering all bonds in the hope that this would prevent false transactions. But it was found that the attestation of the village registrars regarding the truth of the bonds and the receipt of consideration by the creditor was taken as a matter of form. The personnel was hopelessly corrupt. The Commission said :

“ The trouble and expense to the parties in the case of small bonds, the doubtful character of much of the registering agency, and the untrustworthiness of much of the evidence outweigh its advantages. ”

The system was abolished in 1910. As a result, the registration of simple bonds was discontinued. But the registration of mortgages with certain special conditions which have been elsewhere referred to as one of the amendments of the Act in 1886 was continued through Taluqa Registrars.

60 Certificate of payments by decree-holders not necessary

The Commission also recommended that the judgment-debtors should not suffer by reason of the fact that a decree-holder had not certified the payments on the decree, which he received from them. Under the then existing law, a decree-holder had to certify (C. P. C. Order 21, Rule 2) any payments made by a debtor, failing which the payment would not be recognised by the courts. On the recommendation of the Commission the Act was amended in 1895 so that this rule would not apply when the payment is admitted by the decree-holder or proved by the debtor (Sec. 71).

61 Limiting period of suits

The Commission also recommended that the law of limitation contained in Sec. 72 should be modified by prescribing a period of 3 years for simple money or shop debts as under the general law, and six years for suits on bonds or on account stated. This was not given effect to, though the law of limitation was restricted to the Deccan districts.

65 Neutralising factors in rural economy

If the credit system was not wholly shattered by all this legislation, it was due to three factors in the rural economy. The one was the capacity of the creditor and the debtor to neutralise its evils. The second was the greater confidence of the former in the inherent honesty and creditworthiness of the latter. The third was the intense attachment of the peasant to the land. The latter preferred to work as a tenant in his own land paying a higher rent, and deluding himself with the belief that the land was still in his possession. He preferred to let his land on lease for long periods in the hope that his heir might be able to redeem it. This attachment to land and the consequent honesty of the borrower have proved more valuable securities for a loan than the facilities provided by courts.

66 Power of Collector to set aside court sales

The second amendment in the Act of 1907 related to the power of the Collector to set aside court sales under certain circumstances. Sec. 22 A of the Act empowers the Collector to set aside a court sale within 30 days of the date of auction "if he considers the price bid by the purchaser to be inadequate."

67 Other changes in the Act

In 1912 another amendment of the Act exempted the co-operative societies from its provisions as they were expected to be free from the evils of private money-lending. In 1913 the remission of court fees in the case of redemption suits was cancelled by the Government.

68 Summary of proposals

The Commission appointed in 1912 to enquire into the working of the Act recommended its repeal and the substitution of a short Act, embodying the provisions that had been found useful. The uncertainties in the Act which do no good to a debtor should be remedied. The admission of oral evidence or written statements against registered sales should be stopped. The taking of an account should be based on facts and never on assumptions. The maximum number of instalments which a court could grant should be definite. The rate of interest on such instalments should also be stated in the Act. Compulsory examination of defendants might be repealed. Land should be available as ultimate security even for unsecured debts. There should be provision making the debtor liable to pay out of the income from land, and creating a charge on it until the debt is repaid. This will be a better procedure than that of alienating the land in the case of small holders to the creditor or to others for a temporary period, which will only unfit the debtor agriculturist for the occupa-

tion of agriculture when he resumes the land. The exemption of a portion of land for the maintenance of the judgment-debtor from being taken over by the Collector when he manages the property of a debtor, should apply, either when granting instalments or letting the land on a premium or rent, in suits against all agriculturist debtors including insolvents, irrespective of the fact whether the debts of the latter are secured or not. Temporary alienation of land to repay secured debts of insolvents should not merely be restricted to those cases when an advance premium to cover the amount of debt can be recovered from the alienee, but extended to cases when an annual rent also is recoverable. The court should have the power to declare a debtor an insolvent during the course of its proceedings and apply the provisions of the insolvency law.

CHAPTER III

THE PUNJAB LAND ALIENATION ACT, 1900

69 History of the question

If the Deccan Agriculturists' Relief Act became the model for Acts in other provinces for granting relief in suits against agriculturists, the Punjab Land Alienation Act has since 1900 become the model for legislation restricting sale to non-agriculturists. We shall discuss in this chapter the events leading to the passing of the Land Alienation Act, its subsequent amendments, and the results of its working.

As early as 1872 Mr. Justice Melville advocated the need for some restriction on transfer of land in the Punjab. Under the law of civil procedure (Act VII of 1859) the Collector might stop sales of land through the court and arrange for its temporary alienation in the discharge of a debt. Ancestral or joint acquired property could not be sold in the Punjab through a civil court. Every voluntary sale of land should first be offered to the co-sharers, and to the other members of the village community, only if the latter declined. But, with all these restrictions, sale of land was on the increase. Mr. Justice Melville recommended the following measures :

- (1) Investigation behind the terms of bonds.
- (2) Extension of the period of limitation for suits to 6 years.
- (3) Prohibition of transfer of land to a creditor in repayment of debt.
- (4) Restriction of mortgages to the lifetime of the mortgagor.
- (5) Exemption of a minimum produce from attachment.
- (6) Abolition of imprisonment for debt.

The Financial Commissioner made an enquiry in 1872-73 and said that there was no need for any alarm. The Government wrote in the following doubtful terms to the Famine Commission in 1879 about the need for restriction of transfers :

“ Having regard to the fact that the sale of land in execution of decrees in the Punjab is practically prohibited, and that the existing rate of interest charged is said to be exorbitantly high, His Honour is doubtful of the expediency of reducing the security of a creditor still further, and raising his rate of interest by depriving him of a means of compulsion which is found to be eminently effective, which is not shown to be abused, and is so fenced with precautions as to be almost incapable of being made an engine of oppression,”

The Famine Commission of 1880 did not recommend in their report any restriction of rights of transfer.¹

In 1886 the Financial Commissioner of the Punjab, Mr. Thorburn, wrote a pamphlet in which he recommended that money-lenders should be prevented from buying the lands of debtors. In 1892 the Government of India wrote to the Secretary of State, when forwarding proposals regarding the changes required in the Deccan Agriculturists' Relief Act, that transfer of land should also be restricted. In 1895 they issued a circular to Local Governments inviting opinions. Mr. Thorburn made enquiries in the same year and reported that in one circle,

"the amount of cultivated area which had been purchased or was held in usufructuary mortgage by money-lenders was as much as 28%, while in another circle it was 20%."

The Lieutenant-Governor of the Punjab was for limiting the application of any new law restricting transfers only to specified areas. The Government of India was for prohibiting all permanent alienations without the Deputy Commissioner's sanction, and restricting the period of temporary alienations to the life of the alienor. A Committee was thereafter appointed by the Punjab Government, on whose recommendations the Punjab Land Alienation Act of 1900 was based.

70 The main provisions of the Act

The main provisions of the Act were the following. Whenever lands were sold by scheduled agricultural tribes among their groups, or by non-agriculturists, sanction of the Deputy Commissioner was not necessary. Otherwise his sanction should be obtained (Sec. 3-1-2). Mortgages were permissible by members of agriculturist classes to non-agriculturists only in three forms. They might be simple mortgages, and if the amount was not repaid, the Commissioner would put the mortgagee in possession of the mortgaged land upto 20 years. They might be mortgages with possession upto 20 years. But no interest would accrue when possession was held by the creditor, and the debt would be automatically extinguished on the expiry of the term. They might be mortgages under which the debtor would cultivate as a sub-tenant under the creditor who was the mortgagee, on a rental not exceeding the land revenue for the land and for an agreed term. If the mortgagor abandoned the land, the mortgage would take effect as an usufructuary mortgage (Sec. 6). The Deputy Commissioner was empowered to revise the terms of all mortgages consistently with these provision (Sc. 9-1). Mortgages by conditional

¹ Para. 30.

sale were declared null and void if in such mortgages a condition was included that, if the debt was not repaid by a certain date, possession should pass to the creditor, or a condition were attached to a sale of land that, if the amount was repaid, the land would be returned to the debtor (Sec. 10). In respect of conditional sales made after the commencement of the Act, the mortgagee might either agree to have the conditions struck off, or he might be given possession up to twenty years by the Deputy Commissioner for such period and for such sum of money as the Deputy Commissioner considered reasonable (Sec. 9-2).¹

It was possible also that the restriction of the period of usufructuary mortgages might be evaded by agriculturist tribes by granting a land on lease or farm for more than 20 years, or a charge on the produce, to non-agriculturists. Hence the Act provided that the sanction of the Deputy Commissioner was necessarily for leases for more than twenty years, and a charge on the produce for more than one year (Sec. 11 and 15). The Act further provided that a member of a scheduled tribe could sue for redemption of the mortgaged property even before the due date. The Deputy Commissioner would decide the equitable amount due, and on deposit of the same would eject the mortgagee (Secs. 7-3 and 5).

The lands of scheduled agricultural tribes could not be sold (except for realising land revenue) in execution of any decree or order of a Civil or Revenue Court (Sec. 16). Lawyers were forbidden to appear in any proceedings under the Act (Sec. 20). The jurisdiction of the civil court was excluded (Sec. 21). The civil court should send copies of its decrees or orders affecting sales and mortgages of land by agricultural tribes to the Deputy Commissioner who might forward them, if necessary, to Higher Courts for revision, according to the provisions of the Land Alienation Act (Sec. 21 A).

The local Government may exempt any area or persons from the operation of the provisions of the Act (Sec. 24).

71 Amendments of 1907

Certain amendments were made in 1907. In the original Act a certain class of agriculturist residents in the village were also included among the scheduled agriculturists as statutory agriculturists. But this class was excluded in the amended Act of 1907 as there was

1 It has been held by the Courts that the result of an agreement of a mortgagee to strike off the sale clause in a conditional sale document did not invalidate it and that the mortgagee could still sue in a court for foreclosure and possession.

a possibility of their absorbing the lands of agriculturist tribes. It was also found that prohibition of sales to non-agriculturists might be evaded in several ways. A member of an agriculturist tribe may grant occupancy rights to a non-agriculturist money-lender. Secondly, as the landlords have the right of pre-emption, a non-agriculturist money-lender may exercise it and buy the lands of occupancy tenants belonging to agricultural tribes who were indebted to them. So restrictions on permanent alienation were defined to apply to occupancy rights in the amended Act. The Deputy Commissioner was thereby empowered to sanction all alienations of occupancy rights in respect of members of agricultural tribes. But bonafide transfers by an occupancy tenant to his landlord were permitted. Further, when a non-agriculturist landlord exercised his right of pre-emption and bought the land of a member of an agricultural tribe, the sanction of the Deputy Commissioner was made necessary as in other sales of land.

72. Early forecasts about the results of the Act

When the bill was before the Select Committee, Mr. Ahluwalia, one of its members wrote a dissenting minute from which the following are extracts :

"It is vain to suppose that the successors of a mortgagor with no increased resources to fall back upon but with all the ancestral and domestic obligations and agricultural responsibilities in fact would either be able to repudiate the mortgagee's rights, or be freed from the crushing weight of debt. Temporary alienations will take the form of perpetual mortgages, which will prevent landowners from having any control over their property. The irresistible result of the measure will be the creation of a large number of money-lending agriculturists who would be enabled by the power of law to appropriate the holdings of their more indigent brethren at a greatly reduced price. There will be monster fishes in the agricultural community who will be encouraged by law to swallow smaller fishes."

Mr. Ahluwalia showed in his dissenting minute that usufructuary mortgages would only lead to a deterioration of the land, as the mortgagee would not make any improvements on it, and that the provision for sanction for sales would interfere with the right of free transfer of even self-acquired properties. We will see in the succeeding paragraphs how far these forecasts proved true.

The Act has no doubt arrested an increase in the area transferred by sale after 1902. It has also helped to increase the area redeemed as against the area mortgaged till 1920-21. Since then there has been a net increase in the area mortgaged just during the period when one should expect it to be less owing to the rise in land values. We shall now discuss the extent of the growth of debt among the agricultural tribes, its reaction on the increase of mortgages, the

tendency towards the dispossession of the smaller rayats by the bigger landlords, and the growth of tenants-at-will and rent-receivers.

73. The non-agriculturist money-lender and unsecured credit

It is wrong to suppose that the non-agriculturist money-lender has been ousted in the Punjab by the operation of the Land Alienation Act. There are no restrictions regarding the period of recovery of mortgage loans granted by agriculturist money-lenders, as there are in the case of non-agriculturist money-lenders. But the latter have yet a predominantly large place in the field of short-term rural credit. In the 8,000 villages surveyed between 1926-28, 83 % of the villages appear to contain no money-lender of an agricultural tribe.¹ The percentage of unsecured debts borrowed from agriculturists according to village surveys of the Board of Economic Enquiry was 20, 66·7, 34, 22, 42 and 36 in the different villages in which enquiry was made thereby indicating that the balance was borrowed from non-agriculturists.² The recent enquiries of Bhadas, Jamalpur, and Suner show that the percentage of unsecured loans due by agriculturists to non-agriculturists was 63, 78, and 50 respectively.

The cultivator has to borrow for current needs. He will naturally repay first the debt incurred for such needs. To quote from the economic survey of Bhadas :

“ The harvest brings little relief since the produce must be handed over to the money-lender in payment of accumulated debts. In fact he often borrows the grain he has just handed over, and so the vicious circle goes on ” (p. 73).

The money-lenders deal in grain and have shops in the village for the purpose. The recent depression has no doubt adversely affected the money-lenders. Most of them, it is said, are living on their capital.³

“ They are generally prepared to accept smaller amounts for loans already given rather than run the risk of losing them entirely by insisting on full payment.”⁴

Many of them are migrating to towns. But with all the decline in the position of the non-agriculturist money-lender, he can hardly be replaced as the financier of the day-to-day needs of the agriculturist. Prompt issue of credit in small amounts as and when required, the supply of grain and cattle, and the sale of grain

1 The Punjab Banking Enquiry Committee Report, p. 311.

2 Ibid, p. 221.

3 Economic Survey, Jamalpur, 1937, p. 107.

4 Ibid, p. 107.

are all combined in short term agricultural credit. More entries in accounts are necessary in this form of credit than in that of mortgage credit. All agriculturist money-lenders can hardly undertake this complicated business. The Land Alienation Act, therefore, does not seem to have affected adversely the business of short term agricultural credit of non-agriculturist lenders. On the other hand, owing to the limitations placed on land as a security for loans, the business of unsecured credit of the sahuakar began to grow.

74 Privileged position of agriculturist money-lender

It is an admitted fact that short term loans, when they accumulate and cannot be repaid from harvests, are converted into mortgage debts. What can be repaid is paid first to the Sahuakar, as the cultivator requires further credit from him. But mortgage debt is allowed to grow, as the whole sum cannot be repaid from a single harvest. It is in this form of transaction that the agriculturist money-lender has a kind of monopoly. Firstly he can lend on mortgage with possession over 20 years with no restriction as to the liquidation of the whole debt within the period fixed in the mortgage. Secondly, he can purchase the land of the debtor, which a non-agriculturist money-lender cannot do without the sanction of the Deputy Commissioner, which of course will rarely be given. Consequently his number has been increasing. He has advanced three fourth of the mortgage amount and held three-fourth of the land under mortgage.¹

75 Conversion of unsecured to secured loans

That mortgages and sales are due to the accumulation of unsecured short-term debts will be evident from the surveys published by the Board of Economic Enquiry. An enquiry into mortgages of agricultural land was made in 1925 in Ferozpur district. It showed that 64½% of the consideration money was utilised to repay previous debts secured and unsecured. The enquiry into sales of land in South West Punjab published in 1938 states that repayment of debt and family expenses were the respective causes for debt in 41.3% and 34.2% of the number of cases. The recent village surveys bear out this statement. In the village of Suner in the district of Ferozpur, 20 out of 28 mortgagors have mortgaged their lands to repay old debts. Sale of land is mostly for the same purpose. In the village of Jamalpur (Hissar district) the largest amounts borrowed on mortgage are for the purpose of redeeming lands. Sales too are mostly due to old debts. In the

¹ Banking Enquiry Committee Report Punjab P. 223.

"There are indications that where the practice of money-lending is least common among agriculturists, the few persons that have adopted this course enjoy the advantage of a security in the market." (ibid. p. 309).

village of Bhadas, redemption of other land and repayment of debts are mentioned as the main causes of mortgage. The Survey report of the village mentions that "the cause of sale in all these cases was the inability to repay mortgage debt, and the land in three out of the four cases was sold to the mortgagee." Further, an examination of the sources of redemption money in the surveys of these three villages shows that the amount is raised in about 50% of the cases by mortgaging other lands.

76 Increase in mortgage debt and mortgaged area

The Land Alienation Act could not, therefore, be said to have restricted credit to the extent expected under its operation, by its provision for the extinction of mortgage debt within 20 years.

The following statement will indicate that while the net mortgaged area decreased between 1901 and 1916, it increased between the years 1916 and 1930-31, and the increase has been rapid owing to depression between 1931 and 1936.¹

| <i>Average of 5 years.</i> | <i>Total area redeemed by agricultural tribes.</i> | <i>Total area mortgaged by agricultural tribes.</i> | <i>Mortgage money per rupee of revenue of area mortgaged.²</i> |
|--|--|---|---|
| 1902-1906 (Average of 4 years only) | 1,77,951 | 1,89,810 | Rs. 67 |
| 1906-1911 | 2,84,085 | 2,36,510 | 87 |
| 1911-1916 | 2,70,369 | 2,65,274 | 88 |
| 1916-1921 | 2,79,948 | 2,59,826 | 136 |
| 1921-1926 | 2,19,010 | 2,94,458 | 127 |
| 1926-1931 | 1,59,534 | 2,98,013 | 105 |
| 1931-1936 | 1,18,226 | 3,27,835 | 71 |
| 1936-1937 | 1,63,384 | 3,03,839 | 80 |

The figures also show that the scope for raising more credit by mortgaging less lands in predepression years did not lead to any decline in the area mortgaged. They further indicate an increase in the mortgaged area for a lower amount of mortgage debt since the depression.³

1 (Vide Land Revenue Administration, Punjab for the year ending Sep. 1937, Statement XXVII.)

2 The figures are not the average for 5 years, but relate to the final year in each quinquennium.

3 "Many families which were entirely free from debt until a few years back have now got involved in it and those already involved have sunk further into the mire. The people have become restless under the heavy burden of debts. The mortgagees want cultivated land as security, and not uncultivated lands." Village Survey, Jamalpur, 1937 (p. 108).

The following statement will indicate the net increase in usufructuary mortgage debt (i. e. mortgage money advanced less mortgage money discharged) in the predepression period.¹

| | Rs. (crores) | Rural population (millions) |
|------------------------|----------------|----------------------------------|
| For 10 years ending | 1899 | 18 (1901) |
| | 1909 | 17·8 (1911) |
| | 1919 | 18·5 (1921) |
| | 1929 | 21·12 (1929) |
| For the 5 years ending | 1924 | |
| | 1929 | 18·22 |

77 Causes of mortgage debt

An enquiry into the causes of mortgage debt will indicate the great danger of the agriculturist money-lenders to the growth of peasant proprietorship. They are "as exacting and as avaricious": they "encourage people to borrow more than they can hope to repay, forcing them ultimately to mortgage their land to them. Land hunger is the dominant motive." The purchase of lands in certain districts, the avoidance of manual labour and the letting out of lands on lease and the consequent running into debt, the economic deterioration of the smaller cultivators and the tendency to mortgage rather than sell their lands to repay debts, are mentioned as the causes of mortgage debt in the village surveys of the Board of Economic Enquiry.

It might be argued that the object of the Land Alienation Act was not to prevent the growth of unproductive indebtedness, but only the sale of lands or mortgages for interminable periods to non-agriculturists. But the kind of monopoly created in favour of agriculturists can be justifiable if all the agriculturist money-lenders were only small proprietors, and if there had been no dispossession of the latter by big holders among the agriculturists.

78 Tendency towards the dispossession of the small-holder

Evidence is wanting which can show how many of the smaller owners among the agricultural tribes mortgage their lands to the bigger owners. The Punjab Banking Enquiry Committee report says:

"This is no doubt a disadvantage to the debtor but not necessarily to the community which may benefit by land passing out of the hands of the incompetent and resourceless into those of the competent and resourceful. So far as the agriculturist money-lender is concerned, the peasant proprietor who is a member of an agricultural tribe gets less protection than in dealing with the non-agriculturist."

The transfer or mortgage of lands to bigger agriculturists is not a subject which can be so easily disposed of. Evidence is wanting

1 (Vide Punjab Banking Enquiry Committee report, page 335.)

as to how much of the land under usufructuary mortgage is really cultivated by the mortgagee, or let out to tenants-at-will, how much of it again is cultivated by the family, and by agricultural labour, and how much is cultivated by the mortgagor as a tenant under the mortgagee. The village surveys do not give sufficient information on these points. The Banking Enquiry Committee report makes stray references to big landlords amongst agriculturist money-lenders,¹ and to their prosperity being due to the size of their holdings². It also mentions Muhammadan agriculturist money-lenders who form 6% of the total who lend on mortgage with possession, and "even if possession does not pass, the owner's status is virtually that of a tenant-at-will and he gets only half the produce."³ The Economic Survey of a village in the Multan District 1938 has the following interesting comment :

"It will be seen that out of 973 acres registered as sold during a period of 37 years, the big Dehar family alone has purchased 843 acres. Only one case of money-lender having purchased land in the village was recorded in 1935-36 wherein the creditor purchased the land of his debtor in lieu of debt."

Mr. M. L. Darling says in his book "Rusticus Loquitur" that "there are already possibilities in the western Punjab where the large landlord is taking advantage of the Land Alienation Act to add to his acres at the expense of the peasantry."

If a substantial number of usufructuary mortgages are due to the savings of small rayats who lend to richer rayats having larger holdings and who thereby increase the size of their land under cultivation, one need not be alarmed at their increase in recent times. But it is impossible to expect the 3% of the cultivated area under mortgage with possession to other than agricultural tribes to be mortgages taken by small holders among the non-agriculturists with a view to extending their area of cultivation. The fact that most of the mortgages are entered into by owners holding below 10 acres, as the recent village surveys indicate, militates against the possibility of investment of any surplus money in usufructuary mortgages by holders of similar status.⁴

1 p. 230.

2 p. 233.

3 p. 226.

4 According to an official statement prepared in 1920, 3 millions out of 3½ million revenue-payers paid an average land revenue of below Rs. 25/- and owned less than 18 acres. (Wealth and welfare of the Punjab by H. Calvert p. 74).

According to an enquiry in 2000 villages into the size and distribution of holdings in 1925 by Mr. H. Calvert, the following was the percentage of

(Contd. on next page)

Mr. Calvert mentions in his book "Wealth and Welfare of the Punjab" that an increase in the number of tenants is due to an increase in the number of mortgages:

As the mortgagor is in the great majority of cases entered in the records as a tenant cultivating under the mortgagee, the number of tenants tends to increase with the number of mortgages.¹

Mr. Darling shows that the smaller proprietors are involved in debt to roughly double the extent of that for larger proprietors in terms of multiples of land revenue.² In fact mortgages have been so much on the increase that even a rebate of 25% in the revenue demand on unencumbered holdings in Gurgaon District could not arrest the process.³

79 Results of working of the Act

To conclude, the non-agriculturist money-lender has not been ousted from his predominant position in the issue of short term credit. The agriculturist money-lender has a privileged position in lending on mortgages. Both the amount lent and the area mortgaged have been increasing. A substantial source of redemption money arises only by mortgaging other lands. The agriculturist money-lender is a land-grabber. The fall in prices has increased the number of indebted agriculturists. It is also an admitted fact that the smaller proprietor is always heavily indebted. All the agriculturist money-lenders are not agriculturists cultivating their lands with or without

(Contd. from last page)

distribution of land among groups of owners and that of the total number of persons owning in each group. As the percentage of land owned by 6.25 laks of owners holding less than one acre was only one percent, (total owners being estimated at 4 millions) this class is omitted in the following table.

| Group | % of area owned. | % of owners. |
|---------------------------|------------------|--------------|
| Holdings of 1 and under | | |
| 5 Acres. ... | 11 | 49.7 |
| 5 And under 11 acres ... | 15.1 | 21.9 |
| 10 And under 15 acres ... | 11.5 | 10.3 |
| 15 And under 20 acres ... | 8.4 | 5.2 |
| 21 And under 25 acres ... | 6.8 | 3.3 |
| 25 And over ... | 46.1 | 9.8 |

Neglecting the owners who have less than one acre of land at their disposal, 81.9% of the remaining owners fall within 1-15 acre limits. (Vide Royal Commission on Agriculture, Vol. 14, p. 303.)

1 (P. 87).

2 The Punjab Peasant in Prosperity and Debt P. 13.

3 Introduction to Survey of Bhidas, Punjab Board of Economic Enquiry.

the aid of hired labour. As mortgagees they may live on rents of the mortgaged lands.¹ It is, therefore, impossible to conclude that mortgagees of lands under usufructuary mortgages are smaller proprietors with surplus savings who supplement the land owned by them by taking a lease of lands in the form of a possessory mortgage. The tendency is towards the accretion of larger holdings in the hands of agriculturist money-lenders.

80 An enquiry into land sales in the Punjab

The conclusion may look like an obvious fact. But we have pressed the point because one of the enquiries conducted by the Board of Economic Enquiry regarding sales of land points to an opposite conclusion. The enquiry relates to sales during the quinquennium 1922-23 to 1926-27. It concludes that "the majority of sale transactions are between owners of the same classes, i. e. small owners sell to small owners, and large to large. There is no sign whatever of larger owners swallowing up the smaller ones." In a province where owners of 35 out of 40 million acres can sell their lands to certain classes, only with the sanction of the Deputy Commissioner, and have therefore, no free and full rights of transfer, the number of sales alone cannot be the criterion for deciding on the quantum of expropriation of the smaller owners by the bigger. Where sales are not free, there will be an increase in mortgages with possession. In the enquiry this aspect of the question ought to have been considered. Secondly, another point which should have been considered, was as to how many of the mortgagors are tenants under the mortgagees, repaying their debts by payment of rent. Thirdly, the writer of the enquiry himself points out that the figures represent such a low fraction of the provincial figures as not to justify their being taken as the basis of any general inference. Fourthly, the figures relate to sales by owners of 100 acres and less at the end of the quinquennium to those who paid about Rs. 100 or more of land revenue.

The average holding in the Punjab is 6 acres. It may be less in congested districts and more in south-east and west Punjab where there are no irrigation facilities. If the owners of average holdings for each region were taken as the basis, and if it was examined how many of them sold their lands to bigger proprietors, the results might be different. The enquiry itself shows that the average cultivated area owned by vendors in most districts ranged between 6-7

¹ Landlordism is common in the Indus tract—Mr. Darling estimates that about 40% of the cultivated area is in the hands of owners of over 50 acres." Sales of Land in S. W. Punjab—The Board of Economic Enquiry, Punjab 1938 p 6.

acres and 25 acres. Why then did the enquiry not examine how many of those holding 15 or 20 acres lost their lands to big holders holding 50 acres and above? The recent enquiry of sales of land of South-west Punjab commits the same error of classifying a small owner as one holding below 300 acres, and a large owner as one holding above 300 acres. Again, another inference is drawn that, because the amount of land shown as sold within the enquiry i. e. by owners of 100 acres and less to those who paid about Rs. 100 or more of land revenue, was only 6.9% of the total sales of land by agricultural tribes, the balance of 93% of the sales was among the smaller owners owning 100 acres and less. A different set of results might be reached by studying lands sales in another division. But the enquiry has yielded two important results. The one is that 36.9% of the vendors sold off the whole of their land and became landless. The enquiry into sales of south-west Punjab, 1938, states that a fifth of the vendors have become landless. The second is that half the extent of cultivated land taken into account in the enquiry had been sold by vendors who became landless in consequence.

81 Conclusion

The restriction on land transfers in the Punjab has many a lesson for the other parts of India. Restriction of land sales within a group sets a premium on such sales within the group. It increases the rate of interest for the members of the group. It accentuates leases and mortgages with possession. The problem of absentee-landlordism becomes more acute. Any solution intended to save the rayat from losing his land owing to his growing debts should not be such as to save defeat its object by facilitating the loss of land or by leading to an increase in the class of rent-receivers.

82 Increase in benami transaction

One of the results of the Land Alienation Act was an extensive spread of benami transactions. The non-agriculturist money-lender does not feel quite safe in lending to small holders without the ultimate security of their lands. But an agriculturist can buy the lands of small holders when they do not repay the debts due to him. Consequently the non-agriculturist money-lender requests a creditworthy agriculturist in whom he has trust to take the land of the debtor in mortgage with possession, and repay the debt out of the proceeds of the mortgaged land. Or he engages himself nominally as a tenant-at-will under the benami mortgagee while taking charge of the whole produce in adjustment of the loan due to him. Or inasmuch as the form of usufructuary mortgage compels the creditor to recover both

the principal and interest from the mortgaged land in a fixed period, he avoids it by taking only a simple mortgage for the loan, but enjoys the usufruct of the land with the consent of the debtor. Or he becomes a sub-mortgagee for a fixed period (under a benamidar mortgagee) renewing the sub-mortgage until the debt is repaid. In all these cases bonds are passed by the benamidar mortgagee or the debtor to the money-lender so that, whenever there is a breach of understanding, the creditor goes to the court and obtains a decree on these bonds.

In the first place, it should be noted that the Act does not prohibit an usufructuary mortgage, but only restricts its period to twenty years in the case of non-agriculturist moneylenders. When the latter are not sure of the creditworthiness of an agriculturist, they may take the help of benamidar mortgagees. The fact that bonds are passed by the latter to the money-lender takes away their benami character, as he becomes thereby a banker to agriculturist mortgagees who lend to their brethren on mortgages with possession. Secondly, a money-lender may not like to undertake cultivation of lands. His being a tenant-at-will under a "benami mortgagee" is certainly not an illegal transaction.

A number of evasions of the law are mentioned in the Land Revenue Administration Reports.

The report for 1935-36 says "that some wealthy Muslim nonagriculturists are reported to have married the daughters of poor and indigent members of an agricultural tribe to enable them to acquire lands in the names of their wives." Another method is referred to in the report for 1933. "Non-agriculturists collude with Patwaris to show their adverse possession in the revenue records. A suit is filed by the non-agriculturist for a declaration. A decree is obtained by compromise, and on the basis of the civil decree a mutation is entered."

83 How far benami transfers are unfair

Benami transfers are made not only in respect of mortgages but also of sales. A non-agriculturist money-lender lends to an agriculturist. The latter is unable to repay without selling the land. The money-lender under the Act cannot buy the land. So the land is sold to a benamidar vendee who either repays the debt due by the vendor to the money-lender and buys the land himself, or temporarily retains it until a proper agriculturist buyer is found. Or the money-lender may like to retain possession of the land, but as he cannot do so, he might keep it with a benamidar vendee. In such transactions the money-lender safeguards himself by debiting the benami vendee with a loan to cover the price of the land. The arrangement

is probably helpful to the debtor, as otherwise the agriculturist buyer may knock off the land at a rock bottom price. It helps the buyer, whether he is a benamidar or has subsequently bought the land from such a benamidar, as the money-lender may act as a financing agent for the purchase. It helps the creditor too to recover his amounts.

The transaction minimises the evil of the monopolist position of the agriculturist-buyer, and that of the restricted credit of the debtor under the Act.¹

84 Ante-benami provisions of the Punjab Land Alienation Second Amendment Act of 1938

With a view to prevent benami transactions, the Punjab Legislature passed a bill amending the Land Alienation Act in June 1938. Sec. 13 provides that (1) "if the effect of an alienation by a member of an agricultural tribe to another of the same group is to pass the beneficial interest to a person who is not a member of the same group, the transaction shall be void for all purposes;" (2) even though the alienor was a party to evade the provisions, "he will be entitled to the possession of the land so alienated;" (3) these provisions shall apply to all transactions made either before or after the commencement of the Amending Act; (4) if, in order to avoid a transaction declared void, a subsequent transaction is entered into, the latter too should be void; (5) whether the alienor applies or not, the Deputy Commissioner may act on his own motion and satisfy himself whether an alienation is voidable. (6) If he is satisfied, he may eject the person in occupation of the land; and (7) he may place the alienor in possession. The orders under the section are subject to appeal and revision by superior revenue officers.

We have already explained how benami transactions can be consistently made within the four corners of the law. A complete judicial investigation will be necessary to prove a benami. So long as the civil law has not forbidden benami transactions, it is unfair to give retrospective effect to a law of this nature. The Act is also defective in that there is no time limit prescribed for restoring the land to the original debtor. The Deputy Commissioner, on his own

¹ The Director of Information of the Punjab Government has issued a communique (20th July 1938) wherein he says that "in one Tehsil alone it was found that benami mortgages and sales for about Rupees four lakhs had taken place." The communique says further. "On the basis of the enquiry in this Tehsil and other areas it is calculated that benami transactions which have taken place so far in the Punjab involve a sum of several crores, and that the number of such transactions runs to thousands, possibly tens of thousands."

motion, or on the application of the heir of a debtor, may restore the land to the latter, even after long possession by mortgage or sale in the hands of a benamidar.

85 Results of the new Act

The Act provides for restoration of land without compensation only if the land is in the possession of a benamidar. If the latter has transferred it to X, and X to Y and so on, the last owner will get compensation provided the transfer has taken place before June 20, 1938, and the compensation will not be more than the original consideration paid for the land. This shuts out any compensation for improvements made by a subsequent purchaser or mortgagee. The law will be beneficial to the debtor if the non-agriculturist lender suffers in any way for promoting benami transactions. But if he has sufficiently protected himself, it is the benamidar that will suffer. It is possible too that the lender may have a promissory note or a simple mortgage from the original debtor. If the lands are restored by the Deputy Commissioner, the lender will sue the debtor on these bonds. The Act also shuts out the appearance of legal practitioners. An ante-benami legislation will certainly be proper if it be restricted to future transactions, if the proceedings are passed by the civil court and if the debtor will apply for possession of his land within a prescribed period. It makes purchase of lands an extremely uncertain affair, as any day a vendee may be dispossessed under this Act. The greatest sufferers under this Act will be those creditors who have recently made benami transactions, and who had not sufficient time to enjoy the usufruct of lands involved in such transactions.

86 The Punjab Alienation of Land Third Amendment Act of 1938

Another Act that has been recently passed restricts even the right of an agriculturist to buy lands if he were a moneylender. According to the statement of objects and reasons.

It was further a step towards the fulfilment of an undertaking which the Premier gave to a recent deputation as to agriculturist money-lenders being placed for the purposes of the Alienation of Land Act in same position as non-agriculturists in the matter of the power to purchase land.

But the Act has not carried out this object fully. According to the Act, whenever an agriculturist sold land to another in his group, he should not be previously owing any loan to the buyer for three years before the date of sale. The Act will no doubt be an impediment to the automatic transfer of land to agriculturist money-lenders who are desirous of or at any rate not averse from taking over lands in lieu of debts. But it is possible for a debtor to evade the law by selling the land to a third person to whom he did not owe anything.

and the latter selling it to his creditor. The Deputy Commissioner is therefore empowered to make enquiries to detect alienations, "the effect of which is to pass the beneficial interest to such creditor, to declare them void, to eject the person in occupation and to restore possession to the alienor."

But can legislation "plug up the loopholes" in an Act in the manner desired by the Prime Minister? Suppose the land is leased to the creditor by the debtor during the period which should pass before the latter can sell it to the former. Lease of land by one agriculturist to another is not prevented. The debt may be treated as an advance rent received by the debtor and the land may be sold after three years have passed from the date of repayment of loan. Further, a land may be perpetually mortgaged to an agriculturist money-lender in the form of a mortgage, which is only tantamount to a sale. All these evasions may be prevented if an agriculturist money-lender who will no doubt be registered under the Money-lenders' Act and about whose identification there will therefore be no difficulty, be treated as a non-agriculturist to whom lands cannot be sold without the permission of the Deputy Commissioner.

87 Results of the new Act

One repercussion of a legislation of this type will be that it may somewhat restrict sales. It will, therefore, give a monopoly to such members of the agricultural tribes who buy lands but do not lend money. A reduction in the area of sales may be followed by an increase in the area of mortgages for interminable periods. The legislation may be worth a trial under certain restrictions. It is the civil court that should investigate a benami transaction in these sales, but not the Deputy Commissioner. There should be an application from the holder of the land or his heir to eject the benamidar and put him in possession. The limitation for such suits should be one year from the date of the benami transaction, or the year when the next successor to the ownership of the land attains majority. There should be provision for appeal.

CHAPTER IV

REGULATION OF VOLUNTARY TRANSFERS

A.

RESTRICTIONS ON LAND ALIENATION IN OTHER PROVINCES

88 The Bundelkhand Land Alienation Act of 1903

The Punjab Land Alienation Act became the forerunner of similar Acts in some Provinces. The Jhansi Encumbered Estates Act of 1882 in the U. P. did not prevent the recurrence of debt and the consequent transfer of lands by landlords. It was therefore considered wise to prohibit the transfer of land to non-agriculturists on the model of the Punjab Land Alienation Act. The Bundelkhand Land Alienation Act of 1903 was the result. The U. P. Banking Enquiry Committee concluded on the working of this Act in the following terms.

"The richer landlord has increased his possessions at the expense of the poorer. Again it may be doubted whether the Act benefits the tenant. No landlord oppresses his tenants so ruthlessly as the small owner, himself struggling for a bare subsistence."

The Act so much restricted credit that an amendment was introduced in June 1929 amending Sec. 16 and permitting sale of lands by courts. The amendment was that if a mortgagor who took a loan on a simple mortgage defaulted, then, his land might be brought to sale, and the land sold by the court to a member of any agricultural tribe. The amendment applied only to mortgages made by a member of an agricultural tribe to another of the same tribe.

89 The Land Alienation Act in the N. W. F. P.

The N. W. F. P., Delhi, and Ajmere introduced similar legislation on the lines of the Punjab Land Alienation Act. The experience of its working in the N. W. F. P. is given in the Banking Enquiry Committee Report, which we quote below:

"The fall in the mortgage money and in sale value per acre during the last 5 or 6 years combined with protective laws and customs against the non-agriculturists point to a more rapid dispossession of the smaller agriculturists by bigger agriculturists in the future, if the tendency to falling

prices of agricultural produce continues for some time to come. The prospect is disquieting specially in the North-West Frontier Province where tenants-at-will form already too large a proportion of the agriculturists, where transborder people are coming in both as purchasers of land and tenants of big landlords, and where, according to the calculations placed before us by the agricultural expert of the province, it is not possible for tenants working under the prevailing Batai System (produce-sharing) on $5\frac{1}{2}$ acres of the very best land to make both ends meet, even when they are completely free from debt."

90 Restrictions in rayatwari tenure

Rayatwari villages in the Central Provinces have been formed either out of landholders' villages which have escheated or out of the Government lands. The rayats have no rights of mortgage or sale except to co-sharers or heir expectants, or of sublease without the sanction of the Revenue officer. A rayat may also be ejected under certain conditions.¹

91 Restrictions in grants of Government lands

There are restrictions in Madras on transfer of Government lands granted to the depressed classes. But as the restrictions prevented the raising of credit by the latter, Government have permitted borrowings from co-operative societies on the security of these lands. The societies could bring the land to sale if the loans were not repaid.²

In Bengal too there are restrictions on transfer of lands by a tenant of certain Government estates which curtail his credit greatly.³

Restrictions on sales of lands of even ordinary tenants were since 1919 inserted in a special clause in the periodic leases granted by the Assam Government. The object was to prevent the passing of land to Marwadis. The clause provides that a leaseholder from Government shall not sell it to those other than professional cultivators. But opinion seems to be divided on the value of such restrictions. It is said that the Marwadis can evade them by buying the land and not applying for mutation in their name. They may allow the debtor to cultivate the land as a tenant, and sell the land conveniently to a professional agriculturist as it suits them. The provision has remained a dead letter. The rayats do not want it, as it restricts their credit. Still Government feel that the restriction might nominally be in the lease deed as a reserve power to be used particularly for the protection of backward tribes and improvident agriculturists.⁴

1 The C. P. Banking Enquiry Committee report, paras. 102, 1596 and 1610.

2 Madras Banking Enquiry Committee report, para. 361.

3 Bengal Banking Enquiry Committee report, p. 164.

4 Assam Banking Enquiry Committee report, paras. 167 and 168.

92 Restrictions on alienation of aboriginal lands

Legislation regarding alienation of lands has been restricted to aboriginal and backward tribes in provinces other than the Punjab, N. W. F. P., Ajmer, and Delhi. In Bengal, Bihar, and Chota Nagpur the provisions regarding alienation form part of the Tenancy Acts. In other provinces special Acts have been passed to protect the aboriginal tribes. We give below a summary of all these Acts and their working.

Santal Parganas

One of the earliest aboriginals to suffer by the land policy of the British were the Santals of Santal Parganas. They have spread from the plateau of Chota Nagpur to other parts of Bihar and Bengal. Their population according to the last census was 17 lakhs in Bihar and Orissa and 7.96 lakhs in Bengal.¹ The land policy of the East India Company was the root cause of the agrarian trouble in Santal Parganas. The village communities lost their proprietary and customary rights, and the farmers of revenue were placed on a similar status to that of landlords. The result was the Santal rebellion of 1855. It was therefore considered that Santal Parganas should be administered by special officers. But the ordinary civil law was followed. The grievances of the Santals came to a head. They said that there was rack-renting, that their village headmen were being dismissed from the occupancy of their hereditary lands, that their priests were asked to pay rents for rent-free lands, and that they had lost their rights over waste lands, and their customary rights to cut wood, to gather leaves, to graze their cattle in common pastures. Regulation III of 1872 was passed to redress all these grievances which became the Magna Carta of the Santals. It provided for the appointment of special officers to make a record of rights and rents, to record local usage and customs, to restore to the village headmen their hereditary office, and to the people their collective rights over the village wastes.²

In 1876 specific instructions were issued by Government interdicting sales and transfers of land, whether privately or by orders of court, and providing for these instructions to be incorporated in the record of rights.³

These regulations and rules had no doubt the effect of preventing zamindars from letting in foreign rayats. But inasmuch as they

1 Census Report, p. 296.

2 Sir Andrew Fraser's Administration of Bengal, p. 67.

3 2017 L. R. of 4th August 1876 quoted in the Santal Parganas Manual.

legalised the custom of the village regarding restrictions on transfers by recording them in the settlement papers, it was expected that transfers would stop. But gradually a system of free transfer of cultivating rights began to grow. Certain rayats began also to demand such rights. These were called mulrayats and were registered in the Settlement as entitled to rights of transfer. The courts too allowed sales. Private sales followed in their wake. The situation became threatening. In the Settlement of 1900 rules were framed for preventing sales, unless they had taken place before 1887. In order to prevent the civil courts from creating rights as against the Settlement records, judicial powers were given to the Deputy Commissioners by Regulation V of 1893. When sales were allowed, mortgages naturally increased. The rights of leases had to be regulated. This was provided for in the Settlement rules of 1900 that lessees would be granted the status of Jama-bandi rayats if they had held possession for 12 years, or when it was clear that the sublease was of a permanent character. But the law might be evaded by subletting lands on the basis of produce-sharing. So produce-sharing tenants too were granted certain rights of occupancy. Again, transfers might be made to mahajans as deeds of gifts. It was therefore held that a deed of gift alone would not confer a right if the transfer was otherwise invalid. Lands might be exchanged by a village headman, himself taking the best lands. In such cases the rules provided that "the rayat should be given back his original land and allowed to retain the inferior lands gifted to him by the village headman."

Though these various limitations on transfer rights formed the basis in the Settlement for making a proper record of rights and thereby preventing illegal transfers, it was felt necessary that these should be embodied in the Regulation itself. The question was also raised whether a Settlement paper recording the customs relating to transfer had any legal value. So Regulation III of 1872 was amended by Regulation III of 1908.

The new clauses (Secs. 26 and 27) prohibited any kind of transfer of a rayat's holding, ' unless the right to transfer has been recorded in the record of rights, and that only to the extent to which such right is so recorded '. Illegal transfers were not to be registered, nor were courts of any kind to recognise them. The Deputy Commissioner might of his own motion eject an illegal transferee and resettle the land on the original rayat or his heirs, or, failing which, on another rayat according to the village custom. But a transferee who has been continuously cultivating a land for more than 12 years could not be ejected. He should be asked to show cause why he should not be

ejected. He might appeal to the Commissioner against the orders of the Deputy Commissioner. The record of rights also provides that the rayat cannot sublet his land without the sanction of the Deputy Commissioner except in cases of sickness, absense or like exigencies.

The results of working these clauses regarding transfer rights will be evident from the following extract of the report of the Bihar Banking Enquiry Committee of 1930:

In Santal Parganas (Bihar) and Angul (Orissa), all transfers whether by mortgage or sale are, generally speaking, invalid, and the transferee can at any time be ejected. Since in both these the civil, revenue, and criminal powers are to a great extent concentrated in the hands of the Deputy Commissioner and his subordinate officers, the restrictions are effective.

Another part of Orissa where transfer rights are most restricted and enforced is Sambalpur. Here the C. P. Tenancy Act is in force. Mortgages and sales are not binding on the succeeding heir for a period of two years.

The Bihar Banking Enquiry Committee report says that " the restrictions in the backward provinces, on the whole, work well, and though they no doubt diminish the credit of the cultivator, it would be inadvisable in his general interest to remove them at present. "

93 The Chota-Nagpur Tenancy Acts

A study of the Chota Nagpur tenancy legislation is a study in the various difficulties that arise in restricting land alienation by legislation. The landlords of Chota Nagpur had gradually lost their estates to the money-lender class. There were constant disputes between the new class of landlords and tenants, as the former refused to the latter the customary right of using the natural facilities of the village. There were tenants' revolts too in the last century.²

To secure them their legitimate rights, the Chota Nagpur Tenures Act of 1869 and the Chota Nagpur Landlord and Tenant Procedure Act of 1879 were passed to regulate the relations between landlords and tenants. Under the first Act the original descendants of the village were granted permanent occupancy rights. Their lands were surveyed and demarcated. The system of tenure was called the Bhuinhari tenure. But the sale of landed property was always

1 P. 179.

2 "The cultivators are unable to hold their own in the law courts or to cope with the chicanery brought to bear against them. They give way for a time, but at last turn on their oppressors and on other foreigners. There have been repeated instances of this in the history of Chota Nagpur, the last being the Mandari rising of 1899-1900." Administration of Bengal by Sir Andrew Fraser, 1903-1908, Government Press, Calcutta, p. 64.

prohibited. The same right of prohibiting the sale of under-tenures for arrears of rent was granted under the second Act. But the rights of rayats in other lands than in Bhuinhari holdings were not recognised in law. Consequently there were frequent transfers of lands of the aboriginals and the depressed classes to money-lenders.

Restrictions on mortgages

In 1903 an Amending Act was passed with the object of preventing the aboriginals from being reduced to the position of serfs of money-lenders. Mortgages beyond five years were declared illegal, while the period of usufructuary mortgages during which the debt should extinguish itself was fixed for seven years. These restrictions were extended by the Act of 1908 also to the original tenure-holders called "Bhuinhari". The result of this severe restriction of transfer rights proved harmful to the aboriginal rayats. When the term of mortgage expired, the money-lenders got a second mortgage executed for another term. Even if the mortgagor got possession of the land, the money-lender could always attach the produce. Secondly, the tenants, whenever they could not repay their debts, surrendered their lands to the landlords, who in turn sold them to the money-lenders. This procedure led to the squeezing of more money from the tenants both by the landlord and the money-lender. It was, therefore, considered wise to permit the tenant to transfer his land without the intermediary of the landlord. But at the same time the existing restriction on transfer of land to non-aboriginals had to be maintained.

Sanction of transfers among aboriginal tribes

So a clause was added to the Tenancy Act in 1924 empowering the Local Government to make rules permitting certain specified classes of transfer among the tribes. These rules were made and notified to the tenants in Chota Nagpur; but they were neither generally known, nor understood. Permission was not taken from the officers, and there were a number of illegal transfers. The working of the new section in the Act showed two defects. First, the transfers created a large amount of work for the revenue officers who had to scrutinise each case of transfer. This became an impossible task for the officers. Second, the officers had no legal powers to eject an illegal transferee.

The Chota Nagpur Tenancy Amendment Act II of 1938 has mainly concentrated in rectifying these defects. A wholesale veto on sales by tenants has led to the surrender of lands to landlords who in turn passed them on to the creditors. So the Act permits sale of land among the aboriginals and scheduled castes. It prevents money-lenders keeping the land in possession as a mortgage for more than 7 years in

lieu of loans. A rayat and a creditor may collude, and the latter may keep the land illegally for periods longer than those provided in the Act. The Act, therefore, empowers the Deputy Commissioner to move of his own accord and put the mortgagor in possession of the land within a period of 12 years from the date of transfer.¹

94 Restricted tenure in Bombay

A form of restricted tenure was brought into being legislatively even in rayatwari areas as early as 1901 in the Bombay Presidency. According to the survey tenure, full rights of transferability were conferred on the landholders. Even if lands were forfeited to Government for non-payment of arrears of revenue, they were put to auction and the surplus realised in the sales was repaid to the original occupant. But there were alluvial areas where the land itself shifted, as a result of floods and inundations, which could, therefore, be granted only on temporary leases. There were again forest areas brought under cultivation by backward tribes which had to be reclaimed and developed, and which could not, therefore, be granted with full occupancy rights as a cultivable tract. The Law officers held that Government could not restrict transferable rights in lands already surveyed though not occupied. So Government took power under Section 73 A (1) of the Bombay Land Revenue Code to notify in certain areas before the introduction of the original survey settlement that "occupancies shall not be transferable, subject to grant of exemptions to particular tracts and persons, without the previous sanction of the Collector." There remained the question of non-alienated but cultivable lands², and also forfeited lands in already surveyed villages. Under Section 68 Government took power to grant these lands too under restricted tenure. The object was to enforce the restricted tenure only to backward tribes in certain districts such as Thana, Kanara and Khandesh.

Owing to the increase in indebtedness and the transfer of lands to money-lenders in almost all the provinces which has resulted from the power given to courts to sell the lands by public auction, the Government of India urged for legislation to restrict transfers. The Bombay Presidency had just then passed through famine conditions. A large quantity of land was forfeited to Government for non-payment of arrears of revenue. Government thought that it would be wise at least to restrict the transfers of such lands to new grantees with a view to prevent their passing into the hands of money-lenders. Those were days when the proprietary rights of the occupants were warmly up-

1 Vide provisions of Chota Nagpur Tenancy Amendment Act of 1938.

2 Non-alienated land means land whose land revenue has not been alienated by Government to any individual.

held, and enlightened opinion was against the idea of the State being considered as the proprietor of the soil. Under the previous Governments the proprietary right belonged to the village elders. But in those days it had no saleable value, and land was rarely transferred to money-lenders. Sir P. Mehta and the Hon. Mr. G. K. Gokhale contested the right of the State to be the sole landlord of the soil. According to them, it might buy the rights of the owners and resettle new occupants on a restricted tenure, but it should not appropriate the difference between the low assessment and the income from land, by reserving to itself the right of transfer in unoccupied lands. The Hon. Mr. Gokhale said ;

The wide discretionary powers which Government proposed to take under the bill will enable them, whenever they like, to grant short leases or take land for public purposes without any compensation or allot it to whomsoever they please.

It should be noted that restricted tenure was applied in practice only to the backward classes. The rules also provided that, whenever forfeited lands were made over to new grantees, Government could buy them and re-transfer to the original occupant in unjust cases after refunding the sale money and paying compensation for improvements. (G. R. 4503 of 2-7-1902, Bombay Land Revenue Code by K. S. Gupte, page 346). The rules further provided that a thorough investigation should be made in cases of conversion from ordinary into restricted tenure with a view to prevent fraud against creditors, that the restrictions were to apply only to new occupants in areas already surveyed, that they should not apply to the members of intelligent classes, and that sanctions for reasonable alienations for raising credit and for transfer of such land to cultivators should be promptly and easily granted by the Collector.¹

95 The working of the C. P. Land Alienation Act

In the Central Provinces the aboriginals were dispossessed of their lands in many parts of the open country by more forceful immigrants from the plains even during the eighties of the last century.²

1 According to the land revenue administration report of 1936-37 the extent of occupied assessed land under ordinary tenure, alienated tenures, and restricted tenures was 232 lakhs of acres, 71 lakhs of acres, and 11 lakhs of acres respectively. The area of restricted tenures was mostly held in Broach and Panchmahals (2.26 lakhs), West Khandesh (3.72 lakhs), in Ahmedabad and Nasik roughly one lakh each, and in Kaira, East Khandesh, Bijapur and Dharwar between 81000 and 17000 acres.

2 Mr. C. W. Wills wrote in his report on land revenue settlements in 1912 : " The displacement of the aboriginal is an accomplished fact practically over the whole of the open country estates. Interest in their preservation, therefore, must in this district be centred on the seven northern estates. "

The second cause of their leaving the open country was the substitution of foreign for their own hereditary headmen, for "the aboriginals would rather follow the fortunes of their old leader than risk suffering from the want of sympathy of an alien lessee." When, therefore, the Land Alienation Act was passed in C. P. in 1916, much land had already passed to money-lenders and rent-receiving malguzars. That the Act has done a great deal of good has been testified to by many Revenue officers. In the district of Mandla, only small shares have passed to Banias (money-lenders). But even that showed how oppressive they could be.

" Those to whom the villages usually pass through usury, deceit, and trickery are nearly always oppressive Banias, who treat their villages on the most strict commercial lines, levy all sorts and kinds of illegal dues, and have no regard whatever for tenants' rights and interests. The men to whom such villages would pass, if the Act were not in force are those to whom the small shares have already been transferred, and neither I nor any revenue officer with experience of the district would hesitate to describe them as worst possible landlords."¹

The Act has done equal good to the Korkus of Melghat in Amraoti District. But it was not extended to the Nagpur district. The result has been the expropriation of the Gond tenants. They have either gone to forest villages abandoning their tenancy lands in preference to their working under Hindu and Muslim malguzars, or have become landless labourers.²

The Land Alienation Act in the C. P. applies only to aboriginal proprietors. It also applies to certain jaghirs in the Chindwara district and 16 zamindaris in Chanda. It is extended to a number of backward areas year after year. The Revenue officer has to sanction sales of land and leases to non-aboriginals. The Revenue Administration report for Berar for 1937 has recommended an extension of the Act also to aboriginal tenants "who are steadily losing ground in many places."

96 The Bengal Tenancy Act, VII A

With a view to maintain the land system of the Santals and protect them from losing their lands to money-lenders and non-aboriginals, the Bengal Tenancy Act was amended in 1918 by including a special

1 Extract from the Revision Land Revenue Settlement report of Mandla district.

2 Vide Census Report of the C. P. 1933, p. 401, and also the para on the working of the Land Alienation Act in C. P. and Berar Decennial Review of Administration 1933.

chapter, VII A. The Amendment Act was based on the Santal Parganas Regulation of 1872, the Chota Nagpur Tenancy Act of 1903, and the C. P. Tenancy Act of 1898. Under these new provisions Government took power to apply them to certain aboriginal castes and tribes. They were first applied to the Santals of the districts of Birbhum, Bankura, and Midnapore. By a further amendment in 1928, the provisions were applied to the colonisation areas in the Sundarbans with a view to protect the new rayat settlers from losing their lands to money-lenders. As these provisions are generally followed in respect of restrictions on alienation of lands by aboriginals in various other Tenancy Acts, we give below a summary of the same.

No transfers are valid except as provided under the Act. Leases and subletting are permitted only among the aboriginals. If lands are mortgaged, they should be lands '*under the own cultivation*' of the tenure-holder, rayat, or under-rayat; they could be mortgaged only with possession; and the maximum period of such possession should be seven years, within which time the principal of the debt and interest thereon should get fully repaid out of the proceeds of the land. Any kind of transfer to a non-aboriginal should be registered and sanctioned by the Collector. No court of any kind shall recognise illegal transfers. If an illegal transferee has not been in possession for more than 12 years, the Collector may eject him after giving him an opportunity to show cause why he should not be ejected. The Collector may issue an order restoring the land to the transferor or his heirs or if no such persons are available, he may vest the power of settling the tenant in the landlord. The landlord may thereafter settle any person on the land within a year, failing which, the Collector may settle an aboriginal within 6 months, and failing this again, the landlord will have an unrestricted right of settlement.¹ Whenever a tenancy ceases, the landlord is free to settle with an aboriginal, but the formal approval of the Collector is necessary so that there may be no evasion of the provisions regarding the restriction of transfers by collusive surrenders, particularly to money-

1 The Hon. Mr. Beatson Bell, replying to the criticism against the grant of special powers to Collectors, said "If the landlords in the past had carried out their moral duties and had seen that the aboriginals were retained in their ancestral fields, there would have been no occasion for this bill. It is because it has been demonstrated by evidence that far too many landlords, some of them absentees, have done nothing to prevent the alienation of aboriginal holdings, that we have finally decided that it is our duty to protect these poor people by setting up a machinery which will be effective."—Speech introducing the Bengal Tenancy Act Amendment Bill, Calcutta Gazette, Oct. 10, 1917, p. 743.

lending zamindars.¹ The tenancy rights shall not be saleable under orders of court except for arrears of rent and recoveries of public demands. This clause was added to prevent evasion of sales through the process of execution of money decrees. The Court shall grant reasonable time for repayment before it executes the decrees, whether relating to rent or debts. Provision is made for appeal and revision. Any order of the Collector under these sections shall not be questioned by any court except on grounds of fraud or want of jurisdiction.

97 Assam

In Assam restrictions on the alienation of land apply to the aboriginals as in Bengal. Professional money-lenders are not allowed to lend. Mortgages and sales of land by the aboriginal tribes to foreigners are not permitted. In the Lushai Hills there is neither

1 "When I was Deputy Commissioner of the Santhal Parganas, full statistics were obtained in the course of settlement operations of the manner in which holdings were alienated from aboriginals to non-aboriginals, and it was found that the greatest percentage of objectionable alienations took the form of resettlement with the consent of the village headman or the zamindar's agent....When there is an obvious way of evading the provisions of the bill that an aboriginal may not transfer his holding by making a collusive abandonment, it is necessary to provide against such evasion, and that is done by providing that in resettlements a fellow aboriginal shall have a prior right to take the abandoned holding, and it is only by such a provision that you can maintain integrity of the village community by preventing sales to better classes who will not be subordinate to the village headmen, and who will gradually buy all the lands and convert the village community into landless labourers." Speech of Mr. Bompas in the Bengal Legislative Council during the discussion on the Bill. Calcutta Gazettee January 9, 1918, p. 64.)

The original bill provided that in order to prevent evasions, all decrees which ordered sale of holdings of aboriginals should be transferred to the Collector for execution under Sec. 68 of the C. P. C. But this provision was dropped in the bill as passed by the Council. (Calcutta Gazette, Aug. 15, 1917, p. 4.)

The Land Revenue Administration report for Bengal for 1937-38 says that 312 applications for permission to transfer land were under disposal during the year as against 350 in the preceding year.

In a certain portion of Mymensingh, certain lands belonging to aboriginal tenants were taken possession of by the landlords. The latter then put them to auction on the produce-sharing basis, and took agreements from the tenants for the payment of the rent fixed in auction. The Government replied in answer to an interpellation that they would apply to this area chapter VII A of the Tenancy Act and appoint a Settlement officer to fix the rents (vide Bengal Legislative Assembly Proceedings, vol. 52-6, p. 90-30-3-1938).

private property in land nor tenures. The Government distributes the land for cultivation to hereditary chiefs. In Garo Hills the Deputy Commissioner should sanction any settlement of land by foreigners. The people of the plains who have settled here cannot borrow on the security of their lands as all transfers have to be approved by the Deputy Commissioner. Headmen of tribes easily get into debt and transfer a share in their lands to the creditors. (The Assam Banking Enquiry Committee report, paras, 211 to 218).

98 The Agency Tracts Land Transfer Act, Madras

Under the provisions of the Agency Tracts Interest and Land Transfer Act 1 of 1917, there is a form of restricted tenure in operation in the Agency tracts of the Madras Presidency in regard to the lands of hill tribes. Sanction of the Agent to the Governor is required to all transfers of land, by hill tribes to others, but he cannot give it on his own motion (Sec. 4). He can eject an illegal transferee on the application of any person. But these provisions are not strictly adhered to, as the hill men themselves hand over the lands to the creditors and never apply for the ejection of the latter lest they might lose all hope of obtaining credit in future.¹ The Act also provides that suits against hill tribes should be instituted only in the courts of the Agency tracts (Sec. 5), and that the immoveable property of hill tribes is exempt from attachment in execution of decrees (Sec. 6). The Report of the Estates Land Act Committee Madras, 1938, makes the following remarks in its report about the working of the Act : "The Land Alienation Act is supposed to be in force in this tract, but the provisions have not been enforced strictly, because permission has been given freely for mortgaging and selling the land to the people of the plains. The cultivators complain of their indebtedness on account of the exorbitant rate of interest."

99 Alienation problems of to-day

Restrictions on the alienation of lands of aboriginals came a little late.

"Until recently, when Government orders validating tribal customary law regarding succession and inheritance were promulgated, the courts often disregarded the custom against inheritance by daughters and applied to them a Succession Act quite inconsistent with the fundamental social structures and ideas of kinship of the tribes. Until recently when rules against alienation of ancestral lands were promulgated by Government, the ancient tribal custom against such alienation was utterly disregarded, and through such alienation, alien Hindus and Mahomedans were admitted to

¹ Madras Banking Enquiry Committee Report, p. 173.

the villages resulting in the further disintegration of the old village community. The recent restrictions against alienation have come so late, and the people have now been so long accustomed to such transfers, that a large section of the people now feel these restrictions irksome and no longer needed, and subterfuges are often resorted to in order to evade them.¹

We have, therefore, to-day to deal with a different problem of minimising these restrictions on alienation of lands by permitting transfers among the aboriginals. Restrictions on transfer rights arise in another way too, by the enforcement of forest laws on the hill tribes. The latter want large areas for cultivation, they want to clear forests for cultivation, which leads to inundation and damages the plains. They are against afforestation of their tribal lands; they are against the exploitation of minerals from their lands. They are prevented from quarrying without permits from their own lands. There is, therefore, a conflict of the rights of the State and those of hill tribes. This can only be resolved by a judicious and sympathetic understanding of the customary rights of the tribes to enjoy the natural facilities afforded by the forest.

100 Possibilities of restrictions on land alienation

Restrictions on land alienation have been of three types. They have been devised with the object of preserving the lands in the hands of agricultural tribes or communities. Another object is to regulate the distribution of Government lands in certain areas, and in the C. P. to restrict the rights of rayatwari holders. A third object is to protect the aboriginals and backward classes from losing their lands to rentiers and money-lenders. The Royal Commission on Agriculture recommended to Local Governments an examination of conditions as to the passing of lands to money-lenders, and of the need for restrictions on alienation of lands as in the Punjab. When the Government of India called for opinions on the question, almost all of them disapproved of any proposal for restrictions on transfer rights.² The Bengal and Bihar Governments were on the other hand for an extension of transfer rights. The Bengal Government went further and said that "opinions are divided as to whether the restrictions on aboriginals have proved beneficial to the people." The fact is that there cannot be a uniform land policy in relation to debt for all agriculturists. While in the case of landholders restrictions on alienation of land might tend to a restriction of credit and thereby reduce over-borrowing, the indebtedness of tenants would get reduced

1 "Effects on the Aborigines of Chota Nagpur of their contact with Western Civilization."—Journal of Bihar and Orissa Research Society, 1931, quoted in the Census of India, 1931, p. 506.

2 Vide replies of Local Governments in 1930 to the Government of India.

not by restriction on transfer rights, but by their enlargement. Consequently zamindari provinces were not only against any restrictions on alienation, but also proposed removal of existing restrictions on transfer rights. The question ought to have been approached from the point of view of the growth of absentee landlordism as a result of indebtedness of small holders and their gradual dispossession in all provinces. The problem of tenancy being outside the purview of the Commission, they could not possibly investigate the question. The time has come to approach the problem of transfers of land for debt in relation to the growth of a rent-receiving agricultural class. In the following pages an examination of the possibilities of limiting transfer rights with a view to prevent the passing of lands into the hands of non-agriculturists is examined. A reference is also made at the end of the section to restrictions on transfer rights of aboriginal classes, and those on unoccupied assessed lands which are sold by Government to new purchasers.

B

LAND ALIENATION PROPOSALS

101 Non-agriculturist Landholders

To the earlier administrators the problem of transfer of land from the original owners did not appear as anything serious as they thought that it was to the interest of agriculture that the inefficient landlord should be replaced by an efficient one. In fact the power of transfer was conferred on the occupants in Bombay under the rayatwari system of tenure with the express object of "getting land out of the hands of a person unequal to discharge the responsibilities connected with its occupancy, and whenever there happened to be a demand for land secured by the sale of the title to the highest bidder, that it should fall into the possession of a man of means."¹

The purchase of lands by non-agricultural classes and the economic evils of land ownership by such classes were not properly visualised. The new owners accustomed to better returns from money-lending, and intent on realising a high rate of interest on the land which had passed to them either by forced sale or by their own investment in land, did nothing to improve the lands, but only rack-rented the tenants.

102 Two kinds of dispossessed owners

Broadly, the new owners dispossessed the non-cultivating or cultivating members of the old village communities. But what in

1 Note on Land Transfer and Agricultural Indebtedness in India, p. 82.

those days Government was most concerned with was the prevention of the disruption of the landed gentry and the non-cultivating middle class. The former they could not suffer to be destroyed, as they were quasi-public functionaries to whom the function of collecting land revenue was delegated. The latter were expected to supply village leadership and be the connecting link between the people and the executive of the Government. The cultivators, who were dispossessed by the money-lenders, whether belonging to the rayatwari areas or to zamindari areas in the provinces of Upper India, either joined the ranks of labour and tenants-at-will, or cultivated the lands under those new owners as tenants. Their attachment to the land was so strong that they still worked their own lands on a bare subsistence wage, but paying to the money-lenders the profits they used to make when they owned these lands.

103 The problem of land alienation in the last and present centuries

The problem of preventing land alienation as it existed in the latter half of the last century and as existing at present are not exactly similar. The political necessity for granting special relief to zamindars on whom the Government relied for the collection of land revenue has disappeared. Secondly, the problem today is not one of preventing alienation of lands to pure money-lenders. Many among the latter, either out of necessity or of their own free will, have become holders of lands. The evils connected with their ownership, such as want of aptitude or the desire to cultivate their lands, largely disappear when agriculturists themselves buy the lands of indebted proprietors. The problem is again not one of preventing the growth of a non-agricultural class on the land, but that of an agricultural class who rack-rents tenants or exploits agricultural labour and who cannot efficiently manage the large areas owned by them. Thirdly, we have no jointly owned villages wherein the interests in land of the original members have to be protected. Such members to-day are either absentee landlords with or without employment in the learned professions or are cultivating owners. The dispossession of the former in no way affects the agricultural organisation of village. The dispossession of the latter is one of serious consequence. A substantial number of those cultivators have lost their lands and become labourers, or are working as tenants on their own lands under the money-lender who has bought these lands. If the lands sold by cultivating owners had all been purchased by persons of their status, there would be nothing to complain of. But where they have been dispossessed by the big agriculturist holders in

the village who live by rack-renting, or by retired officers, vakils, and traders having surplus money, and whose interest is only the collection of rents from land, the situation calls for an immediate solution.

104 Policy behind restrictions on land alienation

If the purposes for which we want alienation of land to be restricted are properly understood, it will help to clear the ground regarding the scope of such restrictions. We want restrictions so that land may not be bought by mere rent-receivers. For rack-renting leads to inefficient agriculture. Want of proper manuring, absence of necessary improvements to the land, and lack of stimulus to develop the farm are all results of the cultivation of land by tenants who have neither the resources, nor security of tenure, nor a guarantee of fair rent to induce them to put their whole energy into their work. Rent-receivers are only concerned with rents; they have no interest in securing better working conditions for tenants. It becomes therefore the duty of the State to see that land is worked only by those whose occupation is agriculture.

105 Limitations of the policy

Secondly, if it is agreed that restriction of sale of land to rent-receivers is just and proper, the further question arises, should our land policy restrict the small holder from losing his holding by voluntary sales to bigger agriculturists who are not necessarily rent-receivers? A strong case must be made out in order to prohibit sales by small holders to big holders except with the sanction of the Revenue officer. Even where such prohibition has been introduced among the backward tribes, they may not be expected to submit tamely to this position for long, and are sure to claim the right of free transfer of their lands with their growing education and sense of self-respect.

The problem of dispossession of the small agriculturist by the big agriculturist is closely connected with that of purchase of lands by rent-receivers. When the latter is stopped, the scope for purchase of lands by big agriculturists from the small ones is naturally increased. The problem of preventing sales to big holders raises the bigger issue of the protection of family farms as against large-scale farming. We have to consider which is a greater evil, the growth of a hereditary caste of peasants on the land who can never be dispossessed, or the growth of large-scale holdings. Sufficient protection for family farms has been suggested in the

1 Writing about the evils of tenancy in his book, "Wealth and Welfare of the Punjab," Mr. H. Calvert quotes the following remark of Professor Carver that next to war, pestilence, and famine, the worst thing that can happen to a rural community is absentee landlordism.

succeeding chapters by other devices than by a complete prohibition of voluntary sales of these farms. Considering the poor credit resources of most of our holders of land, one has to go cautiously in making proposals of land alienation, lest they might lose their existing credit. Enough data is available today of the growth of a rent-receiving class on the land as a result of indebtedness of agriculturists. The growth of this class on the land is a greater evil which requires to be arrested in the first instance. We shall be enabled, when once we eradicate this evil, to see the respective values of small-scale and big-scale agriculture in the rural economy without the complications due to the holding of lands by a class of rentiers. Restrictions on voluntary sales of land by small agriculturists to big agriculturists are, therefore, not recommended.

We shall now consider the arguments that may be advanced against a policy of restricting alienation of land by agriculturists to rent-receivers. We need not consider the arguments commonly urged against a total prohibition of voluntary sales of land by agriculturists, as we are not proposing it. According to our proposals, no hereditary class of agriculturists is created as every one is free to sell his land. Consequently, the infusion of fresh blood due to the purchase of lands by non-hereditary classes is in no way prevented. Nor is the sense of ownership taken away as is the case when an owner cannot exercise any rights of transfer over the property owned by him. We have to consider whether the prohibition of sales to rent-receivers affects agriculturists in any manner. It might be argued that it would affect their credit. To the extent to which the class of persons to whom land can be sold is restricted, the sale value of land would become less, and the amount of credit realisable by a transfer of land would also be less. Our proposal restores to land its legitimate and real value, depriving it of the inflated value due to the facility available for taking advantage of the competitive rent paid for it.

106 An infringement of proprietary rights

Another objection against the restriction of alienation is that it will be a breach of faith on the part of the authorities to alter the proprietary status which has been granted by the Government to zamindars as well as rayatwari holders. But Government's right to regulate the status of tenants which also impinges on the proprietary right of landlords has never been questioned. Further, while this objection might be considered in the case of a wholesale veto on sales, it is not valid if alienation to certain classes only is prevented. For the State has not only the right but the duty to see that the major industry

of agriculture is not exploited by intermediaries who are interested only in depriving the tiller of the soil of the surplus income from land. If land value diminishes owing to the elimination of the competition of investors in land, it is only a restoration of its normal price. It may be argued that many have invested money in the land as it was a commodity for purchase and sale. But if its sale is to be restricted, a number of purchasers who have already bought lands may not be able to get a fair price for it when they sell it.

A proper reply to this argument is given in the Note on Land Transfer and Agricultural Indebtedness in India and this we quote below.

Their case can scarcely be counted as peculiar or more deserving of attention than that of landlords who suffer by a sudden change in the Rent Law, or merchants who are affected by sudden changes in the Tariff or the currency.

107 The Proposal of 1882 of the Government of India

Legislative proposals for restriction of alienation of land may be divided under two heads: those prohibiting sale of specified classes of land as e. g. a minimum holding for subsistence, or ancestral land, or occupancy rights in private lands and those restricting sales to specified classes of people. The former have the defect of creating a hereditary landlord class. We should therefore prefer to approach the problem by restricting the sales to specified classes. The Government of India, considering the limitations in the various devices adopted for preventing the passing of lands of rayats to rent-receiving money-lenders, proposed in 1882 direct prohibition of transfers of occupancy rights to any but agriculturists.

"Saving all rights vested, we would enact that no person who is not an agriculturist shall hereafter acquire a right of occupancy in rayat land either by purchase or gift, or devise or foreclosure, or in any other manner whatsoever. The rayat would then be able to transfer freely to other rayats, whether by mortgage or sale. But no mere money-lender could acquire the right, though he could advance money on the security of the crop or of the holding, and might bring the latter to sale, subject to the condition that no one but an agriculturist could purchase it. These provisions would be guarded so as not to interfere with the landlord's right of pre-emption. We advocate them with regret as restrictions needed in an immature state of society where the poor and ignorant are apt to fall into the hands of people possessing the discretion to accumulate property, but unable to resist temptations to exaction. As education and the consequent power of self-protection spread, such exceptional legislation would grow obsolete. We therefore think that the Lieutenant-Governor should be empowered to withdraw the above-mentioned provisions in any district where it might be established to his satisfaction that absolute freedom of transfer would be unattended by any risks." ¹

¹ Note on Land Transfer and Agricultural Indebtedness in India, 1895, p.203.

This proposal has so far not been given effect to in any legislative enactments. We will examine in the following paragraphs the extent to which alienation of land may be restricted to agriculturists.

108 Exclusion of money-lenders

All those to whom agriculture is not an occupation may be prohibited from buying lands without the sanction of the Revenue Officer. A difficulty will arise in defining this class of persons. Money-lenders ought certainly to be excluded. With the working of the Money-lenders' Acts in the provinces, all the money-lenders would be registered. They can easily be known from the register. The question whether money-lenders are also agriculturists will not arise, as under the Acts money-lenders who do regular business in money-lending will be registered as such.

109. Exclusion of rentiers

Those who are to-day living on rents by leasing their lands may be prohibited from buying lands. At present information is not available in the Revenue department as to who are tenants of lands. Such a register is maintained in the province of Bombay. It will be useful both to the Government and the people for various purposes to maintain such a register. If sub-lease is to be prevented by law for the future, we should know who the landlords are at the time of commencement of the Act, and who are living on rents, so that the prohibition of sub-lease will apply only to those who buy lands which they cannot themselves cultivate after the enactment of legislation on the subject. The grant of permanent occupancy right will be based on the occupation by a tenant of certain piece of land, and this can be verified only by the maintenance of a register. Whether an agriculturist habitually sub-leases his land can be found out only from such a register.

110 Exclusion of learned professions

Those who are in learned professions and draw monthly salaries may be equally prohibited from buying lands without the sanction of the Revenue officer. A list of professions called learned professions may be defined in the Act itself. Lawyers may be equally excluded.

111 Defining agriculturists by process of elimination

The method of definition adopted in the U. P. Agriculturists Relief Act of 1934, the Madras Debt Relief Act of 1938, and the Bombay Smallholders Act of 1938 may be followed in defining an agriculturist. Those who pay income tax on non-agricultural incomes cannot ordinarily be expected to be devoting attention to agriculture. Those who pay profession tax to Local Bodies and

Municipalities on incomes above a certain limit would not ordinarily be agriculturists. A limit is placed for the profession tax because there may be many small traders, green grocers, and handicraftsmen who might supplement their incomes by intensive cultivation of small plots.

112 Restrictions on subletting

The law should also penalise subletting. If subletting is not penalised, prevention of alienation to rent-receivers has no meaning. A person may buy a land as an agriculturist and afterwards become a rent-receiver. As prevention of subletting is one of the fundamental features of a land policy, not only to prevent indebtednesses, but to regulate the use of land for agriculture, we have dealt separately with the subject at the end of the chapter. The purchaser should not belong to a group of persons who are specially excluded as non-agriculturists.

The defect in this definition would be that there might be persons belonging to professions other than the learned professions, or law, or money-lending who might freely buy lands. The only restriction in their case is that they should not be payers of profession tax over a certain figure, or income tax. There are also the limits proposed under the scheme that they should neither be lessors on the date of purchase of the land nor after the purchase.

113 Definition by tribes

A device adopted in defining agriculturists in Land Alienation Acts is to list the agricultural tribes who can sell land freely among themselves, but not to others. The difficulty in such a definition has been the existence of certain tribes who are both agriculturists and rent-receivers or money-lenders. The Rajputs, Mussalmans, Brahmins, and some of the cultivating castes in the Deccan and South India combine both these occupations. Consequently the rentiers and the money-lenders among the tribes are free to buy the lands of the tribes while others are not, and thus they come to have a kind of monopoly to dispossess their tribesmen. Further, the ownership of land to-day does not rest purely on a tribal basis as it was in the last century. Sheep and cattle rearers, the depressed class menials of the village who performed village service and had no connection with lands, oil vendors and those engaged in grocery business have all bought lands. The sons of cultivating tribes have taken to English education and have joined the learned professions. The tribal basis for permitting alienation is based on the idea of preserving the estates intact to the

old families who have a share in village lands. The members of these families may have left the villages, or have become rent-receivers. A reorganisation of the agricultural structure today cannot be made on the basis of preserving the ownership of land to the scions of the old families in villages.

114 Definition by occupation

We will now consider the rules that are necessary to prevent the alienation of lands to those who are not agriculturists. We have already specified the classes to whom lands should be rendered unsaleable in future without the consent of the Revenue officer of the Taluq. The latter may give consent for such sales if he is convinced that they are investing money in land with a view to follow the occupation of agriculture. We may further define the term 'agriculturist' as including all those who cultivate lands either personally, or by hired labour, or by members of their families.¹

Cultivation may be defined as including "horticulture and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, and the growth of fruit, vegetables and the like."² The definition might also provide that an agriculturist should have a saleable interest in the land and the land should be agricultural land.

115 Application of the rules in practice

Provision will have equally to be made as to how Government are to satisfy themselves that the restrictions laid down are adhered to. The form of sale deed may be prescribed in which the buyer should state that he does not belong to any of the excluded classes, that he does not pay profession tax above the prescribed limit, nor income tax. The restrictions regarding sales may be given due publicity in the sale deed itself. Penalties may have to be provided for making false statements. The Revenue officer should be empowered to eject an illegal transferee on his own motion, or on that of an interested party. The buyer should also get a certificate from the Tahsildar of his jurisdiction that, according to revenue records, he does not let out lands to tenants.

1 The Burma Land Alienation Bill, 1938, defines an agriculturist as one who cultivates with his own hand, or who personally superintends cultivation and whose major income is from such personal superintendence and cultivation with his own hand. The definition will lead to more than one interpretation by courts about the scope of personal supervision and major income; it will exclude agriculturists who direct and take the risks of cultivation but employ paid agents for supervision. The bill also provides for registration of agriculturists which cannot be very helpful, as an agriculturist at the date of registration need not be one on the date of transfer of the land.

2 Punjab Relief of Indebtedness Act, Sec. 7. 3.

116 Defects in existing rules of land alienation

The main principle underlying the classification of those whom we have excluded as non-agriculturists is that it should be definite and traceable to some Government record. To ask every agriculturist to go before an officer for every transaction of sale of land for his approval, and to entrust officials of the lower ranks with this work is both demoralising to the one, and a gratuitous responsibility for the other, not to speak of opportunities for corruption. Control of sales by Revenue Officers should be limited to the minimum, and where such control is exercised, the rules should be so clear and definite as to leave as little discretion as possible to them in this matter.¹

Land sales should be freely allowed among agriculturists. There should be no need for them to go before the Revenue Officer to get his sanction for a sale. The Land Alienation Acts want to protect certain tribes from selling their lands. Consequently they have a number of rules as to when sales should be permitted.² Such a measure is intended to save the land from going into the hands of mere rent-collectors. It does in no way restrict the right of voluntary sale. It does not throw on the officers the responsibility of scrutinising how far the interests of each seller are injured by every sale.³

1 "The largeness of the number of such transfers in the Deccan would render a careful consideration of each application impossible, while anything short of a careful enquiry in each case would only lead—where there is a brisk demand for land and it is to the interest of both parties to evade the law—to fictitious transactions." Extract from the Deccan Commission report of 1891-92.

2 Vide Appendix for a summary of the rules.

3 The rules under the Punjab Alienation Act and the C. P. Tenancy Act enjoin the Revenue Officer to see that sufficient land is left for the maintenance of the protected agriculturist before he gives sanction for sale, and that the interests of the heirs are sufficiently safeguarded. The Indore Tenancy Act of 1931 goes further and scrutinises the act of the tenant whether it promotes the good of his family or is against it. In Germany certain holders cannot be dispossessed of their holdings except by their own group. This rule applies only to hereditary peasant property generally of a minimum of $7\frac{1}{2}$ hectares (1 hectare = 2'471 acres) and a maximum of 125 hectares. It should not be sublet. It passes undivided to one heir. The other heirs are entitled to education or a marriage portion or maintenance if they are unable to get a job owing to no fault of their own. It cannot be charged without the approval of the succession court. It cannot be alienated, nor sold in court auctions. But such holdings are recognised only in the case of peasants having the requisite qualities for operating a farm and offering the guarantee of origin and

(*Continued on the next page*)

117 Proposed rules

Even though rules need not require scrutiny of the sale made by every agriculturist as is the case in the Punjab, the Revenue Officer should be given definite guidance in sanctioning the purchase of lands by the excluded classes. They may buy lands for the bonafide purpose of agriculture, or for erection of buildings close to a town or a village, or for industrial purposes.

The experience gained in the working of the Land Alienation Act in the Punjab will be useful in applying such a law elsewhere. The possibilities of benami transactions under these proposals will be small, as they do not in any way prevent a debtor from selling his land. Possibly a non-agriculturist may pay a better price. Even so there is no prevention. Only the sanction of the Revenue officer is necessary. It may not be possible to expect the managers of properties of temples and religious institutions to directly cultivate the lands. Leases will have to be allowed in such cases, but not necessarily sub-leases by the tenants under these institutions. Sales of land may be effected as gifts to temples and religious institutions. The Revenue officer will have to watch whether any subletting is done under such guises. The working of Tenancy and Land Alienation Acts has shown the possibilities of an increase of benami transactions and illegal transfers. With any amount of vigilant control one should always be prepared for evasions in legislation of this type.

118 Effect of the proposals

By these provisions sales of land by tenants and landholders will be permitted only among the agriculturists. If the latter sublet the lands, the tenants to whom they sublet will be declared owners of the holdings on the same terms and conditions under which their superior holders hold them. Sub-leases will be permitted for legitimate reasons, and in no case to those who are defined as non-agriculturists. These restrictions will stop the investment of money in land by speculators in land, and by rent collectors. Land value will no doubt fall to the extent to which these investments are withdrawn. During the transition when creditors have to learn to place a better value on the produce as a charge for their loan than on

(*Continued from the previous page*)

character required by the legislation.' (Law of September, 1929, Monthly Bulletin of Agricultural Intelligence and Sociology, 1937, January, p. 18). The peasant group may expel a peasant who is unworthy of belonging to them owing to misconduct. Agricultural organisation has not developed the internal vitality in India so as to resist rack-renting by non-agriculturists, and to expel peasants of unworthy conduct, as provided in the German legislation.

land, there may be some restriction of credit which will perhaps be to the good of the agriculturist by making him less improvident.

119 Policy re aboriginal lands

We do not recommend that these proposals should be made applicable to the lands of aboriginals. These are governed by special Tenancy or Land Alienation Acts. A sense of proprietary rights has not yet grown among all the backward tribes. The rights of transfer vary of course from province to province. They have to be liberalised in proportion to the social and educational progress of the backward communities enabling them to take care of their own interests. It is also a point worthy of consideration whether the State should not undertake the responsibility of assisting these people with facilities for credit, production, and marketing of their produce. In fact the State ought to do so, as it has prohibited outside financial help by restricting transfer rights in many ways.

120 Restricted tenure in rayatwari areas

As regards restrictions on the ordinary class of agriculturists who take lands from Government on rayatwari ownership, Government has granted full rights of ownership subject to sanction of transfers by the Collector in the province of Bombay. Since 1931 the Government of Bombay are distributing lands on conditions of impartible tenure. In the C. P., the rayatwari holders have restricted rights of transfer in their lands. Again, lands are granted on temporary leases in certain provinces.

When Government sells its lands in auction, there is no reason for restricting the transfer rights of the purchaser. The C. P. Banking Enquiry Committee says: "It must be remembered that Government has now introduced a system of selling rayatwari rights by auction, and it would seem to be anachronistic to hold back the rights of transfer in most places where rights are auctioned."¹

Temporary leasing may be justifiable when land has to be reclaimed and developed. If after a certain period the cultivators who settle on it may be dispossessed, they are no better than tenants-at-will cultivating the land on a periodical lease. Either the Government farms the land itself or farms it out. In the latter case it should have no other right than the right to receive a rent. But when Government sells its land to the highest bidder,

¹ Para. 1611

it really sells both its right to cultivate and to receive rents. It is worthy of consideration whether Government may not in future stop sales of land, itself either directly farming it, or claiming the right to receive a rent, irrespective of any assessment on the land as a source of provincial revenue.

121 Impartible tenure

The granting of lands by Government on impartible tenure with a view to prevent subdivision of holdings is a step that should be welcomed. It no doubt improves the credit position of the agriculturist by assuring him of an economic holding. As a result, it will tend to reduce the rapid accumulation of unproductive debts which happens in the case of the uneconomic holder. But as it is outside the scope of this book to deal with the problem of economic holdings, we stop here without attempting any detailed examination of the question.

C

RESTRICTIONS ON LEASES

122 Recommendation of the Famine Commission, 1880

We have examined so far the existing provisions in law for preventing the sale of land to non-agriculturists. One of the reasons for such legislation is that the evil of letting, which is an incidence of the ownership of land by non-agriculturists, should be stopped. But it will not be stopped if the buyer of land were an agriculturist only on the date of its purchase. An agriculturist should be prevented from letting his land at all times. One of the chief causes of over-lending by creditors and over-borrowing by agriculturists is the scope that exists at present for letting land at a competitive rent. This reduces the income of the cultivator, whose staying power, necessary for an occupation such as agriculture with unsteady income and need for long-term investments, gets diminished. He gets into debt at high rates of interest which he cannot easily repay. The Famine Commission of 1880 recommended:

If a tenant for a long period fails to keep up the stock required for cultivating his land or otherwise ceases to be by occupation and habit a bonafide cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place.

Effect was given to this recommendation in Section 40 of the C.P. Tenancy Act, particularly owing to the growth of subinfeudation in Hoshangabad district, where the purchase of tenants' land by investors was quite common.

123 Sec. 40 of C. P. Tenancy Act discouraging purchase of tenancies by non-cultivators.

Mr. Rivaz, the Government member who moved the C. P. Tenancy bill of 1898 in the Imperial Legislative Council, made clear in his speech the purpose of introducing the clause preventing subletting. The relevant portion of the speech is quoted below :

“ It (the section) promises to be the most effective of the checks imposed by the Bill on the transfer of tenants' holdings, which it is the policy of the Government to prevent, inasmuch as, by enabling the Government to deny to a purchaser the right to manage by rack-renting, it will deprive investment in land of the principal attraction which they offer to the non-cultivating classes ... The section has been so worded as to make it clear that interference will not be warranted in cases where a tenant sublets to meet special or temporary emergencies, and that the conditions which it is intended to prevent are those in which a person who has obtained the status of the tenant makes use of it simply as a means of gaining interest on his purchase-money by extorting a rack-rent from the actual cultivator. The object of the section being to discourage the purchase of tenancies by non-cultivators, and not to protect any particular class of sub-tenants, we have not regarded the period during which the land may have been held by the individual sub-tenant who may be in possession at the time proceedings are taken. To limit action to cases in which the sub-tenant may have held for a certain number of years (as was proposed by the landlords) would render it easily possible to circumvent the law by frequent changes in subleasing. I consider that the section is the most valuable of those provisions of the Bill which have for their object the prevention of the exploitation of the cultivating by the commercial classes.

124 Its provisions

Hence it was not enough to restrict the period of leases and mortgages. This might be circumvented by a rack-renting investor who had purchased a tenant's land with the sole object of getting a high interest rate on his investment through rents. As early as 1898 the Government of the Central Provinces introduced an amendment in the Tenancy Act. It was to apply to sub-tenants. Sub-tenants are those who hold lands from a tenant of such land, or from a plot proprietor (Malikmakbuza)¹, or from the holder of a survey number (Rayatwari holder). Their names should not appear as occupancy tenants in the settlement records of the last Settlement made before the Tenancy Act of 1920 came into force, and they should not be absolute occupancy tenants.

These sub-tenants, according to the Tenancy Act of 1898, were declared by the Revenue officer to have all the rights of an occupancy tenant as against the tenant from whom they held and as against the

¹ A proprietor of land who has all the rights of a landholder except that of paying land revenue direct to Government.

landlord. These rights would hold good only in such local areas where the Chief Commissioner declared that this section would be in force. It should be proved by the sub-tenant that "land is habitually sublet or managed solely with a view to obtaining rent." The local area wherein sub-tenants get these rights might be a small one. The Revenue officer would inquire into the circumstances, either on his own motion, or on the application of the sub-tenant, and, if satisfied, would grant occupancy rights to the sub-tenant, and also divide the rent payable, as to what was due to the proprietor and the tenant respectively. If the tenant died without heirs, the sub-tenant would hold the land as an occupancy tenant direct from the landlord at the total rent paid by him to the tenant and the landlord. The section was not to be applied *ordinarily* to certain cases of absolute occupancy or occupancy tenants. These tenants might be directly cultivating the lands or leasing them out. With the gradual subdivision of holdings among the heirs, all the lands might be brought under direct cultivation in process of time. So it was considered unfair to declare a sub-tenant as occupancy tenant in such cases. Secondly, many investors have bought tenants' lands before the enactment of this provision in 1898, solely with a view to realise rents. In their case too the section was not to be ordinarily applied.

Sec. 41 of C. P. Tenancy Act

It was found that proprietors might purchase malikmakbuza lands. Such lands might be sublet by them and the tenants rack-rented. So it was laid down in Sec. 41 of the Tenancy Act of 1921 that the tenants of malikmakbuza lands purchased by proprietors might also be declared as those having occupancy rights by a Revenue officer if he was satisfied that such lands were habitually sublet.

Other restrictions on subletting

Letting was also not allowed in the case of lands surrendered by tenants to malguzars, or directly reclaimed by them.¹ Further, sanction of Government was necessary for sub-leases by rayatwari holders.²

125 Defects of the C. P. Tenancy Act

The Central Provinces Tenancy Act has no doubt evolved certain principles for preventing subletting. But beyond preventing a habitual sublesser from changing his sub-tenant, it does nothing more. It presumes the investing in land and the collecting of rents from sub-tenants as incidents of agricultural practice which can only be

1 C. P. Banking Enquiry Committee report (para. 1569).

2 *ibid*, para. 1596.

regulated, but not avoided. The lessor is entitled to the rent he is getting from the sub-tenant on whom occupancy right is conferred. It would be the rent agreed between the sub-tenant and the tenant, till it is settled by the Revenue officer at the next Settlement. Secondly, subletting is allowed in the case of certain tenants whose estates are large on the ground that they will be brought under direct farming by their heirs. Also those who have purchased lands before the Tenancy Act of 1898 could sublet. The Tenancy Act further leaves a large amount of discretion in the hands of the Revenue officer who may allow subletting to rent-receivers on various grounds.

126 Legitimate sub-leases to be defined

Sub-leases should be permitted as incidents of agricultural practice. They may be due to shortage of seed, loss of cattle, and sickness in the family. Sub-leases for a year may be freely permitted for these reasons. The restriction on sub-lease may be evaded by the grant of annual sub-leases. The only safeguard against it is the right of the sub-tenant to claim occupancy rights. Sub-leases may be freely permitted in the case of minors, widows, and physically and mentally disabled persons.¹ They may be freely allowed when only a portion is sublet, as the tiller of the soil is not thereby unfitted for his occupation. They will have to be allowed when a family has no adult member to carry on agriculture. The main problem in the grant of sub-leases is that it is interlocked with that of mortgages with possession. Restrictions on sublease may be evaded by calling them mortgages. If mortgages are prevented, it may unduly restrict credit. It leads also to illegal transfers. If there are legitimate cases of sub-lease not covered by the provisions in the Act, then the Revenue officer may refer them to the superior officer for consent.

127 Provisions for ejection

Provisions for ejection of a lessee after the period of the lease, or of an illegal lessee will also have to be provided for. In the case of sub-tenants who prove that their tenant or land owner is a habitual lessor, the Revenue officer should have the power to put them in permanent possession of the land at the same rent or revenue that was paid by the lessor to his superior holder or Government.

128 Sub-leases by existing land-holders or tenants and by new purchasers

There are in the first place many landlords and tenants who live by leasing. There are again others who may buy lands in the future

1 Vide Sec. 6, U. P. Tenancy Bill, 1938.

and sublet. To eject those who buy lands and then sublet them after the enactment of our proposal into an Act affects in no manner the property rights of landholders, as the latter act with a full knowledge of the consequences of their action. But the justice of preventing leases by those who have already bought lands with a sole eye to subletting may be disputed. They may be given a chance of undertaking direct cultivation within a definite period, failing which the occupancy right should automatically accrue to those who were dispossessed for the purpose of direct farming. The existing holders who let lands on lease may be assured also of a fair rent.

If we had only one set of rent-receivers at the top with tenants-at-will under them, legislation could be easily enacted against sub-lease. But in the zamindari provinces a series of tenants are interposed between the landholder and the under-rayat whose status has been insufficiently recognised in law. The preliminary arrangement suggested of permitting direct farming is not intended to let loose all these classes of rent-receivers to resume their holdings. The statutorily recognised rent-receivers should have no other right than that of receiving rents. The right to directly cultivate can only be granted to the last rent-receiving occupancy tenant in the ladder of subinfeudation for a definite period. If he still sublets, the tiller of the soil under him should be enabled to get the permanent occupancy right on payment of the rent paid by the lessor. In ryotwari tracts where the holder of a patta sublets his lands after registering himself as a direct cultivator, the land should pass to the lessee who proves that the lessor habitually subleases, on the same terms and conditions under which the lessor is holding it from Government.

129 Produce sharing tenants to be treated as sub-tenants

Another difficulty should also be provided against, for whenever occupancy rights are granted to tenants, the landlord can evade such a grant by calling them partners in cultivation (produce-sharers). Such class of workers should also be included under tenants when defining them in the Act.

130 Rules of subleases

The conditions and the periods for which sub-leases are permitted should be specific so that certain sub-leases by all holders of land may be freely contracted without the sanction of the Revenue officer, provided the lease is given to the agricultural classes.

131 Sub-leases to non-agriculturists

Sub-leases may also be allowed to non-agriculturists who willingly take to agriculture as an occupation. They can always buy lands

under the proposals made, subject to the sanction of the Revenue officer. The latter should feel convinced that the lessor, be he an agriculturist or a non-agriculturist holder of land, leases the land for a legitimate purpose, and that the lessee though belonging to the non-agriculturist group will directly cultivate it. In such cases sub-leases may be sanctioned.

132 Registration of sub-leases

We have now to consider whether sub-leases should be registered. Under the existing law, leases for agricultural purposes are governed by local laws. If a Local Government so notifies, the provisions in Ch. V of the Transfer of Property Act will also apply to agricultural leases in addition to those of the local laws. Under these provisions leases of immovable property from year to year or for any term exceeding one year, or which reserve a yearly rent to the lessor should be registered. But oral leases not exceeding one year accompanied by delivery of possession can be executed for successive years, and they are valid without registration. Also under Sec. 17-1 of the Indian Registration Act "the Local Government may, by order published in the official Gazette, exempt from the operation of the section any leases, the terms granted by which do not exceed five years, and the annual rents reserved by which do not exceed fifty rupees."

Under the proposals made, sub-leases have to be approved by the Revenue officer in certain cases. But all the leases get noted in the register of the village accountant. Should this be sufficient or should the leases be further registered? The existing law requires registration of leases exceeding one year. The Local Government may exempt leases whose annual rents do not exceed Rs. 50, and the period five years. These provisions for registration might apply to all the provinces in the case of leases which do not require the approval of a Revenue officer.

D

RIGHTS OF TENANTS

133 Occupancy rights

If control over unproductive indebtedness has to be achieved by restrictions on transfer of land in the case of holders of land, the same control has to be achieved in the case of the landless classes by enlarging their rights in the land. An enlargement of such rights must naturally increase the credit power of the tenants-at-will, make it easy for them to borrow at fair rates of interest, and consequently

decrease a rapid accumulation of unproductive debt due to the payment of usurious rates of interest to compensate for the want of security which a landless debtor can offer to a creditor. Conferment of occupancy rights was also necessitated when original proprietors lost their lands and still worked on them as tenants. Want of power in the tenants to withstand the famine conditions in the eighties opened the eyes of the Government of India to the need for improving their status from that of mere serfs, so that they might command sufficient credit to tide over years of scarcity.

The Famine Commission of 1879 also recommended an enlargement of tenant rights.

"Where the subdivision among tenants-at-will is extreme, and in a country where agriculture is almost the only possible employment for large classes of people, the competition is so keen that rents can be forced up to a ruinous height, and men will crowd each other till the space left to each is barely sufficient to support a family: any security of tenure which defends a part of the population from that competition must necessarily be to them a source of material comfort and peace of mind. Measures should be framed to secure the consolidation of occupancy rights, the enlargement of the numbers of those who hold under secure tenures, and the widening of the limits of that security together with the protection of the tenant-at-will in his just rights, and strengthening of his position by any measure that may seem wise and equitable."

The growth of occupancy rights is the result of a painful struggle between the landlords on the one side claiming the right to eject a tenant, and the Government on the other side to secure fixity of tenure for him. At the early Settlements hereditary rights of the original owners were recognised. But this was resented by the landholders in Bengal, U. P., and C. P.¹

The evolution of Tenancy Laws has shown that the best device for enlarging tenant rights is to grant hereditary rights of occupancy to all occupiers of land under landholders excepting in certain special classes of lands such as private lands, or lands under reclamation, or groves. This was done in the C. P. in 1920 by creating a class of occupancy tenants, and recently in the U. P. Tenancy Bill of

1 (a) "The zamindars invariably showed a repulsive coldness to cultivators with rights of occupancy and this class of cultivators were the one to suffer most." (Syed Ahmed Khan Bahadur's evidence before the Famine Commission, V. 3, p. 191). (b) "The fact that such rights are in constant process of accrual frequently results in an equally constant series of efforts on the landlord's part to prevent such accrual taking place". (The Famine Commission Report of 1880). (c) "The malguzars in the C. P. disfavoured an increase in the absolute occupancy tenants even with all restrictions on rights of transfer". (Note on Land Transfer and Indebtedness 1895, p. 220. Extract from the Settlement Officer's Report).

1938. This bill goes even further by granting hereditary rights of occupancy to tenants of 'Sir' lands of landholders paying a land revenue of over Rs. 250 subject to the reservation of fifty acres as 'Sir' land in the case of each landholder. Even in the case of 'Sir' lands so set apart for each landholder, and of 'Sir' lands of those paying a land revenue of Rs. 250 and below, the U. P. Tenancy Bill assures to the tenants a five-year occupancy on the same rent.

A reform of the rent law in other directions too will equally improve the credit position of the tenants. Experience has shown that there is every possibility of the gradual conversion of tenants' lands into private lands of a zamindar owing to surrender, escheat, and ejection for non-payment of rents.¹ There is every need for preventing the conversion of rayati land into private land, by declaring in law that any land once rayati land should always be rayati land. The rights of a tenant to cultivate and develop the land should again be protected by preventing a landholder from making any undue claims for compensation or enhancement of rent.²

134 Fair rents

Under our proposals for a land policy permanent occupancy rights are to be granted to the tenant as against a holder of land, either under Government or under a proprietor who sublets his land to him for purposes not approved in law. Occupancy rights at fair rents are also to be granted to existing tenants. Consequently the uncertainties of an increased rent, or unknown financial commitments now attaching to a tenant's holding will disappear.

1. The number of occupancy tenants dwindled from 104 lakhs to 98 lakhs and of statutory tenants (those having a life occupancy with a five-year occupancy for their heirs) from 58 lakhs to 50 lakhs, while the number of non-occupancy tenants rose from 5.41 lakhs to 9.43 lakhs between the years 1927 and 1934. Vide Congress Agrarian Enquiry Committee Report, p. 14.

Since the Agra Tenancy Act was passed in 1926, no less than 10.77 lakhs of acres of land in Agra, and since 1921 when the Oudh Rent Act was passed, 4.08 lakhs acres of land has been gained as khudkast (area of owner cultivation) of landlords mostly at the expense of occupying tenants. (Speech of Parliamentary Secretary when introducing the U. P. Tenancy Bill: 1938, vide the Servant of India, June 2, 1938, p. 271.)

2. "There is no doubt, however, that absentee landlordism, the practice of realisation of abwabs and the non-granting of rent receipts by the agents of the landlords have greatly contributed to the complexity of the situation for the preaching of disaffection among the tenants.... There are indications that tenants are becoming increasingly conscious of their rights and they are being encouraged in this by official propoganda and the various peasants' organizations". (Extract from the report on Bengal Land Revenue Administration for 1937-38, paras. 38 and 41.)

Legislation fixing fair rent would increase the margin of income from land for the tenant, and thereby improve his credit position. While rent is fixed in the U. P. and the C. P. by Settlement officers, it is still an indefinable quantity which the court has to determine particularly in the zamin areas of certain provinces.

135 Coercive processes

The stringency of the coercive processes has equally a reaction on the growth of indebtedness. The tenant could not pay the high money rents after the depression. Remissions were granted at six annas in the rupee in the U. P.; yet ejections were on the increase for non-payment of rent.¹

Proceedings in all suits for arrears of rent prior to 1344 Fasli have been stayed in the U. P. by a special Act in October 1937. In Bihar an Act has been passed to restore to tenants the lands which were sold in auction for arrears of rent under certain conditions.

Legislation has also been enacted to mitigate the rigours of coercive processes. When once tenancy rights are enforced against an habitual lessor, the right of the latter to eject a tenant-at-will will also disappear. The lessor will have the right only to rents for which the

¹ Since the depression the number of suits in civil courts for rent arrears with or without ejection have enormously increased as the following figures extracted from the Statistical Abstract of British India will indicate. They relate only to such provinces where the ordinary civil court is the agency for the trial of rent suits.

| | 1925 | 1926 | 1927 | 1928 | 1929 |
|----------------|----------|----------|----------|----------|----------|
| Bengal ... | 3,09,122 | 3,06,950 | 3,12,607 | 3,17,779 | 3,01,113 |
| Bihar & Orissa | 95,322 | 89,837 | 94,387 | 87,625 | 1,08,617 |
| C. P. & Berar | 10,687 | 10,766 | 13,207 | 12,939 | 13,998 |
| Assam ... | 9,146 | 8,559 | 8,270 | 7,906 | 8,012 |
| | 1930 | 1931 | 1932 | 1933 | 1935 |
| Bengal ... | 3,02,834 | 3,01,466 | 3,57,064 | 4,41,934 | 4,62,871 |
| Bihar & Orissa | 1,06,302 | 1,17,656 | 1,32,778 | 1,61,709 | 1,91,480 |
| C. P. & Berar | 17,400 | 25,659 | 25,044 | 28,720 | 30,637 |
| Assam ... | 8,271 | 8,893 | 10,786 | 12,338 | 12,542 |

produce of the holding and the holding will be the charge. When a holding is made the charge for rent, there can be no automatic ejection of the tenant, as only that portion of the holding would be sold as would be necessary to realise the arrears of rent. Secondly, the properties that we have proposed to exempt from sale in execution of decrees should be equally exempt in the matter of collection of rent or revenue. Thirdly, proceedings of distraint should be taken only in chronic cases of default. Where a holding is to be sold for arrears of rent, the landlord may be given the option of keeping it for a temporary period to realise the arrears. Only so much of the holding should be sold, and that too at a fair price, as is necessary to collect the arrears. Sales should only be to agriculturists, as we have defined under our proposal. There should be no special privileges conferred upon the landlord to distrain the moveables and keep them in his custody. There should be provisions for remission of rent for failure of crops. The time limit for rent suits and for execution proceedings should be extremely limited. Subject to these restrictions, the facility to collect rents expeditiously with the aid of the Revenue department may be granted to the zamindars. The recent Bihar Tenancy Amendment Act and the U. P. Bill have approached the question of coercive processes on these lines. A uniform simplified procedure for collection of rent will greatly improve the economic status of tenants.

135 A Impartible holdings

The prevention of disintegration of a holding by partition maintains the credit of an agriculturist. Some principles may be, therefore, laid down to regulate the subdivision of tenancies. At any rate they should be laid down when tenant rights are newly granted. In Bombay, Government have made it a rule since 1931 to grant lands on conditions of impartible tenure in certain areas. In the Barrage area of Sind lands are granted only on impartible tenure since 1931.¹ The recent Bombay Tenancy Bill has a provision, according to which, on the death of a tenant, his heirs are to choose one among themselves to succeed to the holding, failing which the landlord is to choose one among them. While provisions preventing partition

¹ Government waste lands on impartible tenure are granted largely in Ahmedabad, Kaira, Ahmednagar and Kanara. The Bombay Land Revenue Administration report for 1936-37 says, "The people are ready to take the land on this tenure in spite of restrictions and the prices realised are generally more than the upset prices fixed." According to the Sind Administration Report for 1936-37, the total extent granted under impartible tenure under the barrage area was 1,28,962 acres,

and providing for succession of a single heir should be welcomed, the power given to the landlord to choose the heir will prove a source of quarrel in the family, and a Revenue officer will be a better agency to decide any disputes among the heirs. Subdivision need not be prevented when the holding of a tenant is unwieldy in size for direct farming. It should be prohibited only in respect of holdings which, when partitioned, would convert them into uneconomic holdings. An economic holding will have to be defined for each geographical region on the basis of incomes from wet, dry, and garden lands. The problem of preventing the subdivision of the existing holdings of tenants and landlords does not seem to be so easy as in the case of new tenancies. But it will have to be tackled as one of the questions of a larger land policy in the interest of building up a stable agricultural economy, and we do not propose to discuss it here.

Note 3

RESTRICTIONS ON TRANSFER RIGHTS OF LAND-HOLDERS IN THE C. P. TENANCY ACT.

The Tenancy Act of 1898 permitted the sale of proprietary rights and not of occupancy rights in 'Sir' land. But lands were let on lease for long periods; and when such lands were sold, the landlords lost both the rights in the land. The Act of 1920 therefore provided that no landlord should lease his lands for more than five years without the sanction of the Revenue Officer. The C. P. Revenue Manual lays down the rules to be observed by Revenue officers when sanctioning sale of 'Sir' lands.¹ According to these rules, sale of all rights in land should be freely allowed in the case of non-agriculturist landlords. Sale of portions of land, or sale of proprietary or occupancy right in 'Sir' land, or sale of both these rights are to be permitted according to the merits of each case. Proposals for immediate sale which may lower the price fetched by the land, or for making fresh mortgages to repay old debts are to be carefully scrutinised under the rules.

Note 4

RULES GOVERNING RESTRICTIONS OF LAND ALIENATION IN THE PUNJAB.

The Punjab Land Administration Manual gives various grounds for granting or withholding sanction for permanent alienation of land. The more important among them are mentioned below :

- (1) No alienation should ordinarily be allowed which will reduce the land a zamindar (rayat) retains to less than what is required for the support of himself and his family.
- (2) If the transfer is not to a money-lender, then it should be allowed with " less reluctance " in the case of self-acquired properties.

- (3) Sanction for sale of land should be freely given in the following cases :
- (a) where a landlord has surplus land and he wants to alienate for commercial reasons or for consolidating his properties.
 - (b) by indebted landlords who want to sell a portion to redeem their mortgaged lands.
 - (c) when non-agriculturists who have not been classed as a protected tribe but who are really agriculturists want to buy lands.
 - (d) to artisans who are not money-lenders, and who want to own small plots of land.

In the case of (a) and (b), sales of land should first be offered to members of the same tribe, if they are willing to pay a fair price for the land.

- (4) Benami transactions should be watched, and unless there is "suspicion of bad faith", sales should be permitted to members of agricultural tribes.
- (5) The exemption regarding gifts of land for religious and charitable purposes should be watched so that they are not used as a cloak to evade the law.
- (6) The Deputy Commissioner should keep himself informed of the exercise of the right of pre-emption by landlords with a view to check any sale of land by tenants of agricultural tribes to landlords not belonging to the latter group.

Note 5

THE BURMA LAND ALIENATION BILL.

The draft Land Alienation Bill of the Land and Agricultural Committee, Burma, 1938, has the following provisions to restrict the alienation of land. (It is modelled on the Punjab Land Alienation Act.) It allows free sales among the agriculturists. It does not allow any sale to non-agriculturists even with the permission of the Deputy Commissioner, the reason being "that the very existence of such a provision would induce the money-lender to over-finance the peasant proprietor in the hope that ultimately it will be

possible for the agriculturist to part with the land in satisfaction of the debt." This total prohibition of sale is possibly intended to protect the peasant as against even the Government whose officers the Committee do not seem to trust regarding the judicious use of their power in sanctioning sales to non-agriculturists. The bill practically converts the peasants' holding into an inalienable tenure as against non-agriculturists. The consequence of such a prohibition is that the Committee is forced to define the purposes for which lands may be transferred. Section 2 (i) provides that the Act shall not apply to the following transfers of land :—

- (a) under the Land Acquisition Act,
- (b) by or to Government,
- (c) by or to co-operative societies,
- (d) by or to credit institutions controlled or organised by Government and prescribed as such,
- (e) made in good faith for a religious or charitable purpose,
- (f) resulting from inheritance,
- (g) made between joint-owners of the land.

Clause (e) is sure to lead to benami transactions as the experience of working of Land Alienation Acts elsewhere has shown.

When once sale of land by agriculturists to non-agriculturists is totally prohibited, the law might be evaded by an agriculturist changing his status to that of a non-agriculturist. So the definition of the agriculturist provides: "An agriculturist who, with intention of changing his status as such in order to enable him to sell land to a non-agriculturist temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid does not thereby cease to be an agriculturist for the purposes of this Act." The working of this definition in practice will require sanctioning of transfers of lands by non-agriculturists to find out whether they were really non-agriculturists. The Deputy Commissioner therefore instead of sanctioning sales by agriculturists to non-agriculturists will be scrutinising sales among non-agriculturists in order to prevent the evasion of the law. The scope for non-agriculturists to become agriculturists by buying the lands of the latter is also barred, as no agriculturist could sell lands to non-agriculturists.

The bill has defined the agriculturist in two ways: (1) He should cultivate the land with his own hands. (2) "Or he should superintend personally, and throughout the working periods of the year the actual culti-

vation of the land including all the processes thereof and the treatment of the cattle and other equipment used therein; he should also derive the major part of his income either from such superintendence, or from the cultivation of land with his own hands, or jointly from such superintendence and such cultivation." This definition excludes agriculturists who supervise their cultivation by members of their family or by paid men. In other words it is not enough if an agriculturist takes the risks of cultivation. He should himself personally superintend the cultivation. He cannot employ paid labour for supervision. The definition shuts out those agriculturists who direct their cultivation and assist it in every way, but do not personally superintend it. It will also be difficult to ascertain whether a paid supervisor over a farm is really a superintendent or one who takes part in the processes of cultivation.

In order to make the Act workable — for the success of Land Alienation Acts always depends on a clear knowledge of the persons to whom they apply — the Burma Bill provides in clause 18 that "the Governor may by notification in the Gazette require or permit the registration of agriculturists in any area specified in the notification. The fact that a person is or was so registered shall be conclusive proof that he was an agriculturist at the date of the registration." As the clause itself mentions, this register can be a proof that a certain person was an agriculturist, only on the date of registration. Its value is, therefore, nil in determining the status of a person who does not sell land about the time of registration, but later.

CHAPTER V

REGULATION OF FORCED SALES OF LAND

A.

EXISTING LEGISLATION AND PROPOSALS

136 Early notifications on forced sales

Once we think it desirable that the use of land by letting it for rents should as far as possible be prevented, then it automatically follows that any loopholes in law which are detrimental to this policy should be fully closed. When a land is brought to sale by the court, the creditor indirectly exercises a right of deciding who should be the user of the land. This right will have to be restricted by providing that every sale should be to an agriculturist. Secondly, the present agricultural economy based on peasant proprietorship requires special protection if the growth of a landless class is to be prevented. We will in this chapter state the existing provisions in law in order to minimise forced sales, and examine them as to their efficacy and suitability for adoption in different provinces.

When voluntary transfer of land was recognised, land as a security for debt became also prevalent. The superior courts had first unfettered power to sell the lands of a debtor for debts. Munsiff courts were empowered since 1831 to try suits relating to land. Public sale of land thus became common. The Civil Procedure Code (Act VIII of 1859) laid down in Section 205 that lands were "liable to attachment and sale in execution of a decree." Finding that the existence of free transfer rights led to the passing of lands into the hands of money-lenders, some provinces introduced restrictions since the thirties of the last century.

The earliest law prohibiting public sales but allowing temporary alienation by courts was the order of Government passed in 1833 regarding lands in Chota Nagpur. In the Punjab the Judicial Commissioner's sanction was necessary since 1859 for sale of hereditary or joint-acquired property. In 1886 a notification was issued that "no immoveable property shall be sold without the previous sanction of the Commissioner of the division". When the India Councils Act

of 1861 was extended to Oudh, Central Provinces and Coorg, similar notifications were issued. The First Civil Procedure Act of 1859 permitted postponement of sales and arrangement for the repayment of debt by temporary alienation at the instance of the Collector.

137 The Amendment of the C. P. C. in 1871

The subject of preventing forced sales came into prominence since 1871. The section in the Civil Procedure Code permitting postponement of sales and providing for temporary alienation was found to be a dead letter. Complaints were made too about the severity of the civil law. The Deccan Commission too reported on the need for making radical changes in the civil law. When the Code was therefore amended in 1877, Local Governments were empowered under Sec. 327,

to make special rules for any local area imposing conditions (or restrictions) in respect of the sale of any class of interest in land in execution of money decrees where such interests are so uncertain and undetermined as to make it impossible to fix the value, and *for continuing and modifying special rules in force in local areas.*

This Section gave two kinds of powers to the Local Governments to minimise sales of land. The one was to make special rules whenever lands were brought to sale by a court. These are referred to in the final section of this chapter. The second was to continue the existing notifications preventing forced sales with necessary modifications.

Notifications were issued under this Section in Chota Nagpur in 1878, and in the Punjab in 1877 and 1885. In the former province, as lands had to be sold under the Encumbered Estates Act of 1882, the notification was replaced by a general power for the Commissioner to stay a sale. In the latter it was enacted that the Commissioner of the division should sanction sales of land in execution of decrees of civil court, and if the land was a hereditary or a joint-acquired property, the previous sanction of the Financial Commissioner was necessary. These rules have been further modified by the Punjab Land Alienation Act of 1900 and the Debtors' Protection Act of 1936. In the Central Provinces and Oudh the old rule was continued that the Chief Commissioner's sanction was necessary for sale of ancestral land, and the Commissioner's sanction for self-acquired land. In Coorg land not specifically pledged was exempt from sale in the execution of a decree.¹

138 Early legislation

In addition to these notifications, provincial laws were also enacted to minimise forced sales of land. A special method was proposed of minimising forced sales by restricting them only to land specifically mortgaged for a debt. The arguments urged in its favour were the following.¹ Firstly,

The cultivators believe that their lands belong to Government and that they cannot be dispossessed of them unless at the instance of Government. The idea of their lands being subject to sale in satisfaction of a bond debt or a running account with a money-lender has occurred to few of them. So when the land comes to be sold under the order of the courts, the whole procedure is looked upon as some inscrutable action of Government.

Secondly, in so far as the cultivator avoids mortgage from fear that he may lose his land, the consequences of borrowing should be brought home to him by being compelled in law to give a mortgage of his land for a loan. Thirdly,

Landed property is daily becoming more valuable. It is a tangible and valid security much sought after. The man who holds it can generally borrow in the cheapest market with the advantage of being specially protected by the mortgage laws. A further advantage in a mortgage is that it reduces the contract to definite terms in writing, necessitates enquiry by the mortgagee into the title and extent of interest pledged, and gives the other sharers an opportunity of claiming pre-emption or placing a veto on the alienation rights which have generally been secured to them by the settlement contract.²

The Deccan Riots Commission of 1875 were against any such proposal. They said :

The effect of the restriction would be to compel the borrower either to give his land as a security or to pay a higher rate of interest for an unsecured loan. In either case the compulsion would appear to him as a hardship, and though the hardship might be only imaginary in the first case it would certainly be real in the second.

But Sir Richard Temple, the Governor of Bombay, supported the proposal and it was embodied in the Deccan Agriculturists' Relief Act of 1879 as Sec. 22.

The Deccan Commission of Enquiry (1891-92) which enquired into the working of the Deccan Agriculturists' Relief Act said in their report that mortgage debt had not increased and " there is a mass of evidence to show that once the terms on which a loan will be granted are made clear to the would-be borrower, he in many cases prefers or contrives to do without the loan rather than pledge his land." They further said :

1 Note on Land Transfer and Agricultural Indebtedness in India, p. 128.

2 Ibid, p. 130.

The striking extent to which the law has encouraged thrift and self-help constitutes its justification.

They, therefore, recommended that the provision that land could be brought to sale through courts only when specifically mortgaged should be extended to other parts of India.

A number of proposals were made by officers of the Punjab and Bombay provinces to limit sale of land through courts to money decrees above a certain sum, to acquired lands as against ancestral lands, and to loans approved as a suitable charge on the land by the Collectors. In the end the Government of India thought that the provisions in the Civil Code of 1888 empowering Local Governments to impose conditions on sales in certain areas, and transfer decrees relating to sale of immoveable properties to the Collectors, might be given a fair trial.

Whatever might have been the justification for restricting sale of land by courts only to lands specifically mortgaged for a debt in the early eighties of the last century, this provision could not but lead to an increase in mortgages even for small loans. It would only make it difficult for the agriculturist to get unsecured loans as a short-term accommodation, as the creditor would insist on mortgages. The debtor would have to incur even for small loans the expenses of registering a mortgage deed, not to speak of the inconveniences involved in visiting the office of the sub-registrar. This clause in the Deccan Agriculturists' Relief Act might be therefore repealed.

The following were the other laws passed in several provinces:

The Land Alienation Acts forbade the sale of land of protected agricultural tribes in execution of decrees. Some of the Tenancy Acts have a similar clause where an occupancy holding is non-transferable. But sale of holdings for arrears of rent is not barred. The Chota Nagpur Tenancy Act which was amended in 1938 provides that, when a holding is sold for arrears of rent, it should only be to scheduled agriculturists (Sec. 208).

Under the Ajmere Court Regulation of 1877, Sec. 30, "lands and wells not being situated within the inhabited limits of a town or village " are exempt from attachment and sale in execution of decrees of civil court.

Under the Deccan Agriculturists' Relief Amendment Act of 1907 the Collector may set aside a sale within 30 days of the date of auction " if he considers the price bid by the purchaser to be inadequate." The Collector may thereafter resell the property. (Sec. 22 A.)

Sec. 255 of the Rules in the Land Administration Manual, Punjab, provides :

Where the judgment-debtor is deprived of the cultivating occupancy of transferred land, enough should be excluded from the transfer to furnish at least a bare subsistence for himself and his family.

139 Later Legislation

Since the depression, the problem of preventing forced sales through courts has come to the forefront, and we give in the following paragraphs a summary of the legislation in the Punjab, Bihar, Bengal, and the U. P.

The Punjab Debtors' Protection Act of 1936 provides for special safeguards against the sale of ancestral property. Ancestral land shall not be liable for *unsecured* debts incurred after the commencement of the Act. Where ancestral land is brought to sale in respect of debts incurred before the commencement of the Act, the creditor should show that the custom of sale was recognised in any judgment, or order of a court, passed in the presence of the defendant and, not *ex parte*, at the time the debt was incurred.

The Bihar Moneylenders' Act of 1938 has enacted two provisions, one to regulate the price of land sold in a court auction, and the other to exempt a minimum holding from sale in execution of decrees. The court will first estimate the value of the property to be sold. It will then decide whether it would be sufficient to sell a portion, or whether the whole of it should be sold in the interest of a fair price for it. The decree-holder may specify the portion of immoveable property to be sold. In such a case "the court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold." The order of the court fixing the amount of property to be sold is appealable. The court shall fix a fair price below which the land shall not be sold. If the amount bid is less, then the court may sell the property to the decree-holder if "the latter consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation."¹

The Act also exempts a minimum holding from being sold in execution of a decree for the repayment of a loan (Sec. 18). It applies only to loans due by small agriculturist debtors. The latter are not de-

1 (Secs. 16 & 17)

The High Court of Patna has held that these sections are *ultra vires* unless approved by the Governor-General. Hence they have been repealed and were re-enacted in January 1939 for the sanction of the Governor-General,

fined in the Act. The exemption applies to loans made before and after the commencement of the Act. The court will exempt one acre from sale in the case of those who own 3 acres and less. In the case of others it will exempt not more than a third of the holding, but in no case less than one acre. The Local Government will fix, for a district or part of a district, the area of the holdings of the rayats to whom alone the benefit of exemption should apply. These provisions leave it to the court to decide the area of the holding to be exempted. Discretion in such a matter will lead to wide variations in the area to be exempted, and consequently the determination of amounts repayable to the creditors.¹

The Bengal Agricultural Debtors' Relief Act of 1935 provides that when the lands of an insolvent are sold, an area of not more than one third of the land held by him in direct possession and not less than one acre in the case of those who hold less than 3 acres shall be set apart for his maintenance and that of his family. The Act applies only to debts settled by specially constituted boards, and to agriculturists as defined in the Act.

140 Fair price for lands

Legislation has been passed prescribing the mode in which a fair price may be fixed for lands which are sold in auction in execution of decrees. The rules under the U. P. Regulation of Sales Act, 1934, provide an example.

The Collector decides the area of land that should be sold for the recovery of the decreed amount. In determining the area, he has to fix its price. The rules fix the multiple for each area by which the net profit is to be multiplied for arriving at the transfer value of the land. These multiples have to be arrived at on the basis of the market value of the land and the percentage of post-slump profits which the landlord must retain to maintain himself, his family and his dependents, and for the management and the up-keep of his property. Under this procedure, the transfer multiple should be so high that it would reduce the area of land to be sold and release a portion for the maintenance of the judgment-debtor. There is no need to complicate the transfer multiple in this manner. We may base it on the market value of lands. What is required for the maintenance of the judgment-debtor may be separately calculated.

The net profit will be calculated as laid down in paras. 458-472 of the U. P. Revenue Manual. The Collector is not empowered to vary the standard transfer multiple, high or low, by more than 16%

¹ These two provisions have been incorporated in the Orissa Moneylenders Bill of August 1938 (Clauses 14 and 15).

without obtaining the previous sanction of the Commissioner. The grounds on which he may vary the multiple in respect of a particular land are the following:—

- (1) Easy and regular collection of rent.
- (2) Cost of management.
- (3) Stability and security in the matter of irrigation.

“In arriving at a decision on the relative ease or otherwise of rental collections the Collector shall have regard both to the collections in the years just before the slump in prices and to the collection of the rents as reduced by the slump remissions in the years since the fall in prices.” The Collector shall hear the objections of the parties before fixing the transfer multiple. The decision of the Collector is appealable within 90 days to the Revenue Board, whose decision shall be final. It is noteworthy that there have been very few appeals though the number of cases dealt with under the Regulation of Sales Act was 19,543 involving Rs. 436 lakhs in 1935-1936.;

PROPOSALS

141 Public sales only to agriculturists

According to the basic principle of any land policy, there should be definite restrictions on all forced sales, he who purchases land in an auction should be an agriculturist, and if he belongs to the classes which we have under our proposals excluded as non-agriculturists, the sale should be approved by the Revenue officer. The consequence of the proposal will be that a non-agriculturist mortgagee cannot bring a mortgaged land to sale in a suit, but can recover the mortgage money only through instalments granted by a court. If our object is to prevent leasing of lands to non-agriculturists, it automatically follows that auction sale of land for arrears of rent or revenue should only be to agriculturists.¹

Restriction unnecessary for those defined as non-agriculturists

Secondly, it might equally be granted that sale of land by those who are not classed as agriculturists or approved as agriculturists by the Revenue officer need not be subject to any exemption in execution of decrees. It stands to reason that those holders who live on rents and are engaged in other occupations should not be unnecessarily subject to restrictions in freely selling their lands for debts incurred on the security of land.

1 Vide Clause 12 Burma Land Alienation Bill, 1938.

142 Arguments for total exemption of land from forced sales

Thirdly, we should consider whether agricultural land should be totally exempt from forced sales. The arguments for its total exemption are the following: (1) Forced sale is due to failure to repay a debt. It is the existence of this facility to bring a land to sale for debt that tempts over-lending and reckless borrowing. A debt ought to be recoverable from the produce of land within a certain number of years. Where it is not so recoverable, the creditor should forgo what is not recoverable. (2) Ancestral land intended for succeeding heirs should not be allowed to be sold to the detriment of their interests.

(3) Agriculture being an insecure occupation subject to the vicissitudes of the season, and consequently to unsteady incomes, an agriculturist is inevitably involved in debt, and every effort should be made to prevent his lapse into the proletariat class.

(4) In a country of peasant proprietors, disintegration of peasants' holdings should as far as possible be prevented to ward off an economic revolution.

143 Arguments against

As against these arguments, it is said that it is the very insecurity of income and the risks in agriculture that require a greater security for raising the necessary credit to meet the losses in crops and cattle. Risks in agriculture should be provided for by reorganising the agricultural economy. A prevention of forced sales may save the land to the peasant, but will not the needy peasant be forced to sell it voluntarily so that he may maintain his future credit? We have already discussed the disadvantages that result from a restriction of land alienation. Contraction of credit and a higher rate of interest will be the results of preventing forced sales. As a consequence debt will accumulate more rapidly. While, in a reorganised agricultural economy where a peasant obtains better credit owing to the profitableness of agriculture, a creditor may lend on personal security and that of produce, prevention of forced sale in the existing conditions may do him more harm than good.

144 Exemption of family farms

While a wholesale exemption of land from sales may have a serious reaction on the credit of the agriculturist, the exemption of a small portion of land from sale in execution of decrees for the maintenance of the judgment-debtor is quite a different proposition.

Should this legislation apply to all those who cultivate their lands or to the small holder only? If a homestead is to be preserved

to an agriculturist, there can be no differentiation of a small from a big agriculturist. But even among the agriculturists there are two classes. There are the farm managers who cultivate their lands with the aid of hired labour. There are others who work on their farms with the aid of their family labour. However poor the standard of life afforded by such farms, they will stick on to them. The family farm gives work to the members of the family and to that extent mitigates unemployment. It feeds and maintains the dependents when they have no jobs elsewhere. Being less subject to cash economy as it raises food crops, and with as little money as possible, it is not affected by the international rise and fall of prices as commercialised farming is. For a long time to come labour-saving devices have little place in a country like India where men and women compete with animal and machine labour and are willing to work at even a less remuneration than these kinds of labour. A reduction in the number of these family farms will lead to an increase of landless labour. Their preservation from forced sales is of national importance. The suggestions made elsewhere to minimise the sale of land for recoveries of debts, and to mitigate its rigour by the adoption of a lenient procedure in the execution of decrees for sales of land will diminish the need for court sales in the case of all agriculturists. Considering the need of affecting the credit system to as small an extent as possible, homestead legislation ensuring a minimum holding to be exempt from sale in execution of decrees may be confined to agriculturists who cultivate personally or with the aid of their family labour. Legislation may define the agriculturists in two ways. First, their names should have been entered in the village records that they do not lease the lands, and second, that they cultivate personally and with the aid of family labour.¹

Secondly, an upper limit either by way of area of holding or assessment may be fixed as it would be impossible to expect the agriculturists with large holdings to work on the farm with the aid of family labour only.²

1 These records are maintained in the Bombay Province from which are extracted the quinquennial returns indicating those who work by their personal labour aided by that of the family. These records will have to be maintained in every province.

2 Homestead legislation has been generally adopted in South East Europe. In the South East of Yugoslavia there is a homestead law preserving the peasant holdings. This kind of legislation has been furthered owing to the recent depression. According to a law in Bulgaria of 7th August 1934, lands upto 5 hectares (1 hectare = 2.471 acres) to be selected by a debtor, dead stock

145 Area of exemption

The area that is exempt from sale through courts should be next defined. It should not be more than a subsistence holding necessary for the maintenance of a peasant who works on it personally with the aid of his family labour. In fixing the area due account should be taken of his supplementary sources of income. Such an area may be determined for each region either in terms of the extent, or the land revenue paid for it, as the minimum holding that should be exempt from forced sales in the case of agriculturists. A homestead legislation should also exempt the houses, the house sites and the adjoining land of a peasant from attachment in execution of decrees. The rules under the Bengal Agricultural Debtors' Relief Act empower the certificate-officer to fix the area which may adjoin a homestead to be left in possession of an insolvent. Some such rules will have to be formulated as suited to local conditions. Further the fact that a house has been mortgaged by a peasant should not be a ground for allowing its forced sale.

146 Sale at fair price

Another facility that may be granted during the proceedings relating to a sale of land by a court is the fixation of a fair price. The Collector can even now do it under the Civil Procedure Code if so empowered under Sec. 68 by the Local Government. The courts too fix an upset price and postpone the auction dates with a view to facilitate a good price for the land. Should price-fixing be left to the

(Continued from last page)

upto a certain value, and prescribed quantities of livestock cannot be brought to sale by a creditor. In Greece according to Law 5466 of 1932: two hectares of arable land or one half a hectare of vineyard or one-fifth hectare of land suitable for tobacco-growing are exempt. The Homestead Law has been embodied in the constitutions of many States of the U. S. A. But where a property in these States has been mortgaged to raise loan for developing it, it is not exempt from sale for the recovery of such a loan. In France a law was passed in 1909 under which small properties are exempt from sale by a creditor until the children of the owner come of age. (Vide Monthly bulletins of Agricultural Economics and Sociology, January to April, 1937, published by the International Agricultural Institute, Rome). In Germany the Federal Homestead Act of 10th May 1920 exempts farms limited to an area that can be worked and managed entirely by a single family from seizure for debts. The law defines juridically the right of homestead and aims to keep in the family the possession of the homestead, to prevent its dissipation and division among heirs, and at the same time to discourage speculation with it. In Egypt small holdings of less than five feddans are secured against seizure by creditors by an act of 1912. This has been amended in 1932 empowering Government to expropriate such holdings against debt to land and agricultural bank. (I. L. O. Year Book 1933).

discretion of the courts or can it be standardised? If it is to be standardised, it should be in the ratio of certain defined payments already made by a holder of land in relation to the income from his holding. Land revenue and rent are two such payments, the one made in ryotwari areas, and the other in zamin areas. If land revenue is to be the measure for fixing a fair price, then it should be separated from irrigation and other cesses for calculation purposes. A fair price can be known by a reference to the records of sale in registration offices. Or it might be fixed so as to yield an annual interest not exceeding the rate at which Central Co-operative Banks or Central Land Mortgage Banks take deposits or raise debentures. We have made special mention of these Banks, as they are expected to lend at the lowest possible rate to the primary borrower. These figures might be checked by a reference to the sale deeds in registration offices. The prices mentioned in the deeds could not be relied upon wholly, as they might be based on a number of considerations which are not germane to the fixation of prices of lands on their merits. The market price might be useful to understand its relation to the fair price.

Annual net income from land being the basis for calculating the fair price, the latter will have to be expressed as multiples of the former. But this procedure will require that the court should fix the net income of each land. This should not be left to the discretion of individual judges. If the ratio which land revenue or rent bears to net income can be fixed, and if the ratio of sale price to net income is also fixed, then a standard multiple of land revenue or rent can be provided for the courts for fixing a fair price for an area.

A Revenue officer who sells a land may be given a certain latitude of raising or lowering the price by a certain percentage according to the special conditions of the locality. The considerations that should be kept in mind in determining a fair price are mentioned in para. 140. There might also be provision for appeal to the Revenue Board to revise the multiple. We have based these rules on those issued by the U. P. Government in connection with the Regulation of Sales Act. Any agrarian policy for the future whether it relates to levying a tax on the basis of agricultural incomes, or of levying a low basic rate for the land, or for finding out the normal credit of an agriculturist, or for fixing the instalments due on a loan will all be based on net incomes from land. The Resettlement Department has a fund of experience to draw upon in these matters, and even though periodical enhancement of land revenue may be stopped, the collection of data

for deciding net incomes, rents, and land values will be more and more required in times to come.

147 Quantity of land to be sold

Having fixed the price, the Revenue Officer should decide on the area of land to be sold. He should decide, after hearing the parties, whether it is economic to sell a portion of land, or the whole block, for getting a better price at the auction. He should then fix the area of land to be sold. When a land does not bring in an auction the fair price fixed, should or should not a creditor forego the excess amount due to him? The Bihar Moneylenders Act provides that when he wants to buy the land, he should consent in writing to forego the excess due to him over the fair price. But supposing a third party purchases the land, the decree-holder in respect of a secured debt will be entitled under the existing civil law to get the balance due from the other properties of the debtor if it is legally recoverable under the law of limitation. Should this right of recovering the excess due be granted to the decree-holder, or restricted to the excess over the amount fixed as fair price?

148 Liquidation of a debt to the extent of fair price

The Bihar Moneylenders Act grants the former. The U. P. Regulation of Sales Act, 1934 binds the decree-holder that, when the auction price fetched is less than the fair price, the decreed amount should be deemed to have been paid to the extent of the fair price. The Act throws the responsibility of bringing the land to sale on the creditor. When once he does so, he has only two options left to him. He may either buy the land. Or he should adjust the decreed amount to the sum of the fair price fixed, even though the land fetches a less price in auction. But this does not prevent his suing for the excess due to him, if any, *over the fair price* fixed by the court, if it is legally recoverable.

B.

EXEMPTION OF A MINIMUM PRODUCE AND AGRICULTURAL REQUISITES FROM ATTACHMENT.

149 Why exemption necessary

The proposals we have formulated permit voluntary sales, and forced sales only to agriculturists, for the repayment of debts, subject to the exemption of a minimum holding and a dwelling house in execution of decrees. Under these restrictions the alienation of produce will become a prominent feature of the credit transaction of agriculturists. It becomes therefore all the more necessary to be watchful that this alienation of produce does not convert the

agriculturists into mere labourers, selling their produce at each harvest, and beginning to borrow again to maintain their families and raise the next crop. Secondly, the very smallness of the holding of an agriculturist in India requires that sufficient protection should be extended to his produce, so that he might not be deprived of what little he has to carry him on at least for some months after the harvest, if not till the next harvest. Exemption from attachment does not penalise voluntary repayment out of produce by a debtor to a creditor. It only prevents attachment by a forced sale of produce on a suit by a creditor. But it is open to a debtor to refuse to repay his debts to the extent of this exemption.

150 The history of the question till 1877

The problem forced itself on the attention of the Government owing to riots in the Deccan in 1875. The produce was attached by the moneylenders for debts due to them. The rayats could not possibly pay the high assessment on the land as well as the amount of their debts from out of the produce. The Deccan Riots Commission examined the question as to what extent exemption of produce from attachment could be granted. Regulation IV of 1827 exempted from attachment "implements of manual labour and such cattle and implements of agriculture as may in the judgment of the Court be indispensable for the defendant to earn a livelihood in his respective calling or cultivate any land that he may hold for that purpose" (Sec. 62, clause 2). But Section 205 of the Civil Procedure Code of 1859 said, "all property whatsoever moveable or immoveable belonging to the defendant is liable to attachment and sale in execution of a decree". The Deccan Commission recommended that "necessaries consist of agricultural stock and implements, houses, instruments for preparing and cooking food and clothing".¹

The Civil Procedure Code was amended in 1877 when some of the recommendations of the Deccan Riots Commission were given effect to. The existing clause exempting certain saleable properties from attachment in the code was first enacted. These were :

Tools of artisans, implements of husbandry and such cattle as may in the opinion of the court be necessary to enable the judgment-debtor to earn his livelihood as an agriculturist and the materials of houses and other buildings belonging to and occupied by agriculturists.

1 " Frequently when the creditor comes in and sells the wretched hovel in execution, all that is done is to remove the one or two pieces of timber on which the building rests and to leave the mud walls to their fate and the wretched occupant to seek shelter from the sun and the rain where he may." Extract from the report of the Deccan Riots Commission, 1875, para. 98.

151 From 1877 to 1892

The amended Code of 1877 further provided that any sale may be adjourned by the sale officer (Sec. 291). Under section 239 the court can call on the judgment-debtor to show cause against execution. Under section 269 Local Governments can make special rules for the maintenance of attached livestock. In the case of those paying land revenue the Act exempted such moveables from attachment which are exempt from sale for arrears of land revenue. The amended Act of 1882 exempted also seed grain from attachment. In 1892 the proposals to exempt manure, milch cattle and brood mares of agriculturists were made, but the Local Governments did not approve of them. In 1892 the Deccan Commission of enquiry into the D. A. R. Act recommended that the whole of the standing crop should not be allowed to be attached and that half of it should be left over for the subsistence of the agriculturist. The other half should be sold subject to the payment of the land revenue by the purchaser. They said :

This principle of division between landlord and tenants is generally recognised by the people themselves where crop rents prevail; and its adoption appears to promise a ready and practical method of meeting a serious difficulty.

They realised that the proposal was unworkable in the Deccan where the holdings were too small to permit any surplus being left for repaying a creditor after setting apart the produce necessary for subsistence of the debtor till the next harvest. They therefore recommended this procedure for other provinces where large areas were held by zamindars.

152 The C. P. C. of 1908

The Act of 1908 made two important changes. It added " cooking vessels, beds and personal ornaments " to the exempted properties. It also included in the latter.

Such portion of agricultural produce or any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section.

The next section 61 says that

The Local Government may, by general or special order published in the local official Gazette, declare that such portions 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 be exempted from liability to attachment or sale in execution of a decree.

153 Action taken by Local Governments

The exemption of produce has been notified by some of the Local Governments under this section. The Punjab has made special

provisions regarding the same. Under Sec. 10 of the Punjab Debtors' Protection Act of 1936, standing crops other than cotton and sugar-cane, and also standing trees are exempted from attachment and sale. But the Act does not apply to loans of co-operative societies and company banks, and to mortgages. The Punjab Land Revenue Act further exempts in the case of holders of land liable to pay land revenue 'produce necessary for seed-grain and for the subsistence until the next harvest following, of the defaulter and his family'. In the U. P. the exemption is fixed by annual notifications since March 1932 at a third of the produce.¹ In the N. W. F. P., it is a half. In the C. P., the names of food grains exempted in different divisions from attachment are specified by a notification. In the other provinces effect has not been given to Sec. 61 of the Civil Procedure Code.

154 The minimum requirements of an agriculturist

We have first to consider the properties that should be exempted from attachment and sale. The requisites for an occupation should be exempted. The purely agricultural classes require seed grain, implements of husbandry, plough-cattle, sheep and pigs for agricultural purposes, manure, and sufficient produce necessary to maintain themselves and their families and fodder to maintain their cattle till the next harvest. Cattle fodder is not exempt under the C. P. C., unless specifically exempted in local Acts. If the agriculturists combine certain subsidiary industries with agriculture, the tools and raw materials required for such industries should also be exempt. These industries may be divided into two kinds, livestock breeding and others. The former will require a basic herd for its development. The other industries as spinning and weaving will require certain tools and raw materials. Tools and raw materials used in subsidiary industries should also be exempt in the case of agriculturists.²

The phraseology in the Ajmer Regulation fully covers all these exemptions. The words used are "materials of husbandry and animals kept for agricultural purposes and implements of trade or domestic industry." The addition of the word 'raw materials' to 'implements of domestic industry' will exempt all those properties which are necessary for a small agriculturist cum artisan.

There are again the landless classes who either do agricultural or other work. It is worthy of consideration whether anything at all should be allowed to be attached and sold in execution of decrees in their case. The existing law exempts the tools of artisans and wages

1 U. P. Government, First Notification 575/14-93 of 21-3-1932.

2 These are exempt under the C. P. C. only in the case of artisans.

of manual labourers. But the exemptions should be liberalised in the case of landless classes. Food grains necessary for maintenance of the family at least for a few months should be exempt in the case of all landless labourers. Also the basic herd or flock of livestock breeders should be exempt. The raw materials and tools of an industry should be exempt. The finished produce may be freely allowed to be attached where it is not food grains.

155 Need for definite guidance to courts

If some definite guidance can be given to the court in regard to the quantity of moveables that should be exempted, some uniformity of procedure will be secured without leaving the question to the discretion of each individual court.¹ The plough cattle or cattle used for water lifting can easily be fixed by the Local Government in respect of dry, wet, and garden lands. Sheep required for manuring purposes can also be fixed in respect of a holding. The raw materials required for an industry and the basic herd for the livestock industry may be left to the discretion of the courts.

156 Proportion of produce to be exempted

The proportion of produce that should be exempt should as far as possible be definitely fixed.² While the proportion of produce exempted may be smaller for a holder of a larger area of land, it will have to be raised in the case of a small or uneconomic holder.

157 Class of agriculturists

We should first define the class of agriculturists to whom the exemption should apply. The courts now decide to which agriculturists the exemption should be granted. The big holders will always be able to raise credit and replace the things which are attached and sold. The exemption should apply only to those who are not in a position to buy the instruments of production necessary for their occupation, and the domestic articles of consumption required till the next harvest, if they are attached by a creditor. This should be defined in law by fixing an upper limit of rent or revenue in the case

1 At present the court has to decide "the implements of husbandry, and such cattle and seed-grain *as may in its opinion be necessary* to enable an agriculturist to earn his livelihood as such."

2 When the bill for amending the Civil Procedure Code came before the Imperial Legislative Council for discussion in 1907, Tikka Sahib of Nabha said that the duty of fixing the amount of the share of such produce was left in the hands of Local Governments, and that "it would have been better to fix a minimum because the principal details should rather be detailed by the supreme Legislative Council than be left to local authorities."

of agriculturists to whom alone the benefit of these exemptions should apply. Further, the exemption need apply only to agriculturists whom we have already defined in paras. 108 to 114, and not to non-agriculturists.

158 A minimum produce to be exempted

In view of the poor assets of the small holder, a larger exemption of produce, however justifiable from the needs of the case, cannot be made as it will unduly restrict his credit. An exemption of one-third of the produce may not be insufficient in the case of holders of medium sized holdings. But the lower down one goes in the extent of holding of a peasant, the greater will have to be the exemption of produce. A certain limit of produce which will enable a "nominal" agriculturist or a labourer to maintain himself and his family for at least a few months after the harvest will have to be defined in law.

159 Food grains to be attached as a last alternative

The principle underlying exemption of produce is that a small holder should not be deprived of the food grains to maintain himself and his family. The rules should therefore provide that, whenever produce is attached, commercial produce other than food grains should first be attached to the limit of the proportion allowed, and food grains only in the last resort.

160 Special powers of Local Government during times of distress

These principles of exemption apply only in normal years. But the Local Government should take power to exempt a larger portion of the produce in times of distress.

161 Exemption of houses and house sites

Sec. 60 of the Code exempts houses and other buildings (with the materials and the sites thereof and the land immediately appertenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him, from attachment in execution of a decree. This clause has been so interpreted by the courts, that the rayat does not get the benefit thereof. Firstly the owner of the house has to prove that he is an agriculturist and is entitled to the benefit of the exemption. Secondly, if the house is not attached to a holding "which is not transferable by law" it can be attached for decrees in mortgage suits and can be sold in execution. In other words, if the holding is mortgageable and transferable, the house attached to it is saleable for the recovery of a mortgage loan. Thirdly courts have allowed the attachment of materials in the building on a decree for rent though it is not so allowable for an ordinary judgment-

creditor. Fourthly, it has been held that as the clause is intended only to benefit the debtor, he should be allowed to waive the benefit and to mortgage or sell the house. Fifthly, a vacant site used for storing fodder and manure has been held to be a saleable property under this clause.

Some of the provincial Acts also exempt houses from attachment. Section 29 of the Deccan Agriculturists Relief Act provides in respect of insolvents that

Nothing in this Section shall authorise the court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist.

The Punjab Relief of Indebtedness Act, 1934, has amended the Code. The provision in the Code is that houses occupied by the agriculturist are exempt. The Punjab Act has substituted for the word 'occupied', the words 'not let out on rent or lent to others or left vacant for a period of a year or more'. The change has widened the provision so that even the urban residences of agriculturists cannot be attached under certain conditions. It should be noted that occupation for a period without the lapse of an intervening full year can always be proved. The Bengal Agricultural Debtors' Act exempts in the case of insolvents both the dwelling house and the land occupied by it.

It should be noted that the exemption of a house from attachment cannot apply to attachment and sales for recovery of rent due for 'such houses, buildings, site, or land' (Sec. 60.2).

Exemption of the house, its site, and the adjoining plot in execution of decrees should form part of homestead legislation to which we have referred in para. 145.

162 Exemption when recovering rent or revenue

We have finally to consider the question how far the exemption of certain properties from attachment should apply to the collection of arrears of rent or revenue. The application of coercive processes for the collection of rent or revenue are governed by special Acts. But the principle underlying the exemption is that a poor agriculturist should not be deprived of his sources of livelihood, namely his instruments of production. As he is equally an instrument of production aided by family labour along with cattle and implements, the produce for his subsistence and that of his family are saved as far as possible. These sources of livelihood should as much be saved when rent or revenue has to be collected by the application of coercive processes. These are no doubt

the first charges on the holding. But they should be realised from properties other than the exempted ones. If this is not feasible, we must provide for a sale of the holding for collecting the arrears of rent or revenue.

C

TEMPORARY ALIENATION OF LANDS BY REVENUE AND CIVIL COURTS

163 Definition

Another device that has been adopted to prevent sale of lands by courts is that of temporary alienation. By temporary alienation is meant the transfer of land of a debtor to the creditor or any other person for a temporary period by the civil court or by the collector in executing a decree relating to a debt so that the debt or a portion thereof may be repaid out of the produce of the land. Either a premium for its use, or annual rent, or both may be decided by the court as the mode of repayment. We have described elsewhere the powers granted to the Collector under the civil law to execute decrees which required a sale of lands of a debtor. Its object was to minimise sale of land for debts. The method of temporary alienation is not in vogue in all provinces. The Deccan Riots' Commission of 1875 was against temporary transfers as they considered the latter as amounting to a sale. The Deccan Agriculturist' Relief Act provides that the court may direct the Collector to manage the land for seven years. But the Collector should set apart a minimum holding for the maintenance of the judgment-debtor. Both the holding, and the produce from the same are exempt from attachment. As very few holders of lands have more than a minimum holding in the province of Bombay, the Act became a dead letter.

164 Temporary alienations in the Punjab

In the Punjab sales of land of members of agricultural tribes are forbidden in execution of any decree or order of any civil or revenue court. Consequently the courts have little work by way of sales of land for repayment of debts. Hence the provision in the Civil Procedure Code which empowered the Local Government to notify that courts should transfer decrees of sale of land to the Collector, was not in use in the Punjab.¹ The court had, therefore, to

¹ Where the court, however, ordered attachment, sale, or delivery of land or interest in land or the attachment or sale of produce, such orders must be executed by the Collector or some revenue officer appointed by him. Punjab Land Administration Manual, para. 51.

order temporary alienation of land for the recovery of debts. The Punjab Debtors' Protection Act of 1936 provides for temporary alienation by the Collector, and for exemption of land necessary for the maintenance of the judgment-debtor and his family after a due consideration of the other sources of income. When the Act was under discussion, these provisions provoked an animated debate. Temporary alienation required a knowledge of the profits and rents from land, of the supplementary sources of income of the debtor, and of the land that should be set apart for his maintenance. The court applied to the Collector for information on these points. It was considered by some that the revenue officers did not apply themselves with a diligence to this task, because the court, and not they, were the final authority in judging the area and the period for an alienation of land. It would be therefore better, according to these exponents, if the court transferred the proceedings to the collector in the execution of a decree which required attachment and alienation of land. Others thought that revenue officers would not be impartial, even though they were asked to act judicially according to the provisions of the Civil Procedure Code, and that they might set apart more land for the judgment-debtor and thus reduce the amount of a decree due to a creditor. As against such a view, it was held that there was no provision for exempting a portion of a holding for the maintenance of the debtor. This was no doubt rebutted. Sec. 255 of the rules in the Land Administration Manual was quoted that "where the judgment-debtor is deprived of the cultivating occupancy of the transferred land, enough should be excluded from the transfer to furnish at least a bare subsistence for himself and his family". But this referred only to cultivating occupancy, and not to those who had proprietary ownership of land. All their lands might therefore be alienated to a creditor. But there was another rule. Standing Order No. 64 of the Financial Commissioner laid down "that sufficient land should be ordinarily exempted from temporary alienation to provide for the maintenance of the judgment-debtor and his family." The forms prescribed by the High Court required that the officer who made an estimate of income from the land of a judgment-debtor should state also his other means of income.¹

It was on these grounds that the Debtors' Protection Act of 1936 provided in its sections 4 and 5 that decrees for attachment and temporary alienation of lands should be transferred to the Collector for execution, and that a portion of land necessary for

¹ Vide discussions in the Punjab Legislative Council on the Debtors' Protection Bill.

the maintenance of the judgment-debtor and his family after taking into consideration the other sources of income, should be exempted, when making such temporary alienations. The Act further provided that the period of alienation should not exceed 20 years. Again there was a controversy as to whether this provision should apply in the case of all decrees. The Finance Member spoke on the need for the uniformity of the civil law so that banks operating in more than one province might not suffer owing to the variations in law relating to the execution of decrees, and said that the provision should be restricted to the agriculturists, as defined in the Relief of Indebtedness Act. The members of the legislature, who were not agriculturists did not want their credit to be reduced by any restriction of the period of alienation by a court. So the restriction of 20 years applied only to the lands owned by a member of a statutory agricultural tribe. But the other provisions relating to the transfer of decrees requiring temporary alienation of land by the court to the collector, and the exemption of a minimum holding, where necessary, for the maintenance of the Judgment-debtor and his family are to apply to all debtors.¹

165 In the U. P.

The U. P. Encumbered Estates Act of 1934 has made the following provisions regarding temporary alienations to be made by the collector in repayment of debts. The net profits of the area mortgaged should not exceed threefourth of the net profits from the entire property in land of the debtor. The value of the property mortgaged shall be calculated as a certain multiple of net profits, and the amount for which the mortgage is granted shall not be less than this value. The period of the loan shall be revised in case of failure of crops, of grant of remissions owing to fall in prices, and of alterations in the land revenue. The form of mortgage shall be of two kinds: the one possessory, for 20 years, and the other simple. If there

¹ The Act is no improvement on the existing provisions regarding the restriction of the period of temporary alienation to twenty years. Under a High Court ruling, it was held that the Punjab Land Alienation Act did not prohibit temporary alienations by courts for any length of period to agriculturists or non-agriculturists. As this ruling defeated one of the main purposes of the Act of restricting the period of usufructuary mortgages made to non-agriculturists by agriculturist tribes to twenty years, the Punjab Land Alienation Amendment Act I of 1931 was enacted to prevent an evasion of this provision through the civil courts. It limited the orders of Courts regarding temporary alienations to the maximum period of twenty years, and mortgages, to the forms of mortgages permitted under the Land Alienation Act.

is a default in payment under the latter form of mortgage, the collector shall put the mortgagee in possession upto 20 years.

In the U. P. the calculation of net profits from land is easily done as there are settlement officers to fix the rents of land periodically. Rent minus the land revenue is generally taken as net profit. It should be noted that the area mortgaged should cover only the land yielding threefourth of the net profits of the entire land of the debtor, thereby providing for his maintenance.

166 **Proposals re temporary alienations**

Temporary alienation of lands by a court or the collector cannot be helpful to all agriculturists. A reversionary interest in land in the case of an agriculturist who is not an actual cultivator is hardly of any use to him, if most of his lands are to be sold, or if he is an insolvent. Secondly, the cultivator might be unfit to take up cultivation when the land is returned to him. Thirdly, there might be nothing left for temporary alienation if sufficient land were set apart for the judgment-debtor. There are also the risks in realising the annual rent when lands are let to a third party. But there is the risk in the case of bad debtors of their appropriating all the income from land without making the annual repayment for their debts. Schemes of temporary alienation would be workable only in the case of big estates where a landlord had surplus lands. And if we are to enforce the rule of transfer of land only to agriculturists, it is better that the judgment-debtor agriculturist himself cultivates and pays a portion of the land income for the repayment of the debt. In the case of big holders the produce of the land might be charged till the debt is repaid; and they may be allowed to cultivate it. Temporary alienation was a proper device when Government thought of the preservation of lands of landed gentry, but it is not useful from the point of view of a system of peasant proprietors. When once we prevent transfer of land to the class of rent-receivers, the court or the Collector should not also temporarily alienate land except to agriculturists. While therefore temporary alienation should as far as possible be avoided, it might be left to the discretion of the Collector when it should be enforced. Temporary alienation is also adopted by courts when the property is under a receiver, or in proceedings under bankruptcy. In such cases too, the alienation should only be to an agriculturist.

D

MODIFICATIONS IN CIVIL LAW TO MINIMISE SALE OF LAND FOR THE DEBTS OF AGRICULTURISTS

167 Provisions of the Code of 1859, 1877 and 1908 compared

The Code of Civil law of 1859 tried in three ways to minimise sales of land or to get a better price for it when sold. Firstly, the judgment-debtor might apply to the court stating that he would repay the debt by a mortgage or by lease, or by privately selling the property, or a portion of any other immoveable property. The court might adjourn the sale on application (Sec. 243). Secondly, the Collector might make a representation to the court that the amount might be recovered by temporary alienation instead of by a public sale. The court might authorise the Collector to do so, after taking a security for the amount of the decree or for the value of such land or share (Sec. 244). Thirdly, on the requisition of the court and at the instance of Government, the sale shall be conducted by the Collector (Sec.248)

The Code of 1877 repeated the first provision, but the amended Code of 1908 expressly prohibited any adjournment of sale with a view to arrange for temporary alienation or sale of a portion of the property, if the property was directed to be sold in execution of a decree in enforcement of a mortgage of, or a charge on, such property. In other words, the adjournment applied only to decrees for the payment of money (Order 21 Rule 83 (3)). The second section was retained in the Code of 1877 without the restrictive clause which required the taking of a security from a judgment-debtor for the amount of the decree or the value of the land (Sec. 72 of the Code of 1908 and Sec. 326 of the old Code). The Code of 1908 further provided that such decrees for sale of land might be executed according to the same rules as were notified for a local area by the Local Government in respect of such decrees. The Code of 1877, however, introduced two new sections. (1) Special rules might be made for any local area,

“imposing conditions in respect of sale of any class of interests in land in execution of decrees for money where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value.”

(2) Any special rules existing in a local area on the date when the Code came into operation regarding sale of land in execution of decrees might be continued with or without modification. The notifications that were issued under the latter provision are mentioned in para. 137.

The third provision in the Code of 1859 that the Collector should conduct sales on the requisition of the court and on the direction of

Government were elaborated in the Code of 1877 empowering the Local Government to notify the areas where the execution of decrees which required immoveable property to be sold, should be transferred to the Collector, and to make rules for the same. The Code of 1882 provided for appeals from the Collector to the Revenue Board. The Code of 1908 rearranged the clauses, and as the procedure only applied to four provinces (Bombay, C. P. and U. P. and the Punjab) and not even wholly to them, it brought the rules regarding sales by the Collector under a separate schedule.

168 Summary

A good deal of discussion centred round the possibilities of exempting land from sale in the execution of decrees when the Civil Code was amended in 1877. It was decided in the end that a fair trial might be given to the provisions relating to temporary alienations by the Collector before enacting any new law on the subject. The position, therefore, regarding sale of land in execution of decrees may be thus summarised. The Local Government may impose conditions on sales where "the interests in the land are uncertain or undetermined" and therefore sale value cannot be easily fixed. It may notify that decrees requiring sales of immoveable property should be transferred to the Collector. The Collector may represent to the court to stay sale of land, and the court may authorise the Collector to arrange for temporary alienation.

169 Procedure to avoid sales re. execution of money decrees

The rules in the Code define the procedure in the execution of such decrees. The decrees may order the sale of immoveable property (1) either in pursuance of a contract specifically affecting the same, or (2) for satisfaction in the repayment of a debt.

If it is found in the course of proceedings in respect of the latter class of decrees that one's debts were in excess of one's assets, the Collector would arrange for the sale of lands. If the size of debts was moderate enough to be recovered by temporary alienation, then the Collector might let the land on a premium in perpetuity or on a term, or on mortgage, or lease it for a period not exceeding 20 years.¹

¹ The C. P. Revenue Manual says, "The period of 20 years for lease is the extreme to be applied only in exceptional cases and a lease for a long time is nearly as disastrous to the judgment-debtor as sale outright." The officer is instructed to make a local enquiry to find out the competitive rent of private lands before he arranges for leasing. The figures are to be checked by a reference to sub-rents shown in the settlement records and annual patwari (village accountant's) papers. As the Collector has no summary powers to collect the annual lease amount, he should take a security unless he is satisfied that the lessee will not make defaults.

170 Procedure for sale of lands

Where the Collector finds that the decreed amounts could not be recovered by a temporary alienation of land, he may decide on sale of land as the only course left open in executing a money decree. Or the court may order sale of immoveable property in pursuance of a contract specifically affecting the same. The Collector cannot reopen this latter class of decrees and arrange for letting the land. In both cases the procedure to be followed for the sale of land is prescribed. Three courses are open to the Collector when executing the decrees. (1) Time may be given to the judgment-debtor to repay before the land is sold, though he cannot adjourn a sale, "if the property was directed to be sold in execution of a decree for sale in enforcement of a mortgage or a charge on such property." The C. P. Revenue Manual mentions that ordinarily time should not be given "unless the judgment-debtor gives adequate security for the repayment of the decretal amount within the time allowed."

(2) The Collector may raise the amount by letting the land on payment of a premium or by mortgaging it. But he cannot lease it on an annual rent.

(3) He may sell the property in whole or in part. When selling he may fix a reserve price for each lot, adjourn the sale for obtaining a better price, or "buy in the property and resell the same by public auction or private contract" (Schedule III, Sec. 10).

Under the U. P. Manual, "buying in" requires the sanction of the Governor-in-Council. The C. P. rules say :

"If the highest bid obtained is inadequate, it should not be accepted and a fresh sale should be held under suitable conditions, and that the Collector should use these provisions to secure a fair price in the absence of competition at the auction."

The Ministry in the C. P. have issued a notification that the reserve price fixed should be at least three-fourths of the full market price.

171 Other provisions to minimise sales

The Civil Code has provided for a number of orders and rules with a view to restrict sale of land to the minimum. The enforcement of decrees for sale passed under the Transfer of Property Act led to endless controversies. The Act of 1908, therefore, incorporated the sections relating to mortgage suits and decrees in the Transfer of Property Act into the Code. To expedite execution, decrees were divided into preliminary and final.¹

¹ Details about different kinds of decrees are referred to in the chapter on the ordering of instalments by courts.

A number of restrictions are also placed on attachment and sale of properties by the sale officer.¹ Restrictions are equally placed on attachment of agricultural produce.² The amended Act of 1879 also empowered the courts to order instalments in money decrees. But consent of the decree-holder was necessary to revise such decrees already passed and to order instalments.

172 Working of the provisions

Since the depression, the powers granted to the Collector under the Civil Procedure Code have been used to minimise sales of land in execution of decrees both in the U. P. and C. P. These powers were exercised to stop sales of land during the pendency of the debt relief legislation. The Bombay Ministry too did the same in 1937 pending its enactment of the Small Holders' Relief Bill.

The Local Governments in Bombay, C. P., and U. P. have issued notifications under Sec. 68 of the Civil Procedure Code, thereby transferring execution of decrees relating to sale of land to the Collectors. The experience in Bombay has been that the provision to lease lands and to repay debts out of rents is hardly acted upon by Collectors. But the powers of the Collector have been fully used in obtaining a fair price for the lands of judgment-debtors sold in public auction.

The Government Review on the Land Revenue Administration report of Berar for 1937 says that the Collectors have been charged with the responsibility of obtaining the best possible terms in executing the civil court decrees.³

The C. P. Land Revenue Administration report for 1937 says that the reason for an increase in the consideration money in the Jubbulpore divisions in sales by order of court was "the possible leniency shown to judgment-debtors by revenue officers" and that the decrease in the number of court sales in Chhattisgarh division was due "to the sympathetic attitude of the revenue officers towards judgment-debtors in Collectors' cases."⁴

1 See Order 21, Rules 68, 88, 89, 90.

2 See Order 21, Rules 43, 74 and 75.

3 An extent of 16,549 acres changed hands in Berar as a result of civil court decrees during the year on an average price of Rs. 49 per acre.

4 In the C. P. 110,826 acres were sold in 1936-37 by the order of civil court in foreclosure or in execution of decrees, the consideration money being Rs. 10.77 lakhs.

In the U. P. the transfer of decrees to the Collector for execution is more largely in use in the divisions of Meerut, Agra and Rohilkhand.¹

In the province of Bombay the number of cases transferred to Collectors for disposal is very small, it being 26 for the year 1936 according to the Civil Justice Report of the Bombay Presidency.

173 Proposals

The two principles underlying the procedure for execution of decrees by the Collectors are the realisation of the debt due from the income from land over a period of twenty years, and the fixation of a fair price where public sale of land for debts is enforced in law. We have proposed in another section the grant of instalments based on the income from land, and the fixation of a fair price by civil courts. Once these two devices are adopted in suits instituted in civil courts against agriculturists, the need for the use of the revenue department for an elastic and individual treatment of debts with a view to minimise sale of land will not be so urgent and important as it is today. At the same time we do not recommend any change in the existing procedure concerning execution of decrees by Collectors in provinces where it is prevalent.²

1 These three divisions contributed to more than half of the total number of applications disposed of during the year 1935-36. The amount involved in the applications pending at the beginning of the year and filed during the year was Rs. 182 lakhs. 1.99 lakh of applications were disposed of and a sum of Rs. 48.58 lakhs was recovered, leaving a balance of 28,079 cases involving Rs. 29 lakhs at the end of the year.

2 In the Punjab, Government have recently proposed that all decrees which require agricultural land to be sold in satisfaction of a money decree should be transferred to the Collector for their execution except when the decree is one for the recovery of money specially charged on the land. Lands of notified agricultural tribes are exempt from sale in execution of decrees under the Punjab Land Alienation Act. The object of the new proposal is to give the benefit of the revenue agency to the non-notified agricultural tribes when their lands are brought to sale.

CHAPTER VI

REGULATION OF MORTGAGES

174 Principles of regulation

We have so far discussed the laws that restrict voluntary and forced sales. But where such restrictions are energetically enforced, they lead to increased temporary transfers. If sale of lands is prohibited to a certain class, produce might be pledged to that very class year by year. If subletting is penalised, it will take the form of mortgage with possession. It is agreed on all hands that the credit requirements of an agriculturist should be met from the produce, and not from the sale of land. And if the selling up of land is forced on an agriculturist owing to its unprofitability, then it is an unavoidable necessity which any restriction to the pledging of produce cannot stop. This only shows the ineffectiveness of any legislation to protect the debtors which is not aided by a reorganisation of agriculture on a profitable basis. And if the conditions of farming, the size of the holding, and the output of family labour were all conducive to make farming profitable, it ought to be possible to raise the required credit by pledging the annual produce for a limited term of years. We will examine in this chapter in what manner mortgages should be regulated. Two other corollaries arise too out of our central proposal. The kind of mortgage made should in no way transfer lands to non-agriculturists for being leased to tenants. Its object should only be to secure the credit granted by a creditor, and not indirectly to facilitate possession of land by him.

175 Limitation of period of usufructuary mortgages

Usufructuary mortgages have the following defects, that it extends to long periods and is therefore virtually a sale; that as there is no restriction regarding the recovery of the loan by other means than from the mortgaged land, the income from the land may not cover the whole loan but only a portion or interest; and that, where the amount of the loan is large and is never returned, it is tantamount to a sale. These defects might be rectified by restricting the period of mort-

gages, and by providing that the principal and interest should get repaid out of the land income within a stated period.¹ The Orissa Moneylenders' Bill of 1938 has a similar provision restricting the period of usufructuary mortgages to fifteen years within which a debt should be repaid.

176 Objections

The chief objection to this forms of mortgage is that it unfits the debtor for his occupation by keeping him off his land. But if any agriculturist mortgaged only a portion of land, he is in no way taken off his occupation. The evil was partly met by so restricting the period of mortgages as to give longer intervals of possession of the land to the debtor between one mortgage and another. But this led to the other evil of restricting all scope of raising loans, and consequently the tenant in the U. P. and the C. P. came under the greater subjection of the landlord who advanced to him loans for his requirements. Further, an usufructuary mortgagee will hardly improve the land, as the mortgagor need not pay compensation for improvements made by the mortgagee. If the latter can prove that he made improvements to preserve the land from destruction, then alone is he entitled to compensation.² The most fundamental objection to a usufructuary mortgage is that it would help the evasion of any law which prevents subletting. Every sub-lease could be called a

1 The Royal Commission on Agriculture made this recommendation on the basis of the working of the Punjab Land Alienation Act, and the Government of India requested the Local Governments in 1930 to report action taken on it. The Bengal Government replied that they have provided in the Tenancy Amendment Act of 1928 for a limitation of 15 years for usufructuary mortgages in the case of occupancy rayats and under-rayats. The U. P. Government introduced the provision in the Agriculturists' Relief Act of 1934. The Collector was empowered under the same Act to eject an illegal transferee in redemption suits of mortgages of the value of Rs. 500 and below. In the Central Provinces the Government said that they were awaiting the report of the Banking Enquiry Committee which has since then recommended the grant of free rights of transfer to the tenants. The Bihar Government replied as follows :

" A proposal to limit the right of mortgage to self-extinguishing usufructuary mortgages not exceeding fifteen years was examined and, though receiving support from the landlords' party for reasons not connected with the welfare of the ryots, was not accepted by the representatives of the tenants who resented a proposal which might lessen the amount of the ryots' credit. The Local Government are not sure that the necessity for restricting the right to mortgage is as clear in Bengal as it is in the Punjab. The gravitation of the surplus agricultural population to work in the industrial centres is one factor in the desire of ryots for freedom of transfer. "

2 Sec. 63 A, Transfer of Property Act.

usufructuary mortgage. If sub-letting is prevented in agriculture, then it automatically follows that usufructuary mortgages would be restricted to the minimum.

177 Proposals

A usufructuary mortgage should be treated as a sublease requiring the sanction of the Revenue officer. If the object of the mortgage is not to farm out lands for mere collection of rents, but to raise credit, it may be freely permitted by the Revenue officer. In such cases the Revenue officer should see that the mortgagee is an agriculturist, that he will himself cultivate the mortgaged land, and that the mortgage is for a fixed term not exceeding 20 to 25 years within which the principal and interest of the loan would be repaid. There is one form of usufructuary mortgage, according to which the mortgagor works as a sub-tenant under the mortgagee. This is nothing more than an agreement by a debtor to pay a fixed portion of the produce of his land to the creditor. It only amounts to a fixed charge on the produce for a definite number of years, and consequently need not be restricted.

178 A charge on produce

A usufructuary mortgage has a greater advantage in securing a loan than any other, as the creditor has complete control of the produce owing to his being in full possession of the land. If the same control over the produce were available in the recovery of a loan, or some method could be devised which would secure the same advantages to the debtor for raising credit as a usufructuary mortgage, the disadvantage in prohibiting this form of mortgage except with the sanction of the Revenue officer, will not be of any serious consequence. If a charge can be created on the produce every year, it will give the same security to the creditor as a usufructuary mortgage.

A simple mortgage may stipulate instalments or the payment of the mortgage money on a fixed date. But generally it is the latter form of simple mortgage that is in vogue. Neither is it possible to provide by law that instalments should be specified in every mortgage deed. For they will depend on the amount borrowed and the capacity to repay. Where a mortgage deed specifies the instalments, it should be easy for the court to grant a decree in respect of individual instalments, and to sell only a sufficient portion of the land necessary to recover the particular instalment.¹

Where it does not so specify, the mortgagee wants return of the money in a lump. When there is default, he sues. Then the

¹ Vide Select Committee Report on Transfer of Property Act, Sec. 68, quoted at page 416 of the commentary on the Act by Mr. E. Vinayaka Rau.

court may grant instalments. We want some provision under which a mortgagee can claim the produce of the land for every instalment specified in the mortgage deed, and the court may create a charge on the produce for the instalments ordered in its decrees. If we can have such a provision in the case of simple mortgages, the mortgagee will have both the security of the land until the loan is repaid, as well as a charge over the produce.

Neither a simple mortgage nor a charge on the land gives any right to the mortgagee over the produce. In fact, these forms of mortgage are intended for those debtors who bank on a windfall to repay the mortgage money, and for such creditors who are less anxious to get back their money than to realise their security. As the law stands, a mortgagor can freely lease his mortgaged lands according to local usage if no premium or advance rent is taken, and if the lease deed has no covenant for a renewal. Even these terms may be varied and extended in the mortgage deed (Sec; 65 A of the Transfer of Property Act). Secondly, so long as the security is not rendered insufficient, the mortgagor is not liable to the mortgagee for allowing the property to deteriorate. These provisions in law do not recognise any charge over produce for a mortgagee. Where the latter is satisfied with security of land, there is no need for an additional security. But if credit will more unrestrictedly flow, when a mortgagee has, in addition to the security of a simple mortgage, a charge on the produce, this form of mortgage should equally be provided for.

A charge on produce can be enforced as an equitable charge. It will minimise the need for selling the mortgage security. When a charge is allowed on produce along with a mortgage deed, the period of the charge should be limited to a certain number of years, as we have proposed in respect of usufructuary mortgages. During this period the debt should extinguish itself. Every charge should specify the area of land whose produce is charged. Then alone would the court be in a position to see that the debt due is realised from the charge.¹

¹ The declaration of a charge on an immoveable property for the repayment of a debt was one of the proposals considered by the Government of India in 1895. It was recommended by the Judicial Commissioner of Lower Burma.

“It would abolish the distinction between simple mortgages on the one hand and usufructuary mortgages and conditional sales on the other. The creditor would be entitled to satisfy his claim from the property charged, but the property would not be transferred. In other words the mortgage would no longer be one of land, but only of the produce of land.” Note on Land Transfer and Agricultural Indebtedness, p. 160.

179 Registration of charges

When a charge on produce is made part of a simple mortgage, such a charge should have priority over unregistered charges on produce.

It has been common experience that, whenever the period of mortgages with possession is restricted, it might be evaded by giving a charge over the produce. This is provided against in the Punjab Land Alienation Act which requires the Deputy Commissioner's sanction for a charge on the produce of land created by a member of an agricultural tribe for more than a year. We have already suggested the provision of registration of charges on produce which may be made along with simple mortgages. There is no need to further increase the number of restrictions either by making registration of charges of moveable property compulsory, or by empowering the Revenue officer to approve of charges on produce for more than a year.

180 Limitations in attachment of standing crops

There are many difficulties in allotting a share of the produce to a creditor. Disputes may arise in the apportionment of the standing crops. The exact amount of the produce may not be known when the grain has been transported from the thrashing floor. The troubles are many for a creditor in attaching and selling standing crops of produce, while the debtor at the same time may not be able to sell his produce and realise a better price owing to its being attached by a creditor.

181 Freedom for a rayat to sell his crops under certain conditions

The preliminary report of the agricultural credit department of the Reserve Bank made a recommendation in respect of co-operative societies. The report said that, if a charge were created on a crop raised by a loan, it might make it difficult for the agriculturist to sell it and therefore "a fixed charge should be created on the produce, leaving it free for him to sell at the best market but making him liable to three months' imprisonment if he disposed of his produce without repaying the loan." If the creation of a fixed charge would give freedom to the borrower to dispose of his produce at the best market, the desirability of such a provision is certainly worth consideration, at the same time giving an option to the debtor either to enter into such a bond or not.

The need for such penalties does not arise when a charge on produce is coupled with the mortgage of land. For no debtor would like his land to be sold in default of repayments out of the produce if he could possibly avoid it. The penalties may be necessary

when a charge on produce only is given by a debtor. They may be made applicable to the transactions of debtors with co-operative societies, or licensed money-lenders and incorporated banks which come under some supervision. The provision will be an inducement to these classes of lenders to lend to agriculturists, and will facilitate as much credit for the agriculturist as an usufructuary mortgage. Lest an agriculturist may be inveigled into a criminal liability without his knowledge, it might be provided that the liability would not operate unless it is specifically mentioned as part of the transaction.

182 Mortgage by conditional sale

Another form of mortgage in vogue is that of conditional sale. This is defined in the following terms in the Transfer of Property Act :

“Where the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of mortgage money on a certain date, the sale shall become absolute, or on condition that, on such payment being made, the sale shall become void, or on condition that, on such payment being made, the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale, and the mortgagee a mortgagee by conditional sale, provided that no such transaction shall be deemed to be a mortgage unless the condition is embodied in the document which effects or purports to effect the sale”.¹

1 In conditional sales, possession is not delivered to the mortgagee. The latter can sue for foreclosure and sale of land only in default of payment, but cannot sue the mortgagor personally in addition. The condition attached to the mortgage is that if the amount is not repaid within a certain date, the land shall pass to the mortgagee. But a court does not grant possession immediately in such suits. The mortgagee applies for foreclosure. The court grants time, not less than six months, for the repayment of the loan. In case of failure to pay, the decree-holder applies for a final decree for possession. The court has power to extend from time to time the period for repayment. In order to avoid all this trouble, a new form of conditional sale document has become prevalent. The land is sold outright to the creditor, while an agreement is entered into to reconvey it if the amount is repaid. The onus of proof in such suits lay on the mortgagor to prove that it is only a mortgage and not a sale. The court had to ascertain the facts. To avoid the difficulties in the decision of such suits, the Transfer of Property Amendment Act of 1929 provided that, if two documents were passed, one of sale and the other of reconveyance, the transaction would be treated as an outright sale, and the vendor should sue for the specific performance of the contract of resale. The result of the amendment was that the sale and the condition to reconvey have come both to be entered in the same document, again necessitating the court to investigate whether such sales were conditional mortgages. If the court decides that it is only a mortgage, then the mortgagor will have a right to redeem. If it decides that it is a sale, then the mortgagor (or vendor) should sue for specific performance.

183 Bengal regulations, 1 of 1798, and 17 of 1806

The earliest regulation to prevent fraud and injustice in conditional sales of land was the Bengal Regulation 1 of 1798. It was found that money-lenders evaded receiving payment of the loans due to them so that the mortgaged land might pass to them with absolute rights. The proof of payment lay on the mortgagor. This Regulation provided that the latter might deposit the amount in the court even before the date stipulated. If it were a simple mortgage, interest would be calculated at 12% by the court and paid to the mortgagee. In usufructuary mortgages which covered only interest, the principal should be repaid and the interest account would be taken by a calculation of the profits from land. Under the Bengal Regulation 17 of 1806 the mortgagor would be given one year's time to repay the amount when the mortgagee applied for foreclosure. These laws applied to Bengal, Bihar, Orissa, Benares and the Ceded and Conquered Provinces. They were made applicable to the Punjab under the Punjab Laws Act. But these two regulations were repealed in all the provinces except in the Punjab by the Transfer of Property Act of 1882.

184 Objections to conditional sales

These regulations were no bar against the enforcement of foreclosure by a mortgagee. They only facilitated deposit of the amount in courts before the due date, and gave also one year's time for the payment of the decreed amount. The first contention against conditional sales was that the mortgagor did not realise the consequences of the contract :

An alien point of law borrowed from the Muhammadan system, in which it was applied only for mortgage of moveables, furnishes the basis of this system; our technical legal procedure supplies the machinery. Both are foreign to the ideas of the people, unintelligible to their minds, and the result of their combined action is to whittle away rights of property before the parties affected have realised their position.¹

Conditional sale mortgages grew in provinces where sufficient check could not be exercised over sales by Collectors in respect of money decrees, as they were not so empowered by the local Government under the Civil Procedure Code. In the Punjab they grew to such alarming proportions that the Land Alienation Act expressly prohibited them as a form of mortgage.

Secondly, in suits relating to conditional sale mortgages, the right to realise the mortgage money from sources other than the land

1 Resettlement Officer's report of Gujranwala District, quoted at page 156, Note on Land Transfer and Agricultural Indebtedness in India.

mortgaged is not recognised. The court may no doubt postpone sales, and grant instalments, but while in suits relating to simple mortgages, the land may be brought to a public sale, and the Collector may fix a fair price, possession of land must be given to the creditor in decrees relating to conditional sales in default of payment. A creditor can buy land in the public market. Why should he enforce possession to himself except it be to get the land at a price lower than the market one by taking advantage of the indebtedness of an agriculturist? If the granting of possession of the mortgaged land to a creditor owing to non-payment of a debt due to him was forced on the court because of the legal recognition of a form of mortgage, then any civil law which wants to postpone sales is defeated. The creditor includes in the mortgage deed the nature of the compensation to be granted to him for default in payment of the mortgage money, and thereby takes away the discretion of the court to arrange for its payment by some other method. The civil court has no discretion to sell the land at a fair price. No sound banker interested only in investments of his money would covet the land of his client. He has every security for the loan in a simple mortgage, and in the existing law which permits attachment of all kinds of property to repay a loan whether secured or unsecured.

185 Proposals

If we are agreed that sale of land except as an ultimate security (after exempting a minimum holding in the case of small holders) should not be allowed for repayment of debts, then any form of mortgage which contingently transfers property to the creditor in default of payment of mortgage money should be declared void.

Another alternative has been adopted of granting instalments in the preliminary decrees of foreclosure in suits relating to mortgages by conditional sale. But if there is default, possession must pass to the creditor. The main purpose of our proposals is to secure that at least in the case of subsistence holders, land should change hands only by voluntary sale and not as a result of debt. Finally, possession passes to a creditor who may or may not be an agriculturist. This must be prevented by the State whose duty it is to see that land is in the hands of agriculturists, and does not pass into the hands of rentiers. A mortgage by conditional sale militates against our central proposal to conserve lands only for agricultural purposes. For these reasons, such a mortgage should be declared void in law.

186 Restriction of credit through limitations on mortgages

We shall examine in this part of the chapter the possibilities of restricting credit. They are best restricted by the carefulness of the

borrower and the business rules followed by the lender. If the State lends or controls private lending, or if the borrowers are sufficiently educated and organised to raise funds for their occupation, then the problem is solved. The former will become possible only by a gradual process. Private money-lending has assumed various forms of lending in grain, cattle, articles of consumption, and cash. It is done by various agencies i. e., by the relations of the cultivator, widows, landlords, the village grocer, the middleman trader, etc. Registration of money-lenders can only be enforced in the case of those who do money-lending as a regular business.

187. Practical difficulties

Even if all money-lenders are registered, that by itself will not be enough. Their mentality must change and they must feel that the best safety for their money lies in the productivity of the loan and not in its security. The transactions of many a co-operative society show that, even where rules provide for the issue of only productive loans, and where the Management has no interest in over-lending in the hope of realising a plentiful security in land, credit cannot always be made to flow along useful channels. Possibly the supervision of an overhead bank over registered money-lenders coupled with an administrative audit enquiring into rules of business may regulate credit on proper lines at least in respect of such money-lenders. If these are the difficulties in the State control of credit, its control by borrowers seems more difficult. The method of mutual control by borrowers through their own banks would take a longer time in a country like India where a land policy of fixity of tenure, fair rents, and free rights of transfer have yet to be enforced, and facilities for agriculture by way of supplies of goods, sale of produce, and the teaching of technique have to be provided, and the peasant has to be induced by a mass movement to organise himself for his own improvement. During the transition period, when agricultural banking slowly grows, there ought to be some restrictions on credit. How are they to be worked?

The Agricultural Credit Department in their preliminary report have indicated that, if agricultural debtors could be made to borrow only from a single creditor, we would be in a position to control his credit. But in the existing state of agricultural economy this can hardly happen.

188. Registration of all loans

If by some method we could know the total liability of every agriculturist, we could prescribe a maximum limit beyond which

he should not borrow. It was, therefore, thought that every loan borrowed might be registered by village officers. Registration of loan bonds before village officers, so that they might testify to the actual consideration paid, was a total failure under the Deccan Agriculturists Relief Act, and the provision was repealed after a time. Village public opinion has in no way developed so as to counteract the evils resulting from the abuse of the proposed scheme by village officers, not to speak of the resentment which self-respecting creditors and debtors might feel in giving publicity to their transactions. Such laws would lead to more evasions and a shrinkage of credit for the small holder. Another proposal was that Revenue officers should certify a loan if the creditor was to get the help of the court to recover it. The Famine Commission of 1879 proposed that "in special tracts it might be thought advisable that the Collector should be empowered to refuse his sanction to a loan incurred for an extravagant or merely ceremonial purpose or for any cause but one of agricultural improvement or necessity." But the defect of the proposal was that, unless a uniform procedure was adopted, the fixation of credit would vary from officer to officer. Even if rules were made concerning the purpose and the amount of the loan, individual discretion would have to be exercised according to the character and capacity of a borrower. And if Revenue officers are prepared to certify loans, they can do one of two things. The State may either directly lend *taccavi*, or nominate its officers as directors of agricultural banks with a view to approve the loan applications. The implications of the proposal are of value in pointing the way towards the future organisation of agricultural banking.

But all these proposals have this defect that, after all, we can provide a supervising or an auditing machinery which may take up the administration of the bank, but in no way can it prevent a collusion between the authorities of a bank and the debtor, nor remove the inherent defect of private banking to make profits out of the needs of a borrower, provided the security is good, irrespective of the fact whether the loan is used for a productive purpose.

189 Restriction on mortgage liability

Fixation of maximum liability and its scrutiny by restricting the borrower to a single creditor or by the registration of all loans before the village officer or by certification of the loans by the Collector being impossible of working, the device of restricting the amount of mortgage liability may be considered. Mortgages have to be registered, and one can find out from the records of a registration office the extent of mortgage debts of an agriculturist. But such a restriction

will lead to an increase in the amount of unsecured debts as the latter is free from control. This is exactly what has happened in the Punjab. The Agricultural Credit Department of the Reserve Bank have recommended in their report :

“The total future liability (after the liquidation of previous debts) of agriculturists might be limited either by fixing it in terms of a suitable multiple of land revenue or on the basis of the average value of land held in proprietary or occupancy right so as to enable the debt to be liquidated after providing for the bare necessities of life of the owner or tenant and his family within a period of 30 years.”

This formula is perhaps intended for those who own areas of land larger than what is necessary for the maintenance of the owner and his family. Possibly it relates only to mortgage credit, as we cannot expect the Reserve Bank to recommend the impossible proposition of fixing the maximum liability for all loans when we have no means of ascertaining such a liability.

190 Period of usufructuary mortgages

Supposing mortgage credit were restricted by fixing the total liability which a debtor could incur on his lands, it may lead to an increase in the amount of unsecured debts. But there are certain debts which cannot be returned in short periods. A creditor protects himself in these cases by getting a mortgage of the land. The fixing of a total liability for mortgage debts may not achieve the object of restriction of all the borrowings of an agriculturist. But the restriction of the period of mortgages within which the principal and interest of a debt should be repaid, will have a healthy reaction in reducing the amount borrowed by a debtor. And to that extent it will prevent borrowing upto the maximum value of the land, and its possible transfer to the money-lender.

Under the existing provincial laws, restrictions defining the period of usufructuary mortgages are applied to agricultural tribes under Land Alienation Acts, to small agriculturists under the U. P. Agriculturists' Relief Act, and to certain classes of tenants under Tenancy Acts. Both the principal and interest should be repaid within this period, and no personal liability attaches to the mortgagor to repay the amount, if it is not realised by the mortgagee from the usufruct of the mortgaged land. The principle behind the application of these restrictions is that the credit of big holders and rent-receiving agriculturists should not be unduly restricted, and that it should apply only to owners of a subsistence holdings or family farms. and small holders. But there is a class of agriculturists who are called 'nominal'

agriculturists whose credit is low, but whose credit needs are large. It is doubtful how far a restriction of the period of mortgage credit in their case will in any way benefit them.

191 Restrictions on simple mortgages

We will now examine to what extent simple mortgages may be regulated with a view to restrict the credit of a borrower. The restrictions on simple mortgages existing at present are three. Under the law of limitation, the time limit to enforce payment of money charged upon immoveable property is twelve years from the date the mortgage money becomes due. This provision can hardly be a restriction on the period of simple mortgages. The date for payment of mortgage money may be fixed in the deed at an unduly long period.

If the time limit under the law of limitation for instituting suits is calculated from the date of the mortgage, and if the period be sufficiently long for the repayment of long term loans by an average small holder out of the net profits from land, it will have an indirect reaction towards the restriction of mortgage credit advanced by moneylenders. To expect that the granting of a maximum number of instalments by courts will restrict mortgage credit to repayable proportion, will be expecting too much, for a moneylender may not sue. And a debtor owing to his necessity and dependence on the money-lender, may not sue for accounts, or apply for redemption even though Money-lenders' Acts give him the right to do so. The result would be that a money-lender might over-lend for long periods, duly keeping himself within the law of limitation for mortgage suits. A time limit for suits as not to exceed twenty years from the date of the mortgage deed will make a lender cautious in his transactions, and induce him to regulate his mortgage loans on the basis of land incomes realisable during the period when his right to sue will not become time-barred.

The second restriction on simple mortgages is provided for in Land Alienation Acts. When a debtor defaults in paying the mortgage money, the Deputy Commissioner is empowered under these Acts to put the mortgagee in possession of land upto a period of 20 years. Under this restriction, a mortgagee loses his right to bring the secured property to sale. This device has been adopted wherever the object of an Act has been to prevent the sale of lands of a certain tribe or group of people to others than the tribe or the group. According to the proposals made in an earlier chapter, our object is to prevent sale to rent-receivers and non-agriculturists, but not sale of land by

an agriculturist to another agriculturist. Consequently we have provided for exemption of sale of land in execution of decrees to non-agriculturists. The result of this provision would be that a non-agriculturist lender who has lent on the mortgage of land of an agriculturist cannot bring it to sale. A non-agriculturist mortgagee holding a simple mortgage can only get in his favour, when he sues in default of repayment of the mortgage money, the maximum instalments with a charge on the produce granted by a court, but neither the mortgaged land, nor its temporary possession to enjoy the usufruct.

In simple mortgages, a personal covenant to repay the mortgage money is implied. But the court may stay proceedings in suits for the recovery of the mortgage money from the other properties of the debtor "until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, and unless the mortgagee abandons his security and if necessary, retransfers the mortgaged property." Again in mortgage suits for sale of property, a decree-holder can sue for the balance due, if it is not time-barred, and if the amount realised in sales is insufficient to repay the mortgage money. When a mortgagee is sure to realise his loan not merely from the mortgaged property but from other properties, the loans he makes will have little relation to the value of the mortgaged property. They will be made on the general credit-worthiness of the borrower, the mortgage being taken as an additional security. When there is a default in payments relating to mortgage money secured by simple mortgages, the court under our proposals will grant the maximum number of instalments. This provision will be some check on mortgage credit. But when a land is brought to sale owing to default in the repayment of instalments and when the price fetched by the sale is less than the amount due, a creditor can realise the balance by sale of other properties. A provision that the creditor should forgo the amount of his debt which is more than the fair price fixed by a court, irrespective of the price fetched in auction will be an additional check on the amount of money lent on mortgages.

To summarise : (1) the time limit in the law of limitation regarding suits for recovery of mortgage money should be so fixed as to be consistent with the maximum period which a court might grant for repayment of the same amount in instalments; (2) A non-agriculturist mortgagee holding a simple mortgage of the lands of an agriculturist mortgagor should only get the maximum number of instalments in suits for recovery of the mortgage money. (3) A mortgage debt should be deemed to be repaid upto the price of the land fixed by the court in a public auction.

These provisions, based as they are on the general principle of restricting credit to the requirements of agriculturists by regulating the terms of mortgages, should have application to all agriculturists.

192 Reaction of maximum instalments by courts on mortgages

While a law fixing total liability by restricting the mortgage debt may be evaded, we may be able to fix the number of instalments and the amount in suits instituted in civil courts, and to that extent we may bring about an indirect limitation of the borrowings of an agriculturist. We can provide in law that the court shall grant only a certain number of instalments in the case of agriculturists' debts which have to be recovered from the produce of land. The U. P. Agriculturists Relief Act fixed the number of instalments at 20 for all agriculturists and 4 for those who pay a land revenue of Rs. 1000 and below. While the number of instalments alone are fixed and the sum of the debt is in no way altered, sometimes heavier instalments which a debtor could not pay would have to be fixed. The court too should be provided with the schedule of net profits for each region and the number of annual instalments should not exceed twenty or twenty-five, and the amount of each instalment, two-thirds of the net profits from the holding.

Generally it is provided in some of the provincial debt relief Acts that instalments should be fixed having regard to the circumstances of the debtor. When once a creditor sues for a loan due to him, other creditors are sure to sue in their own interest or to come to an agreement with the debtor regarding the assignment of his properties and incomes for the repayment of his debts. Unless the court is seized of a knowledge of all debts of a debtor, the instalments it fixes might injuriously affect the other creditors. The law should, therefore, provide for due notice being issued to the other creditors and for a statement of all his debts by the debtor. It should be noted that fixation of the number and amount of instalments on the basis of produce from land in the case of unsecured debts in no way affects the right of a creditor to attach the properties of the debtor other than agricultural land. Nevertheless the method of fixing the maximum amount in all suits for recoveries of money will no doubt have a reaction on the total credit which an agriculturist would get, for very few agriculturists will have saleable properties other than land for being attached and sold by courts. No money-lender would generally lend more than what he could recover through a court of law. Consequently an upper limit for all loans secured and unsecured would get indirectly fixed by this process.

193 Fixing the maximum number of instalments

If the only way of restricting the total liability of an agriculturist is through the instalments granted by courts, then there should be some provision for fixing the maximum number of instalments which a court should grant. They will have to be greater in the case of uneconomic holders and they can be less in the case of big holders. The maximum number of instalments should therefore be fixed consistently with the credit needs of the smaller holder who gets a bare subsistence out of his holding. The produce necessary for his maintenance till the next harvest should be exempted in calculating the instalments. The rent or revenue to be paid on the holding should also be exempted. The number of instalments should be sufficient to raise loans for minimum land improvements, for periodical purchase of cattle, and for tiding over years of failure of crops. The Local Government should supply the courts with a schedule of net profits for each region. A certain portion of the net profit should be set apart for the maintenance of the judgment-debtor. The balance should be available for repaying long term loans. The difference between the gross produce and the net profit ought to be sufficient to repay the short term liabilities incurred during a year.

194 Classes to whom the regulation of mortgages applicable

The restriction of the period of usufructuary mortgages or charge over produce, granted by courts need not apply to uneconomic and big holders. For, the uneconomic holders should not suffer for want of credit by any reduction in the number of instalments, and the big holders should not be unduly hampered in raising mortgage credit. Excepting in the case of the uneconomic holder whose loans might require larger periods for repayment and whose credit should not get unduly restricted, the principle of maximum number of instalments that a court should grant should apply to all agriculturists (Vide para 205). The approval of usufructuary mortgages by Revenue officers, being intended to prevent illegitimate sub-leases shall apply to all holders of land. The restrictions on simple mortgages and the abolition of mortgages by conditional sale shall apply to all agriculturists.

Any special restrictions in the case of tenants in addition to those prescribed for proprietors are neither just nor reasonable. Subject to the payment of rent, they should have the same rights of transfer as proprietors, and whatever restrictions apply to the latter should also apply to the tenants. A note on the limitation of transfer rights of tenants is appended to this chapter.

Note 6

RESTRICTION OF TRANSFER RIGHTS

We will consider in this note the extent to which the rights of transfer by tenants were restricted under the Tenancy Acts in the several provinces. Even when permanent rights of occupancy were granted to the tenants in zamindari provinces from the middle of the last century, their rights of transfer were restricted in several ways. The objects of such restriction were partly to reconcile the landlords to the policy of granting occupancy rights by giving them a certain authority to sanction transfer of land to tenants, and partly to prevent the passing of these rights to moneylenders and rent-receivers. One specific form of restriction which the proposals of the C. P. Government took in the nineties of the last century, and which was embodied in the Tenancy Act was that of prevention of habitual sub-lease by tenants to sub-tenants by granting the latter permanent rights of occupancy. We have dealt with this form of restriction separately in paras 122-132. (vide also Note 6 A). The other restrictions have taken two forms.

(1) The holding is made non-transferable and exempt in execution of decrees, but a tenant can sub-lease for a limited period (Punjab seven years, C. P. one year, and U. P. Bill of 1938 five years at an interval of three years), or the class of persons to whom he can transfer (scheduled tribes, co-tenants and heirs), and the area of transfer (a police station area) are specified.¹

(2) Where a holding is transferable, it can be sold in execution of decrees by a court, but the period of usufructuary mortgage is restricted, and the landlord has certain rights as those of pre-emption and collection of a transfer fee.²

1 Vide the U. P. Tenancy Bill, 1938, Clause 29 relating to non-transferability, and Clause 35 relating to restriction on sub-letting; The C. P. Tenancy Act 1920, Sec. 6 and Sec. 12, The Chota-Nagpur Tenancy Act, Sections 46 to 49 restricting transfers to scheduled classes and the area of a Police Tana; Orissa Tenancy Act 1913 Sec. 25 restricting sub-leases to 9 years and the Punjab Tenancy Act, Sec. 58² restricting sub-leases to 7 years.

2. Punjab Tenancy Act 52 A, right of pre-emption of landlords—Orissa Tenancy Act Sec. 96, restriction of mortgages to 9 years—Bengal Tenancy Act Sec. 26g and 49, restriction of mortgages to 15 years—Chota Nagpur Tenancy Act Sec. 48 mortgages restricted to 7 years.

The Bengal Tenancy Act of 1938 has abolished transfer fee and the right of pre-emption. The Bihar Tenancy Act of 1938 abolished the existing transfer fee of 8%

(Continued on next page)

In the Bombay province the rights of tenants vary in different areas. The Khot's consent is necessary for sale of a tenant's land in certain parts of the Ratnagiri district. In Madras the tenants have free transfer rights under the Madras Estates Land Act of 1908.

The principles on which these restrictions are based are mentioned below :

Moneylenders should be prevented from buying the holdings of occupancy tenants. The landlords too had an interest in seeing that their lands did not pass to undesirable tenants. It was hoped that the right of pre-emption or the condition of his written consent for a transfer would prevent the purchase of a tenancy and thus drive out bad tenants. On the other hand this power has not been exercised at all by the landlords in the interest of their estates. It became a power in their hands to make a little more money out of an indebted tenant who wanted his lands to be sold to a moneylender. "It has been shown that the landlord's consent has passed in practice as a futile check on the money transactions of the tenant. In such matters his intervention has not as a rule been for the advantage and good guidance of the tenant."¹

It was, therefore, thought that the holding might be made transferable without the intervention of the landlord, but another device was adopted viz. that of restricting the period of usufructuary mortgages to a definite period within which both the principal and interest of the debt should get extinguished. This arrangement failed in its purpose, as the moneylender could rack-rent the mortgagor if he was a tenant under him, during the period of the mortgage. Secondly, the tenant might lose interest in the land, or might be unfit to start cultivation when it was returned to him. The Deccan Commission of 1891 objected to the proposal on four grounds:

(1) That it would raise the rate of interest, (2) that a fixed term would operate harshly in some cases and a term left to the discretion of the judge would injure security, (3) that care would have to be taken to guard against fresh mortgages or the land being mortgaged twice over, and (4) that it would lead to an increase of out and out sales.

If the landlord's intervention by way of transfer fee and pre-emption right was to be stopped, then it was considered better to make the holdings non-transferable. But sub-leases are incidents of agricultural practice. So

(*Continued from last page*)

the consideration money, but sanctions 4% as distribution fee to the landholder for fixing the rent on portions of the holding sold to a purchaser. The Orissa Tenancy Amendment Act 1938, abolished the transfer fee and the right of the landlord to grant a written consent for sales.

¹ The Chief Commissioner's Note of the C. P. of 10th October, 1894 published in **Note on Land Transfer and Agricultural Indebtedness in India, p. 231.**

they were allowed for restricted periods and legitimate purposes. The objection to all forms of usufructuary mortgage and sublease is that it permits leasing of land to non-agriculturists. If in order to minimise this evil the period is restricted, the credit too which a tenant can raise gets restricted. An occupancy tenant cannot sublet for more than one year in the C. P. He may transfer his holding only to a co-tenant or heir otherwise than by a simple mortgage. The idea was to keep the land within the family, and hence it was thought fair to allow family transfers. These stringent provisions make it impossible for a tenant to raise credit except by annually sub-leasing the land. An annual sub-lease is alright for a tenant with a large holding and with a surplus income, as it helps him to get back the land. But in the case of tenants struggling from crop to crop, it makes it extremely difficult for them to raise any credit. Another result of these restrictions in the U. P. and the C. P. has been to throw the tenant completely to the subjection of the landlord. A landlord moneylender, unlike other moneylenders, had a kind of monopolist position in agricultural finance, as he could credit repayments to debts, and eject the tenant for arrears of rent.

One reason why the Tenancy Act expressly permitted sub-leases and usufructuary mortgages for definite periods was to enable the occupancy tenant to enter into transactions of transfer of land with a full knowledge of what he did. The case was not so in the case of simple mortgages, and conditional sales. They were contingent contracts that if the loan was not repaid, the land would be brought to sale, or the mortgage would be foreclosed and possession handed over to the mortgagee. Hence it was thought that sale of land in execution of decrees should be stopped. It is in this view that the Rent Law Commission in Bengal put forward the following suggestion in 1880. "A Mahajan who will readily lend a little money on a ryot's holding in the hope of ultimately realising a very considerable profit by foreclosing his mortgage will have no desire to purchase the same holding at anything like a reasonable price with the intention of becoming a capitalist farmer. In order to render effectual the prohibition against mortgaging, we have enacted that any such mortgage (conditional mortgages) shall be void to all intents and purposes and that no court of justice shall take cognizance thereof or give effect thereto in any judicial proceeding whatever (Sec. 20-d., clause d.); and we have further enacted that a right of occupancy though saleable in execution of a decree for its own rent shall not be in execution of any other decree (Sec. 20 Clause-a).

A non-transferable holding could not but be exempt from sale in execution of decrees. This has been provided for in Clause 42 of the U. P. Tenancy Bill, and Sec. 12 of the C. P. Tenancy Act.

Note 6 A

Statement showing cases regarding the declaration of sub-tenant holding land from a tenant to have right of an occupancy tenant (under Section 61 of the old Tenancy Act of the Central Provinces, and under Section 40 of the new Act.)

| YEAR | Number disposed of during the Year. | YEAR | Number disposed of during the Year. |
|-----------|---|-----------|---|
| 1899—1900 | } Figures not available. | 1918—1919 | 15 |
| 1900—1901 | | 1919—1920 | 5 |
| 1901—1902 | 22 | 1920—1921 | 7 |
| 1902—1903 | 71 | 1921—1922 | 19 |
| 1903—1904 | 16 | 1922—1923 | 16 |
| 1904—1905 | 26 | 1923—1924 | 14 |
| 1905—1906 | 20 | 1924—1925 | 43 |
| 1906—1907 | 20 | 1925—1926 | 23 |
| 1907—1908 | 17 | 1926—1927 | 19 |
| 1908—1909 | 27 | 1927—1928 | 14 |
| 1909—1910 | 29 | 1928—1929 | 9 |
| 1910—1911 | 10 | 1929—1930 | 13 |
| 1911—1912 | 15 | 1930—1931 | 11 |
| 1912—1913 | 26 | 1931—1932 | 6 |
| 1913—1914 | 18 | 1932—1933 | 18 |
| 1914—1915 | 20 | 1933—1934 | 29 |
| 1915—1916 | 15 | 1934—1935 | 10 |
| 1916—1917 | 6 | 1935—1936 | 14 |
| 1917—1918 | 6 | 1936—1937 | 19 |

CHAPTER VII

INSTALMENTS AND REDEMPTIONS

195 The civil law re instalments

The granting of instalments by courts and facilities for debtors to redeem their mortgages are the other devices adopted to minimise transfer of land to moneylenders. These devices are embodied in Moneylenders Acts. We are treating them here separately as they relate to the land policy of preserving the lands in the hands of agriculturists by preventing mortgages leading to a sale of land or to long possession by creditors. As the courts can minimise transfer of lands by granting instalments in suits against agriculturists, special provisions have been made for the guidance of courts in such suits. As the debtor should have the right to redeem a mortgage on his land, certain special rights have been given to him to apply to the courts or the Collector for redemption. These special provisions relating to instalments and redemptions are examined in this chapter.

At present the Civil Procedure Code permits the court to order repayments in instalments in money decrees. Money decrees may relate to secured or unsecured debts. They may be executed by attachment and sale of saleable properties if the amount decreed either in lump or instalments is not repaid on the due dates. The court cannot revise decrees without the consent of the decree-holder.¹

We will now examine the law as to what extent instalments can be granted in decrees other than money decrees. The decrees granted by a court are of two kinds in mortgage suits called preliminary and final. A mortgagee who has lent on a conditional sale mortgage can sue for foreclosure. A preliminary decree is granted giving time to the mortgagor to repay the amount determined as due. If the payment is not made, the mortgagee sues for a final decree. The mortgagor cannot thereafter redeem the property and he should put the mortgagee in possession of the mortgaged land. A mortgagee holding a simple mortgage first gets a money decree. When the decreed amount is not paid, he sues for sale of the mortgaged land. A preliminary decree is granted giving time to the debtor to repay the debt, and also directing that the mortgagee would be

¹ Rule 11, Order 20 C. P. C.

entitled for a final decree to have the mortgaged property sold and the amount realised. When the amount is not paid, the court grants a final decree for sale. In redemption suits too, the preliminary decree grants time to the mortgagor. When the amount is not repaid, the final decree for possession in the case of conditional sale mortgages, and for sale in the case of simple mortgages is granted to the mortgagee.

196 Instalments in preliminary decrees with retrospective effect

In the case of preliminary decrees for foreclosure, for sale, and for redemption, the Civil Procedure Code does not permit the ordering of instalments. But this is provided for in the Deccan Agriculturists' Relief Act (Sections 15 to 17), the U. P. Relief Act (Sec. 3), and the Bihar Moneylenders Act (Sections 14 and 15). Further these decrees, though passed before the commencement of the Act, may also be revised under these Acts, the object of the provision being to facilitate repayments in regard to past debts.¹

197 Instalments till confirmation of sale

The Deccan Agriculturists' Relief Act goes further in ordering instalments by using the words "in the course of any proceeding under a decree for redemption, foreclosure, or sale passed in any such suit," (Sec. 15-B). The words used in the Bihar Moneylenders Act empowering the courts to revise the decrees are: "in respect of loans including *any* decree in a suit relating to a mortgage by which a loan is secured." Under these two Acts even the final decrees for sale are revisable. The U. P. Agriculturists' Relief Act conforms to these provisions, but does not permit the grant of instalments in final decrees for sale which have not been fully satisfied, and passed after the commencement of the Act. Sec. 11 of the C. P. Moneylenders Act gives discretion to courts to fix instalments for decretal amounts. This section does not make it clear that the clause applies also to decrees when they are granted by a court, and not merely to a revision of the decrees already passed. The Act excludes loans which are charged on immoveable property. According to a recent judgment of the High Court in the Central Provinces, it seems, payment by instalments has been refused in suits for foreclosure, as

¹ See also clauses 12 and 13 in the Orissa Bill which closely follows the Bihar Moneylenders Act. The Bombay Moneylenders Bill provides for grant of instalments in decrees already passed whether before or after the Act comes into force. It does not make clear whether a court can grant a decree ordering instalments in preliminary and final decrees of foreclosure, sale, and redemption.

the section refers to judgment debtors, and as there can be no judgment debtors in foreclosure suits.

198 Need for regulating revision of instalments in different kinds of decrees and their execution

The grant of instalments in money decrees, and in preliminary decrees in mortgage suits of foreclosure and sale can be reasonably justified in suits against agriculturists whose income is dependent on unsteady harvests.

But it would not be proper to grant instalments in a money decree relating to a secured debt, and at the same time to grant another set of instalments in a preliminary decree for sale on the same debt though their revision and postponement, owing to special circumstances, may be permitted. The principle underlying revision of decrees in which instalments have been once ordered is that the circumstances of an agriculturist may change owing to failure of crops, and that the court should therefore be empowered to revise the instalments according to the changed circumstances. But there should be a limit to the revision of mortgage decrees by ordering instalments, particularly when once the date of sale of a saleable property has been proclaimed for recovering a decreed amount. No instalments should also be granted in final decrees for foreclosure and sale. Under these proposals, instalments are first ordered. They are revised, subject to a maximum, according to the changed circumstances of the debtor until the date of final decrees in mortgage suits, and the date of decree of sale of any property in the case of unsecured debts. Also a debtor can always repay the whole amount before a property is finally sold in execution of a decree. Under these circumstances, the power given to courts in certain provincial Acts perpetually to revise the decrees should be limited as aforesaid.¹

¹ The recent Bengal Moneylenders Bill has embodied detailed provisions regarding instalments. Suits are divided into two kinds, those in which preliminary decrees in foreclosure suits and preliminary decrees in suits for sale are passed, and other suits. The latter include suits for money decrees in respect of secured loans which, if not repaid, may be followed by suits for sale of the mortgaged property, which come under the first category. Instalments may be granted in the second class of suits by a court both when passing a decree, and on the application of the judgment-debtor, by revising a decree. In the latter case its execution will be stayed. The maximum number of instalments which will be granted by a court when passing a decree is twenty. No interest is payable on these decrees. The court may also order that if there is default in the payment of instalments,

(Contd. on next page)

199 Limits of instalments in redemption suits

The question of granting instalments in redemption suits of usufructuary mortgages requires some notice. As these mortgages under the proposals we have made will be limited in their period in law, redemption suits will grow less. As the purpose of these mortgages is to raise credit, the mortgagee should not be allowed to retain the land when the whole amount due to him is returned. But the Deccan Agriculturists' Relief Act goes further. According to it, the court could grant instalments in suits for redemption of usufructuary mortgages. Is it fair to change the security of a creditor from an usufructuary mortgage to a personal sense of honour to return a loan in instalments? If the whole amount due is repaid, there will be some justice in ordering the return of the land to the mortgagor.

The continuance of the mortgagee in possession will also have to be ordered to compensate for the years when there is a failure of crops. But where the mortgagee is himself prepared to return the land and be satisfied with the order of instalments made by the court, such a procedure may be adopted. This proposal follows the provisions of Sec. 68 of the Transfer of Property Act under which a mortgagee can sue the debtor personally for mortgage money where "he abandons his security and if necessary, retransfers the mortgaged property."

(*Contd. from last page*)

"that instalment and not the whole of the decretal amount shall be recoverable under the decree after the date of such default." (Clauses 33. 1, b. i and ii. and 3).

The maximum number of instalments which a court may grant in preliminary decrees relating to suits of foreclosure and sale is fixed at ten. Under the C. P. C. the court may extend in these suits the time fixed for payment from time to time "on good cause shown." The Bengal Bill provides that no more extension of time than the period fixed for the payment of these ten instalments should be granted by a court. If there is default in the payment of an instalment, it is to carry 3% interest from the date of the decree. While these provisions are to be welcomed in so far as they introduce some element of certainty in the number of instalments granted by a court, they permit the grant of twenty instalments in money decrees and an addition of another ten instalments when the mortgaged land is brought to sale owing to default in payment. Secondly, a perpetual granting of instalments relating to money decrees is possible, as they can be revised as often as is necessary by a court, thereby staying execution proceedings. There should be some limit to the number of instalments granted in the revision of money decrees. The restriction of instalments only to preliminary decrees of foreclosure and sale, preventing thereby the granting of the instalments in these decrees till the date of confirmation of possession, or sale of land, is another good provision in the bill.

200. Instalments to be obligatory

The granting of instalments should be made obligatory in suits against agriculturists or in redemption suits, unless the court has special reasons not to grant them which it should record in writing.¹

The maximum number of instalments should be fixed in law (vide paras. 192 and 193). Subject to this maximum, a court should have discretion to fix the instalment according to the circumstances of the debtor.

201. Creation of a charge during the pendency of instalments

When a court grants instalments, the land may be alienated by a debtor when they are being paid, and the creditor may be duped of his security, thereby no property being left for attachment and sale. The court should therefore have power to prevent the alienation of the property during the pendency of the instalments. Again the produce may be alienated without paying the instalment. A charge should be declared on the produce by the court, where necessary, during the pendency of the instalments.² Co-operative societies and licensed moneylenders may be given a fixed charge on the produce, allowing the debtor to sell on pain of imprisonment

1 Vide U. P. Agriculturists' Relief Act, Sec. 3.

The relief given by instalments under the U. P. Agriculturists' Relief Act will be apparent from the following statement for the year ending September 1936.

1. Applications pending 6,238.
2. Amount involved in lakhs—Rs. 86·81.
3. Applications instituted during the year—47,231.
4. Amount involved in lakhs—Rs. 348·5.
5. Total Applications 53,369.
6. Amount involved in lakhs—Rs. 435·31.
7. Number of cases in which instalments were fixed—34,725.
8. Amount in lakhs—Rs. 336·85.

Instalments were fixed during 1937-36 in 25,024 cases. The number of pending cases at the end of the year was 16,290. The following is the review of the Act in the U. P. Government Review of 24th January 1939. " The average amount of debt per case was Rs. 537 which shows that the provisions of the Act are being applied by large and small agriculturists alike.... The Act has given immediate relief to agriculturists whose cases have come to court by reduction in the exorbitant rate of interest, by the postponement of the execution proceedings, and by the fixation of instalments."

2. Vide U. P. Agriculturists Relief Act, Sec. 3·2.

for three months, if he does not repay the instalment due, out of the sale proceeds (vide para. 181).¹

202 Revision of Instalments by revision of decrees

Experience in the working of the clauses relating to instalments in the Deccan Agriculturists' Relief Act has shown the evil of uncertainty in the number of instalments granted by a court. It is necessary that wide variations in the amount of instalments according to the discretion of the court should be avoided, and the instalments should be realisable by a sale of produce from the land. The local Government should therefore, supply a schedule of multiples of land revenue or rent for different areas for arriving at the profit from land. The court should also have power to change the multiple of land revenue supplied by the Local Government to find out the net profit by a slight percentage according to local conditions, and any special circumstances of the debtor, and of his holdings. There should be provision for appeal to the Revenue Board as regards the multiple for finding the net profit. The instalments should be revisable by the court when agriculture is adversely affected in a certain year when the circumstances of the debtor change, when the land revenue or the rent payable on the holding is altered, and when a debtor makes advance payments. The percentage of reduction in instalments in the ratio of the failure of crops might also be provided under the rules.

The maximum number of instalments that might be granted when revising a decree should be fixed in law, though they may be varied within the maximum according to the needs of each individual

1. The Debt Conciliation Acts in the several provinces provide, that decrees in respect of debts incurred after the date of an agreement shall not be executed until the amounts mentioned in it are repaid, or it has ceased to subsist. This provision is nothing more than a temporary tying up of an agriculturist's income in respect of certain loans. The principle underlying it may be permanently and usefully adapted into the body of the civil law. Mysore which copied recently the Deccan Agriculturists' Relief Act in its Agricultural Relief Regulation 18 of 1928, and granted instalments on unsecured loans has learnt to its cost how debtors alienated their properties during the period when instalments were fixed for repayment. (The Indian Co-operative Review, Sept. 1937). Alienation of land during the pendency of the instalments should be therefore prevented. The best security for a loan therefore is a combination of the security of the land and the produce.

Under clause 75 of the Bombay Agricultural Debtors' Relief Bill No. XIII of 1939, no debtor member of a Resource Co-operative Society can alienate his standing crops or produce without the permission of the Society. Such alienation shall be void. Any debtor who does so shall be punishable with imprisonment extending to six months or with a fine extending upto Rs. 500.

case. The U. P. Agriculturists' Relief Act fixes 20 years for bigger agriculturists and four for smaller agriculturists. As all loans could not be equated in repayable instalments within such a short period, the amounts of instalments should naturally be high, and consequently they lead to default and sale of the holding. Instalment payment should only be permitted where a debt could be repaid out of the produce, and the balance due, by sale of other properties than land. The rules should specifically provide the conditions under which instalments might be revised by a court.¹

203 Fixation of maximum instalments to include the periods of leases by Collectors

In certain provinces decrees requiring a sale of land are transferred to collectors who are empowered to lease the lands upto a period of 20 years. The period of such leases should not exceed the total number of instalments fixed in law for their revision.

204 Summary

These proposals should help the creditor in realising his dues and the debtor in preserving his land from being sold. They make instalments obligatory instead of leaving it to the discretion of the court. They make clear to the creditor the number and the amount of instalments which might be granted by the court, and the maximum postponement of instalments that could be made. They make further clear the instalments that could be granted by revising the decrees, and till what stage in the proceedings such revision could be made. The indefinite period of time which a court could grant to a debtor 'on good cause shown' in preliminary decrees in mortgage suits is

¹ Vide appendix for rules under the Encumbered Estates Act U. P. 1934, regarding instalments.

Under the U. P. Agriculturists' Relief Act, Section 3.4. "Where the number of instalments allowed is 4 or 5 and any two instalments are in arrears, or where the number allowed is six or more and any three instalments are in arrears, the decree-holder may enforce payment of the whole amount then remaining due under the decree, and in the case of a decree for sale or foreclosure, apply that a final decree shall be passed." In these provisions the U. P. Government has attempted to define the limits of postponement of instalments. This would prove too rigid and it would be preferable to declare in law the maximum number of revisions of instalment that could be granted and leave the court to vary the period according to the circumstances of each case. Commenting on the possibilities of future recoveries of instalments, the U. P. report on revenue administration for 1936 says that, "while reduction of interest and instalments have undoubtedly given great relief to rural debtors, it still remains to be seen to what extent instalments will in fact be paid".

prevented by prescribing the maximum number of instalments that a court should grant in preliminary decrees.

205 Class of agriculturist and class of loans to whom an order of instalments is to apply

We have now to define the class of agriculturists to whom the proposals we have made regarding instalments should apply. The principle underlying revision of instalments in decrees already passed is that the circumstances of the agriculturist debtor might change for the worse, and that he might require a longer period to repay the amount. This plea cannot hold good in the case of the big holder to the extent to which it will in the case of the small holder. But none the less, risks in agriculture and consequently variations in income affect all the agriculturists. Hence the principle of ordering instalments should apply to all agriculturists.

But a large number of holders who own tiny bits of lands may require more credit for raising paying crops, for digging a well and for buying cattle. The amount of credit required in these cases may be higher than the value of the holding. The fact is recurring credit for a business is realised from its gross income. If the total liability fixed is in no way less than the sale value of the land, then credit is in no way restricted. We have to remember also that what a tenant-at-will gets as recurring credit for raising paying crops should not be barred to uneconomic holders having saleable rights in land. The *hope* of the small man to employ himself and make a living lies in the credit he commands owing to the productive character of his business and his business honesty.

We have already proposed that the lands, houses and sites of those holding only a subsistence holding should be exempt from forced sales. We have also to remember that, if the Local Government were to exempt the produce necessary for the subsistence of the cultivator and the cultivation of the farm till the next harvest, a larger exemption will have to be made in the case of the poor holders than big holders. If, along with these restrictions, the number of instalments is also fixed, the maximum credit, which uneconomic holders can command, will get further reduced. The number of instalments may have to be more in their case. No restriction should therefore apply in the case of uneconomic holders to whom the court might grant as many instalments as it thinks necessary for the repayment of the debt.

As regards the class of loans it is not known why loans made by banks or companies or mortgage loans or loans by traders should be excluded from the operation of these proposals;

These proposals apply to suits against agriculturists. If any special Act definitely excludes the jurisdiction of the civil courts, and provides for a special machinery, then such Acts should embody the proposals outlined here. The proposals should also apply to Government loans.

206 Limitation for suits

Along with the question of fixation of instalments by a court, we might also consider the desirability of any changes in the law of limitation regarding suits and applications for execution of decrees against an agriculturist. Any restriction of the period of limitation should not put undue pressure on a debtor in repaying a loan which requires a longer period to fructify in a business. Neither should it be so long as to slacken the efforts of a creditor to press for the recovery of a loan, and reduce the anxiety of a debtor promptly to repay a loan. A short period of limitation might also lead to renewals of bonds. But it has an advantage, it may be argued, that when a court is seized of a transaction in a suit, it may regularise the repayments by granting instalments on the basis of repaying capacity of the debtor. This is achieved by the right of a debtor to redeem a mortgage before the due date and to sue for accounts, who could therefore take the assistance of the court in revising the terms of his loans. According to the law of limitation the period is calculated from the date of last repayment. The date of payment of interest by a debtor which can be proved by a creditor even though it is not entered in the bond is also taken as the date of last repayment. In the case of principal, the date of payments should be noted in the bond under the existing law. The period of limitation is six years for registered bonds, and three years for unregistered bonds from the date of last payment of principal or interest. It is 12 years from the date when the money became due for loans charged on immoveable property. In order to stimulate the repayment of principal, it is desirable that the date of calculation for the period of limitation on bonds should be from the last date of the payment of principal. Further with a view to encourage the provision for instalments in bonds and make repayments easy, a creditor should be permitted to sue for the instalments due without prejudice to his suing again for the balance in case of default. Also in order to encourage punctual payment of interest, the court's power to decree interest may be limited to three years of arrears of interest. Such a rule will prevent the moneylender from accumulating the interest due to him for more than three years.¹

¹ Vide Note 8.

207 Limitation for execution of decrees

If decrees are to be executed mostly on the produce, there is equally a need to see that the procedure applying to execution of decrees helps towards repayment from the produce. Should any limit be placed on the period within which a decree should be executed on the produce? The Punjab Debtors' Protection Act, 1936 has reduced the period within which a decree should be executed from the date of its issue from 12 to six years in the case of agriculturist debtors. A long period for execution would take away the impetus in a debtor to earn and make himself a useful member of the society. If the date of execution of the decree was limited the decree-holder would try to realise the amounts promptly, the court would speed up executions, and the debtor would try to pay what he could.¹

The U. P. Agriculturists' Relief Act provides (barring certain exceptional cases) that "in no case shall a decree passed by a civil court against an agriculturist be executed by attachment or sale of agricultural produce after period of four years calculated from the date of filing of the first application for execution." It also provides that, where instalments are granted by a court, the limitation mentioned shall apply to each instalment. The limitation in the Punjab Act refers to the decrees that are executed against all the saleable properties of a debtor. That in the U. P. Act specifies the limitation when agricultural produce is attached and sold. The U. P. Act also permits an extension of the period when a debtor has sublet more than one quarter of the holding or when he has suffered from an agricultural calamity. The limitation of the period of execution is necessary so that a debtor might be discharged early enough to restart his life on a clean slate. In the interest of the agriculturist the attachment of agricultural produce for indefinite periods should not be permitted. The desirability of introducing these provisions in the other provinces might be considered.

REDEMPTION OF MORTGAGES**208 Redemption before due date**

As the object of a mortgage is to raise credit for one's requirements, the mortgage should be redeemable as soon as a debt is repaid. Redemption of a mortgage should not be prevented in law just because the due date for repayment as fixed in the deed has not arrived. The

¹ Vide discussions of the Legislative Council on this provision.

result of such a restriction is that a poor agriculturist is converted into a bank to keep the money of his creditor as a 'deposit' for a fixed term, while the rate of interest is dictated by the creditors unlike in the case of bank deposits, as the transaction is a loan and not a deposit. The right to redeem before the due date is provided for in the Deccan Agriculturists' Relief Act and the Punjab Land Alienation Act.

209 Redemption in cases of partial repayments

The next question arises whether this right of redemption should apply to debtors who repay only a portion of their debt due to the mortgagee. There can be no objection in the granting of instalments by a court in preliminary decrees of redemption relating to simple mortgages, as under our proposals, the court would be creating a charge on the property and on the produce till the instalments are repaid. The court will only be fixing the annual instalment, thereby ensuring steady repayments for the creditor. Mention has been already made in para. 199 showing that, while in respect of an usufructuary mortgage the land may be restored to the debtor if the full amount of the loan is repaid, it will be an infringement on the security of a creditor to grant instalments in redemption suits for the balance due on usufructuary mortgages.

210 Summary procedure by collectors

With a view to help the small agriculturists to redeem their lands by a repayment of the mortgage money, special Acts in the Punjab, N. W. F. P., and the U. P., provide for a summary procedure by the collector in respect of small holders, and mortgage suits of small values. This is a necessary provision to enable the poorer classes of agriculturists to make an application to the collector to know the state of their accounts, and to get back their lands when they make a full repayment of their debts due to the mortgagee. The taking of an account of the profits from land in settling the amount due in usufructuary mortgages will not be so complicated under the proposals made as we have prescribed a procedure for fixing net profits as multiples of land revenue or rent. The Collectors are empowered under these special Acts to eject a mortgagee who is on the mortgaged land after the prescribed term, or who has been repaid the debt due to him.

211 Classes to whom applicable

As regards the class of agriculturists to whom these provisions should apply, redemption before the due date for repayment and the granting of instalments in preliminary decrees relating to redemption

suits should apply to all agriculturists. For every agriculturist borrower should be in a position to get back his land when he repays his debt. Secondly the court should have an opportunity to grant instalments in respect of debt secured by simple mortgages without in any way affecting the security of the creditor.

The provision of a summary procedure through the agency of the Collector in restoring the mortgaged lands to a mortgagor, being a special form of relief for poorer agriculturists, should be applicable only to small holders.¹

¹ Vide Note on Redemption of Mortgages Acts in the several provinces.

Note 7

ORDERING OF INSTALMENTS UNDER THE ENCUMBERED ESTATES ACT IN THE U. P.

Elaborate rules have been formulated under the U. P. Encumbered Estates Act of 1934, for fixing the annual instalments on a loan to be repaid. The Act has not been worked; and we are therefore not in a position to assess the results of its working. The object of the rules is to fix the amount and number of instalments for the repayment of a loan. But the procedure prescribed is extremely complicated as the instalment amount is to be arrived at by the working of a formula, which will leave a sufficient extent of land with its produce for the maintenance of the debtor. The rules supply certain multiples with which to multiply the net profit. This would give the total sum which could be paid in instalments not exceeding 20 years, after leaving sufficient land for the debtor. The multiple may be varied slightly if the landlord has other sources of income and if the farm is paying. The multiple may be further varied according to the cost of management, regularity in the collection of rent, and the needs and circumstances of debtors. Generally the rental amount collected by the landlord is taken as the net profit. The rent over a series of years before and after the fall in prices is taken into consideration in deciding the rental of a land. The best method would be to calculate the net profits on land other than what is necessary for the maintenance of a debtor. The annual instalment should not exceed this figure. It may be varied on the grounds mentioned above. The rules might provide for the calculation of net profits.

Another check provided in fixing the annual instalment is that it will not be more than $\frac{2}{3}$ of the net income of the holding after deducting from the latter the land revenue demand on the land (Rule 44. V).

The instalments fixed are revisable on four conditions. During years of scarcity they may be reduced. Where the loss of produce is

between 6 annas and 8 annas in the rupee, a reduction of 4 annas in the instalment is authorised by the rules. If the loss is between 8 and 10 annas, a reduction of 8 annas is permitted. If the loss is between 10 and 12 annas, a reduction of 12 annas is permitted. If the loss is more than 12 annas, a reduction of 16 annas in the rupee is permitted. The instalments may again be readjusted if the land revenue is revised either at the settlement or otherwise. They may be readjusted if there had been an alteration in the "circumstances of a debtor." They may be readjusted if the debtor makes any advance payments in the Court. The instalments allotted to each property shall be a charge on the same until they are repaid. The main principle underlying the fixing of instalment value is that it should be such as would be repayable easily when spread over up to 20 instalments.

Note 8

THE LAW OF LIMITATION FOR SUITS

The old limitation law in Bombay fixed 12 years in the case of debts supported by a bond, and six years in the case of bonds not so supported. The Act of 1859 reduced the period to 6 and 3 years respectively with the further restriction, that if the bond was not registered, the period of limitation was to be 3 years. The Deccan Riots Commission of 1875 recommended 12 years for registered instruments, and six years for others. Their reasons were the following. The income of a rayat is uncertain and consequently he cannot repay punctually. The shorter the period of limitation, the greater will be the opportunity to renew a bond at compound interest. The longer the period, a creditor will not be forced to sue, and even though interest accumulates, he will lose substantially, as the law of Damdupat will cut off arrears of interest, when it amounts to more than the principal. But this argument presumes that most debtors will not even pay interest. In consonance with the recommendation of the Commission, the Deccan Agriculturists' Relief Act of 1879 provided for 12 years' limitation for registered instruments (it should be noted that under the Act all instruments were registered by village Registrars), and 6 years for others. The Deccan Commission which enquired into the working of the Act in 1891 disapproved of two

limitation laws in the province one for the Deccan, and another for other districts. From an analysis of suits they concluded that "while a period of 3 years is in many cases too short, the 12 year limit is generally considered too long." They quoted in their report Dr. Pollen's evidence in support of their contention. "Short accounts are useful as they show people how they stand. So long as accounts are fairly made up, and it is the duty of the court to see they are fairly made up, the debtor is not injured in any way." They recommended 3 years for simple money- or shop debts subject to the restriction that their period of limitation should not get extended by mere registration. The limitation for suits on bonds and accounts stated should be 6 years. They recommended the last provision for application all over India.

According to the Limitation Act of 1908 suits for recoveries of money are barred only after 3 years in the case of unregistered instruments, and 6 years in the case of registered instruments. The date of calculation of the period of limitation commences from the last date of payment of principal or interest. (In the case of loans charged on immoveable property the limitation is 12 years from the date when the money becomes due). The Act provides that part payment of principal should be entered in the note or bond by the debtor, and it is easy therefore to calculate the three year period of limitation. But a creditor may prove by oral evidence the part payment of interest even when it is not entered in the bond, and thereby claim the right of bringing suits even on time-barred loans. Another complication arises out of the provisions of the Act. The period of suits for a balance due on a mutual open and current account "where there have been reciprocal demands between the parties" is three years from the date of the last item admitted or proved as entered in the account. The interpretation of mutual accounts and reciprocal demands leads to varying circumstances in deciding the limitation period.¹

¹ Civil Justice Committee report page 401.

Note 9

REDEMPTION OF MORTGAGES ACTS

The earliest Act that provided for redemption of mortgages even before the due date and for granting instalments was the Deccan Agriculturists' Relief Act of 1879. The next enactment was the Punjab Land Alienation Act of 1900 which also permitted applications for redemption before the due date by scheduled agriculturist tribes in respect of mortgages made by them to others than those of their group (Sec. 7). The Punjab Redemption of Mortgages Act was passed in 1913 to help agriculturists other than the scheduled tribes to redeem their mortgages. The Act applied only to areas mortgaged upto 30 acres and to loans secured under the mortgage upto Rs. 1000/-. It empowered the collector to adopt a summary procedure. The difficulty in decisions of redemption suits lay in taking an account of land incomes and settling the amount due. If the collector finds that more should be paid, the petitioner should deposit it in 30 days. The Collector may dismiss a petition if he finds it necessary. On depositing the full amount as settled by him, he might eject the mortgagee and put the mortgagor in possession of the land. Aggrieved parties may institute suits in the courts. If the court finds in favour of the creditor, the sum still due will be a charge on the land that has been restored to the debtor. The deposited amount of a debtor shall not be attachable by any court. Interest on the amount due shall cease from the date of deposit. In the case of suits questioning the settlement of the Collector, the court may award any interest that it deems fit.

The number of redemptions of mortgages is certainly greater in the Punjab than in any other province, as the number of mortgages is also larger here in the absence of free sales of land. The Land Revenue Administration Report of 1937 says that the Act is popular among the agriculturists.

The following is the annual average cultivated area for every five years redeemed and mortgaged.¹

| | Redeemed Acres in lakhs | Mortgaged Acres in lakhs |
|-----------|----------------------------|-----------------------------|
| 1897-1901 | 2.33 | 3.39 |
| 1902—06 | 1.78 | 1.79 |
| 1907—11 | 2.74 | 2.11 |
| 1912—16 | 2.50 | 2.25 |
| 1917—21 | 2.76 | 2.32 |
| 1922—26 | 2.18 | 2.58 |
| 1927—31 | 1.63 | 2.71 |
| 1932—36 | 1.29 | 2.95 |
| 1936—37 | 1.78 | 2.69 |

The Royal Commission on Agriculture recommended that the Redemption of Mortgages Act should apply to all agriculturists without any restriction as to the amount of the loan or the area mortgaged, and that the provisions in the Act regarding redemption might be adopted in other provinces as well. Conformably to this recommendation, the Punjab Relief of Indebtedness Act of 1934 extended the scope of the mortgages made under the Punjab Redemption of Mortgages Act by including under it mortgaged areas of fifty acres and below and mortgage loans of Rs. 5000 and below.

The U. P. Government embodied the provisions in the Redemption of Mortgages Act in the Agriculturists' Relief Act of 1934. The collector was empowered to enquire into mortgages of the value of Rs. 500 and below, and the court, above the value of Rs. 500. Appeal is provided for. The Civil Procedure Code is to apply to all the proceedings for redemption of mortgages. It should be noted that summary redemption of mortgages is to apply to agriculturists paying a land revenue of Rs. 1,000 and below. The N. W. F. P. also passed the Redemption of Mortgages Act in 1935.

The Redemption of Mortgages Act, Punjab, and the Agriculturists Relief Act, U. P. do not permit a mortgagor to apply for redemption before the due date. The U. P. Relief Act has no provision to grant instalments in redemption suits. The Bihar Moneylenders' Act of 1938 applies to all mortgage suits, thereby covering redemption suits too. So instalments

¹ Vide Land Revenue Administration Report for 1937, P. lxii.

can be granted in respect of latter suits. During the year 1935-36, 840 mortgages of the value of Rs. 6.24 lakhs were redeemed under the U. P. Agriculturists' Relief Act. The redemption clauses in the Act have been used to the advantage of the debtor in the Lucknow division. Redemption of small amounts through revenue courts have saved trouble and expense to the debtor. The recent Land Revenue Administration Report for 1936 says that "applications for redemption of mortgages have been few." But if a mortgagor is only allowed to apply before the due date, and if instalments or temporary alienation to the mortgagees could be granted by the courts, the Act will be even better availed of by the agriculturists.

CHAPTER VIII

REGULATION OF MONEY-LENDING

A

CONTROL OF USURY

212 Early legislations

The earlier laws concentrated on protecting the debtor against unfair transactions and usurious rates of interest. The next set of laws tried to minimise these evils by providing for regulation of accounts and fixing the rate of interest. Recent legislation has gone a step further to bring money-lending under proper control by registration and licensing.

Rules for the adjustment of debts in 1772 during the time of Warren Hastings declared $37\frac{1}{2}\%$ on sums below Rs. 100, and 24% on sums above Rs. 100 as the established rates.

Compound interest arising from an intermediate adjustment of accounts to be deemed unlawful and prohibited when a debt is sued for upon a bond which shall be found to specify a higher rate of interest than the established rates, the interest shall be wholly forfeited to the debtor and the principal only recoverable and that all attempts to elude the law by deductions from the original loan under whatever denomination shall be punished by a forfeiture of one moiety of the amount of the bond to the Government and the other half to the debtor.¹

Prior to 1855 the maximum rate of interest was fixed at 12% in the various Regulations in Madras, Bombay and Bengal. Following the repeal of usury laws in England, Act 28 of 1855 was passed in India repealing the usury laws. Sec. 2 of the Act provided that the court should decree at the rates agreed to in the suits, or if no rates of interest were stipulated at a rate considered reasonable by the court. Barring the Deccan Agriculturists' Relief Act and the Punjab Land Alienation Act which permitted the court and the deputy commissioner respectively to grant a reasonable rate of interest, there were very few enactments to regulate interest rates.² Further the

1 Vide supplement to Calcutta Gazette, January 24, 1935, P. 142, para 3.

2 Under the Punjab Land Alienation Act, where an agriculturist mortgagor defaults in his payment to a non-agriculturist mortgagee holding a simple mortgage, the Deputy Commissioner may grant an usufructuary mortgage to the mortgagee upto a period of twenty years at simple interest "at such rate as he thinks reasonable."

new Act 28 of 1855 was interpreted by the courts that they were bound to grant the stipulated interest. Consequently, the Hindu law of *Damdapat* was set aside. Secondly, the courts refused to take into consideration any acts of coercion, fraud and undue influence, as the agreed rate should be decreed according to the new Act.

213 Recommendations of the Deccan Commission

The Commission appointed in 1891 to enquire into the working of the Deccan Agriculturists' Relief Act was also requested to make recommendations about its applicability to other provinces. Not only did they recommend its introduction in other provinces with similar conditions, but they made certain proposals for changes in the civil law of the country. The one was that a contract should be voidable under the Indian Contracts Act if the creditor had taken advantage of the simplicity and need of the debtor. The second was that the Indian Evidence Act should be amended so that when the parties to a transaction are not of an equal status, the burden of "proving good faith should lie on the person who had the advantage." Thirdly, they proposed an amendment of the Act for the repeal of usury laws that "agreements to pay interest should be voidable on the same grounds as those on which other contracts are voidable", and that the courts should have power to reopen unconscionable transactions.

After consulting Local Governments, the Government of India amended the Contract Act in 1899 declaring void transactions in which undue influence was exercised, or where there were unconscionable bargains, or where the bargains included a penalty. Undue influence was defined in the following terms. "Where the relations between two parties were such that one party was in a position to dominate the will of the other and used that advantage unfairly, then the contract might be said to be induced by undue influence".

214 The genesis of the Usurious Loans Act of 1918

But the provision in the Indian Contract Act was hardly of much use to an impecunious and ignorant debtor who would never have the courage to sue a moneylender in a court, still less let in evidence about the overwriting of bonds or excessive rate of interest. According to the decisions of the High Courts and the Privy Council, "subordinate courts had no power to interfere with contracts solemnly entered upon, nor rate of interest could be reduced unless certain things could be proved". The Contract Act proved of little use against the frauds and abuses in moneylending. The judges of the Bengal High Court, and the Madras Government pressed for

some legislation in 1906 against exorbitant interest rates. They suggested three methods. The rates of interest should be limited by law. The principle of Damdupat should be embodied in law. The courts should have powers to reopen the accounts and determine the original principal to be paid. Meanwhile the English Moneylenders' Act of 1900 granted the courts equitable powers of reopening contracts, "where the interest was excessive and the transaction was hard and unconscionable." The Government of India introduced a measure similar to this Act called the Usurious Loans Act in 1918.¹

215 Provisions of the Act

The Act was to apply in suits by *creditors* "for the recovery of a loan, and for the enforcement of securities or agreements taken after the commencement of the Act." A debtor could not get relief under the Act in respect of small loans except by driving the creditor to the court by refusing to repay a loan. He could not get relief by suing for accounts or redemption of a mortgage. The Act was amended in 1926 enabling a debtor to apply for redemption of mortgages entered into after the commencement of the Act and thus to get its benefit.

216 Defects in working

The Act gave no retrospective effect to its provisions. Under the Act the court *might* "reopen a transaction if it had reasons to believe that the rate of interest was excessive and that the transaction was unfair." The section was interpreted to mean that the court could not *suo motu* consider these matters, but that the party should apply. So the courts could not apply the Act in *ex parte* cases. The discretion vested in them was hardly exercised. They had little time to make exhaustive enquiries. Where a bond was over-written and there was failure of consideration, the court was helpless, unless extraneous evidence was strong enough to prove what was actually lent. The Act permitted reopening of accounts, firstly for 6 years under the Act of 1918, and for 12 years under the Act of 1926. But decreed amounts could in no way be reduced. These restrictions set a limit to the reopening of accounts. The Act permitted arguments on the question whether a rate was unduly high. Further, the court had to consider a rate excessive in relation to the prevailing rate. Also reopening of accounts might be made difficult, owing to the bonds taken in different names of creditors at each renewal, namely of a partner, the agent, the clerk, or a relation. The debtor's name might be shown differently

1 Vide discussions in the Imperial Legislative Council.

by making the new loan as a joint loan, or in the name of the surety. Previous documents might not be referred to in the new bond.¹ It was also difficult to establish the unfairness of a transaction. The debtors hardly used the Act for their benefit. For reopening a transaction, both the conditions of excessive interest and unfairness of the transaction should be proved.

If the court decided on the fact of existence of these two conditions, then it was empowered to give a certain relief to the debtors. Accounts might be reopened upto a period of twelve years from the date of the transaction even in the case of renewed loans. The excessive interest might be annulled. The excess over the fair rate already paid would be adjusted to principal, and if there was any over-payment after making the adjustment, it should be refunded by the creditor. (Sec. 3.2).² The court might set aside, revise or alter any security given or agreement made in respect of a loan. If the creditor has parted with the security, "the court may order him to indemnify the debtor in such manner and to such extent as it may deem just." Though the Act provided for substantial relief to the debtor, the conditions imposed regarding the determination of an unfair transaction nullified its application to a large extent. The Royal Commission on Agriculture suggested an enquiry into its working so as to make it helpful to the agriculturist debtor.²

217 Recommendations of the Banking Enquiry Committee

The Banking Enquiry Committees investigated the working of the Act and they made the following suggestions. Where there was an unconscionable transaction, the court must reopen the accounts and grant the relief provided in the Act. Such a reopening should not be conditional on the existence both of an unfair transaction and

1 The cunning creditor, in order to avoid the effects of drastic curtailments from his claim in a court of law, now started various underhand practices like advancing only Rs. 80 or Rs. 50 for every bond of Rs. 100, inserting monstrous figures of part and future interests in the documents, deducting interest in advance, taking collateral securities of pawn or pledge of cattle and ornaments for items included in the consolidated amount in the document, taking possession of debtors' land in lieu of interest so as to secure about 50 to 75 per cent. per annum etc. The Usurious Loans Act thus failed in its mission and the debtor was plunged into his present-day indebtedness. Report of Narasinghpur Debt Conciliation Board, C. P. 1937, p. 5.

2 Under the Bengal M. L. Bill, 1939, Clause 34 (d), the borrower will be released from liabilities owed over the amount determined as due, interest being calculated at prescribed rates under Sec. 28 (vide foot note to para. 255 on 'retrospective effect' in the section under rates of interest). If more has been paid or allowed in account after 1-1-39, the court may order its refund by the creditor. (Clause 34. d).

an excessive rate of interest, but it should be done when either of these facts is proved. The usurious rate should be defined. A debtor should have the right to sue for an account in respect of unsecured loans. Compound interest should be prohibited. If the courts are unable to find time to investigate account, the subordinate judiciary should be strengthened. The law of Damdupat should be widely applied.

218 Prescription of the usurious rate

Based on these recommendations, all the amended Usurious Loans Acts provide now that the court should reopen the accounts either when the interest is excessive, or the transaction is unfair.¹ But as the courts were unwilling to exercise their discretion in deciding what an excessive rate is, the Act has prescribed the rates which should be deemed usurious. "The civil justice report for Agra for 1937 says that some District Judges have pointed out that the rates of interest fixed by the Usurious Loans Act 22 of 1934 are not uniform, and recommended that in order to be beneficial a rate should be fixed by the legislature." We doubt the efficacy of this recommendation as the principle in fixing a usurious rate is to leave a wide discretion to the court to grant a reasonable interest, the rate being only a guidance to the courts. It should be noted that usurious rates do not in any way prevent a court from deeming those below such rates as excessive. With a view to give latitude to the plaintiff to prove that a rate was not excessive even though it was higher than the prescribed rate, some of the Acts provide that the prescribed rate shall be presumed to be usurious unless rebutted.²

219 Reopening of decrees barred

One of the principal clauses in the Usurious Loans Act is that when reopening an account 'the court shall not do anything which affects any decree of a court.' This is a wholesome principle particularly when 20 years have passed since the passing of the Act, and we should therefore, expect the courts to have granted the decrees by a due application of its provisions. But the C. P. Reduction of Interest Act, 1936 provides that the sum due under decrees may be revised by applying its provisions and calculating interest at the scheduled rate from 1-1-1932, notwithstanding the provision in the Usurious Loans Act that decrees shall not be reopened. A recent amending Bill of this Act says that there shall be no appeal

1 Vide Note 10 on usurious rates of interest in all provinces.

2 "Such presumption may be rebutted by proof of special circumstances justifying the rate of interest". The Madras Usurious Loans Act of 1936

against an order of the court amending a decree passed by it.¹ The Debt Relief Acts (Madras & U. P.) have provided for reopening of the decrees and calculation of interest at prescribed rates. While this may be justifiable as a temporary remedy in a scheme of liquidation of past debts, permanent measures such as Moneylenders' Acts should not allow reopening of decrees and reduction of the decreed amounts, as otherwise there would be no finality in the decrees of courts.

220 Provision to sue for accounts

The Act at present empowers the court to apply its provisions only when the creditor sues, or when a debtor sues for redemption of mortgages. The U. P. Relief Act, and the Bombay and Bengal Moneylender' Bills provide for the application of the provisions in suits for accounts by debtors. But redemption suits are possible only after the mortgage amount is due, and when the debtor is in a position to repay it. A debtor cannot claim the benefits of the Act when he wants to know how his account stands in other cases. The right of suing for accounts in respect of all loans should be therefore included in Usurious Loans Acts.²

Vide also Chapter IX, the para. on the working of the Relief Act, 1938 in Madras where want of a provision to sue for accounts prevents debtors from applying to the court for getting the relief provided under the Act.

221 No need to restrict the class of suits

The application of the Act is narrowed by defining the class of suits to which it will apply. As the Act has been in operation for the last 20 years, there is nothing objectionable in applying the provisions to all suits relating to loans issued since 1918. Under the Punjab Relief of Indebtedness Act VII of 1934, its provisions are applicable even to suits pending at the commencement of the Act 1918 (Sec. 6). The Bengal Moneylenders' Act Sec. 3 and the U. P. Usurious Loans Act Sec. 2,3 apply the provisions to loans made after

1 The recent Orissa Bill has a special provision that the prescribed rates of interest shall apply only in respect of decrees passed from 1-4-1936 and after, and on the application of the judgment-debtor. Under the Bengal Moneylenders' Bill, decrees other than those passed on or after 1-1-1939 cannot be reopened. The latter class of decrees may be reopened by the court and interest calculated according to prescribed rates by a court during any proceedings in execution of such decrees, or on an application for review made within one year, or in pending appeals relating to such decrees.

2 Vide Sec. 1. (2) of the English money Lenders' Act 1900

the commencement of the Act 1918. The Bombay MoneyLenders' Bill restricts the clause relating to the reopening of transactions to suits for recoveries of loans or enforcement or redemption of securities made after the commencement of the Act. The amendment of the Bengal moneylenders' Bill by the select committee has applied its provisions to all loans made before or after the commencement of the Act.

222 Rules of usury to apply to all loans

Usury should be controlled wherever it is practised. There can be no classification of loans restricting its application. Wherever the Usurious Loans Act has been amended, there has been no exclusion of any kind of loans. But where the provisions of the Usurious Loans Acts have been incorporated in Moneylenders' Acts, the loans excluded under the latter for other purposes have also got excluded in respect of the provisions relating to usury. In the Punjab the clauses relating to usurious loans are not to apply to companies, Banks, and the Imperial Bank of India. We have given in a separate note a list of loans excluded from the operation of Moneylenders' Acts. The loans so excluded cannot get the benefit of the provisions relating to usury under the Bihar Moneylenders' Act, and the Orissa and Bombay Bills. Loans issued by Government and Local Bodies may no doubt be excluded from the operation of the Usurious Loans Act. The court should have power to decide in all other cases whether any transaction is unfair, and if so, to grant the relief provided in the Act.

223 No limitation of time to be placed on the investigation of accounts

A limit of time is placed in the investigation of accounts relating to original or renewed loans from the date of the transaction. The U. P. Usurious Loans' Act fixes it at 17 years, while the other provincial Acts fix it at 12 years as provided in the original Act. The Bombay Bill fixes it at 3 years from the date of the suit (Sec. 34). The hands of the court should not be unduly tied up in this matter, and it is preferable to allow the taking of account at least from 1918, the year of commencement of the Usurious Loans Act. The Select Committee on the Orissa Bill has removed the time limit in the opening of accounts by deleting the proviso clause in the section.

224 Working of the amended provincial Acts

The Acts had no doubt a beneficent effect on some creditors who have begun to charge fair rates of interest* The Punjab civil

* Civil justice report for 1937 for C. P. and Berar, Para 19,

justice reports for 1935 and 1936 say that greater use is being made of the Usurious Loans Act than in the past years, "but it is reported that moneylenders generally do not sue for interest in excess of that now fixed by the Relief of Indebtedness Act."¹

The report for 1936 says that "the necessity for its application does not arise frequently owing to the fact that the maximum rate of interest has now been fixed under the Punjab Relief of Indebtedness Act, and excessive rate of interest is not charged by moneylenders". The Civil Justice reports of Oudh and C. P. for 1937 mention that the enactment of various Debt Acts has reduced the importance of the Usurious Loans Act in putting down usury. But the Land Revenue report of the U. P. for 1936 mentions that "it is reported to have afforded considerable relief to debtors of all classes, its provisions being often applied to claims before complaints are filed, with a consequent reduction in litigation. Relief under the Act has often been given in *ex parte* cases also, and it has clearly had some effect in checking usury."²

B

REGULATION OF ACCOUNTS

225. Maintenance of registers

The Royal Commission on Agriculture recommended the enactment of Money-Lenders' Acts on the lines of the English Money-Lenders' Act of 1927. The Banking Enquiry Committee reports also made recommendations regarding the prevention of various abuses in money-lending. The Government of India held a Conference of representatives of Local Governments in April 1934 and decided that the regulation of money-lending might be left to the discretion of these governments. Almost all the provinces have passed laws on the basis of the Punjab Regulation of Accounts 1930.³

1 Punjab Civil Justice Report, 1936, P. 7.

2 Out of a total of 18,432 applications in the U. P. interest was reduced in 7,774 cases, and the balance to be disposed at the end of the year 1936 was 2,666. During the year ending Sep. 1937, there was a fall in the number of applications from 16,000 to 13,000. Out of 15,503 cases for disposal, the rate of interest was reduced in 6,728, and 6,424 were otherwise disposed of.

3 Writing on the immediate results of the Act, the Punjab Civil Justice Administration Report for 1932 says :

"As noted last year, the passing of the Punjab Regulation of Accounts Act is also to some extent responsible for this increased litigation in as much

(Continued on next page)

All the money-lenders' Acts make it obligatory on the money-lender to maintain proper registers of his transactions. The details regarding the form of accounting vary in some of the Acts. But the following are the usual provisions. The account book should indicate the account of each debtor separately. All the loans advanced to him should be entered therein. The principal and interest shall be shown separately. "The money lenders shall not in the absence of agreement include interest in 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 (3. 2. C. P. and Punjab Acts). The Madras Debtors' Protection Act says that the rate percent of interest charged on the loan should be specified. The recent Bihar Money Lenders' Act provides that "the other terms which may be agreed upon between the money-lender and the debtor should also be recorded." The Bombay Bill has a clear provision that a cash book and a ledger should be maintained in prescribed forms and they shall be written in the regular course of business.¹

226. Issue of receipts

The issue of receipts for repayments is obligatory in some of the Acts. The C. P. Act makes it incumbent that it should be delivered forthwith. As receipts may not be ordinarily demanded by the debtors, the use of receipt books with counterfoils duly numbered may be prescribed if this rule is to be worked in practice. The debtor will be amply protected if he insisted and got a receipt for all his payments. The whole trouble of disputes over transactions arises by the debtor not demanding receipts. A provision that the counterfoil of the receipt should be signed by whosoever makes the payment personally, might help to ensure the genuineness of the receipts.¹

(Continued from last page)

as many village money-lenders being more or less illiterate and uncertain about the exact purport and effect of the Act, are reported to have hastened to the courts with a view to realising their dues and closing their businesses."

1 "It is the experience of the courts in administering the Deccan Agriculturists' Relief Act that the creditors and moneylenders are astute and clever enough to manipulate their accounts in such a way as to conceal the real nature of the transaction from the court..."—Extract from the opinion of the District Judge, Thana on the Money Lenders' Bill No. VII of 1934 dated 20-10-1934.

Supply of uniform account books with pages serially numbered and sealed by the subregistrar is suggested by the joint subordinate judge, Nasik, in his opinion on the same bill.

227. The noting of discharges on the bond

The Bombay Money Lenders' Bill enjoins on the moneylender that "upon repayment of the loan in full, the moneylender shall mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the debtor as security." The introduction of such a provision making it an offence if not complied with may be evaded by the lower class of moneylenders, but as a legal statement of the rights of a debtor it may be helpful if the latter will only know to demand the discharge to be noted in the bond.

228 Submission of periodical returns to debtors

Some of the Acts make it obligatory on the moneylender to furnish a statement of accounts to the debtor (Punjab, U. P. and C. P. Acts), while others provide for it on the requisition of the debtor, and on payment of a small fee (Bengal Moneylenders' Act Sec. 7, Assam Moneylenders' Act Sec. 7-1, and Madras Debtors' Protection Act 3. I. 4. 2). The Bombay moneylenders' Bill provides for furnishing a clear statement to the debtor of such an account every year. It should state the amount due at the commencement of the year, the payments received with dates, the amount outstanding, and the amount overdue both under principal and interest. The bill prescribes a fee for such statements which is to be notified under the rules. It also provides for special fees if a debtor requires a moneylender to send him a statement of account at any time.¹

While levy of a fee when a debtor demands an account may be proper, its levy for the despatch to the debtor of an annual statement of accounts by the moneylender will only increase the price of loans to the debtor. If such annual accounts are to be sent by registered post, it will increase the cost still further to him.²

The furnishing of annual statements to debtors is part of the normal work of any bank. The moneylender should be prepared

1 The Bengal Moneylenders Bill (July 18, 1938) has also similar provisions. The Orissa Moneylenders' Bill (Aug. 23, 1938) has no provision either for furnishing an annual account to the debtor, or a statement of particulars when demanded by the latter.

2 Moneylenders in the Chanda division of C. P. have misconstrued this provision that the periodical statements of individual debts owed to them should be sent to Government, and to avoid this trouble, have stopped lending to tenants who were thereby suffering for want of credit facilities. Vide Land Revenue Administration Report C. P., 1937, P. 51.

to do the same. It is better to rely on the moneylender to issue by post the annual statement of a debtor's position in a prescribed form, and to provide merely for the maintenance of a despatch book showing the parties to whom the statements have been forwarded.

The best method of ensuring correct accounts would be the introduction of the Pass Book System. The entries in the Pass Book will be a guarantee of repayments, and will eliminate the need for sending a copy of the document and annual accounts by registered post. The Pass Book might also state the terms of the loans.

229 Supply of copies of loan documents

Some of the Acts provide that a copy of the loan document should be supplied to the debtor (The U. P. Agriculturists' Relief Act Sec. 39). But the section applies in the U. P. only to landholders paying a land revenue of Rs. 1000 and less. The Bihar Money-Lenders' Act of 1938 makes it obligatory on the creditor to deliver or send by registered post to the debtor or his agent within 15 days of advancing the loan, information stating the date, principal of the loan, interest rate per cent, and any other terms agreed on between the moneylender and debtor. (Sec. 7. c.) The Moneylenders' Bills of Bombay and Bengal also provide for the same. In Assam a copy of the loan document is to be delivered on demand by the debtor. (Sec. 7 (2)) If the costs to the debtor are in no way to increase by the operation of this clause, his signature may be taken in the loan document itself for having received the copy.

Some of the Acts prescribe the language in which the returns are to be sent to the debtor. The Bengal Bill provides that Bengali should be the language in which accounts should be maintained, and returns should be forwarded.

230 Certified accounts admissible as evidence

The Money-Lenders' Acts provide that copies of entries in the account books of the moneylenders certified in the prescribed manner shall be admissible in evidence.

In order to prevent a presumption that, because statements of accounts are forwarded, the debtor should, therefore, be bound by them if he did not object to them within a reasonable time, all the Acts provide that "failure to protest shall not by itself be deemed to be an admission of correctness of the account."

231 Penalties for non-compliance with provisions

Certain penalties are provided for non-compliance with these provisions. Where accounts are not written in the prescribed form,

a whole or portion of the interest found due as well as costs may be disallowed. "Or in computing the amount of interest due upon the loan, the court may exclude any period for which the moneylender omitted to comply with the provisions." Under the U. P. Agriculturists' Relief Act, the court, in cases of wilful failure to give receipts, or to credit payments on the bonds, may award the debtor such compensation not exceeding double the amount of such payment as it may consider proper (Sec. 35. 2). The Bihar Money-lenders' Act of 1938 and the recent Orissa bill provide the penalty for not maintaining the prescribed accounts as "imprisonment which may extend to one year or with fine not exceeding five hundred rupees or both." The punishment for not complying with the other provisions, of issue of receipts, delivery of a copy of the terms of the bond, and an annual statement of accounts to the debtor is fixed at a fine not exceeding five hundred rupees.¹

Though these penalties are very severe in some of the Acts, it is better they are specifically provided by declaring a breach of rules as offences in law instead of leaving the punishment to accrue through a suit, and to the discretion vested in the court to convict a money-lender. For a money-lender may not sue, and no punishment may be possible in such cases for contravening the provisions.

232 Working of the provisions

It is found that the sections relating to maintenance of accounts have proved a dead letter in the U. P. Similar is the experience in the working of the provisions of the Deccan Agriculturists' Relief Act. The Court can disallow costs and interest only if it is proved that receipts have not been issued, and annual account has not been supplied to a debtor. The civil justice report of the Central Provinces for the year ending 1937 says that there were only a few cases of this class that came before the courts. The debtor hardly pleads the fact of his not having received receipts or accounts.

In the Punjab the working of the Regulation of Accounts Act 1930, has led to two results. Village moneylenders generally disregard sec. 3 which enjoins on them to maintain accounts; consequently, "there is an increase in the number of contested cases." Secondly, "as an average moneylender does not keep accounts and as he knows that he will not be allowed interests and costs, he tries to settle disputes outside court and this is one of the many causes of decrease in the institution of suits for debt."²

1-Bihar Moneylenders Act Sec. 20, and Orissa Moneylenders bill Clause 19.

2-Vide Civil Justice Reports of the Punjab for 1935 and 1936.

The Punjab Civil Justice Report for 1937 says that "some district judges report that in order to escape the penalties provided by the Act for failure to comply with its provisions, there is a general tendency to have pronotes or bahi entries executed for twice or thrice the amount actually advanced...Some district judges report that debtors have been able to get considerable relief in the matter of interest and costs but moneylenders, especially the petty ones, have been hard hit with the result that most of them are gradually disappearing from the field".

Legislations of this type are educative instructions rather than penalising laws. Such instructions are better carried out by inspection and audit. The best of legislations to regulate money-lending may be neutralised by the necessities of the debtor and the greed of the creditor. We are stating these experiences not in the view of disapproving the provisions of any penalty, but that we may understand its limitations, and supplement it by a periodical inspection of moneylending.¹

C

PENALTIES AND REMEDIES FOR ABUSES IN MONEYLENDING

233 Prohibition of Illegitimate Charges

All the Money-lender's Acts have some special provisions to prevent the various kinds of abuses that are prevalent in rural money-lending.

(1) The Assam Money-lenders' Act 1934, (sec. 5), the Bombay Moneylenders' Bill 1938 (Cl. 31), and the Bengal Money-lenders' Bill 1939. (Cl. 32) prohibit charges for expenses on loans, saving of course certain legitimate items incurred for the grant of a loan. The Bihar Act provides for punishment with fine if any deductions are made from a loan "such as salami, batta, gadiana, or other exactions of a similar nature by whatever name called or known" (Sec. 21).²

Possibly this section may be interpreted that overwriting of the principal amount in bonds is one of the exactions of a moneylender.

1 Provisions such as these will only serve as a sign-manual to unscrupulous money-lenders in that they will provide them with directions as it were as to what evidence they are to keep ready in case the matter is taken to a civil court. Courts also will be helpless when the only material in the cases would be the manipulated accounts of the sowcar". Extract from the opinion of the Bijapur District Judge dated 23-10-1935 on a private money-lenders' bill vii of 1934.

2 The Orissa bill follows the same provisions.

and therefore its penal provisions apply. But it is better that the Act itself makes a special provision penalising the making of false claims under principal (Vide para 246).

234 Written documents for loans

Under the U. P. Agriculturists' Relief Act every loan shall be evidenced by a written document.

According to the Transfer of Property Act a mortgage of less than one hundred rupees value need not be registered and attested, but may be executed by delivery of property. The Deccan Agriculturists' Relief Act provides that *all* mortgages, liens, and charges should be written and signed by the party. While this clause may be workable, the other requiring written documents for any loan is not practicable. But the U.P. Agriculturists' Relief Act, 1934 excludes small loans of Rs. 20 and below which are paid in equated instalments, and also kind loans whose interest rate does not exceed 25%. A similar provision, but excluding all loans in cash or kind of small sums, may be necessary. Also as loans in running accounts by way of goods and cash supplied cannot be brought under this rule, they will have to be excluded from its operation. Loans taken by pawning goods may also be excluded, as we have proposed special provisions to regulate them.

235 Burden of proof of consideration

The Bihar Money-lenders' Act has a special provision that whenever a loan is paid in cash on registered documents, it should be paid in the presence of the subregistrar who should endorse on the same to that effect (Sc. 26).¹

Under the Punjab Debtors' Protection Act II of 1936, "the burden of proving that any consideration alleged to have been paid by a moneylender actually passed shall be on him" except under two conditions. The burden of proof shall not lie on the money-lender if the consideration is acknowledged by the debtor in his own handwriting. It shall also not lie on him if the registering officer registering a document under the Registration Act endorses that the actual payment of money was made before him.²

1 Vide Bengal Moneylenders bill Clause 37 A.

2 As the Debtors' Protection Act excludes from its operation the following loans, this provision will not apply to them.

1. Loans by Government, Local Bodies, Co-operative Societies, Banks and Companies subject to audit;
2. loans advanced to a trader;
3. advances made on cheques and bills of exchange;
4. a transaction which is, in substance, a mortgage or a sale of immovable property.

It is not known why this partiality is shown only to those who cannot sign their names. This provision is only another way of saying that a defendant in such cases should be examined if desired by the court, and that he should admit the fact of his having received a loan. Where he does not so admit, the court has to investigate the veracity of the loan, and the creditor should be able to prove his payment of the consideration money.

236 Advertisements to borrow

The Assam Moneylenders' Act, 1934 prohibits invitation to borrow by advertisements. Agents and canvassers should not be employed for the purpose. The penalty provided for persons acting against these rules is three months' imprisonment, or a fine not exceeding Rs. 300 or both. Any loan that is proved to have been incurred as a result of such advertisement or the inducements of agents is illegal. It is doubtful whether Indian rural conditions require a preventive clause of this type, when the ordinary peasant suffers little from want of facilities for borrowing, and more for want of credit. Perhaps this section has crept into the Assam Moneylenders' Act as a result of incorporating all the provisions of the English Moneylenders' Act of 1927.

237 Recognition of payments by a judgment-debtor out of court

Based on the provisions of the Deccan Agriculturists' Relief Act, which saves payments out of court by debtors on the decrees of a court, which, under the civil procedure code, are void if not certified by the decreeholder within 90 days from the date of repayment by a debtor (C. C. P. Order 21, Rule 2), the Punjab Relief of Indebtedness Act provides that this latter rule shall not apply to payments made in any proceedings under it (Sec. 71).

238 Contracts to make repayments outside the province void

It may happen that in order to evade the provisions of Moneylenders' Acts, a contract may be made agreeing to make payments on a loan outside the province. Such contracts are declared void under Sec. 23 of the Bihar Moneylenders' Act, 1938, and Sec. 22 of the Orissa Moneylenders' Bill 1939.¹

239. Protection against molestation and intimidation.

The Debtors' Protection Act C. P. 1937 protects debtors against molestation and intimidation. The offence is cognizable and bailable,

¹ The Orissa bill has added an amendment in the select committee stage that "this section (22) shall not apply to contracts in respect of goods supplied on khata or credit."

and the courts can take cognizance of the offence only on the report of a police officer. The Act applies to the whole province. It is intended to prevent the violent methods employed by Kabulis and the lower class of moneylenders in recovering small loans from the poorer classes, particularly the employees in mills. The working of the Act in the city of Nagpur has shown how much relief it could give to the labourers on the pay day when they are watched and pursued in the mill areas by this class of moneylenders. The Bombay and Bengal Moneylenders' Bills have similar provisions (Sec. 38). The successful working of this clause will depend on a clear definition of the word 'molestation.' Molestation also includes abetting of molestation. Both the C. P. Act and the Bombay and Bengal Bills have provided for such an elaborate definition as to make it impossible for a moneylender to plead that his loitering about the premises of a debtor is not molestation.

240 Forum of suits against agriculturists

Some of the Acts provide that suits against agriculturists shall be tried ordinarily in such courts within whose jurisdiction they reside. Experience has shown that moneylenders sue in distant courts, get *ex parte* decrees, and execute them through the courts near to the residence of the debtor. This provision has been found to be a necessary one to prevent moneylenders stipulating in the bond that a debtor might be sued in districts other than those of his residence.¹

241 Provision to receive repayments by debtors

While a bank would receive repayments of loans at any time before the due date, moneylenders generally would like to avoid it for many reasons if their client is creditworthy. The debtor, therefore, should have facilities to repay the loans when the moneylender would not take it. Sec. 83 of the Transfer of Property Act permits deposit of principal money due on mortgage in a court, only after it becomes due. Some of the Debtors' Relief Acts in the Provinces have made a provision for debtors to pay in court what is due to a moneylender. The Punjab Relief of Indebtedness Act provides in the case of agriculturists that any person who owes money may at any time deposit in court a sum of money in full or in part to be paid to his creditor, and interest shall cease to run from that date (Sec. 31 & 32). The Bengal Moneylenders' Act of 1933 provides that, where a moneylender refuses to receive money sent by postal money order by a debtor, he may deposit it in the court. Similar provision is provided

¹ Sec. 11. Deccan Agriculturists' Relief Act, and Sec. 7. U. P. Agriculturists' Relief Act. Vide also para 364.

for, also in the Assam Moneylenders' Act (Sec. 10¹). The U. P. Agriculturists' Relief Act provides that a debtor may deposit in the court not less than one-fourth of the amount due at the time in respect of unsecured loans.¹

The D. A. R. Act provides that where an agriculturist sues for accounts on unsecured debts and gets a decree for the amount due, he may deposit it in the court (Sec. 18). The Bihar Moneylenders' Act and the Bombay, Bengal and Orissa Moneylenders' Bills make similar provisions.²

If a moneylender refuses to accept a sum of money due to him or refuses to grant a receipt for the same, a competent court may, according to the Bihar Moneylenders' Act, receive the sum and issue a receipt therefor. According to the Bombay Bill if the money was paid towards principal, interest shall cease to run on the same from the date of service of notice on the moneylender.

These provisions do not make clear whether repayments could be made in respect of mortgage loans whose date of repayment has been fixed in the deed. The Bengal Moneylenders' Bill, 1939 provides for deposit of a debt due by a borrower in a court when it is not accepted by a moneylender when remitted to him by money order (Sec. 36). But it saves the provisions of the transfer of Property Act according to which such deposits could be made only "in respect of the principal mortgage money when it has become due and before a suit for redemption of the mortgaged property is barred" (Sec. 83). The Orissa Moneylenders' Bill has the following clause :

A debtor may repay the whole or any part of the principal or interest due under a loan to the moneylender at any time and in any manner and any agreement between a moneylender and a debtor to the contrary imposing restriction on the freedom of repayment shall be illegal and void" (Sec. 25)

242 Debtor's right to sue for accounts

Some of the Moneylenders' Acts also provide for the right of a debtor to sue for accounts. The earliest legislation on this subject was the Deccan Agriculturists' Relief Act. Suing for accounts is the only way open to an ignorant debtor to know how his account stands.

1. The U. P. Land Revenue Administration report for 1936 says that "applications for deposits for part-payment in court were fewer." The value of this provision should be judged not by the number of deposits of sums made by debtors in courts, but by the fewness of such deposits. This provision is intended to exercise some pressure on moneylenders to receive the repayments made by debtors.

2. Bombay Sec. 36, Bengal Sec. 36, Bihar Sec. 24 and 25, Orissa Sec. 23 and 24.

The English Moneylenders' Act of 1900 provides that the court may entertain any application under this Act, notwithstanding that the time for repayment of the loan, or any instalment thereof may not have arrived (Sec. 1. 2.). Possibly with the growth of a system of registration of moneylenders and the provision of regulations for account keeping and supply of information to debtors, the need for using this facility may grow less and less.

The Bombay and Bengal Moneylenders' Bills have a similar provision (Sec. 35.). The court will determine the original principal, calculate interest at the rates prescribed or the contractual rate whichever is less, readjust excess payments to principal, and grant a decree.¹

Suits by debtors for accounts of money lent are also provided for in the Agriculturists' Relief Act U. P. Interest will be calculated at a rate not exceeding the scheduled rate. The Usurious Loans Act will also be applied. If the creditor applies for a decree, the court will grant it. If excess has been paid, " the Court shall pass a decree for refund of the overpaid amount to the plaintiff " (Sec. 33).

243 Conversion of rent arrears into ordinary debts

One of the abuses in moneylending results from a combination of the two functions of a landlord and moneylender in one and the same person. When a landlord finds that, owing to the limitation of time for suits, he cannot collect a certain amount of arrears of rent, he converts it into a debt on promissory note. A repayment made by a tenant is credited by him first to the debts due, and thereafter to rents. So it often happens that rents fall into arrears. The C. P. Tenancy Act Sec. 75 (1) has a provision that, if rent is due, a payment made by a tenant should be presumed to be towards it unless the tenant has otherwise agreed in writing. This is a wholesome provision for introduction in Tenancy Acts. It is also necessary that there should be a specific provision, preventing the conversion of the rents due, whether time-barred or not, into debts.²

1. Under the Bengal bill a debtor has only to pay a fee of one rupee and apply in the prescribed form to the court to know the state of his accounts.

2. The practice has become so common even in the management of estates by the Court of Wards in the C. P. that the Government have condemned it strongly in their review of the administration report of the Court of Wards for 1937 in the following words. "Government notes with concern that in certain estates of the Nagpur Division the system of taking bonds for rental arrears is in force. The practice is one that cannot be too strongly condemned, and Government trusts that steps will immediately be taken to put a stop to a practice which it views with disfavour anywhere, and a fortiori in estates managed by the Court of Wards.

The court should be empowered suo motu or on the representation of the tenants or in suits against them by their landlords for moneys lent, to disallow any rent amounts being adjusted as loans advanced to them.

244 Arrest and detention in the civil prison.

The Civil Law was changed from time to time with a view to prevent the misuse of the power of arrest and detention of debtors in the civil prison. A summary of the evolution of the existing law in this respect is given below.

Under the Civil Procedure Code of 1859 as amended in 1877, the court had no discretionary power to refuse execution either against person or against property which lay *at the option of the creditor*. The court must grant the application against either. The power of imprisonment rested with the creditor and not the court. This meant indirectly slavery, "as the power to imprison clearly gives the creditor power to compel the debtor to do whatever would be less grievous to bear, and undoubtedly most cultivators prefer to be allowed to work in their native village and on their ancestral lands to being sent to a distant jail." The Deccan Riots Commission said that there was "ample evidence of the way in which the power of imprisonment is used to convert the Bhils of Khandesh into bondsmen of their Guzar creditors, even to the degree of actual transfer of the enslaved Bhil by sale of the decree which gives the title to his labour. The labour bonds mentioned are not uncommon in Ahmednagar" (Page 79). The Deccan Commission found that arrest was a device adopted to compel the debtor to part with his property, and therefore concluded in their report of 1892, that, where property could be ascertained, attached and sold, there was no need for the civil arrest of a debtor in execution of a decree. On the basis of this recommendation of the commission, the Deccan Agriculturists' Relief Act forbade the imprisonment of agriculturist debtors.

Meanwhile the Code of Civil Procedure was amended in 1888. The amended sections 245 A and 245 B changed the law in respect of arrests for debt. The court, instead of issuing a warrant, was to issue a notice calling on the debtor to show cause why he should not be committed to jail. The court might release him if no malpractices were committed, and if he was unable to repay. It should be noted that the provisions of the code always allowed application for insolvency by an arrested debtor. But he was in the custody of the court. He had to give security that he would appear when called upon by the court. Under the proposed change he was a free man to consult his friends

and prepare an application for insolvency. The amended code of 1888 forbade also the arrest and detention of women for debts.¹

The recent amendment of the Code (Act XXI of 1936) has still further liberalised the provisions. It is not left to the discretion of the court to give notice to the debtor to show cause against warrant of arrest. The court *shall* give notice but with one proviso that " such notice shall not be necessary, if the court is satisfied that the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the court. " Secondly, detention shall not be ordered unless the court is satisfied and it records in writing that the judgment-debtor " was likely to abscond, committed acts of bad faith in relation to property or had the means to pay but did not, or that the decree was for a sum for which he was bound in a fiduciary capacity to account." In calculating the means of the judgment-debtor, properties exempt from attachment by law or custom should be left out of account. It should be proved that the judgment-debtor was committing these malpractices with " the object or effect of obstructing or delaying the execution of the decree " (addition of proviso to Sec. 51). The working of this clause has shown that a court may consider even a tenant-at-will as having means to repay if he takes a land on lease. The words ' means to repay ' are differently interpreted by the courts. Malpractices could be stopped by the provisions under the civil and criminal procedure codes, and it is not necessary that the court should be empowered to arrest a debtor on these grounds. The court has power to attach all saleable properties excepting the exempted particulars under Sec. 60 and 61 of the Code. Arrest therefore, on the ground of the existence of ' means to repay ' by a debtor is superfluous.² The provision of civil arrest in the execution of decrees for debts due should be early repealed at least in the case of agriculturists and poorer classes of debtors, if not of all the debtors.³

The Punjab Relief of Indebtedness Act has amended the law regarding civil arrests. The court must give the judgment-debtor an opportunity to show cause why the warrant of arrest should not be issued against him. Secondly, it should be satisfied that " he has without just cause contumaciously refused to pay the amount of the decree in whole or in part which is within his capacity to pay ".

1 Vide Legislative Council Proceedings.

2. Some of the recent Money-lenders' Acts prohibit the execution of decrees by arrest and imprisonment of the judgment-debtor.

3. (Sec. 34 A, Bengal Money-lenders' Bill).

Thirdly, in considering the capacity of the judgment-debtor to pay, the court shall take into consideration "the value of the property of the judgment-debtor only to the extent to which a civil court can dispose it under the law in execution of a decree." The Punjab civil justice report for 1935, commenting on these provisions, says "that there is an appreciable fall in the number of petitions of insolvency which debtors used to make out of fear of arrest. It further says that almost all district judges, however, agree that immunity of debtors from arrest has rendered the recovery of decretal amounts very difficult. There is no doubt that creditors have a remedy against dishonest debtors, but proceedings they have to adopt are very lengthy, and contumacy cannot be easily proved, owing to the resourcefulness of debtors to conceal their moveable property." In spite of these remarks, it is doubtful whether public sentiment today will approve of the method of arrest and detention of a debtor for facilitating recoveries of loans.

245 Damdupat

In order to prevent accumulation of interest, many of the Moneylenders' Acts provide for the application of the law of Damdupat. The limit of interest recoverable *at a time* through courts is fixed. Its object is not to lower an excessive rate of interest; so it does not reduce interest even if it be usurious. A creditor may collect interest at the stipulated rate, whatever it is, before arrears of interest equal the principal. Thereafter, again, interest continues according to the stipulated rate. The law of Damdupat is a law of limitation in respect of suits for recovery of interest. It was of great use when there was no law of limitation for suits for recoveries of money. But since now there is such a law, with varying provisions for different kinds of bonds, the need for the Damdupat rule has become less. Further, certain Moneylenders' Acts have prescribed the maximum rates of interest which a moneylender could levy. This again makes the Damdupat rule somewhat less necessary inasmuch as, with a smaller rate of interest, it would take longer for interest to come up to the principal. But a better method of preventing accumulation of interest would be a provision to the effect that no court shall decree interest due for over three years. If this provision were introduced, there would be no need for a law of Damdupat. The complaint against Damdupat law is that it leads to a renewal of bonds for old loans. But continuous borrowing can in no way be prevented even under our other proposals when a loan is charged on a property or produce for 20 years.

The law of Damdupat has taken three forms in the Moneylenders' Acts.

(1) Arrears of interest granted by a court shall not exceed the principal of the loan (Bengal M. L. Act, Sec. 6, and Central Provinces M. L. Act, Sec. 10). The principal of the loan is generally interpreted as the outstanding principal. It is so interpreted both in Bengal and the Central Provinces, and the Deccan Agriculturists' Relief Act in Sec. 13 (g) makes it explicit. The recent Bengal Bill has a similar provision (28-1-b). But the Bombay Moneylenders Bill of 1938 provides for granting arrears of interest not exceeding the original principal of the loan (Sec. 27).

(2) Arrears of interest in respect of loans granted by a court shall not exceed, when added to interest already paid, the amount of the original principal (Bihar M. L. Act, 1938, Sec. 11).

This provision has been held *ultra vires* by the Bihar High Court as it is contrary to the existing civil law. The High Court has held that the Governor-General's permission was necessary. A new bill has, therefore, been passed by the Bihar legislature repealing and re-enacting this section for the approval of the Governor-General. The Orissa bill has a provision similar to that in the Bihar Act. But it goes further. It says that "so much of the said amount of interest as is in excess of the loan shall be appropriated towards the satisfaction of the loan, and the court shall pass a decree for the payment of the balance of the loan, if any" (Sec. 10-2).

(3) Under the U. P. Relief Act, when the total amount of accrued interest on a loan, whether paid or outstanding, equals the principal of the loan, the creditor can realise interest only at a scheduled rate which is far less than the rate for other loans. The scheduled rate for secured loans is that at which the Local Government borrows, and two per cent. in addition, for unsecured loans. The Act further provides that excess interest over this rate shall be credited towards the principal, though a debtor cannot claim refund of any interest amount already paid by him (Sec. 31-2). The provision is a method of limiting the period of unsecured loans whose time limit for suits may always be extended by obtaining a payment on the loan once every three years. It will not be to the interest of the creditor to permit a loan to run to such periods when the court will grant a lower rate of interest than the stipulated rate. According to the law of Damdupat, it is only a slack creditor who does not know his own interest that will suffer. But under this provision, a creditor who keeps a loan alive for unduly long periods will lose in

interest charges. While the result arising from a restriction of the period of loans may be beneficial in respect of unsecured loans, it may prevent the issue of secured long-term loans for long-term purposes.

The Bengal, C. P., and Bihar Acts apply to loans made before the passing of the Acts as well as after, but the U. P. Act applies only to loans made after the passing of the Act. Certain Acts contain special provisions in respect of the application of the principle of Damdupat to loans issued before the passage of the Acts. These provisions have taken two forms.

The amount of arrears of interest and principal to be decreed by a court in respect of loans taken before the commencement of the Act shall not exceed twice the principal and interest due on the date of the commencement of the Act according to Sec. 31 of the Punjab Relief of Indebtedness Act, and due on 1st June 1933 in respect of loans incurred before that date according to Sec. 16 of the Madras Debt Conciliation Act. The idea underlying this provision is to prevent retrospective effect being given to the law of Damdupat in the case of loans already issued. But it forewarns the creditors that they should not allow their loans in future to accumulate to a sum more than what was owed to them at the commencement of the Act on such loans. Under this clause the recoverable outstanding interest is not restricted to the outstanding principal, but to the outstanding principal and interest due on a certain date. Relief under this law is of little use, as excessive interest can be reduced under the Usurious Loans Act. Where interest is not excessive and satisfies the rules of interest in the Moneylenders' Acts, the provision grants a longer period of limitation for old loans, as it must take a sufficiently long time for arrears of principal and interest to accumulate so as to equal the sum due under principal and interest at the commencement of the Act. In other words, the law of Damdupat, or fixing a time limit for collecting arrears of interest, by annulling the excess when it exceeds the outstanding principal, is not given effect to in the case of loans issued before the commencement of the Act.

According to the C. P. Moneylenders' Act, 1934, a moneylender can adduce sufficient grounds that he could not sue earlier, in respect of loans made before its commencement, and the court, if satisfied, may grant the excess interest that has been annulled by the law of Damdupat (Sec. 9). The Bengal Moneylenders' Act of 1933 has a similar clause. This qualifying clause is omitted in the Bengal Moneylenders' Bill of 1939.

The law of Damdupat has been further stretched in certain Acts which provide for liquidation of past debts, so as to cover reduction of the principal amount due. The Madras Debt Relief Act of 1938 provides that the maximum amount to be repaid on debts incurred before 1-10-1932 should not exceed double the original principal, or the outstanding principal only, whichever is less. This principle has been embodied in the North-West Frontier Province Bill of 1938, in respect of loans advanced before 1-10-37, and carrying an interest of over 9%. The Punjab Mortgages Restitution Act of 1938 provides that lands mortgaged before 1901 by agriculturist tribes to non-agriculturists shall be restored, if twice the amount of the original principal has been realised by the mortgagee as profit from the land.

The Bengal Money-lenders' Bill, 1939, has made this provision a permanent one for application by a court.¹

The Assam Moneylenders' Amendment Bill of December 1937 has embodied this principle as a permanent provision to apply to all loans, and not merely as a temporary provision for the liquidation of past debts. In the case of usufructuary mortgages, for loans of Rs. 500 and below not only should a creditor not realise in the aggregate more than double the principal of the loan, but the mortgaged land should be restored on the completion of 12 years from the date of the loan in respect of loans issued before the commencement of the Act, and on that of 9 years in respect of loans issued after the commencement of the Act. These provisions are not to apply to loans issued by banks at 6% per annum. The Amendment Bill of 1937 has been pending approval by the Governor for more than a year. The result of such a protracted delay in approving such legislation is dangerous. It would only lead to more suits and more applications for execution of decrees in the interval.

246 Overwriting of bonds

When once the maximum interest rate that will be granted by a court in a suit is fixed, it naturally leads to the overwriting of the principal in the bonds, particularly by necessitous debtors. So restriction of interest rates has to be supplemented by legislation to make overwriting of bonds an offence under the law. The Punjab Relief of Indebtedness Act provides in Section 37 that the entry of

¹ "No borrower shall be liable to pay after the commencement of this Act — any sum in respect of principal and interest which together with any amount already paid or included in any decree in respect of a loan, exceeds twice the principal of the original loan." This provision is in addition to any relief granted by the application of the law of Damdupat in its first form, noted at the beginning of the para.

excess over principal in bonds should not be more than the legitimate expenses incurred; otherwise, the whole or any part of the sum claimed by the plaintiff may be disallowed at the discretion of the Court.¹ Sec. 35 of the U. P. Agriculturists Relief Act provides that, if a creditor enters in the book a sum larger than is actually lent by "way of charges of expenses, inquiries, fines, bonuses, premia, renewals or otherwise", he may be fined Rs. 100 for the first offence, and Rs. 500 for the second and subsequent offences. The experience of officers in working this clause in the U. P. does not show that it has done much good to the debtors. Bonds are overwritten to compensate for the loss of interest. The punishment provided has not proved a deterrent in any way.²

The Bombay Bill provides for a fine which may extend to Rs. 1000 and declares "void and not enforceable a decree whether ex parte or by consent or otherwise, award, power of attorney, note, promise to pay, or security which does not state the actual amount of the loan, or which states such amount wrongly, or which does not state the time for which it is made and the rate of interest charged, or any instrument in which blanks are left to be filled after execution." The Bengal Bill has a similar provision (Sec. 37).

247 Loans and Moneylenders excluded from the operation of Moneylenders' Acts

Regulation and control of moneylending are found difficult even in countries where the banking habit is fairly well-developed among the people, and whose loans are mostly advanced by organised banks. Still more so it should be in a country like India where the existence of a deficit economy in agriculture and cottage industries will only deter business banks from investing their capital in such concerns. A casually employed rural labour population, or uneconomic holders whose agricultural income cannot be counted upon as a certainty from year to year, or the wage-earning employees in towns, or the artisans, require credit for purchase of articles of consumption, or for their occupation, or both. It is the employing landlord, or the trader in produce, or the merchant who buys the finished goods, who has some form of control over these classes, that are bold enough to finance them. In the case of the agriculturist, he requires articles of

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

2. Vide page 57, para b, in the Government Review on the Land Revenue Administration report of the U. P. dated 24th January 1939.

consumption, seed grain, food grains in seasons of scarcity, cattle for ploughing and water-lifting, clothing, brass vessels for the home, and small and big loans for recurring expenses, or for any permanent improvements in land, or for reconverting small loans due to several creditors into a single loan. For the first he goes to the village banya, for the second and third to his own landlord or the agriculturist money-lender, for the fourth to the travelling cattle-dealer, for the fifth to the hawker, and for the sixth to the village mahajan, or the town sahukar, or the kistwalla or anyone having surplus money. He is financed too by a variety of agencies, those to whom moneylending is the main occupation, and those who have surplus cash and do lending along with other occupations as the pensioners, temple priests, petty officials, estate servants, village servants, fakirs, widows, etc. Even those who do the business of lending as a regular profession combine along with it supply of goods on credit, or the marketing of produce, or both. In the case of wage-earners and employees earning small salaries, the shop-keeper advances consumption credit. In the case of artisans, the raw materials are supplied on credit and are repaid in the shape of finished goods. There are also loans issued orally without any document.

The loans therefore may be classified under the following kinds.

- (a) Loans in kind to be repaid in kind or cash.
- (b) Loans as cattle loans on the instalment or hirepurchase system.
- (c) Loans as raw materials to artisans to be returned as finished goods.

They may be further classified under the following two heads according to the nature of security for the loan :

- (a) Loans on promissory notes, bonds, and mortgage deeds.
- (b) Loans not evidenced by any written document.

The lenders may be divided into the following groups:—

- (a) The sahukar or the village mahajan or the agriculturist money-lender,
- (b) Anybody having some small cash in a village and who lends,
- (c) The shopkeeper who supplies articles on credit,
- (d) The trader who buys village produce,
- (e) The pedlar, the hawker, the butcher, the Kabuli,
- (f) The cattle-dealer,
- (g) The merchant lender in the case of artisans,
- (h) The kistwalla who lends small loans in big villages and towns on the equated payment system to small traders etc,

This analysis will show the difficulties in introducing a uniform procedure in regulating rural moneylending. We have to consider whether maintenance of proper accounts, issue of receipts and periodical returns and prevention of specified abuses can apply to all these loans and all these money-lenders.¹ And if they are to apply, what is the effective way of securing compliance with these provisions?

248 Principles underlying exclusion of loans and lenders

We cannot exclude kind loans such as grain loans, as they form a substantial number of the transactions of agriculturists. The Bihar Act excludes goods supplied on credit without the stipulation of any interest. But so far as maintenance of accounts and prevention of unconscionable bargains go, we cannot exclude the shopkeeper's or the grocer's credit by way of supply of goods. Loans as cattle loans on the instalment or hirepurchase system, or advances of raw materials and their return as finished produce may not lend themselves to an easy scrutiny regarding rates of interest, but loans of this class should equally be supervised so that they may conform to the rules of maintenance of accounts, submission of returns and prevention of abuses. All loans other than those for agriculturists are excluded in certain Acts. Small loans on equated payments are excluded in one province. When once we insist on minimum of accounts in money-lending and want to prevent abuses, no loans should be excluded from the scrutiny of the State. The only justification for exclusion of certain loans would be that they are governed by special Acts which insist on proper accounts and returns and provide for the prevention of abuses.² These are loans issued by banks, companies and co-operative societies, and charitable Trusts, and deposits in such incorporated bodies and Post offices.³

1. Vide Note on loans excluded from the operation of the Money-lenders' Acts.

2 The Bengal M. L. Bill originally excluded companies from the operation of chapter relating to the regulation of accounts, but the select Committee has omitted this clause, thereby applying these provisions to companies too.

3 A circular has been recently issued by the Reserve Bank of India to all Local Governments expressing the desirability of exempting joint-stock banks from the provisions of legislation dealing with money-lenders and rural indebtedness. According to the Reserve Bank, the business of joint-stock banks is already regulated by law. Their accounts have to be regularly maintained and audited. The activities of the scheduled banks are further watched and guided by them. There does not seem to be any justification for subjecting their activities to restrictions which are primarily devised to regulate the practice of money-lenders.... Such restrictions will have the effect of frightening them (banks) away from taking any part in agricultural finance, a field in which they already find it precarious to venture.

(Continued on next page)

Loans advanced by Government and Local Bodies may also be excluded from the operation of Money-lenders' Acts. But while all other loans may be included for inspection by the servants of the State, it may not be possible to insist on the maintenance of accounts by all classes of moneylenders. A land-lord who advances kind or cash loans to his own produce-sharing tenants, or labourers may plead that these advances are incidents of land tenures, and that therefore he is not a money-lender. Occasional money-lenders, widows, small holders, and tenants who lend their surplus cash cannot be classified as money-lenders. Those who lend without any documents cannot again be brought under any class of money-lenders. Insistence on maintenance of accounts may not be possible in the case of occasional moneylenders. But it may be enforced in the case of those who do the regular business of money-lending. It may be fairly possible to list money-lenders who do it as a regular business.

(Continued from last page)

Protection of and relief to agriculturist debtors may be classified under four heads, (*a*) grant of moratorium and schemes of liquidation of debts, (*b*) regulation of accounts and prevention of certain abuses by declaring them offences in law, (*c*) regulation of suits against agriculturists by providing for grant of instalments, by exempting a minimum holding and produce necessary for the subsistence of the judgment-debtor and his family, by fixing fair price for land in public sales, by prescribing fair rates of interest, and by controlling usurious transactions through courts, and (*d*) licensing and registration of money-lenders.

We do not see how it is possible to permit joint-stock banks only to recover their debts, while other creditors are not allowed to do so under the stay orders or debt settlements made by conciliation boards. We may exclude joint-stock banks from the provisions referred to in (*b*) above, as these banks have to maintain certain books under the company law, and as they can be punished for certain offences under the provisions of the Indian Penal Code. As regards the provisions regulating suits against agriculturists, they are based on principles adapted to the existing agricultural economy, of protecting the small holder from being unduly exploited in the satisfaction of his debt and from being dispossessed of his land, which is his only insurance against unemployment. Any credit organisation should regulate its credit to agriculturists in such a manner as to conform to these principles. And it will do no good either to joint-stock banks or co-operative societies, if a court has to violate them in their case in suits against agriculturists. For it will be giving them a special kind of monopoly to lend at usurious rates of interest and to bring the lands of agriculturists to sale in execution of decrees. Banking law requires to be amended, empowering Local Governments to exercise some control over banks. Until this is done, the only indirect method of regulating agricultural credit lies in the provisions in the Money-lenders' Acts in suits against agriculturists. As regards licensing and registration of money-lenders, there is no reason to include joint-stock banks under these provisions.

But there will be a class who are on the border line between regular and casual moneylenders whose classification will depend on the discretion of the officer. Experience will show whether any rules can be formulated as a guidance to the officer in this matter. Meanwhile appeal may be provided for as a check against any improper use of such a discretion.

While certain moneylenders will have to be excluded from the enforcement of the provisions relating to a proper maintenance of accounts, the issue of receipts for amounts paid, the supply of copies of documents of loans, and of periodical statement of accounts, the making of entries of payments in the bonds, and the penalising of specific abuses should apply to all money-lenders. For every loan on a written document carries along with it these elementary duties which a creditor should perforce discharge in the interest of his client. These rules should apply only to loans issued after the commencement of Act. But along with such loans, every transaction after the commencement of the Act, though relating to loans advanced before its commencement, should come under the operation of these rules.

249 Procedure for enforcement of penalties

The main difficulty in the working of the Moneylenders' Acts arises in the enforcement of the penalties. The Acts provide that the court may disallow interest from the date on which the default occurs, and also costs of the suit. But cases may not go before the court at all. We have mentioned in a preceding para the difficulties in enforcing penalties for breach of rules during the proceedings under suits.¹

Firstly, where there are no suits, the penalties become inapplicable. Secondly, the penalties should be specific in respect of each of the offences. Thirdly, the concerned officers should have power to enquire of their own motion into abuses by moneylenders. Fourthly, there should be a sufficiency of supervisors to see to the working of these regulations. The need for such supervisors is so well brought out in an article in the *Servant of India*

1. Many of the judges have recommended for executive action and for licensing of moneylenders to prevent abuses in private moneylending, in the opinions which they forwarded to Bombay Government on a private bill No. VII of 1934. The District Judge of Thana said, "It is my firm conviction that if any preventive measures are to be resorted to, then it is the executive officers who can deal more effectively with the unscrupulous moneylenders, if they are empowered by law to keep a scrutiny and watch over their doings etc."

that we gladly quote it below. "Even in the United States with the varied private philanthropic help and social service activities available, it has been found necessary to set up in each State a supervisor of Loan Agencies. It is instructive that some of these supervisors have felt it desirable to let the borrowers know of the legal aid and protection available to them by getting printed on the receipt which every borrower has to get from the lender, the following: 'For information or complaint consult the Supervisor of Loan Agencies.' We are aware that the possibilities of inefficiency or corruption may be urged against the proposal of setting up an official supervisory agency. But in these matters there is no half-way house. Paternal legislation of this kind necessarily means enforcement through administrative machinery. In these matters experience has also often proved that no legislation is better than legislation enforced in an inadequate or lopsided manner."¹

The statutory report of the Reserve Bank of India for 1937 also recommends similar provisions in the Moneylenders' Acts in the following terms:

"We suggest further that apart from any penalties which might be prescribed in such legislation for violation of its provisions a procedure should also be devised for the inspection of the accounts of moneylenders. This will impose a salutary check which will be more effective in eliminating malpractices than any other sanctions...It will further be possible to create a privileged class of moneylenders who may be licensed and approved for dealing with the Reserve Bank" (P. 11).

D.

RATES OF INTEREST.

250 Legal fixing of rates of interest

39. The main purpose of any Moneylenders' Act is to prevent the levy of an usurious rate of interest and any illegitimate exactions in the name of interest. All the Moneylenders' Acts prescribe the maximum interest on loans which a court could grant in suits for recoveries of loans. It is one thing to define a usurious rate for the guidance of courts, leaving it to their discretion to decide whether the rate of interest in respect of a loan is excessive even though it falls below the usurious rate. It is another thing to prescribe a rate and tie the hands of the court that it shall not grant a higher rate.²

1. The Servant of India—July 28, 1938—The Bombay—Moneylenders' Bill by Mr. D. R. Gadgil P. 360.

2. Vide Bihar M. L. Act. sec. 9.

And it is a third thing to declare a transaction as invalid, if it stipulates a higher rate, and therefore an offence in law for which the moneylender may be convicted.¹ The C. P. Reduction of interest Act 1936 which applies to all kinds of loans excepting those due to co-operative societies and scheduled banks says that no debtor shall be liable to pay interest to a creditor at a rate higher than the specified rate (Sec. 3).² The U. P. Relief Act (Sec. 28) declares the rate of interest, the loans of agriculturists shall bear. The former Act educates the debtor that he need not pay more than the prescribed rate. The latter Act enjoins on the creditor what interest he should take. The Bihar Moneylenders' Act in no way regulates the rate of interest stipulated in the bonds, but only defines what maximum rate the court can grant. The provisions in the other Acts are in no way an improvement on the Bihar Act. Unless there is an agency to inspect the books and find out whether illegal rates are demanded, and unless it is an offence to levy such rates for which a moneylender may be convicted, provisions, which declare loans granted at more than the prescribed rates as invalid, have hardly any meaning.

251 Limitations to fixing of interest rates

Rates of interest are better lowered by an elimination of the obstacles to the proper growth of a credit machinery in rural areas. They depend on the creditworthiness of the peasant, and the profitability of his occupation. Legislative prescription of rates may not possibly be evaded by organised banks and licensed moneylenders. The middle-class debtors in towns and the holders of medium-sized and big holdings may get the benefit of such a prescription as they may be expected to claim the benefit of such a rate. Moneylenders too may not evade the law in their case by inflating the principal of the loan, as they may be satisfied with the lower rate of interest owing to less risks in the investment. But when we examine the loan transactions of those in the lower strata of society either in towns or villages, the rate of interest they pay is naturally high. If we prescribe a low maximum rate, the licensed moneylenders, or those in whose case we enforce certain rules of accounting, may refuse to lend to this class of people. The occasional moneylenders and pedlars, hawkers, and kistwallas (those who lend small amounts to be returned in equated instalments) may inflate the amount of principal of the loan, or advance loans without any written document. Money-lending will be driven underground, and will carry exorbitant rates of interest in the

1 Vide Bombay Moneylenders' Bill, Sec. 29

2 Vide Bengal Money-lenders' Bill Sec. 28.

case of poorer classes. Small loans should be, therefore, excluded from the operation of the Act, while a specially high maximum rate should be prescribed for loans above Rs. 25 or Rs. 50. This proposal is not to apply to loans advanced on pawns as they are treated separately.

252 Rates of interest on kind loans

Another class of loans which do not easily lend themselves to a prescribed rate of interest are the kind loans. The price of grain may vary between the date of issue of the loan and that of its repayment. Many of the Moneylenders' Acts include kind loans but without any kind of guidance for calculating interest. The U. P. Relief Act excludes kind loans whose rate of interest does not exceed one-fourth of the principal amount in kind.

There are again loans in kind as cattle, vessels, and clothes whose price is no doubt fixed in cash, but they are repayable in instalments. If the interest rate is prescribed in respect of these loans, the price of the commodities may be raised sufficiently high to compensate for a low rate of interest. Loans to artisans by way of raw materials belong to this category of kind loans. A prescription of the rate of interest regarding this class of loans may be evaded by raising the price of the raw materials.

It is better therefore that kind loans of small sums are excluded from the operation of the Money-lenders' Acts which prescribe the rates of interest on loans. Any relief in their case should come by the operation of the Usurious Loans Act under which the court can always decide whether the rate of interest is excessive or not. The provisions of the Bengal Bill and the U. P. Relief Act give us some guidance which may be adopted in regulating the interest on kind loans of sums over Rs. 25.

Under the Bengal bill, the money value of the commodity taken as a loan in kind at the time of its advance shall be the principal. In determining the amount due under principal and interest, the court shall take into consideration the market value of the commodity in the said locality on the due date of repayment (Sec.31).

Under the U. P. Agriculturists' Relief Act (1934) a loan taken in kind may be repaid by the debtor in cash or kind,

at a fair rate if no rate has been agreed upon, or in any other form and at the rate agreed upon between the creditor and himself, provided that if there is a dispute about the fairness of the rate, the question shall be referred either by the creditor or the debtor to the Collector whose decision shall be final.

These two provisions may be combined. Whenever a rate of interest on kind loans is in dispute, the Collector may decide it. The procedure for calculation of principal and interest may be as provided in the Bengal Bill. But it is open to doubt whether a fixation of the rate of interest on kind loans will be possible. Such rates may be a guidance for the collector to be presumed as fair rates if not rebutted by either party.

253 Need for different rates of interest in law

Subject to these provisions, the prescribed rates of interest should govern all kinds of loans. But in order to prevent the growth of bootleg money-lending which will do more harm to the poorer classes, a higher rate should be prescribed for the smaller sums of loans between Rs. 25 and Rs. 50. Two other rates may be prescribed for sums between Rs. 50 and Rs. 500, and over Rs. 500. Different rates may also be prescribed for secured and unsecured loans. Some of the Money-lenders' Acts at present exclude loans of banks, companies, and co-operative societies. We see no reason for excluding these loans.

254 Lending at a rate higher than the prescribed rate, not to be an offence in the initial stages

One point requires notice regarding the fixation of the rate of interest. It is one thing to give a direction to the courts at what rates they should calculate interest in suits for recoveries of moneys lent. But it is another thing to make it an offence in law to lend at more than the legal rate. In the initial stages of working of the Money-lenders' Acts, lending at unfair rates need not be made an offence. Habitual lending at unfair rates may be made into an offence after a few years. Till then, the fixed rates of interest may be the basis for the calculation of interest by courts in suits for recoveries of money.

255 Retrospective effect to rates of interest

Some of the Acts provide for calculating rates of interest on old loans at the prescribed rates, thereby giving retrospective effect to the latter. Calculation of interest on old loans at these rates is nothing objectionable, provided it is enacted as part of a liquidation scheme of debts rather than as a permanent provision in a Money-lenders' Act.¹

¹ According to the Bengal Bill of 1939 no borrower shall be liable to pay after the commencement of this Act more than the prescribed rate of interest, or more than twice the principal of the loan, or more than the outstanding principal on account of interest,

(Contd. on the next page)

256 Procedure for fixing interest rates

We should now consider the procedure for fixing the rate of interest and also the rate that should be granted from the date of suit to the date of realisation. Considered from the point of view of the agriculturist borrower the rate should be sufficiently low as to suit the low and unsteady profits from agriculture. Considered from the point of view of the lender, the same argument supports the levy of a high rate of interest to cover the large risks inevitable in financing agriculture. The rate should not be high for the agriculturists whose holdings are not uneconomic.¹

(*Contd. from the previous page*)

" whether such loan was advanced or such amount was paid or such decree was passed or such interest accrued before or after the commencement of this Act :

No borrower shall, after the commencement of the Act, be deemed to have been liable to pay before the date of such commencement in respect of interest paid before such date or included in a decree passed before such date, interest at rates per annum exceeding those specified." (Sec. 28). It should be noted that, while principal and interest may be reduced under these provisions in respect of all loans and decrees, a decreed amount cannot be reopened (Sec. 34) unless it was a decree passed on or after 1-1-1939.

1 A new theory in fixing the rate of interest has been enunciated by the Hon. the Premier of the Madras Government on 11th February 1939 when declaring open the conference of land mortgage banks. He said that " in as much as private money-lending alone could fulfil its large function, while they should undercut usury, they should not underbid private lending too much. If a particular rate of interest was insisted upon beyond which the private money-lender could not go, and if at the same time a co-operative institution or government institution lent at a far lower rate, there would be a tussle, competition among borrowers to get loans, and all this will result in corruption. If they underbid the fair money-lender, it would not be to the good of general economy." This is a novel theory, quite unlike what we have often heard, that the co-operative rate has beneficially reacted in lowering the interest rate of the money-lender.

But in contrast to the theory enunciated, an impossible rate of interest of 6½% on all kinds of loans and without reference to the amount or the security or the class of agriculturists has been legally specified in the Debt Relief Act of 1938. All the co-operative societies have been allowed to lend at any rate, without any restriction in law. If therefore there has been any undercutting of the money-lender, it is rather due to the low rates prescribed in the Debt Relief Act than to the co-operative societies. Possibly this new theory has been ventilated for the occasion to prove that land mortgage banks might slightly raise their rates to the borrower from 5 to 5½% and not so lower their rates as to lead to competition between them and the moneylenders. The Prime Minister also said that he meant to enforce the law regarding interest and prevent its evasion. But rates of profit in money-lending could never be controlled merely by a legal fixation of interest. The necessities of the debtor and

(*Continued on the next page*)

A certain percentage rate over the reserve bank rate which will cover the costs of collection and provide for a sufficient reserve will be the proper basis. The rate of interest to the primary borrower in Co-operative Societies can also be considered a fair rate. The rate calculated on these two bases should be embodied in the Act. The U.P. Agriculturists' Relief Act does not exactly define the rate of interest, but defines the excess percentage over the rate at which the Local Government borrows as the legal rate of interest. The Local Government will notify their borrowing rate from time to time. Incorporation of the rate of interest in the Act is essential to ensure stability to the rates, and the changing of rates by the method of notifications should be avoided.

257 Rates of interest on decrees

A low interest rate of 6% is now generally granted by courts in suits from the date of suit to that of realisation. Now that the rates have been prescribed, we see no reason why interest should be calculated from the date of suit at rates lower than the prescribed rates under the Moneylenders' Acts.¹

258 Rates of interest in insolvency

Where the assets of a person are insufficient to repay the loans by calculating at the legal rate, he should be declared an insolvent. The Bengal Bill had a clause that, in the case of insolvents, interest should be calculated in the first instance at 5% on all loans. When the claims of all creditors have been satisfied and when there is a surplus, it shall go towards the distribution of a higher rate of interest (Sc. 27). A reduction of the rate in insolvency is fair and proper. This provision may be usefully introduced in the Moneylenders' Acts of other provinces.²

(Continued from the last page)

the greed of the debtor would be the determining factors of rates of interest, and the remedy lay in more and more control of private lending by licensing, supervision, and audit.

1 Vide Note on rate of interest on decrees at the end of this chapter. The Bengal Money-lenders' Bill, 1939 fixes the rate of interest at 3% on the defaulted instalmentes which are not to exceed ten in preliminary decrees of foreclosure and sale, and prohibits interest on other decrees. The former provision is to apply only to decrees when passed by a court. The latter provision is also to apply to decrees that are revised on the application of a judgment-debtor. The provision regarding these rates of interest cannot be varied by a court.

2 The select committee of the Bengal legislature has omitted this provision in the amended bill.

289 Prevention of evasions

While thus there are many limitations to a legal fixation of interest, the collection of an usurious rate is also prevented in the several Acts by providing for details of procedure in the calculation of interest, and by penalising abuses which are practised to evade the prescribed rate of interest. The law of Damdupat limits the amount of recoverable interest at a time by a moneylender through the court. An excessive rate of interest has been defined under the Usurious Loans' Acts. Compound interest is prohibited or the period of its rests is defined. Penal interest is prohibited; while the levy of simple interest on overdue interest is permitted. The charges incurred for granting a loan unless specifically provided for, and any other exactions are disallowed. In addition, advance deduction of interest may be prohibited. It may be laid down that repayments should first be credited to principal, unless the date of repayment falls on the due date for interest. A false claim made under the principal sum in order to compensate for the losses due to the prevention of exaction of illegitimate charges, or to lending at the legal rate of interest, should be declared an offence punishable with severe penalties.

E.

REGISTRATION AND LICENSING OF MONEYLENDERS

260 Licensing provisions inapplicable to all money-lenders

Experience in the working of the provisions relating to regulation of accounts, rates of interest, and prevention of abuses in moneylending has shown that they are either evaded, or not cared for by moneylenders. The latter may lose interest or the cost of the suit. But few cases are taken by them before the court. Overwriting of bonds can hardly be found out, and even if found out, can hardly be proved. A greater control over moneylending has been found necessary. Registration and licensing of moneylenders are therefore being provided for in recent legislations in the several provinces. The C. P. Moneylenders' Amendment Act of 1936 was the first Act to enforce registration of moneylenders. There is first the initial difficulty in defining a money-lender. He should be one who has been doing the regular business of moneylending.¹

¹ Money-lenders are defined in the following manner in the several Acts.

A money-lender is one who advances a loan in the regular course of business (C. P. M. L. Act, 1934, Sec. 2. V.). Any person who advances a loan is a money-lender (The Bihar M. L. Act, 1938. 2-g.).

(Continued in the next page)

In order to minimise too much interference with rural money-lending, a number of loans have been excluded from the operation of these Acts. These are loans to traders, goods supplied on credit without stipulation of interest, small loans on equated instalments, and kind loans carrying a certain percentage of interest.¹ The first will exclude the indigenous bankers and sahlukars who lend to middle men traders, the second will exclude the banya shopkeeper or the grocer, the third will exclude the travelling moneylenders, and the fourth the merchant moneylenders who lend grain in rural areas. Many of these may no doubt be declared as moneylenders under the Act because of their credit dealings in money, but the loans mentioned above will have to be excluded, so none of the penalties provided in the Act for breach of rules will apply to these loans. It will be an extremely complicated task to sift the various kinds of loans and apply the Act to such of them as are brought under its provisions.² We have arrived at certain conclusions in the preceding paras about the kind of loans in cash or kind to which maintenance of accounts, penalties for abuses, and rates of interest should apply. Under our proposals the penalties will apply to all such loans whether a moneylender is licensed or not. It may be asked why then there should be licensing when we have formulated certain standards of administration in moneylending, penalised certain abuses, prescribed the rates of interest on loans, and provided for specific penalties for breach of rules. Licensing may be justified on three grounds. Firstly, it helps to locate the class of persons whose accounts have to be supervised. Secondly, it lays the foundation for the growth of organised rural banking which will in course of time be connected with larger banking institutions. It helps also for the gradual audit of accounts, and for enforcement of rules of business

(*Continued from the previous page*)

Any person who carries on the business of advancing loans is a money-lender. The term shall not apply to legal representatives or successors in interest by inheritance of the estate of a deceased money-lender who winds up the estates and collects outstanding loans. (The Punjab Registration of Money-lenders' bill 1938.)

1 Vide Note on loans excluded from the operation of Money-lenders' Acts.

2 The reports of Civil Justice, Punjab for 1935 and 1936 say that, "difficulty is again reported by some district Judges to have been experienced in the application of the definition of the term 'creditor' (who is a person who advances a loan in the regular course of business according to the Punjab Regulation of Accounts Act, 1930) as much money-lending is done by people who are not professional money-lenders."

by superior financing banks as the Reserve Bank. Thirdly, one result of the regulation of moneylending will be the driving out of occasional moneylending and the investment of funds in organised banks or in the hands of bigger moneylenders. There is, therefore, a greater reason to license the latter group who will be playing in the future a more prominent part in rural moneylending.

But some loans may of course be excluded from the operation of the Act. For instance the kind advances of a landlord to his own tenant need not be treated as moneylending business. Loans issued by bodies in-corporate under special Acts for the purpose of lending money, and loans by Government and local Bodies may be excluded.

261 Definition of a money-lender

The next difficulty arises in defining a moneylender. The Acts generally define him as doing the business of advancing loans. Some mention the word "regular business". The Orissa bill says he should have a working capital of at least Rs. 1000. If registration is insisted for all moneylenders, then it leaves a lot of discretion with the registering officer to include or exclude a person as moneylender. Some rules should be initially made, and be evolved by experience as a guidance to the Registrars of money-lenders, whom they should exclude as not doing the business of moneylending. Meanwhile a cheap and summary appellate authority should be provided to whom a person who is declared as a moneylender by the Registrar may appeal, if he is not one such.

262 Exemption by Local Government, a crude method

Sir James Lyall called rural moneylending of the last century as "a tangled jungle of disorderly transactions". The position has in no way changed to-day. One device that is adopted in solving this difficulty of defining a moneylender is to provide that every moneylender should register himself unless the Local Government exempts a person (Sec. 3, The Bihar M. L. Act). This gives a large power in the hands of Government, and it will have to be exercised times without number for excluding various classes of moneylenders.

263 Devices to encourage registration

Another device adopted is to freely grant licenses or certificates to any person who applies for them, and not to make it an offence if a person does not hold the licence. Both the Bombay Bill (Sc. 13) and the Punjab bill (Sc. 9) disallow suits for recoveries of moneys by an unlicensed moneylender. The Bihar Act (Sc. 8)

has a similar provision. But while the Bombay bill provides for a penalty not exceeding 3 times the license fees to be paid by a money-lender to get a licence before the court grants a decree, or sanctions an application to execute it (Sec. 13), no such penalty is provided in the Bihar Act and the Punjab Bill. Only a moneylender should get the license before a suit or application is decided by a court. This is a more lenient method which is suited to existing Indian conditions of moneylending. As this is a device to induce a money-lender to get registered, it is provided that a court shall not take up suits even in respect of loans issued before the commencement of the Act. The Bombay Bill saves such loans (Sc. 13.1 and 6). But it goes a little further in that it declares it illegal to carry on business without a licence (Sec. 8 & 12). Consequently it is an offence to do so. Hence there can be no suits in respect of loans issued by a moneylender during the period when he had no licence. The Bihar Act does not invalidate the transaction of an unlicensed moneylender. But it disentitles an unlicensed moneylender from suing for loans issued during the period when he held no licence.¹ The carrying on of business by an unlicensed money-lender being an illegal act, it becomes a general offence under the Bombay Bill, and a competent court may convict such a money-lender for it by a fine upto Rs. 200/- for the first offence, Rs. 500/- for the second offence, and rigorous imprisonment extending to three months for subsequent offences (Sc. 39). The C. P. Act (XIII of 1936) is more specific, in that it declares business by an unlicensed money-lender as an offence compoundable by paying a fine of Rs. 100 (11, F. 1 & 2).

264. A practical procedure for licensing

These various regulations give us some ideas as to the methods of licensing money-lenders and enforcing a licence. A limit of capital invested in the business may be provided, thereby avoiding too wide a discretion to the registering officer in enforcing the Act. Only such loans which are advanced in kind by a land-lord to his tenant, and which are granted by money-lending concerns registered under special Acts, and by the Government and Local Bodies, need be excluded from the operation of the Act. In the initial stages licensing may be furthered by refusing the facility of the court for recoveries of all loans, whether issued before or after the commencement of the Act, by an unlicensed money-lender. A money-lender

1. A money-lender shall not be entitled to institute a suit for the recovery of a loan advanced by him after the date of the commencement of this Act unless he was registered under this Act at the time when such loan was advanced. Sec. 8.

may produce the licence, before the court grants the decree or the application for execution. As far as possible, rules may be formulated for the guidance of registering officers whom they should include as money-lenders who should be licensed under the Act. A cheap and summary appeal may be provided for persons who wish to appeal against the order of a Registrar who declares them as money-lenders. Certain officers may be empowered to summon parties and examine records and call on a person to take a licence. Where the latter does not do so, it may be declared as an offence under the law. The offence may be a compoundable one, the maximum penalty being a fine of Rs. 100/-.

265 Rules of licence

We will now turn our attention to the rules that should apply for the grant of a licence. It is unwise to restrict the area of a money-lender, as a loan advanced to a debtor may become invalid if the latter leaves the area. There need be no statement of the capital invested in the application for licence, as it would be no more than a mere estimate. If Government want such an information for the collection of the licence fee, it is better they rely on the figures of the previous year than on a problematical budget of transactions for the current year. Thirdly, there is no need for the grant of an annual licence, and a single licence should be sufficient for a period of 4 or 5 years.¹ The Act should also specify the grounds on which a licence may be refused. The provisions are clear and specific in the Bombay Bill in this respect.²

1. These restrictive provisions are made in the recent Bombay Bill, while the C. P. and Bihar M. L. Acts and the Punjab Bill omit such details of licensing.

2. Licences are to be freely given except on the following grounds :

- (a) The competent court must have disqualified the applicant from holding a licence.
- (b) The application for licence does not comply with the provisions of the Act and its rules.
- (c) The applicant should have wilfully defaulted in complying with the requirements of the Act.
- (d) He should have knowingly defaulted in or connived at any fraud or dishonesty in the conduct of his businesses.
- (e) He should have been guilty of the following offences under the Indian Penal Code.

Property or theft (Ch. 17), fraudulent cancellation, destruction etc. of will, authority to adopt or valuable security (Sec. 477), punishment for forgery (Sec. 465), and falsification of accounts (Sec. 477 A).

266 Cancellation of a licence

The provisions should also be clear regarding the conditions when and how a licence may be cancelled.

The offences for which a licence is cancelled should be specifically stated. The three grounds that are usually stated are (1) that the money-lender is guilty of fraud, (2) that he has contravened the provisions of the Act, and (3) that he is unfit to carry on the business of moneylending. These findings can be made only in suits brought by a moneylender, or on the application of an interested person (Sec. 16. Bombay Bill and Sec. 14. Bengal Bill). It is too much to expect the latter to happen. Until therefore a suit is brought by a moneylender, there is no possibility of the suspension or cancellation of a licence. But the Bombay Bill permits also the Registrar to suspend or cancel the licences on the last two grounds above mentioned.¹ Though he is not a court to decide the nature of the offence, he is permitted to enquire whether he has contravened the provisions of the Act, and whether he is unfit to carry on the business of moneylending, and if he is so satisfied, "he may suspend or cancel the licence or disqualify the moneylender from holding a licence for such time as he may think fit." Some demarcation is necessary in this respect. The court can only convict for specific offences. It might also endorse on the licence the convictions, and inform such particulars to the Registrar (Bombay M. L. Bill 17.1.C.). But it should be left to the latter, (be he the Collector or any special Registrar), to decide whether cancellation is necessary and if so, for what period.² The basis for the order of cancellation either temporarily or permanently should be the number of offences for which a money-lender has been found guilty by a court. The court should not be saddled with the further responsibility of cancelling licences which can only happen during the course

1. The Bombay Bill defines a competent court as courts which take proceedings under this Act. Proceedings under the Act have been defined in the definition clause. Enquiries for the grant of a licence (Sec. 10) are proceedings under the Act. In as much as the Registrar of licences holds such enquiries, he also becomes a competent court to cancel a licence.

2. Vide Punjab Bill Sec. 6 which leaves the discretion to the Collector regarding the period for which a licence may be cancelled, the Bihar Act Sec. 19 which fixes the maximum period for cancellation of a licence by the Collector as five years, and Sec. 17 of the Bombay M. L. Bill which leaves the period to be decided by the court. The Orissa bill as amended by the Select Committee enjoins on the court to fix the period of cancellation as not to exceed five years, the Collector being a mere executive officer to carry out the orders of the court. Sec. 18.1,

of a suit.¹ The Punjab Bill has clear provisions in this respect. But the offences for which a licence may be cancelled should also be clearly defined as in the Bombay Bill. To these may be added a clear list of abuses whose prevention is provided for in the Money-lenders' Acts. They are the following: (a) Non-production of a licence when demanded by a court,² (b) Levy of compound interest on loans, (c) Charges for expenses on loans, not specially provided in the Act (Sec. 30), (d) False claims under principal, (e) Molestation and intimidation of debtors, (f) Contracts to make payments outside the province, (g) Conversion of arrears of rent into debts due by landlords, and (h) Non-compliance with the provisions regarding accounts and returns. The rules may excuse convictions for certain offences once or twice if they are of a minor character (The Punjab Registration of money-lenders' Bill Sec. 6, 1. and 5). The number of convictions by a court in respect of these offences should form the grounds for suspension or cancellation of the licence by the Registrar. The functions, therefore, of the court and the registering authority should be made clear. Investigation of offences whether rules have been contravened should rest with the court. Conviction for such contraventions should also rest with the court. The power of cancellation or of disqualifying a person from doing the business of money-lending should rest with the registering officer. But his discretion should be fully controlled by a clear specification of the offences, and the number of such offences for which a licence may be temporarily or permanently cancelled.

1 Under the Bihar Act the court should find a registered money-lender guilty of fraud or of having contravened the provisions of the Act, or unfit to carry on the business of moneylending during a suit. If it is of such an opinion, then it is bound to make a report to the Collector, who may cancel the certificate for a period not exceeding 5 years (Sec. 19). The Assam M. L. Act of 1934 empowers the court under the same conditions, of "debaring a moneylender from carrying on such business for such time as may be specified in the order." The order is appealable. The Bengal Bill empowers a competent court to cancel a licence (Sec. 15). Certain courts can disqualify a moneylender for one year, while superior courts can disqualify him for a longer period.

2 If the licence is not produced before the court within the prescribed time by the moneylender for making on it an endorsement of its order, the money-lender shall be liable on conviction to a fine not exceeding Rs. 500 for each day for the period during which the default continues (Sec. 17. C of the Bombay Moneylenders' Bill).

The loans in suits in respect of which a court may find a person guilty of an offence under the Moneylenders' Act should be clearly defined. Can a court find guilty a moneylender in respect of acts done before the date of commencement of the Act? Can a court find guilty a moneylender in suits for recoveries of loans made before the commencement of the Act, while he has contravened its provisions after its commencement? While it is perfectly justifiable that no moneylender should be charged for any irregularities committed before the commencement of the Act, there can be no reason for excluding from the jurisdiction of the court the acts of a moneylender committed after the commencement of the Act, simply because the loans were issued before its commencement.

267 Consequences of cancellation

We shall now consider the effects of cancellation of a licence. The status of a moneylender whose licence has been cancelled is not more than that of an unlicensed moneylender. He cannot, therefore, transact business without being declared an offender in law and being subject to a fine not exceeding Rs. 100/- (C. P. Moneylenders' Act 11 F. 1 and 2). But while under certain Acts an *unlicensed* moneylender can pay the licence fee and thereby be entitled to sue for recovery of moneys lent by him, a moneylender under the Bihar M.L. Act and the Bombay Bill *whose licence has been cancelled* cannot sue at all for loans issued by him during the period when his licence stood cancelled.¹ But even he should have the right to sue for the recoveries of loans advanced by him before the date of cancellation.² This is barred under the Punjab Bill. The moneylender whose licence has been cancelled under that bill can conduct his pending suits provided he had not as a result of a finding by a Court incurred any of the disabilities for which his licence might have been cancelled (Sec. 9). Otherwise the Deputy Commissioner should specify the

1 The Bihar M. L. Act Sec. 8 says that a moneylender could sue only if he was registered at the time when the loan was advanced. The Bombay M. L. Bill Sec. 12 says that no money-lender shall, after the commencement of this Act, carry on or continue to carry on the business of moneylending in any area in the province for which he does not hold a licence.

2 Some of the Acts make no such specific provision. But the clause which says that the court should consider a suit only in respect of loans issued when a moneylender had a licence save his right to sue for loans issued before its cancellation. The Orissa bill expressly provides that such cancellation shall not preclude the moneylender from instituting suits in respect of loans advanced by him before the date of the order of such cancellation." (Sec. 18.2)

loans issued before the date of cancellation which he can recover by suits through the Court (Sec. 11-3). This is too stringent a provision which came for a bitter but legitimate criticism in the Assembly when the bill was under discussion. An amendment was moved that at least those moneylenders whose licences have been cancelled and who were winding up their business need not take the sanction of the Deputy Commissioner. But the amendment was not accepted.

We have also to be careful in defining the effect of cancellation of a licence. For instance, the Punjab Bill bars suits by moneylenders whose licences have been cancelled. But suppose they get back their licence, they can sue for loans issued by them during the period when they had no licence.¹ No other Act allows suits for recoveries of loans issued by a money-lender from the date of cancellation of a licence. While thus the provisions are hard in respect of loans issued by a money-lender before the cancellation of the licence, the bill gives scope for loans issued after the cancellation to be recovered through courts, if a money-lender would get his licence back on the date of the suit! We should make a difference between a moneylender who is not licenced, and another whose licence has been cancelled. In the former case the court may order him to produce the licence before it grants the decree or the application for execution. But in the latter case the loans issued during the period when the licence stood cancelled should not be allowed to be recovered through the court.

Permanent cancellation of a licence will prove a hardship as any human being may turn a better leaf with lapse of time and should have the opportunity to acquit himself honourably. The prescription of a maximum period for the cancellation of licence instead of permanently disqualifying a moneylender is one remedy. Or the Local Government may be empowered to remove the disqualification for holding a licence on specific grounds such as the nature of the offence and the time that has elapsed after the cancellation of the licence.² There should also be provision for appeal both when a licence is refused or cancelled.

1. Suits and applications by money-lenders for the recovery of a loan shall be dismissed unless the money-lender, at the time of the institution of the suit or presentation of the application for execution, or, at the time of decreeing the suit or deciding the application for execution, (1) is registered and (2) holds a valid licence in such form and manner as may be prescribed." (Sec. 3).

² Vide Bengal M. L. Bill Sec. 12, A. 2.

268 Regulation of Pawnbroking

The Moneylenders' Acts do not treat the business of pawnbrokers as separate from that of moneylenders. But pawning of goods for small loans is a necessity in the case of the poorer classes both in towns and villages. The business too so entirely differs from that of the ordinary money-lender that the application of the provisions relating to regulation of accounts to pawn-broking will by itself not be sufficient to regulate and control it. The profits by way of interest which a pawnbroker could make and the charges he could levy for a pledge loan cannot be the same as in the case of other loans. The limit of an outside date should be specified within which a pledge should be redeemed so that the pawnbroker might be prevented from immediately selling the article in case of default. The pawnbroker should be held responsible to protect the pledged article from fire and depreciation. When once we regulate pledge loans, we have to see that stolen articles are not pledged. There should be some provision too for the pawner to get back his pledge when he has lost his pawn ticket. Pledges may be taken with a view to purchase the article at a cheap price by striking a bargain out of the necessities of the pawner. Sales before the due date of redemption have therefore, to be prohibited. A pawnbroker should not be permitted to himself auction the unredeemed goods. The office of the auctioneer should if possible be separate from that of the pawnbroker. The rules of auction should be definitely stated. There should be provision to hand over any surplus amount realised in sales of unredeemed articles. To prevent frauds, the account books should give every detail about the articles pledged. A receipt should be passed for the pawned article. The Sale Book should state the profit realised so that the surplus might be handed over to the pawner. The receipt for payment should state the amount of interest collected so that inspecting authorities might check the collection of any excess interest over the prescribed rates. The inspections in regard to this type of lending will have to be more searching.

269 Provisions for pawnbroking in Indian Acts

Many of the Acts have not made any special provision regarding the business of pawnbrokers. What little provision has been made is extremely meagre to control pawnbroking. The recent Bengal Bill states that a pawnee is also a moneylender. The N. W. F. P. Bill has provided under Section 4 that the receipt given to the pawner should give details of the articles pledged, its market value, the amount lent, and the interest agreed upon. The Madras

Debtors' Protection Act states that, in addition to the accounts to be maintained as prescribed for other money-lenders, a pawnbroker should also keep accounts noting the details of the article pledged, the time agreed for redemption, the name of the pawner, and the name of the owner of the article if different. It further states that, on payment of the prescribed fee, a copy of these entries should be given to the pawner. According to the Bihar Act and the Orissa bill every registered moneylender "shall give to the debtor a signed receipt for every pawned article with its general description immediately after it is pawned, mentioning the amount for which it is pawned" (Bihar M. L. Act Sc. 7. e, and the Orissa bill 7. c.).

270 The Working of the Ceylon ordinance

60. The working of the Pawnbrokers' Ordinance No. 8 of 1893 and amended in 1922 has shown how its provisions were abused by pawnbrokers. The pawn tickets may be forged in another's name, or false entries may be made in the counterfoil. Again there may be fraud in a pawn transaction. Thirdly, illegitimate profits and charges may be realised over and above the prescribed ones. Fourthly, the illegal practices of moneylenders required a greater control than that exercised by Government Agents. The amended ordinance of 1935 has tried to prevent these abuses by its new provisions. The counterfoil of the pawn tickets should be countersigned by the pawner. In order to discover any fraud, the pawnbroker is obliged to retain the redeemed pawn tickets for a period of twelve months from the date of redemption. The back of the foil should contain the rules regarding the profits and charges allowed. Fourthly, it is obligatory on the Government Agents to cancel a licence, if a pawnbroker has been convicted twice by a court for contravening the provisions of the ordinance.

Benefiting by the experience of Ceylon, either a special Act should be provided to regulate the business of pawnbrokers, or special regulations should be incorporated in the existing Money-lenders' Acts. The English Pawnbrokers' Act of 1872 may also be suitably adapted to Indian conditions.

Note 10

RATES OF INTEREST WHICH ARE DEEMED USURIOUS

(1) Rates of interest over the following are to be deemed or presumed as excessive under the Usurious Loans' Acts.

| | SECURED LOANS | | UNSECURED LOANS | |
|--|------------------|-----------------------|------------------|------------------------|
| | Simple Interest% | Compound Interest % | Simple Interest% | Compound Interest % |
| Madras Debtors' Protection Act, 1934 (Sec. 6 A). ... | 9 | ... | 15 | ... |
| Punjab Relief of Indebtedness Act, 1934 (Sec.5)... | 12 | 9 % with annual rests | 18 $\frac{3}{4}$ | 14 % with annual rests |
| The Central Provinces Usurious Loans Act, 1934 (3. 2). ... | 12 | ... | 18 | ... |
| The U. P. Usurious Loans Act, 1934 (3). ... | 12 | ... | 24 | ... |
| The Bengal Money-lenders' Act, 1933 (Sec. 4). ... | 15 | 10 | 25 | 10 |
| The Bihar Money-lenders' Act, 1938 (Sec. 9). ... | 9 | ... | 12 | ... |
| The Orissa Money-lenders' Bill, 1938 (Sec. 9). ... | 9 | ... | 12 | ... |
| The Bombay Money-lenders' Bill, 1938 (Sec. 29). ... | 9 | ... | 12 | ... |
| The Bengal Money-lenders' Bill, 1938 (Sec. 29). ... | [Cash loans] | | 15 | ... |
| | [Kind loans] | | 15 | ... |
| The Assam Money-lenders' Act, 1934 (Sec. 8). ... | 12 $\frac{1}{2}$ | ... | 18 $\frac{3}{4}$ | ... |
| Do Amendment Bill, Dec. 1937 (Not yet approved by the Governor). ... | 9 $\frac{1}{2}$ | ... | 12 $\frac{1}{2}$ | ... |

It should be noted that these rates do not in any way prevent a court from deeming those below such rates as excessive.

Some of the Money-lenders' Acts do not specify the usurious rate but have prescribed maximum rates of interest which would be granted by a court. Consequently rates exceeding such maximum rates are usurious. The prescribed rates of interest have been specified in another note in the section on rates of interest.

(2) Under the Madras U. L. Act the court shall presume the interest to be excessive if compound interest is charged on loans to agriculturists. Under Sec. 10 of the Bihar Money-lenders' Act and the Orissa Money-Lenders' Bill, compound interest on loans advanced after the commencement of the Act shall be void. The Assam Money-lenders' Act, and the Bombay Money-lenders' Bill closely follow the British Money-lenders' Act of 1927 and prohibit compound interest, while permitting collection of interest on overdue interest at simple interest rates.

(3) Stipulation for rests at less than six months for compound interest are disallowed in the C. P. and Bengal Money-lenders' Acts and the U. P. Usurious Loans Act.

Note 11

LOANS EXCLUDED FROM THE OPERATION OF MONEY-LENDERS' ACTS

The Money-lenders' Acts deal with penalties for abuses, maintenance of accounts and submission of returns, rates of interest on loans, and registration and licensing of money-lenders. They exclude certain classes of loans from the operation of these provisions. Loans are defined as "advances in money or in kind at interest and any transaction which the court finds to be in substance a loan". A list of excluded loans is given below with special reference to each of the Acts noting also any particular variations.

**LOANS EXCLUDED FROM
THE OPERATION OF
MONEY-LENDERS' ACTS**

**REFERENCE TO THE
PROVINCIAL ACTS OR
BILLS**

A deposit of money or other property in a Government Post Office Bank or any Bank or in a Company or a Co-operative Society and Loans advanced by Government and Local Bodies.

All Acts and Bills except the Assam Money-lenders Act, (1934).

A loan to, or by, or deposit with any Society registered under Societies Registration Act 1860 or any other enactment relating to a public, religious or charitable object.

Bombay and Bengal Money-lenders' Bills 1938, the Punjab Regulation of Accounts Act 1930, the Punjab Registration of Money-lenders' Act 1938, and the C. P. Money-lenders' Act, 1934.

Advances on bills of exchange or cheques.

Bombay and Bengal Money-lenders' Bills, the C. P. Money-lenders' Act, 1934, and Punjab Registration of Money-lenders' Act.

Loans advanced by a Co-operative Society.

The C. P. Money-lenders' Act, the N. W. F. P. Agriculturist Debtors Relief Bill, and the Punjab Registration of Money-lenders' Act. Bombay excludes these loans in respect of provisions regarding regulation of accounts.

Loans advanced by Banks.

The C. P. Money-lenders' Act, and the Punjab Money-lenders' Registration Act 1935. The Bombay Money-lenders' Bill excludes these loans only in regard to regulation of accounts.

Loans advanced by Companies.

(1) C. P. and Punjab Money-lenders' Acts exclude loans of companies whose accounts are subject to audit by a certified auditor.

(2) The Bombay Money-lenders' Bill excludes these loans only in respect of regulation of accounts.

(3) The N. W. F. P. Agriculturist Debtors Relief Bill.

Loans by any body corporate or incorporated which the Provincial Government may by notification in official Gazette exempt from the operation of the chapter.

A transaction which is in substance a mortgage on or a sale of immoveable property.

A loan advanced to an agricultural labourer by an employer.

Loans advanced to persons other than agriculturists for purposes of trade, commerce, industry, mining, insurance, banking, or entertainment, or the occupation of wharfinger, warehouseman or contractor, or any other venture of a mercantile nature whether as proprietor, or principal, or agent, or guarantor.

Supply of goods on credit.

Bombay Money-lenders' Bill with reference to the chapter on regulation of accounts.

Punjab Regulation of Accounts Act 1930. In the C. P. Money-lenders' Act, the word 'mortgage' appears in the place of 'Charge'.

The C. P. Money-lenders' Act.

The Bengal Money-lenders' Bill Provisions relating to registration of money-lenders and regulation of accounts, (chapters III and IV) will not be applicable to these loans.

The Bihar Money-lenders' Act, 1938.

Under the Orissa bill, a supply of goods

(i) on khata carrying interest upto six and a quarter per centum simple per annum or

(ii) On credit is not a loan. (Sec. 2. i. 2).

In the Bihar Money-lenders' Act a bond bearing interest executed in respect of goods taken on credit constitutes a loan.

A loan advanced to a trader.

The Punjab Regulation of Accounts Act.

Small loans of Rs. 20 and below paid within a year in equated instalments the total of which does not exceed the principal by 10 or 20%.

U. P. (These loans are not excluded in suits by debtors for accounts, penalty for overwriting bonds, and for not issuing receipts).

Advances by landlords to tenants and bonafide advances in business other than moneylending—Loans of Rs. 500 and less.

The Madras Debtors' Protection Act, 1935. (This Act has no provision for registration of Money-lenders.)

Kind loans of agricultural produce repayable at next harvest with not more than $\frac{1}{2}$ of the said produce by way of interest.

The U. P. Agriculturists' Relief Act 1934. (But the Act includes all kinds of loans even though not bearing interest).

NOTE:—(1) The law of Damdupat applies to all loans in the Punjab, while in Madras it applies only to loans of agriculturists exceeding Rs. 100 and which come up for conciliation before the Debt conciliation Board.

(2) The Punjab Registration of Money-lenders' Bill excludes the following further loans :

(a) A kind advance by a landlord to his tenant for the purposes of husbandry provided the market value of the return does not exceed the market value of the advance as estimated at the time of the return.

(b) A loan advanced by a trader to a trader.

(3) (a) In the U. P. the clauses relating to maintenance of accounts apply to all agriculturists, while the rules regarding suits against agriculturists in courts which, operate in the area of their residence, kind loans, supply

of copies of documents, deposit in court, and reduced stamp fees apply only to small agriculturists paying a land revenue of Rs. 1000 and below. The Act also excludes loans of those who pay a certain income tax and loans of agriculturists which are jointly due with non-agriculturists who are not sureties.

(b) The U. P. Relief Act has no provision for registration of money-lenders.

(4) The Assam Money-lenders' Act does not exclude any loan.

(5) In the C. P. a special Act governs the rates of interest. It excludes loans by Co-operative Societies, Land Mortgage Banks, and scheduled banks as defined in the Reserve Bank of India Act of 1934.

(6) The N. W. F. P. Bill, 1938 excludes the following kinds of loans:

- (1) Any liability arising out of a breach of trust provided that no transaction which carries interest shall be considered as a trust and,
- (2) any liability in respect of maintenance whether under an order or decree of court or otherwise.

The bill is a combination of provisions relating to registration of moneylenders, and relief of indebtedness on the lines of the Madras Debt Relief Act. The inclusion of these two kinds of liabilities may be justifiable in schemes of liquidation, but as the Act combines two sets of provisions, what applies to the one has been applied to the other also, without any sufficient grounds for the same.

There is also another Act in operation in the N. W. F. P. called the Regulations of Accounts Act with provisions similar to those of the Punjab Regulation of Accounts Act.

Note 12

RATES OF INTEREST

The class of loans to which rates of interest apply will be evident from the note on "Loans excluded from the operation of Moneylenders' Acts". The following are the rates of interest provided in the several Acts which loans shall bear and which shall not be exceeded by the creditors when granting loans, or which the Court shall not exceed when passing decrees for recoveries of monies lent.

| | SECURED LOANS | | UNSECURED LOANS | |
|---|------------------------------------|---|--------------------------|--------------------------------------|
| | Simple % | Com- pound % (Yearly rests) | Simple % | Com- pound % (Yearly rests) |
| (1) The U. P. Agriculturists' Relief Act (Sec. 28). | | | | |
| NOTE : | | | | |
| (a) These are percentage rates to which the rate at which the Local Govt. borrows should be added. We have noted the latter rate as X. | Loans of Rs. 500 and under | $\times + 5\frac{1}{2} \times + 3$ | $\times + 10\frac{1}{2}$ | $\times + 7\frac{1}{2}$ |
| | Loans between Rs. 501 and Rs. 5000 | $\times + 4\frac{1}{2} \times + 2\frac{1}{2}$ | $\times + 8$ | $\times + 6$ |
| (b) Where an unsecured loan is repaid within 2 years or the due date, the rate of interest for secured loans shall prevail in such cases. | | | | |
| (c) Rates apply only to agriculturists. | | | | |
| (2) The C. P. Reduction of interest Act 22 of 1936 as amended by a recent bill of 1938. | Loans of Rs. 2500 of and under | 7 | 5 | 10 |
| | Loans over Rs. 2500 | 6 | 4 | 8 |

| | SECURED LOANS | | UNSECURED LOANS | |
|--|---------------|------------------------------|-----------------|------------------------------|
| | Simple % | Compound % (Yearly rests) | Simple % | Compound % (Yearly rests) |
| (3) Bihar Money-lenders' Act of 1938 and the Orissa Money-lenders' Bill of 1938 (Sec. 9). | All Loans 9 | ... | 12 | ... |
| (4) The Bombay Money-lenders' Bill of 1938. | Do 9 | ... | 12 | ... |
| (5) The Bengal Money-lenders' Bill. | Cash Loans 8 | ... | 10 | ... |
| (6) The Madras Debt Relief Act applies only to specified class of agriculturists and certain specified loans; vide provisions, para 216, chapter IX. | | 6 $\frac{1}{2}$ | 6 $\frac{1}{2}$ | ... |
| (7) Santhal Parganas and Agency tracts in Madras. | 24 | ... | 24 | ... |

Note 13

RATES OF INTEREST ON DECREED AMOUNTS

A new clause was added in the amended Code of Civil Procedure in 1888 empowering the court to fix the rate of interest from the date of suit to that of decree and from the date of decree to its realisation. The Act of 1908 laid down the interest to be granted on mortgage suits from the date of suit to that of realisation. 6% is generally granted by the courts which has been considered as a low rate by the U. P. Banking Enquiry Committee and the N. W. F. P. Committee. According to them, it encourages a debtor to prolong the satisfaction of the decree so that he might get the benefit of the reduced rate from the date of suit. The U. P. Committee recommended, "that the courts should no longer have discretion to reduce the stipulated rate of interest after the date of the suit unless that rate is 'usurious'" (Page 209). When the clause came for discussion in the Legislative Council during the amendment of the Code in 1908, Tikka Sahib of Nabha gave vent to the public opinion then

prevailing that, "considering the poverty of India and the agricultural classes being in the hands of moneylenders who charge large rates of interest, there should be some limit beyond which interest should not be awarded." The rates of interest prescribed in the provincial laws are noticed in another note. These rates will certainly apply also to decreed amounts from the date of suit to that of payment unless special rates are prescribed for such amounts. The U. P. Agriculturists' Relief Act has a special provision regarding future interest on decrees. According to Sec. 4 of the Act, the Local Government shall notify the rate at which the Government of India will lend money to it, and that rate shall be the rate in force for future interest which may be allowed in any money or mortgage decree or any order for instalments.

CHAPTER IX

COMPULSORY LIQUIDATION OF DEBTS

A

NATURE AND SCOPE OF EARLY MEASURES OF DEBT CONCILIATION

271 Earlier schemes of liquidation in Bengal

The earliest scheme for the liquidation of debts was undertaken in Bengal by Warren Hastings when the administration of the Province was taken over by the East India Company. The Committee of Circuit in 1772 framed a rule regarding adjustment of debts. In accordance with this rule interest was to be calculated at a stipulated rate. No further interest was to be paid on past debts which were to be payable by instalments according to the circumstances of the debtor. The next scheme tried was among the Mundars in Ranchi district in 1906. About 1½ lakhs of rupees was distributed at 6¼% interest by the Government as loans to the Mundars for the repayment of mortgage debts. The Bihar Banking Enquiry Committee report said about the scheme that it

“was generally accepted to be a failure partly owing to the fact that many of the cultivators could not maintain regularity of payment and ultimately contracted fresh debts from the village moneylenders in order to pay off Government instalments.....It was at least evident that where he (the debtor) was not able or competent to repay the instalments, he was driven to borrow at high rates of interest.”

The report of the Bengal Board of Economic Enquiry said about the scheme, ‘that 41% of the total amount due in repayment and interest stood unrecovered. The collection was mostly by *certificate procedure*.’ A settlement of debts was tried in a village in 1919 in Pabna district by the Co-operative department. A debt of Rs. 26,000 was settled at Rs. 10,000 to be paid forthwith in cash and Rs. 5,600 by instalment. The settlement showed that scaling down would be more readily consented to by creditors where some cash payment was immediately made.¹

¹ Supplement to the Calcutta Gazette Jan. 24, 1935, p. 147.

Three years before the Bengal Agricultural Debtors' Act was passed in 1935, settlement of debts was successfully tried and accomplished in the Hajiganj circle in Chandpur sub-division of Eastern Bengal. The conditions were favourable to a settlement, as creditors could hardly collect their debts. 11,000 cases involving Rs. 19 lakhs were brought up before voluntary boards in 1935. 5,000 cases involving Rs. 11 lakhs were disposed of till September 1936. The claims were settled for Rs. 7 lakhs, and a sum of Rs. 5 lakhs has been repaid till September 1936.¹ This experiment showed that enthusiastic revenue officers might achieve a great deal by way of amicable settlement with the aid of village boards. It was as a result of experience gained in this area that the Bengal Agricultural Debtors' Act of 1935 incorporated the scheme of village boards in its provisions.

272 Debt Conciliation in the C. P. in 1897

The first scheme of conciliation to be tried in the Central Provinces was between the years 1897 and 1912.

The main features of the scheme were the following. The local officer played the chief part in bringing about the conciliation. The local Panchayat was more a Consultation Committee for the officer than a statutory body with defined powers. Creditors were asked to submit complete statements of debts owed to them and to bind themselves to forego any future claims not listed in the statements. Interest was allowed only on overdue instalments at 6½% on cash loans, and 12½% on grain loans. No interest should be collected if the default were due to failure of crops. Under the scheme, even though a large amount was written off, the settlement were not legally enforceable, and consequently landlords began to collect their debts as of old. It would be interesting to notice the working of the conciliation Board in Bhandara district in 1936 where debts were composed by the influence of officers as early as 1900. One of the moneylenders who reduced his debts then is a member of the new Board. One of the claims disposed by the present board was the same as what was settled in 1900!

273 Conciliation vs Compulsion

The Hon. Mr. H. C. Gowan, when introducing the Debt Conciliation bill in August 1932, gave an account of the experiments in debt settlement that were undertaken in the previous year. Conciliation

¹ Proceedings of Legislative Assembly, Delhi, 24th September 1936 p. 1819.

was tried in the Pipariya circle of the Hoshangabad district and two portions of the Saugar district. It showed that some form of pressure was necessary to make the creditors appear before the Board.¹

Mr. Gowan also spoke on the need for a bill which would combine conciliation with compulsion. A member of the Legislative Council had just then brought a private bill which provided for a debt board by election, and for remission of debt by 50%. Mr. Gowan explained the dangers of the purely compulsory method. Creditors would begin to take bonds for double the amount in future to protect themselves against such laws, and to compensate for their past losses. Secondly, an elected machinery was hardly suited for such a work. Thirdly, if the boards were to operate over the whole province, the courts would have heavy work in executing the decrees, and a growth in the number of village boards would lead to corruption. Fourthly, the experience of debt conciliation in 1900 was before them. Creditors collected the awarded amounts with great harshness. The same would happen when there was no provision for recoveries of repayments. It was in these circumstances that the C. P. Debt Conciliation Bill was moved in 1932. Its provisions are described in Chapter X.

1 "In two out of three villages the experiment was infructuous, but in the third where indebtedness was heavy, a fair measure of success was attained though some of the creditors refused to be bound by the award. In the Hoshangabad district in 7 selected villages the amount compounded was Rs. 10,394 out of a total of Rs. 1,07,067, the reduction by composition being Rs. 5,264. This is an extraordinary small result for the expenditure and trouble involved. It is said that the creditors were reluctant to forego part of their claim unless the balance was paid in cash or unless adequate security was given for the punctual payment of instalments. Creditors objected to the exclusion from the scope of the proceedings, of debts due to co-operative societies or to Government. In many cases creditors did not turn up and even where they did, they refused to disclose the original amount of loans. Secured creditors in particular ignored the proceedings. Often tenants did not turn up, as they did not expect much benefit from the proceedings. This was especially true of heavily indebted men whose legal position is fairly secured, as their minimum of house, stock, implements, seed and food is safe from attachment under Section 60 of the Civil Procedure Code. A more encouraging report had been from Berar. The officer selected had the advantage of the assistance of two influential non-officials. The operations were carried out in two villages where, out of a total debt of Rs. 57,374, Rs. 17,722 was suitably reduced, and a further sum of Rs. 17,048 was reported to be capable of reduction under better conditions." Speech of the Hon. Mr. H. C. Gowan when introducing the Debt Conciliation Bill, 26th August 1932, page 125.

274 Co-operative Societies and Debt Conciliation in the Punjab

The experience of Co-operative Societies in the composition of debts is described in paras 173-174 of the Punjab Banking Enquiry Committee report.

"The results have only been satisfactory in the small number of cases in which the right type of person was selected for composition.....In Lahore district in one Society the members (whose debts were taken over after a reduction of 4 or 5% of the claim by the money-lender) promised in future to deal only with the Society, but enquiry some years later showed that they had incurred fresh liabilities almost equal in amount to their old ones The arrangements were too favourable to the money-lender and enabled him to recover what might otherwise have been irrecoverable. In Ferozapore the repayments are irregular (to the co-operative Society though the latter has paid off the money-lender). In Rohtak 30 to 50 % reductions have been secured and the results are satisfactory. In Sialkot repayments are made by giving cattle, grain, and partly cash to Sahukars. In some cases instalments are fixed after making a substantial repayment partly, and at times interest ceases to run from the time of payment of a lump sum."

275 Land Mortgage Banks in Madras

The issue of long term loans through co-operative societies in Madras has led only to the growth of frozen assets in the movement, while the members who have benefited by such loans have been few. An enquiry by the central Land Mortgage Bank into the condition of co-operative societies as to the extent that long term loans due by members could be taken over by the Bank, showed that a substantial number of such loans could not be redeemed even by the grant of long term instalments up to 17 years at 6% interest. This showed the impossibility of liquidating the debts even by granting long instalments in the case of certain agriculturists.

B

MORATORIUM ACTS

276 The U. P. Notifications against sale of land and produce

The distress felt by rayats after 1930 in the repayment of loans led to emergency measures for the declaration of moratorium in some of the provinces partly as a relief to agriculturists, and partly to prevent the rush of suits and wholesale executions for debts during the peiord of formulation of debt relief measures. The U. P. Government issued a notification on March 21st 1932 that the execution of decrees in cases in which a civil court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold should be transferred to the Collector, The Collectors were requested by another circular to

watch and to adjourn sales when they were satisfied that the prices offered were unfair. In February 1933 the Government notified certain rules under Sec. 70 of the Civil Procedure Code in execution of decrees of civil courts. These were that,

" (1) No price for land should be regarded as fair which was less than 20 times net profits and (2) in view of the fall in the market value of land sales should be postponed upto the end of 1934 provided that so much property might be sold as would suffice to realise an amount equal to future interest allowed by the decree upto the end of 1934 ."

277 The Temporary Postponement of Execution of Decrees Act 1937 U.P.

But inspite of these notifications, between the publication of the Agriculturists' Relief Bill in January 1933, and its enactment in December 1934 which thus took 2 years to come into force, the decree-holders rushed to courts and got their final decrees for sale. The number of unsatisfied decrees whose execution was held up by the Government during the discussion on the Debt Relief bills was 48000 (vide speech of the Finance member on the Encumbered estates Bill V. 64. 1934 p. 602). The Act permitted the grant of instalments only in preliminary decrees. So nothing could be done by way of revising final decrees for possession or sale. A special proviso was added in the Agriculturists Relief Act in December 1934 that instalments could be granted even in cases of final decrees for sale which have not been fully satisfied, and were passed before the Act came into force. The Encumbered Estates Act of 1934 stayed suits and proceedings in courts in respect of debts of landholders who applied to the Collector for a composition of their debts. The other relief measures in the U. P. have no doubt scaled down the debts of agriculturists, but not on a complete and comprehensive scale, particularly in respect of debts of tenants and small landholders. With a view to formulate such a scheme, and prevent a rush of creditors to courts during the interval, the Congress Ministry in U. P. have passed an Act called the Temporary Postponement of Execution of Decrees Act in 1937. The Act was to remain in force for 6 months and might be extended for another six months. It was restricted in its application to agriculturists paying a land revenue below Rs. 1000 or of similar status, and who were not assessed to income tax. Under the Act pending and fresh applications for the execution of money decrees, and decrees relating to foreclosure or sale in enforcement of a mortgage, and proceedings either pending or fresh under such decrees, were stayed. All persons in detention in civil prisons should be released, and no person should be liable to be arrested and detained in execution of decrees. But stay orders

in the case of agriculturists paying a land revenue or rent over Rs. 250 would be granted only on their depositing 15 of the amount for which the decree was executed. The Court might grant time for payment of the initial deposit. The Act did not prevent the institution of suits, "in as much as the intention was to give relief mainly to petty landlords and tenants."

"It safeguards the interests of decreeholders and potential decreeholders by providing that the law of limitation shall not operate in respect of the execution of decrees for money arising out of claims relating to trusts or for maintenance or for rents and profits in favour of a co-sharer or co-owner or for mesne profits."

The Act shall "also not apply to" mortgage decrees sought to be executed by sale of the mortgaged property, in the hands of a subsequent transferee who has taken the transfer subject to the mortgage on the basis of which such decree has been obtained."

278 The Madras Moratorium Bill

In Madras a moratorium bill was published on first October 1937. It justly restricted its provisions to agriculturists paying a land revenue of Rs. 400 and below. It was thereafter withdrawn, and in its place, a Debt Relief Bill was brought before the Legislature in December 1937. In order to grant the benefit of the bill for those agriculturists against whom decrees might have been executed from the date of publication of the moratorium bill, it invalidated the execution proceedings taken by courts between first October 1937 and the enactment of the Bill on 22nd March 1938. The decreed amounts in these cases might be revised on the application of the judgment-debtor, according to the provisions of the Act. The court was also to order the decreeholder to refund the excess in sales of movable property. In the case of sales of land during this period, the sale was to be set aside, and the auction purchaser was to be repaid the amount of the purchase money provided the judgment-debtor applied to the court within 90 days of the commencement of the Act. The poundage fee collected by the Court on such sales was to be refunded by the Court. Any alienation of immovable property made by a debtor during this period was also declared invalid.

279 Moratorium in the C. P.

Recently the Government of the C. P. have enacted an Act in August 1938 declaring a moratorium on the lines of the U. P. Act, as they have intended to bring a new measure of Debt Relief in the place of the existing Debt Conciliation Act.

The Central Provinces Government issued instructions in 1933 and 1934 that every care should be taken that land was sold in execution of decrees only as an unavoidable necessity. The judicial Commissioner issued instructions to courts that crops and cattle should be attached only after exempting the seed-grain, cattle, and the produce and fodder necessary for the cultivator and his cattle till the next harvest.

280 Temporary Relief of Small Holders' Bill, Bombay, 1938

The Bombay Government passed an Act in March 1938 to provide for the temporary relief of small holders in the province of Bombay, and to prevent the forestalling of laws which are pending enactment, for the protection of agriculturist debtors and for securing them tenancy rights, by the execution of decrees on properties by creditors, and by the eviction of tenants by landlords. It was to remain in force for one year. It applied to small holders. The latter were defined as individuals who held lands not exceeding six acres of irrigated land or eighteen acres of other land, or who held land of whatever description, the total annual agricultural assessment of which did not exceed Rs. 30, and who cultivated the lands themselves, or were inferior village servants. Undivided Hindu families who held lands subject to the same limitation, and at least one member of which personally cultivated lands were also small-holders. Where a person held both irrigated and other lands, one acre of irrigated land would be equal to three acres of other land or vice versa (Sec. 2). All proceedings which were pending or which might be instituted for the sale of land in execution of decrees by Collectors were to be stayed by the Collector, provided interest was paid on the sum for which the land was to be sold, for the actual period or one year from the date on which the said sum became payable. One dwelling house occupied by the judgment-debtor, standing crops, and milk cattle not exceeding two were to be exempt from attachment and sale in all proceedings in execution which are pending or which might be instituted from the date of commencement of the Act. Private transfer of his land or dwelling house could be effected by the small-holder only with the consent of the Collector. Orders directing the Collector to take possession of the land for management under Sec. 22 of the Deccan Agriculturists' Relief Act whether passed before or after the commencement of the Act were not to take effect for a year.

The landlord too could not evict a tenant if he paid his rent for the year ending 30th June 1938. If for any reason land revenue was suspended by the Government wholly or partially, payment of

rent and interest were also to be suspended payment in the same proportion.

281 **Moratorium in Debt Relief Acts**

The Debt Relief Acts too provide for stay of court proceedings in suits and decrees when once an application is made before the special machinery provided by them for debt conciliation. These provisions indirectly grant a moratorium to the debtor in respect of his loans. The longer the time taken by the special machinery to settle a debt, the longer will also be the moratorium gained by the debtors for repayment of such debts.

C

COMPULSORY PROVISIONS FOR SCALING DOWN, OR FOR LIQUIDATION OF DEBTS OF AGRICULTURIST DEBTORS

282 **Scaling down interest and adjusting excess to principal, a time-honoured method**

It was claimed for the Madras Debt Relief Act IV of 1938 that it was the first measure which provided for a compulsory scaling down of debts and thereby gave ready relief to the debtors as against debt conciliation measures which depended on the good will of the creditor for the grant of any relief to them. But Assam was the first to amend its Moneylenders' Act providing that no money-lender should recover in the aggregate more than twice the original loan, thereby granting relief in respect of the principal amount too.¹ This principle had been given effect to in usage by courts in some of the provinces of India. Also scaling down of interest, and adjusting excess payments towards the principal were time-honoured methods in practice since the enactment of the Encumbered Estates Relief Acts in the seventies of the last century. But there is this difference that, while the earlier Acts left it to the discretion of the courts to determine the amounts due on the basis of certain broad lines of procedure laid down by them, some of the recent bills propose a scaling down of debts on a percentage basis, irrespective of the circumstances of the individual debtors or creditors. The principle of scaling down debts was embodied in the Deccan Agriculturists' Relief Act of 1879 which gave discretion to Courts to order instalments and grant any interest. The Court might not even grant any interest in certain cases. The principle of

1 Amendment Bill of 1937 pending approval of the Governor.

reducing excessive interest, and ordering the creditor to repay any sum which the court considered to be repayable in respect thereof, and of not merely crediting the excess paid under interest to principal, was embodied in the Usurious Loans Act of 1918. Not only was this reduction to apply in suits for recoveries of loans by creditors, but also in those for redemption of mortgages, thereby permitting the taking of an account of profits from land even in usufructuary mortgages, provided the mortgagor applied after the due date, and not before, for the repayment of the mortgage money. The Deccan Agriculturists' Relief Act went a step further, that a debtor could sue for accounts, and that a mortgagor could apply for redemption even before the due date, and in these cases too the rate of interest might be reduced by the Court. If it was an usufructuary mortgage, the profits from land would be calculated, reasonable interest would be granted, and the excess adjusted to the principal due. The law of Damdupat was also applied under the same Act, according to which the Court would not grant a decree under arrears of interest for more than the principal due.

283 Conciliation supplemented by Moneylenders' Acts

Since the depression of 1930, Local Governments have amended the Usurious Loans Act defining an excessive rate of interest as a guidance to the Courts. But decrees were not to be reopened under this Act. The Law of Damdupat too has been incorporated in Moneylenders' Acts. It is, therefore, wrong to say that in provinces as Bengal, Punjab, and C. P. where debt conciliation measures and not compulsory ones have been adopted, these provinces have no compulsory sanctions to scale down debts. The provisions of the C. P. Moneylenders' Act of 1934 were fully utilised by the Conciliation Boards to scale down debts.

284 Reduction of interest for depression period at a scheduled rate

After the depression various methods have been adopted to bring down interest charges. Some of the Acts have been framed on the basis that it was perfectly proper to reduce interest in the ratio of the fall in prices.

According to the Agriculturists' Relief Act of U. P. (Sec. 30.1), loans taken before the Acts came into force should carry a certain scheduled rate of interest from 1-1-1930 till such date as might be fixed by the Local Government (Sec. 30.2). All unsatisfied decrees could be revised on the application of the judgment-debtor, and there was to be no appeal against the amendment of such decrees

(Sec. 30.3)¹. The excess paid under interest shall be credited to the principal. Future interest for decrees shall not be more than the rate at which Local Government borrows i. e. 3¼%. The section of the Act fixing the rate of interest on loans has given substantial relief to the debtors.² Reduction of interest according to a scheduled rate has been adopted as early as 1903 in the Bundelkhand Encumbered Estates Act.

285 Taking an account from a certain date and Law of Damdupat

According to the Encumbered Estates Act of 1934 which applied to landlords who paid a local rate of one rupee and more, the original principal would be determined, and accumulated interest not exceeding the principal due on the date of the application would be granted. But "the special judge shall treat as principal any accumulated interest which has been converted into principal at any settlement of account or by any contract made in the course of the transaction before 31-12-1916." No such restriction is placed in the other Debt Relief Acts for determining the original principal. The Act stays suits in civil courts from the date of the application. Future interest from the date of application shall be 4½% for the debtor. Beyond determination of the amounts by the special judge, it did not make any progress in arranging for their repayment to the creditors. Meanwhile proceedings have been stayed by the Board of Revenue pending the consideration of changes in the Tenancy Law and Debt Relief Acts.³

1 The total amount of interest reduced on decrees under this section for the year 1937 was Rs. 7.85 lakhs (vide Administration of civil justice in the Province of Agra).

2 The Act has afforded considerable relief to agriculturist debtors who have taken advantage of it mostly for reducing interest and securing the concession of instalments." *ibid*, p. 9.

3 The report for the year ending September 1938 shows that the number of applications received amounted to 34,000 involving a claim of 25½ crores of rupees and that preliminary valuations have been completed in 8,310 cases involving Rs. 7.47 lakhs. The total number of applications made up to the time of expiry was 34,000 involving 25½ crores. A recent amendment bill of 1938 rectifies certain defects in the Act that have come to light. Under the Act the debts of a creditor who did not submit his statements of debts before the prescribed date to the special judge were deemed to be discharged. The new amendment makes provision for creditors to apply to the special judge for a revival of the debts so discharged on showing sufficient cause, provided decrees have not been passed in respect of such debts.

Proceedings under the Act are dragging on since 1934. Since March 1932 land sales have been postponed. Under the Act a landholder who

(Contd. on the next page)

286 Fixation of rates of interest in the C. P.

The Reduction of Interest Act 32 of 1936 in the C. P. fixes the rate of interest to be granted on debts by courts from 1-1-1932 until such other date as the Local Government may by notification appoint. All unsatisfied decrees may be revised according to this rate. Excess interest paid will be credited to principal, but a debtor cannot claim refund of interest already paid. A recent bill of 1938 amends the rates of interest still further. According to it, compound interest with yearly rests at $4\frac{1}{2}\%$, or simple interest at 6% on secured debts, and 9% on unsecured debts has been provided for. The C. P. Relief of Indebtedness Bill of 1938 fixes the rate on decrees at 4% for unsecured debts and 3% for secured debts, while they are granted no interest under the Debt Conciliation Act.

287 In Bihar

The Bihar Moneylenders' Act of 1938 provides under Sec. 12 for the calculation of interest at rates not exceeding 9% for secured loans and 12% for unsecured loans in suits brought by moneylenders relating to loans advanced before or after the commencement of the Act. It

(*Contd. from the last page*)

has applied for the scaling down of his debts can enjoy the land incomes. The new amendment provides for the appointment of receivers and accumulation of such land incomes at least from non-zamindari properties for the benefit of the creditor. The notices published in the Gazette cost enormously to the debtor and this has been reduced under the new amendment.

There was no provision for a creditor to sue such of the joint debtors who did not apply for a settlement of their debts. This provision has also been embodied in the new amendments.

The following are the other defects mentioned about the working of the Act. Since 1935, the year of commencement of the Act, suits and proceedings in Courts have been stayed. This has been preceded from 1931 by departmental notifications stopping sale of lands by collectors. Consequently even interest has not been paid by the debtors. The Act unduly prolongs settlement even in the case of debts which are greater in amount than the value of the land and which could be promptly adjusted by a transfer of land. There is no elasticity in the provisions for effecting a compromise. The rules do not require that a land-holder should disclose further properties acquired by him after filing his statement of debts. Merchants and non-agriculturist debtors have benefited by the Act. There have been collusive transfers of mortgaged properties by debtors who wanted to get rid of them. The transferee had everything to gain in such circumstances as he applied for debt settlement under the Act, and got the execution proceedings stayed by the courts.

The Act has no specific provision that relief under the Act should not apply to a mortgage, or a mortgage decree, on land which has been purchased by a subsequent transferee subject to the mortgage or the decree.

is neither to apply to decrees already passed, nor to suits for redemption of mortgages.

288 Annulment of interest in Madras

The Madras Debt Relief Act abolishes outstanding interest in respect of debts incurred before 1-10-1932 until 1-10-1937.¹ In the case of debts incurred on or after 1-10-1932 the interest due shall not be more than 5% per annum simple interest till 1-10-1937. Excess interest paid shall not be adjusted to the principal. Decrees shall be revised by courts according to these rules. Interest on all decrees from 1-10-1937 shall be 6½%.

289 The N. W. F. P. Bill of 1938

The North West Frontier Bill of 1938 closely follows the Madras Debt Relief Act with a few slight changes. It does not provide for a special rate of interest to be paid on debts incurred on or after 1-10-1932. It abolishes all interest due till 1-10-1937.

290 Main features of relief under interest—merits and demerits

All these Acts have provided for 3 kinds of relief under interest. The one is that arrears of interest shall not be granted by a court for a sum more than the outstanding principal. The second is that a court shall not grant interest at rates more than the scheduled rate, the excess interest paid being allowed to be adjusted to principal under this method. The third is abolition of outstanding interest due.

The fundamental defects of all these methods of scaling down interest is that the relief is not based on the circumstances of the debtor to repay a debt. The object of the law of Damdupat is not to grant relief to debtors by scaling down debts, but to limit the amount of recoverable interest at a time. Those who have paid interest as not to exceed the principal will get no relief. Bad payers will be helped by this law. Further, the law of Damdupat cannot afford relief in the case of short term or intermediate loans which do not double in a short period. Also a new debtor will get no relief in the case of new debts. If the interest is cut down according to a scheduled rate, a debtor who requires more relief may not get it. Many debtors will

¹ Under the rules of the Agricultural Loans Act of 1884 as amended in 1935, the loan officer, when granting loans for the repayment of prior debts, shall fix an amount "which 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" (Rule VI). This rule has been recently replaced by the provisions of the Madras Debt Relief Act, 1938. Vide para, 380.

have to be left out under such a scheme. Even good debts would be reduced, thereby making a money-lender lose what he could collect, and bad debts may not be fully reduced, thereby increasing the proportion of bad to good debts owed to him. Annulment of interest for all agriculturists, irrespective of their capacity to repay, can be justified only on the wide prevalence of conditions of distress among all classes of people. Here too the debtor who never repays will get more relief. The man of small means has his only security in prompt repayment of his loans. Consequently he repays interest better than a debtor who can provide ample security in land. Debtors of small means therefore will get less relief.

291 Conclusion

In any scheme of liquidation of past debts, there should be some latitude given to the special officer or the Court to grant any interest or not on the future instalments. Instalments fixed by conciliation boards carry no interest in Bengal and C. P. The Madras Debt Relief Act guarantees uniformly $6\frac{1}{4}\%$ on future loans. But the land mortgage Bank lends at $5\frac{1}{2}\%$ to the borrower. The U. P. Relief Act provides for $3\frac{1}{4}\%$ as future interest on decreed amounts, and the U. P. Encumbered Estates' Act provides for $4\frac{1}{4}\%$ to be paid by debtors on instalments. While rates of interest for loans in the future may be fixed, the rates of interest on debts adjusted in schemes of liquidation should depend on the repaying capacity of the debtor. The principle behind any scheme of scaling down debts is that it should reduce them to a repayable size, and also determine the annual amount of instalment, if their repayments are spread over many years. This instalment has to be fixed as in the case of equated payments, on the basis of the repaying capacity, and has no relation to any rates of interest.

Also the maximum rates of interest which may be granted for past debts till the date of settlement may be prescribed subject to the discretion of the conciliation officer to lower it in deserving cases, according to the repaying capacity of the debtor. In other words, such rates should only define what usurious rates are, thereby giving full discretion to the officers to vary the rates in each individual case, as are considered by them to be fair. The provisions should in no way debar from applying for relief by way of redemption of mortgages even before the due date, and thus obtaining the benefit of a rate of interest which is not usurious.

292 Methods of scaling down principal

We will now take up the measures adopted for the compulsory scaling down of the principal. This has been done in three ways.

The principal amount is reduced by a certain percentage on the basis of the fall in prices. Secondly, when lands are sold in execution of decrees, their price is fixed on the basis of pre-slump profits. The creditor may either buy the land according to this price, or be satisfied with whatever is fetched in auction, and the debt to the extent of the fair price fixed shall be deemed to be discharged. A third method that has been adopted is to grant a decree only up to double the original principal amount including what has been already paid, provided that, if the amount is due only under interest, such interest need not be repaid.

293 The price theory

All these methods suffer from one main defect that they want to reduce the debt on the basis of a fall in prices. The reduction of the amount of debt in the ratio of prices raises the question as to why other properties also such as rents, houses, lands, money in banks, wages etc. should not equally be reduced on the same principle. Secondly, the application of this principle requires that all debts owed to co-operative societies, Banks, and the Government should equally be reduced on the same scale. To revalue debts on the basis of a fall in prices may have been a proper argument if legislation had been undertaken in 1932 and not six years later when lands have passed many hands and many transactions have been settled to the detriment of the agriculturist. The debts of agriculturists accumulate periodically owing to the unsteady incomes from agriculture, the large investment of money it requires, the long period that elapses before it fructifies, and the want of a proper land policy suited to Indian conditions. It wants periodical pruning and adjustment. It grows irrespective of a rise and fall in prices. In a country of uneconomic holders unaided by supplementary occupations, the best argument for scaling down debts is the inability of the debtor to repay.

294 The Relief of Indebtedness Bill : Scaling down principal at a scheduled percentage

We will now examine the provisions of the Debt Relief Acts and Bills in regard to the three methods adopted in different provinces.

The Government of the Central Provinces have introduced the Relief of Indebtedness Bill which has just passed through the Select Committee.

The main principle of the Bill is the scaling down of the principal of a debt at a scheduled percentage. The Debt Relief Court will re-open all transactions made 12 years before the last transaction or before 1st January 1932, whichever is earlier. It will ascertain the original

principal and calculate interest at 7 p. c. on secured debts and at 10 p. c. on unsecured debts. Excess payments under interest will be adjusted to principal. The court shall not award on account of arrears of interest a sum greater than the outstanding principal due. The principal amount shall also be reduced in the following manner. Debts incurred on or before 31st Dec. 1925 will be reduced by 30 p. c., debts incurred after 31-12-1925 and on or before 31st Dec. 1929 will be reduced by 20 p. c., and debts incurred after 31st Dec. 1929 and on or before 31st Dec. 1931 by 10 p. c.

Some of the debts which were reduced by conciliation methods under the C. P. Debt Conciliation Act are excluded from the scope of the present Bill. The main class of debts affecting a majority of agriculturists who are tenants of landholders, namely, rent debts are not capable of being reduced in any manner under the Bill. Rent debts in the C. P. are, in certain cases, no more than ordinary debts, as it is common among land-holders to adjust all payments by a tenant to debts and allow rents to accumulate, as they can collect rents by a more severe coercive process than that of the civil court. Under the existing Act co-operative debts can be conciliated with the approval of the Registrar. These are excluded from the scope of the new Bill.

Again, debts due to companies having a hundred or more shareholders, and debts due to banks are excluded. The new Bill may give relief in certain cases, but it does not provide for bringing down debts to the repaying capacity of a debtor. The sponsors of the Bill do not aim at redeeming a debtor from *all his debts*, but at giving partial relief to *all debtors*, whether such relief is really required by them or not.

The Bill excludes from its scope agriculturists whose debts are over Rs. 25,000. Such agriculturists may have their debts conciliated up to Rs. 50,000 by the debt boards under the present Act. Compulsory scaling down on a percentage basis can be justified only if it is applied to the average debts of average agriculturists. A further reduction in the maximum limit of debts, say up to Rs. 10,000, will minimise the evil of State assistance to the richer classes to repudiate debts which they could repay.

Some other provisions of the Bill also prevent the preparation of schemes for the liquidation of all the debts of a debtor. When a debtor applies to a Debt Relief Court, he is also to apply to the other courts to stay proceedings. But if in a suit the issues have been settled, or evidence has been recorded before a court of small

causes, or an order of adjudication has been passed in insolvency proceedings, the debtor is prohibited from applying for a stay of proceedings in these cases. All debts covered by suits which are not stayed by the courts will get excluded under the scope of the new bill.

Under the Bill a creditor is allowed to rebut the statement of a debtor that he is unable to pay his debts. If the creditor proves his statement, the application of the debtor will be rejected. Under this clause, another group of debts will get excluded. Further, a debtor may be able to pay certain debts, but he may dispute the amount. Such cases are excluded from being settled by the Relief Court, as only those who are unable to pay their debts can apply. Again, appeal is provided for on certain grounds from the Debt Relief Court to the District Judge. The existence of appeal powers will prove a deterrent against the free use of the Relief Courts by debtors. It is also possible that the relief obtained may be nullified in the appeal. The existing Debt Conciliation Act of 1933 bars all appeals or revisions, and the appearance of lawyers before the board. The recent Bombay Bill, 1939, permits appeals in the case of awards of over Rs. 1,000. The C. P. Bill will prevent debtors who are unable to defend themselves in appeal from taking advantage of its provisions. And as it has not prohibited the appearance of lawyers before the courts, debtors too will have to engage lawyers to defend their interests. This, again, will be a serious impediment to a wide use of the Relief Courts for obtaining the relief provided in the Bill.

It should also be noted that no relief could be granted under principal to debts incurred after 1-1-1932. The Debt Conciliation Act of 1933 has no such prohibition, and any debt may be brought down to the level of the paying capacity of a debtor with the consent of a certain percentage of creditors.

One is doubtful whether a compulsory scaling down of debts will really give more relief than the process of amicable settlement. The recent Government Review on the working of debt conciliation boards for the year 1937 says :

The remission secured was 54 p. c. of the demand. The highest percentage of remission in some individual cases is as much as 64 p. c. In Berar where debts are generally secured, the proportion of remission was smaller than in the C. P., involving a remission of 43 p. c. of the demand.

A percentage reduction under the principal proposed in the new Bill is certainly less than what debt settlement boards have so far achieved. The above statement gives the average remission.

It must be more in deserving cases. When the average for all classes put together is itself high, the average remission in respect of the small holders and insolvents must be naturally higher. The small agriculturist has little hope of an adjustment of all his debts under the Bill. In fact, the limitation of the period proposed for re-opening an account to twelve years will prove a serious handicap in determining the original principal in renewed bonds.

The introduction of compulsion will shut out the possibility of greater relief being agreed to by a creditor than what is prescribed in law. The officers under the debt conciliation boards have always tried and mostly succeeded in leaving some property to the debtor in the settlement of debts. This kind of relief which should form part of any scheme whose object is to help a debtor to restart his life free from any debt is totally absent in the new Bill.

The provisions for settlement of debts do not invest the Relief Courts or the Revenue officers with any large powers for the purpose. Under the bill, debts may be adjusted by a transfer of the property where a debtor is *willing* to do so. The court may transfer the property in cases where a debtor fails to complete a transfer having once agreed to it. But where a debtor does not agree to a transfer, the only penalty which a court can award is that of levying interest on instalments at rates not exceeding those mentioned in the schedule. The utility of this provision which only increases the payment that is to be made by a debtor is rather doubtful. It defeats the very purpose of scaling down debts. A better procedure would be to empower the court to adjust the debts due either by letting lands for rent, or by selling them, or by granting instalments, or by other ways.

The proposal in the Bill allowing interest on defaulted instalments at 3 p. c. in the case of secured debts, and 4 p. c. in the case of unsecured debts, and the provision for suspension of instalments during years of suspension of land revenue or rent are the special features of the new Bill. The Bill provides also for recoveries of instalments by the Deputy Commissioner, and for taking execution proceedings by the creditor, where the instalment is certified as irrecoverable, or where two consecutive instalments are in arrears. The fees to be paid by a creditor, which will be added to the instalments payable under the scheme by the debtor, is fixed at one-fifth of the usual court fees.

It is surprising why, while the statement of objects and reasons attached to the Bill mentions the loss in the court fees as the reason

for this levy, the same fee has not been fixed on a graded scale, reducing it to the minimum in respect of smaller amounts of claims and poorer agriculturists. It is surprising too that there was not a single member in the select committee who has urged for a lowering of the limit of debts which will come under the scope of the Bill; but on the other hand, all the seven members who have written minutes of dissent have urged for raising the pecuniary limit of jurisdiction of the Relief courts.

295 Transfer of land at presump values

The second method that has been adopted for scaling down debts was that of transfer of lands at pre-slump values. This has been provided for both under the U. P. Encumbered Estates Act of 1934, and the U. P. Regulation of Sales Act of 1934. The period for applying for scaling down debts under the latter Act expired with December 15, 1936. Its object was to regulate the sale of agricultural land in execution of civil court decrees against agriculturists. Consequently the Act could apply only when a creditor applied to the collector for the execution of his decree against an agricultural land. We have mentioned elsewhere how the price of land is fixed for this purpose. The collector may also fix the price in certain areas as certain multiples of land revenue or the local rate. In fixing the multiple, the remissions granted for rent are ignored, so that land values may be calculated on the basis of the predepression rent realised from land. On the basis of the price fixed, the Collector shall determine the amount of land to be sold in execution. The decreeholder may either take the land or have the sale postponed till November 1936, or have the decree realised by a public sale. But in the latter case his debt would be deemed to be discharged upto the price fixed for the land, if the amount fetched in the auction were less. The Act permits appeal to the Revenue Board from the Collector in respect of the transfer value fixed by him. It is estimated that, in the Meerut Division the average increase in the price of land by this mode of calculation was 45%. The Act is considered as having largely benefited the agriculturists as will be evident from the recent Revenue Administration Report of the U. P. for 1936.

The Act saved a large number of debtors from the loss of much of their property and gave considerable relief in individual cases. Its comparatively simple and expeditious procedure led creditors to regard it with less resentment than they regarded other measures. The Government Review of the Land Revenue Administration report for 1938 says the following about the working of the Act :

"The number of cases for disposal was 20,543 involving a sum of Rs. 4.47 crores. The average amount of debt per case was Rs. 2,180. Debts were liquidated to the extent of 5.44 lakhs in 428 cases by the transfer of property at pre-slump rates to decree-holders and to the extent of 24.53 lakhs in 2,042 cases by the sale of property at the existing market rates. The number pending at the end of the year was 8,184 involving a sum of 1.73 crores. The Act has proved particularly beneficial to small proprietors and has saved them from the loss that would have been caused by the fall in the market value of property. The decree-holder did not generally prefer the part-payment of sale, nor was he anxious to acquire property in satisfaction of his debts. The plan which was most favoured was the sale of land at existing rates in order to set the locked capital free for fresh investment."

The method of transferring land at pre-slump prices, though based on the theory of fall in prices, was less objectionable, as the mortgagee has imposed his interest on the land only on the basis of the prevailing prices on the date of the loan. But it was only a partially applicable method, and could not grant full relief in all cases. It was not to apply to cases which have been granted relief under the U. P. Agriculturists' Relief Act.

296 The Madras Agriculturists' Relief Act

The third method was adopted in Madras under the Agriculturists' Relief Act of 1938. We have already mentioned about its provisions for scaling down interest. Under that Act, the principal was to be reduced by courts in suits by creditors so as not exceed a total repayment under principal and interest of a sum equal to twice the principal. Decrees also may be revised by the courts and the same amount of relief may be granted.¹ Now who are the

1 The Madras Agriculturists' Relief Act of 1938 has been forestalled by an amendment Bill of the Assam Moneylenders' Act of 1934 in December 1937. The following was the new provision passed by the Legislature.

"No moneylender shall in respect of a loan made before or after the commencement of this Act recover on account of interest and principal whether, through court or otherwise or by way of usufructuary mortgages, a sum greater in aggregate than double the principal of the loan.

(1) The term 'aggregate' means and includes the amount already paid amicably or otherwise.

(2) For the purpose of the subsection 1 of section 9 in respect of usufruct of lands in usufructuary mortgages, a loan not exceeding Rs. 500/- in principal made before the commencement of this Act shall be deemed to be fully satisfied on the completion of 12 years from the date of the loan, and on the completion of 9 years of the loan made after the commencement of this Act. Provided that nothing in this subsection shall affect (1) a bank advancing money at interest not exceeding 6% per annum and (2) subscribers to a loan made to or debentures or other securities of any description issued by Government, a public body, a bank, or a company."

class of persons who would benefit by this provision? The small holder who goes on repaying on his ancestral debt will certainly benefit by this clause. The agriculturist who has contracted loans at high rates of interest, and consequently whose repayments quickly double will benefit by this clause. But the benefit may also go to the agriculturist moneylender who takes deposits, and has paid interest up to twice the deposited amount.

277 The law of Damdupat to reduce principal

The ancient law of Damdupat had a meaning when moneylending was individualistic, and when moneylenders did not handle deposits. But, with the growth of investment in banking, will it be fair to refuse the principal to those who invested their slender resources with moneylenders? The law of Damdupat was never applied for reducing the principal amount due by a debtor. It meant only that the sum under interest due when it exceeded the principal would not be granted by Courts. The original bill applied the clause only to loans carrying a higher rate than 9%, but not to loans on which a low rate of interest was paid over a long series of years. But this division was omitted in the Act. The greatest amount of relief under this Act would go to the rich debtors who never repaid interest. The small holder or the uneconomic holder might get relief under principal for long-standing loans. But generally he would be paying interest, and the period of his loans would not be so long as to make the sum of repayments under interest as more than the principal. The Act had no provision for the grant of instalments,¹ nor for exempting a minimum holding from sale in execution of decrees, nor for fixing a fair price. A creditor might sell up a debtor when he did not pay the reduced amount. Neither had the Act any other method of calculating interest by certain fair rates. For example, a debtor who paid an usurious rate of 15% on a loan of Rs. 100 would be paying within 5 years a sum of Rs. 75 under interest. He would have still to pay the principal sum of Rs. 100 under the proposed provisions. But even if interest were calculated at 12% for the same period and the excess credited to principal, he would have only to pay Rs. 85/- under principal. The Agricultural Loans Act, Madras, allowed the calculation of interest at 6 p. c., and crediting the excess payment under interest to the principal. Relief on the basis of a scheduled rate of interest was not provided for in the Act.

1 At the last moment the Government introduced a clause under the rule-making powers to order payment by instalments. But it was withdrawn, as possibly there was legal objection for the introduction of a main provision under rules while it was not embodied in any of the clauses in the Act.

298 Scope of the Act

It should be noted that the Act excluded debts due to a woman upto a maximum of Rs. 3000 under principal, so that she might not lose her principal amount or interest under the Act. Usufructuary mortgages in which no interest was stipulated, were also excluded from the scope of compulsory provisions. It is a common practice in Madras for agriculturists to borrow on usufructuary mortgages, the annual yield from the land being adjusted to interest. No relief has been granted to this class of mortgagors under the Act.¹

299 Definition of agriculturists

The bill excluded debts due to joint-stock banks carrying an interest of 9% and below. While one can understand the exclusion of loans due to co-operative societies whose dividend to non-borrowing shareholders is restricted, there can be no reason for a further exclusion of debts due to joint-stock banks. Debts contracted on the security of house property only in a municipality, or a union which is not a village Panchayat are also excluded from the scope of the Act. One good feature of the Act was that it excluded from the benefit of the Act certain classes of people who hold lands, but were not really agriculturists. If, along with this restriction, the Act had set an upper limit by way of land revenue, thereby excluding big holders as was done in the Madras Moratorium Bill in October 1937, it would have prevented the benefit of a reduction in principal to those who could ordinarily afford to repay. The following classes of agriculturists were excluded from the operation of the Act.

(1) Those who have been assessed to income tax.

(2) Those who have been assessed to profession tax on a half yearly income of more than Rs. 300/- derived from a profession other than agriculture by Local Boards other than village Panchayats.

(3) Those who have been assessed by Local Boards other than village Panchayats to property or house tax in respect of buildings or lands other than agricultural lands, whose aggregate annual rental value of such buildings and lands whether let out or in the occupation of the owner is not less than Rs 600/-.

(4) Zamindars under the Madras Estates Land Act or Jennies under the Malabar Tenancy Act paying a land revenue of over Rs. 500, and Inamdars paying a quite rent of Rs. 100 and over.²

1 Mortgages with possession formed a little less than a third of mortgages without possession for the year 1934, according to the village surveys of 2 typical villages in each district referred to in Mr. Satyanathan's report.

2 It is rather surprising that while this class of landholders are excluded with certain limits, the ryotwari holders paying such land revenue have not been excluded.

The Act was to apply to all agriculturists having saleable interest in lands not being situated in a Municipality or a Cantonment, and to their tenants and subtenants.

A communique of the Madras Government dated 21st March 1939 gives the following figures about the working of the Act, for the eleven months ending with January 1939. It is not possible to say from their analysis the amount scaled down under principal and interest separately. Neither can we say anything about the extent of relief received by different classes of agriculturists according to their land status. Nor have we any information analysing the applications according to their value. Considered in bulk, a sum of Rs. 45.61 lakhs has been reduced to Rs. 23.72 lakhs in the case of debts incurred before 1932 in respect of 7,174 cases giving an average of Rs. 635 per claim. In the case of debts incurred after 1932, interest has been reduced. The amount involved was Rs. 14.64 lakhs. The amount as scaled down was Rs. 10.57 lakhs. An amount of Rs. 142.23 lakhs due under 19,041 decrees has been scaled down to Rs. 73.65 lakhs. The total amount of remission worked to 47%. The number of cases disposed of during the eleven months was 72,494. Those pending amounted to 20,008.

300. Reduction in rent debts.

Another form of relief granted by the Madras Debt Relief Act of 1938 related to rent debts. The rent for fasli 1347 i. e. 1937-38 and for fasli 1346 i. e. 1936-37 should be paid before 30th September 1938, and 30th September 1939 respectively. If the rent is so paid, rent for previous faslis due to landholders or under-tenure holders under the Madras Land Estates Act or Jenmis and intermediaries under the Malabar Tenancy Act would be treated as discharged. If a tenant paid the full rent due for 1937-38, and only a portion for 1936-37 the amount of relief in respect of rents due for the previous years would be in the proportion which the rent actually paid for 1937-38 and 1936-37 bore to the full rent due for these years. Any payment made by a tenant towards rent should first be credited to the rent for 1937-38 and then for 1936-37, thereby barring crediting of rents to previous years. The principle on which this relief has

(Contd. from last page)

Speaking on this subject Mr. Ahmed Meeran said in the Legislative Council, "the ryotwari pattadar held greater sway in their party meetings and tried to do something which perhaps they would not have (liked to be) done. They put an upper limit in the case of the Moratorium Bill and that shows they were willing to recognise that principle. Now they have given up that principle."

The Rt. Hon. V. S. Srinivasa Sastri said: "It was this disparity between the treatment accorded to the peasants and the treatment that is accorded to the big landlords that puzzled our minds. It is a puzzle to all of us."

been based was also that of fall in prices. The relief under rent went to the immediate occupier of land under the Zamindar and not to the tenants under them.¹

301 N. W. F. P. Relief Bill

The North Western Province Agriculturist Debtors' Relief Bill (vide Report of Select Committee No. 3312-L. A. of 11th Nov. 1938) closely followed the Madras Debt Relief Act but with important variations. The relief was to apply only to those agriculturists who paid an assessment of Rs. 250/- and less in certain cases, and Rs. 500/- and less in certain other cases. But while the Madras Debt Relief Act excluded only such debts due to Companies which carry an interest rate lower than 9%, the N. W. F. P. Bill excludes debts due to all companies registered under the Companies Act. The reduction in principal amount on the basis that the total repayments should not exceed twice the original principal, or the outstanding principal due, whichever was less, was to apply only to loans bearing simple interest higher than 9% or compound interest. Accounts of usufructuary mortgages were to be taken, and the relief was also to apply to them where the rate stipulated was higher than 9% simple interest or compound interest. Restriction of relief to principal, only in cases of levy of an usurious rate of interest, would minimise the evil of scaling down of debts in the case of the richer classes who could afford to pay; and inclusion of usufructuary mortgages for the purpose of relief would be helpful to the smaller agriculturists in redeeming their lands.

The restriction of the relief to those paying below a certain limit of land revenue regulâtes its application to the more deserving, and to that extent minimises the expropriatory character of the legislation. The Act has two other provisions regarding instalments and rents. Repayments within six years are provided for (Sec. 19). If two instalments are in arrears, when the court has ordered four or more than four instalments, the decree-holder may apply for execution for the whole amount under the decree (Sec. 19. 2). All outstanding rents, whether due as such, or under decrees, should be deemed to be discharged. But a landlord could collect from the tenant " what amount he has paid to the Government as land revenue in respect of the crops of which the rent has been remitted, and the recovery whereof is not barred by the provisions of the Law of

¹ The undermentioned amendment moved by Mr. R. M. Palat was however lost :—Provided further that any intermediary under the Malabar Tenancy Act 1929 who has recovered from his tenant his rent or any portion thereof in any year shall pay his superior landlord his rent or his share in the same proportion.

Limitation" (Sec. 20). The relief is also to apply to tenants-at-will who are others than lessees holding by contract, or decree, or order of a competent authority.

302 Restriction of land sales to recoveries of secured loans only

Scaling down of debts was also a result of the earlier measures which were adopted to prevent the transfer of land for debts by the agriculturist. The Deccan Agriculturists' Relief Act restricted sale of land by courts to the recovery of secured loans, and gave retrospective effect to this provision (Sec. 22). Consequently the right of an unsecured creditor was limited to the realisation of his amount from the produce and property other than land, and what could not be so realised had to be forgone by him.

303 Liquidation of irrepayable debts

The revision of terms of conditional sale mortgages in the Punjab in accordance with the forms of mortgages permitted by the Land Alienation Act must have resulted also in creditors losing part of the loans advanced by them. But recent Acts have gone far in annulling debts which could not be repaid in the case of the poorer cultivators. The principle underlying the Acts is that the assistance of the law should not be given for debts which are beyond the means of a debtor to repay, and that a debtor should be relieved of debts which are not recoverable within a certain period.

304 The U. P. Temporary Regulation of Executions Act

The first enactment of this type was the U. P. Temporary Regulation of Executions Act 1934. The last date of application under the Act expired on 29th October 1936. Its object was to regulate the execution of civil court decrees for the debts of small agriculturists passed before the commencement of the Act. It was to apply to cultivators who were liable to pay rent and who paid a local rate not exceeding one rupee, and who were not assessed to income tax in the year preceding the passing of the Act. With a view to exclude non-agriculturists from its benefits, the Act expressly defined the cultivators in its schedule. Decrees passed in favour of co-operative societies in respect of loans advanced on agricultural produce, and for amounts below Rs. 10 and more than Rs. 1000 were excluded from the scope of the Act. Decrees passed under the U. P. Agriculturists' Relief Act could not be revised under this Act. The judgment-debtor could stay proceedings in a decree that was being executed, and apply for its revision consistently with the provisions of this Act. He could also get all the decrees that have been passed by a court

revised under this Act. But he should deposit within a month in court 25% of the decreed amount. The court would stay proceedings and determine the amount due. The minimum amount of annual instalment he should pay was twenty times the amount of local rate payable by him for the year, and the amount of rent due for the year subject to any remissions. Twenty times the amount of local rate might be taken as equal to the rent due for the lands of the debtor for the year. The amount of annual instalment would therefore amount to twice the rent for a year. In the case of tenure-holders and fixed-rate tenants who had not to pay as much rent to their landlords as ordinary tenants, the amount of annual instalment was twenty times the local rate for the year and three times the rent (Sec. 10).

The number of instalments was fixed at five. The amount repaid in this manner should not exceed 50% of the sum due if the rate of interest on the debt was 24% and less, and 40% of the sum due if the rate of interest exceeded 24%. The instalments were not to carry any interest. In other words, if the total sum of the five annual instalments was lower than 40% or 50% of the decreed amount, only the lower sum need be paid. If the sum were higher, the percentage of 40 or 50 as the case might be need alone be repaid. Any balance due under the decree over the sum arrived by this formula was automatically annulled by these provisions. The Act has done substantial good where it has worked. But the advance deposit has proved an impediment to the full use of the Act being made by the judgment-debtors.¹ 2867 cases were settled with instalments at Rs. 6,57,035 lakhs and 496 cases covering Rs. 1,23,835 were pending disposal at the end of 1935-36. During 1936-37, 655 applications were disposed of. The cases for disposal for 1937-38 was 1396 involving 4.28 lakhs. The average amount of debt per case was Rs. 305. The Act should be welcomed for the great relief it has given to the small cultivator, unlike the Act in Madras which has aided the big holder who could repay his debts, to repudiate a portion of them.

305 The C. P. Liquidation Of Industrial Workers' Debt Act

The second enactment which wiped off irrepayable debts was that passed in the C. P. in 1936 in respect of industrial workers. Even though this Act is not germane to our subject, we are giving a

1 "Little use was made of the Act except in a few districts where debtors, by paying something towards the decretal amounts, obtained considerable reduction in the remainder thereof." U. P. Revenue Administration for 1936, p. 17.

summary of its provisions, as they embody a definite procedure for the cancellation of debts of encumbered workers which have an equal application to the debts of agricultural workers. The Act was to apply only to industrial workers whose average monthly income calculated on the total income from all sources during the preceding 12 months did not exceed Rs. 50. Their debts should exceed the aggregate value of their assets and three times their average income. The worker should satisfy the court about his inability to repay. The court was thereafter to determine the amount due according to the provisions of the Usurious Loans Act, and the law of Damdupat by which arrears of interest would be reduced to a figure which would not exceed the outstanding principal. The court was also to determine the repaying capacity of the debtor. This was not left to its discretion, as the result of an exercise of discretion in this matter would lead to inequalities in the fixation of the amount to be repaid to a creditor. The assets of the workers would no doubt be adjusted to debts. Their surplus income was also determined. 'Surplus' meant in the case of a worker having no dependents, twelve times his average income, having one dependent, nine times his average income, and more than one dependent, six times his average income. If the debts determined were equal to or less than the assets and the surplus of the debtor, then he was discharged. Otherwise he was declared an encumbered worker. The debts were to be arranged in order of priority. The secured creditor was to be paid out of the proceeds of the property mortgaged to him. He was to be ranked with unsecured creditors in regard to the balance of debt, if any, due to him. The proceeds of other assets which were not mortgaged were to be distributed to the unsecured creditors. The remaining debt was to be recovered from the 'surplus' of the debtor in 36 monthly instalments. The decree should be executed within 3 years from the date of the order. The debts incurred by an encumbered worker were not to be recoverable through the court during this period.

306 The Working of the Act

The Act is based on the recommendations of the Royal Commission on Labour (1931). They recommended that the total amount repayable should be the net income of the worker accruing in a period of three years. The present Act has fixed it at six times the average monthly income of a worker having more than one dependent. The Commission further recommended that the maximum period for the execution of the decreed amount should not be more than four years. The Act has restricted it to three years.

The working of the Act has not shown that the workers have taken full advantage of it. The Commission forecast such a result. But they hoped, as would be evident from the following extract from their report, that trade union workers would take advantage of the proposal and bring its benefits to the door of the worker. "Trade Unions in particular will have an opportunity of constructive work of a striking kind, and should be able by asserting the workers' rights as against his creditor, to demonstrate their value to many more workers." This prediction has however not come true. The Act would have given better results, if it provided that, if debtors or creditors did not apply within a certain period, the debts would be deemed to be discharged. The Bombay Debt Relief Bill of 1939 has made such a provision.

307 Insolvency provisions in the Bengal Agricultural Debtors Relief Act of 1936

The Bengal Agricultural Debtors' Relief Act 1936 has provided also for wiping off debts which could not be repaid within 20 years. The debts so composed were to be collected from the assets and the agricultural produce of the debtor after leaving not more than half for his maintenance. If the adjusted debts were recovered by a sale of land, a certain area not exceeding one third and not less than one acre in the case of those holding three acres and below was to be exempt from sale. Certain moveables and the dwelling house were also exempt.¹

The Provincial Insolvency Act of 1920 has also been amended in certain provinces with a view to give relief to debtors.²

308 Scaling down debts, the result of retrospective application of special provisions governing suits against agriculturists

An addition to the saleable properties that were to be exempt from sale in execution of decrees against agriculturists might have the result of scaling down debts when given retrospective effect. Section 18 of the Bihar Money Lenders' Act has defined the area of land to be exempt in execution of decrees in respect of loans of small agriculturists granted for recoveries of loans advanced before or after the commencement of the Act. Where a creditor has lent on the security of the exempted land, he may have to forego the debt due to him if it cannot be recovered otherwise. Another relief it granted was the fixation of a fair price when land was sold by a court. The court was to decide the extent of holding to be sold, and to sell the land at a fair price fixed by it. It might sell it at the fair price "if the decree-holder consented in writing to forego so much of the amount decreed as was equal to

¹ Vide Note 16.

² Vide Note 17 in the appendix.

the difference between the highest amount bid and the price specified for such property in the sale proclamation." This relief was also to apply to loans advanced before the commencement of the Act. The creditor in such cases will have to forego that amount of the loan which cannot be realised by a sale of land in public auction. The exemption of a certain produce necessary for the subsistence of the cultivator and his family from attachment, which has been adopted in the C. P., the U. P., the Punjab, and the N. W. F. P. would also necessitate a cancellation of the debt which could be recovered only from such exempted produce. But these exemptions from sale either of land or of produce do not prevent the realisation of debt from the unexempted portion of the produce over a long period.

Debts are also scaled down by a retrospective application of some other provisions of Moneylenders' Acts. The Deccan Agriculturists' Relief Act prescribed the mode of taking accounts of loans due on bonds and usufructuary mortgages, gave discretionary powers to the court to grant instalments and any sum of interest, and prohibited sale of properties for unsecured debts. These provisions were given retrospective effect. The Usurious loans Act was another permanent measure which permitted reopening of accounts up to 12 or 17 years, calculation of interest at fair rates which were not usurious, and adjustment of any excess payment of interest to the principal due. The recent Moneylenders' Acts prescribe the rates of interest and the maximum amount of interest which a court could grant on a decree. These are made applicable in suits against agriculturists for recoveries of loans advanced before the commencement of the Act. The Orissa bill, 1939, has a special clause making the provisions relating to the exemption of a minimum holding, rates of interest on loans, and recoverable maximum interest, applicable to loans issued before the commencement of the Act (sec. 16).

The Orissa bill makes it clear that these provisions will apply also to pending suits. It is the absence of such a provision that made it impossible for the courts to apply the clauses in the Assam Moneylenders' Act of 1934 relating to rates of interest and the principle of damdupat to pending suits and appeals (sec. 16). The Act was amended in Dec. 1937 rectifying this defect. But unfortunately it has so far not received the Governor's approval, leading thereby to a rush to courts by creditors to obtain decrees before the bill became law.

Any scheme of debt relief cannot avoid opening the decrees and giving the much needed relief to the debtor. And error in the drafting of Moneylenders' Acts in this respect defeats their purpose in granting

relief for past debts. While opening of decrees may be unfair in a permanent law relating to money lending, it ought to be provided for as a temporary measure in schemes of debt liquidation. The Assam Moneylenders' Bill of Dec. 1937 made this provision, but it was defeated in the Legislature. The Orissa bill definitely excludes decrees passed on 1-4-1936 and thereafter, thereby denying the relief of its provisions to decrees passed before that date (Sec. 16. ii).

309 Retrospective effect to the limitation of period of usufructuary mortgages.

Loans granted on usufructuary mortgage have been scaled down in recent legislation by giving retrospective effect to the provisions relating to the restriction of the period of usufructuary mortgages. The right of a debtor to sue before the due date, and the right of the court to take an account in usufructuary mortgages and determine the principal and interest due even in respect of loans taken before the commencement of the Act according to the provisions of Section 13 A and 15 B of the Deccan Agriculturists' Relief Act are examples to show how the principal under loans was reduced by courts by a fair adjustment of profits from land. Under these provisions the law of Damdupat might also be applied, interest might be calculated at a reasonable rate, and the excess interest might be adjusted to the principal. But there can be no annulment of the principal by restricting the period of the mortgage to a definite number of years. It was given to the Punjab to recently enact a measure permitting the revision of the terms of mortgages made before 1901 and adjusting the account in their respect. Bengal forestalled Punjab by nine months by enacting a measure restricting the period of mortgages made before 1928 to that in the mortgage, or fifteen years, whichever was less. The provisions of these two Acts are discussed in a note in the appendix. The result of this legislation would be that creditors who have taken mortgages for periods longer than fifteen years would have to return the lands in their possession, irrespective of the sum of debt owed to them by the mortgagor. The object of restriction of the period of mortgages was to prevent over-borrowing by agriculturists, and the consequent sale of land to the creditor. Consequently it is made applicable only to small agriculturists, and retrospective effect is hardly given to such a provision as it would be changing the form of a contract already entered into and expropriating a creditor. The justification for such a legislation would be the inability of a debtor to repay his debts. Hence it should apply only to those whose main source of living is the land, and the expropriation of whose lands

is fraught with serious danger to rural economy. A small holder to-day has not only to repay the instalments for his past debts, but also to command future credit out of his produce. Any scheme which scales down past debts will release a greater amount of produce for raising credit in the future. If a creditor has lent in the case of poor cultivators on usufructuary mortgage for more than 20 years, and if the State restores back the land to such people, he should only blame himself for his over-lending. Retrospective revision of the terms of mortgages can be justified only in the case of small cultivators.¹

310 Limits to compulsory reduction of debts

Let us now examine the extent to which compulsory scaling down of debts is possible in the case of agriculturists. Reduction of excessive interest above a prescribed rate by the courts may apply to all debtors. Excess payment under interest calculated at a fair rate may be adjusted to principal. Arrears of interest exceeding the outstanding principal may be wiped off. These provisions may be applied to usufructuary mortgages by taking an account in suits for redemption. The area or the proportion of holding to be sold for debts due may be determined by the court and it may be sold at a fair price fixed by the court. Where a fair price is not fetched in auction, the creditor should consent in writing that he would forego the balance.

311 Cancellation of irrepayable debts on family farms

But there are a class of agriculturists who form a large number, to whom land is the major source of living, and who work on it by personal cultivation with the aid of their families. We have already proposed when discussing the land policy that certain moveables including a portion of the produce, the minimum land necessary for a subsistence holder, and the dwelling house should be exempt in the case of family farms. This provision should be given a retrospective effect in order to save the lands and the homestead of this class of agriculturists. But we have to consider whether a creditor should be given the right over the produce for their past debts. The same produce is the only asset available for the holder of a subsistence farm for raising future credit. The rent due to the landlord or the revenue due to Government has to be paid out of it. An exemption of all the produce from being attached for *past* debts will not be an unfair proposition. It is the only practical course possible to rehabilitate the position of uneconomic holders whose debts have to be cancelled periodically. We have also to remember that, what a creditor generally expects

¹ Vide Note 14 in the appendix.

from uneconomic and subsistence holders is not a full repayment of past debts, but only a running business from them. To him the bonds from this class of debtors are intended as a threat to keep them under control, and as a sanction to enforce future custom.

We have already made proposals about the saleable properties that should be exempt in execution of decrees in the case of small agriculturists, livestock breeders, artisans and rural labourers. Such an exemption will automatically bar the court from attaching certain properties in their case, when executing decrees.¹ But in the case of the subsistence holder, two thirds of the produce is available under our proposals for the creditor. Any proposal which exempts this too from attachment for past debts will not be unfair to the creditors. If this is considered too drastic, legislative measures should at least advance to the position taken in the Temporary Execution of Decrees Act U. P. 1934, and the C. P. Liquidation of Debts of Industrial Workers' Act. The amount of annual instalment to be paid should leave a third for the subsistence of the cultivator till the next harvest, and another third as a margin for future credit. The balance of one third of the produce may be made available for the repayment of past debts. The instalments should not carry any interest. The number of instalments should not exceed three.

312 Exemption of a minimum holding and class of agriculturists

We have next to consider how far it will be fair to exempt a minimum holding in the case of all holders of land in schemes of liquidation. We have already proposed that such a legislation should be made part of the civil law in the case of agriculturists who personally cultivate their lands with their labour and that of the family. Retrospective effect, when given to this law, will prevent sale of land of the holders of family farms in respect of their past debts. In the case of other holders of land, it would not be unfair if a subsistence holding were exempt from transfer in schemes of liquidation. The result of such a provision would be that the creditor might have to forego the secured or unsecured debt due to him which might otherwise be recovered from the sale of the exempted holding. Its justification lies in preserving a small portion of land for future cultivation by a landholder. Consequently the exemp-

1 During the discussion on the Madras Debt Relief Bill in Feb. 1938 Rt. Hon V. S. Srinivasa Sastri moved three amendments to wipe off the debts of agricultural labourers. But they were lost. The Hon. Minister for Agriculture, when speaking on the Zamindari report in the Legislative Assembly in Madras in January 1939, has agreed to bring a bill shortly regarding the debts of agricultural labourers.

tion should be made only in the case of agriculturists who do not lease lands and will not do so in the future except for legitimate purposes. The provision should apply temporarily to schemes of liquidation, and not permanently as part of the civil law, nor under the law of insolvency.

Debts which cannot be compulsorily scaled down according to these provisions can only be composed with the consent of the creditor. It is to debt conciliation measures that one should look for, for scaling down these debts, which we will examine in the next chapter.

CHAPTER X
THE STRUCTURE AND WORKING OF DEBT
CONCILIATION ACTS

A
PROVISIONS

313 Conditions for an amicable settlement

Debt conciliation Acts have been passed in C. P., Punjab, Bengal, Madras, Assam, and also in some of the Native States. The main feature of these Acts is the provision for conciliation between debtors and creditors. The Central Provinces Act II of 1933 was the foundation on which the other Acts are based. Under this Act a conciliation board could reduce into writing an agreement arrived at between debtors and creditors. It should be registered within a month, and thereafter it took effect as if it were a decree of the civil court (Sec. 12. 1). As the object of the Act was the amicable settlement of debts, 'agreement about a minimum percentage of debts due by a debtor was enforced by the Act, Sec. 12 says that,

Unless creditors to whom not less than forty percent of the total amount of the debtor's debts are owing come to an amicable settlement with the debtor, no agreement can be arrived at between them. (Sec. 12).¹

The interests of the mortgagee were also protected in the settlement. In as much as a mortgage is an imposition of a charge on the property preventing its sale thereby,

the mortgage, lien or charge which a creditor has on the immoveable property of a debtor shall subsist to the extent of the amount payable to him, until the debt settled in the agreement is paid, or the property is sold in satisfaction thereof. Sec. 12-A.

314 Devices for securing creditors' cooperation-Certification of debts in the C. P.

The co-operation of a creditor had to be secured for making an amicable settlement. A creditor might agree if the settlement was favourable to him. If not, he might exert his influence to make a settlement impossible by persuading the creditors not to join in it. There should be some disadvantage for an unreasonable creditor who did not agree to a fair offer made by a debtor. The Act, therefore, provided that,

¹ The Select Committee report on the C. P. Debt Conciliation Amendment Bill No. 32 of 1937 has proposed 30 instead of 40 as the minimum percentage of debts owed to creditors who agree for a settlement. The Madras Debt Conciliation Act of 1936 has fixed the percentage of debts for making an amicable settlement at 50.

" where the debtor has made the creditor a fair offer which he ought reasonably to accept, the Board may grant the debtor a certificate "

The effect of a certificate on a non-agreeing secured or unsecured creditor, whether relating to settled or unsettled cases, was that the court would disallow costs of the suit, and simple interest more than 6%, when the certificate was produced before it. Its effect on a non-agreeing unsecured creditor was that he could not execute a decree for the decreed amount until the amounts recorded as payable in the case of agreeing creditors have been paid off, or the agreement has ceased to subsist. But decrees for recovery of rent can always be executed (Sec. 15). The C. P. Act thus provided for the exercise of a mild pressure on the creditors by the issue of certificates.

315 In the Punjab

The Punjab Relief of Indebtedness Act of 1934 improved on the C. P. Act. The requirement of an agreement among creditors to whom 40 % was owing, prevented settlement of debts between a debtor and one or more creditors to whom 40 % of debts might not be owing, but who might be willing to settle their debts. Settlement in these cases was provided for by Sec. 15 of the Punjab Act. While this provision was an improvement on the C. P. Act, the Punjab Act has gone back on the powers of the boards in the C. P. in certifying debts to the settlement of which creditors did not agree. While under the C. P. Act a certificate might be issued against any creditor if the board was of opinion that he had refused a fair offer made by a debtor, " the board in the Punjab shall not grant a certificate unless it is satisfied that creditors to whom not less than 40 % of the debts are owing have come to an amicable settlement with the debtor " (Sec. 15). The result of such a provision is that certificates could not be issued in respect of all debts, even though a creditor had refused a fair offer. They could be issued only in respect of such debts which remained unsettled after forty per cent of the total debts have been amicably settled. Consequently no certificate could be issued against a sole creditor if he did not agree to a fair offer. This restriction on the issue of certificates has prevented a large number of settlements in the Punjab,

316 In Bengal

The Bengal Agricultural Debtors' Act of 1936 has made more stringent provisions regarding the effect of a certificate. If a fair offer was not accepted by a creditor, a certificate might be issued to the debtor in respect of the debt to which the offer related.

The effect of a certificate in respect of such debts was the following. (1) The creditor would be disallowed by the courts costs

of the suit and interest in excess of 6% simple interest, after the date of the certificate *on the debt determined as due* by the board (Sec. 21).¹

(2) A decree in respect of such debts, even though secured, could be executed only when "all amounts payable under an award in respect of other debts of the debtor have been paid, or such award has ceased to subsist" (Sec. 21).²

(3) Even where there was no award, a decree in respect of certified debts could be executed only "after the expiry of such period not exceeding ten years as may be specified in the certificate" (Sec. 21). This provision was found necessary to put some pressure on secured as well as sole creditors. The recent amendment bill of 1939 applies this provision to all certified debts, and not merely to those for which there is no award, thereby enabling the boards to apply a less stringent provision of only postponing the execution of decrees, instead of ordering a settlement in respect of debts in cases in which an award is granted.³

1 The Amendment Bill of 1939 disallows interest altogether.

According to the Assam Debt Conciliation Act of 1936, when a certificate is granted in respect of a debt that a fair offer has been rejected, the court may not only disallow costs of suit and interest in excess of 6%, but "it may refuse to grant a decree for any sum in excess of the sum specified in the certificate as a fair offer." The Board in Assam may grant a certificate that a fair offer has been rejected in respect of any debt, even in cases where no settlement is arrived at. And the Court is bound to consider the decision of a board relating to a reasonable offer made by a debtor.

2 The Assam Debt Conciliation Act X of 1936 went one step further and provided that, where a creditor disagrees to a settlement to which creditors to whom 40% is owing have agreed, the court shall not execute the decrees in respect of his debts "until all amounts recorded as payable under such agreement have been paid or such agreement has ceased to subsist." The issue of a certificate that the creditor has refused a fair offer is not necessary in this respect. The fact of his having refused to come to a settlement is itself a rejection of a fair offer.

3 Many cases of sole creditors could not be settled in the C. P. as they refused to appear before the boards. The Narasinghpur board report of 1936 says that "this set of creditors presented a strong front, the issue of a certificate and its consequent disallowance of costs in the civil suits being too feeble to make him agree in the board." Where sole creditors in some cases required the good will of the officer in conciliating the debts due to them in other cases, the officers used such occasions to exercise a mild pressure on the creditors to be reasonable in their demands in cases where they were sole creditors.

This clause was hotly discussed in the Bengal Legislature. The reasons for it were explained by the Revenue Secretary.

"If the offer has been a reasonable one, it has been an offer to pay as much as the debtor can pay in a reasonable time without selling off his property. If the debtor is not to be turned off his land in such a case, it is necessary to allow him time upto a maximum of ten years. Once the clause is there, the chances are that creditors will adopt a reasonable attitude."

Ordering a settlement, another device

The Boards in Bengal were also empowered to pass an order settling the amount in certain cases, in spite of disagreement of the creditor to such a settlement.¹ If creditors to whom 40% was owing agreed to an amicable settlement, and the Board decided that an offer made by a debtor in respect of debts not included in the amicable settlement was a fair offer which the creditor ought to reasonably accept, the Board might either pass an *order* that "the debt to which the offer relates *shall be settled* in accordance with such offer", or might issue a certificate in respect of such debts, the effect of which has been described in the previous para (19.1 b).²

Settlement between debtors and single creditors

The Bengal Act also permitted, as in the Punjab Act, the boards to grant an award on the basis of amicable settlements between a debtor and anyone creditor even though the amount of debts settled did not amount to 40% of the total (Sec. 19.1. a.).

318 Awards vs agreements

The amicable settlements, and the settlements that were ordered were to be embodied in an award to be made by the board. The Bengal boards, therefore, did not merely register an agreement, but granted an award based either on amicable settlements, or on settlements ordered by it. In the C. P. the Board has no power to refuse to authenticate an agreement. Under the Punjab Act the Board may so refuse if the period fixed for payment is excessive (Sec. 17.1). The Madras Act empowered the Board to authenticate an agreement, only if considered equitable (Sec. 14.1).³

1 Even though the principle of composition of debts on the basis of agreement of a certain percentage of creditors and relating to a certain percentage of debts is taken from the insolvency law, conciliation measures are not those of insolvency. In the one case it is the equitable payment of debts according to the capacity of the debtor to repay, and in the other it is an entire distribution of the assets among the creditors. Hence it is in the power of the insolvency court to reject an agreement, agreed to by a certain percentage of creditors and order a larger payment, which power is not given to conciliation boards.

2 A recent amendment bill of the Act (Feb. 1939) empowers the Boards to take an account of usufructuary mortgages according to the rates of interest prescribed in the Moneylenders' Act, and eject the mortgagee if he is in possession of land for more than 15 years. A secured creditor has no rights over the mortgaged land in these cases. Vide para 385.

3 The award shall contain a schedule of properties of the debtor which shall be the security for the amounts payable under it subject to any mortg-

(Continued on next page)

319 Principles of a fair offer

It should be noted that one of the conditions for ordering a settlement, and for issuing a certificate was the opinion of the Board that a fair offer was made by the debtor and rejected by the creditor. The C. P. Act gave complete freedom to the board to consider what a fair offer was. The Bengal Act defined a fair offer by two tests.

(1) Its terms should not be less favourable than the terms of amicable settlements relating to a debt of the same description (19. b.1).

(2) If the fair offer reduced the principal amount due in any way, creditors to whom not less than sixty per cent. of the total debt determined as due was owing, should agree.

The rules under the Act (51.2) provided that in deciding a fair offer, the Board should consider the actual amount received as loan, and apply the provisions of the Bengal Money-lenders' Act regarding interest.¹

320 Interest of a mortgagor in the secured land

When creditors to whom 40% was owing agreed to an amicable settlement, and a fair offer approved by the Board was made by a debtor, the Board in Bengal might pass an order binding a secured creditor to it, even though he did not agree to such a fair offer (19.1. b). The interest due might be reduced, the original principal might be determined, and where creditors to whom 60% was owing agreed, even his principal might be reduced. The amount ordered in the settlement was embodied in the award. The award had the force of a civil court decree (Sec. 25.3). This meant that, if a creditor went to the court for realising a debt in respect of which a settlement has been ordered, the court could not in any way

(*Continued from last page*)

age, lien, or charge, subsisting thereon. It shall state the serial number of the debt, the amount settled amicably or by order, the number of instalments and year and month of payment, and the manner and order of payment. It shall state the simple interest to be paid on instalments which are not paid on the due dates (25.1). The award shall supercede the previous decisions of the civil court and shall be binding on the debtor and his creditors, and the successors in interest of such debtor and creditors (25.3). The award or the certificate is to be registered by the chairman of the Board. An award shall also be published in the manner prescribed by rules. Rule 51. I states that " the board shall not embody in writing any proposed amicable settlement which is likely to prejudice the payment of arrears of rent due to the landlord of the debtor. "

1 Vide Note 18 on Debt Conciliation Measures in Native States.

revise the award. But "the mortgage, lien, or charge on any immoveable property of a debtor shall subsist to the extent of the amount payable in respect of such debt under the award, until such amount has been paid or the property has been sold for the satisfaction of such debt" (27.1). Can a secured creditor be delayed in realising his security in default of repayment? This question was hotly discussed in the Bengal Legislative Council, and the following reply of Mr. Townend, I. C. S., the Revenue Secretary explains the limitation of the interest of a secured creditor in a mortgaged land :

There should be a certain flexibility in the settlement. The scheme is a composition of debts. Payments directed in the settlements have no reference to realisation of security when the creditor takes steps to realise it and not before. Ordinarily the income remains at the disposal of the debtor and at that stage it is not a security. Is there any law preventing a man from paying an unsecured creditor at the same time as a secured creditor? Is it necessary under the existing law for a debtor to wait until he has paid off his secured debts before he pays one anna to unsecured creditors? If secured creditors should have priority over unsecured creditors, even second and third mortgagees who are practically unsecured creditors will get the priority.

32. Other devices—Staying of suits and proceedings

Three other provisions were also made in order to induce a creditor to come to a settlement of debts. Firstly, as the object of providing the machinery for conciliation would be defeated, if suits could be prosecuted in civil courts after a debtor had applied to the Boards, all the Acts provided for stay of suits and proceedings. Under the Bengal Act, the Board should give notice to courts in respect of debts applied for settlement relating to which suits and proceedings were *pending* in the courts. The court should stay such suits or proceedings until the application in respect of such debt was dismissed, or an award was made thereon by the board. If the Board included any part of the debt in the award, or it decided *that the debt did not exist*, the suit or proceeding should abate so far as it related to such debts (Bengal Act, Sec. 34). Secondly, no *fresh* suits or applications or proceedings shall be entertained by a Civil or Revenue court in respect of debts included in an application by a debtor or in statements by a creditor and pending before the Board or payable under an award (Sec. 33). These two provisions have been incorporated in all the Debt Conciliation Acts.¹

¹ The provision that a court shall not decide the amount in a suit when a board is of opinion that a debt does not exist is peculiar to the Bengal Act. The Court is enjoined thereby to take the opinion of the board regarding the existing of a debt as final.

322 Ensuring complete information from creditors by declaring certain debts as not payable.

It was not enough if the Boards obtained exclusive jurisdiction of settling the debts of an applicant. The Board should obtain all information from all creditors. So all the Acts provided that, when a notice was served on the creditors to submit a statement of debts within the specified time, and when a general notice was also published to the same effect, the amount in the statements so submitted should be deemed to be the debts to be repaid. Other debts were not to be payable.¹

Such an order of the Board could not be questioned in a civil court according to the Bengal Act, though it might be reviewed by the Board or appealed against by a creditor, who could plead extenuating circumstances for his inability to submit the statement within the proper time. Any decree passed by a civil court in respect of debts which have been deemed to be discharged owing to its non-inclusion in the statement of the creditor shall be treated as a nullity (Bengal Act Sec. 36 a). According to the other Acts, a creditor may apply to the civil court to revive the debt due to him (Sec. 10 Madras Act, Sec. 8 C. P. Act, Sec. 14 Punjab Act).

323 Certain documents declared invalid in evidence

The creditor had to submit along with the statement full particulars of debts with proofs for the same by way of entries in accounts and documents. The Board might give him sometime to produce the documents. If they were not so produced, they were not to be admissible in evidence against the debtor in any suit brought by the creditor, "unless it is proved to the satisfaction of the civil court that there were sufficient reasons for the non-production of the document before the Board." If it was not so proved, any decree passed by a civil court on debts relating to such documents should be treated as a nullity (Sec. 36 b). The Board might also excuse default in the production of documents according to the Madras and Punjab Acts.

1 The language of the C. P. Act sec. 8 is more drastic. "Every debt of which a statement is not submitted to a Board shall be deemed for all purposes and all occasions to have been duly discharged."

The Bombay Agriculturists' Relief of Indebtedness Bill, 1939, declares all debts as void which are not submitted for adjustment, or for being recorded as settlements in case they are amicably settled, before debt boards, within one year of their commencement. The object of this provision seems to be to adjust all the debts of all the cultivators doing personal cultivation with the aid of their families in the province through the agency of the debt boards.

324 Limits to compulsion are the strength of conciliation

Criticisms have been levelled against Debt Conciliation Acts that a secured creditor could not be touched if he refused to join in an amicable settlement. The object of conciliation was to scale down debts with the consent of creditors. It is no use condemning an Act for not doing a thing for which it had not been enacted. The elasticity of the provision in the Punjab Relief of Indebtedness Act permitting agreement between a debtor and a single creditor has broken the possible combination among creditors to make the Act ineffective. The larger powers to order a settlement or to issue certificates given to the Bengal boards should be ample for the successful working of conciliation boards. These powers may be supplemented by the provision in the Assam Debt Conciliation Act that the court may refuse to grant a decree for any sum in excess of the sum specified in the certificate as a fair offer.

It is not the object of these methods by ordering a settlement, or issuing a certificate, to reduce the debts due to a creditor, or make it difficult for him to collect his dues. They are only intended to bring a mild pressure on recalcitrant creditors to join in the amicable settlement. The less they are put to use, the greater should be considered their success in bringing together the debtors and the creditors before the Board.

325 Whole property of the debtor, a charge for the settled debts

The Acts also provide other inducements to creditors to persuade them to agree to a settlement. Debts incurred by a debtor after his application to the board could not be recovered by execution of any decrees relating to them, until the award has ceased to subsist, or the amounts payable under it have been paid (Sec. 35 iii Bengal and Sec. 12-3 C. P. Act). This provision indirectly gave a first and sole charge on the properties of the debtor to creditors in respect of settled debts. Such a drastic provision has also the element of danger in it, that the award will discourage lending in future by the creditors. One could understand the charging of a definite portion of property by the court till the instalments were repaid. But to prevent any execution on the properties of the debtor would be putting a brake even on legitimate borrowings whose indirect result would be a rise in the price for credit by way of a higher rate of interest.

326 State aid for recoveries

The facility granted to the creditors to realise the instalment amounts through the Revenue officers was another inducement to

them to appear before the boards. In fact, this was the main inducement to the creditors to join in an agreement. The method was found by them quicker and cheaper than that of the civil court. The existence of a provision for recovery through revenue officers makes the debtor too, alert in his repayments, as he knows that there are few chances of dilatory proceedings in the summary procedure of the Revenue Department. Further, in cases where bitterness still lingers after a settlement and the settled debt has to be repaid in instalments, a debtor would prefer to pay the amounts due to a Revenue officer rather than to the creditor direct.¹

327 Negotiability of the awards

Yet another inducement provided in the Bengal Act was that "the right to receive any amount payable under an award shall be assignable in the prescribed manner." The awarded amounts were, therefore, negotiable.

328 The smallness of the court fees

Creditors were further encouraged to come before the board owing to the small court fees they had to pay.

329 Decrees of civil courts favourable to debtors

The power granted to courts to revise decrees already passed and to order instalments in their payment (The C. P. Money-Lenders Act of 1934), and the definition of usurious rates in the Usurious Loans Acts, have approximated somewhat the status of civil courts to those of conciliation bodies. A creditor could not hope to get better terms from the civil courts under these circumstances. The depression also aided conciliation measures, as the low price for lands discouraged recoveries by bringing them to sale.

330 The reaction of the depression on the creditor

Armed then with powers which, without in any way infringing on the rights of a creditor over the property of a debtor, put a mild pressure on him to make up his mind to appear before the conciliation boards, providing further some inducements to him to take advantage of the latter, and aided also by the economic situation in the country, the Conciliation Boards in the C. P., the Punjab, and Bengal, have been enabled to provide a substantial amount of relief to the rayats with the consent of creditors.

331 The best machinery for Conciliation

The object of conciliation could be achieved only by the appointment of such conciliators whose personal influence and appeal would

¹ Recoveries through Revenue Officers are provided for in Assam, Bengal, and C. P. Acts.

carry weight with the creditors. Secondly, the provision of a special machinery charged with the sole responsibility of effecting conciliation has achieved better results than that of civil courts which have their normal work to do. The system of rural moneylending has evolved in such a manner as not to lead to a proper settlement of debts by a mere interpretation of the bonds and deeds relating to debts. And when our object is to liquidate past debts, but not to provide a permanent machinery for the settlement of future debts, special tribunals are the best agencies for the purpose. The appointment of a special judge for settling claims has been the procedure adopted from the latter half of the last century in respect of encumbered estates of big landholders. The same procedure was adopted in the Deccan Agriculturists' Relief Act of 1879, with this difference that, while certain sub-judges were empowered to deal with suits against agriculturists, a special judge was appointed to inspect their work and review the progress of relief under the Act. The permanency of a measure as the Deccan Agriculturists' Relief Act necessitated the use of the ordinary machinery of the civil courts for determining and settling debts in the place of special tribunals; but so long as there was a special judge, the Act did give a substantial amount of relief to the rayats. If it is granted that the debts of agriculturists required individual treatment according to the size of the debt, the economic status of the creditor as well as the debtor, and the nature of money-lending by varying classes of creditors, then a special machinery working by the method of conciliation alone will be able to tackle the problem of liquidation of past debts. The work required not only good-will and local knowledge, but also a certain amount of legal knowledge.

333 The Constitution of the boards in the C. P. and the Punjab

In the C. P. and the Punjab, Revenue Divisional officers of ripe experience have been appointed as chairmen of these boards. The jurisdiction of the C. P. boards was ordinarily that of two taluqs. In the Punjab a board cannot effectively function for more than one Taluq. The boards in both the provinces consisted of not less than 3 members and not more than 9 members. Creditors and debtors were represented on the boards. Non-official members are paid in the C. P. travelling allowance and a daily allowance of Rs. 3/- per day. The Board disposed of 10 to 15 cases a day and 4000 to 5000 applications within a period ranging between 2 and 3 years. The term of the Board is one year in the C P., but is extended from year to year. In the Punjab the life of a board is fixed for 3 years. The fixing of a short term for the board is considered as not helpful to conciliation, as

a creditor may postpone his appearance before it in the hope that the board itself will soon disappear. The working of a board in the C. P. was less costly than in other provinces, as non-official members were not paid any salaries. The Board maintains one clerk on Rs. 35 and 2 peons, and its total cost is not more than Rs. 8000 a year. The cost of maintenance of the Boards in the Punjab must be naturally high, as the members are paid a salary of Rs. 200. The chairman who is generally a retired judicial or executive officer is paid Rs. 250 a month. A fixed travelling allowance of Rs. 75 a month is also paid to the members. The average cost of working of a board amounted to Rs. 12000.¹

One of the difficulties experienced by the Boards is about the want of a quorum, which is fixed at 3. There can be no solution to this difficulty, and the chairman of a board should not be over-anxious to help a debtor who cannot persuade at least two representatives of the debtors, to be present at the board meetings. The restriction of the term of members to one year gives of course an opportunity to the Government to discontinue their membership, and to select another set of members, whom they hope, will be more regular in attendance.

333 Fixation of graded fees

The Government of the C. P. have been losing a court fee income of about Rs. 6 lakhs a year owing to the settlement of debts by conciliation boards. As against this loss there has been an increase under registration fees of Rs. 25000. In Bengal the loss in court fees due to the stay of suits and proceedings during the last 3 years is estimated at Rs. 50 lakhs. This loss can be set right by levying court fees in respect of debts above a certain maximum of Rs. 2000 or Rs. 3000. The charges for an occupancy tenant or a small holder debtor in the C. P. in applying to the Board for a settlement of his debts are equally heavy. He has to pay an application fee of 12 annas, a process fee of Re. 1 for every creditor to whom the process is issued, another fee of 12 annas to stay suits in the court, a court fee of Re. 1 on agreements, and another 8 annas for non-judicial stamps, and a registration fee of Re. 1-13 annas for the first Rs. 100 and another 8 annas for every additional hundred rupees. The fees ought to be graded in proportion to the amounts to be settled and should be the minimum possible for debts below Rs. 500.

Under the Bengal Agricultural Debtors' Relief Act, the debtor has to pay a sum of 12 annas for the application, and one per cent on

¹ Vide All-India Co-operative Review Sep. 1937, and speech of Mr. M. L. Darling at the Delhi Legislative Assembly on 24-9-1936, p. 1826.

the settled amount for the issue of the award. He has not to pay anything for the staying of suits or the issuing of notices to the creditors. But he has to pay fees for the summons issued for the appearance of parties or witnesses to appear before the board.

334 Class of debtors

A conciliation board should have as simple a procedure as possible for calling applications, verifying them, and dismissing such of those which it is not possible to conciliate. In order that the time of the board may not be unduly taken up in the settlement of big amounts of landholders, either the pecuniary jurisdiction of the board, or the class of agriculturists whose debts should be settled, or both, should be limited. In the Central Provinces a debtor is defined "as a person who earns his livelihood by agriculture and who is an occupancy tenant, or absolute occupancy tenant or raiyat or a proprietor whose debt exceeds Rs. 150 or such lower amount as the Local Government may prescribe for a particular area." Such a definition permits the large class of big rent-receiving proprietors to apply to the boards for a settlement of their debts. The statement appended will indicate the large size of debts that are settled by the boards in the C. P.¹

The levy of court fees on all amounts above a certain limit in the C. P. would have proved a deterrent, and thus the number of cases would have been reduced to the most needy ones which alone should be entitled to special protection. In Bengal the Act is restricted "to rayats and under-rayats whose primary means of livelihood is agriculture," and to those "who cultivate the land themselves or by members of their families or hired labourers or by produce-sharing tenancies" (Sec. 2. 9). It was found by experience that even those who are not agriculturists might have their primary means of livelihood from agriculture and thus be entitled to the benefits of the Act. The Amendment bill of 1939 adds the words 'occupation and;' between the words 'whose' and 'primary'. This might prevent purely rent-receiving rayats from applying to the board. But it cannot prevent big zamindars from applying before them, if they cultivate a portion of their lands themselves, and thus satisfy the definition of agriculturist in the Act.²

In the Central Provinces too, the Act has helped the conciliation of debts of non-agriculturists. The latter might buy a piece of land

1 Vide statement A. I. A special board has been constituted for the Seoni Subdivision in 1937 for the conciliation of debts between Rs. 25,000 and Rs. 50,000.

2 A recent example was the application of Mr. S. M. Mitra, M. L. A.,
(Continued on the next page)

and thus obtain legal recognition as agriculturists.¹ Sometimes non-agriculturists apply as joint-debtors along with an agriculturist. Difficulties also arose in the definition of a debtor. According to the Act, a debtor should be one who earns his livelihood mainly by agriculture. Some of the courts rejected the notices issued by the boards on the ground that they were not agriculturists. To solve this difficulty, the Act was amended in 1937, and the power of the board in deciding whether a debtor was an agriculturist was declared final.

The Madras Debt conciliation Act includes landholders holding lands under Zamindars and Inamdars, ryotwari holders, and occupancy tenants in Malabar and South Kanara, but excludes tenants in ryotwari areas and labourers. The inclusion of all who live by cultivation including stock raisers and cultivators of special crops is necessary if the relief of indebtedness is to be of real help to the agricultural economy. No amount of care will be too much in defining the class of debtors to whom debt relief measures are to apply. The definition should make it impossible, as far as legislation can do it, for non-agriculturist holders of land to take advantage of these measures. The ordinary law courts are available for them for settling their debts. A too narrow definition of agriculturists as those who personally cultivate their lands will exclude agriculturists who lease a portion of their lands, but cultivate another portion. Various difficulties will crop up in the exclusion of rent-receiving agriculturists. By such an exclusion, even small agriculturists who have temporarily leased their lands for legitimate reasons might get excluded. All those whose primary means of livelihood is agriculture, even though they are rent-receivers, should therefor come under the scope of Debt Conciliation Acts. If such a provision would enable rent-receiving big holders to take advantage of the concessions under the Act which are not intended for them, the upper limit of amounts to be settled by the boards, and the provision of the levy of the usual court fees should be sufficient correctives to an abuse of powers by the boards in declaring whether a debtor is an agriculturist, or to an evasion of the law by the big landholders. Another difficulty would arise by restricting the scope of the Act to those whose primary means of livelihood is

(*Contd. from the previous page*)

Zamindar, and President, Bar Association, Rajashahi to Gagram Board for settlement of debts amounting to Rs. one lakh. The subordinate judge of Rajashahi has stayed the proceedings on receipt of notice from the Gagram Board. (A. B. Patrika, Mofussil notes, Feb. 13th 1939). Vide also para 368.

1 Vide report of Khandwa Debt Conciliation board.

agriculture. The restriction would lead to the exclusion of uneconomic holders whose major source of income may be from sources other than agriculture. The Act therefore, will have to specify that the qualification will not apply to those holders of land paying below a certain sum of land revenue.

335 Class of debts-Rent debts

Certain classes of debts are excluded under these Acts. How are rent debts to be treated? The C. P. Debt Conciliation Act does not exclude rent debts from the scope of the Act. But decrees passed in rent suits can always be executed by a landlord, and the issue of a certificate in respect of certain debts, or the existence of debts which have not been repaid under an agreement, can be no bar to the execution of such decrees (Sec. 15. 3 Proviso).

The problem of debt in the C. P. is interconnected with that of rent debts and it is an extremely reactionary step which the recent Debt Relief Bill has taken by excluding rent debts from its scope. The Bengal Act includes rent arrears till the date of determination of the debts subject to a number of restrictive provisions. Firstly it excludes the rents due by produce-sharing tenancies (2.8. iii).¹ In cases of joint debts for arrears of rent, all the debtors should join in the settlement (9.2).² Secondly, according to Sec. 23, a settlement of debt cannot reduce the principal of any debt due under arrears of rent, nor can a certificate be issued in respect of such debts. In other words, a landholder may bring the lands to sale for non-payment of rent. But he is required to give three months' notice to the board, during which period, a secured creditor may pay the arrears and prevent the sale, and recover it later from the debtor (Sec. 35. ii). Whenever a land is sold by the certificate officer in Bengal under the Agricultural Debtors' Relief Act, the proceeds of sale shall first be applied to the payment of arrears of rent. The collection of rent is thus safeguarded in the Bengal Act. Any special legislation to grant relief to tenants ought to bring in its scope at least the rent debts of those who do not sublet and whose major occupation is agriculture. Differentiation between rent debts and other debts becomes extremely difficult where the

1. The Madras D. C. Act excludes rent of land of Zamin and Inam villages.

2. The Amendment Bill of 1939 provides that a Board may settle such rent debts even if one among the joint-tenants applies to it. But the applicant should pay the entire debts as settled by the board. (9. 3. 1) It is only when the tenant fails to repay the debt within the stipulated period, the landlord can institute a suit in the civil court. The other tenants are liable to pay to the applicant the amount due by each one of them 9.3 (a and b).

landlord is often the moneylender as in the U. P. and the C. P.¹ The Conciliation officers in the C. P. usually insisted on tenants paying off their arrears of rent before they took up their applications for settlement.² But if the arrears of rent were such that they could not be repaid, they admitted the application using their best endeavours for their reduction, and seeing at the same time that the lands were not surrendered.

Rent debts as settled by a board, if they are not due to any adjustment of payments to other debts, should be the first charge on the land. While rental dues should never be allowed to be reduced normally by courts on the basis of the repaying capacity of a debtor, a scheme of conciliation of past debts cannot but reduce rents too. The fact of existence of huge arrears under rent is itself an index of the period of depression and the need for settling them as other debts. Scaling down of rent arrears, after determining it by taking an account of the payments made to a landlord whether for rent or for debts due to him, and on the basis of the fall in prices will be nothing unfair, as rent is a payment for the use of land on the basis of the value of the produce raised from it. Some of the Tenancy Acts have a provision for reduction in rents in proportion to the fall in prices (U. P. Tenancy Bill, 1939, Sec. 102, Madras Estates Land Act Sec. 39 A). Such reductions should be subject to the collection by the landholder of such amount of rent as would not be less than the land revenue he has paid to the government on the land.

336 Co-operative debts

Another class of debts which could not be easily conciliated were the debts due to the co-operative societies. The Punjab Act excluded

1. " This class of creditors was as a rule found to be a regular parasite on the tenantry. All payments made by the tenant debtor went towards the highly inflated and unreal claims of the Malguzar creditor and decrees after decrees for arrears of rent were filed up to harass the tenant and ever keep him under his bondage. This class of moneylenders in most of the cases was not afraid of Sec. 8 (deeming debts about which statements are not submitted by creditors as discharged), or Sec. 15 (issue of certificates) of the Act, as the debtor was ever within their full grasp. " Report of Narasinghpur board 1937, Page 16.

2. " The marked decrease in the number of ejection cases, especially in the Saugor, Hoshangabad, and Nimar districts, is ascribed largely to the voluntary payment of rental arrears by tenants with a view to qualify themselves for applying to the debt conciliation boards for settlement of their debts. " Land Revenue Administration Report for C. P. 1937, Para 91.

them from its scope. In the C. P., Madras, Assam, and Bengal, these debts could be settled with the previous approval of the Registrar in writing. It has been found so difficult to conciliate these debts in the C. P., because of the difficulty in getting the approval of the Registrar of co-operative societies at the proper time. Another difficulty was that a set of terms different from those on which the Board has settled the debts were sometimes proposed by the Registrar. The other creditors took advantage of this situation and resiled from the agreements once made. The justification for the privileged position granted to the co-operative societies was that their object was not to make profits, and that depositors who have financed them would suffer a loss. But nothing has brought so low in the eyes of the agriculturists the position of co-operative societies in the C. P., Madras, and Bengal, as the fact that those who were not their members were able to get a substantial relief from creditors, while the members of such societies alone could not get their debts conciliated by creditors because they owed money to these societies.

Government should evolve a separate scheme, which consistently with the soundness of their finances would enable co-operative societies to give substantial relief to their debtor members. The recent proposal in Madras was to hand over the lands bought by co-operative societies back to their owners, on condition that the latter agreed to pay a reasonable price for these lands spread over in a number of instalments over a period of 20 years. The price to be paid for these lands would not be more than the sum of debts as scaled down according to certain rules.¹

That a scheme independent of conciliation work done by boards was necessary would also be evident from the following extract from the report of the Narasinghpur Board. "To save a good deal of time of the board and of the parties it would not be undesirable to remove these debts of the ryot from the jurisdiction of the board, and at the same time providing for the Registrar's

1 A recommendatory circular for scaling down of debts was issued by the Registrar of Co-operative Societies, Madras, in October 1937 in respect of "D" class societies which have become defunct owing to heavy overdues. The scheme was to calculate interest at a low rate of $6\frac{1}{2}\%$ from the date of disbursement of the loan, to give a percentage remission under the principal amount, and to still further grant a reduction under principal amount, if cash payment was made within a year. The Circular has recently been extended to all classes of societies. Circular, B 768/38 of 29-10-38 states that these concessions should be extended to members of all societies irrespective of their classification, provided of course, the general body of the society and the central bank agree to the course in each case, and provided also the financial condition of the society permits it."

powers to give suitable convenience to the debtor where his other debts have been conciliated in a board."

337 Debts due to banks

The Bengal and the Punjab Acts (28VI and 7.1) exclude debts due to banks. The exclusion is based again on the principle that depositors should not suffer by any scaling down of debts. But this should be no reason for cutting down interest when high rates of interest are stipulated by banks. In the case of co-operative loans, it can be said that Government may compose them equitably as co-operative societies are under their control. But there can be no such justification for exclusion of loans due by banks.

338 Trade debts

The Punjab Act excludes debts incurred for purposes of trade by an agriculturist (Sec. 7.1). Such a provision will only complicate the work of the board, as the latter will have to keep an eye on such debts to prevent evasion or fraud which of course cannot be easily discovered from the terms of the bonds.

338 A Debts due to Government

A comprehensive scheme of debt liquidation should not exclude any class of debts. Otherwise the relief can only be partial. And an encumbered agriculturist can hardly prove a creditworthy person for being assisted in the future by a co-operative society or a money-lender. The Bombay Bill of 1939 provides for relief to be granted by co-operative societies and the Government, in respect of loans due to them which they would intimate to debt adjustment boards.

339 Need for simple rules of application

The rules regarding applications for debt settlement should be as simple as possible which an ignorant and illiterate debtor may be able to fill up with the aid of a writer. All other Acts excepting the Bengal Act require that the debtor should state in the application that he is unable to pay his debts.¹ This clause was omitted deliberately in the Bengal Act on the ground that a debtor might be solvent, and the object of his application might be to clear up and settle the disputed claims of a creditor.² The Bengal Act requires full particulars of the property of the debtor with their value to be given by him in the application which he is not able fill up in many cases (Sec.11. e).

1. Madras 6. 1. a., Punjab 11. d., C. P. 6. 1. A., Assam 6. 1. f.

2 Vide discussion on the section in the Bengal Legislative Council proceedings.

340 Need for scrutiny of applications

The procedure in the Bengal Act regarding verification of plaints is simple. The examination of the applicant on oath or affirmation is not obligatory (Sec. 12.3). The C. P. Act requires verification of every application in the manner prescribed in the Civil Procedure Code (Sec. 5). In the C. P. various cases of bogus applications came before the Boards.¹

In the case of joint-debts, all the debtors have to apply before the board, or the debts should have been partitioned among them with the consent of the creditors. Where only one of the many joint-debtors applies, and the debts too have not been partitioned, it has happened that such debtors falsely alleged that creditors have agreed to the partitioning of debts, so that they might not be barred from applying to the Board.² There was need therefore for a thorough scrutiny of the applications.

341 Result of all creditors not joining in an application

Applications were also preferred by creditors with the object of getting a settlement made of their debts without the knowledge of other creditors. The chairman of the Narasinghpur board merged such applications in those of debtors, or rejected them. For, the result of settling the debts of a few creditors of a single debtor would be that the others would be able to sue and to sell his properties. Sometimes debtors too forget to include the names of all creditors. To cancel the debts of creditors to whom no notice had been given would be unfair. To permit them to sue and unsettle an agreement would defeat the object of conciliation. One of the reports of the boards recommends that a "civil court, while passing a decree in such cases should pass an order arranging for the payment on the lines of the other creditors of that debtor." This is a recommendation which can be usefully embodied in an amendment to the Act.

342 Prevention of fraudulent practices

With a view to check fraudulent practices in the submission of applications, the Bengal Act empowers the Board to dismiss an application "if the debtor being a joint-debtor or a joint-surety wants to defraud his partners in the debt" (Sec. 17.1), or "if the application includes any claim which is intended to defraud any

1. "We came across some instances where debtors to defraud their creditors had made fraudulent transfers or executed bogus mortgage deeds. Such cases were very difficult to settle as more often than not, the bogus creditors stood firmly by their documents." Report of Narasinghpur Board, page 14, 2 Report of Bhandara Board.

creditor, or there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor" (Sec. 17.2).

343 Difficulties in serving notices

After the admission of applications, a statement of debts is called for from the creditors. Here, the difficulty lies in issuing the notices to the correct addressees of the creditors. This difficulty has been experienced in every province, but to a greater degree in Bengal. Illiterate rayats who have put their thumb impression on their loan bonds or promissory notes might be thinking of the person who paid them the loan as the creditor, while another name might have been noted as the creditor in the document. Since the passing of the Usurious Loans Act which permitted the courts to take an account for 12 years, the link of the old loan due is generally broken by moneylenders by taking a new loan bond in the name of another creditor, thereby making it impossible for the courts to investigate whether a loan was a renewed one. Secondly, registered notices are refused by the creditors. Service of notices by the revenue staff and their return with the signatures of the party will be the best procedure. Where, however, such signatures cannot be obtained through the revenue-staff, it may be supplemented by service through registered post.

344 Verification of statements

The next difficulty arises in the verification of the statements. Full information regarding the history of the debt is hardly given by the creditors. In this connection a standard form of accounts to be filled up in regard to each debt by the creditor may be usefully adopted. The Narasinghpur Board Officer was enabled to take an account of debts with the aid of information supplied in these forms,

345 Difficulties in the stay of proceedings by courts

Before the Board begins its work of settling the debts, it should stay the proceedings in the court in respect of such debts. The officers in the C. P. and the Punjab had not much of a difficulty either in getting the statements from creditors and their appearance before the boards, or the assistance of civil courts to stay suits and proceedings. The difficulties which the village boards in Bengal had to encounter in this respect are described elsewhere.

346 Powers of revision and appeal

The procedure for settling the amount has to be as simple as possible. Consequently the Bengal Act does not enjoin on the board the verification of statements of the creditor as prescribed in the

code of civil procedure. But the boards in the C. P. have so to verify the statements of creditors¹.

No appeal or revision of the orders of the Board is allowed in all the Acts excepting in Bengal where, owing to the operation of village boards with non-official chairmen, appeal and revision have to be provided for².

But a board may review its own order either on the application of a person interested, or of its own motion. The former is provided for under all the Acts, while the C. P. and the Madras Acts also provide for the latter.³ Under Sec. 20 of the C. P. Act, and the Assam Act, lawyers cannot appear before the boards, while the other Acts allow them to appear with their permission.⁴

Under the Bengal Act, the provisions of the Indian Evidence Act of 1872 and the Code of Civil procedure 1908 shall not apply to any proceedings before a board except as otherwise provided in the Act.⁵

It is often complained that the boards conciliate debts which cannot come under the scope of the Act and that they exercise extra legal powers. Firstly, the work of the boards comes under the supervision of the Revenue Commissioners. Secondly, they conduct their proceedings openly in the presence of the public. The value of the boards to the poor ryots lies in the absence of any appeal on their orders. Any change in the law in this respect will only impair the usefulness of the boards.

347 Powers of the Boards

The Board is also given certain other powers for the due discharge of its duties. It can summon and examine parties and witnesses and call for documents. Even though the Board has this power, unwilling creditors summoned with the aid of law may express their resentment by refusing to co-operate in the amicable settlement. This shows the need for sparingly using this power of

1 Sec. 9, A, C. P. Act.

2 Sec. 18 C. P. Act.

3 Sec. 19 C. P., and Sec. 23 Madras.

The recent Bengal Amendment Bill of 1939 empowers the Boards to review their own orders on their own motion. The Laxam special board dismissed 26 cases. The Director of debt conciliation boards urged their revival though it could not be legal to do so. The proposed amendment might help a review of cases which are considered by the Boards as requiring a revision. Vide answer to an interpellation by the Government on 19-8-38, Bengal Legislative Assembly Proceedings, p. 203.

4 Punjab Sec. 24, Bengal Sec. 46 and Madras Sec. 24.

5 Sec. 45

summons. Some of the Bengal village boards, being unable to get the appearance of the creditors before them with the aid of their own influence and status, urge on divisional officers to use this power in almost all cases. Possibly this cannot be helped in Bengal.¹

The board can further attach the immoveable property of a debtor after receipt of his application. In order to prevent fraudulent transactions some of the Acts have the following or a similar clause. "Every transfer of property made with intent to defeat or delay the creditors of the debtor (after an application made and until the agreement subsists) shall be voidable at the option of any creditor so defeated or so delayed."² There is also provision in the Acts that the members of the Board shall be deemed to be public servants and the proceedings, judicial proceedings within the meaning of the Indian Penal Code.³ The Bengal Act further provides that "no suit, prosecution or legal proceeding shall lie against the chairman or members of the Board, appellate officer or certificate officer in respect of anything in good faith done or intended to be done under this Act" (Sec. 51 Bengal). "Breach of rules under the Act are to be punishable with fine which may extend to Rs. 50 and where the breach is a continuing one with a further fine during which the breach continues."⁴ The Bengal Act has a further provision providing for penalties "for making false statements, for producing false documents, for falsely personating and abetting any punishable act." The person convicted of these offences shall be liable to imprisonment for a term which may extend to 3 years or fine or both. The prosecution for such offences can be commenced only with the consent of the Collector (Sec. 54).

B

THE PROCESSES IN SETTLEMENT AND THE WORKING OF THE C. P. BOARDS

348 Joint and ancestral debts

We will now examine the provisions relating to the processes of settlement of debts and their working in the several provinces. Any conciliation Act should enable the settlement of debts of a single

1 Report of Mekhar Conciliation Board, C. P., Page 15.

2 C. P. Sec. 17, Assam Sec. 17, Madras Sec. 20, Bengal Act, Sec. 37.

3 Sec. 24 C. P., Sec. 23 Assam, Sec. 28 Madras, 49 & 50 Bengal.

4 Sec. 56 Bengal Act, Sec. 23 C. P. Act, Sec. 29.4 Madras Act, Sec. 29 Punjab Act, and Sec. 25.2 Assam Act.

debtor in the case of joint-debts. A creditor should not be able to prevent a settlement of joint-debts on the ground that all debtors have not joined.

The absence of a provision to settle joint-debts in case of individual debtors has been one of the causes for dismissal of applications by the C. P. Boards. The Bengal Act specially provides for a composition of joint debts-other than rent debts even though all the debtors do not apply. "Such an order of the board shall not be questioned in any civil court, provided that an order of the board under this subsection shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due be entitled to realise more than his dues from the persons jointly liable" (Sec. 9, 2).¹

The Bengal Act also makes it easy for the Board to settle joint-debts of ancestral character. It provides that it is not necessary that all the debtors who join in an application in respect of such debts should be agriculturists. The speech of the Government member on the clause in the Bengal Legislative Council explains the reasons for this clause. "The property that is involved is agricultural land, and it is for the protection of agricultural land that this clause has been inserted, quite irrespective of the fact whether the ancestor was an agriculturist or not"² This provision may be usefully introduced in the other Acts, thereby making it easy for boards to conciliate ancestral debts.

349 Determination of debts

One of the disputed questions regarding conciliation measures is whether it is necessary that conciliation boards should determine the amounts due before making an amicable settlement? A board may not be able to arrive at a decision regarding the amount due, but yet debtors and creditors may agree by amicable settlement to a certain amount as due for repayment. It is said that, in respect of certified debts, the court will allow interest only at 6% and the court should therefore know the exact amount of debt. It is doubtful whether a court would not determine the amount due in spite of the fact that a board has arrived at a certain sum as due. But it is worthy of consideration whether the court might not be empowered to grant a decree

¹ Under this clause "the case of the surety who is a non-agriculturist appears to be a bad one but his liability gets reduced when the debts of the debtor are reduced. Whereas if an agriculturist debtor does not repay, the surety will have to bear the whole amount." Extract from the speech of the Government member during the discussion on the clause.

² Bengal Legislative Council proceedings V. 47. Nov-Dec. 1935.

as it thinks fit, only for the sum determined by the board in respect of debts for which a fair offer has been made by a debtor. Such a provision will necessitate a statement by the boards detailing the debts claimed and settled and the arguments indicating the fair offer made by the debtor. The debtor may file the statement in the court in every case when the creditor sues him. The Travancore Debt Conciliation Regulation and the Assam Debt Conciliation Act give such a discretion to the courts.¹

350 Disputed debts

Another difficulty arises about disputed debts. Some of them were settled by Debt Conciliation Boards in the C. P. for nominal amounts (Report of Narasinghpur Board Page 14). Suppose the Board goes into the whole question and finds that a small debt, or no debt exists. All its work is wasted labour, if its decision is not binding on the creditor. The creditor refuses to agree. A settlement cannot be made. He sues for the amount in a court of law. In such cases it should be made binding on the court to consider the opinion of board. The Bengal Agricultural Debtors' Act has a stringent provision that "if the board decides that the debt does not exist, the suit or proceeding shall abate so far as it relates to such debt".

351 The scope of conciliation

Measures of debt conciliation cannot compose all existing debts. It was estimated by an officer of a board in the C. P., that one-fifth of the agriculturists in the two Taluqs of his board would hardly have any debts to be repaid; another one-fifth who owed small sums below Rs. 25, or who were nominal agriculturists but mostly labourers would also not apply; about 2/5, though indebted, were so much in the clutches of moneylenders or in need of future credit from them that they dared not apply for reduction in their debts; and it was the remaining one-fifth that generally applied to the boards for a composition of debts. These applicants were either moderately indebted and were not afraid about future credit, or were so heavily indebted and had exhausted all their credit that the future had no dread in store for them. About half the applicants had to be rejected for various reasons and the other half were granted relief. (Statistics collected by the officer of the Conciliation board for Chindwara and Amarwada Taluqs in Aug. 1937).

352 Reasons for rejection of applications

The following are the other causes mentioned in the administration reports of conciliation boards in the C. P. either for dismissal of

¹ Vide Nota 18 on Debt Conciliation measures in Native States

applications or their rejection owing to the difficulty of making the creditors and debtors agree.

(1) The paying capacity of the debtors is found to be too good and hence there is no need to scale down their debts.

(2) Debtors are obstinate and are too much attached to the land to come to a settlement with their creditors. They refuse to agree to a transfer of land.

(3) Creditors holding decrees of foreclosure, or lands under interminable usufructuary mortgages are unwilling to conciliate the debts due to them.

(4) The debtor may have no lands of his own, or he may not be an agriculturist as defined in the Act.

(5) Debts of adjudicated insolvents cannot be conciliated.

(6) The over-indebtedness of the debtors is also a reason for rejection of applications.

(7) Debtors whose debts are above the maximum fixed under the Act i. e. Rs. 25000 have to be excluded.

(8) Under the Act debts due under an award of the Registrar of co-operative societies and contributions levied in liquidation proceedings are not debts. Hence the applications of debtors owing this class of debts are rejected.

(9) Applications of those owing heavy arrears of rent or revenue are generally dismissed.

353 Relation of land tenures to methods of settlement

We have first to understand the economic background in the C. P. and Berar on which the debt boards had to work. In the C. P. the problem of mortgage debts was not so serious as in Berar, as transfer rights were largely restricted there. Neither could a composition of debts by land transfer be freely resorted to as in Berar, where the cultivators had proprietary rights of free transfer in land. Loans in the C.P. could be recovered mainly from the produce of land. So the instalment method of repayments was more widely adopted in the C. P. The following is the classification of the number of cases according to the methods of settlement adopted by the Narasinghpur board. (1) Sale of a portion of land, 91 (2) Leasing of lands, 18 (3) Sale of land and instalments, 145, and (4) Instalments, 3612.

Another factor to be noted about the debts of tenants in the C. P. was their huge size quite out of proportion to the income of a tenant. This was due to the high rates of interest which tenants with limited transfer rights had to pay. These were owed to the

Malguzars in certain districts whom the powers of a conciliation Board could hardly frighten, as they had their tenant debtors under their subjection in more ways than one. Or they were owed to Banias and Brahmins who were equally rapacious in their dealings. (Narasinghpur Board report, page 16). The Jain money-lenders were another unreasonable class, intent on getting the property of debtors about whom the report of the Khurai board says that "without the aid of legislation they are hard to tackle" (Page 6). The large percentage of remission of debts in the C. P. was mainly due to the reductions made in the the debts, by allowing only the principal, and by cutting down interest substantially.¹

Thirdly, the boards found it difficult to settle accounts of usufructuary mortgages. Mortgages on long lease were common in the Jaghir areas. In the Narasinghpur area there were two kinds of mortgages. The Patta form of mortgage is a lesser evil as it ran only for a fixed term.

"There are other forms of possessory mortgages in which the sowkar is allowed to appropriate the usufruct of the mortgage security towards interest, and then towards principal if the volume of the usufruct so permits with a condition to pay the balance of the debt at some unduly long future date. These transactions from their very nature were mostly hard and unconscionable bargains."²

Fourthly, some of the debts were not incurred for genuine agricultural purposes, but were forced on the cultivator owing to his economic subjection to the landlord. These were the transfer fees due to the landholder, in cases of sale, or inheritance by a tenant other than the son or the grandson of the last holder. "Heirs of deceased tenants undertook to pay huge Nazrana to the Malguzar with the result that their annual income went to him and made the unfortunate heir more miserable year by year." There were also the ancestral debts admitted by the debtors, while no property has descended to them from these ancestors. All these classes of debts were substantially reduced by the Boards in the C. P. as they were not debts incurred for useful purposes.

354 Nature of debts and settlements in Berar

The causes of the debt in Berar were of a different nature. There was the bad harvest of 1929. Fall in prices also affected the agriculturists. Apart from the recent depression which has brought low

1. Vide statements—A 2 and 3 in the appendix.

2. Out of 2735 mortgage claims in 5317 cases settled by the board, 438 were those relating to usufructuary mortgages of which 337 of a value of Rs. 2.58 lakhs were settled for Rs. 1.04 lakhs, and 101 possessory mortgages of the value of Rs. 65000 could not be conciliated by the Narasinghpur Board.

the value of lands, the debts incurred for purchase of lands in periods of boom prices of cotton between 1922-24 have remained the same, while cotton prices fell since 1927. This will be evident from the following statement about indebtedness extracted from the settlement report of Akot Taluq of Akola District, 1928.

"The most common cause of considerable indebtedness is the habit of borrowing capital for purchasing land. The usual practice is to save part of the price of a field, and borrow the rest, pledging the field purchased. Usually the mortgagee is the vendor himself. The less prudent practice is to borrow the whole of the price, giving as security other property as well as land bought. But such transactions are not so common. These purchases are generally done when there is ample money floating in the market and in consequence the price of land soars high. The purchaser in a majority of cases eventually loses his original holding as well as his newer acquisition. The undreamt of rise in the price of cotton in 1922-24 infatuated the cultivators so much.... Many of the existing debts are in a majority of cases due to imprudent purchases of land as well as imprudent leases of land entered into during the period of cotton boom." (P. 13).

The size of debts was larger in Berar owing to the greater security a rayat could offer for raising a loan in view of the rights of ownership he had in land. "The Khojas advanced loans and took mortgage deeds with the object of acquiring land, and these people remained adamant."¹ Most of the debts in Berar were secured debts and they had to be conciliated generally by a transfer of land.²

The Kelapur Board refers to the treatment of debts incurred for purchase of lands in years of boom. The debtor had more than enough lands which he leased or even allowed them to lie fallow. Most of the lands were transferred back to creditors, leaving a small portion to the debtor. The instalment system was not adopted in these cases. The recent Land Revenue Administration Report for Berar for 1937 says that "favourable conditions facilitated the settlement by debt conciliation boards of a large amount of debt by the transfer to the creditors of small portions of the debtors' property."³

Another class of debts in Berar was owed by village officers (Patils and Patwaris). Their debts were easily composed as creditors were afraid of them, and afraid too to take their lands, even though they had hardly made any repayments.

355 Difficulties in working

It is these various classes of debts the conciliation boards in the C. P. had to tackle. The boards first dismissed the debts

1 Kelapur D. C. Board Report, Page 8.

2 Vide statement A 3 in the appendix.

3 P. 6

supported by defective documents, thereby indicating to the debtor that a court of law would not grant to the creditor any decree on such debts. The second thing they did was to deliberately postpone consideration of secured debts and decrees in respect of which the creditor refused to come to an agreement. This was the only kind of penalty which the boards could possibly levy on recalcitrant secured creditors. The original principal was then determined in the cases approved by the board and interest at 6% was allowed on it. Cases of small debts of poor tenants who were practically insolvents were settled by transfer of a small portion of land or a cow or a buffalo to the creditor. Ordinarily the boards in the Central Provinces rejected cases of debts which could not be settled either by transfer of lands or by instalments within 20 years. Unless the creditor agreed, they had no insolvency powers of reducing the debts to a repayable size.

356 Transfer of lands for debts.

Debts had to be settled either by leases of land, or by its sale, or by spreading the amount over long instalments. Lease of land to others than creditors with a view to raise the necessary capital to repay the debts was hardly resorted to, neither the system of putting the creditor in possession of land for a temporary period in lieu of debts was in vogue in the C. P. as in the Punjab and Bengal. In all sales of land the officers used their influence in fixing a fair price. As the revenue officers in the C. P. execute all decrees requiring sale of lands, the Local Government have formulated certain rules for their guidance and fixed the price at which they should conduct such sales between 50 and 70 times the land revenue. It is necessary that the rules should either provide for fixing a fair price for land in schemes of liquidation of debts, or legislation should be enacted defining fair price as part of the law regulating moneylending and suits against agriculturists. The provision for fair price will set at rest the present wrangles between the creditor and the debtor regarding market values for land, and the apportionment of land for debt.

357 The resiling of the creditor

Another difficulty cropped up in the C. P. boards during the process of conciliation. The mind of the creditor is made up by the members of the board by appealing to his religious and charitable instincts and sometimes to his sense of vanity (Narasingspur Board report p. 23). But every creditor cannot remain long in that

mental make-up. There is therefore every need for reducing the agreements immediately into writing.¹

Even after the writing of the agreements, some creditors refuse to execute them. It is too costly for debtors to sue creditors in the courts, and compel them to execute the agreements. Some amendment of the law which will not nullify an agreement because of its non-registration, subject of course to the payment of registration fee, will be necessary in this respect. The difficulty becomes greater in the registration of transfers after they have been agreed to. When a debtor refuses to transfer the land as arranged in a settlement of debts, the work of the Board becomes a wasted effort. The chairmen of some of the Boards have therefore urged for powers to themselves to execute transfers of land which have been agreed to in the settlement.

358 The transfer fee, want of insolvency provisions, risks in instalments

The payment of the transfer fee to the landlord was another obstacle to the transfer of lands to creditors. Another difficulty which the Boards had to face was that they had to persuade the creditor to leave some land to the debtor on which he could maintain himself in the future. There were no insolvency provisions applicable to the debtors. It was here that the boards in all the provinces felt the impossibility of liquidating debts by the method of conciliation. The creditor insisted on the transfer of all the property. If a certain portion was saved, then instalments had to be fixed for the balance due. The creditors too put pressure on the officers to grant heavier instalments, in case lands could not be transferred to them. Naturally one was forced to grant instalments even when he knew they were irrecoverable.² The debtor too was immensely hopeful that he would repay the instalments and so was unwilling to part with land. No doubt care has been taken that the amount of instalment did not exceed one and a half times the rent in the C. P. or two times the land revenue in Berar. But the statement appended at the end of this chapter (A. 4) will show cases in which the officer of the Amraoti Board must have found it extremely embarrassing to fix the instalments at the pitch he did. Most of these are uneconomic holders. Only little land has been left to them after transferring a portion of

1 The practice of first accepting settlement and then going behind it by certain creditors continued till the end. Such creditors exploited the debtors to agree to pay them cash, cattle, or registration fee in addition to the amount entered in the agreement, Report of Khurai board report 1935.

2 The Mekhar board had to fix the instalments even five or six times the land revenue in certain cases.

their property to the creditors. Considering the area of the lands left to them, the instalments they have to pay are very heavy. The figures certainly point to the conclusion that the instalment method would hardly suit the uneconomic holder unless the latter had supplementary sources of income and the debts too have been drastically cut down. Consequently an alternative method was also adopted. Where a creditor was doubtful of the capacity of the debtor to repay the instalments, a deed of sale of the land was executed in his favour by the debtor, on condition that the land would be reconveyed to the latter if the instalments were repaid.

The creditors too were unwilling to agree to long-term instalments. Hence the latter had generally to be fixed so as not to exceed 10 or 12 years. The difficulties in transferring lands to creditors would be a great deal solved if the boards had the power to exempt a portion of the holding for the maintenance of the debtor. Where instalments are granted, the board should equally have the power to exempt the portion of produce necessary for his maintenance. When once these powers are granted to the boards, creditors will entirely change their attitude towards them. The Bengal Agricultural Debtors' Act has special provisions regarding insolvency which are worthy of adoption in every province.

359 The instalment system in Bengal

Settlement of debts by the instalment system of payment has been more largely used in Bengal and Central Provinces than in the Punjab. In Eastern Bengal most of the tenants hold less than 2 acres. Roughly the homestead forms one acre of which one-fourth comprises the hut and the pond. The latter supplies the fish for edible purposes. The other area of three-fourths is cultivated with betelnuts, vegetables, fruit trees and bamboos. In the remaining one acre he raises a double crop of paddy in one season, and jute (half an acre) and chillies or sesamum half an acre in another season. Excluding the rent he has to pay, and presuming a tenant owns a pair of cattle, he may be able to make a net income of about Rs. 80/- per acre with the aid of his free family labour. The only way of dealing with the debts of this class of tenants is to grant easy instalments.¹ The instalments too should carry no interest as in the C. P. and Bengal. Their number will have to vary according to the capacity of the debtor to repay. A sufficient margin will have to be made also for defaults in instalments. The risk in repayment by instalments lies in their irrecoverability in years of failure of crops.

1 (Vide statement B-4 and 5)

360 Recoveries of Instalments

The Government Review on the working of conciliation Boards for the year ending Sep. 1937 published in Feb. 1939 said that recoveries of instalments varied from district to district, and that defaults were more common in some districts than others. The previous review issued on 14-8-1937 said that 21% of the demand was recovered by coercive processes. The land Revenue Administration Report of the C. P. for 1937 said that the percentage of recovery ranged between 25% and 52%. It mentioned the postponement of recoveries of instalments as one of the reasons for the increase in the number of pending cases with the Collectors. The report further said that "the number of cases for the recovery of instalments fixed by the boards are increasing and the recovery of these in the Seoni subdivision presents considerable difficulty as the multiple of rent adopted there was too high. The Berar Land Revenue Administration Report for 1937 said that "these statistics (about pending cases) illustrate the difficulty in recovery of these instalments even during a normal year." No deductions can be made about the difficulties in the collection of instalments from these figures. For these percentages refer only to the cases brought before the Deputy Commissioners for recovery. It is only in respect of very bad cases that a creditor will take the assistance of the revenue officer for realising an instalment.

The difficulties in recovery are more an indication of the want of insolvency provisions in the C. P. Debt Conciliation Act to bring down debts to a level as not to entrench on the produce necessary for the maintenance of the debtor and his family. Unless the recoveries are classified according to the area owned by debtors, it is not possible to attribute the difficulties in recoveries to an adoption of a higher multiple of rent or revenue in the fixing of instalments by conciliation officers. The fact of the matter is that there are a class of holders whose past debts can never be repaid. The debts of this class require a special treatment which we have dealt with under compulsory provisions for scaling down debts.¹

1 The Mekhar D. C. Board report says "instalments are like the sword of Damocles but the optimism of debtors in regard to payment of instalments is unshakable and blinds them to the hard realities of the life of an agriculturist... We think at least 90% will be able to pay their instalments *provided they are not singularly unlucky and the years are normal*". The Narasinghpur Board report says "only 15 per cent kists have been sought to be recovered which is by no means unsatisfactory specially when late showers of rain had spoiled the crop from which those instalments were settled to be paid. A comparison of the amount covered by the total number

(Contd. on next page)

361 Rigorous provisions for recoveries in the C. P.

One special feature of the C. P. Debt Conciliation Act is that the amounts mentioned in an award are not recoverable at any time through the civil courts. Under the Bengal Act such a limitation applies only until the award subsists.¹ The real trouble is about the further action to be taken in case of default in the repayment of instalments. The Bengal Act has more detailed provisions in this respect. The certificate officer can grant time and even postpone the payment of the instalments on sufficient grounds. If he still finds it impossible to recover the amounts, he may declare the debtor an insolvent, and thereafter the insolvency provisions will apply. If he does not do so, he will merely certify that the amounts are irrecoverable, and thereafter the creditor may sue in a civil court for the amount due within three years from the date of the certificate.²

362 Restriction of credit of the settled debtor

It is at this stage that the Bengal Act hands over a debtor who has joined in an award to the civil court.³ But the C. P. Act excludes the civil courts in regard to the recovery of agreed amounts. It gives more powers to the revenue officers to sell the lands of the debtor and do everything needed to recover the debts settled by an agreement. The powers given to them are very stringent. According to Sec. 13.1 of the C. P. Debt Conciliation Act, if a debtor defaults in paying any amount due in accordance with the terms of a registered agreement, such amount shall be recoverable as an arrear of land revenue on the application of the creditor made within ninety days from the date of default.

(*Contd. from last page*)

of kists for the first June 1936 shows that 21% of the amount of instalments fixed was sought to be recovered..... It is but natural that about one fourth the amount of each year's kist may not be paid at all for one reason or the other. Their nonpayment will not necessarily show the fixation of a heavier instalment. It should not be forgotten that the amount which has to be spread over these instalments represents the minimum figure of creditors' dues which is acceptable to the creditor, and that the creditors also have got a family to be supported."

1 Sec. 16 iii C. P. and Sec. 35 i (b) Bengal.

2 Vide Note 15 on the procedure for recoveries of instalments in Bengal.

3 A complaint that is often levelled at the C. P. Debt Conciliation Act is that the position of a debtor does not improve under the award, as he can be sued in two courts, in the revenue court for the non-payment of instalments and in the civil court by a secured creditor who refuses to join in the agreement. The Bengal Act prevents the latter from suing a debtor for at least a period of ten years in the case of certified debts, and until the award subsists where an amicable settlement has been arrived at in respect of other debts.

A combination of the elastic provisions of the Bengal Act regarding recoveries of instalments, and of the C. P. Act providing only for the revenue agency for the collection of the amount in the award even after default, will be the best procedure to prevent the jeopardising of the relief granted by a settlement of debts, due to the severity of coercive processes adopted for their recovery.

All the Debt Conciliation Acts provide a charge on the property for the amounts to be repaid in a series of instalments. In other words, they prevent the execution of any decree for loans made after the registration of the agreement or the award. The result of such a provision is that it makes it difficult for a conciliated debtor to raise future loans on the security of his house or land property.¹ Consequently agriculturists who have to borrow are afraid to apply for the conciliation of debts. The better procedure would be to create a charge only on a portion of the property and to permit a further charge even on that portion to the extent to which the instalments have been repaid. If the property charged is thus released for raising credit, the credit position of the debtor would be to some extent improved for the future.

363 Other methods of recovery.

The other methods adopted in the different provinces for the repayment of debts were cash payments, transfer of moveables, the granting of land on mortgage with possession, and repayment to creditors either by bonds or through land mortgage banks or by Government. Cash payments were few and far between, both in Bengal and the C. P. But the working of the Punjab Boards indicate that such payments were made by debtors in some cases. In the Punjab the most usual forms of payment were the transfer of cattle, trees, fodder, and jewellery to the creditors. Arbitrators were appointed to fix their value. House sites were also transferred. But as sale of land was forbidden in the Punjab, the usual form of repayment was by the granting of usufructuary mortgages up to 20 years in favour of creditors (vide statement C. 2 in the appendix).

C

THE WORKING OF CONCILIATION BOARDS IN OTHER PROVINCES.

364 Debt Conciliation in the Punjab.

Before we discuss the question of state aid for the repayment of debtors to creditors, we will refer to some of the practical experiences

¹ "One of the chief objections to conciliation under the Act is that the debtor cannot secure credit until the last of his instalments is paid." C. P. Land Revenue Administration report, 1937, para 152.

gained by the working of conciliation boards in the different provinces. Sufficient reference has been already made to the Central Provinces. We shall therefore deal with the difficulties encountered and the experience gained, in the conciliation of debts in other provinces.

It is claimed for the Punjab Debt conciliation Boards that they have met with a fair measure of success. The remission in the conciliated amount works to seven annas in the rupee. As in other provinces a fair number of applications, not less than a third had to be dismissed for various reasons. The difficulties which the Board had to face were similar to those in other provinces.¹ But one special difficulty the Punjab Boards had to contend against. Ex parte decrees obtained in courts operating outside the area of residence of the debtor were brought before the boards for conciliation. Such decrees are common in Upper India Provinces where a creditor deliberately sues a debtor on a bond in a distant court so that the debtor may not appear and disprove the claim. As in the C. P., some debtors also included bogus debts in their applications, which one should be prepared for in any scheme of conciliation. The Act in the Punjab had no provision for the recovery of instalments through Revenue officers. Possibly such a provision was not required when debts were settled in a majority of cases by temporary transfers of land, and sale of house, sites and houses, and moveables. But if debtors were to take a greater advantage of the Act, the provisions intended to put pressure on recalcitrant creditors should be stiffened as in the Bengal Agricultural Debtors' Relief Act.²

365 Debt Conciliation in Madras

The Debt Conciliation Act in Madras had a very unfortunate career. It was brought before the Legislature as a private bill by Dewan Bahadur T. A. Ramlingamchettiar in 1934, but the government then in power was unwilling to undertake any legislation on behalf of debtors. It appointed a special officer to enquire about the need for such a bill. On the basis of his report, the Conciliation Bill was taken up for discussion in the Legislature. It was a half-hearted measure which did in no way profit by the experience of C. P., as Bengal and Punjab

1 Indian Co-operative Review, Sep. 1937. Article on Debt Conciliation Boards. Vide statement C-1 in the appendix.

2 The Punjab Relief of Indebtedness Act was extended to Delhi in January 1938. A recent review of the working of the Board in Delhi for the year 1938 shows that 33% of the amount was remitted in the settlements, that instalments were fixed for three-fourths of the amount settled up to a period of ten years, that the average period of instalments was five years, and that the board had been popular with the creditors.

did in their Conciliation Acts. It received the assent of the Governor-General on 5th April 1936. It came into force on first January 1937. Six Debt Conciliation boards were started, and they did not have a fair trial. Meanwhile the new government began to emphasise the greater usefulness of compulsory measures as compared to conciliation measures. Possibly it was not conscious of the fact that compulsion, by a mere application of the law of Damdupat to principal in addition to interest was only a single provision of the many provisions in Money Lenders' Acts which have been largely applied by Conciliation Boards in Bengal, Punjab, and C. P. But soon the government realised the need for individual treatment of debts, as a retrospective application of Damdupat to the aggregate amount due in respect of old loans could not be a substitute for adjustment of debts in various ways such as transfer of land and grant of instalments. Also the working of the Agriculturists' Loans Act gave them a fresh experience. The special Loans Officers appointed under this Act to issue loans for the repayment of debts, had no legal power to scale them down, and then repay the creditors.

The alternative was the grant of relief under the Madras Debt Relief Act of 1938 through courts. But in Madras there is no legal provision permitting a debtor to sue for accounts. Consequently relief could come to him only when the creditor applied to the court. The Act of course permitted application by a debtor in the case of decrees. The debtor might also apply for the redemption of mortgages under the Usurious Loans Act of 1918. But debtors could not apply for relief in the case of any other debts owed by them. It was no doubt open to them to refuse to pay more than what the Debt Relief Act granted to a creditor under its provisions. All debtors might not be in a position owing to several reasons to take up such an attitude. The right of a debtor to sue for accounts would have an indirect reaction on the creditors to settle the debts in accordance with the provisions of the Madras Debt Relief Act. But this right to sue alone would be insufficient to protect the debtors, unless the poorer among them could do so by a mere application to the court without paying the usual court fees to be paid for a suit. The Madras Government found that the best they could do, if they were to avoid any legislation was to revive the conciliation boards, which gave the debtor the right to apply to these boards for a settlement of debts. Consequently they have issued another communique that 92 conciliation boards would be formed, covering the whole province so that all debtors might apply to these boards and have their debts scaled down. Here too the debtors had another obstacle in obtaining the

relief provided under the Madras Debt relief Act, as creditors to whom 50% was owing should agree to the settlement. A few amendments of the Madras Debt Conciliation Act liberalising its provisions on the lines of the Bengal Act will make the boards accessible to a larger number of debtors who will be thereby enabled to obtain the relief granted under the Madras Debt Relief Act of 1938.

366 Debt Boards in Assam

The Debt Conciliation Act came into force in Assam in Jan. 1937. The first Board was set up on first September, 1937 for South Kamrup district. Another board was set up for North Sylhet on 3rd Jan. 1938. Propaganda had to be conducted by the South Kamrup Board to educate the agriculturists on the provisions for debt conciliation for a period of 3 months. The need for propaganda to attract debtors seems to be peculiar to Bengal and Assam. No such work seems to have been found necessary in the C. P. or the Punjab.

Up to the end of Nov. 1938, 264 cases involving Rs. 99403/13/4 were registered by the Kamrup board 51 cases involving Rs. 14369/3/0 were settled at Rs. 8621/2/0. Another 13 cases involving Rs. 4158/- settled at Rs. 2120 were shortly to be registered. By the end of Nov. 1938, 71 cases involving Rs. 19932/7/0 were in the process of settlement.¹

The machinery for conciliation is a board comprising a sub-deputy collector, a vice-chairman, and three to five non-official members for 2 or 3 Taluqs of a district. Recently the Government have proposed to increase the member of boards and to appoint non-officials as their chairmen.

367 Limitations in the working of village boards in Bengal

The machinery provided for conciliation in Bengal is the village board. The board consists of 5 members, all nominated by the Collector of whom 2 represent the creditor and 2 the debtor. A board ordinarily sits 4 times a week. A village board is handicapped in many ways. In the first place big creditors did not ordinarily recognise it as its members did not count for much in their eyes (vide statement B-1).² In conciliation it is the personality, especially of

1 The statistical information has been extracted from a paper read at the Economic Conference in Dec. 1938 by Mrs. Sadhana Das Gupta M. A. of Shillong.

2 In answer to a question in the Legislative Assembly, the Hon. the Minister in charge of rural indebtedness explained that one of the reasons for the slow disposals was "the non-appearance of many creditors." (vol. 52-6. 1-4-38. P. 113)

the chairman of the board that counts. A large number of processes had to be issued for requiring the attendance of persons, for production of documents, and for receiving evidence.¹

The debtors were not able to give full particulars of their mortgaged property. The documents filed in Court were not easily obtainable by the Boards. The Boards too could not be expected to be so prompt in their work as to summon a creditor only once. They had no powers to compel a creditor to submit a statement of debts by ordering such debts for which a statement was not submitted as not payable.²

Even if they had such a power, a creditor might submit a statement and not appear before that board. It was to compel recalcitrant creditors to appear before the Board that the Bengal Act empowered the Board to issue a certificate which prevented a creditor from collecting his debts for a period of ten years. But the village boards were not endowed with such powers.

In the second place, joint-debts could not be settled by village boards unless specially empowered, or they had to be transferred for settlement through the Collector to the special Boards (Rule 80). Thirdly, they could only settle debts relating only to single debtors and single creditors. They had no power of binding all the creditors to an agreement by ordering a settlement, when creditors to whom 40% was owing agreed to it. Such cases had to be transferred to the special boards with the consent of the Collector (Rule 79). Fourthly, the Board had no power to decide cases of insolvency.

Unless there was a special Board in the area, the village board was not empowered even to recommend such cases (Rule 78). Where there was a special board, such cases should pass through the Collector who might refuse to recommend them.³

1 (Vide item 23 of statement B-3). Boards in Dacca District suffered from want of this power as well as power to compose joint debts. (vide reply to a question in the Bengal Legislative Assembly, Vol. 52.3, p. 187). In Tippera District only 37 out of 534 ordinary boards had these powers. (ibid, Vol. 52.4, 11-3-1938, p. 155) In Mymensingh district all the 436 boards had none of these powers (ibid, Vol. 51.4 dated 30-9-1937, p. 2268).

2 The number of notices has been reduced to the minimum in the Bengal Agricultural Debtors' Amendment-Bill of 1939. Notices to all debtors for consideration of the application for a further statement of debts from debtors and creditors and for production of documents by creditors have been combined into a single notice.

3 In answer to an interpellation on 1-3-1938, the Hon. the Minister said in the Legislative Assembly, Bengal that they meant to keep the applications of insolvents in abeyance, and "that it is the Government's policy that powers under Sec. 22 should not be used until it is clear that all other means of effecting a settlement are of no avail."

368 Civil Court decisions

The Courts went into the question in suits before them, whether a debtor was an agriculturist as defined in the Act. The High Court however ruled that the Boards alone had the final authority in deciding whether a person was a debtor or not, according to the Act.¹ In another case the stay order was questioned by a subordinate Court on the ground, whether it was issued in respect of agricultural debts.² The High Court decided that subordinate Courts had no such power. The lower courts also went into the question whether the debtor resided in the area of the boards.³ A defendant in a suit in the Civil Court at Darjeeling who owed Rs. 26,855 went to Malda, and applied to the Parbatipur board to settle his debts. The board issued a notice requesting the subordinate judge to stop the suit.⁴ During the course of his judgment, the Acting Chief Justice wrote:

It seems clear that the Bengal Debt Settlement Act in its present shape is likely to entail consequences of a fantastic description which obviously could not have been fully realised or even dimly foreseen when the Act was drafted or when it was passed into law.

Benefitting by the experience of these judgments, the Local Government issued instructions to the boards that they should first record their resolutions that the debtor was an agriculturist as defined in the Act, that he resided in the area of their jurisdiction, and that their debts came under the scope of the Act.

369 Difficulties in staying proceedings

More difficulties were also experienced by the Boards in getting the proceedings stayed by the courts.⁵ The courts insisted that every

1 "Although the alleged debt was as much as Rs. 26,000, it yet does not seem open to the court to decide or even consider whether the debtor comes within the Act or whether he does not. That question rests solely with the board." Remarks of Acting Chief Justice, High Court, Bengal, 41 CWN, 1364.

2 Shib Dalal Shuklal vs. Kishoreganj Loan Office, appeal against the order of the additional Judge-High Court Judgment of 8-11-1937.

3 In one case the court refused to stay proceedings unless the Board had been empowered with special powers. The High court overruled this decision. Satyendra Mohan Ghose vs. Nibaran Chandra Bose. High Court Judgment of 14-4-1937.

4 Bhagawan vs. Chandulal 41 CWN 1365.

5 In answer to an interpellation in the Legislative Assembly, the Hon. the Minister said that in several cases notices were rejected on grounds of formalities and technicalities (vide Vol. 51-3, p. 493).

Government themselves made it difficult for these boards to function by too many rigid rules which they relaxed only in September 1937. The original order of Government was the following. A debtor applicant should be heard after issuing notices to all persons whose addresses are given in the

(Contd. on the next page)

party who has been made a defendant by the creditor in the suit should jointly apply with the debtor for staying the proceedings. This meant that subsequent mortgagees and purchasers of his land should join with the debtor in the application to stay proceedings, which is an impossibility. - Knowing that the courts in some areas would insist in this manner, the landlords made all the inheritors of a former tenant who had neither any interest nor title to the holding as parties to their rent suits. If the proceedings were to be stayed, the debtor should find out all these tenants and get them to agree to the application for stay.¹

Secondly, the debtor could not give the correct number of the pending suits or decrees for execution which he had to obtain from the clerk of the court and the pleader on payment of a remuneration. Sometimes he was unable to give the correct name of the creditor, as he did not know the contents of the document to which he had put the thumb impression. A notice to stay was also returned, as wrong numbers of sales were noted by the Boards which was due again to copying the wrong numbers in the sale proclamations of courts, for which the latter alone were responsible. It also happened that when a certificate to stay proceedings was submitted to a court, it was returned with the remark that no execution proceedings were pending. But the creditor applied 2 or 3 days after, and the court granted the execution. There should be some procedure by which the court would note in the case register the application for stay, so that it might not take any further proceedings in the suit. Decrees were also executed by surprise without the knowledge of the debtor, thus giving the latter no time to apply to the Boards to stop the proceedings.

The courts interpreted stay of execution proceedings regarding sale of property as not applying to unsatisfied final decrees of sale. The result was that proceedings of sale once begun were continued, as the courts held that there were no decrees to be stayed in such cases. The courts had at any rate a right to refuse to stop pro-

(Continued from the last page)

application. Then the Board should issue notices to the court to stay proceedings in pending suits and decrees. If the claim exceeded Rs. 1,000, the sub-divisional officer's permission is necessary. The approval of the Collector is necessary if the notice is to be served on the High Court. (Vide Bengal Legislative Assembly Proceedings Vol. 51:4, p. 2245-30-9-1937).

¹ Proceedings under a decree of a rent suit (1446 of 1937) were not stayed by the second Munsif of Chandpur, as all joint debtors have not joined in the petition (vide Legislative Assembly Proceedings, Vol-52:6 of 8-4-1938, p. 397). The recent Amendment Bill of 1939 enables any one among the joint-debtors to apply for settlement of rent debts.

ceedings in cases when the decree-holders themselves have purchased the lands, even though the sale has not been confirmed, as there was no decree to be stayed in such cases.¹ A large number of properties were thus brought to sale in spite of the notices of the borrowers to stay proceedings.² The difficulties experienced in the stay of suits led to the exclusion of many debts from the operation of the boards.³

370 Limitations of partial settlements.

Partial settlements of debts were also of no value, as the creditors left outside them might sue the debtor in the court. The Boards have been advised not to issue awards in cases of partial settlements. Owing to these restrictions the Boards could only take up cases which could be wholly and amicably settled. Such a restriction became necessary on two grounds. Firstly, village boards could not be trusted with large powers. So the very nature of the machinery created for settlement of debts curtailed the number of cases that could come before a board. Secondly, the Government did not want to use compulsory powers in the initial stages, but to conciliate with the consent of all the creditors.

371 Dearth of applications in the initial stages.

The Boards had first to contend against certain initial difficulties. In Eastern Bengal opinion gathered strength that lands would be sold for failure to pay the instalments, and that it was better not to appear before the Boards. Owing to the ignorance of the rayats, and the hopes created by the passing of the Bengal Amended Tenancy Bill by the Legislature giving retrospective effect to the limitation of the period of usufructuary mortgages made before 1928 as fifteen years, and the election propaganda for the Legislative Assembly in 1936 the relief envisaged by the Act was considered insufficient.⁴

1 41 CWN 1308 and 41 CWN 1370 *Manindra vs. Bepin*.

2 Vide para. 385 on the results of the Bengal Agricultural Debtors' Act 1935 on the rural credit system. The Amendment Bill of 1939 makes it clear that the courts should stay proceedings for sale of property until such sale is made absolute, if so requested by the Boards.

3 One of the Hon. Ministers who owed a debt of Rs. 27 lakhs applied to Sikarpur Settlement Board, which issued a notice to the High Court to stay proceedings. The proceedings were stayed pending decision of the powers of boards under the Act. The judges of the High Court have recently ruled that the Act could not empower the boards to stay the proceedings and suits pending in the High Court.

4 "Where the relations between landlords and tenants were strained, it was due...to some extent to the unfulfilled promises and expectations held out to the rayats by irresponsible propagandists in the course of the last election". Report on the Land Revenue Administration, Bengal, 1936-37, p. 16.

There was also the pressure exercised by landlords and creditors preventing the debtors from appearing before the Board. In some cases the debtors were also surrounded by village touts, were misinformed, and were asked to withdraw their applications. Further, debtors did not apply to the Boards as there was no time limit fixed for their applications. They preferred to wait until the summons came to them regarding a suit, or about the execution of a decree against them. Then in order to stay the suit or the proceedings, they applied to the Board. One peculiarity about the Bengal Boards is that a debtor may apply for conciliation of debts upto a period of five years commencing from August 1936. This means that the Board will not only be composing debts incurred before the commencement of the Act, but also those which will be incurred till 1941. Such a provision has naturally reacted on the credit of the rayats.

372 Difficulties of the Boards

If the Board was successful in staying the proceedings by satisfying every technical rule of the court, it had to encounter further difficulties in settling the debts. The obstinancy of a single creditor spread like contagion and prevented a settlement. The Central Co-operative Banks did not co-operate in certain areas by sending their representatives for conciliating debts, but began to sell up the properties of debtors.

No wonder then that many of the village boards grew indifferent to their work. The vast difference between the number of applications pending and the number disposed is a commentary on the working of the boards.¹

The following were the other difficulties mentioned in the working of the boards.

(1) Creditors applied before the boards only when they were certain of not getting a better treatment at the hands of the court. The court too could reduce the amount of interest and grant instalments under the Money Lenders Act. But the court fees might be saved by applying before the boards. In some cases debtors too did not appear before the board when they felt that a settlement of their debt would not be in any way useful to them and that they had nothing to gain by it. It also happened that some debtors applied, not in the view of settling a debt, but to defraud creditors by withholding payments as long as they could.²

1 Vide statement in the appendix B 1 and 2.

2 Vide Speech of the Collector of Midnapore, Mr. B. R. Sen as president of the Midnapore co-operative conference, on 17-2-1939. A. B. Patrika

(2) Transfer of land to creditors in lieu of debts was not possible owing to the transfer fee that had to be paid to the landlords. This has been made easy owing to its abolition in the recent amended Tenancy Act of 1938. An enlargement of rights of tenants in periods of depression only leads to their appropriation by money-lenders who have lent on a lesser security before these rights were granted.¹

Discussing a similar situation in the C. P., the C. P. Banking Enquiry Committee remarked in the following manner in para 1613 of their report. "We would also not recommend the grant of rights of transfer in any area where the rayats were seriously indebted until facilities for amortisation of existing debts have been provided by the establishment of a land mortgage bank."

(3) Most of the debts were converted into usufructuary mortgages for short periods in lieu of interest, the principal remaining unpaid. A condition was also attached that, if the loan amount was not repaid within a certain number of years, the land would pass to the creditor. The Boards had no power to settle these mortgages without the consent of the creditor (Vide Statement B, 3, item 18). 14 Boards in Chandpur area could not do any work, as most of the debts were covered by usufructuary mortgages.²

It also happened that lands secured by usufructuary mortgages were not returned to the debtor, even when he acted up to the terms of the award. The recent amended Tenancy Act of 1938 has declared void all usufructuary mortgages made for periods over 15 years even though they were made before 1928. This provision is sure to help those whose lands have been in possession of the creditor for more than 15 years to get back their lands.³

(4) There is no provision for settling rent debts to be paid in instalments unless the landlord agreed to it. Secondly, the landlord added the charges incurred for the collection of rent in his claims which swelled the arrears of rent due to a huge figure.

1 The correspondent of the A. B. Patrika, Bogra, refers in his notes to the increase in the execution of saledeeds "by leaps and bounds" in the office of sub-registrar which he attributes to the abolition of the transfer fee. A. B. Patrika, Mofussil Notes, 1-3-1939.

2 The Bengal Government have introduced a bill in January 1939 with a view to empower the Boards to settle the debts involved in usufructuary mortgages. Details of the provisions are referred to in para. 385.

3 The Munsifs of the Munshiganj sub-court have held that this provision would apply only to usufructuary mortgages as defined in the Transfer of Property Act of 1882. If the mortgage deed had provisions permitting the mortgagee to sue if the loan was not returned within a certain date, or if there was any personal covenant to repay the debt, then the new section in the Tenancy Act could not apply to these mortgages.

(5) The main problem of debt relief in Eastern Bengal is that of reducing the irrepayable debts of uneconomic holders. This problem which was referred to the preliminary report of the Board of Economic Enquiry in 1935 and on whose recommendation the insolvency provisions were included in the Act has yet to be tackled seriously in Bengal. The reports mention the difficulties in making creditors agree to long-term instalments. The procedure laid down for the boards prescribes the rules for calculating the surplus income of each debtor after deducting family expenses, cultivation charges, and landlord's rent. The calculation sheet has to be maintained by the boards. This was not maintained by the boards of the Chandpur area when the writer of this thesis visited some of the centres in the last week of December 1937. We are stating this fact not with a view to criticise adversely the work of the village boards, some of whose work should certainly be appreciated, but just to show that too much is expected of them. The supply of a standard form for this purpose may open the eyes of the board to the necessity of fixing instalments consistently with the repaying capacity of the debtor.

(6) Complaints are made of want of quorum for meetings, and also of absence of remuneration for the members of the boards. The latter demand is often made when poor villagers who cannot be expected to work free out of public spirit are asked to do so, while the supervising officers are paid their salaries.

(7) A Board generally comprises between 10 and 20 villages, and its members may not command the local knowledge about all the debtors and creditors. The need for advisory ward committees is felt in certain areas.

(8) Want of peons to serve notices is mentioned as one of the causes for delay in disposal of cases.

(9) As the whole province is not covered by village boards, debtors in non-board areas were sued by creditors in courts, and the number of execution proceedings increased against them.¹ The Government therefore permitted special boards to act as village boards and to admit the applications of debtors. But the latter have not found them so accessible as village boards.

¹ In answer to a question why boards were not formed in many areas, the Hon. the Minister replied that one of the difficulties was the selection of the personnel of the boards. (Vol. 52, 2, p. 208 and 209, vide also reply of the Hon. Minister on the same question on 5-8-38 on absence of boards in the district of Murshidabad.)

373 Structure of the machinery for conciliation

By the end of March 1939 Government expected to reach the estimated number of 5600 ordinary village boards and 150 special boards. A village board maintains a clerk on a salary of Rs. 10 to Rs. 15, a peon on a salary of Rs. 8, and is allowed a contingent expenditure of Rs. 12 per month. A sum of Rs. 15 is also allowed under travelling charges every month for the members of the board. As compared to the overhead charges, the expenditure on village boards is practically little and, considering the amount of clerical work involved in the work of the boards, a well-paid clerk is essential for its proper working.

The clerk of a special board is paid Rs. 35 per month and the peon Rs. 12. Contingent charges about Rs. 40 per month are permitted. For every 30 boards there is a special officer whose duty is to supervise their working and who is paid a salary and house allowance of Rs. 150 and a fixed travelling allowance of Rs. 50 per month.* Above these are two debt conciliation officers; one an I. C. S. Officer for Eastern Bengal, and another Senior Provincial Service Officer for Western Bengal. The following budget for the year (1939-40) will indicate the huge machinery which the Bengal Government have erected for the purpose of debt conciliation.¹

| | Rs. | Revised estimate 1938-39 | Budget 1939-40 |
|---------------------|-----|-----------------------------|-------------------|
| Pay of Officers | .. | 2,00,000 | 3,15,000 |
| Charged | .. | 7,000 | — |
| Establishment | .. | 6,25,000 | 10,02,192 |
| Allowance honoraria | .. | 1,75,000 | 3,02,160 |
| Charged | .. | 2000 | |
| Contingencies | .. | 2,00,000 | 4,93,060 |
| | | <hr/> | <hr/> |
| Total voted | | 12,00,000 | 21,12,000 |
| Charged | | 9000 | |
| | | <hr/> | |
| | | 12,09000 | |

The method of conciliation by village boards inevitably leads to the need for a controlling staff. Government, having started a scheme for liquidation of debts, have got deeply involved in the administrative problems of keeping the machinery for conciliation in

¹ The appointment of six retired officers as special officers was the cause of a series of interpellations in the Bengal Legislative Assembly. (Vide Proceedings Vol. 5-13, p. 493 dated 24-8-1937)

order, and the main work goes into the background. The work turned out by the boards is little. Khan Bahadur S. M. Hosain brought forward a bill in the Bengal Legislative Council on 27th January 1938, and during the course of his speech introducing the bill, said: " In the last budget Rs. 16 lakhs was provided for debt settlement boards, and if this goes on for five years, we shall spend about a crore of rupees, but we may receive by that time only about 50,000 applications and dispose of only 5,000 of them. The result achieved will not justify the cost and the money will be entirely wasted. "¹

The settlement of joint debts (Sec. 9-2), the ordering of certain debts of a creditor for which he does not submit a statement as not payable (Sec. 13.2), the ordering of a settlement in respect of all debts of a debtor when creditors to whom 40% is owing agree (19.1.b), the issue of certificates respecting debts for which the debtor has made a fair offer (Sec. 21), and the declaring of a debtor as an insolvent and applying the insolvency provisions of the Act (Sec. 22), these powers can be exercised only when a Board is so empowered by a Local Government. The first two powers are also granted to some village boards. But the idea is to have a special board for every subdivision of a district to which the village Board will pass on the cases with its remarks and those of the Collector for settlement. There will be a large amount of duplication of work, as the village boards would first be enquiring into all cases, Notices would have been issued to creditors and witnesses examined. The same thing might have to be repeated by the special boards. The difficulty of endowing a village board with large powers has necessitated the formation of another set of boards with the circle officers who supervise union boards, as their chairmen.

375 Supervision and appeals.

The Collector and the Sub-Collector are the pivots on which the whole machinery of village boards hangs. The consequence is a tendency to standardisation of work which is detrimental to the individual treatment of debts which is the requisite of any scheme of liquidation of debts. To illustrate the point, the Collector of Mymensingh issued a circular that an initial lump payment should, where possible, be arranged to prove the bonafides of the debtor.

¹ Many of the boards began work from November 1936. During the last two years ending December 1938, Government have incurred an expenditure of 14 lakhs of rupees on the boards, while their income from fees from the applicants has been 5 lakhs. (Vide article on Debt Boards by Mr. M. K. Bose, M. A., B. L., A. B. Patrika, 26th February 1939.)

The boards would indiscriminately apply such instructions, even though they could hardly have a general application.¹

The Collector and the Sub-Collector have powers of appointing and controlling the staff of the boards. The two Provincial officers who supervise the work are to exercise their powers subject to the control of the Collector of the district. The Act provides for 2 kinds of appellate officers. The ordinary appellate officers are under the control of the Collector. The special appellate officers who are persons with judicial experience are under the control of the District Judge.

Under Sec. 40-8 of the Act appeals can only lie where there is a dispute between a creditor and debtor. As the settlements are mostly amicable settlements, there have been few appeals. Such appeals relate either to the award granted, or to the question whether the debtor is an agriculturist as defined in the Act.

376 Corruption and inefficiency of the Boards

Considering the poor human resources available for village leadership, one should be prepared to face a certain amount of corruption and inefficiency in the working of boards. The evils found in the working of the scheme of village conciliators under the Deccan Agriculturists' Relief Act have only repeated themselves in Bengal under the Bengal Agriculturist Debtors' Relief Act of 1936. Raja Bahadur of Nashipur moved a resolution for an immediate inquiry into the working of the Boards in the Bengal Legislative Council on 25th January 1938. During the course of his remarks, he referred to the sentence passed on the chairman of a debt Settlement Board, of six months' rigorous imprisonment and a fine of rupees hundred for illegal gratification. He also referred to the following strictures passed by the judges of the High Court on the personnel of these Boards. "The personnel of the ordinary debt settlement board consist mostly of persons whose literary attainments do not go beyond ability to sign their own names. Bond suits and rent suits are awaiting decisions by the aforesaid members of those Boards. In both classes of suits intricate questions of law frequently arise-questions that often tax the intelligence and baffle the judgments of experienced judges and lawyers." Referring to corruption and bribery among the members of the Debt Settlement Boards, Rai Keshav Chandra Bahadur said that, "the more well-to-do and unscrupulous amongst the creditors will probably lose no time to seize the opportunity of securing a favourable decision from the members of the boards." The

¹ Vide Bengal Legislative Assembly Proceedings, Vol. 51.4 dated 30-9-37, p. 2268.

Hon. the Minister for rural indebtedness did not controvert these facts, but on the other hand gave additional evidence of corruption in the boards by stating that "he has removed some members from the boards in the districts of Mymensingh and Khulna, and in many places without any motion being tabled on that ground." The interpellations in the Legislature showed that the evil of the misuse of conciliation by creditors becoming conciliators under the Deccan Agriculturists' Relief Act, has repeated itself in some areas in Bengal. There is enough evidence too of the illegal exactions of vendors, clerks, servants and touts to which the poor cultivators who appeared before the Boards were subject to.¹

Various complaints have been made about the administration of the boards. Cases for hearing are fixed without giving sufficient time to the parties. Sometimes banks (loan offices) are asked to attend simulataneously the hearings of too many boards which are distant from one another. Large delays occur in getting copies of documents and in disposal of cases. The recent all Bengal Lawyers Conference held at Mymensingh in December 1938 resolved that "the working of present system very often occasions failure of justice and that the absence of a trained legal mind at the head of the conciliation Boards is primarily responsible for arbitrary findings in many cases in disregard of the cherished notions of justice and fairplay."

377 Features of debt Conciliation in Bengal

The main features of debt conciliation in Bengal are the following. The debts are generally small amounts below Rs. 500 which are due to 5 or 6 creditors in each case. The Boards have to take an account of the incomes from land in usufructuary mortgages. Rates of interest in the claims are more than 18% and go upto 37½%. Huge amounts are shown as due, and possibly some creditors are satisfied with the large reductions made, as the amount actually advanced is not more than the sum of the debt as scaled down. A large number of creditors also apply to the Boards, because the necessity they feel to amicably settle their debts, the little court fees they have to pay, and the absence of any possibility of their getting better terms from the court, induce them to take advantage of the machinery for conciliation. The Act has no doubt granted a moratorium for the debts

1 "Debt settlement board clerks realise fees from each applicant at the rate of annas four for copying the document even though it be copied by the applicant, and annas eight for statements even though the statements be written and presented by the applicants." (Bengal Loan Companies with special reference to the B. A. D. Act by Mr. M. K. Bose, M. A., B.L., p. 10)

of debtors who applied before the boards as, at their instance, the proceedings in the civil court were stayed.¹

D

FORMS OF STATE AID

378 Forms of State aid-issue bonds by the State.

It now remains to discuss the various forms of aid given by the State to enable the debtor to repay to the creditor the debts scaled down by conciliation boards.

The U. P. Encumbered Estates Act was the first Act in India which provided for the issue of bonds to creditors. After the scaling down of debts on lines which we have referred to in para. 295, the Collector was to arrange for its repayment. The instalment value of the property of the debtor (that value which, if spread over instalments repayable in 20 years, will be realisable from the net profit from land, due account being taken of the land income required for the maintenance of his family) was then found out. If the sum of debts was less than the instalment value, then the Collector ordered it to be paid in instalments not exceeding 20 years at 4½% (Sec. 21). In such cases the Collector *shall* give bonds at 3¼% to the creditors which shall be payable by Government within 20 years (Sec. 30).

These provisions have not been put into effect as the working of the Act has been temporarily stayed. The issue of bonds by the State to repay a creditor has been criticised on many grounds. The first criticism that is levelled against it is that bonds will have to be issued for the debts estimated in crores for the several provinces by the Banking Enquiry Committees. This criticism does not take account of the fact that bonds could be issued only in the case of debts of those agriculturists who own a larger extent of land than what is necessary for the maintenance of their families. Secondly, the debts will have to be scaled down to an amount which is repayable by a debtor. Thirdly, cases in which a fixing of instalments will only postpone the sale of lands, but not prevent their sale, will have to be immediately composed by a transfer of all the land or a portion, to the creditors, or by its sale in public auction. The amount fixed for the annual instalment should take due note of the land income necessary for the maintenance of the agriculturist and for raising future short term credit for domestic and agricultural expenses, and of the periodical failure of crops or death of cattle by epidemics.

379 Land Mortgage Banks

Whether the bonds are issued by the State, or whether the latter guarantees the debentures issued by a Central Land Mortgage

1 Vide statement B. 3 to 5.

Bank, and the Banks repay the creditors, the bonds or the debentures will have to be supported by the mortgages made by the debtors. Mortgages can only be taken from such debtors whose repaying capacity satisfies all the tests just now mentioned. It is owing to these reasons that Land Mortgage Banks are unable to help all the debtors with loans to repay the debts scaled down. So long as most of the agriculturists have small or deficit holdings and have no supplementary sources of income, so long as agriculture is not organised enough to minimise the risks to which it is subject, and to provide for itself at a minimum cost the facilities for production and marketing, so long one must be prepared to face a recurrence of unproductive debt which will require periodical adjustment. No sound bank would be willing to undertake the liquidation of debts of every agriculturist. And uneconomic holders form a large number in every province of India. No wonder then that mortgage banks do not come to the rescue of the boards. One of the reasons alleged why debtors do not apply to these banks for loans is that, while the instalments fixed by the boards and recovered through Revenue officers carry no interest, they have to pay interest on loans made by mortgage banks. Sufficient reduction in the debt can be made in the settlement itself to compensate for the lump payment made to a creditor by the mortgage bank, and for the interest which a debtor will have to pay to the bank. The real trouble is, as put by the officer of the Narasinghpur boards: "that the creditors would not agree to take that small sum only which the scanty property of the debtor could raise from the land mortgage bank."¹

It therefore comes to this, that bonds and loans can be respectively issued by the State or the mortgage banks only in respect of the debts of big holders who have the capacity to repay the instalments. These instalments may, if necessary, be spread over long periods in their case, unlike in the case of small and uneconomic holders who could not be burdened with prolonged repayments. The bonds or the loans should be therefore limited in value to the instalment value of the properties of a debtor. Secondly, they should be covered by a sufficient mortgage security. Thirdly, there should be provision

¹ "Lately the Debt Conciliation Boards have been giving the maximum concession possible in respect of the number of instalments and exemption of the instalments from interest, thus leaving no incentive to the debtors, whose debts have been conciliated, to apply for loans from land mortgage banks which charge interest at 6 $\frac{1}{4}$ %, take mortgages of the property, and insist on punctual payment." Extract from the Government review on the working of Debt Conciliation Boards for the year ending Sept. 1937.

for a sinking fund. These safeguards should amply protect the bonds issued by the State, and the repayments in lump made by a mortgage bank on behalf of its debtor-members to the creditors.¹

Two methods have been adopted in Madras for the repayment of loans to creditors. The one was the issue of loans for redemption of prior debts through Land Mortgage Banks. A large number of primary banks are financed by the central Land Mortgage Bank. The State has recently guaranteed the debentures of the latter upto 2 crores of rupees. The rate of interest to the primary borrower is 6%. The Bank has been extending its activities mostly in areas which have water facilities for irrigation and are therefore assured of steady incomes from land, and where the record of rights in land is properly maintained unlike in Zamindari areas. Its working has shown that the number of agriculturists who can be helped with long-term loans at a lower rate of interest for repaying their prior debts is negligibly small as compared to the large number of indebted agriculturists in a village.

380 Debt Redemption loans made by the Government of Madras.

Another method adopted by the Madras Government was to issue loans under the Agriculturists' Loans Act for the relief of indebtedness of owners and occupiers of arable land. The Act was amended by the Madras Act XVI of 1935, including relief of indebtedness as one of the objects for which loans could be issued. Recently the rules under the Act have been amended (Fort St. George Gazettee Part I Sep. 13, 1938) and the present Ministry have provided for a sum of Rs. 50 lakhs in the current year's budget to be issued to the agriculturists after their debts have been scaled down in the manner provided in the Madras Debt Relief Act of 1938 either by the Court or Debt Conciliation Boards, or by loan officers. As the latter have no power to reduce the debts, any scaling down of debts can be done by them only with the consent of the creditors.

Under the original rules the loan officer is not empowered to repay a creditor unless the total amount scaled down does not exceed the original principal with interest at 6%, or twice the amount of the original principal, whichever is less. This rule is now abrogated, and in its place the Loan Officer is empowered to reduce debts according to the provisions of the

¹ We have appended a note on State aid for the liquidation of debts in other countries of the world (Note 19). The conditions, particularly in the south-east States of Europe, approximate to those of India. The difficulties to which debtors have been put by a wholesale moratorium and the changes adopted later by some of these States to conciliate debts instead of cancelling them will be apparent from a study of this note.

Debt Relief Act of 1938. The relief is to apply only to such debts as are specified under the Madras Debt Relief Act. The applicants should own lands whose value does not exceed Rs. 5,000. According to rules under the original Act, only those should apply whose debts would be completely discharged. The new rules permit of loans also those whose total encumbrance on a definable part of the property can be cleared (V, ii). The amount of loan that can be granted has been reduced from Rs. 2,000 to Rs. 1000, in the new rules. The scope of the Act has been restricted by the provision that these loans shall not be made to repay debts incurred after 1-10-1937. The Loan Officer should satisfy himself that "he will be able to grant a loan sufficient to discharge all such debts, or the whole encumbrance on a definable part of the applicant's property" (VIII. 5). The original rules provided for one and a half times the amount of the loan as the value of the security to be taken. This has been increased to $2\frac{1}{2}$ times. Further, under the former rules, other persons may give their lands as collateral security on behalf of a debtor. This is not permissible under the new rules. Again the old rules required only a sufficient portion of land as security; but under the new rules all the lands should be mortgaged to Government in cases where all the debts of the applicant are discharged, "even though a portion of it may be sufficient." The rate of interest on these loans has been increased from $5\frac{1}{4}\%$ to $6\frac{3}{4}\%$. The number of instalments has been reduced from 25 to 20, while in special cases it may be increased to 30.

381 Scope of redemption

The following was the extent of relief granted by Government loans before the new rules were enacted.

| <i>Year</i> | <i>No. of applications</i> | <i>Settled amount</i> | <i>%of Remission in the amount of claims.</i> |
|------------------------|----------------------------|-----------------------|---|
| 1935-36 | 2089 | Rs. 5.23 lakhs | 20 % |
| 1936-37 | 13827 | Rs. 28.06 lakhs | 29.9% |
| 1937-38 (I quarter) | | | 33.7% |

Let us now examine the scope of relief according to the new rules under the Madras Agricultural Loans Act. Roughly calculated, the Act will apply to those holdings comprising 5 to 7 acres of wet or garden lands, or 50 to 100 acres of rainfed dry land, and less. Those holding below 3 acres wet or garden, or 15 to 20 acres dry can hardly be relieved as their repaying capacity from land incomes will ordinarily be almost next to nothing. The scheme of discharging debts incurred on the mortgage of a portion of land is an extremely risky one, as the

secured debts on the other portions may be growing. It may be unworkable in practice, as the other creditors will immediately sue for the amounts due to them, while the debtor is making arrangements with the aid of the Government loan to pay only a certain creditor or creditors. The security demanded in land of two and a half times the value of loan in all cases, and of the whole land of the debtor when his debts are completely discharged, will prevent the raising of future credit except at very disadvantageous terms. We would therefore suggest the creation of a charge on the property to the extent of the instalments due, which would safeguard the Government loan, and also leave the balance of land property with the debtor, thereby releasing sufficient security for future loans. The abrogation of the old rule which permitted others to mortgage their property as collateral security will still further narrow the number of debtors who will apply to the loans officer for relief. Again the old rule permitted the scaling down of the debt on the basis of a scheduled rate of interest which could have given greater relief in certain cases than the Madras Debt Relief Act of 1938. Secondly, the rate of interest has been raised for the debtor from $5\frac{1}{4}\%$ to $6\frac{1}{4}\%$. Government might well issue these loans at a specially lower rate as they were to be granted only to small holders and for liquidation of old debts.*

* The Hon. the Revenue Minister replied on February 24th 1939 in the Madras Legislative Council that applications were received till December 1938 under the new rules for Rs. 23 lakhs, applications for Rs. 16 lakhs had to be rejected as they did not conform to the rules, and the remainder were under consideration.

CHAPTER XI

DEBT RELIEF MEASURES AND THE CREDIT STRUCTURE OF THE COUNTRY

318 The United Provinces

We shall now examine the results of debt relief measures on the credit structure of the country. The U. P. Agriculturists' Relief Act of 1934 has no doubt prevented sale of land by ordering instalment payments, has scaled down interest, and in some measure helped the small agriculturist to redeem his mortgaged lands. But the danger in the accumulation of overdue instalments, and in applications for attachment and sale of land for the whole amount due has not been averted.¹

The Encumbered Estates Relief Act of 1934 has granted relief by staying all suits and proceedings under decrees in the case of those who have applied for settlement of debts under its provisions. It is claimed for this Act that it has enabled the landholders to pay their land revenue, and the number of coercive processes for its recovery has decreased in certain divisions of the province. But this statement cannot be generally applicable to all landholders, as the commissioner of Gorakhpur remarks that "the paying capacity of the tenant was still low, and many small Zamindars found it difficult to meet their liabilities to Government as is evidenced by the large number of estates attached."²

There has been a fall too in the number of suits by Zamindars, "due to their having lost the capacity to file suits," as reported by the Commissioners of Allahabad and Benares divisions."³ The Regulation of Sales Act 1934 has no doubt substantially benefited the moderately indebted small landlord and the privileged tenants by transferring mortgaged lands to the creditors, or by selling them in public auction at pre-slump prices. The Temporary Regulation of

1 "In spite of these concessions, the district Judge of Ghatipur is of opinion that their inability to pay continues unabated." Civil Justice report for Agra, 1937.

2 Land Revenue Administration Report, 1936, P. 5

3 (Ibid, P. 6)

Execution Act has given substantial relief to the few cultivators who could afford to make an advance deposit of 25% of their debts.

But all these measures were not comprehensive enough to reduce indebtedness to the level of the repaying capacity of the agriculturists. The U. P. Government have appointed an expert Committee to bring forward such a measure. With a view to prevent a rush to courts by creditors to recover the sums due to them by smaller agriculturists and tenants, during the pendency of the proposed legislation, they have enacted the Temporary Postponement of the Execution of Decrees Act of 1937 which has stayed pending and fresh proceedings for recovery of money, or for foreclosure, or for sale of land. Another Act has stayed proceedings for ejection, and for recovery of accumulated arrears of rent. Depression followed by executive notifications against sale of land, exemption of a portion of produce from attachment, Relief Acts, and the granting of moratorium for debts, has vitally changed the credit system. Moneylenders are averse to buying lands of debtors particularly after the depression. The number of unsecured loans is diminishing. Tenants execute leases of land for debts supplemented by payment of nazrana to the landlord. Loans on pledge of jewels have increased, and surplus funds of moneylenders are getting into joint-stock banks. "Moneylenders are extremely reluctant to advance money on the security of land : at the same time they use every conceivable device for getting round the law, most of them enter in the bond a sum of a greatly inflated value."¹

Rural credit has greatly contracted. The penalties in law for making false claims under principal have probably no terrors for the moneylender, as such acts are done in collusion with the debtor.² "Undoubtedly this has a distinct advantage: but as agriculture, like every other industry cannot live without credit, the contraction has increased the difficulties of many small proprietors."³

The tenants have no doubt been hard hit as they could not get the required credit from the mahajans. But it is claimed that it

1 Land Revenue Administration Report, U. P., 1936, appendix, page 2.

2 "There are however indications that creditors have in some places evaded the provisions of the Act by entering in the pronote or bond a larger amount of loan than that actually advanced. It is difficult to see how such a practice can be prevented. The practice is at present illegal under the Agriculturists Relief Act, but this prohibition appears to have been ineffective." Extract from the Government Revenue on Revenue Administration dated 29th January, 1939.

3 Ibid, appendix, page 4.

was good in one way that they would not be borrowing from the latter and paying off the rent arrears. The fall in rent suits is explained by the Commissioners of Benares and Allahabad divisions in the Revenue Administration reports for 1936 as due to zamindars and tenants "having lost their capacity to file suits."¹

The increase in ejectments of tenants in certain districts is explained as due to more illegal subletting on account of economic depression and the inability of tenants to pay. The increase in the number of applications for relinquishment by tenants is explained as due to increased indebtedness of the tenants, and the low price of agricultural produce resulting in an inability to pay their rent. The recent Government review on the Land Revenue Administration, dated 29th January 1939 has a more encouraging report on agricultural conditions. The area from which tenants were ejected and the number of relinquishments of land by tenants have decreased. "The area of proprietary cultivation has fairly expanded, while there has been no material increase in the number of sales or transfers of landed properties by private negotiation."²

Referring to the results of debt legislation, a recent circular of the Reserve Bank says that "provisions like payment of debts by instalments, stay of execution of decrees etc. have frozen a part of the assets of some banks, specially in Bihar and the United Provinces, and some such banks are experiencing embarrassment in meeting their obligations in consequence."

The civil justice reports of Agra and Oudh for 1937 explain the phenomenal fall in the number of suits, and the increase in infructuous applications for execution of decrees as due to economic depression and debt legislation.³

Another disturbing factor in the rural credit system is the tenancy legislation. Tenancy legislation cannot but adversely affect the credit of landholders, and would tend to increase the credit of tenants-at-will who are granted rights of occupancy. Moneylenders would naturally demand additional security for their old loans to landholders, to the extent that their land income is affected by the enlarge-

1 Ibid, appendix, p. 6.

2 Ibid, appendix, p. 7.

3 "The heavy fall in realisations indicates the impoverished condition of the judgment-debtors whose paying capacity has been considerably impaired by the continuous financial troubles. It is also the inevitable result of low institutions and realisations in instalments under the Debt Acts." Extract from Civil justice report of Oudh, 1937, p. 12.

ment of the rights of tenants. If the new rights granted to tenants are not to be deprived of by the moneylenders, the law should prohibit the realisation of past debts out of the additional rights in land newly secured by any recent tenancy legislation. The recent Government Review on land revenue administration of 28th January 1939 favourably comments on the situation stating that contraction of credit has not affected productive credit and makes special mention of the need for constructive measures in the following words.

The problem of indebtedness has not been solved by the Debt Acts. What are required are measures for the provision of working capital to the agriculturists at a fair rate of interest, the reduction of the present debt to enable it to be paid off in a reasonable period of time, and the prevention of the accumulation of excessive debt in future, particularly debt of a social or unproductive nature."

382 The Punjab

In the Punjab, the policy of restrictions on sale of land to non-agriculturists did not restrict credit, but only increased usufructuary mortgages among the agriculturist tribes. The facilities for redemption of mortgages have also not reduced the area and number of such mortgages. The non-agriculturist moneylender had still a flourishing business in unsecured loans and bename transactions. The former was attempted to be regulated by the Regulation of Accounts Act of 1930. But the penalties of disallowance of costs and interest in suits, if accounts are not properly maintained, and if receipts and periodical returns are not issued to the debtors, had possibly no effect on the moneylenders. An Act has therefore been passed in 1938 providing for the licensing and registration of moneylenders. The Land Alienation Act of 1900 has also been amended in 1938 with a view to eject bename transferees, and restore the lands to the transferor or his heir. The restrictions on voluntary sales encouraged sales to agriculturist moneylenders. This has been sought to be prevented by another amendment of the Land Alienation Act in 1938 by disallowing sale of land to agriculturist creditors, unless three years have elapsed after the settlement or repayment of loans due to them. But this new provision may be evaded by making perpetual mortgages of land to agriculturist moneylenders, which no legislation has so far prevented, and which is tantamount to a sale.

Under the Land Alienation Act of 1900 the land of an agriculturist is exempt from sale in execution of decrees. The Court can only temporarily alienate the lands. Recent legislation has imposed further restrictions on the borrowings of an agriculturist. Under

the Debtors' protection Act of 1936, the Courts can alienate lands only for a period of 20 years, after setting apart that portion of the land necessary for the maintenance of the judgment debtor and his family. Further, standing crops and trees excepting cotton and cane are exempt from attachment. Ancestral lands are also exempt from attachment under certain conditions. Under the Punjab Relief of Indebtedness Act of 1936, the rates of interest which are usurious have been defined for the guidance of courts. The liability of a judgment debtor for arrest has been severely restricted.¹ Debt Conciliation Boards have been formed for settling debts. Recently legislation has been passed providing under certain conditions for the restoration of lands mortgaged before 1901 to the agriculturists,

The effect of these laws and the depression was firstly that there was contraction of credit, secondly, the amount of unsecured loans has fallen, and thirdly, the advances by non-agriculturist money-lenders have shrunk. They have also encouraged private settlement of old debts in favour of the debtors.²

All these laws have also given certain advantages to the agriculturist moneylenders to dispossess the needy small agriculturists and get their lands under their possession.³ The Prime Minister of the Punjab Government has foreseen that all his compendious legislation must lead to a contraction of credit, and that he should be prepared for the creation of a new credit machinery for the agriculturist. Referring to the agitation started by non-agriculturist moneylenders, he stated in October 1938 in a public speech that "the present Government which regarded the welfare of the rural masses as its first work would not take long in providing other means of credit in order to satisfy all genuine needs of the peasantry."

383 N. W. F. P.

In the North-West Frontier province the Land Alienation Act of 1904, the exemption of a portion of produce from attachment under Sec. 61 of the Civil Procedure Code, the Usurious Loans

1 Commenting on the results of the Punjab Relief of Indebtedness Act, the Civil Justice Report for 1936 says that "the Act has lowered rural credit and brought about an appreciable decrease in litigation. Chances of realisation of a decree have, however, been materially reduced and even debtors who have means to pay refused to do so as they know that it is difficult to establish 'contumacious refusal', and that most of their property is now immune from attachment."

2 Vide speech of Mr. M. L. Darling in the Legislative Assembly, Delhi, on 24th September 1936 on the resolution on indebtedness of agriculturists, p. 1824.

3 Ibid. p. 1824.

Amendment Act of 1935, the Regulation of Accounts Act 1935, and the Redemption of Mortgages Act 1935 have not been able to check the abuses in moneylending and prevent sale of land by agriculturists.

The agriculturists too have no other recourse than the moneylender to satisfy their credit needs. The co-operative movement is only recently expanding in that province, and it can hardly be expected to take the place of the moneylender. The recent Agriculturists' Relief Bill of 1938 has tried to compulsorily compose debts. It has been stoutly opposed by the moneylenders of the province. One should expect a contraction of credit which would adversely affect the agriculturists, particularly when organised banking has not sufficiently developed to take the place of moneylenders.

384 Central Provinces and Berar

The land revenue administration report for 1937, Central Provinces, relates in the following terms the results of debt legislation on the credit machinery.

Credit in general was restricted owing to the operation of debt conciliation boards and the agriculturists found it difficult to borrow money even for productive expenditure. Co-operative Societies afforded little or no relief to them owing partly to their own deterioration, and partly to the difficulties involved in recovering arrears. Conditions were thus unusually difficult, but the timely distribution of taccavi on a large scale eased the situation and enabled the tenants to carry on their agricultural operation successfully.¹

Commenting on the phenomenal fall in the number of suits for money or moveable property from 75,169 in 1933 to 37,743 in 1937, the civil justice report for the C. P. and Berar for 1937 says that :

The effect of recent debt legislation has been to decrease the credit available for the small men unable to offer convincing security, and that there is little prospect of any substantial revival in suits for money and other property, unless and until the creditor class is satisfied that the courts are in a position to enforce claims with reasonable certainty and without excessive legislative interference in favour of the debtor."

The relief afforded by debt legislation has in no way arrested the general deterioration in the condition of the agriculturist to which is attributed an increase in the number of rent suits between landlords and tenants, and that of applications for ejectment of tenants for non-payments of arrears of rent (vide Land Revenue Administration for C. P., 1937, paras 94 and 104).

The C. P. Land Revenue Administration Report for 1937 also refers to the advantage of restrictions on credit, "as it will teach

the agriculturists to be more economical in expenditure on ceremonials and deter the creditors from giving extravagant loans."

Debt Relief measures in the Central Provinces have been enacted on the basis that there was a limit to the application of any legal pressure on creditors beyond which any law could not proceed, and if it did, it would only harm the interests of the debtor. The Debt Conciliation Act of 1933 required an agreement among creditors to whom 40% was owing for an amicable settlement of debts. The Usurious Loans' Act of 1934 fixed a sufficiently high rate as an usurious rate, thereby avoiding any drastic cutting down of the amount due under interest. The Moneylenders' Act of 1934 provided for instalments, and the maximum interest recoverable under its provisions was limited to the principal due. The only Act which provided for a compulsory scaling down of debts according to a scheduled rate of interest was the Reduction of Interest Act of 1936. But it restricted the period of calculation of the scheduled rate of interest from first January 1932. Further the scheduled rate was fixed comparatively high at 15% for unsecured debts and 10% for secured debts against which no creditor could grumble.

The chief complaint against the debt conciliation process in the C. P. is that many debtors who are dependent for future credit on their old creditors do not want to antagonise the latter by applying for settlement of debts by the Boards. On the other hand private settlements have increased between such debtors and creditors.¹

Another advantage of debt conciliation cannot also be gainsaid that debts which would remain unredeemed for generations are wiped off in the settlements made by these boards.

What creditors complain of is about the uncertainty of the laws which are sprung on them from year to year. A comprehensive scheme of debt legislation will be less resented by creditors, as they can adjust themselves to the new situation and carry on the business of moneylending. It should also be noted that the common complaint of losses suffered as a result of measures of debt relief comes more from the class of sub-lenders who take loans from banks or mahajans and lend among the poorer classes at exorbitant rates rather than from the better class of private bankers or moneylenders.

The Mekhar Debt Settlement Board, 1937, (Berar) refers in its report to two adverse effects on rural credit, ' that perhaps now

¹ 15% of the total debts which have not come before the Board have been privately conciliated. Government Review on the work of the Balghat Conciliation Board (1969-1549, XII 25th May 1937).

creditors are not willing to advance loans without double the security, and insist on a mortgage or a conditional sale deed in every case.'

Broadly stated, the results of debt legislation in the C. P. can be put in the following words of the Government Review on the work of the boards during the year ending September 1937 :

"Chairmen of Debt Conciliation Boards have reported that conciliation of debts has led to considerable shrinkage of credit so that agriculturists experience difficulty in securing new loans. It is however reported that they have been keeping back sufficient portion of their crops to carry on the cultivation next season. For genuine agricultural purposes, financial accommodation, though difficult, is reported to be not totally non-existent. For these reasons there has been no fall in the area under cultivation."

385 Bengal

The immediate result of the Agricultural Debtors' Relief Act of 1935 in Bengal, was that creditors rushed to courts during the period between the enactment of the Act and the starting of the boards on work. In the Chandpur subdivision of Tippera district alone, 5208 money suits were decreed, and 847 sales of land held between 30-7-1936 and 10-12-1936. At the instance of the debt settlement boards, the Chandpur civil courts passed stay orders in 105 cases after granting final decrees of sale, but vacated the orders after the expiry of one month in 91 cases. The total number of cases of sales of land was therefore 938 in one sub-division.¹

In answer to a question in the Legislative Council, Government pleaded inability to give the exact figures of the amount involved and the area of land sold in the 938 cases of sales. Not only in Tippera district, but in other areas too, zamindars and moneylenders began hurriedly to collect their rents and debts in order to escape the operation of the Relief Act.²

The second result of the Act has been the difficulty of the rayats to get credit. The hon. Member in charge of rural indebtedness replied in the Legislative Council on the 25th January 1938 that 'while no land remained uncultivated for want of credit, and while it was fortunate that our agriculturists had not to run about for easy money, it was no doubt true that the agriculturists have not got the money that they now want.'³

1 Vide Bengal Legislative Assembly Proceedings, Vol. 51-3, of 30-4-1937, p. 484, and of 5-8-1938.

2 Vide Bengal Legislative Assembly proceedings V. 51, 4 of 20-9-1937, p. 1628.

3 Legislative Council proceedings 25-1-1938, p. 97.

The Land Revenue Administration report of Bengal for 1937-38 says that :

The establishment of conciliation boards has resulted in the shrinkage of rural credit in the Chittagong and Rajshahi divisions but has not appreciably affected such credit in the Burdwan division except in the district of Burdwan and a part of Hooghly. In Midnapore where the number of boards is largest, the agriculturists are not experiencing difficulty in getting small loans of money or paddy."

The same report also refers to "the existence of straitened financial condition of most of the tenants which is making it difficult for landlords and their agents to collect almost as freely as before."

One other result of the working of the Bengal Agriculturist Debtors' Relief Act, 1935, has been an increase in land transfers, as mortgages with possession to the creditor. The recent amendment bill of 1939 has provided for a restoration of these lands to the debtor under certain conditions. An account will be taken of the profits of the mortgaged land at the rates of interest prescribed in the Moneylenders' Acts (Sec. 18.5). "Where the debt relates to a loan in kind or where there is any stipulation for the payment of interest in kind, the money value of the principal or interest shall, where the circumstances require such calculation, be calculated in the manner prescribed" (Sec. 18.6). Any excess interest recovered from the profits of the land will be adjusted to the principal. (Sec. 18.5) The amount thus determined will be settled on the basis of a fair offer made by a debtor, by an order of the board. The order will state the date within which the land should be restored to the debtor, but not exceeding fifteen years from the commencement of such possession. It should be noted that these new provisions do not require that a certain number of creditors should agree to the settlement, nor that the mortgage will subsist in the case of a secured debt as against an award. The objectionable character of this legislation does not lie in the procedure for revising the terms of the usufructuary mortgage, but firstly in reducing the amount due at a prescribed rate of interest, secondly in restricting the period of possession to fifteen years irrespective of the capacity of the debtor to repay, and thirdly in relying on the village board to settle accounts of usufructuary mortgages. The Deccan Agriculturists' Relief Act empowers the civil court to take an account of usufructuary mortgages, but the court is not bound to continue the mortgagee in possession only up to fifteen years, nor to grant interest only at a prescribed rate. It has full discretion in these matters. These provisions would have been justifiable if they applied only to small holders among the rayats, so that the creditor would have the satisfaction that he was remitting a

portion of the debt in respect of debtors who were unable to pay. The result of this compulsory provision in the Bengal Act would be a further contraction of credit for the rayat.

The Hon. the Finance Minister of the Bengal Government observed in his first budget speech in 1937 that mere scaling down of debts could not prevent recurrence of unproductive debts, and that the "ryats will also have to be provided with proper credit facilities for their long-term and short-term requirements. How best such facilities can be given, whether through co-operative societies or land mortgage banks is receiving careful consideration of the Government." It is hoped that the Government, without pinning its faith in one method, will explore all possible methods suited to Indian conditions for the growth of a sound credit machinery in the province.

386 Bihar

The recent Bihar Moneylenders' Act of 1938 has attempted a comprehensive regulation of moneylending. But the provisions relating to Damdupat and the estimation of the price of land by the court have been considered ultra vires by the High Court of Patna, and Government have repealed these provisions and re-enacted them for approval of the Governor-General. The re-enacted provisions have been since approved by the Governor-General.

387 Assam

In Assam, the Moneylenders' Act of 1934 had no application to pending suits and decrees. As the Act was not preceded by any moratorium bill, a large number of suits were decreed without any reduction under interest. The Amendment Bill of 1937 provided for the application of the provisions of the Moneylenders' Act to pending suits and appeals, but not to decrees pending execution. The Bill has not received the assent of the Governor, the result being a further fillip to institutions of suits and execution of decrees. Another result of the Moneylenders' Act was an increase in usufructuary mortgages, as the provisions relating to reduced rate of interest did not apply to them. Certain provisions were therefore introduced in the Amendment Bill of 1937 to calculate the rate of interest according to the prescribed rate in respect of loans advanced on usufructuary mortgages, to fix a time limit for loans of Rs. 500 and below within which the land should be restored to the mortgagor, and to grant possession of the land to the mortgagee for such period only during which he would have realised in the aggregate a sum not exceeding twice the principal. These provisions are to have retros-

pective effect, and they were passed by the Legislature because of the inordinate increase in usufructuary mortgages as a result of the Moneylenders' Act of 1934. Babu S. C. Biswas said during the course of the debate in the Legislative Assembly in Dec. 1937 :

"If this amendment is not accepted, I think 60% of the cultivators in the district of Sylhet will become landless. If we go to villages, we find that paddy lands of 75% of the cultivation are given in usufructuary mortgage. So a year limit is absolutely necessary. If there be no year limit, litigation will increase. Creditors will say that it will take so many years. If the crops fail in such a year, the produce will not be estimated from year to year, and in order to avoid this sort of litigation a year limit is absolutely necessary."¹

Maulvi Abdur Rehman, another member of the Legislature said :

"I have got reports that some persons are enjoying the land for 30 years, even for 40 years. Specially in the lower part of Habiganj subdivision the reports are that the tenants who are paying to the landlords for about 4 hals of land are not holding even a kiyar of land, and unless some sort of amendment is enacted, these poor people cannot be given any relief."²

The bill has not been assented to by the Governor, though more than a year has passed. Such bills only worsen the position of the cultivator.

388 Bombay

There has been no recent legislation in Bombay whose result on the credit machinery we need assess.

389 Madras

The Madras Estates Land Committee presided over by the Hon. the Revenue Member referred in their report of November 1938, to the results of the working of the Agriculturists' Debt Relief Act of 1938 in the following words :

"Naturally the agriculturist find himself in trouble with regard to credit. The old sowcars whose debts have been cut down under the Act would not be enthusiastic and ready to lend moneys to the agriculturist to the extent to which they were doing before the Act was passed. Numerous complaints have been made before our Committee on this question."

However, a press note of 6th December 1938 of the Development department stated there was no need for alarm, and that the co-operative societies were coming forward to the help of the agriculturists. Recently, the Prime Minister of Government of Madras, opening the Land Mortgage Banks' Conference on Feb. 11th, 1939, said "that it was only a certain class of debtors who could successfully approach the banks or the Revenue Department and get loans. There were recommendations, influence and other factors which came into play. He was far too much of a realist and villager to ignore these factors.

1 Assam Legislative Assembly proceedings V. 3.15. P. 2019.

2 Ibid P. 2018.

Only certain classes of debtors could get easy credit and the bulk of borrowers had to go to the private moneylender."¹

This description of the situation is really true. As in other provinces there has been a contraction of credit as a result of the Debt Relief Act of 1938. The effect of the Relief Act on the credit system is referred to in the replies to a questionnaire issued by the Madras Provincial Co-operative Union and published in its Journal of December 1938, and is summarised below. The small holder or the uneconomic holder now agrees to an inflation of the principal of the loan to compensate for the loss created to the creditor by the legal rate of interest. The agriculturist who has excess lands, mortgages them with possession, thereby evading calculation of interest at the legal rate. Payment of interest in kind has been stipulated in certain cases. "Outright sale documents of lands in consideration of amounts advanced without specifying the oral understanding to reconvey the properties to the borrower on his paying the principal amount and the exorbitant rate of interest demanded by the moneylender are also said to be the rule where the professional moneylender still advances to the rayat." Bonds are renewed without making any reference to the previous documents. The period of loans has been shortened. Loans on pledge of jewels have increased.

We have to remember that the scope for falsehood in rural credit transactions started with the enactment of the Deccan Agriculturists' Relief Act in 1879, had a sudden expansion all over India with the enactment of the Usurious Loans Act of 1918, and since then has been steadily growing, reaching its peak today under the influence of debt legislation enacted after 1930.

Piecemeal legislation has nowhere been able to regulate the profits of moneylending and prevent its abuses. The unfortunate history of legislative protection in India has been the fact that it never had a fair trial on a sufficiently comprehensive scale laying down a land policy, regulating future moneylending, and liquidating irredeemable debts. But legislation requires too to be aided simultaneously by a machinery for assisting and organising the occupation of agriculture. Piecemeal legislation therefore is generally viewed as harmless in their economic results, as the creditor and the debtor may combine to neutralise their results, though it cannot be considered quite so harmless in the growth of citizen responsibilities and proper standards of personal honesty, as they teach the people to evade the law, and force them to practise falsehoods in order to conform to the form of the law.

1 Extract from the Hindu of Madras, 11-2-1939.

390 A credit Machinery for the future.

Contraction of credit has been the result of depression and debt legislation enacted after 1930. Scaling down of debts and legislative protection against abuses in moneylending have only a limited value. For the recurrence of unproductive debt can be solved only by increasing the earning power of the peasant and the agricultural labourer.¹

Co-operative societies are thought of as a remedy. But certain conditions are essential for their success. The members should not be steeped in irredeemable debts. The systems of land tenure should ensure fixity of tenure at a fair rent for the cultivator. The members should own economic holdings which would make it easy for them to repay their loans. More than all, the average agriculturist should be able to manage the society without the help of such classes in the village who may join out of philanthropic motives, and not because they have any common interests to be satisfied along with those of the average agriculturist. Lastly, the general body of members should be able to exercise sufficient control over the management. Even if all these conditions are satisfied, a co-operative society should command sufficient technical ability to arrange for supplies, to aid in production, to minimise risks by the provision of insurance facilities, to market the produce, and to organise subsidiary industries. Further still, there is a substantial number of tenants and labourers whose only asset is their labour, which requires to be organised in remunerative activities. Co-operation is for those who have sufficient means and can take care of themselves. Such classes are few in every village. The realisation by the Prime Minister of the Madras Government that co-operative societies and government cannot solve by themselves the problem of rural credit is one to be welcomed. His proposal again that private moneylending should be controlled is equally to be welcomed. But his faith that India's rural credit problem can be solved by the agency of private capitalism, and the faith of the Hon. Revenue Minister, Madras, that a multi-purpose co-operative society for every group of villages can solve it, both seem to envisage a too easy a solution of the problem. The problem has to be viewed in a larger setting, the size of an economic holding, the possibilities of minimising risks in agriculture such as by death of cattle and failure of crops, the possibilities of reducing costs by combined economic maintenance of cattle, and the subsidiary industries which can be introduced in different regions. Is it seriously believed that a village moneylender is going to interest

¹ Vide speech of Mr. M. L. Darling in the Delhi Legislative Assembly on 24th September 1936, p. 1827.

himself in rehabilitating the agricultural economy, or that the co-operative Society can command financial and human resources for such a task ?

The leadership that is required for the reorganisation of agriculture on a profitable basis should combine a knowledge of conditions, a capacity to organise industrial activities, a sympathetic outlook to help all classes, and an earnestness to push a scheme through. A trained and well-paid agency duly controlled from the top and working under an agricultural bank and branches will give far better service to the village ryats and labourers than a co-operative society of the two latter classes. And though India has not to-day a developed citizenship to rehabilitate village life, it has certainly a large army of enthusiastic young men who have been educated in the universities and who are pulsating with a new life to share in the great task of building the economic life of the country. The working of the all-India Spinners' Association has shown what can be done by a central body to help the masses. And if only we had asked the villagers to run spinners' societies, they would have become dormant long ago. What little success can be claimed for co-operation in the Sunderbans in Bengal is due to the working of the societies under the supervision of a single estate which runs a supply store, and markets the paddy of its tenants. Almost every success of a village co-operative society can be traced to a single person in whose absence the society goes to sleep. The way therefore lies in the promotion of larger units of centralised organisations aided and controlled by the State, operating through branches, and a well-paid and trained staff.

What form these agricultural co-operatives or banks would take in the future, one cannot envisage today. Agricultural credit machinery in the world has taken four forms. There are highly centralised State organisations providing for direct state intervention. There are again mixed organisations with co-existing state banks and co-operative institutions. There are again co-operative institutions receiving state aid in several ways. There are finally independent banks and co-operative societies which are run without any state aid. India today cannot afford to rely solely on the co-operative societies.¹

Whatever form the credit machinery may take, its purpose should be to convert the deficit economy of the peasant into a surplus one, and to find labour for the unemployed agricultural population.

¹ Two schemes have been so far proposed for creating a new credit machinery for agriculture. The one is that of Mr. Mudie, I. C. S. on the formation of an Agricultural Bank with branches in the U. P., on the lines of the Agricultural Bank in Egypt. The second is that of Mr. E. Noel, Director of Agriculture, N. W. F. P. published in pages 355 to 364 of the report of the Travancore Co-operative Enquiry Committee, 1935.

CHAPTER XII

SUMMARY OF MAIN PROPOSALS

I

RESTRICTIONS ON TRANSFER OF LAND

(*The figures in brackets denote the number of the para heads*)

1. Sale of land to agriculturists only

1. One of the chief causes for over-lending by creditors and over-borrowing by agriculturists is the existence of a large scope at present for investors to buy lands and to rackrent the cultivator. This reduces the income of the cultivator whose staying power, in consequence, necessary for an occupation as agriculture with its unsteady incomes and need for long-term investments, gets diminished. He easily gets into debt at high rates of interest which he could not repay. The following proposals will help to effect conservation of land in the hands of agriculturists for the purpose of agriculture only (101 to 104).

2. 1. Sale of land should be restricted to agriculturists. (105 to 107.)

2. Agriculturists are those who cultivate lands either personally, or by hired labour, or by members of their families. Cultivation may be defined as including " horticulture and the use of land for any purpose of husbandry-inclusive of the keeping or breeding of livestock, poultry or bees, and the growth of fruit vegetables and the like " (114).

3. Sale of agricultural land should be prohibited to the following groups of persons except with the approval of the Revenue officer.

(a) Moneylenders who are registered under the Money-lenders Act (108).

- (b) Those whose names are entered in Revenue records as lessors of agricultural land (109).
- (c) Those in learned professions drawing monthly salaries (110).
- (d) Lawyers (110).
- (e) Those who pay incometax on non-agricultural incomes (111).
- (f) Those who pay profession tax above a certain limit (111).

4. Every buyer should get a certificate from the Revenue officer that according to the revenue records he does not let out lands to tenants (115).

5. The buyer should state in the sale deed that he does not belong to any of the classes excluded as non-agriculturists and that he fully understands the penalties he should undergo for non-compliance with the provisions (115).

6. On the back of the sale deed might be printed the rules stating the classes to whom the lands could not be sold, the power of the Tahsildar to eject an illegal transferee, and the penalties attaching to the making of false statements (115).

7. Severe penalties should be provided in the case of buyers who make false statements (115).

8. The Revenue officer should be empowered to eject an illegal transferee on his own motion or on that of an interested party (115).

9. The purposes for which the Revenue officer may sanction sale of agricultural lands may be specified under rules. These are the bonafide purpose of agriculture, erection of buildings, and industrial purposes (117).

10. Leasing of temple lands and lands of charitable and religious institutions may be permitted. But there should be no subleasing by the tenants of temple lands. Restriction on sales may be evaded by endowing lands for religious purposes

and making the buyer the trustee of such properties, who will thereby have powers of subleasing. Such benames should be watched and prevented (117).

2 Subleases and their Registration

1. A buyer of land may be an agriculturist to-day but he may sublet tomorrow. The prohibition of sales to rent-receivers will therefore become inoperative. Hence subleases should be prevented. Further, prevention of subinfeudation will eliminate the inducement to rent receivers to invest money in lands, and will ensure the cultivating rights of tenants which will thereby improve their credit. Is sublease to be prevented only in the case of future buyers of land, and only in respect of lands bought in the future? Are the landholders who do not buy lands after the enactment of this proposal into law to be permitted to sublet their lands? If a future buyer sublets, then rights of occupancy on the same rent or revenue paid by the buyer should be granted to the tenant (128).

2. In the case of those who have already bought lands in order to obtain a competitive rent, a fair rent may be assured to them, and the tenant granted full heritable and transferable rights (128).

3. An opportunity may also be given to the rent-receiving landholders and tenants existing at the time of enactment of this proposal, to take to agriculture within a definite period, failing which the dispossessed tenant should have the right to occupy the land (128).

4. Subletting after the expiry of this period either by proprietary cultivators or tenant cultivators should be penalised in the same manner as in the case of those who buy lands after the commencement of the Act (128).

5. To prevent evasion of the law by rent-receiving landholders or tenants, by declaring their sub-tenants as produce-sharing partners in cultivation, the latter class of agricultural workers too should be declared as tenants (129).

6. Subletting for legitimate purposes as shortage of seed, loss of cattle or sickness in the family or subletting by widows and minors might be freely allowed without the intervention of the Revenue officer. In such cases the maximum period of sublease might be specified in law. Subletting may be allowed in all cases without restriction for a single year (126).

7. Subletting by physically and mentally disabled persons and by those who have no adult members in their family to cultivate the land shall be approved by the Revenue officer, the approval being formal (126).

8. Subletting for specified legitimate purposes and for prescribed periods by agriculturists, should be permissible without the sanction of the Revenue officer. In other cases his permission should be taken (130).

9. Where a revenue officer finds any difficulty in deciding whether a purpose is a legitimate one, he shall refer it to his superior officer whose decision shall be final (126).

10. Subletting to those who are classified as nonagriculturists should be permissible only with the sanction of the Revenue officer (131).

11. The Revenue officer shall have power on the application of the lessor or on his own motion to eject a tenant whose sublease does not conform to prescribed rules (127).

12. The Revenue officer shall have power to put a sub-lessee in possession of land, who proves that his immediate superior holder sublets (127).

13. Every lease shall be noted in the village records (132).

14. Agricultural leases exceeding one year should be registered except those which have been approved by the Revenue officers. The Local Government may exempt leases from registration whose annual rents do not exceed Rs. 50/- and the period, 5 years (132).

3 Repeal of Special Acts to preserve the estates of Landholders

As landholders of big estates are mostly rent-receivers, special legislation to protect land properties of Zamindars against sub-

division, or transfer by sale to creditors, only perpetuate a class of rent-receivers. The agricultural economy stands apart from this class and does not benefit in any way by their protection. The time has therefore come to treat the proprietary interests in land of all landholders on a similar level. Special Relief Acts, Court of Wards Acts, Acts restricting alienation or subdivision of estates, and provisions regarding sale of occupancy rights in "Sir" land should be repealed (19).

4 Tenant Rights

If indebtedness among holders of land is to be prevented by a restriction of their rights of alienation, indebtedness among the landless classes has to be prevented by granting rights of occupancy. The tiller of the soil should get permanent occupancy rights of heritability and transferability subject only to the payment of a fair rent as fixed by the Government. In all lands excepting specified classes of land which are either required for public purposes, or are unfit to be leased for agricultural purposes, or which are being reclaimed by a landlord, a tenant's land whether it accrues to the landlord by escheat, surrender, or distraint or abandonment, should not be allowed to become his private land. A land taken in public auction by a landlord for non-payment of rent should not be retained by him for direct cultivation for more than a defined period as determined by the Revenue officer.

Tenancy laws regarding survey of lands and settlement of rents, maintenance of irrigation sources, and full rights for the tenants to exploit and develop the land will improve their credit position. When tenancy rights are newly conferred, the area of an economic holding to be prescribed shall not be partitioned to the several heirs, but shall descend to one of the heirs either chosen by agreement among themselves, or in the alternative, appointed by the Revenue officer.

With the disappearance of tenants-at-will, ejectment will also go into disuse. The time limit for a rent suit should be extremely limited. The properties, other than the land for

which rent is due, that are exempt under the Civil Procedure Code in execution of decrees should equally be exempt for the collection of arrears of rent. The sale of a holding in public auction should be resorted to only in chronic cases of default. The minimum holding that should be put to auction at a fair price for recovering the arrears of rent should be decided by the Revenue officer. If the amount fetched in auction is less than the arrears of rent due, it should be deemed to have satisfied the rent decree in full. The landlord may be given the option of temporarily keeping the land to himself when the price fetched is less than that fixed by the Revenue officer. In such a case the number of years he could keep the land to himself for direct farming for realising the arrears of rent should be fixed by the Revenue officer (133 to 135 A).

5 Exemption of sales of agricultural land and houses in execution of decrees.

1. When lands are sold in execution of decrees, they should only be to agriculturists as we have defined, and if to others, it should be approved by the Revenue officer. Sales for arrears of land revenue or rent should also be to agriculturists (141).

2. The exemption of forced sales of agricultural land and houses in execution of decrees should apply only to those landholders who do not employ hired labour on the farm but work with their personal labour and that of their family. The village officers' records should clearly show this class of holders (141).

3. Those holding lands which could not be personally cultivated, as defined on the basis of an upper limit of land revenue or rent they pay, might be excluded from the operation of this exemption (144).

4. The area that should be exempt from sale must be defined for each region according to the source of irrigation as dry, wet, or garden. It should yield a major portion of the annual income required for the maintenance of a subsistence-holder.

of land, on the presumption that the remainder is raised from other sources (145).

5. The homestead area of the house, its site and surroundings should also be exempt from sale in execution of decrees (145 and 161).

6. The area of land that should be sold to satisfy a decree should be decided by the court (147).

7. The Local Government would notify the multiples of land revenue or rent for different kinds of land or different regions for finding out the value of land. The court might be permitted to raise or lower it according to prescribed rules to suit local conditions. The value so determined will be the fair price for land (146).

8. When a creditor brings a land to sale, he should submit to two conditions. If he is an approved agriculturist, he may himself buy the land. In such a case he should consent in writing to forego the excess due to him over the fair price. If the land is taken in auction by a third party, and if the auction price fetched is less than the fair price, the creditor should forego the decreed amount to the extent of the fair price (148).

6 Exemption of moveable properties of agriculturists in execution of decrees

1. Materials of husbandry, animals kept for agricultural purposes, and raw materials and implements of trade or domestic industry shall be exempt from attachment in the case of small agriculturists holders of land, (owners or tenants) who either pursue the occupation of agriculture, or who combine with it subsidiary occupations. Where they combine live-stock breeding, the basic herd necessary for the purpose shall be exempt (154).

2. (a) In respect of landless classes food grains should be exempt,

(b) the raw materials and tools of an industry should be exempt, and

(c) the basic herd necessary for livestock breeding should be exempt (154).

3. The Local Government shall fix the number of plough cattle or of cattle for water lifting, and of sheep necessary for manorial purposes in the case of different holdings. The court shall exempt in execution of decrees the animals kept for agricultural purposes according to this schedule (155).

4. Effect shall be given in all provinces to Sec. 61 of the Civil Procedure Code which empowers Local Governments to exempt the portion of produce necessary for the support of the judgment-debtor and his family, and for the cultivation of the land till the next harvest (153).

The exemption should be greater in the case of those holding a subsistence-holding and below. A minimum amount of produce should be exempt in the case of all holders (156).

5. When produce is attached for sale, commercial produce shall first be attached and food grains in the last instance (159).

6. The Local Government should have power to exempt a large proportion of produce from attachment in times of distress (162).

7. The exemption of moveables mentioned in this section shall equally apply to the coercive processes used for the collection of rent or revenue (162).

8. These provisions should be applicable only to small holders who do not command sufficient credit to replace these exempted properties (157).

7 Temporary Alienations

(1) The existing provisions in the Civil Procedure Code Sec. 68 to 72 which permit the transfer of decrees requiring sale of agricultural land to the Collector for execution in the provinces of Punjab, Bombay, C. P., and U. P. need not be extended to other provinces, as the courts themselves under our proposals should be in a better position to calculate profits from land, with the help of the schedules supplied by the Local Government (173).

(2) Temporary alienation by the Collector with a view to prevent sale of land in execution of decrees should as far as

possible be avoided, as it encourages sub-leasing and unfits the cultivator to resume his occupation after a time. The Revenue officer might allocate the land whose produce was to be adjusted to debts, and declare a charge on the same. The debtor himself might be permitted to continue to cultivate his land (166).

(3) Where the debtor cannot be trusted to cultivate his land and repay the debt, temporary alienation may be arranged by the Collector either on payment of a premium or annual rent for a period not exceeding 20 years. But such alienations should only be to agriculturists and not to those who sublet (166).

The period of the lease should not exceed the maximum number of instalments which a court could grant when revising a decree (166).

4. Where a civil court orders temporary alienation by appointing a receiver during the pendency of the proceedings or in proceedings of insolvency, the leasing of land for rent should only be to agriculturists (166).

5. The portion of land necessary for the maintenance of the judgment-debtor and his family shall be exempt from temporary alienation by the Collector or the court (166).

8 Forms of Mortgages-Their Regulation

1. Usufructuary mortgages may be permitted provided the Revenue officer certifies that the object is not the renting of land, and the principal and interest are repaid within a prescribed period. There should be no personal liability to repay the mortgage money (177 and 190).

2. As usufructuary mortgages lead to subleases, the alternative method is the provision of a charge on the produce on a definite area of land, and for the same period for which usufructuary mortgages are permitted (178).

3. Mortgages by conditional sale should be declared null and void (185).

4. The time limit for suing on simple mortgages should not exceed the number of years for repayment which a court will be fixing under our proposals, when granting instalments in

its decrees relating to mortgage suits. Non-agriculturist mortgagees holding simple mortgages, unless approved as agriculturists by Revenue officers, should not bring a mortgaged land to sale in execution of their decrees. A mortgage debt should be deemed to be repaid upto the price of the mortgaged land fixed by the court in a public auction (191).

5. The fixing of a maximum number of instalments which can be granted by a court in decrees for recovery of loans will indirectly restrict the credit of the agriculturist borrower (192, 193).

6. The restriction of the period of usufructuary mortgages or charges over produce or the number of instalments granted by courts need not apply to uneconomic and big holders. The approval of usufructuary mortgages by Revenue officers being intended to prevent illegitimate subleases shall apply to all holders of land. The restrictions on simple mortgages (I. 9.4), and the abolition of mortgages by conditional sale shall apply to all agriculturists (194).

9 Granting of Instalments

1. Granting of instalments in suits against agriculturists should be made obligatory on courts except for special reasons to be recorded by them in writing. The maximum number of instalments (1) that can be granted when passing a decree or, (2) when revising it after its passing or during the course of proceedings in execution of decrees, owing to agricultural calamities or special circumstances of a debtor, shall be fixed in law. When once instalments have been granted in money decrees in suits relating to simple mortgages, they should not be granted over again in suits for sale, though any decree may be revised owing to the special circumstances of the debtor subject to the maximum number of instalments. No instalments shall be granted on final decrees of foreclosure or sale (195 to 198, 200, 202, 203 and 204).

2. Instalments shall not be granted in redemption suits relating to usufructuary mortgages except with the consent of the mortgagee. Where they are granted owing to special reasons

the mortgagee should consent to it, otherwise he may be continued in possession of the land (199).

3. The Local Government should supply a schedule of multiples of land revenue or rent for different areas for arriving at the net profit of a land. The court should have the discretion to raise or lower it by a slight percentage to suit local conditions and any special circumstances in regard to a particular holding. The court when fixing the instalments shall exempt the portion of the holding necessary for the maintenance of the judgment-debtor and his family (202).

4. The court should be empowered to attach the property of the judgment-debtor as well as the produce from the same, and prevent its alienation during the pendency of the instalments (201).

5. The rules regarding instalments shall apply to all agriculturists. But the limit of the number of instalments shall not apply to nominal agriculturists subsisting with the aid of un-economic holdings. Loans by banks, co-operative societies, and Government will be excluded from the operation of these rules regarding instalments, in suits against agriculturists, if the same provisions have been incorporated in the special Acts which govern them (205).

10. Limitation for Suits and applications for execution

1. The date of calculation for the period of limitation on bonds should be from the last date of the payment of principal (206).

2. A creditor should have the right to sue for the instalment due in case of default without prejudice to his suing for the balance (207).

3. No court shall pass a decree on account of arrears of interest for any period exceeding 3 years (207).

4. At present the last application for the execution of a decree should be presented within 12 years from the date of the

decree or the date fixed for the recovery of money or land. This might be changed to 6 years (207).

5. In no case shall a decree passed by a civil court against an agriculturist be executed by attachment or sale of agricultural produce after a period of 4 years calculated from the date of filing of the first application for execution (207).

II Redemption of Mortgages

A mortgagor should have the right to redeem a mortgage. This right should exist even though the full mortgage money is not repaid. The court might grant instalments in such cases. But there can be no restoration of land to the mortgagor, in case of usufructuary mortgages unless the full amount of the mortgage money has been repaid, or the time limit prescribed in law, or the deed has expired. These provisions should apply to all agriculturists. With a view to enable the poorer classes of agriculturists to understand their accounts and redeem their lands, Collectors may be empowered to decide redemption suits in their case (208, 209, 210, 211).

II. REGULATIONS OF MONEYLENDING

Moneylenders' Acts apply to all debtors, and not merely to agriculturists. Legislation prescribing rates of interest, and penalising abuses, when they are discovered only during a suit, has failed to prevent evasion of the law. Supervision of rural moneylending by executive agency, and registration and licensing of moneylenders doing the regular business of money-lending are necessary if the provisions in the Moneylenders' Acts are to be enforced in practice.

I Control of usury

The lines on which the Usurious Loans Acts require amendment are summarised below :

- (1) When once an usurious rate is prescribed in law, it should be binding on the courts to treat every transaction as unfair which levies a rate higher than the prescribed rate. The courts should have no discretion

- in treating such transactions as fair if the creditor pleads any special circumstances (218).
- (2) There should be no reduction of decreed amounts at a prescribed rate of interest except under special Acts intended to scale down past debts (219).
 - (3) The debtor should have the right to sue for accounts and in such cases the provisions of the Usurious Loans Act should be applied by the courts (220).
 - (4) The provisions should apply in all suits for recoveries of loans issued since 1918, and not merely to those issued after the enactment into law of the bills pending in the several provinces (221).
 - (5) No loans should be excluded from the operation of Usurious Loans Acts excepting loans due to Government and Local Bodies (222).
 - (6) Reopening of an account and investigation of the original principal in the case of renewed loans by a court should in no way be restricted by any time limit, but should be permitted at least from the date of commencement of the Usurious of Loans Act of 1918 (223).

2 Regulation of Accounts.

- (1) Maintenance of accounts books should be insisted only in the case of moneylenders who do the regular business of moneylending (225).
- (2) Supply of copies of documents of loans, issue of receipts, submission of periodical statements of accounts and a proper recording of payments and discharge on the bond should be insisted in the case of every moneylending transaction, whether the creditor is a licensed money-lender or not (226 to 229).
- (3) No fees should be charged for sending a periodical statement of accounts to the debtors (228).

- (4) The Pass Book system is a better procedure to adopt. Where this is not possible, the maintenance of a despatch book by moneylenders indicating the submission of returns to debtors with copies thereof should be considered sufficient (228).
- (5) The signature of the party who makes the repayments should be obtained on the counterfoil of the receipt in token of having received the receipt for the payment (226).
- (6) Definite penalties should be provided for non-compliance with provisions relating to accounts, instead of allowing offences to accumulate to be discovered only in the course of a suit instituted by a moneylender (231).

3. Prevention of abuses in moneylending

The following common abuses in moneylending should be prevented.

- (1) Any charges incurred in connection with securing loans excepting those which are specified as legitimate, and any other exactions should be prohibited (233).
- (2) All loans excepting small loans in cash or kind, loans in running accounts by way of goods and cash, and loans advanced on pledges, should be evidenced by a written document. All loans on mortgage, and charge or lien over property of any value should be reduced to writing and signed by the party (234).
- (3) When a document is not registered, the proof of consideration that has been passed shall lie on the creditor in the case of illiterate debtors (235).
- (4) It should not be considered necessary for a valid payment by a debtor on a decree that it should be certified by the creditor (237).

- (5) Contracts made to make repayments outside the province should be declared null and void (238).
- (6) Molestation and intimidation by creditors or their representatives should be declared criminal offences (239).
- (7) Suits against agriculturists shall ordinarily be tried only in such courts within whose jurisdiction they reside (240).
- (8) Conditions in bonds that the principal of a debt should be repaid only on certain dates should be declared void (241).
- (9) The court should receive repayments due to money-lenders who refuse to receive them, and interest should cease to run from the date of deposit in the court (241).
- (10) A debtor should have the right to sue for accounts in respect of secured and unsecured loans. Interest should be calculated in such suits according to prescribed rates. The provisions of the Usurious Loans Act should be applied, and the court might declare the amount due. The declaration might be converted into a decree on payment of the court fee by the lender. Excess payments should be adjusted towards the amounts due and if there is a surplus, the court should order its refund to the debtor (242).
- (11) When rent is due, payment made by a tenant shall be presumed to be towards it unless the tenant otherwise agrees in writing. Recoveries of loans which are proved to be adjustments towards rents should be disallowed in suits (242).
- (12) The provision for arrest and detention in the civil prison should at least be repealed in the case of agriculturists and poorer classes as artisans and labourers (244).

- (13) No Court shall decree interest due for over three years (245).
- (14) No loans should be excluded from the operation of rules relating to maintenance of accounts and submission of returns and penalties against abuses, unless these are provided for by special Acts such as those governing Banks, Companies, Cooperative Societies, and Charitable Trusts. Loans advanced by Government and Local Bodies should be excluded from the operation of these rules (248).
- (15) These rules should not apply to loans issued before the commencement of the Act. But they should apply to every transaction relating to such loans and to loans made after its commencement (248).
- (16) These regulations will become a dead letter unless every kind of moneylending is inspected by a State Agency (249).

4. Rates of interest

- (1) Small loans in cash or kind may be excluded when defining rates of interest for different sizes of loans (251).
- (2) Small loans on pledges advanced by pawnbrokers should have special rates prescribed in law both as to interest and to charges. They should be lower than those on unsecured loans for small amounts. There need be no lower limit of amount for excluding pledge loans from the operation of interest rates (251).
- (3) Regarding kind loans, the money value of the commodity made as a loan in kind at the time of its advance shall be the principal. In determining the amount due, the Collector shall take into consideration the market value of the commodity in the said locality on the due date of repayment. The Collector shall be the authority to decide in cases of dispute the principal and interest due in respect of kind loans (252).

- (4) Rates of interest varying according to the size of the loan with a specially higher rate for small sums below Rs. 50, and as they are secured or unsecured, shall be prescribed in law (253).
- (5) Rates of interest fixed in law shall apply to all loans of banks, companies, co-operative societies, Government and Local Bodies, unless the same has been incorporated in special Acts. In the initial stages of working of the Moneylenders' Acts, lending at unfair rates need not be treated as an offence. After a few years it may be made an offence if a moneylender is found to do so habitually. Till then the fixed rates of interest may be the basis for the calculation of interest by courts in suits for recoveries of money (254).
- (6) Rates of interest should be prescribed in the Act itself (and not be left to notifications) on the basis of the Reserve Bank rates. They should cover the costs of collection particularly for small loans to poor people, and provide for a sufficient reserve in the case of loans to agriculturists (256).
- (7) There need be no differential rate on loans from the date of suit to the date of decree and from the date of decree to that of realisation (257).
- (8) Interest shall be calculated at 5% on all loans in the case of insolvents whose assets are not sufficient to repay all the creditors. When the claims of all creditors have been satisfied, and when there is a surplus, it shall go towards the distribution of a higher rate of interest (258).
- (9) Compound interest may be prohibited, or when it is levied, such sum of interest as will not exceed the simple interest rates may be granted by the courts (259).

- (10) Penal interest on overdue simple interest may be allowed to be levied at simple interest rates (259).
- (11) All repayments should first be credited to principal, unless the date of repayment falls on the due date for interest (259).
- (12) Making of any false claims under principal should be declared an offence punishable in law (246).
- (13) Prescribed rates of interest should apply only to loans issued after their enactment into law. Retrospective effect may however be given to them temporarily as part of a scheme of liquidation of past debts (255).

5 . Registration and Licensing of Moneylenders

(1) Registration and licensing need be insisted only in the case of moneylenders working with a capital of Rs. 1000 and over (260).

(2) A moneylender may be defined as a person, or joint family, or incorporated association which does the regular business of moneylending. The Local Government should frame rules for the guidance of Registrars of moneylenders, as to which moneylenders they should insist on, to get registered and to take a license. A cheap and summary appeal should be provided against the orders of the Registrar in this respect (261).

(3) Loans which are advances in kind by a landlord to a produce-sharing tenant, and which are granted by money-lending concerns registered under special Acts, and by the Government and Local Bodies should be excluded from the operation of the Act (261).

(4) A moneylender, when suing for recovery of loans, may be permitted to produce the license before the court grants the decree or the application for execution. The production of the license should be insisted also in suits for

recoveries of loans made before the commencement of the Act. Also a registering officer may be empowered to summon parties, examine records, and call on a person to take a license. Where the latter does not do so, it may be declared an offence under the law. The offence may be a compoundable one, the maximum penalty being a fine of Rs. 100 (263,264).

5. Licenses should be granted for sufficiently long periods in the early stages of working of the Act and need not be annually renewed. When a graduated license fee is levied by Government on the ratio of the working capital, the figures for the previous year may be taken as the basis instead of those for the current year. The grounds on which a license may be refused should be clearly stated (265).

6. The cancellation of a license should rest with the executive authority as the Registrar, and not the court. The Act should state the names and number of offences for which a license may be cancelled temporarily or permanently. While no moneylender should be charged for any irregularities committed before the commencement of the Act, there can be no reason for excluding from the jurisdiction of the court the breaches of rules by a moneylender committed after the commencement of the Act, even though such breaches are in respect of loans issued before its commencement. The Local Government should have power to remove the disqualification of a moneylender and permit him to renew his license where it is satisfied that sufficient amends have been made by the disqualified moneylender (266).

7. The cancellation of a license should in no way disentitle a moneylender from suing for loans advanced before the license was cancelled. But his carrying on business during the period of cancellation of license should be an offence in law as in the case of an unlicensed moneylender. But while the latter should have the right of suing in the court on payment of the license fee, the former should not be permitted to sue at all in respect of loans advanced during the period when his license stood cancelled (267).

(8) The business of pawnbroking should be regulated and controlled either by a special Act or by incorporating special provisions for the same in the existing Money-lenders' Acts on the lines of the English Pawn-brokers' Act, and the Ceylon Pawnbrokers' Ordinance (268, 269, 270).

III

LIQUIDATION OF PAST DEBTS.

1. Experience of working of earlier measures of relief

1. Liquidation of debts cannot prevent recurrence of unproductive debts (272).

2. The earlier schemes of liquidation of debts have shown the need for some form of compulsion to bring the creditors and the debtors together for a settlement (273).

2. Moratorium Acts

1. With a view to prevent the rush of creditors to courts to institute suits and to execute decrees, during the pendency of debt legislation, moratorium Acts should be enacted (277 to 280).

2. The period taken by debt boards to settle debts is a moratorium for individual debts till the date of their settlement (281).

3. Compulsory scaling down of debts

1. The maximum rates of interest which may be granted for past debts till the date of settlement may be prescribed, subject to the discretion of the conciliation officer to lower it in deserving cases according to the repaying capacity of the debtor (291).

2. The amount fixed as due in debt settlements should ordinarily carry no interest from the date of settlement. If payment of interest is decided upon, it should depend upon the repaying capacity of the debtor (291).

3. Schemes of liquidation should permit redemption of mortgages before the due date and taking of an account in such mortgages at a reasonable rate of interest (292).

4. The only sound basis for liquidation of debts is the repaying capacity of the debtor, and not the fall in prices (293).

Percentage reduction of principal according to a schedule will fail to give relief where it is needed, and will give undue relief to debtors who may not require it (294).

5. Transfer of land to secured creditors at values prevailing in the year in which the debt was incurred, is a less objectionable method than scaling down debts on a percentage basis (295).

6. Scaling down debts by the application of the law of Damdupat to both principal and interest will grant only partial relief, and will hardly have any relation to the repaying capacity of a debtor (297).

7. Reduction of rent arrears during the depression period on a percentage basis is a justifiable form of relief (300).

8. Relief has been sought to be given by a *retrospective* application of the special provisions in Moneylenders' Acts, or Agriculturists' Debt Relief Acts, relating to suits against agriculturists. They are the following :

- (a) Fixation of a fair price in public auction of sales of land (308).
- (b) Limitation of the period of usufructuary mortgages (309), and
- (c) Exemption of a minimum holding from public sales in the case of small agriculturists (308).

The granting of retrospective effect in respect of (a) and (c) is justifiable. Exemption of a minimum holding in the settlement of debts may also apply to all agriculturists and not necessarily to small cultivators in any scheme of liquidation of debts (312).

It will be justifiable in respect of (b) if confined only to agriculturists who do not let out lands for rent and who are small cultivators.

Any scheme for liquidation of past debts in Debt Relief Acts should include debts relating to pending suits and appeals,

pending proceedings in execution of decrees, and decrees already passed by courts (308A).

9. The U. P. Temporary Regulation of Executions Act has provided for scaling down of debts in the case of small cultivators who can in no way afford to repay past debts, as not to exceed 40 to 50% of the amount due, and five annual instalments, each instalment not to exceed twice the rental (304).

According to the C. P. liquidation of Industrial Workers' Debts Act, the debts of a worker are to be determined as not to exceed the value of his assets, and his salary for six months. The amount is to be realised by a sale of the assets and a contribution from his salary in 36 monthly instalments (305).

10. Insolvency provisions have been incorporated in the Bengal Agricultural Debtors' Relief Act. The Insolvency Act too has been amended in certain provinces to permit small cultivators to take advantage of the summary procedure provided in the Act in the case of small debts (307).

11. The cancellation of debts in the case of small cultivators is a perfectly fair proposal. But if such a cancellation will injure the interests of the debtor, certain nominal repayments may be provided for. A formula may be devised fixing the maximum repayment realisable from small cultivators, leaving it to the conciliation officer to settle the debt subject to the maximum.

In the case of uneconomic holders, tenants-at-will, and labourers, a stiffening of the sections in the civil procedure code regarding the saleable properties to be exempt in execution of decrees will give them the necessary relief. (Vide para I. 6 of the Summary). The debts of subsistence-holders who are just on the border line, and whose holdings will be barely sufficient to maintain them even with the addition of other sources of income as manual labour in off-seasons, can hardly be repaid if their produce is to be the charge for future credit, and if cooperative societies or other approved banks are to finance them for the future. If this step is considered too drastic, then provision

may be made for a few instalments not exceeding three, and each instalment not exceeding the rent on the land (310, 311).

4 Debt Conciliation Acts and their working

1. The devices adopted in the Bengal Agricultural Debtors' Relief Act to secure the co-operation of the creditors may be usefully adopted in all Debt Conciliation Acts with the following modifications :

(a) A fair offer should be defined as in the C. P. Debt Conciliation Act.

(b) The Court should have the discretion to refuse to grant a decree for any sum in excess of the sum specified in the certificate as a fair offer (313 to 320).¹

2. The bar of execution of decrees on the property of a debtor until the whole sum of the settled debt is repaid will prevent his raising any credit for the future. Charging only a definite proportion of the property and its produce would release whatever security a debtor has, for satisfying his future credit requirements (325).

3. Recoveries of instalments with the aid of the Revenue department should be provided for (326).

4. Another inducement to the creditor is the negotiability of the award granted by a board (327).

5. The best machinery for conciliation is the formation of boards with an official chairman of the status of a Revenue Divisional Officer and four or five other members nominated by the Government. Village conciliation in the Deccan in the nineties of the last century, and village boards in Bengal during the last two years have not proved successful (331, 367 to 377).

6. The loss in court fees can be made up by charging graded fees, and the usual fees, in the case of bigger agriculturists on the amount determined as due (333).

With a view to adjust all the debts of all the cultivators, the Bombay Bill declares such debts as void as are not submitted for adjustment, or for recording of an amicable settlement, before the debt boards within one year of their commencement.

7. Debt Conciliation Acts should include under their scope all agriculturists, whose occupation and primary source of livelihood is agriculture, whether they are farm managers, or cultivators, or rent-receivers. If relief to the rent-receiving class will be an unjust extension of the special measures intended only to relieve the agriculturists of their burden of unproductive debt, the fixing of an upper limit for the amount of debts to be conciliated, and the levy of the usual court fees on sums over a certain amount of debts should be sufficient correctives against the extension (334).

8. Rent debts, debts due to co-operative societies, debts due to Banks and Companies, and trades, should not be excluded from the scope of conciliation. Even loans due to Government should be settled if any scheme of liquidation is really to be a complete one (335 to 338A).

9. The provisions regarding stay of suits and proceedings should be clear and definite so that boards may have no difficulty in settling the debts of the applicants before them (345).

10. Appeal and revision should ordinarily be barred. Lawyers may appear before the boards with their permission (346).

11. The Act should provide for settlement of joint-debts in the case of single debtors that apply before the board (348).

12. As it might be possible to conciliate a debt in spite of differences of opinion regarding the debt determined as due, the duty of determining the debt in each case should not be laid on the boards. But a board should determine the amount in cases of certified debts as a guidance for the consideration of civil courts (349).

13. If a board decides that a debt does not exist, the suit or proceeding shall abate so far as it relates to such debts (350).

14. The boards should have power to take an account in respect of usufructuary mortgages by granting a fair rate of interest, and to eject the mortgagee or continue him in possession of the land for a definite period (353).

15. They should also have power to sell the lands of a debtor or to lease them temporarily (356, 357).

16. The instalments should be carefully fixed after deducting the portion of the property necessary for the maintenance of the judgment-debtor and his family. No interest should be allowed on instalments. Sufficient margin should be made for defaults (358, 359, 360).

17. Payment of instalments should be suspended, when a debtor is unable to repay owing to circumstances beyond his control. Under no circumstances the amount settled in an award should be allowed to be collected through civil courts in cases of default. The creditor should be given a charge on the property and on the produce till the instalments are repaid (361, 362).

18. Where moveables such as cattle, trees, fodder, and jewellery are transferred in lieu of debts, there should be provision for the appointment of arbitrators to fix their value (363).

19. The State may help by the issue of bonds to creditors, or by guaranteeing the debentures issued by a mortgage bank. But such bonds or debentures should be limited in value to the amount recoverable in instalments from the debtors. They should be covered by sufficient mortgage security (378 to 380).

20. Rules regarding Government loans through Loan Officers in Madras should be liberalised, and could not be of much help in the case of small agriculturists unless their debts have been scaled down to their paying capacity (380).

NOTE 14

RETROSPECTIVE REVISION OF TERMS OF MORTGAGES

The Punjab Legislature has recently passed an Act called 'The Punjab Restitution of Mortgaged Lands Act' 1938, empowering Deputy Commissioners on application by a mortgagor to restore to him his land on certain conditions irrespective of the terms of the mortgage. It applies only to mortgages made before the Land Alienation Act came into force i.e. 8th June, 1901. Secondly, it applies only to mortgagors who are at present members of notified agricultural tribes under the Land Alienation Act, and who have mortgaged their lands to persons who are not members of the same group among the tribes so notified. The object of the Act is to correct a deficiency in the Land Alienation Act of 1901 after full 37 years have passed! Mortgages by agricultural tribes to others not of the same group made after 1901 could be revised by the Deputy Commissioner and restricted to 20 years' usufruct for the discharge of both principal and interest. The same procedure could not be adopted in respect of mortgages entered into before 1901. The present Act wants to extend the benefit of the Land Alienation Act to the mortgages made before 1901.¹

The mortgages may be simple or usufructuary. It would be rare to find mortgages of the former type after 37 years, unless a mortgagee has kept alive his right to sue by conforming to the law of limitation. So the Act mainly applies to usufructuary mortgages. On receipt of the petition from the mortgagor, the Deputy Commissioner will take an account of the value of the benefits enjoyed from the land by the mortgagee according to the *terms of the mortgage*. If he finds that the mortgagee has realised from the land an income equal to twice the principal, he will be asked to restore the land

¹ A press note of the Punjab Government, July 1938 says that 3,06,738 mortgagors have executed 1,66,864 mortgages before 1901 which are yet unredeemed. The area of land that is expected to be redeemed by this measure is 7,29,012 acres. (vide Debt Legislation in the Punjab by Mr. Vinaikumar Chopra, M.A., a paper presented to the All-India Economic Conference in December, 1933, p. 8.)

immediately to the mortgagor. If the income realised is less, the mortgagor should pay compensation to the mortgagee if he wants the land to be restored to him. The compensation should *not exceed* the following rates. Where the land has been in possession between 31 and 40 years, it shall be thirty times the land revenue. Where the land has been in possession between 41 and 50 years, it shall be fifteen times the land revenue. Where the land has been in possession for over fifty years, it shall be five times the land revenue. For the calculation of compensation the land revenue paid at the time when the land was mortgaged would be taken into consideration. Subject to these two formulæ, the amount to be repaid by the mortgagor will be decided by the Deputy Commissioner. Only certain Senior Revenue Officers will be empowered to decide the cases under the Act. The order is appealable to the Commissioner within 60 days when it is made by the Collector, and to the Financial Commissioner within 90 days when it is made by the Commissioner. Civil courts cannot question the validity of proceedings under this Act. The principles of assessing the amount due by a calculation of the land incomes will be notified under the rules. The Act would be justifiable with the following improvements. There should be some time limit set for application by mortgagors or their heirs. It ought to have been applied only to small holders. Mortgaged lands in the hands of agricultural tribes should also be restored to the small holders. It is noteworthy that the clauses relating to compensation will in no way benefit most of the mortgagees, as the latter would have realised double the principal amount during the period of rise in prices till 1929.

We will now refer to another piece of legislation, the Bengal Tenancy Bill of 1937 passed by the Bengal Legislature. It has recently received the assent of the Governor. The Tenancy Act of 1928 restricted usufructuary mortgages by occupancy rayats and under-rayats by the provision that the principal and interest of a debt should get repaid out of such mortgages within 15 years. The recent Act has given retrospective effect to it, thereby permitting the revenue officer to eject a mortgagee occupying a land for more than 15 years from the date of registration of the deed, or his entry into possession. There is no provision for compensation to the mortgagee. But it applies only to

occupancy rayats, and under-rayats, and not to landholders and privileged tenants (Sections 26, G. and 49).

Both in Bengal and Assam the tenants suffer by mortgaging their lands with possession to the creditor (Vide para. 372). A majority of cultivators in Sylhet have raised loans by mortgaging their lands with possession to money-lenders.¹ An amendment was proposed to the Money-lenders' Act of 1934 that a mortgagee should be ejected from the land, if he had realised twice the principal of the loan from its income, or if twelve years had elapsed from the date of the mortgage loan, even though it had been advanced before the passage of the Act. In the end, the Assembly passed the amendment in the following terms, i. e., that the limitation of the period of usufructuary mortgages should be twelve years in respect of loans issued before the commencement of the Act, and nine years in respect of loans issued after its commencement, that a mortgagee should be ejected when he had realised twice the principal from the income from land, and that these two provisions should apply only to loans of Rs. 500 and below. The restriction of this formula to small loans has eliminated the possibility of big landlords repudiating with the aid of law, the debts due to creditors.

The Sylhet Tenancy Amendment Bill, 1939, and the Goalpara Tenancy Amendment Bill 1939, have made certain provisions in respect of usufructuary mortgages made before these Acts were passed in 1936, and 1929 respectively. The provisions in these Acts have restricted the period of usufructuary mortgages made after their commencement to nine years. The present bills fix the period for mortgages made before these Acts were passed as twelve years " or the period mentioned in the instrument whichever is less." Whatever might be the terms in these mortgages, they shall be deemed to have taken effect as a complete usufructuary mortgage. The provisions are to apply to mortgages made by occupancy rayats.²

1 Vide Assam Legislative Assembly proceedings, Dec. 1937, P. 2007-2030.

2 Whenever the periods of usufructuary mortgages is fixed, a complete usufructuary mortgage is defined in the several Acts " as a transfer of the rights of possession in any land for the purpose of securing the payment of a loan in kind or cash upon condition that the loan with all interest thereon shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage."

NOTE 15

FACILITIES FOR RECOVERIES OF INSTALMENTS
THROUGH REVENUE OFFICERS UNDER THE BENGAL
AGRICULTURAL DEBTORS' RELIEF ACT

The C. P. Debt Conciliation Act 1933 and the Bengal Agricultural Debtors' Act 1936 provide for facilities for recovery of instalments through the Revenue Officers. The Bengal Agricultural Debtors' Act, 1936, has made the following provisions on the subject. As soon as a debtor defaults in the payment of the instalment, the amount is recoverable as a public demand under the Bengal Public Demands Recovery Act of 1913. If the creditor does not apply within the specified time, then the amount due to him cannot be recovered in the execution of a decree through courts, until the debts scheduled in the award have been repaid, or the award has ceased to subsist. The certificate officer may grant time and even postpone payment if he thinks fit. The rules provide the circumstances under which an officer may grant a postponement for the repayment of instalments. The debtor should have been so physically disabled as to make it impossible for him to cultivate the land. There should have been a partial or total failure of crops. The debtor should have suffered from any other exceptional disaster such as serious loss by fire or theft or loss of cattle needed for cultivation owing to accident or disease. If the amount cannot be repaid even after granting extension of time, then he shall sell the moveable property of the debtor or his agricultural produce or his immoveable property.

The proceeds of sale shall first be applied for the payment of arrears of rent and costs of sale in execution of the certificate. Secondly, an account shall be kept of the sale proceeds of the lands on which a mortgage, lien, or charge exists. If the debt secured on the land has been settled under the award, the sale proceeds of the mortgaged land shall first be devoted to the debt so payable. If such a debt is not payable under an award but under a decree of a civil court, it shall have the second priority. If any balance remains unpaid to secured creditors under an award or a decree of the civil court, then it shall rank equally with unsecured debts. Where there is a doubt or dispute regarding priority, the certificate officer shall refer the matter to the appellate officer. The sur-

plus in the sale of mortgaged property and any proceeds from further sales of land shall be devoted to the payment of unsecured debts. The lands or produce exempted from sale in the case of insolvents shall not be sold by the certificate officer. Where the latter finds it impossible to recover an amount payable under the award, he shall so certify. The award will then cease to subsist. The creditor may thereafter sue within 3 years to recover the amounts mentioned in the award. Or the certificate officer may pass an order declaring the debtor an insolvent. Thereupon the provisions of insolvency will apply. A further provision is made that if a land mentioned in an award is sold under the Tenancy Act for rent arrears, the balance of proceeds in the sale shall be paid to the certificate officer for distribution to the creditors to discharge the debts due to them under the award.

Note 16.

A SUMMARY OF THE INSOLVENCY PROVISIONS IN THE BENGAL AGRICULTURAL DEBTORS' RELIEF ACT, 1936.

The Bengal Act provides for insolvency provisions. It has implemented the recommendation in the report of the Royal Commission on Agriculture regarding rural insolvency. Under this Act a debtor need not declare in his application to the Board that he is unable to pay his debts. If his debts cannot be so settled as to enable him to repay within twenty years, then the Board may declare him by a written order to be an insolvent. Or a certificate officer, when he finds that an overdue instalment cannot be recovered, may pass such an order. It should be noted that the debtor need make no application to be declared an insolvent. The order passed by a board shall either fix instalments for repayment of the debt within 20 years, or, if the former course is not desirable, direct the sale of all the property of the debtor. This order will be embodied in an award. If the instalments are fixed, the following condition should be adhered to. (1) The debt should be reduced to a figure which can be repaid within 20 years. (2) In fixing the annual instalment, the Board shall so fix it "as in its estimation is likely in a year of normal harvest leave to the insolvent as provision towards his maintenance *one half of the surplus* which remains from the value of the produce of his and after paying to the landlord the current rent due for such land".

If the property is to be sold " it shall set aside as provision towards his maintenance not more than one third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house :—

Provided that, even if he holds less than three acres of land in his direct possession, the Board shall then set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house :

Provided further that no portion of the immoveable property of an insolvent shall be exempted under this section from sale for realisation of arrears of rent " (Sec. 22).

If an instalment fell due and the certificate officer could not realise it after allowing a reasonable time, he shall forthwith sell the property necessary either to pay the instalment or the whole amount due (Sec. 28.3 Proviso). Thereafter the clauses relating to the sale of properties by a certificate officer shall operate.

The property on which there is no lien, charge, or mortgage, should first be sold, and the sale proceeds should be adjusted to the debts secured on such lien, charge, or mortgage of lands which are exempted from sale under the insolvency provisions, to the extent of the estimated value of such portion. The certificate officer should therefore first estimate the value of the exempted land so mortgaged. If there is still a balance of debt to be paid regarding the debt secured on the exempted land, then the non-exempted mortgaged lands should be sold. Part of the sale proceeds should go to pay this balance, and the other part to pay the debt secured on the non-exempted lands.

The Board shall also decide what portion of his immoveable property shall be deemed to be the dwelling house of the debtor. They shall first consider the requirements of the family in the homestead area. " Such an area shall include the sites and plinths of the buildings upon it together with such other land and such means of approach as the Board considers reasonable for the proper enjoyment of the buildings and may include a tank or pond or portion thereof, but, so far as may be practicable, shall not include garden or orchard land " (Rule 59 c).

The area so set apart shall be exempt from sale, but " the insolvent shall be incompetent to mortgage, charge, lease, or alienate the same in any way until he is granted a certificate of discharge."

Also moveable property as is exempt from attachment under the code of civil procedure and "such agricultural produce as may appear to the certificate officer to be necessary for the purpose of providing until the next harvest for the support of the insolvent and his family" shall be exempt from sale when the properties of an insolvent are sold for the discharge of debts.

When the instalments have been paid or the property of the debtor has been sold according to the provisions of the Act, the Board shall make an order of discharge and grant the debtor a certificate of discharge. But if it is found that an insolvent owns any property other than the exempted one within 5 years of the date of the order of discharge, and if a creditor applies to the board, the Board may order a distribution of such properties among the creditors.

Note 17.

AMENDED PROVINCIAL INSOLVENCY ACTS (V 1920).

The aim of insolvency law is twofold, firstly to provide for an expeditious and economic collection of assets so that the creditors may get the maximum possible repayments, and secondly to discharge a debtor from his past debts so that he might restart life without any encumbrance. The Royal Commission on Agriculture recommended the enactment of a simple Rural Insolvency Act to protect agriculturist debtors. The reasons for this proposal were two. The Insolvency Act could not help debtors whose debts were less than Rs. 500. Secondly, the courts were "disinclined to allow the benefits of the Act to landholders whose rights are protected from sale in execution, on the ground that such persons are not insolvent within the meaning of the Act".

The Central Banking Enquiry Committee also made a recommendation in their report for a simple Rural Insolvency Act. Before dealing with the question of how these recommendations were given effect to in recent legislation, we will briefly notice the earlier legislation on the subject.

The Deccan Agriculturists' Relief Act 1879 enacted a few simple provisions to liquidate rural insolvency in the case of agriculturists

and small debts (vide para 26). The Deccan Commission of Enquiry, 1891, recommended that these provisions should be made more generous, and that unsecured debts should not be repaid from out of the proceeds of temporary alienation or sale of land (vide paras 51 and 52). The Government of India called for views in what manner the insolvency law should be liberalised in the interest of agriculturists on the basis of the recommendations of the Deccan Commission of 1891. Sir James Lyall suggested in 1892 for the Punjab that the Revenue officers should compose the debts of small agriculturists, that the rate of interest to be granted should not be more than 12% per annum, that kind interest for grain loans should not be more than 25%, and that the court might arrange for temporary alienation of land and not sell it. In 1907 the Law of Insolvency was codified. Under the old code " an honest debtor could not apply to be declared insolvent. One single decree-holder creditor might run away with the benefit of the execution to the exclusion of all the other creditors. The Act of 1907 showed a great sympathy for the debtor, conferring upon him automatic protection from arrest and imprisonment " (vide Provincial Insolvency Act by two vakils, Ramakrishna Bros. Poona, Page 2). The Act of 1920 helped the creditor to get as much as he could out of the assets available, and an honest debtor to get discharged from debts he could not repay, while providing for the punishment of dishonest debtors.

The Act applied only to debtors whose debts amounted to Rs. 500 and above. Properties which were exempt under the Civil Procedure Code and any local enactments were also exempt from attachment and sale in execution of decrees under this Act. If in a local area the Collector was the authority for executing decrees by sale of immoveable property, the same provisions would apply to this Act.¹

Sec. 74 of the Act provided for summary administration " if the property of the debtor is not likely to exceed in value five hundred rupees." No notice was required in the official Gazette, no receiver need be appointed, and no schedule of debts need be prepared. " The property of the debtor should be realised with all reasonable despatch and thereafter, when

¹ A recent amendment of the Provincial Insolvency Act, Punjab, provides that, when a Collector makes temporary alienation in accordance with the orders of the court, the portion of land necessary for the maintenance of the judgment-debtor should be exempted from such alienations (Act III of 1939).

practicable, distributed in a single dividend. The debtor shall apply for his discharge within six months from the date of adjudication. More modifications may be prescribed with the view of saving expense and simplifying procedure." Two provinces have amended the Insolvency Act so that these summary provisions might be made applicable to smaller agriculturists, and smaller debts. In the Punjab and the C. P., the minimum amount of debt which entitles a debtor to apply for insolvency has been reduced from Rs. 500 to Rs. 250.¹ The upper limit of debts to which the summary provision is to apply in the Punjab has been raised from Rs. 500 to Rs. 2,000.

But an amendment in the insolvency provisions in the C. P. and Berar has in no way resulted in an increase in the number of insolvency petitions. On the other hand the latter declined according to the civil justice report from 1766 in 1936 to 1070 in 1937. The petitions were one third of the number for 1933 and slightly more than one fourth of those of 1930. The decline was mainly due to the working of different Debt Acts in the province. Another reason was the amendment of the civil law relating to imprisonment for debts. The threat of imprisonment having disappeared, the debtors had no need to apply for insolvency to avoid it. This has also been the result in the Punjab, due to the liberalising of the provisions relating to arrest in the Punjab Relief of Indebtedness Act. The C. P. and Berar civil justice report for 1937 says "that legislation has provided remedies designed to allow the settlement of debts over a period of years, and these procrastinatory remedies which at any rate defer the necessity for the plunge into insolvency are being widely availed of. Any substantial increase in insolvency petitions in the near future appears unlikely."

Any scheme of rural insolvency should take note of the following facts, viz., that no debtor would ordinarily apply to be declared an insolvent, that his debts should be composed during the course of civil suits or proceedings under Debt Relief Acts, and that a special tribunal is absolutely necessary for liquidating the huge amount of unproductive debts in rural areas.

¹ Vide Punjab Relief of Indebtedness Act, 1934 Part II, and Provincial Insolvency Amendment Act C. P. 1935.

Note 18

DEBT CONCILIATION MEASURES IN NATIVE STATES

In the following paragraphs a review is made of such of the measures undertaken in the Native States which have any special features different from those of the Acts enacted in the British provinces. The Travancore Agriculturists Relief Regulation of 1937 provided for an elastic method of conciliation by giving a wide discretion to the Boards in the settlement of debts. The Boards might arrange for a lump sum cash payment, or it might sell up the properties of the debtor, leaving about a fourth of it for the maintenance of the debtor. Payments might be made by instalments, the debtor giving security for such payments. If there were defaults by way of three consecutive instalments, the entire amount should be recovered. When a settlement was agreed upon, it should have the force of a civil court decree, as soon as it was registered. The agreed settlement would be forwarded to the absentee creditors who did not appear before the Board, and if no reply was received from them, "the Board shall state in the agreement that it is deemed to have been signed by such persons also." When all the creditors did not agree, the board might record a certificate about what would be a satisfactory manner of settlement and what cash payment should be made by the debtor forthwith in full settlement of all the debts. The certificate might also state the terms of a fair settlement even in regard to creditors not appearing before the Board. A creditor might apply to a court to call upon the debtor to deposit the amount mentioned in the certificate. The Court thereupon would order the debtor to do so within three months. "In respect of any debts covered by the certificate of the Board, the court *may* in its discretion disallow the whole or in part the costs of the suit or of the application, as the case may be, and may also, in its discretion, reduce the amount of interest remaining due for the period from and after the year 1930 upto the date of decree or order or the application, by reducing the rate of interest to any rate which is not less than either one half of the stipulated rate or four percent per annum whichever is higher."

According to these provisions, a debtor should repay the settled debt in three months which would be hardly possible in all cases. The court also had full discretion to grant a decree without any reference to

the settlement. The Act has failed to give any relief to the agriculturist debtors.

The Cochin Debt Conciliation Regulation of 1937 closely follows the Central Provinces Act with this modification that creditors to whom 50% is owing should agree for an amicable settlement. But the Court would grant in respect of certified debts only 4% simple interest in suits by creditors. Under the Regulation, one debt conciliation board worked in three taluqs of the State during the year 1937-38. 572 applications were disposed of. 28 applications were conciliated in full, 12 were compromised, and 2 were privately settled, 215 were dismissed by the board on various grounds, and 313 were dismissed for default. Apart from the loss of court fees to Government, the Board has lost a net sum of Rs. 1700 during the year.

The State of Bhavanagar has liquidated the agriculturists' debts by repaying the creditors from State funds, and realising it along with the annual assessment from the agriculturists. A committee was appointed in December 1925. It reported in April 1931. A debt redemption scheme was put into force. The following were the provisions of the scheme. The agriculturists and the money-lenders of every 'mahal' (30 to 40 villages) were to make a joint application expressing their willingness to agree to the scheme. On admitting the application, the State appointed a Debt Liquidation Committee consisting of a Revenue officer, a Judicial officer, two respectable Panches nominated by the creditors, and one or two respectable persons co-opted by them. As soon as the committee undertook the scheme in a village, it applied only to such of the creditors and debtors who agreed that the awards of the committee would be binding on them. The Committee could compose all debts including decrees. It would take an account according to the provisions of the Khedut's Protection Act. Two rules were enacted for compulsorily scaling down debts. The maximum amount repayable by an agriculturist should not exceed three times the annual assessment payable by him. The total amount paid by the State in respect of a village (Tappa) shall not exceed one-fourth of the nominal arrears outstanding in the books of accounts of creditors. The amount so determined was paid to the latter by the State and realised from the agriculturists at four per cent per annum along with the annual assessment. The State enjoined on the agriculturists, that they should bring the produce over to the *Darbari Khalwad* to settle the account. The scheme was worked between April 1930 and March 1934. The time was considered most propitious for a settlement because, owing to fall in prices creditors were in a mood to settle, and any errors in the fixation of instalments would be greatly minimised by the fact that they were being

fixed during a depression period. The following statement would indicate the extent of debt liquidation completed in the State of Bhavanagar :

| | | |
|--|---------|-----------|
| No. of individual holders | | 27,898 |
| No. of holders free from debt | | 15,405 |
| Assessment paid by them | ... Rs. | 12,76,858 |
| No. of holders indebted | | 12,493 |
| Assessment paid by them | ... Rs. | 13,79,696 |
| Amount outstanding according to sowcar's books | ... Rs. | 86,38,874 |
| Amount found due by the Redemption Committees | ... Rs. | 45,11,183 |
| Amount actually paid in composition | ... Rs. | 20,59,473 |

To show its bonafides in the liquidation scheme, the State as the supreme owner of land remitted 19 to 20 lakhs of arrears of land revenue. The scheme has saved interest charges to the agriculturists. The report issued by the State in 1934 states, "where formerly the Khedut weighed down by the burden of past debts would have shortpaid by 4 to 6 as., the State has been able to recover the full unit of assessment and also something towards arrears." But an easy recovery of land revenue has in no way stopped the need for remission in areas of agricultural distress. For a later report of 1937 mentions that "some two years back about seventy villages in the two Mahals of Kundla and Lilia paying an annual assessment of rupees six lakhs and more were subjected to the effects of a most severe drought. The State first suspended the whole of the revenue demand, and later remitted nearly 75% of the suspended revenue." The State has followed up the scheme by a series of constructive measures to improve the economic condition of the agriculturists. It advanced according to its report Rs. 1½ lakhs for purchase of seeds and bullocks and constructing or deepening wells. Special amounts sanctioned for relief of distress, for seeds, food-grains, grass, etc., were remitted and were adjusted out of the interest amount on the Cultivators' Amelioration Fund started in 1912. In order to encourage deposits in co-operative societies, the State has agreed to advance to each of them an equal amount not exceeding Rs. 2000 at 3½% interest per annum, and to make a free donation of 20% of the deposits collected by the members not exceeding in a single case Rs. 400. Remission of land revenue, remission even of State loans granted for productive purposes, and subven-

tions to cooperative societies, only indicate that even a complete redemption of past debts cannot by themselves improve the income of a rayat.

The Government of H. E. H. the Nizam has issued a regulation dated 25th June, 1938 establishing conciliation boards in one or two taluqs in five districts to compose debts of agriculturists who pay a land revenue of Rs. 500 and below, and whose debts do not exceed in each case Rs. 1000.

The Mysore Agriculturists' Relief Committee made a number of recommendations for the relief of indebtedness. They recommended the formation of Debt Conciliation Boards similar to those in the Central Provinces. On the basis of this recommendation Regulation No. 6 of 1937 to make provision for the setting up of Debt Conciliation Boards was enacted on 4th February 1937. It is mainly modelled on the Madras Debt conciliation Act of 1936. The Boards have commenced work very recently, and it is too soon to judge about their working.

NOTE 19

SCHEMES OF LIQUIDATION OF DEBTS OF AGRICULTURISTS IN OTHER COUNTRIES

Results of moratorium on agricultural credit

The following were the methods adopted for the repayments of debts by debtors after the depression in the Danubian and Baltic States of Europe.¹

1. In most of the states of S. E. Europe, a moratorium for 5 or 6 years was first declared from the year 1932. But it was in the States of Rumania, Bulgaria, and Yugoslavia that the results of a "credit blockade were severely felt." The government in power had to satisfy the demands of peasants. In Rumania the peasants were protected from the suits of creditors and from forced sales through courts. In Bulgaria the number of moveable and immoveable properties that could not be brought to public sale was enlarged. The result of the laws in Rumania was that creditors refused to lend.

"No grocer, no tradesman, no factory, and no bank would give goods on credit, or money on loan to a debtor who could really no longer be forced to pay his debts. The credit stringency of the peasants became so acute

¹ Vide Monthly Bulletin Agricultural Economics and Sociology Round 1937 Vols. 1 to 4, and Report of Systems of Agricultural credit and insurance by League of Nations—II Economic and Financial, II A. 24. 1938.

that in some places riotous demonstrations took place in front of public offices. On the other hand the small village grocers who no longer gave salt, flour, petroleum etc. on credit were so much pressed that they shut up their shops and moved into the towns. This unexpected result induced all the three governments to make changes in the original legislation by which the rights of the creditors were better protected and the provisions of the law limited to the obligations already in existence, while, with regard to new credits, they left the existing law against defaulting debtors unchanged." (Proceedings of the Third International Conference of Agricultural Economists 1934, p. 101).

It was after this experience that these States provided for reduction of debts only in the case of poor small holders and arranged for their repayment to creditors by the issue of bonds, while at the same time giving a longer time for debtors to repay to State Banks at a lower rate of interest.

Some schemes of scaling down debts

The schemes have varied in different countries according to the character of the rural credit system. Where farmers have not kept proper accounts, and debts accumulated rapidly and could not be repaid owing to the uneconomic character of the holdings, the debts required to be investigated, and bankruptcy proceedings had to be undertaken. This happened in the Daubian States. Consequently legislation in these States had to provide for composition of debts. The principal amount too had to be reduced in these countries. In countries where banking organisations are sufficiently developed, legislation has taken the form of providing for longer periods for old loans at a lower rate or interest (U. S. A.). Where agricultural charges have exceeded the incomes owing to fall in prices and were due to high rates of interest, the debt was determined by calculating interest at a lower rate. Finally moratoria were granted to the landholders in certain countries with a view to prevent the selling up of their properties.

1. In Rumania a debt conciliation measure was adopted by the law of 7th April 1935. The object of the measure was not to prolong unduly the repayment of debts which only embittered the relationship between debts and creditors, but to arrange for quick repayments. The maximum reduction that was allowed in scaling down debts was 50% of the amount determined as due. A creditor might refuse to consent to this reduction. In such a case he could not sue for his debts for a period of ten years or even 15 years,

Interest would be allowed at one per cent on the initial capital. "But the creditor exposes himself to the expropriation of his claims in conformity with the law on expropriations for public utility." Where the creditors agreed, the reduced amount was to be paid in 17 half-yearly instalments. The payment of the earlier instalments was made easy by the provision that the minimum to be repaid for the first two instalments was $2\frac{1}{5}\%$ of the settled debt, and for the next two instalments 3% of the settled debt.

If fifteen per cent. of the amount was paid every year for 2 years, the balance would be struck off. If 8% of the amount was paid every year for 5 years, the balance would equally be struck off. Advance payments of instalments would carry 6% interest. The debtor might apply for a loan to the Agricultural Mortgage Credit Bank and repay the instalments.

The State also subsidised the Agricultural Mortgage Credit Bank by paying 2% on the amount lent on condition that the Bank lowered its rate in its loans from 7 to 5% .

It is claimed for the scheme that it has improved the credit position of the peasants. They have made a punctual repayment of the first instalments. "The definite solution of the problem of indebtedness has brought about a revival of economic activity amongst the Rumanian farmers which has been encouraged by other factors." (Monthly Bulletin of Agricultural Economics and Sociology, Rome, 1937 No. 3, p. 88).

2. In Bulgaria debts upto a certain figure were reduced by 40% , while only interest was reduced in the case of debts below the prescribed figure. Moratorium was granted upto fifteen years for the former class of debts, and six years for the latter. The State undertook to indemnify creditors. An Amortisation Fund was created which issued 3 per cent bonds repayable in 23 years, with which the creditors were paid off. (Law of 7-8-34).

3. In Yugoslavia the Privileged Agricultural Bank took over the debts of private banks and co-operative Societies. These banks and societies were to write off one-fourth of the debts. The State issued bonds at 3% to be amortised in 20 years for another one fourth of the debts. It also issued what were called "Orders for the payments of the debts of peasants to the Privileged Agricultural Bank," to the extent of the balance of 50% of their debts which the peasants might assign to their banks or societies.

These orders also would be amortised in 14 years at 3% by the State. The debts of the small holders were reduced by 50%. They were to pay to the State the balance at 4% interest in 12 years.

4. The State contributed to the interest fund or the amortisation fund of the Bank of Hungary to the extent to which the amount of debts has been reduced in the case of small owners. The lands of the latter were declared protected. The State took over their debts upto forty times the land revenue assessed on the lands of these owners. (Austria, Decree No. 14000 of 23-10-1933).

5. In Poland and Latvia the short term loans of credit institutions were converted into long term loans at lower rates of interest. Any loss in the process upto 50% was borne by the State in Poland.

6. Long-term bonds were given to the debtors in Lithuania.

7. In Esthonia the State issued 4% mortgage bonds to creditors and the peasant repaid in 30 years at 4½% interest plus a certain percentage for amortisation. Where the debts exceeded the value of the property, no interest was to be paid on them (Regulation 46 of 1933).

8. In Turkey the Agricultural Bank took over the lands of debtors for debts, but owing to their low value they proved a dead loss to the Bank " Under a law of June 24th 1935, agricultural debts contracted with the Agricultural Bank upto the end of 1932 will be charged interest at 3% per annum and extended for fifteen years, repayments to be made in equal annual instalments."

9. "The Egyptian Government repaid to the Land Bank by an agreement of 1933 applicable exclusively to rural loans, two-thirds of the arrears subsequent to 1928, the remaining one-third payable in thirty-five years at a rate of interest not exceeding 6%. In April 1936, a new Agreement was concluded, by which interest outstanding since December 31st, 1934, on loans not covered by the convention of 1933, was reduced to 6%. The Government for its part undertook for the years 1935 to 1941 to take the place of the defaulting debtors."

10. " The law of May, 1937 in Greece contains provisions for the cancellation of interest due upto the end of 1936 and the reduction of the rate of interest to 3%. In addition, borrowers who completely liquidate their

1 Report on systems of Agricultural credit and Insurance, 1938, League of Nations p. 65,

obligations before September 30th, 1938, will be granted a reduction on the capital of their debts upto the amount of 30%. But this law does not concern claims of the Agricultural Bank."¹

11. "The Argentine National Bank undertakes the splitting up of estates passing into its possession and the settlement of families of agriculturists on the same against payments spread over ten years or mortgage loans granted in conjunction with the National Mortgage Bank."²

12 "In Indochina interest rate was gradually reduced from 10% to 6½% in 1935. The Native Mutual Agricultural Credit Societies which suffered by the reduction in interest were helped in several ways. What they owed under arrears of interest prior to January 1924 to Local Authorities was waived. Secondly, Government lent from the Long-term Loans Department from 1935 to the rice-growers for the adjustment of their old debts. This amount was made available to the Mutual Credit Societies. The Central Agricultural Credit Bank also lent to small landowners for long terms which amount again went to repay the debts due to the mutual credit Societies. Lastly, the central Bank for Native Agricultural Credit, succeeded in obtaining from the Central Authorities the liberation of part of the indebtedness of native mutual agricultural credit societies."³

13. In Tunis the Land Bank issues land bonds to creditors at 3% for the debts to them by agriculturists.⁴

Note 20

THE BOMBAY AGRICULTURAL DEBTORS' RELIEF BILL, 13 OF 1939.

The bill is an attempt in the right direction. Its object is a complete settlement of all existing debts of agriculturist holders of land. With a view to bring all the debts for adjustment before the debt boards, clause 29 provides that every debt in respect of which no application for adjustment or settlement is made within one year from the date of establishment of a debt adjustment board shall be *deemed to have* been duly discharged." Provision is also made for the settlement of debts due to Government and co-operative societies.

The Bill has made it obligatory on debtors whose debts are adjusted by a board, to get themselves admitted in co-operative societies without at the same

1. Ibid, p. 69.

3. Ibid, p. 102.

2. Ibid, p. 54.

4. Ibid, p. 111.

time making any provision for a sound credit machinery. Every debtor whose debts are adjusted by an award, should be, or should become a member of a Co-operative Resource Society before the award is made (Clauses 50 and 58). The standing crops or the produce of the debtors whose debts are adjusted by an award are not alienable without the permission of the society. Any such alienation is an offence in law punishable with six months' imprisonment or a fine of Rs. 500 (Clause 75). The Local Government may also authorise "in any local area any individual or body of individuals to advance loans to debtors in respect of whose debt an adjustment has been made under this Act" (Clause 76).

The success of the scheme will rest on two factors. There should be a sufficiency of debt boards to settle the debts as rapidly as possible, as delay in settlement may make it difficult for the debtor to raise credit. The credit machinery should be simultaneously created. Considering the magnitude of the task, it would be advisable to work the scheme only in areas where a state-controlled credit organisation could be put into operation, and to arrange for an amicable settlement of debts on the basis of defined principles in other areas.

The difficulty in the working of the co-operative organisation has been the fact that its members joined with a load of prior indebtedness which could not be cleared. The test of the present bill lies in the sufficiency of its provisions in clearing the debts of agriculturists, so that they may restart life without the encumbrance of irredeemable debts. Under the bill, the amount of debt would be determined by calculating interest at 6%, and adjusting the excess payment to principal. A uniform formula without reference to size of the loan, or security, or the capacity of the debtor to pay may prove unfair both to creditors and to debtors. Also the bill does not permit a revision of decrees by calculating interest at the scheduled rate, though the amount under the decree is to be adjusted like other debts. The property of the debtor would be valued at the prevailing rate, and the debt scaled down to 80% of the value, subject to the realisation of the secured debt from 80% of the value of the mortgaged property, and the balance from 80% of the value of unsecured properties. The defect of a percentage reduction under principal and interest on the basis of a formula is that it will enable sometimes even debtors who could pay, to repudiate their debts. The consequence is that creditors who would otherwise be willing to forego the amounts due to them in the case of deserving debtors will be unwilling to do so, and it is the smaller agriculturists who will thereby suffer both in the scaling down of their debts, and in raising future credit.

The adjusted debt is to be recovered by sale of property, and by spreading the repayment up to 25 instalments at 6% interest. Under the Deccan Agriculturists' Relief Act a property can be brought to sale only if specifically mortgaged for a loan. The present bill

empowers the Collector to sell the property even in respect of unsecured debts. Again, the Deccan Agriculturists' Relief Act gives the discretion to the court to grant interest on instalments, but the bill fixes it at 6% in all cases. Generally, instalments settled in liquidation schemes are annuity payments on the total amount settled, and there could be no interest on such annuities. 80% of the property is to be the charge for the adjusted debts till they are repaid. The produce from the land is to be the charge for the loans of the co-operative society. It will be a hard job for the Collector to recover the instalments out of the produce, which is also a charge for the debts due to co-operative societies. The bill has gone on the principle that every debtor will have some land left to him on the basis of adjustment of 80% of the property to debts. But in the case of the uneconomic holder or the subsistence-holder of lands, a sale of land upto 80% of its value will make his position worse by depriving him of the little land he has for his maintenance. If instalments are fixed, it may make it difficult for him to repay them out of the produce, and to raise also recurring credit from year to year. If every one had lands enough to maintain himself, and to repay the instalments after the adjustment of debts on the basis of the proposed formula, the scheme proposed would be the best one. But the majority of cultivators own uneconomic holdings, or small holdings barely sufficient to maintain them. To expropriate them of their lands is a danger to rural economy. To fix instalments of repayments out of produce is to make it impossible for them to raise future credit. Cancellation of debts is the only way out, and if this is too drastic a step, a limitation of repayments to a small number of instalments fixing the annual payment at a figure which will not block the raising of current loans on the basis of land incomes is the only remedy.

One has always to remember in debt conciliation that we should not try to provide for logical instalments in respect of past debts of small and uneconomic holders. Many creditors would rather think of the continuing custom of a debtor, than the collection of past debts which they know they could not realise. And we need not be more anxious than the creditors to make arrangements for the repayment of this class of debts.

One good feature of the bill is that all sales from January 1927 will be presumed to be mortgages unless the contrary is proved. While this no doubt enables the board to enquire into sales due to debts owed to moneylenders, the facility in the Deccan Agriculturists' Relief Act which permits a debtor to let in oral evidence to prove that a sale is not a mortgage, irrespective of any time limit, should also be made available in the bill.

The provisions of insolvency provided in the bill do in no way prevent the expropriation of the uneconomic and the small holder.

Certain other defects in the bill are noted below. The bill restricts its scope to those holders of land who cultivate with or without the aid of hired

labour, or under their supervision or that of their families. This definition will be excluding the large class of agriculturists who take the risks of cultivation and direct and supervise it through paid agents, but are not fortunate enough to have able-bodied dependents to assist them in cultivation in their own family. A greater danger in the definition lies elsewhere. A cultivator may be leasing his lands to tenants under the system of produce-sharing, and unless the latter is defined, there is every danger of rent-receivers being classified as those doing personal cultivation.

The bill has no provision regarding the settlement of rent debts, relaxing where necessary, the provisions of the Land Revenue Act or the Taluqdari Acts. The provision for appeals in regard to claims of Rs. 1,000 and over will impede the working of these boards. The limit of amount is not based on the sum determined as due in the award, but on the claim put in by a creditor. Awards will naturally be for substantially lower amounts than those in the claims. The limit of sums for appeal should be raised so that debts relating to small holders as defined in the Small holders' Relief Bill may not be questioned in the appeal. The need for appeal is less, as the working of debt boards is subject to the supervision of special judges. The land value is to be determined on the market value of the land on the date of application. This provision is sure to lead to a lot of complication, as the values may vary according to the generosity of the chairmen of boards, and as there are sure to be constant appeals on this question to the courts. The better way would be to supply a schedule of multiples of land revenue for different tracts to the boards, and to permit appeals to the Commissioners or the Revenue Boards where such multiples are objected to. This provision was made in the Sales Act in U. P., and has worked successfully.

Note 21

THE U. P. AGRICULTURISTS AND WORKMEN DEBT REDEMPTION BILL, AND THE MONEY-LENDERS' BILL

The U. P. Government introduced in the Legislative Assembly the Agriculturists and Workmen Debt Redemption bill on 17th April 1939. It has also introduced another bill, the Moneylenders' bill on 27th April 1939. The Legislative Assembly passed the amendments to the Encumbered Estates Act which we have noticed in the footnote to para. 285, on 20th April 1939. A few more minor amendments providing for relief in the case of partners of firms and surety debtors were also passed. The Legislative Council has made certain amendments in favour of the creditors on 26th May providing for restoration of claims of creditors which have been annulled by the special judge, and allowing interest to be claimed as principal on renewed bonds in certain cases.

The Agriculturists and Workmen Debt Redemption Bill provides for relief in the case of those tenants and landholders paying a rent or revenue of Rs. 1,000 and less, and who are not assessed to income-tax, of rural labourers, and wage earners whose wages do not exceed Rs. sixty a month. Those whose applications are pending under the Encumbered Estates Act 1934, and are not subsequently quashed by the special judge cannot apply for relief under the new bill. Relief in respect of other landholders will follow the existing provisions of the Encumbered Estates Act of 1934. Under the bill, the first procedure of common application to all classes of debtors is that debts will be scaled down according to a scheduled rate of interest, of 5% on secured debts, and 8% on unsecured debts. The Agriculturists' Relief Act, 1934, U. P., provided for practically double the rates of interest in scaling down debts to be applied to loans, but only from 1-1-1930. The rates of interest provided in the bill cannot be said to be very low, though they may be slightly increased, so as to cover the administrative charges in the employment of money in rural areas.

In the case of tenants and zamindars paying a rent or revenue of Rs. 500, debts will be scaled down as not to exceed "the difference between twice the principal and the amount paid by the debtor towards the principal or interest, or both of the loan." The application of this form of the law of Damdupat only to those who are paying a small land revenue minimises the evil of repudiation of debts in respect of long term loans at low rates of interest by the better class of landholders. A definite exclusion of loans advanced at low rates of interest from the application of this law of Damdupat will still further prevent its misapplication to secured long term loans.

The usual law of Damdupat of not decreasing under interest a sum more than the outstanding principal is to apply to all agriculturists.

The bill has a provision of common application to all debtors that execution can be taken against produce only to the extent of one fourth of the quantity in a year, and that too only for four years. This provision will help the non-propertied classes to be relieved once and for all from their load of ancestral and long-standing debts. Closely approximate in status to the non-propertied classes are the uneconomic holders, and those subsisting on family farms of their own. Their land is no doubt exempt from sale. But how is it possible to expect this class to repay out of their land income to creditors? This class of holders can be protected only by providing for the same mode of repayments as in the case of non-propertied classes. For their land income will hardly be sufficient as a charge for future credit, and it cannot be encumbered with any past liabilities.

Another provision prescribes the procedure regarding transfer of land to creditors in execution of decrees. Land will be valued at pre-slump values

in the case of decrees relating to loans advanced before 1-7-1930. In respect of other decrees "the court shall determine the value of land to be transferred by multiplying its annual value in the year in which the decree is sought to be executed by sale by the prescribed multiple." Where the value is less than the amount of the decree, the land shall be transferred to the decree-holder, "and the decree shall be deemed to be satisfied up to the value of such land." Where the value is more, the court shall determine the amount of land to be transferred in order to satisfy the decree.

The U. P. Government have recognised that these provisions by themselves will not scale down debts to a size which can be repaid by agriculturists, and they should be supplemented by an additional bill enabling reduction of debts to the level of repaying capacity of the debtors and exempting a minimum holding from being sold up for debts. Two proposals have also been made in this connection which we shall examine below.

Firstly, lands assessed to a land revenue of Rs. 250 are to be exempt from sale in execution of decrees. This provision ought to exempt sale of land belonging to small and uneconomic holders. But while land is exempt from sale, the produce may be alienated to creditors. Creditors have the following two options under these proposals. They may take possession of two-thirds of the land assessed to a land revenue of Rs. 250 for a period of fifteen years as a self-liquidating mortgage. Land in excess over that assessed to a land revenue of Rs. 250 may be sold to creditors. Or creditors may become proprietors of the private lands of land-holders, the latter becoming ex-proprietary tenants under them perpetually paying a certain rental as fixed under the Tenancy Act. The first provision can operate only where creditors are willing to take the responsibility of managing a farm. The second method raises a number of questions relating to principles of a land policy. Is it proper to increase the extent of sub-in-feudation in the country by interposing the moneylender as a proprietor which all debt legislation wants to avoid? While the conversion of rent-receiving landlords into ex-proprietary tenants of their private lands does in no way harm the agricultural economy, in so far as no new class of rent-receivers is created by the legislation, the principle of making money-lenders into rentiers should not be applied to small landowners whose income from land hardly admits of its perpetual sharing with a money-lender newly created as a proprietor. To legalise debts which perhaps could not be realised from a poor landholder by splitting them into annual rents, and encumbering land as a charge for their repayment, may lead only to a further deterioration in the position of the small holder. The application of this principle may be permitted in the case of rent-receiving big holders and not otherwise.

Possibly the sponsors of these proposals want to avoid the provision of instalments which lead to difficulties in recoveries. But the creation of the

creditor as proprietor is no more than the fixation of interminable instalments. The granting of land again, to a creditor for fifteen years is no more than the granting of instalments, ensuring at the same time for their recovery, by granting possession of the land to the creditor for a period of fifteen years.

The Money-lenders' bill provides for registration and licensing of money-lenders. The statement of objects and reasons makes the following observation on the scope of the bill :—

“The introduction of a number of new petty criminal offences, the existence of which would merely provide a means of harassing money-lenders generally, has been avoided, and the administration of the Act is left mainly in the hands of the civil courts—the ordinary forum for litigation regarding suits.”

The experience in the working of Moneylenders' Acts does not bear this out. If irregularities and offences are to be discovered only through suits, many will remain undiscovered. And if they are to apply only to licensed money-lenders, many who could not be licensed will escape from the clutches of the law. The proper procedure would be for the executive authorities to inspect money-lending, and to prosecute money-lenders for offences before the courts, and for the courts to investigate them and if proved, to convict the money-lenders.

STATEMENTS.

A

DEBT CONCILIATION BOARDS IN THE CENTRAL PROVINCES.

(1)

No. of applications received on the basis of their value by the Mehkar Board. (Buldana Dt.)

| | | | | |
|-----------------------|-------------------------|-----------------------|-----------|----------------------|
| Below Rs. 500 1254 | Rs. 501 to 5000 1997 | Rs. 5001 to 173 | Rs. 15000 | Over Rs. 15000 31 |
|-----------------------|-------------------------|-----------------------|-----------|----------------------|

Statement showing the working of Debt Conciliation Boards in the C. P. for the year ending 30th September 1936
(To indicate rejected applications)

| | Dismissed applications after admission | | Applications rejected after admission | | No. of certificates issued | | Agreed cases | | % of remission | Average No. of instalments | Average multiple of rent or revenue for fixing instalments | |
|------------------------|--|------------------------|---------------------------------------|------------------------|----------------------------|------------------------|----------------------------|-------------------------------|----------------|----------------------------|--|----------------------------|
| | No. in lakhs | Amount in lakhs of Rs. | No. | Amount in lakhs of Rs. | Cases | Amount in lakhs of Rs. | Amount due in lakhs of Rs. | Amount agreed in lakhs of Rs. | | | | |
| | | | | | | | | | | | | No. of certificates issued |
| Ramtek-Umter | 117 | 1.79 | 170 | 3.15 | 75 | 1.01 | 1179 | 15.45 | 7.00 | 55 | 16 | 2 |
| Patan-Sehora | 734 | 8.42 | 305 | 3.83 | 104 | .76 | 914 | 10.97 | 8.75 | 48 (?) | 8-12 | 1 |
| Narashingpur-Gadarwara | 156 | 2.41 | 1265 | 28.49 | 963 | 9.43 | 3866 | 57.63 | 25.22 | ... | 1 to 20 | ... |
| Tulapur (Yeotmal) | 97 | 2.05 | 228 | 7.04 | 130 | 2.36 | 483 | 15.49 | 10.25 | ... | ... | ... |
| Mekhar (Buidana) | 73 | 13.37 | 77 | .77 | 142 | 1.24 | 2641 | *26.55 | 18.20 | ... | ... | 3.5 |

Note:—The last 3 boards have completed their work.

* A sum of Rs. 8.35 lakhs was repaid by a transfer of 8491 acres of land.

(3)

Progress Report on the working of the Debt Conciliation Boards in the Central Provinces and Berar to the end of July 1938.

| Name of the Board | Agreements executed | | | Certificates issued under section 15 (1) of the Debt Conciliation Act | | Average no. of instalments | Average multiple of rent or revenue for fixing instalments |
|--------------------------------------|---------------------|---------------------------------|-------------------------------|---|--------|----------------------------|--|
| | Number | Amount involved in lakhs of Rs. | Amount agreed in lakhs of Rs. | Percentage of remissions | Number | | |
| | | | | | | E | E |
| Sausar, district Chhindwara.... | 1,417 | 17.33 | 6.87 | 60 | 128 | .7 | 2½ |
| Ohhindwara and Seoni sub-division.—A | 4,452 | 36.32 | 15.72 | 57 | 688 | 3.85 | 1½ |
| Wardha and Hinganghat. | 3,000 | 52.04 | 26.52 | 49 | 1,098 | 7.45 | 2 |
| Arvi, district Wardha. | 1,180 | 25.73 | 8.55 | 67 | 158 | .85 | |
| Betul; Multai and Bhainsdehi. | 5,068 | 43.01 | 20.14 | 53 | 332 | 1.92 | |
| Nagpur. | 109 | .84 | .38 | 55 | 25 | .06 | |
| Katol and Saoner, district Nagpur. | 356 | 3.06 | 1.98 | 35 | 52 | .33 | |
| Chanda | 40 | .29 | .17 | 40 | ... | ... | |
| Warora, district Chanda | 7 | .04 | .01 | 71 | ... | ... | |
| Burhanpur, district Nimar. | 1,595 | 21.61 | 8.12 | 62 | 99 | .86 | |
| Khandwa, district Nimar. | 6,882 | 96.26 | 38.53 | 60 | 1,139 | 9.92 | 2 |

E—The figures in these columns have been taken from the statement on the working of Boards for the year ending 30th September 1936.
A—Conciliation finished on 31st July 1938.

| Name of the Board | Agreements executed | | | Certificates issued under section 15 (1) of the Debt Conciliation Act | | Average no of instalments E | Average multiple of rent or revenue for fixing instalments. E | |
|--|---------------------|---------------------------------|-------------------------------|---|--------|-----------------------------|---|---|
| | Number | Amount involved in lakhs of Rs. | Amount agreed in lakhs of Rs. | Percentage of remissions | Number | | | Amount for which certificates were issued |
| | | | | | | | | |
| Hoshangabad, Harda and Seoni-Malwa. | 1,526 | 13.64 | 4.37 | 64 | 136 | .39 | March 1938 | |
| Jubbulpore and Murwara. | 790 | 4.25 | 2.29 | 46 | 72 | .09 | | |
| Harsud | 14 | .09 | .03 | 67 | ... | ... | March 1938 | |
| Rajpur and Baloda Bazar. | 26 | .22 | .13 | 44 | 31 | .44 | | |
| Bhandara, Gondia and Sakoli. | 6,185 | 55.01 | 20.46 | 63 | 664 | 2.92 | March 1938 | |
| Darbhayestmal. | 1902 | 38.98 | 21.43 | 45 | 544 | 7.11 | | |
| Sohagpur, District Hoshangabad. | 1482 | 22.40 | 9.43 | 59 | 299 | 4.23 | March 1938 | |
| Damoh and Hatta, district Saugor. | 3782 | 30.76 | 15.79 | 49 | 1435 | 7.15 | | |
| Bilaspur-mungeli. | 231 | 4.73 | 3.11 | 34 | 41 | 1.01 | Term of board not extended after October 1937 | |
| Rehli, Saugor and Banda, district Saugor. | 4788 | 46.25 | 21.77 | 53 | 360 | 5.10 | | |
| Janjgir, district Bilaspur | 355 | 3.32 | 1.45 | 56 | 44 | 1.26 | April 1938 | |
| Drug.-B | 189 | 2.91 | 2.15 | 26 | 127 | 5.84 | | |
| Bilaspur-Mungeli. | 661 | 10.24 | 5.79 | 43 | 115 | 1.94 | April 1938 | |
| Balod Sanjari and Bemetara, district Drug. | 15 | .29 | .16 | 43 | 3 | .12 | | |

B-Conciliation finished on 30th June 1938.

| Name of the Board | Agreements executed | | | Percentage of remission | Certificates issued under section 15 (1) of the Debt Conciliation Act | | | Average No. of instalments | Average multiple of rent or revenue for fixing instalments |
|---|---------------------|---------------------------------|------------------------|-------------------------|---|---|--------|----------------------------|--|
| | Number | Amount agreed in lakhs of Rs. | | | Number | Amount for which certificates were issued | | | |
| | | Amount involved in lakhs of Rs. | Amount in lakhs of Rs. | | | Number | Amount | | |
| Basim and Mangrul, district Akola. ... | 4,362 | 53.41 | 31.19 | 42 | 219 | 1.68 | | | |
| Murtizapur, district Akola. ... | 697 | 5.83 | 2.77 | 52 | 134 | 1.24 | | | |
| Akot and Akola. ... | 2,129 | 16.12 | 8.04 | 50 | 229 | 1.50 | | | |
| O—Amraoti—Chandur.—D ... | 4,305 | 55.49 | 38.29 | 31 | 513 | 4.74 | 15 | 1.19 | |
| Ellichpur—Daryapur, and Melghat. ... | 580 | 2.58 | 1.48 | 42 | 30 | .12 | | | |
| Morsi, district Amraoti. ... | 415 | 1.94 | 1.09 | 44 | 14 | .0 | | | |
| Chikhi—Malkapur, district Buldana. ... | 1,782 | 18.49 | 10.52 | 43 | 64 | .34 | | | |
| Balapur, district Akola. ... | 393 | 1.02 | .38 | 62 | ... | ... | | | |
| Pusad, district Yeotmal. ... | 194 | 1.20 | .64 | 46 | 244 | .14 | | | |
| Khangaon—Jalgaon, district Buldana. ... | 246 | 1.13 | .38 | 66 | 20 | .20 | | | |

C—Till 30th Sep. 1936, a sum of Rs. 9.77 lakhs was repaid by a transfer of 3648 acres at Rs. 268 per acre.

D—A sum of Rs. 7.14 lakhs was settled by a transfer 3240 acres of land at 220 per acre till 30th Sep. 1936.

Note.—During the year ending Sep. 1937, debts amounting to 65.95 lakhs was settled by a transfer of 41960 acres of land, including malguzari shares aggregating to about 13 villages and 3 houses.

(4)

Statement to indicate the difficulties in fixing instalments in the case of small and uneconomic holders.

Extracted from cases settled by Amraoti D. C. Board

| Case No. | Area owned | | Area transferred for debts | | Debts involved Rs. | Area left | | Annual Instalment in Rs. | No. of years |
|--|------------|-------------|----------------------------|-------------|--------------------|-----------|-------------|--------------------------|--------------|
| | Acres | Rent in Rs. | Acres | Rent in Rs. | | Acres | Rent in Rs. | | |
| 1275 | 11 | 25-0-0 | 6-37 | 10 | 7594 | 5-3 | 11 | 21 | 15 |
| 886 | 15-24 | 24-1-0 | 12 | 18 | 2101 | 3-24 | 6-11-0 | 31 | 15 |
| 1285 | 15-35 | 13-0-0 | 10-35 | 9-8 | 1225 | 5 | 3-8 | 7 | 11 |
| 1962 | 3-23 | 10-6-0 | 2 | 6 | 1413 | 1-23 | 4-6 | 5 | 12 |
| 1833 | 14-22 | 31-7-0 | 7-15 | 20 | 1945 | 7-7 | 11-4 | 50 | 13 |
| 2033 | 9-25 | 9-0-0 | 5-28 | 6-8 | 3258 | 3-37 | 2-8 | 30 | 20 |
| 2017 | 10-19 | 21-8-0 | 3-38 | 7 | 2208 | 6-21 | 14-8 | 12 | 13 |
| 548 | 3-16 | 10-8-0 | 2-10 | 6-4 | 937 | 1-6 | 4-4 | 10 | 20 |
| 1874 | 7-32 | 15-0-0 | 3-36 | 7-8 | 1033 | 3-36 | 7-8 | 13½ | 12 |
| Cases in which instalments have been fixed without a transfer of land | | | | | | | | | |
| 719 | 2 | 7-8-0 | ... | ... | 600 | 2 | 7-8 | 25 | 2 |
| 1706 | 8-5 | 24-0-0 | ... | ... | 1201 | 8-5 | 27 | 47 | 12 |
| 1886 | 10-28 | 23-0-0 | ... | ... | 2717 | 10-28 | 23-11-0 | 138 | 10 |
| 1367 | 6-17 | 18-12 | ... | ... | 866 | 6-17 | 18-12-0 | 40 | 14 |
| 1860 | 3-3 | 2-5-0 | ... | ... | 680 | 3-3 | 2-5-0 | 16 | 10 |
| 1848 | 11-25 | 20-8-0 | ... | ... | 1685 | 11-25 | 20-8-0 | 54 | 20 |
| 1851 | 9-38 | 27-4-0 | ... | ... | 584 | 9-38 | 27-4-0 | 39 | 10 |
| 1733 | 2-19 | 5-8-0 | ... | ... | 1284 | 2-19 | 5-8-0 | 30 | 12 |
| 1661 | 4-34 | 18-2-0 | ... | ... | 679 | 6-34 | 18-12-0 | 36 | 13 |
| 1212 | 1-12 | 2-0-0 | ... | ... | 2508 | 1-12 | ... | 90 | 20 |
| 1634 | 6-3 | 11-6-0 | ... | ... | 1587 | 6-3 | 11-6-0 | 91 | 14 |
| 1508 | 6-27 | 12-4-9 | ... | ... | 842 | 6-27 | 12-4-9 | 39 | 16 |
| 1412 | 10-8 | 25-0-0 | ... | ... | 752 | 10-8 | 25-0-0 | 51 | 12 |
| 1253 | 5-24 | 14-0-0 | ... | ... | 938 | 5-24 | 14-0-0 | 47 | 16 |
| 1142 | 1-30 | 5-0-0 | ... | ... | 478 | 1-30 | 5-0-0 | 50 | 10 |

B
DEBT CONCILIATION BOARDS IN BENGAL

(1)

STATEMENT TO SHOW THE POSTPONEMENT OF CASES
OWING TO NON-APPEARANCE OF CREDITORS.

(*Barkul Board, Chandpur Division*)

- (1) Case No. 28 was postponed 6 times from 4-2-1937 to 23-12-1937.
- (2) Case No. 53 was postponed 6 times from 20-6-1937 to 23-12-1937.
- (3) Case No. 210 was postponed 5 times from 1-8-1937 to 23-12-1937.
- (4) Case No. 7 was postponed 7 times from 18-3-1937 to 16-9-1937.

(2)

PROGRESS STATEMENTS OF BOARDS IN HAJIGANJ CIRCLE,
CHANDPUR DIVISION, EASTERN BENGAL TILL
31-12-1937

(The following statement will indicate the slow progress in the working of boards vide Legislative Assembly Proceedings. vol. 52, 6, of 8-4-1938, p. 329)

| | | |
|--|-----|--|
| 1. Number of Boards | ... | 27 |
| 2. Number of applications pending. | ... | 5458 |
| | | (No. of cases pending by November 1937 was 5331 involving Rs. 30.99 lakhs) |
| 3. (a) No. of cases in which claims have been submitted. | ... | 1295 |
| (b) Amount involved in the same. | ... | Rs. 5,11,397 |
| 4. (a) No. of cases in which amount has been determined | ... | 538 |
| (b) Claims in the same. | ... | 1,53,733 |
| (c) Amount for which determined. | ... | 1,15,724 |
| 5. (a) No of cases settled. | ... | 385 |
| (b) Claims in the same. | ... | 1,029,20 |
| (c) Composed for Rs. | ... | 38,327 |
| 6. Realisation from court fees in stamps. | ... | Rs. 6218 |
| 7. Establishment Charges. | ... | Rs. 11507 |

(3)

**STATEMENT OF PROGRESS OF BOARDS IN CHANDPUR
DIVISION IN EASTERN BENGAL.**

(Upto September 1937)

| | | | |
|-----|--|-----|-----------|
| 1. | No. of boards in 2 police station areas. | ... | 26 |
| | No. of applications filed upto September 1937: | ... | |
| 2. | By debtors. | ... | 3,450 |
| 3. | Amount of claims Rs. | ... | 30,33,197 |
| 4. | By Creditors. | ... | 1,202 |
| 5. | Amount of claims Rs. | ... | 3,00,168 |
| 6. | No. of applications disposed in full. | ... | 204 |
| 7. | No. of creditors therein. | ... | 287 |
| 8. | No. of applications disposed in part. | ... | 184 |
| 9. | No. of Mahajans claiming in the same. | ... | 1,168 |
| 10. | No. of Mahajans with whom settled. | ... | 308 |
| 11. | Total claims of debt settled. | ... | 1,21,492 |
| 12. | Amount at which settled. | ... | 90,087 |
| 13. | No. of cases in which usufructuary mortgages have been given in redemption. | ... | 14 |
| 14. | Applications dismissed for default of applicant. | ... | 114 |
| | For the debtor being a non-agriculturist. | ... | 20 |
| | For co-debtors not joining in the application. | ... | 18 |
| 15. | No. of cases in which creditors to whom 40% is owing have agreed to amicable settlement. | ... | 9 |
| 16. | No. of cases in which the debtor is unable to repay within 20 years. | ... | 107 |
| 17. | No. in which creditors have refused a fair offer. | ... | 34 |
| 18. | No. in which the debtors' property is in possession of the creditor by virtue of mortgage. | ... | 1,274 |
| 19. | No. in which creditors have not appeared. | ... | 1,280 |
| 20. | No. of notices issued under Sec. 34 requesting the court to stay proceedings. | ... | 1,826 |
| 21. | No. of notices disagreed by civil courts. | ... | 222 |
| 22. | Number disagreed by the High Court ruling. | ... | 89 |
| 23. | No. of processes issued upto 30th September. | ... | 25,249 |
| 24. | No. of sittings of the Board. | ... | 841 |
| 25. | No. of meetings without a quorum. | ... | 55 |

B (4).

SAMPLE CASES OF SETTLEMENT BY VILLAGE BOARDS
IN BENGAL.

(To indicate the methods of settlement adopted)

(Extracted from the Press Communiques issued by the Bengal Government)

| | No. of Debits. | Claims. | Amount Settled | Terms of settlement |
|--------------------------------|-------------------|---------|-------------------|---|
| A case in Rajshahi | 2 | 236 | 86 | One debt of Rs. 36 to be paid in 18 annual instalments, and the other, a civil Court decree for Rs. 200 settled for Rs. 50 to be paid in 10 annual instalments. |
| A case in Rangpur | | | | The creditor leased his land to the debtor on condition that the entire crop was handed over to him, the value of half the crop going to meet the debts. In this manner the debt was adjusted by the supply of free labour by the family. |
| A board in Bakarganj Dt. | 1 | 300 | | Usufructuary mortgage for 1200 years settled by returning half to debtor, and the other half to be retained by creditor on payment of rent. |
| A case from Faridpur | 1 | 800 | 425 | Cash payment. It was a case of usufructuary mortgage wherein land had been enjoyed for 9 years in lieu of interest. |
| A case from Noakhali | 14 | 1719 | 588 | Rs. 283 paid in cash to six creditors by selling 60 cents. 68 cents came back to the debtor by redemption, of which 64 cents has been mortgaged for 15 years to pay off a sum of Rs. 145. Balance of Rs. 150 is to be repaid during the current year. |
| A case in Jamalpur | 1 | 980 | ... | The creditor having enjoyed the land for a long time returned it to the debtor. |
| Do. | 1 | 100 | ... | Written off. |
| Do. | 1 | 175 | ... | - do - |

| | No. of Debits. | Claims. | Amount Settled | Terms of settlement |
|-----------------------|-------------------|---------|-------------------|---|
| Mymen- singh | 1 | 4800 | 695 | Debtor owned only 2 acres of land. Cash payment in lump ordered by the Board. |
| | 1 | 496 | 120 | To be paid in instalments of 18 years. |
| A case in Rajshahi | 1 | 1500 | 100 | The debtor owned only 14 acres. Land having been enjoyed for 15 years, the creditor parted with 6 acres on cash payment of Rs. 100. |
| Do | 13 | 1189 | | The debtor owned 18 bighas and a homestead. 6 bighas and a homestead were given back to the debtor though mortgaged. The mortgagee who has lent Rs. 812/- got 12 bighas worth Rs. 300 and the small creditors gave up their claims. |

(5)

**SAMPLE CASES TO INDICATE THE DIFFICULTIES IN
FIXING INSTALMENTS IN THE CASE OF
UNECONOMIC HOLDERS**

(The Board of Economic Enquiry preliminary report issued in 1935 calculates the income from land in the district of Tippera as Rs. 60/- per acre before the depression (vide Page 117 Supplement to Calcutta Gazette Jan. 24, 1935).

Barkul Debt Settlement Board

| | Amount settled Rs. | Extent of land in direct possession in acres | Supplement-ary occupation | Annual income Rs. | No. of instal-ments fixed | Amount to be paid each year Rs. |
|---|-----------------------|--|---------------------------|----------------------|---------------------------|------------------------------------|
| 1 | 25 | .53 | Day Labourer | 50 | 2 | 12½ |
| 2 | 30 | 1.62 | Do | 50 | 2 | 15 |
| 3 | 76 | 1.51 | Do | 70 | 5 | 15 |
| 4 | 350 | 1.61 | Milkman | 100 | 6 | 58 |
| 5 | 130 | .66 | Service | 125 | 10 | 13 |

Baharia Settlement Board (near Chandpur)

| | | | | | | |
|---|-----|------|---------------------------|-----------------------|------------------------|-----|
| 1 | 188 | .80 | Day Labourer in jute work | Information not given | 3 in one year | 188 |
| 2 | 363 | 1.53 | nil | ... | 15 | 24 |
| 3 | 65 | .16 | nil | ... | 2 | 32 |
| 4 | 128 | .67 | Seller of lime | ... | 45 monthly instalments | 34 |

Harinarayanpur Board (near Noakhali)

| | | | | | | |
|---|----------------|------|--|--|----|----|
| 1 | Rs. 696-1-6 | 1.61 | The Son of the tenant is a peon earning Rs.12/- a month, and has to maintain 5 members in his family | | 20 | 35 |
|---|----------------|------|--|--|----|----|

A board in Haflong Circle

| | | | | | | | |
|---|-----|-------------|-------|--------|-----|---|------|
| 1 | 350 | to creditor | No. 1 | } 1.61 | ... | 6 | } 76 |
| | 16 | ... | No. 2 | | ... | 2 | |
| | 21 | ... | No. 3 | | ... | 3 | |
| | 17 | ... | No. 4 | | ... | 5 | |

Note.—This statement does not mean that instalments may become irrecoverable in all cases. It only shows the difficulty in fixing instalments in the case of uneconomic holders depending on casual labour to supplement what they get from their land. Absence of insolvency provisions for application in the case of this class will only lead to the fixation of irrepayable instalments by the boards.

C.

DEBT CONCILIATION BOARDS IN THE PUNJAB

(1)

**STATEMENT INDICATING THE WORKING OF
CONCILIATION BOARDS IN THE PUNJAB***(Extracted from the Indian Cooperative Review of September 1937)*

| Name of board and period of working | No. of Appli-cations. | | Total | No. dismissed | No. Conciliated | | | Total debt | | | No. of certificates issued |
|-------------------------------------|-----------------------|-----------|-------|---------------|-------------------|----------------------|-------|---------------------|-------------------------|----------------|----------------------------|
| | Debtors | Creditors | | | With in-stalments | without in-stalments | Total | Claimed in lakhs of | Conciliated in lakhs of | % of remission | |
| 1 Amritsar (11-9-1935 to 31-12-36) | 1420 | 1087 | 2507 | 891 | 26 | 184 | 210 | Rs. 2-16 | Rs. 1-38 | 64 | ... |
| 2 Garhshankar (1-10-35 to 30-6-37) | ... | ... | 964 | ... | ... | ... | 432 | 3-73B. | 2-92 | ... | 16 |
| 3 Panipat (till May 1937) | 1574 | 1496 | 3070 | 1258 | ... | ... | 1492 | 16-65 | 9-31 A. | 45 | 1 |
| 4 Jhang (till March 1937) | 3713 | 1423 | 5136 | ... | 62 | 555 | 617 | 23-70 C. | ... | ... | 72 |

Note:— A. The amount includes 3-15 lakhs which was the sum settled on secured debts of Rs. 4 lakhs, remission on secured debts being 23%.

B. A sum of Rs. 1-94 lakhs relates to secured debts.

C. The principal of the debt was reduced only in ten cases.

(2)

STATEMENT TO INDICATE THE MODE OF PAYMENT
ARRANGED BY THE PUNJAB DEBT CONCILIATION BOARDS.

| Name of Board | No. of cases settled | Cash | Transfer of land on mortgage | Sale of houses, sites, or non-agricultural land | Sale of cattle | Sale of land | Trees | Fodder |
|---------------|----------------------|--------|------------------------------|---|----------------------|--------------|-------|--------|
| | | Rs. | Rs. | Rs. | Rs. | | Rs. | Rs. |
| Jhang ... | 67 | 35,000 | 50,000 | 15,000 | More than Rs. 1 lakh | ... | ... | ... |
| Panipat ... | 1,492 | 35,718 | 91,915 | 3298 | 1,12,257 | ... | 10458 | 8159 |
| Gorhshankar | 432 | 1843 | 23079 | 1621 | 2245 | 5217 | 20 | 16 |
| Amritsar ... | 210 | 11752 | 3155 | 5606 | 5688 | | 50 | 292 |

Note:— A. Area mortgaged was 512 acres with possession and 11 acres without possession.

B. Debtors could not pay their instalments only in 30 cases.

C. Area mortgaged was 85 acres.

SELECT BIBLIOGRAPHY

I

PUBLICATIONS OTHER THAN ACTS

Reports

1. Report of the Deccan Riots Commission, 1875.
2. The Famine Commission Report, 1880.
3. Evidence Submitted by Local Governments on Land Alienation and Land Tenures to the Famine Commission of 1880.
4. Report of the Commission of Enquiry in 1891 into the working of the Deccan Agriculturists' Relief Act.
5. Note on Land Transfer and Agricultural Indebtedness in India, 1895 (Government of India).
6. The Civil justice Committee Report 1924-25.
7. Recent resettlement reports of Madras, C. P., Punjab, and Bombay during the last ten years, re agricultural indebtedness and land transfers.
8. Report of the Royal Commission on Agriculture, 1928.
- Do. Circular of Government of India to Local Governments in 1930 on the possibilities of restricting alienation of lands.
9. Appendix to the report of the Royal Commission on Agriculture, vol. 14.
10. Central and Provincial Banking Enquiry Committee reports and evidence volumes relating to village enquiries, 1929-1930.
11. Census reports, 1932, of Bihar and Orissa, and Government of India re. transfer of land among aboriginals.
12. Remarks on tenancy and agricultural conditions in the census reports of 1932 of all the Provinces.
13. The U. P. Government Enquiry into depression in Jan. 1932.
14. Report of the Agricultural Debt Enquiry Committee, U. P. (U. P. Gazette, Sep. 10, 1932).
15. Enquiry into agricultural indebtedness by the Madras Government, 1935, (Mr. Sathyanathan's Report).
16. Enquiry of the Bengal Board of Economic enquiry into rural indebtedness, 1935.
17. The Ceylon Banking Commission report, 1935.
18. The U. P. Congress Agrarian Enquiry Committee report, 1935.
19. The Bombay Congress Agrarian Enquiry Committee report, 1936.
20. The preliminary report of the Agricultural credit department of the Reserve Bank of India, 1937.
21. Report of the Land and Agricultural Committee Burma, 1938.

Reports--Native States

22. Report of the Economic depression and relief measures enquiry Committee, Cochin, 1934.
23. Report of the Agriculturists Relief Committee, Mysore.
24. Agricultural indebtedness in H. E. H. the Nizam's Dominions by Mr. S. M. Bharucha, Additional Revenue Secretary, 1937.
25. Agricultural debt redemption report—Bhavnagar State.
26. The Agricultural Debt Redemption Committee report, Travancore, 1934.

Administration Reports

27. Land Revenue, Court of wards, and Civil Justice, of all the Provinces for the last five years.
28. The C. P. and Berar Decennial Administration report, 1933 (Working of the Land Alienation Act).
29. Reports of Debt Conciliation Boards of Central Provinces and Berar.
30. Reports on the working of the Central Land Mortgage Bank, Madras for the last six years.

Manuals

31. The Punjab Land Revenue Manual—Rules re exemptions from attachment and sale of property of the agriculturists, execution of decrees, and the working of Land Alienation Act.
32. Sir Andrew Fraser's Administration of Bengal re tenures in Chhota-Nagpur.
33. Santal Parganas Manual.
34. The Bombay Land Revenue Code by Mr. K. S. Gupte re restricted tenures.
35. The C. P. Land Revenue Manual re transfer rights of landholders, prevention of sub-letting, and execution of decrees by Collectors.
36. The U. P. Revenue Manual re calculation of net profits, and execution of decrees by Collectors.

Commentaries on Acts

37. The Deccan Agriculturists' Relief Act by Mr. K. S. Gupte, B. A. LL. B. Poona.
38. The Punjab Alienation of Land Act XIII of 1900—Nihalchand Anand B. A. Lahore, 1924.
39. The Law relating to relief and protection of debtors (Law Publishing Co. Mylapore, Madras) by Mr K. V. Ramasubramanyam.
40. The Punjab Relief of Indebtedness Act by Sir Chhotu Ram, University Book Agency, Lahore.

Surveys

41. Village Surveys of the Punjab Board of Economic Enquiry.
42. An Enquiry into mortgages of Agricultural land, 1924, Punjab Board of Economic Enquiry.
43. Enquiries into sale of land 1922-1927, and in the South-west Punjab, 1938.

Books

44. The Punjab peasant in prosperity and debt by Mr. M. E. Darling.
45. Wealth and welfare of the Punjab by Mr. H. Calvert.
46. 'Rusticus Loquitur'—Mr. M. L. Darling.
47. Land problems of India—Radhakamal Mukerjee.

Foreign

48. Monthly Bulletin of Agricultural Economics and Sociology, Jan. to April 1937, (articles on agricultural indebtedness).
49. I. L. O. year books for the past five years—chapters on Land Reform and Settlement.
50. Report of systems of agricultural credit and insurance, by Mr. Louis Tardy, League of Nations, Geneva, 1938.
51. Report of the proceedings of the International Agricultural Economists' Conference, 1934.

Miscellaneous

52. Articles in Servant of India—Aug. 26th 1937 till to date on Tenancy and Debt Relief problems.
53. Communiqués of the Madras Government on the working of the Agriculturists' Relief Act, 1938.
54. Communiqués of the Bengal Government on the working of the Bengal Agriculturist Debtors Act, 1936.
55. Circulars of the Registrars of Co-operative Societies, Madras and Central Provinces, on scaling down debts in Co-operative Societies.
56. The Statistical Abstract of British India.
57. Opinions of judges and Collectors on a private Money-lenders Bill of 1934 of the Bombay Legislative Council.
58. Bulletins of the Agricultural credit department of the Reserve Bank of India.
59. The Indian Cooperative Review, Sep. 1937
60. A pamphlet on Loan Companies and the Bengal Agriculturist Debtors' Relief Act by Mr. M. K. Bose, M. A. B. L.
61. The Bombay Tenancy problem by Mr. K. S. Gupte, Poona.

**LIST OF ACTS RELATING TO PROTECTION AND RELIEF
OF AGRICULTURIST DEBTORS**

*(Refer also to rules, reports of select Committees, and discussions
in the Legislature on these Acts).*

Ajmir

1. The Ajmir Taluqdars Act of 1872.
2. The Ajmir Court Regulation of 1877 re articles exempted from attachment.
3. The Ajmir Loan Regulation of 1911.

Assam

4. The Court of Wards Act, 1879, Assam.
Do. Amendment Act of 1937.
5. The Assam Moneylenders' Act, 1934.
The Assam Moneylenders' Amendment bill, Dec. 1937,
6. The Assam Debt Conciliation Act of 1937.

Bengal

7. Rules framed by the Committee of Circuit in 1772 regarding adjustment of debts.
8. The Court of Wards Act, 1879, Bengal, and the Amendment Act of 1935.
9. The Bengal Tenancy Amendment Act of 1918 re aboriginals
10. The Bengal Moneylenders' Act, 1933.
11. The Bengal Agricultural Debtors Act and Rules, 1936.
12. The Registration of Moneylenders' Bill, Bengal, 1938.

Bihar

13. The Chota-Nagpur Tenures Act of 1869.
14. The Chota-Nagpur Encumbered Estates Act of 1876.
15. Notifications against forced sales in Chota-Nagpur, 1878.
16. The Chota-Nagpur landlord and tenant procedure Act, of 1879.
17. The Chota-Nagpur Tenancy Act of 1903 and Amendment Acts of 1908, 1924, and 1938.
18. The Bihar Restoration of Bakhast Act, 1938.
19. The Bihar Money lenders Act, 1938.
The Bihar Moneylenders (Regulation of transactions) Act 1939.

Bombay

20. The Deccan Agriculturists Relief Act, 1879 and Amendment Acts of 1882, 1886, 1895, and 1912
21. The Broach and Kaira Encumbered Estates Act of 1881.
22. The Ahmedabad Taluqdars Act of 1862 incorporated in the Gujarat Taluqdars Act of 1888.
23. Sections relating to restricted tenures (1901) in the Bombay Land Revenue Code.
24. The Court of Wards Act I of 1905 do. Amendment Act of 1934.
25. A bill to provide for the temporary relief of small holders in the province of Bombay (VI of 1938).
26. A bill to regulate the transactions of money-lending in the province of Bombay (VII of 1938).
27. Bill No XIII of 1939, to provide for the relief of agricultural debtors in the province of Bombay.

Burma

28. The Burma Land Alienation Bill, 1938.

Central Provinces

29. The C. P. Tenancy Act of 1898— sections relating to restrictions on alienation of occupancy rights in ' Sir ' lands.
30. The Court of Wards Act, 1899.
31. The Land Alienation Act, 1916.
- The C. P. and Berar Temporary Postponment of Execution of Decrees Act, 1938.
32. The Central Provinces Debt Conciliation Act, 1933.
33. The Central Provinces Debt Conciliation Act, 1933, as applied to Berar.
34. The Usurious Loans (Central Provinces Amendment) Act, 1934.
35. The Central Provinces Moneylenders Act, 1934.
- The Central Provinces Moneylenders (Amendment) Act, 1936
36. The C. P. Provincial Insolvency Amendment Act, 1935.
37. The Central Provinces Adjustment and Liquidation of Industrial Workers' Debt Act, 1936.
38. The Central Provinces Reduction of Interest Act, 1936, and Amendment Bill 5 of 1938.
39. Central Provinces Protection of Debtors' Act, 1937.
40. The C. P. and Berar Relief of Indebtedness Bill, 1939.

Ceylon

41. An ordinance relating to pawn-brokers, No. 8 of 1893.
42. An ordinance relating to money-lending, (No. 2 of 1918).
43. Ordinance 5 of 1935 to amend the ordinance relating to money-lending.

Madras

44. The Court of Wards Act I of 1902.
45. The Madras Impartible Estates Act II of 1904.
46. The Agency Tracts Land Transfer Act, Madras, Act I of 1917.
47. The Madras Debtors' Protection Act, 1934.
48. The Madras Usurious Loans Amendment Act, 1935.
49. Act XVI of 1935—Agricultural Loans. Rules under the Act before and after the passage of the Madras Debt Relief Act.
50. The Debt Conciliation Act, Madras, 1936.
51. The Madras Moratorium Bill, Oct, 1937. (dropped)
52. An Act to provide for the relief of indebted agriculturists in the province of Madras, Act IV of 1938.

N. W. F. P.

53. The Land Alienation Act, 1904.
54. Usurious Loans Amendment Act, 1935.
55. Regulation of Accounts Act, 1935.
56. Redemption of Mortgages Act, 1935.
57. The Agriculturist Debtors Relief Bill, N. W. F. P. 1938.

Orissa

58. The Orissa Moneylenders' Bill, 1939.

Punjab

59. The Punjab Tenancy Act of 1861—sections relating to the alienation of occupancy rights in ' Sir ' lands.
60. Notifications against forced sales in the Punjab, 1877, and 1885.
61. The Punjab Land Alienation Act of 1900, Amendment Acts of 1907, and 1931, and Second and Third Amendment Acts of 1938.
62. The Redemption of Mortgages Act, 1913.
63. The Punjab Regulation of Accounts Act, 1930.
64. The Punjab Relief of Indebtedness Act, 1934.
65. The Punjab Debtors' Protection Act, 1936.
66. The Punjab Mortgages Restitution Act, 1938.
67. The Punjab Registration of Moneylenders' Act, 1938.

68. The Provincial Insolvency Punjab Amendment Act III of 1939.

Sind

69. The Sind Encumbered Estates Act, 1896.

United Provinces

70. The Oudh Taluqdars Relief Act 24 of 1870.

71. The Jhansi Encumbered Estates Act of 1882 (Repealed).

72. The Rent Act of 1881, N. W. P., and the Oudh Rent Act of 1868—Sections relating to restriction of alienation of occupancy rights in ' Sir ' lands.

73. The Bundelkhand Encumbered Estates Act of 1903.

74. The Court of Wards Act, 1912.

75. The Oudh Settled Estates Act of 1917.

76. The Agra Estates Act of 1920.

77. The U. P. notifications against sale of land and produce since 1932.

78. The Usurious Loans (United Provinces Amendment) Act, 1934.

79. The United Provinces Temporary Regulation of Execution Act, 1934. (Expired on 29-10-1936).

80. The United Provinces Encumbered Estates Act, 1934.

The United Provinces Encumbered Estates (Amendment) Act, 1935.

The United Provinces Encumbered Estates (Amendment) Bill, 1939.

81. The United Provinces Regulation of Sales Act, 1934. (Expired on 16-12-1936).

82. The United Provinces Agriculturists' Relief Act, 1934.

The United Provinces Agriculturists' Relief (Amendment) Acts 1935, and 1937.

83. The Temporary Postponement of Execution of decrees Act, U. P., 1937.

84. The U. P. Stay of Proceedings (Revenue Courts) Act, 1937.

85. The U. P. Tenancy Bill, 1939.

85A. The United Provinces Agriculturists and Workmen Debt Redemption Bill, April 1939.

85B. The United Provinces Money-lenders' Bill, April 1939.

Native States

86. The Indore Land Revenue and Tenancy Act, No. I of 1931 and circulars.
87. The Travancore Agriculturists' Relief Regulation, 1937.
88. The Mysore Agriculturists' Relief Regulations 1928, and 1935
89. Debt Conciliation Regulation No. 6 of 1937 (Mysore).
90. The Cochin Debt Conciliation Act, 1937.
- H. E. H. the Nizam's
91. The Land Alienation Regulation, 1935.
92. The Moneylenders' Regulation, 1938.
93. The Debt Conciliation Regulation, 1938.
94. The Kheduts Protection Act, Bhavnagar.
95. The Debt Redemption Act, Bhavnagar.

All-India

96. Regulations in the provinces fixing the rate of interest prior to 1855.
97. Act 28 of 1855 repealing usury laws.
98. Indian Contract Amendment Act of 1899.
99. Rules of grant of Government lands in all provinces,
100. Sections in Tenancy Acts dealing with rights of occupancy and rights of free transfer, and exemption of land from attachment in execution of decrees being others than for arrears of rent.
101. The Civil Procedure Code of 1859 and its amendments of 1877, and 1908 (re-execution of decrees relating to agricultural sale of land).
102. Bengal Regulation 1 of 1798 and 17 of 1806 repealed by the Transfer of Property Act, 1882 except in the Punjab.
Transfer of Property Act, (sections relating to mortgages).
103. The Indian Limitation Act IX of 1908.
104. The Provincial Insolvency Act V of 1920.
105. The Usurious Loans Act of 1918 and the Amended Act of 1926.

Foreign

106. The English Moneylenders' Acts, 1900, and 1926.
-

ERRATA

| <i>Page</i> | <i>Para</i> | <i>Line</i> | <i>For</i> | <i>Please read</i> |
|-------------|-------------|--|--------------------|--|
| 1 | ... | 5th from the bottom | its | it, |
| 3 | 5 | 7 | Enquirie | Enquiries |
| 5 | ... | Footnote, 3rd line | Extreme by | Extremely |
| 9 | ... | 9 | amendi | amending |
| 29 | 18 | 4 | 50 years | During the last 50 years |
| 30 | ... | Footnote | ... | insert serial numbers 1, 2, 3 |
| 36 | ... | 3 | debtor | debt |
| 38 | 33 | 7 | instatments | instalments |
| 43 | ... | 4 | hat | that |
| 45 | 54 | 1 | misgiving | misgivings |
| 48 | 63 | 1 | that | the |
| 49 | ... | 3rd line from the bottom | | Insert comma after money-lender, and change 'T' into 't' |
| 51 | ... | 3rd line from the bottom | alience | alienee |
| 61 | ... | Footnote, 5th line from the bottom | 1-15 | 1—15 |
| 63 | 81 | 8 | save | delete the word 'save' |
| 80 | 100 | 12 | them | the Local Govern- ments |
| 84 | ... | 22 | is | delete 'is' |
| 89 | 116 | 5th line from the bottom | Such a | The proposed |
| 89 | Footnote | 9 | enjoin | enjoin on |
| 98 | ... | 6 | power | staying power |
| 116 | 145 | 5 | supplimen- tary | supplementary |
| 124 | 161 | 4th line from the bottom of the para | (Sec. 60:2) | C. P. C. Sec. 60:2) |
| 128 | 166 | 9 | But | Further |
| 135 | 176 | 1 | forms | form |
| 145 | 191 | 15 | to repay- | to a repay- |
| 148 | 194 | 7 | larger | longer |
| 175 | ... | 5 | account | accounts |
| 176 | 220 | 11 | IX, the para | X, para 365 |

| <i>Page</i> | <i>Para</i> | <i>Line</i> | <i>For</i> | <i>Please read</i> |
|-------------|-------------|---------------------------|--------------------|--|
| 178 | Footnote | Last line | Same | Some |
| 192 | " | 9th line from the bottom | The | This |
| 213 | Footnote | 7 | is sued | is-sued |
| " | " | 8 | save | saves |
| 222 | ... | 7th line from the bottom | inclusion | exclusion |
| 224 | item (6) | 6 | 216 | 296 |
| 227 | 272 | 12 | settlement | settlements |
| 245 | 297 | 3 | in | Delete 'in' |
| 246 | 299 | 1 | bill | Act |
| 253 | ... | 2nd line from the bottom | And | An |
| 254 | ... | 5 | excludes | includes |
| 255 | 311 | 2nd line from the bottom | uneconomic holders | uneconomic and subsistence holders |
| 264 | 323 | 2 | away | way |
| 276 | 343 | 3 | addressees | addresses |
| 287 | 360 | 1 | | Add 'in the C. P.' at the end of line 1 |
| 305 | ... | 12th line from the bottom | boards | board |
| 310 | ... | 8th line from the bottom | ... | Insert the last three lines commencing from "undoubtedly" and ending with 'proprietor', after the word 'contracted'. |
| 318 | ... | 7 | ryats | rayats |
| 327 | 4 | 6 | Inf | in |
| 327 | 4 | 9 | , | . |
| 327 | 4 | 10 | a | A |
| 344 | 9 | 4 | exceed | be less than |
| 350 | ... | 13th line from the bottom | eliminated | eliminated |
| 361 | ... | 19 | Daubian | Danubian |
| 361 | ... | 5th line from the bottom | Debts | Debtors |
| 362 | ... | 14 | in | on |
| 368 | ... | 8th line from the bottom | is no doubt | should no doubt be |

